



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

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 4770/2015

In the matter between:

THE LAW SOCIETY OF THE FREE STATE

Applicant

and

SEBABATSO JEREMIA RADEBE

Respondent

CORAM:

LEKALE, J *et* MOTIMELE, AJ

HEARD ON:

17 JUNE 2016

JUDGMENT BY:

LEKALE, J

DELIVERED ON:

30 JUNE 2016

BACKGROUND AND INTRODUCTION

- [1] The applicant is the statutory custodian of attorneys' profession and acts, in the instant matter, in furtherance of the objectives of

its constituting and enabling legislation viz. The Attorneys Act, 53 of 1979 (the Act) which include regulation of the exercise of the profession and promotion of uniform practice and discipline among practitioners. (See **Section 58 of the Act**).

[2] The respondent, on the other hand, has been a member of the applicant since his admission as an attorney in 2004 although he started practising as such for his own account in 2007.

[3] The disciplinary rule of the applicant authorises the applicant's disciplinary committee (disciplinary committee) to determine complaints referred to it by the chief executive officer or executive officer of the applicant and provides, *inter alia*, that:

“When upon the determination of a complaint, a disciplinary committee is of the opinion that *prima facie* the conduct of the practitioner constitutes misconduct and that a finding of guilt would warrant an application for the striking off of such practitioner from the roll, or his or her suspension from practicing, it shall not make a finding, but shall make a recommendation to the council and simultaneously therewith forward the record of the enquiry to the council for such action as the council may deem proper;” (See Rule 19(3) (c) of the Rules of the Free State Law Society (the Rules)

[4] The disciplinary committee is, further, obliged not to make a finding at the conclusion of an enquiry if it is of the opinion that the case is one contemplated by rule 19(3) (c) but to refer the matter to the applicant's council (the council) for such action as the council may deem proper. (See **Rule 19(3) (g) of the Rules**).

- [5] From 2010 to and including July 2012 the applicant, through its executive officer, received seven complaints against the respondent which it referred to the latter for his reply in terms of the disciplinary rule. In 5(five) of such complaints the respondent practitioner was required to appear before the disciplinary committee on the 1st October 2014 after he had failed on numerous occasions to appear but he once again failed to do so. As a result of non-appearance on his part the disciplinary committee referred the matters to the council with recommendations that he either be struck off the roll of attorneys or suspended from practice.
- [6] In 1(one) matter the respondent was directed to furnish documents to the disciplinary committee by a specified date and, when he failed, a recommendation for either his striking off or suspension from practice was made to the council.
- [7] The seventh complaint, which related to alleged failure to transfer immovable property, was forwarded to the respondent on 27 August 2013 and he filed his responding affidavit on 13 September 2013, thus, complying with the disciplinary rule which required him to respond under oath by way of an affidavit.
- [8] The applicant feels aggrieved by the respondent's alleged lack of co-operation and, on the 7th October 2015, launched the instant application moving for the respondent's striking off and, in the alternative, his suspension from practice relying on the above complaints to demonstrate the respondent's attitude towards it, as

custos morum of the profession, as well as the complaints levelled against him.

- [9] The respondent opposes the motion and appears in person before the court while Ms Collins, a local counsel, appears for the applicant.

ISSUES IN DISPUTE

- [10] Parties are at variance on whether or not the respondent, through his conduct, poses attitudinal challenges to the applicant with the latter effectively contending that, on numerous occasions, it bent over backwards to accommodate the respondent by postponing matters, thus, delaying finalization of the same all in vain.
- [11] In the event of the preceding question being decided in the affirmative, the dispute between the parties extends to the fitness and propriety of respondent to remain in the profession as well as appropriate sanction in the event of it being found that he does not match up to the conduct which can, reasonably, be expected from a practitioner in his position.

DEPOSITIONS AND CONTENTIONS FOR THE APPLICANT

- [12] The applicant's then President, **VUYO MOTSEKI MOROBANE**, deposed to, *inter alia*, the effect that the respondent has complete disregard for the complaints laid against him and blatantly refuses to co-operate with the disciplinary committee as well the council of the applicant. In his view such conduct on the part of the

respondent, as the officer of this court, renders him not fit and proper to remain in the profession. The applicant's current President, **DEIDRE MILTON**, deposes that the respondent even evaded service of the instant motion and gave the sheriff a run around with clear knowledge that an attempt was being made to serve him. Such conduct on the part of the respondent does not match up to the conduct expected of an attorney according to her.

