



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not Reportable

Case no: 1050/2024

In the matter between:

JOHAN NICOLAAS BOUWER

APPELLANT

and

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

RESPONDENT

Neutral citation: *Bouwer v The South African Legal Practice Council* (1050/2024)
[2026] ZASCA 141 (16 October 2026)

Coram: MOCUMIE, MAKGOKA and NICHOLLS JJA and MABESELE and
BASSON AJJA

Heard: 23 February 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 16 October 2026.

Summary: Legal Practice – Legal Practice Act 28 of 2014 (the LPA) – *locus standi* of the provincial structure of the National Legal Practice Council to institute legal proceedings against a legal practitioner – institution of court proceedings without prior investigations by the disciplinary committee not a pre-requisite – three-stage enquiry

not applicable at interim stage – conflation of the test for an interim order and final relief
– failure to account to the National LPC as contemplated in terms of s 87(5) of the LPA
– whether the National LPC proved the prerequisites of an interim order – all the prerequisites established.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Francis-Subbiah J and Thobane AJ, sitting as a court of first instance):

1. The appeal is upheld to the following extent.
2. The order of the High Court is set aside and substituted with the following:
 - '(a) The respondent is suspended from practicing as an attorney pending the hearing of Part 'B', which shall be heard not later than 6 months from the date of this order;
 - (b) The respondent is to deliver his certificate of enrolment as an attorney to the registrar of the High Court within two weeks of this court order, failing which the sheriff is authorised to take possession thereof;
 - (c) The respondent is prohibited from handling or operating any trust account, subject to the appointment of a *curator bonis*, whose powers are set out in detail in paragraph 6 of the Notice of Motion;
 - (d) The respondent must deliver his accounting records, records, files and documents with details of receipts, payments, investments, interest on investments, deceased and insolvent estates details and further that should he fail to comply, the sheriff be authorised or empowered to search for and take possession thereof;
 - (e) Pending the finalisation of Part 'B', the respondent is prohibited from occupying the office of;
 - (i) Executor of any estate;
 - (ii) Curator or guardian of any minor;
 - (iii) Trustee of any insolvent estate;
 - (iv) Liquidator of any company;
 - (v) Trustee of any trust; and
 - (vi) Liquidator of any Close Corporation.
 - (f) The *curator bonis* is given powers to deal with records, files and documents for the determination of taxation, inspection fees and disbursements due to the

firm, including publication of the orders of this Court in newspapers and the eventual winding up.

(g) The respondent is to pay the costs of the application, such costs to be on the attorney-and-client scale.'

3. The appellant is to pay the costs of the appeal on the attorney-and-client scale.

JUDGMENT

Mocumie JA (Makgoka, Nicholls JJA, Basson and Mabesele AJJA concurring):

Introduction

[1] This is an appeal against the order of the Gauteng Division of the High Court, Pretoria (the High Court), with the leave of that court. The matter was brought before the High Court by the respondent, the South African Legal Practice Council (the National LPC), seeking an urgent interim order suspending the appellant, Mr Johan Nicolaas Bouwer (the appellant), from practicing as a legal practitioner. This was pending the hearing of Part 'B', in which the National LPC sought an order that the appellant be struck from the roll or be finally suspended.

Condonation application

[2] At the hearing of this appeal, the appellant sought condonation for the late filing of his notice of appeal, which caused the appeal to lapse. It is trite that the application for condonation is not a mere formality and therefore not merely for the asking.¹ It is an indulgence granted by a court exercising its discretion, having considered whether there was good cause for the delay and whether there is a lack of prejudice to the respondent. The most important factor is the interests of justice. It is clearly in the public interest that this matter be heard. The application was unopposed. Condonation was therefore granted.

¹ *Grootboom v National Prosecuting Authority and Another* [2013] ZACC 37; 2014 (2) SA 68 (CC); 2014 (1) BC LR 65 (CC); [2014] 1 BLLR 1 (CC); (2014) 35 ILJ 121 (CC) para 23.

Legal framework

[3] Before dealing with the factual background leading to this appeal, it is necessary to detail the relevant sections of the Legal Practice Act 28 of 2014 (the LPA). The powers of the National LPC are derived from s 4 of the LPA, which provides, in relevant part, as follows:

‘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.’

[4] Section 37(1) of the LPA mandates the National LPC to establish investigating committees to probe complaints of misconduct against legal practitioners, candidate legal practitioners or juristic entities. Section 37(2)(a) provides:

‘An investigating committee may. . . direct any legal practitioner or an employee of that legal practitioner to produce for inspection any book, document or article which . . . relates to the complaint...’.

