

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED: NO

DATE: 5.2.2025

Case Number: **35120/2022**

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL Applicant

And

GREG DE LA HUNT First Respondent
DE LA HUNT & KAMFFER INCORPORATED Second Respondent

And

Case Number: **35119/2022**

SOUTH AFRICAN LEGAL PRACTICE COUNCIL Applicant

and

DANELLE KAMFFER First Respondent
DE LA HUNT & KAMFFER INCORPORATED Second Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J:

Introduction

[1] On 20 April 2023 the applicant obtained orders in terms of which the first respondents in the respective matters were suspended from practising as legal practitioners pending the finalisation of the applications for their names to be struck from the roll of legal practitioners.

[2] The respective first respondents practiced under the name and style of the second respondent and the facts relied upon by the applicant for the removal of their names from the roll of legal practitioners are largely the same. In the result the matters were heard together and this judgment is handed down in both matters.

[3] The first respondents will be referred to collectively as "the respondents" or individually as "de la Hunt" and "Kamffer".

Legal position

[4] The question whether a legal practitioner is a fit and proper person to practice as such lies in the discretion of the court. In exercising its discretion, the court embark on a three-stage inquiry, to wit

4.1 First, a factual enquiry;

4.2 Should the factual inquiry establish the offending conduct, the second inquiry is whether the practitioner is fit and proper to continue to practise:

4.3 If the person is not fit and proper to practise as an attorney, the third inquiry involves the sanction to be imposed on the person.

[See *inter alia*: *Jasat v Natal Law Society* 2000 (3) SA 44 (SCA)]

Factual inquiry

[5] The facts underlying the application is common cause between the parties. De la Hunt was admitted as an attorney on 19 May 2017 and Kamffer on 22 May 2017. As stated *supra* they were practising for their own accounts under the name and style of De la Hunt & Kamffer Incorporated at the time that the applications were brought.

[6] The applications for the suspension order were based on the following facts:

6.1 they were practising as attorneys without fidelity fund certificates since 1 January 2021;

6.2 they failed to submit their auditor's reports for the financial periods ending 29 February 2020 and 28 February 2021;

6.3 they failed to pay their annual fees for the years 2020, 2021 and 2022.

[7] The applicant explained that the purpose of a fidelity fund certificate is to protect the general public and that the Legal Practitioner's Fidelity Fund was founded for the purpose of reimbursing persons who suffer pecuniary loss as a result of theft committed by a practising attorney. The seriousness of the respondents' conduct in practising without fidelity fund certificates cannot be overemphasised.

[8] The applicant stated that the conduct of the respondents is firstly, contrary to the peremptory legal requirements applicable to attorneys and

secondly, placed trust creditors who may suffer pecuniary loss as a result of the misappropriation of trusts monies, at risk.

[9] Insofar as the failure to submit auditor's reports in terms of Rule 54 of the Legal Practice Council Rules (LPC Rules) is concerned, the applicant pointed out that the failure constitutes misconduct in terms of Rule 57.1.A fidelity fund certificate is issued on the strength of unqualified audited reports and the importance of submitting the reports is self-evident.

[10] Lastly, their failure to pay annual fees amounts to unprofessional conduct in terms of Rule 4 of the PLC Rules.

[11] The order issued on 20 April 2023, suspending the respondents from practicing as attorneys placed certain obligations on the respondents. The court appointed curator *bonis* had to ensure that these obligations were complied with and to this end the curator filed a report detailing the status of the practice and the conduct of the respondents.

[12] The report revealed *inter alia* the following:

12.1 on 26 May 2023 there was an amount of R 150, 00 available in the second respondent trust banking account;

12.2 the sheriff served the suspension order on the respondents on 31 May 2023. In contravention of the court order the respondents failed to hand over their client files to the sheriff and informed the sheriff that they do not have client files. The sheriff could not find any client files;

12.3 in contravention of the court order the respondents failed to hand their complete accounting records to the sheriff. The sheriff was provided with a letter from the respondents' auditors stating that the auditors were in the process of conducting an audit of their trust

accounting records.

[13] The respondents eventually and on 23 September 2023, submitted audited reports for the financial periods 2020, 2021 and 2022 to the applicant. The audited reports revealed that the respondents' accounting records were written up and balanced up to 31 July 2022. The reports further indicated that the trust bank account and trust investment accounts of the respondents had a balance of R2 834 863, 97 on 31 August 2021 and a balance of R 2 976 049, 64 on 2 February 2022. The reports also confirm that the respondents' trust account had been maintained, in all material respects, in compliance with the LPC Rules and the Legal Practice Act, 28 of 2014 (the Act).

