THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 184/2024

In the matter between:

MMATLOU LESLEY MATSI **FIRST APPLICANT**

MATSI LAW CHAMBERS INC.

ATTORNEYS **SECOND APPLICANT**

and

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL (GAUTENG PROVINCE) **RESPONDENT**

Neutral citation: *Matsi and Another v The South African Legal Practice Council (Gauteng Province)* (184/2023) [2026] ZASCA 12 (06 February 2026)

Coram: PETSE, MBHA and DLODLO AJJA

Heard: 15 September 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website, and release to SAFLII. The date and time for hand down is deemed to be 06 February 2026 at 11h00.

Summary: Legal Practitioner – Legal Practice Act 28 of 2014 – whether the immediate suspension of a legal practitioner pending the determination of application to have his name struck from the roll is imperatively called for in the context of the peculiar facts of the case – s 17(2)*(f)* of the Superior Courts Act 10 of 2013 – whether substantial and compelling circumstances exist warranting reconsideration of decision refusing leave to appeal and, if necessary, variation thereof – none established – application dismissed.

ORDER

On application for reconsideration: (referred to Court by the President in terms of the proviso to s 17(2)*(f)* of the Superior Courts Act 10 of 2013):

1 The application referred to the court in terms of s 17(2)*(f)* of the Superior Courts Act 10 of 2013 for the reconsideration of the decision made on 20 February 2024 under s 17(2)*(b)* is dismissed with costs on an attorney and client scale.

2 The operation and execution of the order granted by the Gauteng Division of the High Court, Pretoria on 30 August 2023 suspending the first applicant from practising as a legal practitioner with immediate effect shall not be suspended or stayed pending the decision of any application or appeal that the applicants might institute in future.

JUDGMENT

Petse AJA (Mbha and Dlodlo AJJA concurring):

Introduction

[1] This is an application referred to the court by the President on 7 June 2024 in terms of the proviso to s 17(2)*(f)* of the Superior Courts Act 10 of 2013 (the SC Act), for the reconsideration of the decision of two judges of this Court who, on 20 February 2024, refused leave to appeal against the order of Davis J, of the Gauteng Division of the High Court, Pretoria (the high court). On 20 November 2023 Davis J had himself refused leave to appeal against his order, hence the petition to this Court.

[2] The first applicant, Mr Mmatlou Lesley Matsi, is an attorney admitted and enrolled as such, and a member of the South African Legal Practice Council (the

LPC) of the Gauteng Province, the respondent in this application. For convenience, I shall hereinafter refer to the respondent as the LPC. The second applicant is Matsi Law Chambers Inc. Attorneys. It is essentially the name and style under which the first applicant practises his profession. Thus, it exists simply by virtue of the fact that the first applicant elected to practise his profession under such name and style. As can be deduced from its name, the second applicant is more appropriately the juristic entity through which the practice is conducted.

[3] During August 2023 the LPC instituted proceedings, as a matter of urgency, by way of a notice of motion comprising Part A and Part B in the high court. In Part B of its notice of motion the LPC, in the main, sought an order that the name of the first applicant be struck off the roll of legal practitioners on the grounds that he is no longer a fit and proper person to remain on the roll of legal practitioners. The LPC also claimed ancillary relief predicated upon the removal of the first applicant's name from the roll.

[4] In Part A of the notice of motion, the LPC sought an order that the first applicant 'be suspended from practicing as a legal practitioner on an urgent basis…' pending the final determination of Part B of its application. The LPC also sought consequential relief in relation to Part A of its application. [1]

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[1] The following ancillary orders were sought:
'3. That the First Respondent immediately hand delivers his certificate of enrolment as an attorney to the Registrar of this Honourable Court;
4. That in the event of the First Respondent failing to comply with the terms of this order detailed in the previous paragraph within two (2) weeks from date of this order, that the sheriff of the district in which the certificate is, be authorised and directed to take possession of the certificate and to hand it to the Registrar of this Honourable Court;
5. That the First Respondent be prohibited from handling or operating from his firm's trust accounts, Matsi, Mailula Inc Attorneys (also known as Matsi Law Chambers), as detailed in paragraph 6 hereunder;
6. That the Director/Acting Director and or Nominee, of the Gauteng Provincial Office of the Applicant, be appointed as *curator bonis* (herein referred to as "curator") to administer and control the trust accounts of the First Respondent's firm, Matsi, Mailula Inc Attorneys (also known as Matsi Law Chambers), including accounts relating to insolvent and deceased estates and any deceased estate and any estate under curatorship connected with the First Respondent's practice as attorney and including so, the separate banking account opened and kept by the First Respondent at a bank in the Republic of South Africa in terms of section 86(1) of the Legal Practice Act (LPA) and/or any separate savings or interest-bearing accounts as contemplated by section 86(3) and section 86(4) of the LPA, in which monies from such trust bank accounts having been invested by virtue of the provisions of the said sub-sections

in which monies in any manner have been deposited or credited (the said accounts being hereafter referred to as "the trust accounts"), with the following powers and duties:

6.1 immediately to take possession of the First Respondent's accounting records, records, files and documents as referred to in paragraph 7 and subject to the approval of the Board of Control of the Legal Practitioner's Fidelity Fund (hereinafter referred to as "the Fund") to sign all forms and generally to operate upon the trust account(s), but only to such extent and for such purpose as

6.2 subject to the approval and control of the Board of Control of the Fund and where monies had been paid incorrectly and unlawfully from the undermentioned trust accounts, to recover and receive and, if necessary in the interests of persons having lawful claims upon the trust account(s) and/or against the First Respondent in respect of monies held, received and/or invested by the First Respondent in terms of Section 86(3) and section 86(4) of the LPA (hereinafter referred to as "the trust monies"), to take any legal proceedings which may be necessary for the recovery of money which may be due to such persons in respect of incomplete transactions, if any, in which the First Respondent was and may still have been concerned and to receive such monies and to pay the same to the credit of the trust account(s);

6.3 to ascertain from the First Respondent's accounting records the names of all persons on whose account the First Respondent appears to hold or have received trust monies (hereinafter referred to as "trust creditors") and to call upon the First Respondent to furnish him, within 30 (thirty) days of the date of service of this order or such further period as he may agree to in writing, with the names, addresses and amounts due to all trust creditors;

6.4 to call upon such trust creditors to furnish such proof, information and/or affidavits as he may require to enable him, acting in consultation with, and subject to the requirements of, the Board of Control of the Fund, to determine whether any such trust creditor has a claim in respect of monies in the trust account(s) of the First Respondent and, if so, the amount of such claim;

6.5 to admit or reject, in whole or in part, subject to the approval of the Board of Control of the Fund, the claims of any such trust creditor or creditors, without prejudice to such trust creditor's or creditors' rights of access to the civil courts;

6.6 having determined the amounts which he considered are lawfully due to trust creditors, to pay such claims in full but subject always to the approval of the Board of Control of the Fund;

6.7 In the event of there being surplus in the trust account(s) of the First Respondent after payment of the admitted claims of all trust creditors in full, to utilise such surplus to settle or reduce (as the case may be), firstly any claim of the Fund in terms of section 86(3) of the LPA in respect of any interest therein referred to and, secondly, without prejudice to the rights of the trust creditors of the First Respondent, the costs, fees and expenses referred to in paragraph 13 of this application, or such portion thereof as has not already been separately paid by the First Respondent to Applicant, and, if there is any balance left, subject to the approval of the Board of Control of the Fund, to the Respondent, if he is solvent, or, if the First Respondent is insolvent, to the trustee(s) of the First Respondent's insolvent estate;

6.8 In the event of there being insufficient trust monies in the trust bank account(s) of the First Respondent, in accordance with the available documentation and information, to pay in full the claims of trust creditors who have lodged claims for repayment and whose claims have been approved, to distribute the credit balance(s) which may be available in the trust bank account(s) amongst the trust creditors alternatively to pay the balance to the Legal Practitioner's Fidelity Fund;

6.9 subject to the approval of the chairman of the Board of Control of the Fund, to appoint nominees or representatives and/or consult with and/or engage the services of attorneys, counsel, accountants and/or any other persons, where considered necessary to assist him in carrying out his duties as curator; and

6.10 to render from time to time, as curator, returns to the Board of Control of the Fund showing how the trust account(s) of the First Respondent has/have been dealt with, until such time as the Board identifies him that he may regard his duties as curator as terminated.

7. That the First Respondent immediately delivers his accounting records, records, files and documents containing particulars and information relating to:

7.1 any monies received, held or paid by the First Respondent for or on account of any person while practising as an attorney;

7.2 any monies invested by the First Respondent in terms of section 86(3) and section 86(4) of the LPA;

7.3 any interest on monies so invested which was paid over or credited to the First Respondent;

7.4 any estate of a deceased person or an insolvent estate or an estate under curatorship administered by the First Respondent, whether as an executor or trustee or curator or on behalf of the executor, trustee or curator;

7.5 any insolvent estate administered by the First Respondent as trustee or on behalf of the trustee in terms of the Insolvency Act No 24 of 1936;

7.6 any trust administered by the First Respondent as trustee or on behalf of the trustee in terms of the Trust Property Control Act, No 57 of 1988;

[5] The application by the LPC was brought in terms of s 43 of the Legal Practice Act (the Act).[2] Section 43 of the Act provides as follows:

'Despite the provisions of this Chapter, if upon considering a complaint, a disciplinary body is satisfied that a legal practitioner has misappropriated trust monies or is guilty of other serious misconduct, it must inform the Council thereof with the view to the Council instituting urgent legal

