



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 10029/2020

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

and

KERITH CHETTY

Respondent

Coram: Justice E T Steyn *et* Justice J I Cloete

Matter enrolled for hearing: 12 February 2021

Delivered electronically: 12 February 2021

JUDGMENT

CLOETE J (STEYN J concurring):

[1] This is an application for the striking of the respondent's name off the roll of attorneys of this Court. The application was issued on 29 July 2020 and served on the respondent on 6 November 2020. There is no opposition, and I deal with this below.

[2] The application was considered on the papers and written submissions filed by the applicant's attorney without oral argument, in accordance with

paragraph 10.1 of the Directives dated 2 May 2020 issued by the Chief Justice in terms of s 8(3)(b) of the Superior Courts Act 10 of 2013, as read with Section D (1) of the Directives issued by the Judge President of this Division on 26 January 2021 (effective 1 February 2021).

- [3] The respondent was admitted as an attorney by this Court on 7 December 2012 and commenced practice for her own account on 1 August 2013. The initial relief sought by the applicant included other far-reaching orders such as the appointment of a curator to take control of the respondent's practice and to wind it up. However it has since been accepted by the applicant that the respondent ceased practice with effect from 1 November 2018 and simultaneously closed her firm's trust account at Nedbank. The applicant thus only asks that the respondent's name be struck off the attorneys' roll together with the customary costs order.
- [4] On 10 December 2020 the respondent filed a "Notice of Consent" to the initial relief claimed, together with an explanatory affidavit. In essence, and while seeking to excuse her conduct, she cannot dispute that during the period May 2017 to January 2018 she unlawfully disbursed monies held by her in trust on behalf of various trust creditors pertaining to property transactions, totalling some R2.25 million, none of which has been repaid by her.
- [5] Despite the respondent having consented to an order, it is nonetheless incumbent upon us to exercise our discretion whether to strike her name off the attorneys' roll, given the settled legal position that applications such as

these are not ordinary civil proceedings, but are rather *sui generis* and of a disciplinary nature. It is the Court which is the final repository of disciplinary proceedings over attorneys. In *Solomon v Law Society of the Cape of Good Hope*¹ it was stated that ‘...the Law Society protects the interests of the public in its dealings with attorneys. It does not institute any action or civil suit against the attorney. It merely submits to the Court facts which it contends constitute unprofessional conduct and then leaves the Court to determine how it will deal with this officer...’.

- [6] The approach to the exercise of the Court’s discretion in a matter such as this is equally settled: see *inter alia Jasat v Natal Law Society*²; *Malan & Another v Law Society Northern Provinces*³. It is a three-stage enquiry.
- [7] The first stage is whether the conduct complained of has been established on a balance of probabilities. This is a factual enquiry. It is clearly established in the present case.
- [8] The second stage, which is a discretionary evaluation, necessarily calls for the conduct complained of to be weighed against the standard of the profession, which is partly value judgment and partly objective fact. The respondent is guilty of substantial misappropriation of trust funds over a protracted period. This is regarded as one of the most serious forms of unprofessional conduct. It renders her unfit to practice as an attorney. What is also disturbing is that in one of the annexures to her explanatory affidavit the

¹ 1934 AD 401 at 409.

² 2000 (3) SA 44 (SCA).

³ 2009 (1) SA 216 (SCA).

respondent informed the applicant, when giving notice of her intention to cease practice, that she intended remaining one of its non-practising members. Accordingly at that stage she had no intention of consenting to the order sought by the applicant. She did not attempt to deal with this in her explanatory affidavit.

[9] The third and final stage of the enquiry is whether the delinquent practitioner should be struck from the roll or suspended. Again, this involves the exercise of a discretion. Not even the respondent suggests that she should be suspended for any particular period. In my view striking is the only appropriate sanction in the circumstances.

[10] Two other aspects require mention. The first is that the respondent maintains she no longer has her certificate of enrolment as an attorney in her possession. In the initial relief claimed an order was sought directing her to surrender and deliver such certificate to the Chief Registrar of this Court. This has been established practice, and has been incorporated in orders, for many years, even though the Attorneys Act 53 of 1979 did not contain this as a statutory requirement, and nor does the Legal Practice Act 28 of 2014 ("LPA").

[11] The purpose of such an order is twofold. First and foremost, it protects the public and secondly, it enables the Chief Registrar to maintain accurate records, since the applicant invariably fails to mention the case number under which the practitioner was admitted in the first place.

[12] The applicant has seemingly accepted the respondent's averment, since it no longer requests such surrender nor any alternative form of relief in relation thereto. There is no other information at our disposal either.

[13] Section 30(5) of the LPA imposes an obligation on the registrar, immediately after issuing an order that the name of a legal practitioner be struck off the roll or suspended from practice, to forward a certified copy thereof to the applicant through its provincial branch having jurisdiction. In turn, s 30(3)(e) of the LPA requires the applicant to keep a Roll of Legal Practitioners reflecting the particulars of any such order. After discussion with the Chief Registrar, she has obtained confirmation from the applicant's Mr Frank Dorey that such particulars also appear on its website (info@lpc.org.za) which is easily accessible to the public. Accordingly, in the particular circumstances of this matter, the public will be safeguarded even though the respondent will not be ordered to surrender her certificate.

[14] The second aspect is that the respondent has tendered, in her explanatory affidavit, to make available to the applicant, should it be required, the accounting records and ledgers up to the date of closure of her practice and trust account, all of which she states are still in her possession. In my view this should also be incorporated in this Court's order.

[15] **The following order is made:**

1. The respondent's name is struck off the roll of attorneys;
2. The respondent shall make available to the applicant, within 20 (twenty) days of written request, all accounting records and ledgers up to the date of closure of her practice and trust account; and
3. The respondent shall pay the applicant's costs of suit on the attorney and client scale.

J I CLOETE

I agree.

E T STEYN