



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

Case No: 10313/2021

**In the matter between:**

**THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL**

**1<sup>st</sup> Applicant**

**MEC FOR THE EXECUTIVE COUNCIL FOR HEALTH  
OF THE WESTERN CAPE PROVINCIAL DEPARTMENT**

**2<sup>nd</sup> Applicant**

**and**

**ZUKO MACK MICHAEL NONXUBA**

**1<sup>st</sup> Respondent**

**NONXUBA INC.**

**2<sup>nd</sup> Respondent**

**NOMVELWANA ALICIA LITHEMBA NONXUBA**

**3<sup>rd</sup> Respondent**

*Date of hearing* : 11 April 2022

*Date of Judgment* : 18 April 2022

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**J U D G M E N T**

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**NUKU, J**

[1] This is an application by the South African Legal Practice Council ("*the LPC*") to suspend Mr Zuko Mack Michael Nonxuba ("*Mr Nonxuba*") as a practising attorney pending the final determination of an application to strike his name off the roll of legal practitioners.

**[2]** The matter started off as an urgent application which was brought by the LPC on 21 June 2021 for an order interdicting Mr Nonxuba from practising as a legal practitioner pending the final determination of disciplinary proceedings launched by the LPC against Mr Nonxuba. For ease of reference I refer to this application as the main application.

**[3]** The main application was prompted by some investigations conducted by the LPC which suggested that Mr Nonxuba might be guilty of professional misconduct. These investigations traversed some material which might breach professional legal privilege enjoyed by Mr Nonxuba's clients. For this reason, the LPC obtained an order that was granted by Rogers J which provides that what the investigations revealed must be kept confidential.

**[4]** Mr Nonxuba opposed the main application, filed opposing papers and the main application was set down for hearing on 10 August 2021. On 3 August 2021, the LPC received an application by the Member for the Executive Council for Health of the Western Cape Provincial Government ("**the MEC**") to intervene in the main application. For convenience I refer to the application by the MEC as the intervention application.

**[5]** The affidavit filed in support of the intervention application revealed that Nonxuba Incorporated, the law firm where Mr Nonxuba practises as a director, had successfully prosecuted five medical negligence claims involving minor children against the Member

for the Executive Council for Health of the Eastern Cape Provincial Government (***the MEC, EC***) which resulted in the following court orders being granted, namely:

5.1 a court order dated 28 May 2018 where the MEC, EC was ordered to pay the plaintiff:

5.1.1 R300 000 in respect of general damages;

5.1.2 R14.7 million on behalf of a minor child;

5.1.3 R1 102 500 in respect of the costs for the administration of a trust to be established for the benefit of a minor child

5.1.4 Plaintiff's costs of suit.

5.2 a court order dated 6 August 2018 where the MEC, EC was ordered to pay the plaintiff:

5.2.1 R350 000 in respect of general damages;

5.2.2 R17 555 350 on behalf of a minor child;

**5.2.3 R1 316 651.25 in respect of the costs for the administration of a trust to be established for the benefit of a minor child**

**5.2.4 Plaintiff's costs of suit.**

**5.3 a court order dated 29 March 2019 where the MEC, EC was ordered to pay the plaintiff:**

**5.3.1 R7 441 860.47 on behalf of a minor child;**

**5.3.2 R558 139.53 in respect of the costs for the administration of a trust to be established for the benefit of a minor child**

**5.3.3 Plaintiff's costs of suit.**

**5.4 a court order dated 6 August 2018 where the MEC, EC was ordered to pay the plaintiff:**

**5.4.1 R350 000 in respect of general damages;**

**5.4.2 R15 215 016.90 on behalf of a minor child;**

**5.4.3 R1 570 870.28 in respect of the costs for the administration of a trust to be established for the benefit of a minor child**

**5.4.4 Plaintiff's costs of suit.**

**5.5 a court order dated 6 August 2018 where the MEC, EC was ordered to pay the plaintiff:**

**5.5.1 R350 000 in respect of general damages;**

**5.5.2 R9 846 319 on behalf of a minor child and costs for the administration of a trust to be established for the benefit of a minor child**

**5.5.3 Plaintiff's costs of suit.**

**[5] In addition to the amounts referred to in 5.4 and 5.5 above, the MEC, EC had paid R6.5 million and R5 million respectively to the trust account of Nonxuba Incorporated. All the five court orders referred to above obliged Nonxuba incorporated to establish the trusts for the benefit of the minor children within a period of six months from the date of the order.**

**[6] In three matters where trusts were established after a period way in excess of six months, Nonxuba Incorporated had failed to pay over the monies to the trusts. In two**

matters no trusts were established, although in one of these matters the monies were transferred to another law firm after the termination of the mandate of Nonxuba Incorporated.

