

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

FROM: The Registrar, Supreme Court of Appeal

DATE: 28 MARCH 2006

STATUS: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

The Supreme Court of Appeal today substantially dismissed an appeal brought by the Law Society of the Cape against a judgment of the Cape High Court in which that court declined to remove the name of a Cape Town attorney, Ms Henriette Peter, from the roll of attorneys and instead suspended her from practice for a year and precluded her from practising for her own account for a further year.

In the judgment of the Cape High Court, Mr Justice E Moosa, with whom the Deputy Judge President Mrs Justice JT Traverso concurred, said that Ms Peter, who admitted misappropriating approximately R20 000 from her trust account in her first few months of practice in order to pay her practice and living expenses because her income from her practice was not sufficient to keep her office open, had manifested a character defect which warranted the conclusion that she was not a fit and proper person to practise. He said that the circumstances of the case were exceptional and that it was accordingly not necessary to remove her name from the roll.

What counted in her favour, he said, was ‘her frank and full disclosure, accepting responsibility for her conduct, the short duration and limited nature of her misconduct, her expression of contrition and her willingness

to effect restitution and her limited exposure to the running of a conventional legal practice and management of trust accounts.’

In the majority judgment in the Supreme Court of Appeal, Mr Justice IG Farlam, with whom Mr Justice DG Scott and Mr Justice J Heher agreed, said that he did not agree that Ms Peter’s actions in stealing trust moneys resulted from a character defect. He said that they could more readily be seen as a moral lapse brought about by the pressure she was under at the time. He said that she was not an inherently dishonest person and that she had clearly learnt a hard and painful lesson. He held that it was appropriate to suspend her from practice for a year and to restrict her from practising for her own account for at least a further year. He ordered that this restriction should only be uplifted once Ms Peter had satisfied the Cape High Court that it was appropriate for this to happen.

In a minority judgment Mr Justice RW Nugent, with whom Mr Justice LTC Harms concurred, agreed that Ms Peter’s name should not be removed from the roll but held that she have been suspended from practice for three years.