

**The Legal Practice Council of South Africa v Van Dyk**  
**2020 JDR 2511 (GP)**

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<b>Citation</b>	2020 JDR 2511 (GP)
<b>Court</b>	Gauteng Division, Pretoria
<b>Case no</b>	90321/19
<b>Judge</b>	CJ Van Der Westhuizen J and N Skibi AJ
<b>Heard</b>	Information not supplied
<b>Judgment</b>	30 October 2020
<b>Appellant/ Plaintiff</b>	The Legal Practice Council of South Africa
<b>Respondent/ Defendant</b>	Schall Jurgens Van Dyk

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**Summary**

**Attorney** — Misconduct — Trust account shortfall — No explanation offered — Attorney struck from roll.

**Judgment**

**Van Der Westhuizen J:**

- [1] The applicant is the authority in South Africa tasked with regulating the affairs of all legal professionals. It was established in terms of section 4

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- of the Legal Practice Act, 28 of 2014 (the Act) and is a juristic entity. The applicant succeeded its predecessor, the Law Society of South Africa. It has the same responsibilities as its predecessor, but now also regulates practitioners who were previously admitted and enrolled as advocates, prior to the Act coming into force.
- [2] On 17 December 2019, following an urgent application, the applicant obtained an order suspending the respondent, who was a practising attorney for his own account (as a sole practitioner), from practising as an attorney and authorisation to take control of the respondent's trust account. The urgent application was premised upon a report obtained from a chartered accountant who was instructed to investigate the respondent's trust account following a qualified audit report for the financial year ending 28 February 2018. As a result, the applicant did not issue a Fidelity Fund Certificate to the respondent. The chartered accountant investigated the respondent's practice and recorded her findings in her report dated 29 July 2019. The said report recorded a trust account deficit.
- [3] In its urgent application, the applicant set out various contraventions of the Attorneys Act, the Legal Practice Act, the Rules for the Attorneys Profession and/or the South African Legal Practice Council Rules. The contraventions included *inter alia*: failure to respond to all communications to the respondent that required response within a reasonable time; failure to report immediately a trust deficit to the applicant; failure to insure payments from the trust account only to or for trust creditors or due to the firm; failure to ensure a balanced trust account; failure to keep proper accounting records; failure to produce the respondent's accounting records for inspection when requested to do so; and, practising as an attorney without the prescribed Fidelity Fund Certificate.
- [4] The applicant concluded that the respondent had made himself guilty of unprofessional or unworthy conduct and that the respondent is no longer

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- a fit and proper person to continue to practise as a legal practitioner or an Officer of the Court. The applicant resolved to apply for the suspension/striking off of the respondent from the role of legal practitioners/attorneys. It further transpired that the respondent had abandoned his practise without advising the applicant thereof.
- [5] As recorded earlier, the respondent was suspended from practising as an attorney and ancillary relief was granted. That relief formed part of Part A of the Notice of Motion in the urgent application. The applicant now applies for the relief sought in Part B of the said Notice of Motion, which was postponed *sine die* on 17 December 2019.
- [6] The urgent application was served on the respondent personally and the notice of set down of Part B was also served personally upon the respondent. The respondent chose not to oppose either of the applications and did not file any answering papers, nor appeared at any of the hearings, or participated therein.
- [7] On 20 October 2020, the application for relief in terms of Part B of the Notice of Motion served before us. After considering the papers filed and hearing oral argument in addition to the written heads of argument filed on behalf the applicant, an order as contained in the document appended hereto and marked "XYZ" was granted and the reasons for the said order were reserved. This judgment contains the reasons for the grant of the order for the striking off of the respondent from the roll of legal practitioners/attorneys.
- [8] Despite numerous requests and attempts on the part of the applicant to obtain relevant documentation and other relevant information, the respondent ignored such and deliberately obstructed the applicant from undertaking an appropriate and detailed investigation into the affairs of the respondent's practice. His only response was to abandon his practice without advising the applicant. He merely shrugged off his responsibilities.

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- [9] We have not been afforded the courtesy of any explanation for the disastrous state of the respondent's legal practice, nor any indication that the respondent would adhere to his obligations and responsibilities in terms of the relevant legislation in future.
- [10] From the foregoing, it is clear that the respondent is not a fit and proper candidate to remain on the legal practitioners/attorneys roll. There is simply no basis upon which this court can show any leniency towards the

respondent. His duty in respect of the conducting of a trust account requires a high standard of trustworthiness.

<sup>[1]</sup> The respondent failed to adhere thereto.

[11] It follows that the applicant is entitled to the relief sought in the order that was granted on 20 October 2020 and appended hereto. The respondent was accordingly struck off the roll of legal practitioners/attorneys. The balance of the relief sought under Part B and contained in the said order of 20 October 2020 is also warranted.

The order appended hereto marked "XYZ" is confirmed.

C J VAN DER WESTHUIZEN

JUDGE OF THE HIGH COURT

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ACTING JUDGE OF THE HIGH COURT

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On behalf of Applicant:

C Jooste

Instructed by:

Iqbal Mahomed Attorneys

On behalf of Respondent:

No appearance

Instructed by:

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<sup>[1]</sup> *Law Society, Transvaal v Mathews* 1989 (4) SA 389 (T) at 393I-J

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