Section 37(3) stipulates that, after investigating a complaint, an investigating committee must refer the matter to the National Council for adjudication by a disciplinary committee if there is prima facie evidence of misconduct.

[5] Section 44 of the LPA states as follows:

- ‘(1) The provisions of this Act do not derogate in any way from the power of the High Court to adjudicate upon and make orders in respect of matters concerning the conduct of a legal practitioner, candidate legal practitioner or a juristic entity.
- (2) Nothing contained in this Act precludes a complainant or a legal practitioner, candidate legal practitioner or juristic entity from applying to the High Court for appropriate relief in connection with any complaint or charge of misconduct against a legal practitioner, candidate legal practitioner or juristic entity or in connection with any decision of a disciplinary body, the Ombud or the Council in connection with such complaint or charge.’

[6] Section 86 in relevant part stipulates that:

- ‘(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 vest 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.'

- [7] Section 87(5) (a) and (b) provide:

'(a) Despite section 37(2)(a), any attorney or 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 Board, produce for inspection a book, document or an 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 Board or person authorised by the Council or Board may make copies of such book, document or article and remove the copies of such book, document or article from the premises of that attorney or 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.'

Factual background

[8] The appellant was admitted as an attorney on 14 May 1985, after which he established his legal practice, for his own account, as sole proprietor on 1 April 1989 under the name and style of N Bouwer. On 29 February 1996, the appellant sold the firm to Bouwers (Roodepoort) Incorporated, where he was the sole proprietor.² On 28 February 2018, he ceased practising. The firm was closed on 11 June 2018 for reasons set out later in this judgment. After his practice closed, on 15 August 2018, he joined another law firm, Bouwer Malherbe Attorneys, in Roodepoort as a director. On 19 October 2018, he resigned from the directorship and joined as a consultant on

² It appears that the appellant, as sole proprietor, sold his firm to himself under a different name.

20 October 2018. He is still a consultant at the same firm. However, he does not have a fidelity certificate because, according to him, he only consults for the firm.

[9] On 8 August 2020, Ms Renate Louw (Ms Louw) filed a complaint against the appellant with the National LPC. She stated that she is the daughter and intestate heir of her mother, the late Ms Erica Steenberg, who passed on 8 June 2013. Her father, Mr Willem Adriaan Steenberg (Mr Steenberg), was appointed as executor. During 2013, Mr Steenberg gave the appellant instructions to assist him in administering the deceased estate on the basis of a power of attorney. Around 5 March 2018, she and her brother, Mr Ernst Adriaan Steenberg, consulted with the appellant on the matter. He informed them that he had opened an estate account at Mercantile Bank, into which funds were received. However, he said that there were some aspects which he needed to address with the Master of the High Court (the Master) before the estate funds could be distributed. The appellant also informed them that, whilst he awaited the Master's consent, the funds were invested in an interest-bearing account through the Trust account of Bouwer (Roodepoort) Inc.

[10] Ms Louw stated that, during 2018 and 2019, she received no communication from the appellant explaining why she had not yet received her share of the estate. In 2019, she approached another law firm, Snymans Incorporated Attorneys, for assistance. This law firm's attempts to intervene failed as they received no response from the appellant. As of 29 May 2020, the appellant had not made payments to the heirs. She then approached the National LPC to lodge a formal complaint.

The application before the High Court

[11] On 21 November 2022, the National LPC resolved to institute legal proceedings to suspend the appellant from practising as a legal practitioner or alternatively have his name removed from the roll of attorneys. Initially, the National LPC sought urgent relief to suspend, alternatively strike the appellant off the roll of attorneys. Minnaar AJ struck the s 43 application from the roll for lack of urgency. On 28 March 2023, the National LPC launched an application comprising 'Part A', pending 'Part B'. In 'Part A' of the notice of motion, the National LPC sought an order suspending the appellant from practicing as an attorney pending the finalization of 'Part B'. In the latter, it sought an order for the removal of the appellant from the roll of

attorneys, or, in the alternative, that he 'be finally suspended' from practising as an attorney, and certain ancillary relief.

