NORTH WEST HIGH COURT MAFIKENG

CASE NO.:3497/10

In the matter between:

THE LAW SOCIETY OF THE NORTHERN PROVINCES (incorporated as the Law Society of The Transvaal)	**APPLICANT**
and	
PHEMELO ADAM HLAHLA	**1ST RESPONDENT**
SAMUEL MOROKANE TEBOGO MOTLHAMME	**2ND RESPONDENT**
THE LAW SOCIETY OF BOPHUTHATSWANA	**3rd RESPONDENT**
DATE OF HEARING	**20 AUGUST 2010**
DATE OF JUDGMENT	**19 NOVEMBER 2010**
FOR THE APPLICANT	**MR D MINCHIN**
FOR THE 1st RESPONDENT	**IN PERSON**
FOR THE 2nd RESPONDENT	**IN PERSON**

JUDGMENT

LANDMAN J:

[1] The Law Society of the Northern Provinces launched an urgent application against the first and second respondents. The Law Society of Bophuthatswana was cited as the third respondent. The first and second respondents agreed, on 17 December 2009, not to practise as attorneys pending the application to strike their names from the roll of attorneys. This undertaking was incorporated in an order which also saw the appointment of Mr John van Staden as the curator of their trust accounts.

[2] On 4 June 2010, at the request of the respondents, the application was postponed to

20 August 2010 to enable them to file answering affidavits. These affidavits have been filed and the applicant has filed a replying affidavit. The parties were also ordered to file heads of argument.

[3] At the commencement of the hearing the first respondent, through counsel, applied for a postponement. This application was refused. The first respondent did not file heads of argument but we nevertheless heard the matter.

The law

[4] The question whether an attorney is no longer a fit and proper person to practise as such lies, in terms of section 22(1)(d) of the Attorneys Act 53 of 1979 (hereinafter referred to as the "Attorneys Act"), in the discretion of the court. This subsection reads:

'22(1) Any person who has been admitted and enrolled as an attorney may on application by the society concerned be struck off the roll or suspended from practice by the Court within the jurisdiction of which he practices-

….....

(d) if he, in the discretion of the Court, is not a fit and proper person to continue to practise as an attorney....'"

[5] In **Jasat v Natal Law Society** 2000 (3) SA 44 (SCA) Scott JA said at 51 B-I:

"Ultimately, therefore, what is contemplated is a three-staged inquiry. First, the Court must decide whether the alleged offending conduct has been established
on a preponderance of probabilities.....The second inquiry is whether, as
stated in s 22(1)(d), the person concerned *'in the discretion of the* Courf is not a fit and proper person to continue to practise. The words italicised were inserted in 1984 (see Law Society of the Cape of Good Hope v C 1986 (1) SA 616 (A) at 637B-C). It would seem clear, however, that, in the context of the section, the exercise of the discretion referred to involves in reality a weighing up of the conduct complained of against the conduct expected of an attorney and, to this extent, a value judgment. The discretion is that of the Court of the
first instance.....The third inquiry is whether in all the circumstances the
person in question is to be removed from the roll of attorneys or whether an order suspending him from practice for a specified period would suffice. This is similarly a matter for the discretion of the Court of first instance and the power of a Court of appeal to interfere is likewise limited. Whether a Court will adopt the one course or the other will depend upon such factors as the nature of the conduct complained of, the extent to which it reflects upon the person's character or shows him to be unworthy to remain in

the ranks of an honourable profession (Incorporated Law Society, Transvaal v Mandela 1954 (3) SA 102 (T) at 108D - E), the likelihood or otherwise of a repetition of such conduct and the need to protect the public. Ultimately it is a question of degree."

[6] An application of this nature is in itself a disciplinary inquiry and *sui generis.* It is not of the nature of a *lis* between the Law Society and the practitioner. The Law Society, as *custos morum* of the profession, places facts before the court for consideration. See **Solomon v The Law Society of the Cape of Good Hope** 1934 AD 401 at 407; **Cirota and Another v Law Society, Transvaal** 1979 (1) SA 172 (A) at 187 H; and **Prokureursorder van Transvaal v Kleynhans** (SA) 1995 (1) 839 (T) at 851G-H.