**[7]** The above facts greatly concerned the LPC and caused it to approach this Court on an urgent basis seeking an order interdicting Mr Nonxuba and all others persons authorised to operate upon the trust accounts kept by Nonxuba Incorporated from operating such trust accounts, as well as an order appointing the Director of the Gauteng office of the LPC as a curator to the said trust accounts, with the authority to operate them until Mr Nonxuba or Nonxuba Incorporated had, to the satisfaction of the LPC:

- 7.1 proved the date upon which the funds payable in terms of the court orders referred to above were received by Nonxuba Incorporated;
- 7.2 proved that the amounts so paid were correctly credited to the relevant trust ledger accounts and to provide the LPC with copies thereof;
- 7.3 identified any debits made to the trust ledger accounts in question, and to show that the said debits were lawfully made. Mr Nonxuba and or Nonxuba incorporated were required to provide copies of all the source documentation relating to payments made from the accounts.

**7.4** proved that the credit balance in each trust ledger account is still held in trust except for one matter where the funds had been transferred to another law firm.

**[8]** For ease of reference I refer to the application referred to in paragraph [7] as the conditional application. The conditional application was also set down for hearing on the same date as the main application on 10 August 2021. On 10 August 2021, Mr Nonxuba's legal representatives provided the LPC's legal representatives with copies of redacted trust bank statements of Nonxuba Incorporated for the month of July 2021 together with some accounting records comprising in excess of 2000 pages. This necessitated a postponement of the conditional application to enable the LPC to peruse and consider the accounting records. By agreement between the parties the matter stood down until 13 August 2021.

**[9]** On 12 August 2021, the LPC supplemented its papers by filing an affidavit commenting on the documents provided to the LPC's legal representatives by Mr Nonxuba's legal representatives. In the supplementary papers, the LPC pointed out that the documents so furnished did not show that Nonxuba Incorporated still held the funds in trust because Mr Nonxuba had failed to provide a list of trust creditors as well as the amounts owed to such creditors which could be reconciled with the balance in the trust bank statement.

**[10]** The examination of the reducing balance in the redacted bank statement was also a cause for concern to the LPC as it showed that a sum of R10 500 000 had been

transferred from trust to business during the month of July 2021 and that all these transfers were in perfectly round numbers.

**[11]** The examination of the trust ledgers in one matter revealed that a sum of R4 805 500.30 was transferred as fees from the trust account to the business account before the date of the order obliging the MEC, EC to pay. In another matter the examination of the trust ledgers revealed that a sum of R5 908 971.80 was transferred as fees from the trust account to the business account before the date of the order obliging the MEC, EC to pay. There were also a number of other accounting irregularities that were identified.

**[12]** The matter came before Le Roux AJ on 13 August 2021 who was presented with a draft order granting an interim interdict and postponing the conditional application to 26 October 2021 with a timetable for the filing of further papers. Mr Nonxuba delivered his answering papers on 15 September 2021. The answering papers raised some technical defences which I do intend to set out as they were subsequently abandoned.

**[13]** On the merits of the counter application, Mr Nonxuba provided documents that comprised five arch lever files which he said were demonstrative of the fact that the money that was paid in the five medical negligence cases was still in trust. He also provided corrected trust ledger accounts in respect of the two matters in respect of which the LPC had pointed out that monies were transferred from trust to business at a time when no funds were held in trust in respect of those matters.



**[14]** On 30 September 2021, the LPC delivered a notice of its intention to amend the conditional application together with its replying affidavit. On 6 October 2021, Mr Nonxuba delivered a Notice in terms of Rule 30 indicating his intention to ask the Court to strike out the LPC's notice of intention to amend the conditional application.

**[15]** The matter was allocated to me for case management and the first case management meeting was held on 26 October 2021, being the date on which the conditional application was set down for hearing. I do not intend to deal in detail with what transpired during the case management meetings except to say that Mr Nonxuba was granted an indulgence to file a further affidavit dealing with the issues which he complained constituted new matter. The parties have provided their written consent in terms of Rule 37A (15) of the Uniform Rules of Court for me to preside over this matter despite having been the case management judge.