The LPC's case

[12] The gravamen of the complaint is sketched in the founding affidavit of Ms Puleng Magdaline Keetse (Ms Keetse), the chairperson of the Gauteng Provincial office of the LPC. She states, first, that the appellant failed to account to Ms Louw, as a beneficiary, for monies she was entitled to receive from the deceased's estate of her mother. Second, during 2014, the appellant opened a deceased estate account with Merchant Bank into which R809 720.14 was deposited. Between 2014 and 2015, he misappropriated almost all of the funds through a series of transfers into various accounts, including his own trust account. As of 31 August 2022, the deceased's trust account had a debit balance of R1 201.32. In April 2018, the appellant's firm's bank account was closed. He did not account to the LPC or any of the beneficiaries for the R800 000.

[13] Third, when he was required to account, the appellant refused and/or failed to do so in some instances. In others, he did not account for all payments or interest on the purported investments he had made for the benefit of the beneficiaries. These deficiencies only came to light through the investigation by the National LPC's chartered accountant, Mr Philasande Nyali (Mr Nyali), who requested the bank statements of the deceased estate directly from the bank for inspection in terms of s 37(2)(a) of the LPA.

The appellant's case

[14] The appellant opposed the National LPC's application. In his answering affidavit, he raised several grounds, including that:

- (a) The National LPC approached the High Court without having conducted an investigation through its disciplinary committee as the LPA prescribed;
- (b) The National LPC did not give him an opportunity to respond to the allegations levelled against him before instituting the proceedings against him in the High Court;
- (c) He acted at all times under his client's instructions. He stated that, over the years, when administering deceased estates, his practice was not to leave the money in the

deceased estate account; instead, he withdrew it and reinvested it in various other accounts.

(d) Mr Nyali was not a member of the disciplinary committee, and thus the National LPC could not rely on his recommendation for the institution of proceedings against him in the High Court; and

(e) The National LPC brought the application before the High Court. Yet, it was the Gauteng LPC which resolved to bring the application before the High Court. The Gauteng LPC was a separate entity from the National LPC and thus not authorised to act in the place of the National LPC.

[15] He denied misappropriating estate funds. He stated that he handled the estate funds in accordance with the instructions of his client, Mr Steenberg, in his capacity as the executor. Pursuant to those instructions, he invested part of the estate funds by purchasing property for other clients, in return for substantial returns. He further contended that the National LPC's application was invalid and defective, as it was common cause that, as a consultant, he does not operate a trust account. As such, it was not open to the National LPC to institute s 43 proceedings, which presuppose a completed investigation, against him. In terms of s 37(3)(a) read with s 43 of the LPA, the investigating committee would first have to resolve to refer the legal practitioner's misconduct to the Council with a view to instituting urgent legal proceedings against him. He argued that the failure to refer the allegations of misconduct to the investigating committee bars these proceedings.

[16] The appellant alleged that those proceedings were intended to suspend him from practice pending the outcome of a disciplinary inquiry to be adjudicated by a disciplinary committee. Instead, the National LPC instituted an application under 'Part A' for his suspension from practice, pending the outcome of 'Part B', in which it sought his permanent suspension or striking off, depending on the mitigatory factors he would have placed before the court. He contended that the procedure adopted by the LPC deprived him of his right to be heard before any penalty could be imposed; in this instance, an 18-month suspension from practice.

[17] As regards the complaint that he had not accounted to the National LPC or the beneficiaries, the appellant contended that the National LPC's procedure is contrary to

the mandate set out in the Gauteng LPC Provincial Council's resolution, which was to the effect that the National LPC was to bring an application for his interim suspension first, pending the outcome of an adjudication by a disciplinary committee, followed by the relief sought under Part 'A' of the notice of motion. He submitted that, if followed properly, this procedure envisaged that only a curator bonis would be empowered to request the necessary documentation from him once that relief was granted. The National LPC ought to have proceeded in terms of s 37(3)(a) by first referring the matter to the disciplinary committee for adjudication, followed by a disciplinary hearing, before instituting these court proceedings for his suspension. He argued that, in any event, Minnaar AJ had struck the s 43 application from the roll for lack of urgency.