[7] From the nature of disciplinary proceedings it follows that a respondent is expected to co-operate and provide, where necessary, information to place the full facts before the court to enable the court to make a correct decision. Broad denials and obstructionism have no place in disciplinary proceedings. See **Prokureursorde van Transvaal v Kleynhans** at 853G-H.

[8] The facts on which a court exercises its discretion are to be established on a balance of probabilities. See **Prokureursorde van Transvaal v Kleynhans** at 8531-J and **Law Society, Transvaal v Matthews** 1989 (4) SA 389 (T) at 393I-J.

[9] The opinion or conclusion of the Law Society that a practitioner is no longer a fit and proper person to practise as an attorney carries great weight with the court, although the court is not bound by it. See **Kaplan v Incorporated Law Society Transvaal** 1981 (2) SA 762 (T) at 781H and **Die Prokureursorde van die Oranje Vrystaat v Schoeman** 1977 (4) 588 (0) on 603A-B.

[10] The failure to keep proper accounting records is a serious contravention and an attorney who fails to comply with this requirement is liable to be struck off the roll or to be suspended from practice. See **Cirota and Another v Law Society Transvaal** at 193

and **Holmes v Law Society of the Cape of Good Hope and Another** 2006 (2) SA 130 (C) at 152B-F.

[11] Kirk-Cohen J in **Law Society Transvaal v Matthews** at 395 said the following regarding the keeping of proper accounting records by a practitioner:

"Failure to keep proper books of account is a serious contravention and renders an attorney liable to be struck off the roll of practitioners or liable to suspension; and the Courts have repeatedly warned practitioners of the seriousness of such a contravention. See Cirota and Another v Law Society, Transvaal (Supra at 193 F - G). The seriousness is again underlined in rule 89 read with rule 89(11) of the applicant's rules which provides that it is unprofessional or dishonourable or unworthy conduct on the part of the practitioner to contravene the provisions of the Attorneys Act or the applicant's rule".

See also **Malan v The Law Society of the Northern Provinces** [2008] ZA SCA 90 (12 September 2008) at paragraphs [10] to [11].

[12] The approach of the court in relation to trust shortages and the duty of an attorney with regard to trust money was also stated in **Law Society Transvaal v Matthews** at 394 as follows:

"I deal now with the duty of an attorney in regard to trust money. Section 78(1) of the Attorneys Act obliges an attorney to maintain a separate trust account and to deposit therein money held or received by him on account of any person. Where trust money is paid to an attorney it is his duty to keep it in his possession and to use it for no other purpose than that of the trust. It is inherent in such a trust that the attorney should at all times have available liquid funds in an equivalent amount. The very essence of a trust is the absence of risk. It is imperative that trust money in the possession of an attorney should be available to his client the instant it becomes payable. See Incorporated Law Society, Transvaal v Visse and Others; Incorporated Law Society Transvaal v Vilioen, 1958(4) SA 115(T) at 118F-H. An attorney's duty in regard to the preservation of trust money is a fundamental, positive and unqualified duty. Thus neither negligence nor willfulness is an element of a breach of duty: Incorporated Law Society, Transvaal v Behrman, 1977(1) SA 904(T) at 905 H. It is significant that in terms of section 83(13) of the Attorneys Act a practitioner who contravenes the provisions relating to his trust account and investment of trust money will be guilty of unprofessional conduct and be liable to be struck off the roll or suspended from practice."

[13] The dictum in **Incorporated Law Society, Transvaal v Visse and Others**

deserves to be quoted, for purposes of this case, in full. Boshoff J said:

"When trust money is handed to a firm it is the duty of the firm to keep it in its possession and to use it for no other purpose than of the trust. The position is, however, not the same in a case where a specific article is handed over which must subsequently be returned or accounted for. The firm fulfils its duty if it accounts for or return an equivalent amount. It is inherent in such a trust that the firm should at all times have available liquid funds in an equivalent amount. The very essence of a trust is the absence of risk. I am in respectfully agreement with Hathorn, J., where he states in the case of *Incorporated Law Society v. Stalker,* 1932 N.P.D. 594 (at p. 606), that it is imperative that trust
moneys in the possession of an attorney should be available to his clients the instant they become payable and that.....are generally payable before and not after demand. If a deficit exists in respect of trust moneys for which the respondents were not responsible but for which they are liable, they had no right to use moneys entrusted to them for a particular purpose, to satisfy trust creditors in respect of whose moneys the deficit existed. If they did use it in a manner they would be guilty of theft because they would then be using moneys of their clients to satisfy their obligations towards their clients."