**[16]** At this stage, the LPC's case is that his trust reconciliation has been fabricated. This, taken together with the delay in paying the damages award to the respective trust and the round transfers gives rise to a suspicion that Mr Nonxuba has stolen the trust monies. The allegation that the trust reconciliation is based on the documents provided by Mr Nonxuba which show that as at 31 July 2021 he had 12 trust creditors and that the balance standing to their credit was R101 721 310.63. This amounts reconciles with the balance in the trust bank statement but that is not where the enquiry ends as Mr Nonxuba contends.

**[17]** One of the irregularities apparent in this list of trust creditors is that Nonxuba Incorporated is one of the trust creditors and the balance standing to its credit is R6 925 887.03. Mr Nonxuba did not provide a trust ledger account in respect of this trust creditor. In six of the trust ledger accounts provided by Mr Nonxuba, none of the receipts or debits reflected in the trust ledger accounts reconcile with the bank statement. In the other five trust ledger accounts, only the receipts reconcile with the amounts reflected with the trust bank statements.

**[18]** Mr Nonxuba has given no explanation for these irregularities. Instead he bemoans the fact that the deponent to the LPC's affidavit is not an expert and that for all his years that he has been in practice, Nonxuba Incorporated has been issued with Fidelity Fund certificates as it had been receiving unqualified audit opinions in respect of its trust accounts. Mr Nonxuba also makes the point that the LPC has not established any shortfall in the trust account of Nonxuba Incorporated.

**[19]** That Nonxuba Incorporated has been issued with Fidelity Fund Certificates in the past years cannot avail Mr Nonxuba in light of these patent irregularities. The documents provided by Mr Nonxuba show that the accounting records have indeed been fabricated. I say this because there can be no way of explaining why a trust ledger would indicate that monies were received on a particular date when no such credit appears in the trust bank statement.

**[20]** The irregularities identified by the LPC are not limited to the ones dealt with above but for the purposes of determining whether Mr Nonxuba should be suspended from practice, the fabrication of accounting records suffices. As submitted on behalf of the LPC it is in the interest of Mr Nonxuba's clients, the Court, the public and the profession that Mr Nonxuba be urgently interdicted from practice on the terms outlined in the LPC's amended conditional notice of motion.

**[21]** In the result an order is granted in terms of the draft order annexed hereto marked "X".



**JUDGE L.G. NUKU**

**APPEARANCES**

For the Applicant:

Attorney S. Koen

Attorneys:

Bisset Boehmke & McBlain Attorneys

For the Respondent:

Advocate E. Killian, SC  
Advocate C. McKelvey

Instructed by

Enzo Meyers Attorneys  
(Ref: Mr. E. Meyers)

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

Case No: 10313/2021

**BEFORE THE HONOURABLE MR JUSTICE L.G. NUKU  
MONDAY, 18<sup>th</sup> DAY OF APRIL 2022**

**In the matter between:**

**THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL**

**1<sup>st</sup> Applicant**

**MEC FOR THE EXECUTIVE COUNCIL FOR HEALTH  
OF THE WESTERN CAPE PROVINCIAL DEPARTMENT**

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**2<sup>nd</sup> Respondent**

**NOMVELWANA ALICIA LITHEMBA NONXUBA**

**3<sup>rd</sup> Respondent**

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**~~DRAFT~~ ORDER**

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**HAVING HEARD** the legal representatives for the 1<sup>st</sup> applicant and the 1<sup>st</sup> respondent,  
it is ordered that:

1. That pending the final determination of an application to be brought by the 1<sup>st</sup> applicant for the striking off of the name of the 1<sup>st</sup> respondent from the roll of attorneys:

- 1.1. The 1<sup>st</sup> respondent is suspended with immediate effect from practising as an attorney;
- 1.2. The 1<sup>st</sup> respondent shall surrender and deliver to the Registrar of this Honourable Court his certificate of enrolment as an attorney;
- 1.3. Should the 1<sup>st</sup> respondent fail to comply with the provisions of the preceding paragraph of this order within 1 (one) week from date hereof, the Sheriff for the District in which such certificate of enrolment is, shall be empowered and directed to take possession of and deliver the same to the Registrar of this Honourable Court;
- 1.4. The 1<sup>st</sup> and/or 2<sup>nd</sup> respondents shall deliver his books of account, records, files and documents containing particulars and information relevant to:
  - 1.4.1. any moneys received, held or paid by the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents for or on account of any person;
  - 1.4.2. any moneys invested by the 1<sup>st</sup> respondent and/or 2<sup>nd</sup> respondents in terms of section 86 (3) of the LPA;
  - 1.4.3. any interest or moneys so invested which was paid over or credited to the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents;
  - 1.4.4. any estate of a deceased person, or any insolvent estate, or any estate placed under curatorship of which the 1<sup>st</sup> respondent is the executor, trustee or curator or which the 1<sup>st</sup> respondent is administering on behalf of the executor, trustee or curator of such estate; and the 1<sup>st</sup> and/or 2<sup>nd</sup> respondent's practice as an attorney;