Findings of the High Court

[18] In its judgment delivered on 16 January 2024, the High Court agreed with the National LPC. It found that :

'The conduct of [Mr Bouwer] is not in accordance with what is expected of an officer of this Court. [He] was placed in a position of trust as a legal practitioner, and was made to be in control of estate funds. He moved those funds and used them for other purposes, such as lending money to his other clients to purchase immovable property and pay for clearance certificates. He explains that he did not believe there was any risk in doing so but states that did numerous such transactions but fails to provide details. (sic) That, in our view, was a classic case of misappropriation of such funds. [He] has offered to pay these funds but has failed to even explain the source of such funds or even give a breakdown thereof. He has failed to take the Court into his confidence. The offending conduct has been established on a preponderance of probabilities.'³

[19] It furthermore found that:

'With the offending conduct having been established the next issue to consider is whether the legal practitioner is fit and proper to continue to practice. Among other things this entails considering the seriousness of the conduct complained of as well as what is expected of a legal practitioner. The conduct is serious enough, in our view, because it involves an element of dishonesty. [Mr Bouwer's] conduct fell short of what is expected of a legal practitioner. While we find that he is no longer fit and proper to continue to practice, we are also of the view that

³ *Legal Practice Council of South Africa v Bouwer* 2024 JDR 0232 (GP) para 31.

a striking from the roll is not warranted. This is because he is now a consultant and does not handle trust funds at his current firm, therefore the need to protect the public is lessened.’⁴

[20] Consequently, the High Court granted the following order:

- ‘1. The respondent is suspended from practising as a legal practitioner for a period of 18 months, from the date of this order.
2. The respondent is directed to provide the applicant, within 30 days of this order, a detailed breakdown of the estate funds in the matter of Estate Late Erica Steenberg, detailing where the funds were invested, where the funds are now since the respondent does not have a trust account, the interest earned to date as well as profit made from the loans that were made;
3. In the event of the respondent failing to comply with order 2 above, the applicant is granted leave to approach this court, on the same papers, suitably supplemented, for appropriate relief’;
4. The respondent is ordered to pay the costs of the application on an attorney and client scale.’

[21] In essence, instead of granting the interim relief pending Part ‘B’ sought by the National LPC, the High Court ordered that the appellant be suspended for 18 months and directed that he provide certain documentation to the National LPC. In the event of the appellant failing to comply, the National LPC was granted leave to approach the court on the same papers.

Before this Court

[22] The appellant was aggrieved by the order of the High Court. In his heads of argument, he submitted that the High Court erred in finding that he had misappropriated deceased’s estate funds. The High Court erred in granting an order the National LPC did not seek, namely, a final suspension order of 18 months with ancillary orders. Instead, it should have granted an interim suspension pending investigations by the investigation committee and the appointment of a *curator bonis* to take control of all his files and bank statements to establish the alleged misconduct.

[23] The appellant raised two preliminary points: (a) The *locus standi* of the chairperson of the Gauteng LPC to institute legal proceedings against a legal

⁴ Ibid para 33.

practitioner and (b) the premature launching of the application by the National LPC before the High Court on the allegations that the National LPC ought not to have approached the High Court before a disciplinary inquiry was conducted and before the disciplinary committee had recommended such an inquiry. For this, he relied heavily on the judgment of the High Court in the same division in *South African Law Practice Council v Louw and others*.⁵

[24] As regards the first preliminary point, the appellant attacked the National LPC's decision to initiate legal proceedings against him before the High Court. He contended that Ms Keetse, as a provincial chairperson of the Gauteng LPC, could not have acted on behalf of the National LPC, as the provincial structure is independent of the National LPC. It is that provincial structure which took the resolution to institute proceedings against the appellant, which should have been before the High Court. It follows, so it was contended, that the provincial structure was not empowered to act in the place of the National LPC.

[25] The appellant has not raised any new grounds to support his allegations. Most recently, this Court, in *Chueu*,⁶ held:

'[T]he issue of authority has been dealt with in a number of decisions of this Court. The position is now established that the manner to challenge the authority of a litigant is to utilise rule 7(1) of the Uniform Rules of Court. The original understanding of rule 7(1) was that it only applied to the mandate provided to attorneys. However, this Court in *Unlawful Occupiers, School Site v City of Johannesburg (Unlawful Occupiers)*, citing *Eskom v Soweto City Council* and *Ganes and Another v Telecom Namibia Ltd*, held that the remedy for a respondent who wishes to challenge the authority of a person allegedly acting on behalf of the purported applicant is provided for in rule 7(1).'

⁷(Footnotes omitted.)

[26] It is common cause that the appellant at no stage prior to the institution of the application in the High Court challenged the mandate of Ms Keetse by filing a rule 7 notice. When the National LPC lodged the application before the High Court, the

⁵*South African Legal Practical Council v Louw and Others* [2024] ZAGPJHC 959; 2025 (1) SA 447 (GJ) (Louw).

⁶*Limpopo Provincial Council of the South African Legal Practice Council v Chueu Incorporated Attorneys and Others (Chueu)* [2023] ZASCA 112; 2023 JDR 2704 (SCA).