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7.7 any company liquidated in terms of the Companies Act, No 61 of 1973, administered by the First Respondent as or on behalf of the liquidator;
7.8 any close corporation liquidated in terms of the Close Corporation Act, 69 of 1984, administered by the First Respondent as or on behalf of the liquidator; and
7.9 the First Respondent's practice as an attorney of this Honourable Court, to the curator appointed in terms of paragraph 6 hereof, provided that, as far as such accounting records, files and documents are concerned, the First Respondent shall be entitled to have reasonable access to them but always subject to the supervision of such curator or his nominee.
8. That should the First Respondent fail to comply with the provisions of the preceding paragraph of this order on service thereof upon him or after a return by the person entrusted with the service thereof that he has been unable to effect service thereof on the First Respondent (as the case may be) the sheriff of the district in which such accounting records, records, files and documents are, be empowered and directed to search for a d to take position thereof wherever they may be and to deliver them to such curator;
9. That the First Respondent be and is hereby removed from office as -
9.1 executor of any estate of which the First Respondent has been appointed in terms of section 54(1)(a)(v) of the Administration of Estates Act, No 66 of 1965 or the estate of any other person referred to in section 72(1);
9.2 curator or guardian of any minor or other person's property in terms of section 72(1) read with section 54(1)(a)(v) and section 85 of the Administration of Estates Act, No 66 of 1965;
9.3 trustee of any insolvent estate in terms of section 59 of the Insolvency Act, No 24 of 1936;
9.4 liquidator of any company in terms of section 379(2) read with 379(e) of the Companies Act, No 61 of 1973;
9.5 trustee of any trust in terms of Section 20(1) of the Trust Property Control Act, No 57 of 1988;
9.6 liquidator of any close corporation appointed in terms of Section 74 of the Close Corporation Act, No 69 of 1984;
10. That the curator shall be entitled to:
10.1 hand over to the persons entitled thereto all such records, files and documents provided that a satisfactory written undertaking has been received from such persons to pay any amount, either determined on taxation or by agreement, in respect of fees and disbursements due to the firm;
10.2 require from the persons referred to in paragraph 10.1 to provide any such documentation or information which he may consider relevant in respect of a claim or possible or anticipated claim, against him and/or the First Respondent and/or the First Respondent's clients and/or the Fund in respect of money and/or other property entrusted to the First Respondent provided that any person entitled thereto shall be granted reasonable access thereto and shall be permitted to make copies thereof;
10.3 publish this order or an abridged version thereof in any newspaper he considered appropriate;
10.4 wind-up the First Respondent's practice;
11. That, if there are any trust funds available, the First Respondent shall within 6 (six) months after having been requested to do so by the curator, or within such longer period as the curator may agree to in writing, shall satisfy the curator, by means of the submission of taxed bills of costs or otherwise, of the amount of the fees and disbursements due to him (First Respondent) in respect of his former practice, and should he fail to do so, he shall not be entitled to recover such fees and disbursements from the curator without prejudice, however, to such rights (if any) as he may have against the trust creditor(s) concerned for payment or recovery thereof;
12. That a certificate issued by a director of the Legal Practitioner's Fidelity Fund shall constitute *prima facie* proof of the curator's costs and that the Registrar be authorized to issue a writ of execution on the strength of such certificate in order to collect the curator's costs
13. That the costs of this application be paid by the First Respondent on an attorney and client scale.'

[2] Section 43 of the Legal Practice Act 28 of 2014 (the Act).

proceedings in the High Court to suspend the legal practitioner from practice and to obtain alternative interim relief.'

The LPC is established in terms of s 4 of the Act. Section 4 reads:

'The South African Legal Practice Council is hereby established as a body corporate with full legal capacity, and exercises jurisdiction over all legal practitioners and candidate legal practitioners as contemplated in this Act.'

[6] The objects of the LPC are provided for in s 5. In relevant part, the section reads:

'(a) …

(b) …

(c) promote and protect the public interest;

(d) regulate all legal practitioners and all candidate legal practitioners;

(e) …

(f) enhance and maintain the integrity and status of the legal profession;

(g) determine, enhance and maintain appropriate standards of professional practice and ethical conduct of all legal practitioners and all candidate legal practitioners;

…

(l) give effect to the provisions of this Act in order to achieve the purpose of this Act, as set out in section 3.'

[7] Section 84 of the Act bears mentioning. In relevant part, it provides as follows:

'(1) Every attorney or any advocate referred to in section 34(2)(b), other than a legal practitioner in the full-time employ of the South African Human Rights Commission or the State as a state attorney or state advocate and who practises or is deemed to practise—

(a) for his or her own account either alone or in partnership; or

(b) as a director of a practice which is a juristic entity, must be in possession of a Fidelity Fund certificate.

(2) No legal practitioner referred to in subsection (1) or person employed or supervised by that legal practitioner may receive or hold funds or property belonging to any person unless the legal practitioner concerned is in possession of a Fidelity Fund certificate.

(3) The provisions of subsections (1) and (2) apply to a deposit taken on account of fees or disbursements in respect of legal services to be rendered.
(4) A Fidelity Fund certificate must indicate that the legal practitioner concerned is obliged to practise subject to the provisions of this Act, and the fact that such a legal practitioner holds such a certificate must be endorsed against his or her enrolment by the Council.
(5) A legal practitioner referred to in subsection (1) who—
(a) transfers from one practice to another; or
(b) ceases to practise, must give notice of this fact to the Council and comply with the Council's relevant requirements in relation to the closure of that legal practitioner's trust account and in the case of paragraph (b) return his or her certificate to the Council.
(6) The Council may withdraw a Fidelity Fund certificate and, where necessary, obtain an interdict against the legal practitioner concerned if he or she fails to comply with the provisions of this Act or in any way acts unlawfully or unethically.
(7) The provisions of this section do not apply to a legal practitioner who practises in the full time employ of Legal Aid South Africa on a permanent basis.
(8) An advocate, other than an advocate referred to in section 34(2)(b), may not receive or hold money or property belonging to any person in the course of that advocate's practice or in respect of any instruction issued to the advocate by an attorney or a member of the public.
(9) No legal practitioner in the full-time employ of the South African Human Rights Commission or the State as a state attorney, state advocate, state law adviser or in any other professional capacity may receive or keep money or property belonging to any person, except during the course of employment of such legal practitioner with the State or the South African Human Rights Commission and in such case only on behalf of the South African Human Rights Commission or the State and for no other purpose.'

[8] Lastly, a reference to s 86 of the Act, which deals with trust accounts, must also be made. It reads:

'(1) Every legal practitioner referred to in section 84(1) must operate a trust account.
(2) Every trust account practice must keep a trust account at a bank with which the Fund has made an arrangement as provided for in section 63(1)(g) and must deposit therein, as soon as possible after receipt thereof, money held by such practice on behalf of any person.

(3) A trust account practice may, of its own accord, invest in a separate trust savings account or other interest-bearing account any money which is not immediately required for any particular purpose.
(4) A trust account practice may, on the instructions of any person, open a separate trust savings account or other interest-bearing account for the purpose of investing therein any money deposited in the trust account of that practice, on behalf of such person over which the practice exercises exclusive control as trustee, agent or stakeholder or in any other fiduciary capacity.
(5) Interest accrued on money deposited in terms of this section must, in the case of money deposited in terms of—
(a) subsections (2) and (3), be paid over to the Fund and vests in the Fund; and
(b) subsection (4), be paid over to the person referred to in that subsection: Provided that 5% of the interest accrued on money in terms of this paragraph must be paid over to the Fund and vests in the Fund.
(6) A legal practitioner referred to in section 84(1) may not deposit money in terms of subsection (2), nor invest money in terms of subsections (3) and (4) in accounts held at a bank which is not a party to an arrangement as provided for in section 63(1)(g), unless prior written consent of the Fund has been obtained.
(7) A legal practitioner referred to in section 84(1) must comply with the terms of an arrangement concluded between a bank and the Fund as provided for in section 63(1)(g).'

[9] What precipitated the institution of the current legal proceedings against the applicants were several complaints lodged by certain of their clients with the LPC. The gravamen of the complaints was that the first applicant failed or neglected to account to them in respect of moneys paid on diverse times by the Road Accident Fund (the RAF) to compensate them as contemplated in s 17 of the Road Accident Fund Act.[3] In addition, it transpired that the first applicant practised without being in possession of a valid Fidelity Fund certificate as required by s 84(1) of the Act.

[10] Briefly stated, the case against the first applicant was, inter alia, that:

[3] Road Accident Fund Act 56 of 1996.

(a) he failed to report to the LPC that there were recurring trust deficits in his bookkeeping;

(b) he failed to report such trust deficits;

(c) he effected irregular transfers from his trust account to his business banking account;

(d) he refused to allow inspection of his practice accounting records;

(e) he submitted manipulated audit reports for the 2021 and 2022 financial years to conceal the trust deficit that existed; and

(f) he misrepresented the true state of affairs concerning his accounting records and thereby placed his trust creditors and the Legal Practitioner's Fidelity Fund at grave risks.

[11] Because of the wide-ranging allegations made in the LPC's founding affidavit deposed to by its chairperson, Ms Puleng Magdeline Keetse, and in order to promote a better appreciation of the contextual setting it is necessary to quote fairly extensively from the founding affidavit in order to gain a better insight into the gravamen of its case against the applicants.

[12] In the LPC's founding affidavit, Ms Keetse, inter alia, asserted that:

'11.1 During Nyali's[4] discussion with the First Respondent, the First Respondent advised that the maintenance of the firm's accounting records is outsourced to Mcmillan Financial Services.

11.2 According to the First Respondent, the accounting records are updated on a monthly basis.

11.3 Nyali was unable to validate the First Respondent's statements in the paragraph above since he was not furnished with the firm's accounting records for inspection.

[4] Mr Philasande Nyali (Mr Nyali) was the LPC's internal auditor who conducted the investigation into the applicants' accounting records at the behest of the LPC.

11.4 Nyali concluded that the First Respondent contravened Rule 54.6 of the LPC Rules in that he failed to maintain accounting records as required.

11.5 Rule 54.6 of the LCP Rules provides:

Accounting Requirements - General

A firm shall keep in an official language of the Republic such accounting records, which record both business account transactions and trust account transactions, as are necessary to enable the firm to satisfy its obligations in terms of the Act, these rules and any other law with respect to the preparation of financial statements that present fairly and in accordance with an acceptable financial reporting framework in South Africa the state of affairs and business of the firm and to explain the transactions and financial position of the firm including, without derogation from the generality of this rule:

54.6.1 records showing all assets and liabilities as required in terms of sections 87 of the Act;

54.6.2 records containing entries from day to day of all monies received and paid by it on its own account, as required by sections 87(1) and 87(3) of the Act;

54.6.3 records containing particulars and information of:

54.6.3.1 all monies received, held and paid by it for and on account of any person;

54.6.3.2 all monies invested by it in terms of section 86(3) or section 86(4) of the Act;

54.6.3.3 any interest referred to in section 86(5) of the Act which is paid over or credited to it;

54.6.3.4 any interest credited to or in respect of any separate trust savings.

…

11.7 The account had a credit balance in the amount of R292.86 as at 31 August 2022.

*A copy of the trust bank account statement dated 31 August 2022 is attached to the report marked **A2a** as **Schedule D**.*

<u>*Receipts*</u>

11.8 According to the First Respondent, the firm does not hold trust investments.

<u>*Payments*</u>

11.9 The First Respondent advised Nyali that payments from the trust banking account are effected via electronic funds transfer. The First Respondent is the only person that authorises payments from the trust account.

11.10 The First Respondent further advised that clients are requested to provide proof of banking details before a payment can be made.

<u>*Fees journal and transfer procedure*</u>

11.11 The First Respondent stated that fee transfers are done at various stages of the month.

11.12 The First Respondent also stated that fees are generally transferred on a matter by matter basis and occasionally in bulk.

11.13 Nyali was unable to validate the First Respondent's statements regarding the fee transfers due to the First Respondent's failure to provide the requested accounting records.

...