to the curator appointed in terms of this order, provided that as far as such books of account, records, files and documents are concerned, the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents shall be entitled to have access to them, but always subject to the supervision of such curator or a nominee of such curator;

- 1.5. That should the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents fail to comply with the provisions of the preceding paragraph of this order within 1 (one) week from the date of this order the Sheriff for the district in which such books of account, records, files and documents are, be empowered to take possession of and deliver them to such curator.
- 1.6. That the curator shall be entitled to:
  - 1.6.1. hand over to the persons entitled thereto all such records, files and documents;
  - 1.6.2. hand over all such records, files and documents over which the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents exercised a lien to the persons entitled thereto as soon as he has satisfied himself that the fees and disbursements in connection therewith, if any, have been paid or secured, or in the event of any dispute as to the provision of security, in his discretion.
- 1.7. That a written undertaking by a person to whom the records, files and documents referred to in paragraph 1.4 above are handed to pay such amount as may be due to the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents, either on taxation or by agreement, shall be deemed to be satisfactory security for the purposes of the preceding paragraph hereof provided that such written undertaking incorporates a *domicilium citandi et executandi* of such person.
- 1.8. That such curator be empowered to require that any such file, the contents of which he may consider to be relevant to a claim, or possible or anticipated claim, against him and/or the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents and/or the 1<sup>st</sup> and/or 2<sup>nd</sup> respondent's clients and/or the Legal Practitioners Fidelity Fund (hereinafter referred to as "the Fund") in respect of money and/or other property entrusted to the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents, be re-delivered to such curator.
- 1.9. That, the 1<sup>st</sup> respondent and any other person who was, prior to 13 August

2021, authorised to operate upon the trust account(s) be interdicted and prohibited from operating on the trust account(s).

- 1.10. That, the Director for the time being of the Gauteng office of the 1<sup>st</sup> applicant, be appointed as curator to administer and control the trust account of the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents comprising the separate banking accounts opened and kept by the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents at a bank in terms of section 86 (2) of the LPA and/or any separate savings or interest-bearing accounts as contemplated by section 86 (3) and/or 86 (4) of the LPA, in which money from such trust banking accounts have been invested by virtue of the provisions of the said subsection/s or in which moneys in any manner have been deposited or credited (the said account(s)) being herein referred to as "trust account(s)") with the following powers and duties:

1.10.1 subject to the approval of the Legal Practitioners' Fidelity Fund Board (hereinafter referred to as "the Board"), to sign and endorse cheques and/or withdrawal forms and generally to operate upon the trust account(s), but only to such extent and for such purpose as may be necessary to bring to completion current transactions in which the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents were acting at the date of this order;

1.10.2 subject to the approval and control of the Board, to recover and receive and, if necessary in the interests of persons having lawful claims upon the trust account(s) and/or against the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents in respect of money held, received and/or invested by the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents in terms of section 86 (3) and/or 86 (4) of the LPA (hereinafter referred to as "trust moneys"), to take legal proceedings which may be necessary for the recovery of money which may be due to such persons in respect of incomplete transactions in which the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents may have been concerned and which may have been wrongfully and unlawfully paid from the trust account(s) and to receive such moneys and to pay the same to the credit of the trust account(s);



1.10.3 to ascertain from the 1<sup>st</sup> and/or 2<sup>nd</sup> respondent's books of account the names of all persons on whose account the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents appear to hold or to have received trust moneys (hereinafter referred to as "trust creditors") and to call upon the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents to furnish him, within 30 (thirty) days of the date of this order or such further period as he may agree to in writing, with the names, addresses of and amounts due to all trust creditors;

