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**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Case No: 6176/2022

Reportable: NO

Of Interest to other Judges: NO

Circulate to Magistrates: NO

In the matter between:

**THE SOUTH AFRICAN LEGAL
PRACTICE COUNCIL**

Applicant

And

IZAK JACOB STEENKAMP

First Respondent

REHAN COETZEE

Second Respondent

STEENKAMP & JANSEN INCORPORATED

Third Respondent

THEUNIS JANSEN

Fourth Respondent

JUDGMENT

CORAM: S NAIDOO J *et* E MAHLANGU AJ

JUDGMENT BY: NAIDOO J

HEARD ON: 9 MARCH 2023

DELIVERED ON: 26 SEPTEMBER 2023

[1] In this application, the applicant, The South African Legal Practice Council (the LPC) seeks an order, *inter alia*, for the suspension of the first and second respondents from practising as attorneys pending the finalisation of investigations against them and any disciplinary proceedings to be instituted against them in court by the LPC. The first and second respondents opposed the application. Adv (Mr) N Snellenburg SC represented the applicant. Mr R Coetzee, the second respondent, represented the first respondent and himself. I shall refer to the first respondent as “Steenkamp” or “the first respondent”, the second respondent as “Coetzee” or the “second respondent” and collectively as ‘the respondents’

[2] The respondents are both practising attorneys and enrolled as such in the records of the LPC. The first respondent was admitted as an attorney in terms of the Attorneys Act 53 of 1979, on 5 September 2002 and the second respondent was admitted as an attorney, in terms of the same Act, on 16 September 1999. They initially practised under the name and style of Steenkamp De Villiers and Coetzee. Following an investigation against the first and second respondents as a result of a deficit in their Trust banking account, they closed that practice and joined the third respondent, Steenkamp and Jansen Incorporated, taking with them all the files, not subject to the investigations that I referred to.

[3] While the first and second respondents were directors of Steenkamp De Villiers and Coetzee, there was a deficit in their Trust account in the amount, alleged by the LPC to be at least Two Million Five Hundred and Fifty Six Thousand Nine Hundred and Forty Four Rand and Sixteen Cents (R2 556 944.16). A *curator bonis* was appointed to administer the Trust account. An amount of R2 048 925.84 was identified as misappropriated funds and there was an unidentified shortage of R508 018.32. The former bookkeeper employed by the respondents at Steenkamp De Villiers and Coetzee stole a large amount of money from the Trust account but repaid an amount of R840 000.00, meaning that the Trust deficit prior to this payment was the amount R3 396 944,16.

[4] It appears that a professional assistant employed by the firm, one Mr Fourie, had also misappropriated Trust funds, which according to the respondents was an amount of R613 000.00. The respondents also averred that the amount stolen by the bookkeeper amounted to R899 950.00. A forensic audit was conducted by the auditing firm Newtons, who established the identified and unidentified shortages in the amounts I mentioned earlier. The respondents have not indicated how the shortfall of R59 950.00 was dealt with after the bookkeeper repaid the amount of R840 000.00. There is no clear indication of what steps were taken against Mr Fourie to recover the amount that he misappropriated. It is also undisputed that no criminal action was taken by the respondents against Mr Fourie and the bookkeeper. The respondents also do not deny that the shortfall in the Trust account was not repaid by them.

[5] While the investigations into the numerous complaints and the Trust shortfall was ongoing, the respondents joined the firm Steenkamp & Jansen Incorporated, of which the fourth respondent is the sole director. It is not in dispute that the fourth respondent was previously employed by Steenkamp, De Villiers & Coetzee. It is also not in dispute that the respondents moved the practice of Steenkamp De Villiers & Coetzee, their infrastructure and personnel to Steenkamp & Jansen Inc, including all their files, except those relevant to the investigations in respect of the Trust deficit.