13.6 According to Nyali, it appears that the First Respondent's failure to effect payment to the complainant was due to the fact that the funds had been utilised and were no longer available in the trust account. The First Respondent's assertion that the funds are still available in the trust account is untrue and misleading.

13.7 The First Respondent thus contravened Rule 54.14.14.2 of the LPC Rules in that he made transfers from the trust account to the business account in excess of what was due to the firm. Rule 54.14.14.2 provides:

as transfers to the firm's business banking account, provided that such transfers shall be made only in respect of money due to the firm; and provided that no transfer from its trust banking account to its business banking account is made in respect of any disbursement (including counsel's fees) or fees of the firm unless:

54.1.14.2.1 the disbursements have actually been made and debited by the firm; or

54.14.14.2.2 a contractual obligation has arisen on the part of the firm to pay the disbursement; or

54.14.14.2.3 fees and disbursement have been correctly debited in its accounting records.

13.8 He further contravened section 3.1 of the Code of Conduct in that he failed to maintain the highest standard of honesty and integrity by misappropriating the client's funds and making false assertions about the availability of such funds.

...

20.1 During the inspection of the trust bank statements, Nyali noted that the First Respondent received a total amount of R12 452 172.40 from RAF on behalf of various clients. The trust bank statements revealed that between 08 July 2022 and 31 January 2023, the First Respondent transferred an amount of R4 831 759.00 to the firm's business account.

20.2 According to Nyali, this amount appears excessive, and he suspects that it is higher than what was due to the firm. However due to the First Respondent's failure to furnish his accounting records he was unable to validate his suspicions.

…

21.2 The total trust funds available as at 28 February 2021 align with the amount reflected in the trust bank statements. Nyali was unable to verify the total trust creditors amount as a result of the First respondent's failure to provide him with the firm's trust accounting records.

21.3 However, according to Nyali, it is highly unlikely that the total creditors would equal an amount R40, 559.61. Based on complaints discussed in paragraphs 12-19 above, the First Respondent owed huge amounts of monies to the complainants.

21.4 For example, the First Respondent only made a payment of R400, 000.00 to Ms Morifi in August 2022 (see paragraph 14 above). This client was a trust creditor as at 28 February 2021. This is a clear indication that the trust creditors amount as at 28 February 2021 was manipulated to conceal a huge trust deficit that existed.

21.5 Again, Nyali notes that as at 28 February 2022, the trust bank account balance was only R142.51. This aligns with the firm's audit report. However, the audit report was manipulated to show a total trust creditor's amount of R142.51. Considering the complaints discussed above, it is clear that the First Respondent owed vast sums of monies to clients as at 28 February 2022.

…

21.8 The First Respondent thus contravened Rule 54.14.8 of the LPC Rules in that he failed to ensure that the total amount of money in his trust banking account at any date is not less than the total amount of trust creditors. Rule 54.14.8 provides:

A firm shall ensure that the total amount of money in its trust banking account, trust investment account and trust cash at any date shall not be less than the total amount of the credit balances of the trust creditors shown in its accounting records.

…

22.1 Based on the instructions received form the Legal Practice Council: Gauteng Provincial Office and the findings outlined in the report, Nyali concluded that the First Respondent did not comply with the following provisions of the LPA; the LPC Rules and the Code of Conduct:

22.1.1 Section 37(2)(a) and Section 87(5) of the LPA in that he failed to produce the requested trust accounting records for inspection as outlined in paragraph 8.23 above:

22.1.2 Rule 54.14.8 of the LPC Rules in that he failed to ensure that the amount of money in his trust banking account at any date is not less than the amount of trust creditors as stated in paragraph 21.8 above;

22.1.3 Rule 54.14.10 of the LPC Rules in that he failed to immediately report in writing to the Council that the total amount of money in his trust bank account was less than the total amount of trust creditors as sated in paragraph 21.9 above;

…

22.1.6 Rule 54.14.14.2 of the LPC Rules in that he made transfers from the trust account to the business account in excess of what was due the firm as stated in paragraph 13.7 above;

…

24.1 The First Respondent contravened numerous provisions of the LPA, the Code of Conduct, the LPC Rules, and the Rules for the Attorneys' Profession. It is respectfully submitted that these offences are serious as it is a fundamental duty of a legal practitioner to ensure that trust monies held on behalf of a client are kept safe.

24.2 It is respectfully submitted that the First Respondent's contravention of the provisions of the LPA, the code of Conduct, the LPC Rules, and the Rules for the Attorneys' Profession constitutes unprofessional or dishonourable or unworthy conduct on the part of the First Respondent as provided for in the Code of Conduct, the LPC Rules and the Rules for the Attorneys' Profession.

24.3 I humbly submit that the conduct of the First Respondent amounts to such a material deviation from the standards of professional conduct that he is not a fit and proper person to continue to practise as a legal practitioner. Accordingly, it is my view that the First Respondent's name be removed from the roll of legal practitioners, alternatively that he be suspended from practice as a legal practitioner, pending the removal of his name form the roll of legal practitioners.'

[13] The applicants opposed the LPC's application. They also delivered a counter-application in which they sought certain orders, namely: (a) reviewing and setting aside the LPC's decision taken on 25 May 2023 to institute the legal proceedings referred to in paragraph 3 above of this judgment on the grounds that they were not

afforded the opportunity to be heard before the decision to embark on litigation was taken; (b) reviewing and setting aside the internal investigation report prepared at the behest of the LPC by its internal auditor, risk and compliance, Mr Nyali, into the affairs of the applicants which established that there were various instances of, amongst other things, misappropriation of trust funds; failure to keep proper trust accounting records; and recurring trust deficits on the grounds that 'they were not given an opportunity to answer to the investigation report' upon its completion in April 2023; and (c) the review and setting aside of the LPC's refusal to issue a Fidelity Fund certificate to the first applicant to enable him to lawfully practise his profession.

[14] In their answering affidavit deposed to by the first applicant, the applicants sought to avoid taking responsibility for what obtained in their practice and, instead, asserted that Mr Mailula who was at one-time also a director of the practice until 2019 'was the head of finance' in the practice. And that when he resigned from the practice, he filched certain files, rendering it impossible for them to provide the LPC with the required accounting records. The first applicant also contested the entitlement of the LPC to some of the documents it sought, describing the LPC's request to allow its internal auditor access to its business account records as 'out-of-the-ordinary or ultra vires.'[5]

[15] Insofar as the complaints lodged with the LPC against the applicants are concerned, the first applicant, inter alia, averred in his answering affidavit, somewhat dismissively, that:

'The applicant's report and application is premised upon 8 (eight) matters in respect of which it is suspected that clients did not receive their RAF compensation. I can confirm that payments were made in all of the matters. The said matters are as follows:

[5] The free translation of the expression 'ultra vires' means that the LPC had exceeded its statutory powers.

a. Msiza v RAF

i. Unfortunately, Ms Mzisa passed away just before payment could be made to her. An executor was appointed and she was assisted by our colleagues, Trip Manaswe Attorneys. I can confirm here under oath that payment to client as regards the first capital (relating to the first court order…) was made to the abovementioned attorneys.

ii. The only outstanding amount is what has not been paid out by the RAF (see second court order... There is a rescission of judgment application... Trip Manaswe Attorneys requested us (on behalf of clients) that we can continue to fight the RAF as we know the matter better.

iii. The deceased is survived by a traditional spouse (Mr Phiri) and 4 children, one adult and 3 minors.

b. Morifi vs RAF

i. I confirm that payment of the capital was made to client, hence the affidavit was filed. A complaint of this client was lodged with the LPC by my former co-director, Mr Mailula. He accessed the information illegally and used that anyway. Mr Mailula used lies and slander to woo clients to him or to get them to sign mandate transfer documents. The Morifi's noted that something was fishy. They refused to signed the documents, came back to the firm and were paid. They made an affidavit confirming this and withdrawing the complaint.

ii. If there is a further investigation that is necessary in this regard, a process must ensue. In its preliminary report, the LPC confirms that payments were made to this client. Therefore urgency does not arise but is rather imagined or putative. Real justice was served.

c. Mboyisa vs RAF

i. I confirm that payment of the capital was made to client. In its preliminary report, the LPC confirms that payments were made to this client. Therefore urgency does not arise. Real justice was served. Urgency has to be real.

d. Sethokga vs RAF

i. I confirm that payment of the capital was made to Mohlapi Attorneys as per client's instruction. Therefore urgency does not arise. Real justice was served. Urgency has to be real.

e. Mautla vs RAF

i. I confirm that payment of the capital was made to Thanyane Attorneys as per client's instruction and this complaint matter should be regarded as closed. Therefore urgency does not arise. Real justice was served. Urgency has to be real.

f. Mogolola vs RAF

i. Payment of the capital was made to client in the sum of R410 455,00 and this matter should be regarded as closed. Client received payment even though party and party costs have not yet been paid by the RAF. In fact the RAF indicated its intention to review same. The law firm is somewhat prejudiced as it runs the risk of not recovering its file costs and fees in full. Real justice for client is served. Therefore urgency does not arise but is rather imagined or putative as it is based on old incomplete factual narratives. Urgency has to be real.

g. Mthimunye vs RAF

i. Payment of the capital was made to client as confirmed in the very report of the LPC and this matter should be regarded as closed. Therefore urgency does not arise but is rather

imagined or putative as it is based on incomplete factual narratives. Urgency ought to be real.

h. Mogorosi vs RAF

ii. Payment of the capital was made to 2 (two) different law firms, namely, Matsi Law Chambers Inc – R300 000,00, and Lesiba Mailula Attorneys Inc – R927 378,50 – ...'

[16] I pause here to observe that what is curious about the first applicant's assertions in the preceding paragraph is that he chose to couch his answers in extremely vague terms and provided no details of: (a) the respective dates on which the funds for each one of these claimants were received from the RAF; (b) the amount paid by the RAF for the benefit of each client; (c) how much was paid to each client by the practice and the date(s) of the respective payments; and (d) how long after receipt of the funds in each instance from the RAF were the claimants caused to wait for an accounting from him. Instead, the first applicant contented himself with blithely stating that 'payment of the capital was made' to the client or different firms of attorneys and that the 'complaint…should be regarded as closed.' The applicants elected to downplay the gravity of their infractions in the face of damning and detailed allegations against them.