[14] Karnffer was employed by Aucamp and Cronje Attorneys from 1 August 2021 to 30 June 2024 and de la Hunt was employed by the same firm from 1 September 2021 to 30 June 2024. Both respondents took up employment with Cronje Attorneys during July 2024 and was still employed by the firm at the time of the hearing of the matter.

[15] The employment of the respondents with Aucamp and Cronje Attorneys from respectively August and September 2021 until 19 April 2023 was in breach of several LPC Rules to wit:

15.1 they did not notify the Council of their employment with Aucamp and Cronje;

15.2 they abandoned their practice respectively during August and September 2021. The respondents did, however, not close their practice in terms of Rule 54.31 and 54.32. Their failure to comply with these Rules constitutes misconduct in terms of Rule 57.1.

[16] Their employment after their suspension was without the consent of the

Council, in contempt of the court order and contravened the following provisions of the Act:

16.1 section 33(2) in holding themselves out as legal practitioners;

16.2 section 33(4) by being rendering services as a legal practitioner and being engaged in a legal firm;

16.3 in contravening section 33, the respondents committed an offence in terms of section 93(2).

Fit and proper

[17] Having established the offending conduct of the respondents, the question whether they are still fit and proper to practice as attorneys needs to be considered.

[18] In respect of their failure to submit auditors' reports for the financial periods ending 29 February 2020 and 28 February 2021, the respondents who are in both a romantic and professional relationship, explained that Kamffer's mother assisted them during 2018, 2019 and the beginning of 2020 with bookkeeping.

[17] Kamffer's mother travelled from Potchefstroom to Kempton Park weekly to update the financial records of the practice. As a result of the COVID hard lockdown which commenced at the end of March 2020, Kamffer's mother could no longer travel to the practice to attend to the bookkeeping.

[18] Due to the COVID lockdown, the respondents were unable to see clients and to attend court. As a result of the COVID period and specifically the job losses that occurred during the period, clients could no longer afford the services of the respondents. Accordingly, the practice was no longer viable and both their incomes were nullified in June 2021.

[19] In order to make ends meet, the respondents took the following steps:

19.1 they sold both their vehicles;

19.2 they cancelled their medical aid and insurance policies;

19.3 they cut down on all unnecessary as well as necessary expenses; and

19.4 exhausted all avenues of credit.

19.5 they obtained alternative employment during respectively August and September 2021.

[20] The respondents admitted that they did not hand over their client files to the sheriff and stated that there were no clients that held any funds in the trust account of the second respondent. Consequently, there were no active client files to be handed to the sheriff. The respondents received confirmation from Ms Zandile at the curator's office that they were only required to hand over client files for those clients that have active trust balances and are entitled to be refunded.

[21] The respondents denied that they abandoned the practice of the second respondent and stated that they finalised the minimal matters that remained after the COVID pandemic. The respondents, furthermore, kept a detailed record of the trust funds and trust creditors of the second respondent. As is evident from their audited reports, there were no trust funds left in the trust account. The respondents have submitted a closing audit report to the Council on 15 October 2024 and stated that they do not wish to practice for their own account any longer.

[22] The respondents paid their outstanding annual membership fees on 18 April 2023.

[23] In respect of their employment with Aucamp and Cronje Attorneys, the respondents stated that they initially planned on being employed at the firm for a period of three months whilst attempting to resuscitate the second respondent. The respondents stated that because it was initially only for a three-month period, they did not inform the Council.

[24] Instead of attending to the general duties of attorneys, the respondents realised that they would be assisting with the administrative backlog relating to the correspondent work of the firm. The type and volume of work the respondents did at the firm after the date of the suspension order, the respondents were expected to do precluded them from an opportunity to resuscitate the second respondent.

[25] The respondents stated that they became depressed, felt hopeless and was under immense emotional strain. As a result of their sense of futility, hopelessness and general inability to see any light at the end of the tunnel, they neglected to comply with any of their professional requirements.

[26] Without resuscitating the second respondent, the respondents had no source of income and remained in the employment of the firm to survive financially.

[27] Concerning their employment after the suspension order, the respondents stated that they were unaware that they had to obtain permission from the Council to be so employed. Upon being made aware of the transgression during August 2024, they immediately applied to the Council for permission to be employed by Cronje Attorneys. The respondents reiterated that they remained employed after April 2023 to survive financially.

[28] In considering whether the respondents are fit and proper to continue to practice, the court exercises a discretion. An important consideration in the exercise of the discretion is the protection of the public. [See *Malan and Another v Law Society, Northern Provinces* 2009 (1) 216 (SCA) at para [4] and [7]].