- [13] Ms Collins for the applicant submits that the respondent's attitude towards the applicant is such that he should either be struck off the roll of attorneys or suspended from practice regard further being had to the difficulties the sheriff encountered in serving the instant motion on the respondent who was evading service.

DEPOSITIONS AND CONTENTIONS BY THE RESPONDENT

- [14] The respondent deposed to, *inter alia*, the effect that he always co-operated with the disciplinary committee and always subjected himself to applicable disciplinary procedures. He, further, points out that he answered all the complaints levelled against him and appeared before the disciplinary committee whenever he was required to do so. It is, further, his case that he furnished all the information required from him by the disciplinary committee whenever he received directives from the applicant. He further denies ever receiving summons requiring him to appear before the disciplinary committee on 6 August 2014 and 3 September 2014.

- [15] The respondent, further, contends that he failed to appear before the disciplinary committee or to furnish documents required of him only when he was not aware of the sittings and directives because he had not received relevant notifications and correspondence. He did not evade service of summons nor did he deliberately fail to appear before the disciplinary committee on all the dates referred to in the applicant's founding papers.

APPLICABLE LEGAL PRINCIPLES

- [16] The question in the instant matter is whether or not the offending conduct on the part of the respondent has been established on a balance of probabilities and, if so, whether or not the respondent is, on the basis of such conduct and in the discretion of the court, a fit and proper person to remain in the profession. In the event of the latter question being decided in the negative, the next enquiry is whether, in the circumstances of the matter, the respondent should be removed from the roll or suspended from practice. (See **Jasat v Natal Law Society** 2000 (3) SA 44 (SCA) and **Law Society of the Northern Provinces v Mabaso** [2015] ZASCA 109 *para* [2]).
- [17] Failure on the part of an attorney, as an officer of the court, to co-operate and deal with complaints of professional misconduct is viewed in a serious light by the courts and may, in appropriate cases, constitute a material consideration justifying removal of his name from the roll of attorneys. (See **Law Society of the Northern Provinces v Mabaso** (*supra*)).

- [18] In applications for striking off or suspension from practice on the grounds of misconduct what matters are the conduct complained of on the part of the respondent attorney, his responses and attitude towards such a complaint and whether it may be concluded therefrom that he should remain in practice. (See **Summerley v Law Society of Northern Provinces** 2006 (5) SA 613 (SCA) and **Law Society of Northern Provinces v Mabaso** *op cit* para [17]).

APPLICATION OF LEGAL PRINCIPLES AND FINDINGS

- [19] It is patent *ex facie* the papers that the complaints against the respondent were serious in nature in that they included failure to finalise deceased estates within reasonable times, failure to keep clients informed of progress, alleged overreaching of a client and failure to hand over contents of a file to a newly appointed executor after he was removed from office by the Master. The parties are effectively in agreement that such complaints cried out for the attention of the disciplinary committee.
- [20] It is, further, clear from the founding affidavit that the respondent failed to appear before the disciplinary committee on numerous occasions until it was resolved to recommend his striking off or suspension to the council in line with the disciplinary rule.
- [21] It is equally apparent from the papers that the allegations against the respondent were not tested to establish their veracity by way of calling witnesses and hearing evidence in the light of the fact that the respondent had responded to the same and placed them

in dispute. In this regard it should be noted that what was referred to council by the disciplinary committee were the complaints (untested and disputed allegations) and not the respondent's attitude. In my view it was, as such, imperative on the part of the disciplinary committee to establish the veracity of the relevant allegations before it could refer the complaints for the attention of the council.

[22] It is, however, true, as Ms Collins effectively contends, that the applicant does not rely on the veracity of the complaints laid against the respondent by third parties in its case before us. It simply uses such complaints to demonstrate his attitude which, according to it, reflects negatively on his fitness and propriety to remain in the profession. To the foregoing extent the present motion is, therefore, not based on the recommendations of the disciplinary committee for it referred the actual untested and disputed allegations to council and recommended the ultimate sanction thereon.