[17] Elsewhere in his affidavit, the first applicant accepted that most 'of the complaints by clients were warranted.' And yet in the same breath he sought to excuse his dishonourable conduct by contending that the complaints had 'their common genesis, [ie] delays that not only emanated from the 2nd [applicant's] internal process, but a confluence of factors such as the crippling effect of the Covid-19 lockdown.'[6] However, neither the 'internal processes' nor the 'factors' referred to here were explained for the court and the LPC to fully appreciate precisely what

[6] See vol 2 at 458 lines 1-6.

was sought to be conveyed. As this Court rightly observed in *Wightman t/a J W Construction v Headfour (Pty) Ltd and Another*[7] '…failure to deal issuably with the factual averments is unjustifiable on any rational basis.' It therefore goes without saying that a litigant who does not sufficiently engage with the facts alleged by the adversary and provide countervailing evidence to the averments in the founding affidavit that are not true or correct should not be surprised if the court adopts a robust approach and reject the opposing averments as either far-fetched or clearly untenable, and instead accept the applicant's factual averments as inherently credible.[8]

Discussion

[18] It is convenient first to deal with the contentions of the applicants in their counter-application. This approach is adopted because most of what is asserted by the applicants stems from their misconception about the role of a statutory body such as the LPC and the nature of the proceedings instituted against them. It is trite that applications for the suspension of a legal practitioner pending the outcome of a striking-off application are of a disciplinary nature. On this score, one can do no better than make reference to certain passages in *Solomon v Law Society of the Cape of Good Hope.*[9] There, Wessels CJ explained the role of a body such as the LPC in matters of this nature and said:

'The Law Society itself has no power to deal with a delinquent attorney. It can only bring to the notice of the Court such facts as it possesses with regard to the unprofessional conduct of attorneys and ask the Court to deal with them by suspending them or striking them off the roll, or in such other way as the Court thinks fit. The Society institutes no action against the attorney. It merely cites him to appear before the Court and to hear its complaint against his conduct, as it is authorised

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[7] *Wightman t/a J W Construction v Headfour (Pty) Ltd and Another* (66/2007) [2008] ZASCA 6; [2008] 2 All SA 512 (SCA); 2008 (3) SA 371 (SCA) para 19.

[8] Compare*: Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd.* [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620 at 634E-635C and the cases therein cited.

[9] *Solomon v Law Society of the Cape of Good Hope* 1934 AD 401 (*Solomon*).

to do by the Act. In Gabriel's case the proceedings were called quasi-criminal. It is difficult to place this kind of application in a particular legal docket. The proceedings are statutory and sui generis, and are no more than a request to the Court by the custos morum of the profession to use its disciplinary powers over an officer of the Court who has misconducted himself. That is, and what is not, a civil suit or action was fully considered by this Court in the case of Collett v Priest (1931 AD 290). DE VILLIERS, C.J., at p. 300 said: "But the words 'suit or action' are not confined to proceedings originating in a summons; even proceedings on petition are included in them provided in such proceedings one party sues another for or claims something from another party.' Now in these proceedings the Law Society claims nothing for itself from the applicant. It merely brings the attorney before the Court by virtue of a statutory right, informs the Court what the attorney has done and asks the Court to exercise its disciplinary powers over him. It asks nothing from the attorney. It does not ask id quod sibi debetur. The fact that it asks the Court to strike the attorney off the roll or suspend him is not a request for id quod sibi debetur because he owes nothing to the Society. Before the Cape Law Society received statutory recognition, the Court mero motu dealt with the unprofessional conduct of attorneys. In practice the Attorney-General was asked to lay the facts before the Court (In re Cairncross, 1877, Buch. 122). In 1883 the Cape Law Society was established by statute, and it became the body which laid before the Court the facts concerning the unprofessional conduct of an attorney. The Law Society protects the interests of the public in its dealings with attorneys. It does not institute any action or civil suit against the attorney. It merely submits to the Court facts which it contends constitutes unprofessional conduct and then leaves the Court to determine how it will deal with this officer.'[10]

[19] The learned Chief Justice concluded:

'Each case will depend on its own circumstances, and no general rule can be laid down which the Courts must follow. The whole enquiry is of a disciplinary nature, and how the Court will conduct the enquiry will depend on the circumstances of the case.'[11]

[20] In similar vein the court in *General Council of the Bar v Matthys* said the following:[12]

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[10] Ibid at 408-409.
[11] Ibid at 412.
[12] *General Council of the Bar v Matthys* 2002 (5) SA1 (E).

'The proceedings are not ordinary civil proceedings, but are *sui generis* in nature: they are proceedings of a disciplinary nature, of the Court itself, not those of the parties; the Court exercises its inherent right to control and discipline the practitioners who practise within its jurisdiction; the applicant, in bringing the application, acts pursuant to its duty as *custos morum* of the profession; in the interests of the Court, the public at large and the profession, its role is to bring evidence of a practitioner's misconduct before the Court, for the latter to exercise its disciplinary powers; the proceedings are not subject to all the strict rules of the ordinary adversarial process.'[13]

[21] Some nineteen years later, this abiding principle was reiterated by this Court in *Van der Berg v General Council of the Bar of South Africa*[14] where Nugent JA said the following of the role of a litigant such as the LPC in this case:

'The applicant's role in bringing such proceedings is not that of an ordinary adversarial litigant but is rather to bring evidence of a practitioner's misconduct to the attention of the court, in the interests of the court, the profession and the public at large, to enable a court to exercise its disciplinary powers.'[15]

[22] Accordingly, the applicants have no tenable basis to contend that the first applicant should have been invited to the meeting where the decision to institute legal proceedings for his immediate suspension from practice pending the outcome of the striking-off application was taken. What the LPC did was, on the authority of *Solomon*, simply to take a decision to report the first applicant's infractions to the court by virtue of its statutory duty and thereafter leave it to the court to decide whether a case has been made out against the legal practitioner concerned warranting, as in this instance, the first applicant's immediate suspension.

[23] The same reasoning applies with equal force to the applicants' review relating to the report compiled by the LPC's internal auditor, Mr Nyali. The applicants were

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[13] Ibid para 4.
[14] *Van der Berg v General Council of the Bar of South Africa* [2007] ZASCA 16; [2007] SCA 16 (RSA); [2007] 2 All SA 499 (SCA).
[15] Ibid para 2.

afforded the opportunity to present their version before the high court to counter the LPC's assertions. And, having regard to the content of Mr Nyali's report and the serious nature and extent of the transgressions canvassed in the report, read with the averments in the LPC's founding affidavit, it is hardly surprising that the LPC refused to issue the first applicant with a Fidelity Fund certificate required in terms of s 84(1) of the Act without which he was not permitted to practise as an attorney.

[24] Significantly, s 84(2) of the Act provides, amongst others, that no legal practitioner practising for his or her own account either alone or in partnership or as a director of a practice which is a juristic person may receive or hold funds or property belonging to any person unless the legal practitioner concerned is in possession of a Fidelity Fund certificate. To qualify for the issuance by the LPC of a Fidelity Fund certificate a practitioner is required to submit an unqualified audit report which, inter alia, attests to the fact that the trust accounting records of the practice comply with the relevant LPC regulatory framework and statutory prescripts.

Litigation history

High Court

[25] As already indicated, the litigation commenced by way of a notice of motion on urgency basis, seeking principally an order, inter alia, suspending the first applicant from practice. It was alleged that the first applicant failed to comply with some of the LPC's crucial Rules and prescripts of the Act concerned with the keeping of accounting records pertaining to the practice's trust account. This was a sequel to the investigation into the applicants' affairs conducted by the LPC's internal auditor, which was precipitated by complaints lodged against the applicants. The most lethal complaints that demonstrated that the applicants had over time

abused their trust account, allowing the trust account to be in deficit in breach of Rule 54.14.10 of the LPC's Rules, were from certain of their clients.

[26] In paragraph 16.14 of his report, the internal auditor had the following to say:

'During the inspection it was noted that the legal practitioner submitted manipulated audit reports/attorney's annual statements on trust account for the financial years 2021 and 2022. It is clear that the audit reports were manipulated to conceal a huge deficit that existed at reporting dates...

Due to the practitioner's failure to provide me with the requested information I was unable to estimate the actual trust deficit. However based on a high number of complaints lodged against the legal practitioner and my findings as detailed in paragraph 5-14 above it is clear that a significant deficit exists.'

[27] The high court quoted extensively from the auditor's report. In particular, it referred to paragraph 16 of the report and said:

'I quote his conclusion in full, to place the matter in context:

16.1 The Legal Practice Council initially instructed Ms Puseletso Nhlopo Hlogwana to attend to the inspection of the firm's accounting records. According to the email communication between Ms Hlogwana and the legal practitioner, she attempted to secure an appointment date for a meeting several times with no success. Ms Hlogwana resigned from her position at the Legal Practice Council prior to finalisation of the inspection. I have thus taken over Ms Hlogwana's file and was mandated to inspect the firm's accounting records.

16.2 I had a physical meeting with Mr Matsi on 9 September 2022. I informed him of my mandate to conduct an inspection in terms of Section 37(2)(a) of the Act. Mr Matsi was also informed of the scope of the inspection, as well as the information and records required for the inspection.

16.3 Subsequent to our meeting on 9 September 2022 I sent Mr Matsi a letter, specifying the accounting records required to complete the inspection.

16.4 After a number of follow-up emails the practitioner failed to provide me with the firm's requested accounting records. Despite the fact that Mr Matsi was given ample time to provide the requested information he persisted in failing to do so. Due to the practitioner's failure to cooperate, the firm's bank statements were requested directly from the firm's bankers in terms of Section 91(4) of the Legal Practice Act.

16.5 The inspection was thus confined to the limited information available to me, which included information contained in the complaints, as well as the Trust bank statements obtained directly from FNB.

16.6 In my discussion with Mr Matsi, he advised that the maintenance of the firm's accounting records is outsourced to an external book keeper. According to Mr Matsi the accounting records are updated on a monthly basis. I was unable to validate the practitioner's statements about the maintenance of accounting records, since I was not furnished with same.'

[28] The high court also had regard to what the investigation into the applicants' affairs had uncovered and said:

'The first complaint to be considered is that of Ms Msiza. From the affidavits the relevant facts regarding Ms Msiza's complaint can be summarised as follows: It is common cause that Ms Msiza was a client of the practitioner. Her claim against the Road Accident Fund was settled in court on 24 April 2019. The Road Accident Fund shortly thereafter, on 25 July 2019, made payment of exactly the amount contained in the court order, namely R1 915 920.00. Shortly after that payment, on 30 September 2019, as subsequently determined by Mr Nyali from the respondent's bank statements, the respondent's trust account only had a balance of R271 673.18. The money received from the Road Accident Fund must therefore have been disbursed from the trust account. From the bank statement it appears that it was used to pay other accounts, rather than Ms Msiza, including six personal loans of the practitioner and other expenses.'

[29] It then continued:

'The next complaint necessary to be dealt with is that of Ms Molefe. The details regarding this complaint is shortly as follows: Ms Molefe was also a claimant in a Road Accident Fund matter.

She complained to the LPC that the legal practitioner has on 21 October 2022 received an amount of R837 722.70 from the Road Accident Fund in respect of her claim.