[29] Furthermore, as aptly stated by Harms ADP in the *Malan* matter:

"[9] the exercise of this discretion is not bound by rules, and precedents consequently have a limited value. All they do is to indicate how other courts have exercised their discretion in the circumstances of a particular case. Facts are never identical, and the exercise of a discretion need not be the same in similar cases. If a court were bound to follow a precedent in the exercise of its discretion it would mean that the court has no real discretion. (See *Naylor and Another v Jansen A* 2007 (1) SA 16 (SCA) at para 21.)"

[30] The conduct of the respondents in failing to submit auditors report and as a consequence, practising without a fidelity fund certificate is no doubt serious. The rationale behind the requirement of submitting an auditor's report in order to obtain a fidelity fund certificate is mainly to protect the public against unscrupulous attorneys who misappropriate trust funds.

[31] In *casu* the respondents did not misappropriate trust funds. To the contrary, and notwithstanding the fact that they were in financial dire straits, the respondents did not touch the money in the trust account of the second respondent. The respondents sold their vehicles and cancelled their medical aid and insurance in an attempt to make ends meet.

[32] Albeit in contravention of the LPC Rules, they sought employment in order to survive financially. The conduct of the respondents cannot be viewed in a vacuum. The transgressions were brought about by the decline in their practice. Their endeavours to resuscitate the practice were thwarted by the

type and volume of work they were engaged in at Aucamp and Cronje Attorneys.

[33] It is understandable that they, in the circumstances felt helpless, despondent, depressed and incapable of taking rational decisions.

[34] It is noteworthy that the Council received no complaints from clients of the practice in respect of the manner in which the respondents executed their legal duties. One should therefore accept that they served their clients professionally and with the necessary legal knowledge.

[35] The respondents, albeit it belatedly, submitted the outstanding auditor's reports, a closing report, paid there outstanding annual fees and submitted a request to the Council to practice at Mr Cronje's firm. This conduct indicates that the respondents, not only have insight in the enormity of their transgressions but also have the ability to remedy same.

[36] The respondents readily admitted their misconduct and have shown remorse for their failings. I am satisfied that they have learned a valuable lesson that would preclude them from repeating their transgressions in future. On their own admission they, however, lack the necessary skills to do proper accounting.

[37] Their conduct to my mind should not prohibit them from practising as attorneys but should prohibit them for practising for their own account. The respondents are relatively young, having only be admitted in 2017 and might at a later stage wish to practice for their own accounts. In deciding on an appropriate sanction, I will take the aforesaid into account.

Sanction

[38] In the premises, I am of the view that the suspension should be uplifted/

(lifted?) and that an order be issued prohibiting the respondents to practice for their own account. Should the respondents wish to practice for their own account they must satisfy the Council and the court that they have the necessary accounting skills to do so.

Costs

[39] The respondents requested that a cost order be ordered on a party and party scale. I could, however, not find any convincing reason to deviate from the normal order on the scale of attorney client.

ORDER

In the result, I propose the following order:

Case number 35120/2022

1. The suspension of Greg de la Hunt to practice as a legal practitioner is uplifted.
2. Greg de la Hunt may not practice as an attorney for his own account.
3. Should Greg de la Hunt wish to practice for his own account, he must satisfy the Council and the court that he possesses the necessary accounting skills to do so.
4. Greg de la Hunt is ordered to pay the costs of the application on an attorney client scale.

Case number: 35119/2022

1. The suspension of Danelle Kamffer to practice as a legal

practitioner is uplifted.

2. Danelle Kamffer may not practice as an attorney for her own account.

3. Should Danelle Kamffer wish to practice for her own account, she must satisfy the Council and the court that she possesses the necessary accounting skills to do so.

4. Danelle Kamffer is ordered to pay the costs of the application on an attorney client scale.

**JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

I agree.

**KEKANA
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

It is so ordered.

DATE HEARD:

28 January 2025

Case number: 35119/2022

1. The suspension of Danelle Kamffer to practice as a legal practitioner is uplifted.

2. Danelle Kamffer may not practice as an attorney for her own account.
3. Should Danelle Kamffer wish to practice for her own account, she must satisfy the Council and the court that she possesses the necessary accounting skills to do so.
4. Danelle Kamffer is ordered to pay the costs of the application on an attorney client scale.

**JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

I agree.

**KEKANA
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

It is so ordered.

DATE HEARD:

28 January 2025

DATE DELIVERED:

5.2.2025

APPEARANCES

For the Applicant: Adv Stocker
Instructed by: RW Attorneys

For the Defendant: Adv Malherbe
Instructed by: Pro Bono