The facts

The partnership

[14] Mr Phemelo Adam Hlahla, the first respondent, and Samuel Morokane Tebogo Motlhamme, the second respondent were admitted as attorneys in this court in 2003.

[15] On 1 April 2005, the respondents entered into a partnership to conduct a legal practice under the name and style of Hlahla Motlhamme Attorneys. The first respondent says that the partnership operated reasonably well, to the extent that they had plans to expand their operations in order to make a bigger profit. Their books of accounts were audited and they submitted Rule 72 certificates to the applicant who in turn issued Fidelity Fund Certificates to them. However, it transpired later that the respondents could not agree on major policy decisions regarding the conduct of their practice. They decided to dissolve the partnership and concluded a dissolution of partnership agreement on 30 October 2007. The dissolution agreement provided that the first respondent would open his own trust account. He did so but failed to inform the Law

Society of the existence of this account.

[16] Importantly the respondents also agreed that for a period of a year both respondents could practice and both could do so under the name and style of Hlahla Motlhamme Attorneys. The respondent did not inform the Law Society of the dissolution of the partnership.

[17] The first respondent says that at around the same time as the dissolution took place he relinquished his signing powers on both the main trust and business cheque books. He left the practice and allowed the second respondent complete use and control of the practice.

Law Society's investigation

[18] The law society received a number of complaints relating to the first and second respondents. The Law Society appointed an auditor, Mr L Swart, to:

(a) visit the offices of the firm to establish the state of the accounting and supporting records, systems and procedures;
(b) determine the trust position of the firm at specific and or elected dates;
(c) identify any circumstances or irregularities which may manifest themselves during the course of his inspection; and
(d) identify and report on any contravention of the applicable Act and Rules.

[19] Mr Swart made his inquiries and concluded that:

"(1) Based on my instructions received from the Law Society and arising out of my findings and comments set out previously, I am of the opinion that the firm Hlahla & Motlhamme Attorneys has

contravened the provisions of the Act and/or of the Rules as set out hereunder.

(1.1) Rule 68.1 of the Rules and Rule 48(1) of the Bop Rules in that the firm did not keep in an official language of the Republic such accounting records as are necessary to represent fully and accurately in accordance with generally accepted accounting practice.

(1.2.) Rule 68.5 of the Rules and Rule 48(3) of the Bop Rules in that the firm did not regularly and promptly update its accounting records as its accounting records have not been written up for more than one month.

(1.3) Rule 69.7 of the Rules and Rule 55(1) of the Bop Rules in that the firm did not, at intervals of not more than three months, extract a list of trust creditors and compare the total of the list with its cash position.

(1.4) Section 70 of the Act and Section 65 of the Bop Act in that the firm refused to comply with a direction of the Law Society to produce for inspection to a person authorized thereto the accounting records of the firm.

(1.5) Rule 89.25 of the Rules and Rule 76(24) of the Bop Rules in that the firm failed to comply with an order, requirement or request of the council.

(1.6) Rule 68.4.2 of the Rules and Rule 48(1)(b) of the Bop Rules in that the firm's accounting records were not retained at no other place than the firm's main office.

(1.7) Rule 89.23 of the Rules and Rule 76(22) of the Bop Rules in that the practitioners failed to answer or to appropriately deal within a reasonable time with any communication which reasonably requires a reply or other response.

(1.8) Section 78(1) of the Act and Section 73(1) of the Bop Act read together with Rule 69.3.1 of the Rules and Rule 54(1) of the Bop Rules in that the total amount in the trust banking account of the firm was less than the total amount of the firm's trust creditors. In terms of Section 83(9) of the Act, any practitioner who does not comply with the provisions of Section 78(1) of the Act shall be guilty of an offence and on conviction liable to a fine not exceeding R 1 000.00.(1.9) Rule 68.7 of the Rules and Rule 49(1) of the Bop Rules, read together with Sections 78(4) and 78(6)(c) of the Act, in that the firm did not within a reasonable time after the performance or earlier termination of any mandate account to its client in writing. In terms of Section 83(9) of the Act, any practitioner who does not comply with the provisions of Section 78(4) of the Act shall be guilty of an offence and on provisions of Section 78(4) of the Act shall be guilty of an offence and on conviction liable to a fine not exceeding R 1 000.00.