After Mr Nyali had inspected the Trust bank statements for that month he confirmed that the amount had indeed been received in the trust account. Shortly thereafter, however, on 31 January 2023, the trust balance was only R333 441.00. This means that a substantial portion of the amount, if that had been the only funds in the trust account, had been disbursed without payment of it to the client.'

[30] There was also a Ms Mogolola on whose behalf the applicants received payment of R630 690-00 from the RAF on 26 November 2021. From this amount Ms Mogolola was paid measly amounts, such as R5000-00 on 13 September 2022; R5000-00 on 30 November 2022 and R10000-00 on 22 December 2022. The applicants' response to the complaint of Ms Mogolola, which the high court described as telling, was this:

'Payment of the capital was made to client in the sum of R410 455.00 and this matter should be regarded as closed. Client received payment even though party and party costs have not yet been paid by the RAF. In fact, the RAF indicated its intention to review same. The law firm is somewhat prejudiced, as it runs the risk of not recovering its final costs and fees in full. The real justice for client is served. Therefore urgency does not arise, but is rather imaginative or putative, as it is based on old, incomplete factual narratives. Urgency has to be real.'

[31] The high court proceeded to consider the question whether the LPC had made out a case for the first applicant's immediate suspension from practice. Insofar as this aspect is concerned, the court said:

'Regarding the test for suspension, this has been set out sufficiently previously in *Jasat v Natal Law Society* 2000 (2) ALL SA 310 (SCA) at paragraph 10. The test is as follows: first, that the court must decide if the alleged offending conduct has been established on a preponderance of probabilities. After conclusion of this factual inquiry a court must consider if the practitioner concerned is, in the determination of the court, not a fit and proper person to continue to practice. This involves a weighing-up of the conduct complained of against the conduct expected of a legal

practitioner, and involves a value judgment. Thirdly, the court must inquire whether, in all the circumstances, the practitioner in question should be removed from the roll or whether a suspension from practice would suffice. The third enquiry is ordinarily applicable when an application for striking off is considered. The first two considerations, and the protection of the public, are those considerations relevant when a temporary or interim suspension is to be considered.

In the current case the position is as follows, and I shall not deal with all the eight complainants, but primarily only those referred to in the replying affidavit as well as that of a Ms Mogolola.

The first complaint to be considered is that of Ms Msiza. From the affidavits the relevant facts regarding Ms Msiza's complaint can be summarised as follows: It is common cause that Ms Msiza was a client of the practitioner. Her claim against the Road Accident Fund was settled in court on 24 April 2019. The Road Accident Fund shortly thereafter, on 25 July 2019, made payment of exactly the amount contained in the court order, namely R1 915 920.00.

Shortly after that payment, on 30 September 2019, as subsequently determined by Mr Nyali from the respondent's bank statements, the respondent's trust account only had a balance of R271 673.18. The money received from the Road Accident Fund must therefore have been disbursed from the trust account. From the bank statement it appears that it was used to pay other accounts, rather than Ms Msiza, including six personal loans of the practitioner and other expenses.'

[32] After making reference to certain sections of the Act and the LPC Rules the high court said:

'Regarding a major source of non-compliance with obligations, one has to consider whether the obligation to keep up the books of account had been satisfied, and whether there have been cooperation in respect thereof with Mr Nyali on behalf of the LPC. Section 87(5)(a) of the Legal Practice Act obliges a practitioner to produce for inspection a book, document or article in his possession or under his custody or control if such is requested by the LPC.

Added to this is the obligation in terms of Section 37(2)(a) of the Act, requiring a practitioner to cooperate with the LPC when it investigates any matter. The failure to cooperate, as required by the Legal Practice Act, has been sufficiently set out by Mr Nyali in his report.'

[33] It continued:

'Apart from the obligation to co-operate and produce books of account, Section 87(1) of the Legal Practice Act provides that a Trust account practice, such as that of the legal practitioner in question, must keep proper accounting records containing particular information in respect of moneys received and paid by its own account, and moneys received, held or paid by the account of any person.'

[34] It further noted that:

'Rule 55(4) of the LPC Rules requires such books of account to be kept, which would present fairly, and in accordance with an acceptable financial framework, the state of affairs of the business, of a firm such as the practitioner in question, indicating assets and liabilities, day-to-day receipt of moneys and entries made in respect thereof, and information of all monies held and paid by it, or by the practitioner to the account of any person. This will include the three complainants already referred to.

[35] Invoking certain decisions of our courts, the high court concluded that on the facts presented on behalf of the LPC, read in the context of the response from the applicants, it was satisfied that the infractions relied upon by the LPC were clearly established. In the light of its finding, it went on to hold that, given the gravity of the proven misconduct, the immediate suspension of the first applicant was imperatively warranted.

[36] The high court subsequently refused the applicants' application for leave to appeal, noting that in their application for leave to appeal the applicants were merely content to rehash their previous arguments that had failed previously instead of meaningfully addressing the court's findings in its judgment in relation to the trust

deficits and the substance of the complaints against them dealt with extensively in the judgment against which they sought to appeal.

[37] Undeterred by the dismissal of their application for leave to appeal, the applicants turned to this Court, seeking leave to appeal in terms of s 17(2)*(b)* of the SC Act against their immediate suspension. The application suffered a similar fate. On 5 March 2024 the applicants then applied to the President of this Court under the proviso to s 17(2)*(f)* of the SC Act for the reconsideration of the decision of the two judges of this Court in terms of which the applicants' application for leave to appeal was dismissed with costs.

[38] On 7 June 2024 the President referred the decision of the two judges of this Court, which is ordinarily final, to the court for reconsideration under s 17(2)*(f)* and, if need be, also variation. It is necessary to emphasise at this juncture that at the time when the reconsideration application was launched, ie 5 March 2024, s 17(2)*(f)* read, in relevant part, as follows:

'The decision of the majority of the judges considering an application referred to in paragraph (b)…to…or refuse shall be final: Provided that the President of the Supreme Court of Appeal may in exceptional circumstances, whether…or on application filed within one month of the decision, refer the decision to the court for reconsideration and, if necessary, variation.'[16]

The amendment of s 17(2)*(f)* operative from 3 April 2024 had the effect of deleting the phrase 'exceptional circumstances', substituting it with the phrase 'in circumstances where grave failure of justice would otherwise result or the administration of justice may be brought into disrepute.' Since the applicants' s 17(2)*(f)* application was already pending when the amendment took effect, the current application falls to be determined under the pre-amendment statutory regime.

[16] Section 17(2)*(f)* was amended with effect from 3 April 2024.

[39] This then raises the question whether in the context of the facts of this case weighty and compelling factors exist warranting, upon reconsideration of the otherwise final decision of the two judges of this Court refusing leave to appeal, variation of such decision. To answer this question, it is necessary to have regard to the peculiar facts of this case and, in effect, determine whether the envisaged appeal would have a reasonable prospect of success or there is otherwise 'some other compelling reason why the [envisaged] appeal should be heard.'

This Court

[40] It will be recalled that in the LPC's application, the applicants also filed a counter-application seeking various orders. First, they sought an order reviewing and setting aside the decision taken by the LPC on 25 May 2023 to institute motion proceedings for the striking off the first applicant's name from the roll of attorneys. The basis for this prayer was that the LPC's decision was in breach of the rules of natural justice because he was not afforded the opportunity to defend himself prior to the LPC taking its decision. At the hearing, however, counsel who appeared on behalf of the applicants abandoned this point. Counsel acted wisely in doing so, for the LPC did no more than take a decision to report to the court what its internal auditor had unearthed during his preliminary investigation into the financial affairs of the applicants pertaining to their practice and for the court to exercise its disciplinary powers. Once the matter was before the court, the applicants were afforded the opportunity to resist the application as they saw fit and present their version to the high court. Therefore, insofar as the taking of the decision to institute legal proceedings against the applicants on the basis of the internal auditor's report is concerned, the issue of non-observance of the rules of natural justice does not arise.

[41] In the second place, the applicants complained that Mr Nyali's investigation report 'was compiled with collaboration and contribution from an erstwhile Director of the Practice'[17] with whom they were at loggerheads for reasons that are not germane for present purposes. They also contended that they were not afforded sufficient time to answer to the report before it was acted upon by the LPC. There is no merit in the applicants' contentions. The report formed part of the papers, and it was therefore open to them to address it in their answering affidavit which they chose not to do in any meaningful way, save to skirt around the crux of the matter as already indicated above.

[42] In the third place, the applicants took issue with the fact that the LPC was supposedly unlawfully withholding or blocking the issuance of the requisite Fidelity Fund certificate to them. Here again, the applicants' complaint is devoid of substance. The first applicant, as a practising attorney, could not have been oblivious to the fact that for him to qualify for such a certificate the practice's auditor needed to attest to the fact that the financial affairs of the practice were compliant with the relevant LPC's Rules and statutory prescripts. That is, the auditor should have given the applicants a clean professional bill of health in relation to their trust account and accounting records. Given the content of Mr Nyali's investigation report it is hardly surprising that no unqualified audit certificate was forthcoming from the applicants. Accordingly, the applicants' complaint on this score borders on absurdity because from what emerges from the record the applicants were clearly the authors of their own misfortune. All of this ineluctably leads to the conclusion that the counter-application was manifestly doomed to failure from the outset. Thus, the high court can not be faulted for giving this issue short shrift.

[17] This was a reference to Mr Mailula who resigned from the practice in 2019.

[43] In any event, these proceedings being *sui generis* in which the LPC claims nothing for itself, the high court was duty-bound to act after having been apprised of the financial state of affairs in the applicants' practice. Consequently, the counter-application presented no obstacle to the main application being entertained because doing so would not have violated the applicants' fair-hearing right entrenched in s 34 of the Constitution. Indeed, in opposing the application, the applicants availed themselves of the opportunity to present their version to the court, albeit only in the vaguest of terms.

[44] Because of what will shortly follow, it is convenient at this juncture to refer to the LPC's most pertinent rules designed to reinforce some of the provisions of the Act. The first one of these is Rule 54.6. It provides:

'A firm shall keep in an official language of the Republic such accounting records, which record both business account transactions and trust account transactions, as are necessary to enable the firm to satisfy its obligations in terms of the Act, these rules and any other law with respect to the preparation of financial statements that present fairly and in accordance with an acceptable financial reporting framework in South Africa the state of affairs and business of the firm and to explain the transactions and financial position of the firm including, without derogation from the generality of this rule:

54.6.1 records showing all assets and liabilities as required in terms of section 87 of the Act;

54.6.2 records containing entries from day to day of all monies received and paid by it on its own account, as required by sections 87(1) and 87(3) of the Act;

54.6.3 records containing particulars and information of:

54.6.3.1 all monies received, held and paid by it for and on account of any person;

54.6.3.2 all monies invested by it in terms of section 86(3) or section 86(4) of the Act;

54.6.3.3 any interest referred to in section 86(5) of the Act which is paid over or credited to it;

54.6.3.4 any interest credited to or in respect of any separate trust savings.'