1.10.4 to call upon such trust creditors to furnish such proof, information and affidavits as he may require to enable him, acting in consultation with, and subject to the requirements of the Board of Control of the Fund, to determine whether any such trust creditor has a claim in respect of money in the trust account(s) and, if so, the amount of such claim;

1.10.5 to admit or reject, in whole or in part, subject to the approval of the Board of Control of the Fund, the claims of any such trust creditor, without prejudice to such trust creditor's right to access to the civil courts;

1.10.6 having determined the amounts which he considers are lawfully due to trust creditors, pay such claims in full, but subject always to the approval of the Board of Control of the Fund;

1.10.7 in the event of there being any surplus in the trust account(s) after payment of the admitted claims of all trust creditors in full, to utilise such surplus to settle or reduce, as the case may be, firstly, any claim of the Fund in terms of section 86 (5)(a) of the LPA in respect of any interest therein referred to and, secondly, without prejudice to the rights of the creditors of the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents, the costs, fees and expenses referred to in paragraph 2 of this order, or such portion thereof as has not already been separately paid by the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents to the 1<sup>st</sup> applicant, and, if there is any balance left after payment in full of such claims, costs, fees and expenses, to pay such balance, subject to the approval of the Board, to the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents, if they are solvent, or, if the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents are insolvent, to the trustee(s) or

liquidator(s), as the case may be, of the 1<sup>st</sup> and/or 2<sup>nd</sup> respondent's insolvent estate(s);

1.10.8 in the event of there being insufficient moneys in the trust banking account(s) opened by the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents in terms of section 86 (2) of the LPA from which to pay the claims of trust creditors in full and after taking reasonable steps to ascertain the identities of such creditors and the amounts due to them to distribute pro rata amongst creditors whose claims have been proved or admitted, the amount(s) reflected by the credit balance(s) in said account(s) provided that the curator shall pay to trust creditors whose funds are held in separate accounts in terms of section 86(3) and/or 86(4) of the LPA who satisfy him that they are entitled to such funds, the amounts due to such creditors;

1.10.8.1 subject to the approval of the Board, to close the trust account(s) and pay the credit balance(s) to the Fund and to require the credit balance(s) to be placed to the credit of a special trust suspense account in the name of the 1<sup>st</sup> and/or 2<sup>nd</sup> respondent in the Fund's books;

1.10.8.2 to refer the claims of all trust creditors to the Board to be dealt with in terms of the provisions of the LPA;

1.10.8.3 to authorise the Board to credit the credit balance(s) referred to above to its "Paid Claims Account" when the Fund has paid, in terms of section 55 of the LPA, admitted claims of the trust creditors in excess of such credit balance(s), provided that, notwithstanding the foregoing, the said Board shall be entitled, in its discretion, to transfer to its "Paid Claims Account" the amount of moneys of any claim or claims as and when admitted and paid by it;

1.10.8.4 subject to the approval of the Chairman of the Board , to appoint nominees or representatives and/or consult with and/or engage

**the services of attorneys and/or counsel, and/or accountants and/or other persons, where considered necessary, to assist such curator in carrying out the duties of curator; and to render from time to time, as curator, returns to the Board of Control of the Fund showing how the trust account(s) has (have) been dealt with, until such time as the said Board notifies him that he may regard his duties as terminated.**

**2. That the 1<sup>st</sup> and/or 2<sup>nd</sup> respondent are directed:**

- 2.1 to pay the fees and expenses of the curator, such fees to be assessed at the rate of R1 000,00 per hour, including travelling time;**
- 2.2 to pay the reasonable fees and expenses charged by any person(s) consulted and/or engaged by the curator as aforesaid;**
- 2.3 to pay the costs of and incidental to this application on a scale as between an attorney and client;**
- 2.4 within 1 (one) year of him having been requested to do so by the curator, or within such longer period as the curator may agree to in writing, to satisfy the curator, by means of the submission of taxed bills of costs, or otherwise, of the amount of the fees and disbursements due to the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents, in respect of their former practice, and should he fail to do so, he shall not be entitled to recover such fees and**

disbursements from the curator without prejudice, however, to such rights, if any, as he may have against the trust creditor(s) concerned for payment or recovery thereof.

3. That the striking off application referred to in paragraph 1 above must be issued within 4 (four) months of the granting of this order.
4. That the papers in the conditional application brought under case number 10313/21 are not subject to the confidentiality of the Court order granted on 13 August 2021 under the same case number.

**BY ORDER OF THE COURT**

**COURT REGISTRAR**