(1.10) Rule 68.8 of the Rules and Rule 49(1)(d) of the Bop Rules in that a firm did not pay any amount due to a client within a reasonable time unless otherwise instructed.

(1.11) Rule 89.15 of the Rules and Rule 76(14) of the Bop Rules in that the practitioners are guilty of unprofessional, dishonourable and unworthy conduct by neglecting to give proper attention to the affairs of their client.

(1.12) Rule 3.1 of the Rules in that the firm did not within 30 days after the change of its address and the closure of its offices inform the Law Society in writing of such changes.

(1.13) Rule 89.17 of the Rules in that the practitioners abandoned their practice without previous notice to their clients.

(1.14) Rule 70.3 of the Rules and Rule 56(1) of the Bop Rules in that the firm did not ensure that the accountant's report to be furnished by an accountant in terms of Rule 70.4 of the Rules and Rule 57(1) of the Bop Rules is so furnished within or at the required time.

(2) Conclusions

(2.1) The complete lack of reaction and communication by the practitioners to the requests and demands by the Law Society, compromise unprofessional, dishonourable and unworthy conduct by the practitioners and a complete disregard for their controlling body.

(2.2) It was clear during my visits that the partners are not interested in ensuring that the firm's accounting records are kept up to date and are correct.

(2.3) The state of the firm's accounting records and the manner in which the firm is handling trust funds, creates in my opinion a major risk for the firm's clients as well as the Attorneys Fidelity Fund.

(2.4) Based on the documentation presented to me, it is clear that the partners misappropriated the firm's clients' money, most probably for their own personal benefit."

[20] I pause here to state that it will be necessary to consider:

(a) the conduct of the second respondent after the conclusion of the agreement of dissolution; and

(b) the first respondent's own conduct and his liability for the conduct of the second respondent for the period commencing on the date the dissolution agreement was signed and for a year later and thereafter his own subsequent conduct.

[21] It will be convenient to begin with the second respondent's conduct and thereafter to consider the first respondent's conduct.

The second respondent's conduct

[22] The respondents say they operated on a cheque account held with First National Bank which was opened and operated exclusively for and on behalf of Microzone Projects CC. This entity had been a client and who owed them fees in excess of a million rand, which have not been recovered. The second respondent continued to operate on the trust account.

[23] One of the clients of the practice was a political party (the North West branch of the African National Congress).

[24] In the matter of E M Mayisela the practice incurred disbursements of R1.3 million in respect of two Senior and two junior advocates. The practice also debited fees of R806

666.66 in respect of this matter. The Party paid R315 000 and still owes, as at 20 August 2010, a balance of R1 8 51 666.66. The practice did not have the necessary funds to pay the advocates.

[25] The Bar blacklisted the practice which meant that no other member of the Bar would accept a brief from the practice.

[26] The solution, which occurred to the second respondent, was to pay the advocates in the Mayisela matter with monies in the trust account which were held in trust for other clients of the practice.

[27] It is common cause that the monies kept in trust for Mrs K M Leepile and Mr S B Chuma were wrongfully used to pay the debts (counsels' fees) of the practice including a debt owed by the practice to Adv Gedulsky SC (which had been ceded to attorney Frankel).

[28] The facts of the Frankel matter need not be recounted. No complaint was lodged by Mr Stephan van Rensburg who acted for Mr Frankel. But what is relevant is the fact that the second respondent admits that he paid R450 000 to Mr Frankel using funds in the trust account which belonged to other clients.

Mrs Leepile

[29] The practice acted for Mrs Leepile in a Road Accident Fund matter. On 1 August 2008 the practice received R434 720.50 from the Road Accident Fund. But the practice failed to account to Mrs Leepile for this. On 10 December 2008 she established that the firm had received the fund from the Road Accident Fund. The second respondent acknowledges that the monies are owed to Mrs Leepile (as at the date of the hearing the

funds have still not been paid to her).