[45] In the second place, Rule 54.14.8, in turn, provides:

'A firm shall ensure that the total amount of money in its trust banking account, trust investment account and trust cash at any date shall not be less than the total amount of the credit balances of the trust creditors shown in its accounting records.'

[46] And the further rule that bears mentioning is Rule 54.14.10. It reads as follows:

'A firm shall immediately report in writing to the Council should the total amount of money in its trust bank accounts and money held as trust cash be less than the total amount of credit balances of the trust creditors shown in its accounting records, together with a written explanation of the reason for the debit and proof of rectification.'

[47] Like the learned judge in the high court, I do not intend to traverse all of the infractions relied upon by the LPC in support of its application. I, too, will confine myself only to some of the complaints lodged against the applicants so as not to overburden this judgment. I am satisfied that based on the selected instances that formed the foundation of the interim relief sought in Part A of the LPC's notice of motion a proper case has been made out to suspend the first applicant from practice with immediate effect, in the public interest, pending the final determination of Part B of the application.

[48] The five complaints to which reference will be made are those of: (a) Ms Essie Emma Msiza; (b) Ms Tshwene Julia Morifi; (c) Ms Maditati Merriam Mogorosi; (d) Ms Joyce Ntabeleng Mogolola; and (e) Ms April Muthimunye. I deal with the complaints from each of these complainants in turn. Ms Msiza was awarded damages in the sum of R1, 915 920-00 in respect of general damages and loss of earnings. The RAF electronically paid this amount to the applicants on 25 July 2019. The applicants failed to inform Ms Msiza of the payment and, in particular, to account to her in respect thereof. The deposit of the amount was confirmed by Mr Nyali during his investigation into the applicants' affairs. Of crucial importance

though is that although the applicants had yet to account to Ms Msiza for this payment, their trust account had a credit balance of only R217 673-18. This situation is clearly indicative of the fact that a substantial portion of the award was no longer held in the trust account despite the fact that no statement of account had been rendered to Ms Msiza.

[49] Insofar as the complaint of Ms Morifi is concerned, she, too, was awarded damages in the sum of R837 722-70 from the RAF. On 21 October 2020 the Fund paid such amount into the applicants' trust account. Some four months later, on 28 April 2021, Ms Morifi had not received payment from the applicants. Yet, three months after receipt of the funds the trust account had a credit balance of only R354-41. Ms Morifi ultimately received payment in the sum of R400 000-00 from the applicants, a year and 9 months after the remittance of the damages award to the applicant by the RAF.

[50] As for Ms Mogorosi, she was given a runaround by the applicants. In desperation, she approached the RAF where she was told that R300 000-00 was paid to the applicants on 26 June 2019. The deposit of the amount was subsequently verified from the inspection of the applicants' trust bank statements. Nevertheless, the inspection further revealed that as at 20 July 2019 the trust account balance was a mere R24 869-83. As can be seen, it took less than one month for the funds to be almost entirely dissipated by the applicants.

[51] The next complaint emanated from Ms Mogolola who had pursued a claim against the RAF on behalf of her minor child. She was similarly treated with disdain by the applicants, who misrepresented the true state of affairs in relation to the status of her claim. In desperation, on 15 August 2022 she, too, approached the RAF directly. The RAF informed her that an amount of R630 690-00 was paid to the

applicants in July 2022. Yet, when she approached the applicants on 13 September 2022, some two months after the payment, who were unaware that she had already been advised by the RAF of the payment of the award, she was told that no payment had so far been received from the RAF. Ostensibly motivated by empathy and out of their goodwill, the applicants offered to make an advance payment of R50 000-00 to her from their own funds whilst supposedly still awaiting payment from the RAF, which offer Ms Mogolola declined. An inspection of the applicants' trust bank statements revealed that the applicants had made payment to Ms Mogolola in three tranches of R5000-00; R5000-00 and R10 000-00 on 13 September 2022, 30 November 2022 and 22 December 2022 respectively. Thus, some five months after the payment was made to the applicants by the RAF, Ms Mogolola was paid a measly amount of R20 000-00, even though the RAF had already paid the capital amount of R630 690-00 to the applicants. And to compound matters, the applicants' trust account held a balance of just R67 601-83 as at 1 February 2023, substantially less than the amount of the award. Quite clearly therefore, the applicants' trust account did not, as at this date, hold adequate funds so that payment of the balance of the compensation could be made to the client. This is so even on the acceptance of the applicants' version that only a sum of R330 000-00 from the award was ultimately due and payable to Ms Mogolola.

[52] The fifth and last complaint to which reference must be made emanated from Ms April Muthimunye. It was made to the LPC on 26 February 2022. Similarly, her claim was against the RAF which was settled in an all-inclusive amount of R1, 157 767-72. The loss of earnings component of the claim was settled for R744 104-00 which the RAF paid to the applicants' trust bank account on 26 February 2019. Almost five months later, the applicants' trust bank statement reflected a balance of R24 869-33 notwithstanding the fact that no payment had been made to the complainant. Payments to the complainant from the applicants only began to trickle

in from 16 August 2019 in the sum of R50 000-00. Thereafter, and from 10 October 2019 to 26 November 2020, she received varying periodical payments ranging from R20 000-00 to R250 000-00.[18] Curiously, as to why the complainant was paid in 'dribs and drabs' whereas the applicants had received the full amount representing the damages award from the RAF in one fell swoop has not been explained by the applicants.

[53] In consistently delaying payments to their clients, the applicants thereby contravened Rule 54.12 and 13 of the LPC's Rules which, in relevant part, decree that:

'54.12 Every firm shall, within a reasonable time after the performance or earlier termination of any mandate, account to its client in writing and retain a copy of each such account for no less than five years. Each account shall contain details of:

54.12.1 all amounts received by it in connection with the matter concerned, appropriately explained.

54.13 A firm shall, unless otherwise instructed, pay any amount due to a client within a reasonable time…'

[54] It bears emphasising that in their answering affidavit the applicants did not make even the slightest attempt to meaningfully proffer a plausible answer to any of these damning and overwhelming allegations against them. Apart from resorting to their oft-repeated refrain that the clients were ultimately paid what was due to them, they elected not to address the gravamen of the complaints against them, namely that they misappropriated trust funds. In addition, there was no explanation whatsoever, let alone a reasonable and honest one, as to why: (a) they failed to keep proper books of account as required by the LPC's Rules, in particular Rule 54.6; (b) their trust account was perpetually in deficit in breach of statutory prescripts and regulatory

[18] Ms Muthimunye was paid a total of R500 000-00 as follows: R50 000-00 on 16 August 2019; R50 000 on 10 October 2019; R 50 000-00 on 25 October 2019; R30 000-00 and R20 000-00 on 16 January 2020; R30 000-00 on 22 April 2020; R250 000-00 on 26 November 2020 and R20 000-00 on 26 November 2020.

framework; (c) the clients were not paid what was due to them within a reasonable time of receipt of the funds from the RAF; (d) instead of co-operating with the LPC's internal auditor when an inspection of their trust accounting records was required, a duty reinforced by the Act, they resorted to stratagems designed to impede or frustrate timeous inspection of their accounting records; and (e) every attempt by the LPC's representatives to secure an interview with them was thwarted at every turn, with the applicants conjuring up excuses for why the first applicant was not immediately available to meet initially with Ms Hlongwane and later with Mr Nyali.

[55] Undoubtedly, the expeditious resolution of the complaints lodged by their clients was not a priority to the applicants. In this regard, it will be recalled that Mr Nyali, on behalf of the LPC, wrote to the first applicant on 9 May 2019 seeking a meeting with the latter. That meeting materialised only some 23 months later. Instead of co-operating with the LPC to facilitate the inspection of the accounting records, the first applicant needlessly put obstacles on the path of the LPC by, inter alia, demanding what he at one stage described as 'terms of reference' when an inspection of the accounting records, was requested. As an astute and prudent attorney he holds himself out to be, it could hardly lie in the first applicant's mouth that he was unaware that in seeking an inspection of his books of account, the LPC invoked, inter alia, s 87(5)*(a)* and *(b)*[19] of the Act. Accordingly, his patently false assertion in his answering affidavit that it dawned on him only when he read the

[19] Section 87(5)(a) and (b) reads:
'(a) Despite section 37(2)(a), any attorney or an advocate referred to in section 34(2)(b) or an employee of a trust account practice must, at the request of the Council or the Board, or the person authorised thereto by the Council or the Board, produce for inspection a book, document or article which is in the possession, custody or under the control of that legal practitioner or such employee, which book, document or article relates to the trust account practice or former trust account practice of such attorney or advocate: Provided that the Council or the Board or person authorised by the Council or the Board may make copies of such book, document or article and remove the copies from the premises of that attorney, advocate or trust account practice.
(b) The legal practitioner referred to in paragraph (a) or employee in question may not, subject to the provisions of any other law, refuse to produce the book, document or article, even though he or she is of the opinion that it contains confidential information belonging to or concerning his or her client.'

LPC's founding affidavit as to what the LPC required of him is not only far-fetched and untenable but also contrived.

[56] In these circumstances, the established facts can only lead to a single ineluctable conclusion, namely that the first applicant disdainfully failed to comply with the Act and the relevant LPC Rules. That the applicants ill-advisedly sought to minimise their culpability by criticising the LPC for approaching the high court when it did does not redound to their credit. And it must be said that their criticism of the LPC is misguided. The LPC did no more than present to the high court the facts it had unearthed through its preliminary investigation into the way the applicants conducted their practice. As the custodian of the *boni mores* of the legal profession, the LPC acted in the public interest to protect, maintain and enhance the integrity of the legal profession. Consequently, it can hardly lie in the mouth of the applicants to criticise the LPC for discharging its responsibility and legal duty.

[57] Lest we be misunderstood, this judgment only finds that the high court was justified, on the facts, in reaching the conclusion it did, namely granting an order for the immediate suspension of the first applicant together with ancillary relief. Whether the first applicant is still a fit and proper person to remain on the roll of attorneys – which remains doubtful on the facts currently at our disposal – is yet to be determined under Part B of the application in due course, an issue in relation to which we express no firm view.

Application for reconsideration

[58] As indicated at the outset[20] what serves before us is an application for the reconsideration of the decision of 20 March 2024 made by two judges of this Court under s 17(2)*(b)* in terms of which they refused the applicants' application for leave

[20] See paragraph 1 above.

to appeal the judgment of the high court. This came about pursuant to the order granted by the President in terms of the proviso to s 17(2)*(f)* of the SC Act. Section 17(2)*(f)* has already been quoted in paragraph 38 above. But it will be convenient at this juncture to quote it again. At the material time, s 17(2)*(f)* of the SC Act read as follows:

'The decision of the majority of the judges considering an application referred to in paragraph *(b)*, or the decision of the court, as the case may be, to grant or refuse the application shall be final: Provided that the President of the Supreme Court of Appeal may in exceptional circumstances, whether of his or her own accord or on application filed within one month of the decision, refer the decision to the court for reconsideration and, if necessary, variation.'