[6] The LPC alleges that although the respondents purport to practice as consultants at Steenkamp & Jansen Inc, the first respondent, Steenkamp, subsequently deposed to affidavits in other matters in which he describes himself as a director of Steenkamp & Jansen Inc. The second respondent, Coetzee, is not mentioned or identified in the correspondence of Steenkamp & Jansen Inc, while the first respondent is reflected in such correspondence as an assistant to the director. The LPC further alleges that it as well as its predecessor received, on a continuous basis, numerous complaints against the first, second and fourth respondents, as well the director of the third respondent (Mr Jansen) and the professional assistant, Mr Fourie. Such complaints number approximately 127 in total. The complaints are of a serious nature and the first respondent was called upon to respond to the complaints but failed to do so timeously.

[7] The majority of these complaints arose during the period that the respondents practised as Steenkamp De Villiers and Coetzee. At the time the Attorneys Act was applicable and subsequent complaints fell to be dealt with in terms of the Legal Practice Act 28 of 2014 (the LPA). The Code of Conduct for Legal Practitioners, Candidate Legal Practitioners and Juristic Entities subsequently came into operation and replaced the rules that existed in respect of the various Law Societies in South Africa. Section 119(3) of the LPA provides that any law repealed or amended by the LPA remains valid if it is consistent with the LPA.

[8] The LPC contends that the investigation into the complaints is a long process, and they would need time to do so. They also aver that in view of the previous Trust account deficit, the clients of the respondents and members of the public need protection against a recurrence of that situation. They, therefore seek the suspension of the respondents in order that such investigations may be undertaken expeditiously. The matter was previously delayed as a result of the first respondent's failure to respond to complaints, and the subsequent investigations, leading to the disciplinary hearing that was held in June 2021.

[9] I pause to mention that the LPC led evidence at the disciplinary hearing. After it closed its case, Coetzee, who represented himself and Steenkamp applied for absolution from the instance on the basis that the process for referral of the matter by the Investigating Committee to the Disciplinary Committee was flawed. The Investigating Committee failed to conduct its own investigation to establish that there was *prima facie* evidence of misconduct by him and Steenkamp, but relied on the report of a third party (the auditing firm of Newtons) to conclude that there was *prima facie* evidence of misconduct. The Disciplinary Committee rejected the application for absolution from the instance, but found that the Investigating Committee did not in fact follow the correct procedure in referring the matter to it. Hence the Disciplinary Committee found that the matter was not properly before it, and dismissed the proceedings.

[10] The defence proffered by the respondents is that the Disciplinary Committee dealt with the merits of the matter and dismissed the proceedings, as no misconduct was established on the part of the respondents. Hence, the current application

cannot succeed. The further point raised by the respondents is that the Investigating Committee, once more, did not itself conduct the investigations against the respondents to establish a *prima facie* case of misconduct, but resolved to move the current application. The application was therefore irregularly brought and falls to be dismissed. The respondents set out a detailed response to some of the complaints lodged against them and which were mentioned in the Founding Affidavit, concluding that most of the complaints have been dealt with and it was, therefore, not open to the LPC to use such complaints as part of its case against the respondents.

[11] It is common cause or not in dispute that:

11.1 the respondents closed the practice of Steenkamp De Villiers and Coetzee, without informing the Law Society of such closure, as was required of them by the relevant Rules;

11.2 the respondents have not yet submitted a final audit in respect of the closure of the practice of Steenkamp De Villiers and Coetzee;

11.3 the respondents allowed their professional assistant and bookkeeper access to, and gave them authority to make payments from the firm's Trust banking account, which enabled these individuals to misappropriate funds from the Trust account;

11.4 there was a deficit in the respondents' trust account, which the respondents have not repaid;

11.5 the investigation into the conduct of legal practitioners is *sui generis*, and is not to be approached as if it were a criminal trial.

[12] The issues before us are, in my view, whether:

12.1 the respondents acted contrary to the provisions of the LPA and its predecessor, the Attorneys Act, and the Rules promulgated in terms of each, which were applicable at the material times;

12.2 the respondents failed to conduct themselves with the diligence and care required of them in terms of the Act and Rules, and

12.3 the LPC is entitled to the relief it seeks

[13] As I intimated earlier, a number of specific complaints and the history relevant thereto was mentioned in the Founding papers and responded to in Answer. In my view, it is not necessary and may be inappropriate to deal with these in any detail, as many of the complaints appear to still be under investigation. If necessary, I will refer to them in relation only to their relevance in deciding the issues before us.