[23] The respondent contends that he co-operated with the disciplinary committee and denies receipt of the relevant notices calling upon him to appear before it. His version that whenever he received communication from the applicant he responded finds credence in the fact that he responded to all the complaints against him. His case that where he received notices he appeared or kept the applicant's executive officer aware of his unavailability to attend sittings is supported, to a large extent, by the fact that on numerous occasions the sittings of the disciplinary committee were postponed and he was granted further opportunities to

appear. In my view where the committee was satisfied that the respondent was properly notified of a sitting, it would have simply proceeded with the enquiry in his absence for, without any apology from his side, there would have existed no cause whatsoever to postpone the sitting. In my judgment his version is, thus, probable.

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[24] There exist disputes of facts on material allegations against the respondent which cannot be resolved on papers as far as the respondent's attitude and responses to the complaints against him are concerned. It was for the applicant, through the disciplinary committee, to resolve such disputes by hearing evidence before it could refer the drawing of an inference as to the fitness and propriety or otherwise of the respondent to remain in the profession to the court and not to defer to the court on the same. It is, however, not impossible that the respondent did receive the relevant notices but elected not to attend the hearings. The possibility in question is, however, a matter of speculation and conjecture as there is no proof whatsoever, on the papers, of such allegations. A perusal of the papers, further, reveals that all the matters on which recommendations for striking off or suspension were made were scheduled to be heard on the 1st October 2014. It is, as such, not as if the respondent failed to appear on numerous occasions in that regard.

[25] Respondent's response to the contention that he evaded service of the present motion is also probable and acceptable insofar as he gave a logical explanation of failure by the sheriff to effect service on him. Once again it is not impossible that he evaded

service but there is simply no reliable evidence on which to make a conclusion in so far as the applicant relies on inadmissible hearsay, which is, in any event, disputed, in support of its case in this regard.

- [26] The alleged offending conduct on the part of the respondent, in the form of negative attitude towards the profession, and justifying the conclusion that he is not fit and proper to remain in the profession has, therefore, not been established.

COSTS

- [27] The role of the applicant in matters of the present nature is limited to blowing the whistle on offending conduct, which warrants the attention of the court, on the part of the respondent, as an officer of this court, by drawing the attention of the court to such conduct.
- [28] For purposes of costs in the instant matter the question is whether or not there existed cause, on the part of the applicant, to launch the present application. I am satisfied that such cause existed regard being had to the fact that notices were sent out to notify the respondent of the sittings of the disciplinary committee. It is, further, not in dispute that on numerous occasions the respondent did not turn up at scheduled meetings of the disciplinary committee. Although his explanations as to why he could not show up are acceptable, they do not render the actions of the applicant in referring the matter to the court unreasonable or malicious.

[29] There, therefore, exists reason on the part of the court to deviate from the general principle with regard to costs by not allowing costs to follow the event. In my view, fairness demands that each party pay its own costs in the instant matter.

[30] As a parting shot I feel obliged to point out that we have, as the court, a strong suspicion that the respondent displays contemptuous attitude towards the applicant regard being had to the fact that, as at 1 October 2014, a complaint lodged in 2010 had not yet been determined although it regularly served before the applicant's disciplinary committee. It is, further, cause for concern that the sheriff was sent from pillar to post in an attempt to effect service of a court process on an officer of this court although such an officer has given his business address to the applicant as the custodian of attorneys' profession. The respondent should always bear in mind that, as an officer of this court, he is accountable to it for his conduct and he represents the profession as and when he interacts with the world socially and professionally. The public judges the profession and the legal fraternity at large by the way he conducts himself. If he persists with his games he will, no doubt, soon find himself in the cold outside the profession.

ORDER

[31] The application is dismissed.

[32] There is no order as to costs.

LJ LEKALE, J

I concur

AMM MOTIMELE, AJ

On behalf of applicant: Adv. L Collins
Instructed by:
Symington & De Kok Attorneys
Bloemfontein

On behalf of respondent: In person
Instructed by:
S.J. Radebe Attorneys c/o Ponoane
Attorneys
Bloemfontein

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