[59] As the referral order was granted on 7 June 2024 following an application made some months earlier,[21] it was common cause between the parties that it is the pre-amendment version[22] of the SC Act that regulates the referral with which we are concerned in this case. The material change effected by the amendment was the substitution of the words 'in exceptional circumstances' with the phrase 'in circumstances where a grave failure of justice would otherwise result or the administration of justice may be brought into disrepute.'

[60] Significantly, s 17(2)*(f)* explicitly states that 'the decision of the majority of the judges considering an application referred to in paragraph (b)[23]…to grant or

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[21] The application in terms of s 17(2)*(f)* was delivered on 5 March 2024.

[22] After its amendment that took effect on 3 April 2024 s 17(2)*(f)* now reads:

' The decision of the majority of the judges considering an application referred to in paragraph (b), or the decision of the court, as the case may be, to grant or refuse the application shall be final: Provided that the President of the Supreme Court of Appeal may, in circumstances where a grave failure of justice would otherwise result or the administration of justice may be brought into disrepute, whether of his or her own accord or on application filed within one month of the decision, refer the decision to the court for reconsideration and, if necessary, variation.'

[23] Paragraph *(b)* of s 17(2)*(f)* reads:

'If leave to appeal in terms of paragraph (a) is refused, it may be granted by the Supreme Court of Appeal on application filed with the registrar of that court within one month after such refusal, or such longer period as may on good cause be allowed, and the Supreme Court of Appeal may vary any order as to costs made by the judge or judges concerned in refusing leave.'

refuse the application *shall be final*: Provided…' [Emphasis added.] Nevertheless, as the Constitutional Court aptly observed:

'The proviso in section 17(2)*(f)* is broad. It keeps the door of justice ajar in order to cure errors or mistakes and for the consideration of a circumstance, which, if it was known at the time of the consideration of the petition might have yielded a different outcome. It is therefore a means of preventing an injustice. This would include new or further evidence that has come to light or became known after the petition had been considered and determined.'[24]

[61] The Court, however, went on to dispel any notion that the proviso to s 17(2)*(f)* served as an 'open sesame'. It emphasised that the proviso was not intended to afford litigants a further attempt at procuring relief that has already been refused. The Court made plain that s 17(2)*(f)* was intended to enable the President to deal with truly deserving cases where a failure of justice might otherwise result.

[62] Apropos the phrase 'exceptional circumstances' this Court in *Avnit v First Rand Bank Ltd*[25] stressed that:

'In the context of s 17(2)(*f*) the President will need to be satisfied that the circumstances are truly exceptional before referring the considered view of two judges of this court to the court for reconsideration. I emphasise that the section is not intended to afford disappointed litigants a further attempt to procure relief that has already been refused. It is intended to enable the President of this Court to deal with a situation where otherwise injustice might result. An application that merely rehearses the arguments that have already been made, considered and rejected will not succeed, unless it is strongly arguable that justice will be denied unless the possibility of an appeal can be pursued. A case such as *Van der Walt* may, but not necessarily will, warrant the exercise of the power. In such a case the President may hold the view that the grant of leave to appeal in the other case was inappropriate.'[26]

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[24] See, in this regard: *Liesching and Others v S* [2016] ZACC 41; 2017 (4) BCLR 454 (CC); 2017 (2) SACR 193 (CC) (*Lieshing I*) para 54.
[25] *Avnit v First Rand Bank Ltd* [2014] ZASCA 132 (*Anvit*).
[26] Ibid para 6.

[63] This theme was elaborated upon by this Court in *Motsoeneng v South African Broadcasting Corporation SOC Ltd and Others*[27] where the following was stated: '[t]he necessary prerequisite for the exercise of the President's discretion is the existence of "exceptional circumstances." If the circumstances are not truly exceptional, that is the end of the matter. The application under subsection (2)*(f)* must fail and falls to be dismissed.'[28] In *Motsoeneng* it was accepted by the parties without question that an applicant in a reconsideration application referred to court by the President is required to satisfy the Court seized with the reconsideration application that exceptional circumstances existed that warranted the exercise of the President's powers under the proviso to s 17(2)*(f)*. And *Motsoeneng* proceeded to hold that 'exceptional circumstances' is a jurisdictional fact that must be established before the Court to which the decision by the two judges has been referred for reconsideration may entertain such application and therefore 'steps into the shoes of the two judges' of this Court who refused leave under s 17(2)*(b)*.

[64] In *Bidvest Protea Coin Security (Pty) Ltd v Mandla Wellem Mabena*,[29] Unterhalter JA put things beyond doubt and held that the existence of 'exceptional circumstances' is a jurisdictional fact that must be satisfied before reconsideration of the order refusing leave can be entertained. Save for two dissenting voices, the decisions in *Motsoeneng* and *Bidvest* have been consistently reaffirmed in

[27] *Motsoeneng v South African Broadcasting Corporation SOC Ltd and Others* [2024] ZASCA 80; 2025 (4) SA 122 (SCA) (*Motsoeneng*).
[28] Ibid para 19.
[29] *Bidvest Protea Coin Security (Pty) Ltd v Mandla Wellem Mabena* [2025] ZASCA 23; 2025 2025 (3) SA 362 (SCA) (*Bidvest*).

subsequent cases,[30] most recently in *Rock Foundation Properties and Another v Chaitowitz.*[31]

[65] The first dissenting voice came from Coppin JA in *Lorenzi* whose view was that in a reconsideration application it was not incumbent upon an applicant to establish that exceptional circumstances exist as a jurisdictional fact. This was because, the learned judge opined, in the language of s 17(2)*(f)* it was the President, and not the court, who was empowered to make that call. Thus, once the President is satisfied that exceptional circumstances exist, and, as a result, refers the matter to court for reconsideration of the decision of the two judges refusing leave, the court must without further ado entertain the reconsideration application, and 'effectively steps into the shoes of the two judges' and decide whether to grant or refuse the application for leave to appeal previously refused by two (or more) judges of this Court under s 17(2)*(b)* of the SC Act.

[66] The learned judge went on to say that s 17(2)*(f)* was clear enough as to admit of no ambiguity. He emphasised that 'what is referred for reconsideration is not the exercise by the President of her discretion, but the refusal by the two judges…to grant the applicant the leave that is being sought.' And that the President's decision to refer the matter to court 'for reconsideration is not itself up for reconsideration, or review…'

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[30] *Spar Group Limited and Others v Twelve Gods Supermarket (Pty) Ltd and Others* [2025] ZASCA 7; 2025 (3) SA 137 (SCA); *Doorware CC v Mercury Fittings CC* (836/2023) [2025] ZASCA 25 (27 March 2025) ; *Lorenzi v S* (1171/2023) [2025] ZASCA 58 (13 May 2025) (*Lorenzi*); *Ekurhuleni Metropolitan Municipality v Business Connexion (Pty) Ltd* (1186/2023) [2025] ZASCA 41 (10 Aprl 2025); *Tarentaal Centre Investments (Pty) Ltd v Beneficio Developments* (15/2025) [2025] ZASCA 38 (8 April 2025); *Nel v S* (708/2023) [2025] ZASCA 89 (12 June 2025); *Japhtha v S* [2025] ZASCA 80; 2025 (2) SACR 305 (SCA).

[31] *Rock Foundation Properties and Another v Chaitowitz* (1038/2023) [2025] ZASCA 82 (9 June 2025).

[67] Hot on the heels of *Lorenzi* was the minority voice of Matojane JA in *Schoeman v Director of Public Prosecutions*.[32] The learned judge, too, held that whilst the existence of exceptional circumstances is a jurisdictional fact for the proper exercise by the President of the powers for which s 17(2)*(f)* provides, this is however not a question that arises for the court to determine upfront before entertaining the application for reconsideration referred to it by the President. After undertaking an interpretive exercise, the learned judge held that on the clear wording of s 17(2)*(f)* the exercise of the President's power 'inherently links the existence of exceptional circumstances directly to the President's power to refer.' The effect of this, reasoned the learned judge, was that the President alone is the repository of the power to decide whether exceptional circumstances exist. And once that threshold is met, in the President's view, that is the end of the enquiry. The court itself must thereafter proceed to determine whether variation of the decision refusing or granting leave is warranted.

[68] Accordingly, Matojane JA held that *Bidvest* and all those decisions that followed in its wake were 'wrongly decided and [their] interpretation of s 17(2)*(f)* should not be followed.' After making reference to decisions of our Courts in relation to the doctrine of *stare decisis*[33] the learned judge concluded that *Bidvest* was clearly wrong. And that had he commanded the majority, he would therefore have overruled *Bidvest.*

[69] The intrinsic value of the doctrine of precedent is beyond question. This was made plain by the Constitutional Court in *Camps Bay Ratepayers' and Residents' Association and Another v Harrison and Another.*[34] The Court said the following:

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[32] *Schoeman v Director of Public Prosecutions* [2025] ZASCA 124; 2025 (2) SACR 561 (SCA) (*Schoeman*).
[33] Literally means 'stand by previous decisions' ie precedent.
[34] *Camps Bay Ratepayers and Residents Association and Another v Harrison and Another* [2010] ZACC 19; 2011 (2) BCLR 121 (CC); 2011 (4) SA 42 (CC).

'Observance of the doctrine has been insisted upon, both by this Court and by the Supreme Court of Appeal. And I believe rightly so. The doctrine of precedent not only binds lower courts but also binds courts of final jurisdiction to their own decisions. These courts can depart from a previous decision of their own only when satisfied that that decision is clearly wrong. Stare decisis is therefore not simply a matter of respect for courts of higher authority. It is a manifestation of the rule of law itself, which in turn is a founding value of our Constitution. To deviate from this rule is to invite legal chaos.'[35]

[70] In a most recent judgment[36] of this Court, *Moetsoeneng, Bidvest, Lorenzi* and *Schoeman* were overruled to the extent that those decisions adopted the so-called 'jurisdictional fact interpretation' that had the effect of contradicting what the Constitutional Court said in *Liesching I* and *Liesching II* concerning the proper interpretation of the proviso to s 17(2)*(f)* of the SC Act. Indeed, to my mind, the approach adopted in *Motsoeneng* and re-inforced both in *Bidvest* and by the majority in *Schoeman* relative to the proper interpretation of s 17(2)*(f)* of the SC Act, is, with respect, jurisprudentially unsound.