⁷ Ibid paras 21-23.

appellant did not object or challenge Ms Keetse's authority to depose to the affidavits of the National LPC. His challenge was that the National LPC could not institute the application when it did not conduct the investigations itself, considering that provincial structures are independent of the National LPC. This does not detract from the fact that anyone who is qualified to depose to an affidavit can do so. In this instance, the National LPC chose Ms Keetse, who, without any challenge, is qualified.

[27] From the above, it is clear that, absent a challenge to the authority to act, it is close to impossible to allege on appeal that a person has no authority to act on behalf of another. Ms Keetse's mandate has never been in doubt until this late stage. If the appellant had filed a rule 7 notice, the National LPC would have been bound to produce the resolution in which it specifically authorises her to depose to the affidavits.

[28] Ms Keetse set the wheels of the investigation in motion. As the chairperson of the Gauteng LPC, she had an interest in the matter against the appellant in motion, and personal knowledge of all the allegations against him. This is what a deponent swears to. Ms Keetse deposed to affidavits on behalf of the National LPC. She did not state that she was acting on behalf of the Gauteng LPC. This attack, raised by the appellant before the High Court and pursued further before this Court, does not pass muster.

[29] On the second preliminary issue, namely the premature launching of the application by the LPC, *Louw*⁸, which was decided on 30 September 2024, some nine months after the judgment of the High Court, does not assist the appellant. There, the court expressly disavowed the proposition that the appellant should first have been taken through the disciplinary hearing before a committee. The court states:

'The "power" referred to in section 44(1) can be none other than the common law power the High Court has always possessed to discipline its officers, including attorneys. To make the exercise of that power conditional as a matter of principle upon the LPC first holding full disciplinary inquiry would be inconsistent with its explicit preservation in s 44(1).'⁹

⁸ *Louw* fn 5.

⁹ *Ibid* para 18.

[30] The appellant's case falters on these two preliminary points. Ordinarily, this would end the appeal, but in the interest of justice, and given the conclusion we reach on the High Court order, we must address the merits in detail.

The law

[31] At this stage, as before the High Court, and in line with the relief sought, the inquiry is not whether the legal practitioner is 'fit and proper'. This is the enquiry to be undertaken when final relief is sought. If the court finds that the legal practitioner is not fit and proper, it then has a discretion as to what sanction to impose. At this juncture, it is sufficient to show facts that justify an interim suspension.¹⁰ This is a precautionary measure to safeguard public trust funds and the public at large. The founding affidavit in this matter is not a model of clarity, and it did not allude to this critical dichotomy. Instead, it conflated the test for an interim order and the three-stage enquiry.¹¹ By applying the three-stage enquiry at this stage, the High Court misdirected itself. Thus, its punitive order of suspension.

[32] Despite the mischaracterisation of the relief sought before the High Court by all the parties, the crisp question for determination is whether the LPC has met the trite requisites for an interim interdict, namely:

- (a) a *prima facie* right, although open to some doubt;
- (b) a well-grounded apprehension of irreparable harm if the interim relief is not granted, and the ultimate relief is eventually granted;
- (c) the balance of convenience favours the granting of the interim relief;
- (d) the absence of any other satisfactory remedy.

Prima facie right

[33] With regard to the first prerequisite, *prima facie* right, I consider the following: The appellant failed to account to Ms Louw and the National LPC with regard to the

¹⁰ See *Chueu* fn 6.

¹¹ The test for whether a legal practitioner is fit and proper is a three-stage enquiry. First, a court must determine whether the alleged misconduct against a legal practitioner has been proved on the facts. Second, the court applies a value judgment to determine the legal practitioner is a fit and proper person to continue practising. If the decision is that the legal practitioner is unfit, the third stage is for the court, in its discretion, to decide whether the legal practitioner should be suspended from practice for a fixed period or be struck from the roll. (See *Society of the Northern Provinces v Mogami and Others* [2009] ZASCA 107; 2010 (1) SA 186 (SCA); [2010] 1 All SA 315 (SCA).

allegations of misappropriation of the trust fund of the deceased estate. On his own version, he has not produced all the documents or books in respect of the trust fund in general, nor the amounts he alleged he had invested for the benefit of, or on the instructions of, his client to gain interest. At this stage, the National LPC must only show a *prima facie* right, even if open to some doubt. This it has done.