[14] Section 78(1) and (4) of the Attorneys Act provide that

(1) Any practising practitioner shall open and keep a separate trust account at a banking institution in the Republic and shall deposit therein the money held or received by him on account of any person.

(2)

(3)

(4) Any practising practitioner shall keep proper books of account containing particulars and information of any money received, held or paid by him for or on account of any person, of any money invested by him in terms of subsection (2) and of any interest on money so invested which is paid over or credited to him.

Section 83 of the Attorneys Act provides as follows:

Any practitioner who contravenes subsection (1), (3) or (4) of section 78... shall also be guilty of unprofessional conduct and be liable to be struck off the roll or suspended from practice.

[15] The former Attorneys' Act and the then applicable Rules of the Free State Law Society, as well as the successor thereto, being the LPA and the current Code of Conduct provide in clear terms the duties and obligations of legal practitioners. The common thread that is to be found in both the former Act and Rules as well as the current LPA and Code of Conduct is that the highest standards of integrity, competence and diligence are expected of an attorney. He is required to maintain the reputation and good standing of the legal profession in order to gain the complete trust and confidence of his clients and members of society at large. It is well established in our case law that such duties and standards of conduct are non-negotiable, and a failure to adhere thereto attracts severe penalties.

[16] From what I have tabulated above, it is evident that the respondents do not deny that a large amount of money, which the firm of Newtons found to be in excess of Two Million Rand, was stolen from their Trust account by their employees over a period of many months. They placed their bookkeeper in a position of full control, without supervision or oversight, which enabled her to steal almost One Million Rand. This was many months after they discovered the theft of over R600 000.00 by Mr Fourie. In my view, this speaks of an abrogation of their duties and strict responsibility in relation to their Trust account. It is of concern to this court that the respondents do not appear to take responsibility for their failure to guard their trust account and for the consequent loss of Trust money, choosing instead to blame the craftiness of their employees in manipulating the accounting system, and avoiding any explanation regarding what control they exercised over the Trust account. They also seem to hold the misguided view that the LPC condoned the non-repayment by them of the Trust shortfall. It is not becoming of attorneys with many years of experience to feign ignorance of what is expected of them, or to hold the view that the LPC has the authority to condone a shortfall in a Trust account.

[17] I pause to mention that the first respondent, Steenkamp, simply deposed to a Confirmatory Affidavit attached to the Answering Affidavit deposed to by the second respondent. From the explanation by the second respondent, it is evident that he was unable to explain exactly how the first respondent conducted his interactions with Fourie, what oversight, if any, he exercised to ensure that the payments he authorised at the request of Mr Fourie, were in fact properly requested and properly

authorised. In the circumstances the court can only conclude that the first respondent was negligent in the manner in which he dealt with the firm's Trust account and exercised no oversight or supervision of their employees in relation to the Trust account. The Act and Rules provide that each director is jointly and personally liable for the acts of his co-directors and all other acts and omissions performed on behalf of the company. It, therefore, does not avail the second respondent to distance himself and the first respondent from the malfeasance perpetrated by the firm's employees.

[18] The other area of concern for this court is what appears to be the summary closure of the firm of Steenkamp De Villiers and Coetzee, without following the process and procedures stipulated in the Attorneys' Act and Rules applicable at the time. The respondents who are seasoned attorneys and ought to have known the requirements of the Act and Rules at the time, did not even inform the Law Society that the practice was closed. They merely took the files, staff and infrastructure of the firm over to Steenkamp and Jansen Inc and continued to practice there, alleging to do so as professional assistants to that firm. The allegations by the LPC that the respondents were appointed as directors of the third respondent, at a time when they were not in possession of valid Fidelity Fund Certificates, and that they appear to be acting as directors of the third respondent, creates a sense of unease and disquiet that requires investigation. If such allegations are true, it would amount to serious misconduct on the part of the first and second respondents

[19] The conduct of the first and second respondents was in contravention of the relevant provisions of Rule 3B of the Rules for the Orange Free State. Rule 3B.2 is relevant, and provides as follows:

“2. Before or as soon as may be after voluntarily ceasing to practise for any reason...a practitioner, who practises or has practised for his own account in the Province, shall comply with the provisions of rule 3B.1 other than those in paragraph 4 thereof and shall thereafter inform the Secretary in writing of any changes in his business, postal and residential addresses for a period of three years from the date of his ceasing to practise or for as long as his name

remains on the Roll of the Court, whichever period is the shorter.” [my underlinig]

[20] The respondents further do not appear to have taken the necessary steps to protect the interests or property of their clients. Disturbingly, the second respondent alleges in Answer that he and the first respondent kept all the files not related to the misappropriation of Trust monies by Mr Fourie and the bookkeeper, and as clients enquired about their files, the respondents would advise them of the situation and give the clients the opportunity to either remove their files or extend the mandate of the respondents to continue acting for those clients. This again is in conflict with how such files ought to have been dealt with. No mention was made of how the respondents dealt with the Trust account of their practice. They were requested in 2017 by the Law society to render a final audit in respect of their former practice. The respondents complain that this was two days before the scheduled date for the disciplinary hearing and it was impossible to do so in that time. They say nothing further about the matter or why they did not render such an audit as soon as possible after they were requested to submit it. To date, there is no indication of what became of such Trust account or the clients on whose behalf such monies were held.

[21] In my view, the various complaints which were lodged against the respondents and which are still under investigation, merely highlight the need for the LPC to conduct proper investigations into those complaints, and to do so unhindered. The respondents’ conduct has fallen far short of the high standards required by the relevant Act and Rules for the regulation of the legal profession. The complaints, as I indicated, are of a serious nature, and flout many of the provisions of the Attorneys’ Act, the LPA as well as the Rules and Code of Conduct. In summary, therefore, my view is that the defences proffered by the respondents do not address the heart of the issues to be decided in this matter. It is clear therefore that they have contravened the provisions of the Attorneys’ Act and Rules relevant thereto, as well as the LPA and Code of Conduct. Their actions further demonstrate that they have not conducted themselves in a manner that maintains the strict standards of diligence required of them, nor have they discharged the duty of care owed to their clients. In addition, their argument that the Disciplinary Committee of the LPC

dismissed the merits of the matter, cannot be sustained, as that Committee was specific in finding that due to the investigations not being properly undertaken, the matter was dismissed. It did not deal with the merits in relation to the finding it made, and most certainly did not exonerate the respondents of wrongdoing and misconduct. I am of the view that the LPC is therefore entitled to the relief it seeks.

[22] In the circumstances, I make the following order:

22.1 IZAK JACOB STEENKAMP, Identity Number 7[...]4 (the First Respondent) is suspended from practising as a legal practitioner of the High Court of South Africa pending the finalisation of the investigation against him by the Applicant, and any subsequent disciplinary proceedings which may be instituted in Court;

22.2 The First Respondent shall immediately surrender and deliver to the Registrar of this Court his certificate of admission and/or enrolment as an attorney and/or legal practitioner of this Court;

22.3 In the event of the First Respondent failing to comply with paragraph 22.2 of this order within two (2) weeks from the date of service of this order on him, the Sheriff is authorised and directed to take possession of the certificate and to hand it to the Registrar of this Court;

22.4 REHAN COETZEE, Identity Number 7[...]2 (the Second Respondent) is suspended from practising as a legal practitioner of the High Court of South Africa pending the finalisation of the investigation against him by the Applicant, and any subsequent disciplinary proceedings which may be instituted in Court;

22.5 The Second Respondent shall immediately surrender and deliver to the Registrar of this Court his certificate of admission and/or enrolment as an attorney and/or legal practitioner of this Court;

22.6 In the event of the Second Respondent failing to comply with paragraph 22.5 of this order within two (2) weeks from the date of service of this order on him, the Sheriff is authorised and directed to take possession of the certificate and to hand it to the Registrar of this Court;

22.7 The First and Second Respondents are directed to pay the costs of this application jointly and severally, the one paying the other to be absolved.

S. NAIDOO, J

I concur

E MAHLANGU AJ

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2nd Respondents: Mr R Coetzee
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