[71] It is therefore unnecessary for present purposes to traverse the same ground in this judgment. Suffice it to reiterate that in all instances where the President refers a decision of two judges of this Court refusing or granting leave to appeal to the court for reconsideration, such a court is simply required to place itself in the shoes of the judges who dealt with the application under s 17(2)*(b)* and determine whether such decision is legally sustainable or not – accepting that the President in whom the discretion to determine the existence of exceptional circumstances vests – has already made that determination. Hence the matter is before the court purely for the reconsideration of such decision and, if necessary, its variation. And, if on the one hand the court should find that leave was correctly refused it will, as a result, dismiss

[35] Ibid para 28.
[36] *4 Seasons Logistics CC v Kgotse* [2026] ZASCA 09 delivered on 04 February 2026.

the reconsideration application. On the other hand, if in the opinion of the court leave to appeal should have been granted, the court would then enter into the substantive merits of the appeal as contemplated in the referral order and determine the appeal itself. However, in instances where leave to appeal was sought against a decision of a magistrates' court, the court would in that event, if so inclined, grant leave to appeal to the relevant Division of the High Court.[37]

[72] What the applicants appear to have lost from sight in pursuing this application is that once the high court decided that the immediate suspension of the first applicant was imperatively warranted, it passed a value judgment and in effect exercised a true discretion. Therefore, an appellate court's interference with the exercise of such discretion is permissible only on restricted grounds.[38] Thus, where the appellate court is required to interfere with the exercise of the discretion of the kind exercised by the high court, it can only do so if the discretion was exercised capriciously, or upon a wrong principle or the court failed to bring its unbiased mind to bear on the question or has not acted for substantial reasons.[39]

[73] Having regard to the extent of the widespread and unabated abuse of the practice's trust account by the first applicant, I am not convinced that the high court exercised its discretion improperly. On the contrary, what emerges from the record in this case is that the first applicant operated his practice's trust account as a Ponzi Scheme. And because he habitually rolled over trust funds, he engaged in what can appropriately be described as a proverbial case of 'robbing Tom in order to pay Harry.' The applicants' situation was compounded by the fact that instead of making

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[37] Compare: *S v Khoasasa* 2003 (1) SACR 123 (SCA); [2002] 4 All SA 635 (SCA) para 19; *S v Matshona* [2008] ZASCA 58; 2013 (2) SACR 12 (SCA) para 5-7.

[38] See *Beyers v Pretoria Balieraad* 1966 (2) SA 593 (A) at 605F-H; *Olivier v Die Kaapse Balieraad* 1972 (3) SA 485 (A) at 495D-F; *Swain v Society of Advocates, Natal* 1973 (4) SA 784 (A) at 786H.

[39] *Benson v SA Mutual Life Assurane Society* 1986 (1) SA 776 (A) and the authorities therein cited.

a clean breast of themselves and taking the court into their confidence, they elected to resort to obfuscation by indulging in linguistic acrobatics. By all accounts, this is not the sort of conduct befitting someone enjoined the privilege of practising an honourable profession as an officer of the court.

[74] By his conduct, the first applicant has tarnished the image of the profession. As will have been observed from the extensive quotations from the LPC's founding affidavit, the averments contained therein tell a sorry tale of a troubling indifference to and wanton disregard for the LPC's Rules and statutory prescripts under the Act to the prejudice of the clients. Instead of taking responsibility for his misconduct, the first applicant flippantly asserted that the complaints were non-existent because, after all, the clients were eventually paid what was due to them. In my view, one would be hard pressed to contend, as the applicants do, that the first applicant deserves to be allowed to continue to practise when he has demonstrated that he has no insight into the gravity of his infractions. To do so, in my view, would be tantamount to unleashing him to unsuspecting members of the public to the latter's detriment.

[75] What requires to be emphasised is that an attorney, as an officer of the court, belongs to an honourable profession. The profession scrupulously demands absolute honesty, reliability and integrity from its members. Equally, the members of the public who entrust their affairs to an attorney are entitled to assume that their affairs will be handled honestly, meticulously and with the requisite skill. This entails that where an attorney receives money on behalf of his or her client the money will not be used for any other purpose than for the purpose and benefit of the client. And that the attorney will pay moneys due to his or her client within a reasonable time. It is totally unacceptable for an attorney to use money received on behalf of a client for his or her personal needs as has been witnessed in this case. As has been repeatedly

said in countless decisions of our courts, the theft of money held by an attorney in trust on behalf of clients and persistent vain attempts by such attorney to rationalise his or her conduct and to pretend that there is nothing wrong he or she has done not only reflect adversely on his or her character but also bring the profession as a whole into disrepute.

[76] By now it must be obvious from what has already been said, particularly in paras 72 to 76 above, that I am not convinced that the high court was influenced by any wrong principle or acted for reasons that were not substantial in granting an order for the first applicant's immediate suspension whilst still awaiting the outcome of Part B of the LPC's application. Hence, it is hardly surprising that Kumalo J exercised his discretion under s 18(1) of the SC Act and found that the operation of the order of the high court would not be suspended pending the outcome of the appeal process that the applicants had embarked upon. Having had the benefit of reading the record, we wholeheartedly endorse the order of Kumalo J.

[77] This then brings me to the order made by the Full Court on 18 February 2025 pursuant to the appeal brought by the applicants under s 18(4)*(ii)* of the SC Act. With Kumalo J having found that exceptional circumstances exist justifying that the operation and execution of the order of Davis J should not be suspended notwithstanding the applicants' application for leave to appeal pending before this Court, the indefatigable applicants invoked their automatic right to appeal against such order to the Full Court. On 18 February 2025 the appeal served before the Full Court. Inexplicably, the Full Court was somehow persuaded that the order of Davis J immediately suspending the first applicant from practising ought to be stayed pending the outcome of any 'appeal court process.' Consequently, it allowed the first applicant to resume practise, albeit subject to certain stringent conditions. Although the applicants were required to account to the *curator bonis* in control of their

practice affairs, the effect of the full court's order was indubitably to unleash the first applicant to the unsuspecting public, a grave risk that was evident from the papers for all to see.

[78] In keeping with judicial comity, it is not a pleasant thing to make adverse remarks about colleagues. However, in the context of the facts of this case, I am constrained to observe that it is difficult to understand how the Full Court deemed it appropriate that the operation of the suspension order granted by the high court ought to be stayed. I say this because there was, and still is, clear and overwhelming evidence that the first applicant treated his trust account – that was perpetually in deficit in substantial amounts – as his piggybank. That the order of the Full Court was apparently granted by agreement between the parties, does not mitigate the potential adverse consequences of allowing the first applicant back to his practice given the extent and scale of his infractions. Such an order should never have been granted in the first place. This is so because officers of the court, like attorneys, are accountable to the courts that preside over them. This entails that the court alone is the final arbiter as to whether legal practitioners are still fit and proper persons to remain on the roll. There is also s 44(1)[40] of the Act which explicitly empowers the courts, without flinching, to exercise discipline over legal practitioners.

[79] To compound matters, in resisting the application, the first applicant was not candid with the high court as would be expected of an officer of the court. He assiduously avoided pertinently dealing with the thrust of the LPC's case against him. As already indicated, he repeatedly contented himself with a disdainful refrain that whatever happened his former clients were ultimately paid what was due to

[40] Section 44(1) which is headed 'Powers of the High Court', reads in relevant part as follows:
'The provisions of this Act do not derogate in any way from the power of the High Court to adjudicate upon and make order in respect of matters concerning the conduct of a legal practitioner…or a juristic person.'

them. However, this cannot avail nor absolve the applicants from accountability for at least two reasons. First, they failed to properly and timeously account to their clients as required in terms of the LPC's Rules. Second, they chose to avoid responding directly to the categorical averments under oath made by the deponent to the LPC's founding affidavit that they were effectively rolling trust funds. To sustain what, by all accounts, amounted to a fraudulent scheme, the applicants resorted to misrepresenting the true situation to their clients by, in certain instances, telling a palpable lie that the RAF had still not paid the agreed amount. Generally, this was the applicants' mode of operation which placed their personal interests above those of their clients. By all standards and bearing in mind what the statutory and regulatory prescripts require, the first applicant's conduct is the antithesis of what is expected of a legal practitioner and officer of the court.

[80] The question then remains: are there any compelling and substantial factors in this case to warrant variation of what is otherwise a final decision of the two judges of this Court under s 17(2)*(d)* of the SC Act in terms of which the applicants' application for leave to appeal was dismissed. I cannot discern any such factors, meaning that the answer must be a resounding 'No'. In these circumstances the application for reconsideration of the decision refusing leave to appeal must similarly fail.

[81] Before concluding, there is one further point to address, albeit briefly. It is this. The record in this application has been overburdened with multiple pages of irrelevant material which should never have been included in the record. Although the applicants were advised by their adversary to omit the irrelevant material, they paid no heed to this and persisted in their obdurate desire to include all manner of material that had no bearing on the issues raised in this application. This is deprecated. Had the applicants been successful in this Court, I would have seriously

considered awarding costs against them to mark our displeasure at their conduct in causing the members of the bench in this case to waste valuable judicial time trawling through irrelevant material.

[82] In conclusion, it bears mentioning that from what has emerged from the record, the applicants have clearly evinced a determination to thwart the effect of the order granted by Davis J on 30 August 2023. In adopting this stance, the applicants are still putting their personal interests above those of the legal profession and the general public. As this Court has inherent powers to exercise discipline over legal practitioners, in addition to the statutory powers conferred upon it by s 44(1) of the Act, it is incumbent upon it in this instance to invoke such powers without flinching to protect both the image of the legal profession and the general public. It is therefore necessary to ensure that henceforth the operation and execution of the order suspending the first applicant from practising as an attorney with immediate effect is not undermined to protect not only the public but also the integrity of the legal profession. This will be provided for in the order set out below.

Costs

[83] Insofar as the costs are concerned, there is no reason to depart from the general rule that costs follow the result. Since the LPC is litigating in the interests of the court itself to protect the image of the legal profession and the public at large, there is no reason not to award it its costs on the attorney and client scale in keeping with abiding jurisprudence of our courts.

Order

[84] In the result the following order is made:

1 The application referred to the court in terms of s 17(2)*(f)* of the Superior Courts Act 10 of 2013 for the reconsideration of the decision made on 20 February 2024 under s 17(2)*(b)* is dismissed with costs on an attorney and client scale.

2 The operation and execution of the order granted by the Gauteng Division of the High Court, Pretoria on 30 August 2023 suspending the first applicant from practising as a legal practitioner with immediate effect shall not be suspended or stayed pending the decision of any application or appeal that the applicants might institute in future.

X M PETSE

ACTING JUDGE OF APPEAL

Appearances

For the applicants:	M R Maphutha with A Seshoka and P Tolo (Pupil)
Instructed by:	Matsi Law Chambers, Pretoria
	Honey Attorneys, Bloemfontein
For the respondent:	I Hlalethoa
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