[30] The second respondent concedes that the monies were misappropriated in that accounts of the practice regarding the Party's matters were also paid from the trust funds of Mrs Leepile. The second respondent further admits his undertaking to pay the monies to her and his failure to do so. The only excuse that he offers is that he did not use trust money for personal gain.

MrChuma

[31] On 2 June 2008 Mr Chuma deposited the purchase price of R280 000.00 in respect of the immovable property into the firm's trust banking account. Mr Chuma subsequently discovered that the property had not been transferred into his name. The second respondent advised Mr Swart (the Law Society's investigator) that he refunded Mr Chuma an amount of R180 000.00 from funds borrowed from his bank. The second respondent admits that the monies of Mr Chuma, like the monies of Mrs Leepile, were used to settle the accounts of advocates briefed in another matter. The second respondent states that these complainants will be paid. He goes so far as to say that the Fidelity Fund is not at risk because the money was not used for personal gain. The second respondent denies that trust creditors Lengane, Mpete and Motoko should be included in the trust account deficit of R1 474 456.41.

Lengane

[32] I agree that the funds owed in respect of Lengane do not fall within the trust fund administered by the second respondent. I shall deal more fully with this complaint when I

consider the first respondent's culpability.

T E Mpete

[33] Mr Mpete bought property from the North West Housing Corporation for a total amount of R380 000.00. This amount was deposited into the practice's trust account. The properties were not registered in the name of Mr Mpete. He decided to cancel the transactions and he advised the selling agent, Microzone Project CC, that he was not continuing with the purchase of the property. He claimed repayment of the funds, which he had deposited into the practice's trust account, plus interest thereon. Microzone responded and accepted the cancellation of the agreement. Mr Mpete was advised that the practice had paid his monies to Microzone. According to the applicant the mandate of the firm was to retain Mr Mpete's fund until date of registration of the property.

Mr Mokoto

[34] Mr Mokoto purchased immovable property. He instructed the practice to handle the registration of the transfer. On 13 August 2000 he deposited an amount of R200 000.00 into the practice's account. Mr Mokoto says that the firm failed to attend to the registration of the transfer and also failed to reply to his letters and telephone calls. The second respondent admits that the amount of R200 000.00 was deposited into the trust account. He alleges that the owner of the immovable property i.e. Mr Mmileng stayed at a guest house and that he (second respondent) paid the guest house a total of R87 000.00. He attaches the invoices. The second respondent denied that he misappropriated any trust funds from Mr Mokoto. He says that the documentation was lodged in the Vryburg Deeds Office. The only outstanding issue is the electrical

compliance certificate.

Miscellaneous

[35] It is common cause that the second respondent failed to submit a Rule 70 auditor's report for the period ending 28 February 2009 to the Law Society. His defence is that it is the auditor (and not him) who is obliged to submit the report. The second respondent failed to inform the Law Society of his change of particulars. The Law Society went to the expense of appointing tracers to find him. The second respondent attacked the character of the Law Society's auditor. He did not provide any evidence in support of his allegations. The second respondent did not keep an appointment with the Law Society. He said that he was hospitalized. However, the compliant concerned says that he saw the second respondent walking along a street in Mafikeng.

The first respondent's conduct

[36] In considering the complaints against the first respondent I intend to deal first with the Lengane complaint and thereafter the first respondent's own dereliction of duty and finally his culpability as regards the complaints which are leveled against the second respondent.

Complaint of Lengane Investment Holdings

[37] Monies belonging to Lengane Investment Holdings were held in trust by Panchia Attorneys. Mr Panchia passed away. The first respondent was appointed as administrator. At the end of 2007 Lengane wished to obtain payment of the trust funds

under the control of the first respondent. Lengane alleges that it experienced some problems but recovered an amount of R100 000.00 during June 2008. An amount of R184 701.85 is still owing. The first respondent says that the complaint by Lengane should not be confused with the trust account of the erstwhile practice of Hlahla Motlhamme Attorneys. The funds of Lengane were paid into the trust account of the late M P Panchia's firm for which the first respondent was subsequently appointed the administrator. The first respondent goes on to say:

"In exercising my duties as administrator I have to ensure that any claim that I pay is indeed due and payable. I agreed with Mr Tumagole that I will provisionally pay without prejudice an amount of R100 000-00, until they proof to me that their client is owed any balance to date hereof (sic). I have not received any detailed or conclusive proof of their client account.