A well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted

[34] On the second prerequisite, the appellant did not refute the National LPC's serious allegations. In the face of serious allegations levelled against him, all he stated was that (i) the National LPC denied his *audi alteram partem* rights before the matter was enrolled in the High Court and (ii) he refused to disclose anything to Mr Snyman as he felt obliged not to disclose the true facts pertaining to the finances in the deceased estate to Mr Snyman¹². This is no defence at all. This apprehension of irreparable harm if the interim relief is not granted is well grounded.

The balance of convenience

[35] The third prerequisite. The appellant did not point to any other measures the National LPC could have taken to protect the unsuspecting public and bring him to book, other than the steps it took. The balance of convenience favours the National LPC, which has no alternative means of performing its oversight functions and remedy.

The absence of any other satisfactory remedy

[36] The appellant has continued to ply his trade, i.e. giving legal advice, albeit as a consultant, once his firm was closed and he no longer had a fidelity certificate from the National LPC to practice. The members of the community, particularly of Roodepoort where the consultancy office is based, as well as his now-closed law firm, would continue to be vulnerable to his conduct, *inter alia*, mismanaging deceased estates or using the money invested in the trust account to the potential detriment of his clients who are unaware of the ongoing investigations against him as the National LPC alleges. Accordingly, the National LPC has satisfied all the prerequisites for granting

¹² The National LPC appointed Snymans Incorporated to take control of the files in respect of this deceased estate.

an interim suspension order. And the same should have been granted in the High Court.

[37] The High Court granted its order in January 2024, almost thirty-six months ago. But when the appellant launched this appeal, the National LPC halted all the work it had undertaken, including seizing the appellant's files, until this appeal was finalised, one way or another. Nonetheless, part of the work has already been done, and the files were not returned to the appellant; neither were the bank statements which Mr Nyali accumulated for his investigations destroyed. Thus, a shorter period to update all investigations and records in a sole proprietor's firm cannot be insurmountable. All that remains is for the National LPC to initiate Part 'B'. Six months ought to be more than adequate for this purpose. The National LPC should proceed with final relief against the appellant on the expedited court roll.

Costs

[38] It is trite that the National LPC is generally entitled to costs, even when unsuccessful, and costs are usually ordered on attorney-and-client scale. This is so because the National LPC has a statutory duty to approach the court. The National LPC does not approach the High Court as an ordinary litigant but *sui generis*, to protect the public. The appellant will not be entitled to costs because, first, the appeal will be upheld in part. Second, because of his obstructionist conduct. He did not play his cards openly with the National LPC during the investigations, or with the High Court during the proceedings. An officer of the court must maintain the highest ethical standards and assist the National LPC by providing documents when called upon.

[39] In the result, the following order issues:

1. The appeal is upheld to the following extent.
2. The order of the High Court is set aside and substituted with the following:
 - '(a) The respondent is suspended from practicing as an attorney pending the hearing of Part 'B', which shall be heard not later than 6 months from the date of this order;

- (b) The respondent is to deliver his certificate of enrolment as an attorney to the registrar of the High Court within two weeks of this court order, failing which the sheriff is authorised to take possession thereof;
- (c) The respondent is prohibited from handling or operating any trust account, subject to the appointment of a *curator bonis*, whose powers are set out in detail in paragraph 6 of the Notice of Motion;
- (d) The respondent must deliver his accounting records, records, files and documents with details of receipts, payments, investments, interest on investments, deceased and insolvent estates details and further that should he fail to comply, the sheriff be authorised or empowered to search for and take possession thereof;
- (e) Pending the finalisation of Part 'B', the respondent is prohibited from occupying the office of;
- (i) Executor of any estate;
 - (ii) Curator or guardian of any minor;
 - (iii) Trustee of any insolvent estate;
 - (iv) Liquidator of any company;
 - (v) Trustee of any trust; and
 - (vi) Liquidator of any Close Corporation.
- (f) The *curator bonis* is given powers to deal with records, files and documents for the determination of taxation, inspection fees and disbursements due to the firm, including publication of the orders of this Court in newspapers and the eventual winding up.
- (g) The respondent is to pay the costs of the application, such costs to be on the attorney-and-client scale.'
3. The appellant is to pay the costs of the appeal on the attorney-and-client scale.

B C MOCUMIE
JUDGE OF APPEAL

Appearances

For the appellant: C Georgiades SC
Instructed by: Bouwer Malherbe Attorneys, Roodepoort
Pieter Skien Attorneys, Bloemfontein

For the respondent: I Hlalethoa
Instructed by: Mphokane Attorneys, Pretoria
Phatshoane Henney Attorneys, Bloemfontein.