I deny that Lengane experienced any problems in receiving payment from me. Lengane says that after experiencing serious problems without saying what the problems are/were, they simply fail to inform this Honourable Court that I demanded proof of M P Panchia Attorneys indebtedness to them, which they failed to submit.

Should Lengange submit sufficient proof that the late M.P. Punchia's practice owe them, I will honour their claim."

[38] I turn to consider the liability of the first respondent for the practice's trust fund deficiencies. Partners are liable for the proper account of their trust fund until at least the formal dissolution of the partnership and the provision of the final closing statement. The partnership was provisionally dissolved on 30 October 2007 and finally dissolved on 30 October 2008. The closing statement was not submitted.

[39] What is more, it is not known when the misappropriation took place and when counsel in the Mayisela were matter paid. If they were paid during the period set aside for the dissolution of the partnership the first respondent would bear liability for the handling of the trust account. Not so if they were paid after 30 October 2008.

[40] The parties were requested on 1 September 2010 to provide the dates upon which the counsel were paid. On 5 October 2010 Mr Minchin informed us that as all the

accounting records were reported lost and the computers reported stolen, the auditor was unable to provide the information sought. Mr Minchin inspected the file cover in the Mayisela matter. It showed that appearances were made on various days between 25 February and 7 August 2008. Presumably payments to counsel became due and payable during and after this period. The respondents have not replied to the communications sent to them. I am not able to establish whether the payments were made before 30 October 2008 ie the date of dissolution or thereafter.

[41] What is known is that Frankel was paid R350 000, with trust monies belonging to other clients, some time prior to 24 August 2008 and R50 000 on 24 August and R50 000 in September 2008.

Findings and evaluation - the three stage inquiry

The first respondent

(a) The conduct

[42] I am satisfied that the first respondent is guilty of contravening the following Rules or sections of the Attorneys Act:

(a) Section 78(1) of the Act read together with Rule 69.3.1 of the Rules in that the total amount in the trust banking account of the firm was less than the total amount of the firms trust creditors.

(b) Rule 68.7 of the Rules read together with Sections 78(4) and 78(6)(c) of the Act, in that the firm did not within a reasonable time after the performance or earlier termination of any mandate account to its clients in writing.

(c) Rule 3.1 of the Rules in that the firm did not within 30 days after the change of its address and the closure of its office inform the Law Society in writing of such changes.

(d) Rule 68.8 of the Rules in that the firm did not pay any amount due to a client

within a reasonable time unless otherwise instructed.

(e) Rule 70.3 of the Rules in that the firm did not ensure that the accountant's report to be furnished by an accountant in terms of Rule 70.4 of the Rules is so furnished within or at the required time.

[43] I find that:

(a) In the Leepile matter the first respondent's conduct is less disreputable than that of the second respondent.

(b) the first respondent failed to exercise control over the handling of the practice's trust fund for the period ending 30 October when he ought to have done so. Instead he abandoned his duties and left matters entirely in the hands of the second respondent. This he was not entitled to do. Had he exercised his obligations towards the trust fund and his former clients the misappropriation may not have taken place. He is culpable but less so than the second respondent.

(c) contrary to what the respondents allege there was a personal gain because the trust monies were misappropriated to pay debts of the partnership. However, I accept, as the first respondent seeks to say that the misappropriation was not for personal enjoyment.

(d) I accept that there is no proof of a misappropriation of the trust monies of the late Panchia of which the first respondent is a curator.

(b) Is the first respondent a fit and proper person to continue to practice?

[44] I have referred to various authorities above which clearly set out the standards expected of an attorney with regard to trust funds. It is not inappropriate to repeat what is said in **Law Society Transvaal v Matthews** at 394:

"....An attorney's duty in regard to the preservation of trust money is a fundamental, positive and unqualified duty. Thus neither negligence nor willfulness is an element of a breach of duty: Incorporated Law Society, Transvaal v Behrman, 1977(1) SA 904(T) at 905 H."

[45] The first respondent abandoned control of the trust monies and is in my view not a fit and proper person to practice as an attorney. He did not inform the Law Society of the dissolution of the partnership. He practiced without advising the Law Society.

(c) Should the first respondent be suspended from practice or struck off the roll?

[46] In my view the first respondent should not be struck from the roll. It will be sufficient if he be suspended from practice for a period of five years. I am led to this result by the nature of the transgressions, the first respondent's discomfort in proceeding with the partnership, the extent of the loss and the likelihood that in five years time the first respondent will be a more mature person.

The second respondent

(a) The conduct

[47] The second respondent:

(a) admits that he misappropriated trust funds to pay the firm's creditors.

(b) to the extent that he has denied that certain funds were not trust funds has erred so gravely that it must be said that his error is not an honest mistake.

(c) does not view his handling of trust funds as improper. He thereby shows that he either does not understand the concept of trust funds or that he, being in a financial predicament, decided to ignore the well known rules. I am satisfied that the latter reflects his state of mind.

(d) has attacked the applicant saying that it acts dishonestly and with malice but has

not justified his aspersions.

(e) failed to keep back up copies of his accounting records.

(f) failed to provide the Law Society with source documents e.g. cheques when requested to do so.

(g) abandoned his practice and files.

(h) failed to inform the Law Society of this.

(i) failed to inform his clients of the closure of his practice.

(j) failed to arrange for other attorneys to take over his files or to inform the Law Society of this.

(k) failed to submit a Rule 70 auditor's report for the period ending 28 February 2009 to the Law Society. His assertion that the auditor is obliged to do so shows that he is either unacquainted with the Rules or his explanation is simply a subterfuge for his dereliction of duty.

(I) failed to inform the Law Society of is change of particulars. This caused the Law Society to appoint a firm of tracers to locate him.

(m) attacked the character of the Law Society's auditor without substantiating his allegations.

n) misled the Law Society into believing he was hospitalized when in fact he was seen on the streets of Mafikeng.

(b) Is the second respondent a fit and proper person to continue to practice?

[48] The second respondent is without doubt not a fit and proper person to practice as an attorney. He is not fit to be entrusted with trust monies. He has disingenuously sought to evade some of his duties by pretending ignorance. At the same time he has admitted the misappropriation of the trust monies; in the circumstances of the case he had no other choice. The public must be protected against a repetition of his conduct.

[49] It is so that he is young and that his immaturity probably led him to conduct litigation without cover but he could and should have avoided paying the debts of the practice with other people's money.

(c) Should the second respondent be suspended from practice or struck off the roll?

[50] A suspension would not be a sufficient sanction in the light of the conduct of the second respondent. His name must be struck off the roll of attorneys.

[51] I propose that the following order be made:

1. That Phemelo Adam Hlahla be suspended from practising as an attorney of this court for a period of 5 (five) years.
2. That the name of Samuel Morokane Tebogo Motlhamme be struck off the roll of attorneys of this court.
3. That the relief set out in section A paragraphs 1.3 up to and including 1.11 of the order made on 17 December 2009 remain in force.
4. The first and second respondents are directed:

4.1. to pay, in terms of section 78(5) of Act No 53 of 1979, the reasonable costs of the inspection of the accounting records of the first and second respondents;
4.2. to pay the reasonable fees and expenses of the curator;
4.3. to pay the reasonable fees and expenses of any person(s) consulted and/or engaged by the curator as aforesaid;
4.4 to pay the costs of this application on an attorney and client scale.

A A LANDMAN

JUDGE OF THE HIGH COURT

I concur and order:

1. That Phemelo Adam Hlahla be suspended from practising as an attorney of this court for a period of 5 (five) years.
2. That the name of Samuel Morokane Tebogo Motlhamme be struck off the roll of attorneys of this court.
3. That the relief set out in section A paragraphs 1.3 up to and including 1.11 of the order made on 17 December 2009 remain in force.
4. The first and second respondents are directed:

4.1. to pay, in terms of section 78(5) of Act No 53 of 1979, the reasonable costs of the inspection of the accounting records of the first and second respondents;
4.2. to pay the reasonable fees and expenses of the curator;
4.3. to pay the reasonable fees and expenses of any person(s) consulted and/or engaged by the curator as aforesaid;
4.4. to pay the costs of this application on an attorney and client scale.

M M LEEUW
JUDGE PRESIDENT

ATTORNEYS:
FOR THE APPLICANT **MINCHIN & KELLY**

FOR THE RESPONDENT