THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 1258/2023

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL **Appellant**

and

JOHANN OOSTHUIZEN **Respondent**

Neutral citation: *South African Legal Practice Council v Oosthuizen* (1258/23) [2025] ZASCA 168 (07 November 2025)

Coram: MEYER, MOLEFE, KGOELE AND COPPIN JJA AND CHILI AJA

Heard: 15 August 2025

Delivered: 07 November 2025

Summary: Legal Practice – Attorney – Professional Misconduct – Application for striking from roll – Legal Practice Act 28 of 2014 – s 40(8) provides that the Legal Practice Council (LPC) must give effect to the advice and decision of a disciplinary committee (DC) – Whether LPC is free to depart from a sanction recommended by the DC – LPC is not prevented from seeking relief outside of the sanction deemed appropriate by DC.

ORDER

On appeal from: Free State Division of the High Court, Bloemfontein (Molitsoane and Van Rhyn JJ sitting as court of first instance):

1. The appeal is upheld with costs on an attorney and client scale.
2. The order of the high court is set aside and replaced with the following:
   ‘(a) The respondent’s name is struck from the roll of legal practitioners of the High Court of South Africa.
   (b) A fine of R15 000.00 is to be paid by the respondent to the Free State Provincial Council of the Legal Practice Council within seven days of this order.
   (c) The respondent must facilitate the payment of R100 000.00, which was held in trust by Honey Attorneys, to the complainant, Mr Aroonslam.
   (d) The respondent must forthwith surrender and deliver to the Director of the Free State Office of the South African Legal Practice Council his certificate of enrollment as an attorney.
   (e) The respondent is to pay the costs of the application on an attorney and client scale.’

JUDGMENT

Meyer JA (Molefe, Kgoele and Coppin JJA and Chili AJA concurring):

> ‘After all they are the beneficiaries of a rich heritage and the mantle of responsibility that they bear as the protectors of our hard-won freedoms is without parallel. As officers of our courts lawyers play a vital role in upholding the Constitution and ensuring that our system of justice is both efficient and effective. It therefore stands to reason that absolute personal integrity and scrupulous honesty are demanded of each of them. It follows that generally a practitioner who is found to be dishonest should in the absence of exceptional circumstances expect to have his name struck from the roll.’

[1] It is well to remember these words of Ponnan JA in *General Council of the Bar of South Africa v Geach and Others (Geach)*.[1]

[2] This appeal is against the order of the Free State Division of the High Court, Bloemfontein (Molitsoane and Van Rhyn JJ), delivered on 22 June 2023 (the high court). The high court dismissed an application brought by the appellant, the South African Legal Practice Council (the LPC), against the respondent, Mr Johann Oosthuizen (Mr Oosthuizen), for the striking of his name from the roll of legal practitioners of the High Court of South Africa. The appeal is with leave of the high court.

[3] Mr Oosthuizen was admitted and enrolled as an attorney of the High Court of South Africa on 5 March 2009. On 1 February 2010, he commenced practicing as a professional assistant at Van Deventer & Thoabala Inc (VDT) in Bloemfontein, an incorporated firm of attorneys, notaries and conveyancers. He became a director of VDT on 11 June 2010, until his resignation on 26 August 2020.

[4] The LPC was established in terms of s 4 of the Legal Practice Act (the LPA).[2] It is the *custos mores*[3] of all legal practitioners and candidate legal practitioners in the public interest. On 29 March 2018, a certain Mr Morchim Aroonslam lodged a complaint with the LPC against VDT. He made allegations of, *inter alia*, misappropriation of trust funds by VDT. His complaint arose from an immovable property ownership transfer that was attended to by VDT. The passing of ownership was registered during 2007, and an existing mortgage bond in favour of SA Home Loans was cancelled in the process. On 18 July 2007, SA Home Loans transferred a credit refund in favour of Mr Aroonslam in the amount of R51 506.68 into the trust account of VDT, which VDT failed to pay to Mr Aroonslam. Without his permission, a further amount of R22 250.00 was deducted from his funds after the transfer.

[5] An Investigating Committee (IC) of the Free State Provincial Office of the LPC was appointed to investigate Mr Aroonslam's complaint. Having completed its

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[1] *General Council of the Bar of South Africa v Geach and Others* [2013] 1 All SA 393 (SCA) para 87.
[2] Legal Practice Act 28 of 2014.
[3] The guardian of morals.

investigation, the IC, on 25 March 2021, recommended to the LPC that the matter be referred to a Disciplinary Committee (DC) of the LPC for disciplinary steps against Mr Oosthuizen. On 24 November 2021, the LPC summoned Mr Oosthuizen to appear before its DC.

[6] The charges in the charge sheet against Mr Oosthuizen read as follows:

'i) Charge 1:

Breach of Section 87(4)(a) of the Legal Practice Act 28 of 2014 and Provision 21 of the Legal Practice Council's Code of Conduct

. . .

In that [he] failed to pay over to the Legal Practitioners Fidelity Fund unclaimed money held in the trust account of Van Deventer and Thoabala Attorneys for more than a year, which [he] claims [he] did not know the identity of the rightful owner.

ii) Charge 2

Breach of Rule 54.13 of the Legal Practice Act Rules and Provision 21 of the Legal Practice Council's Code of Conduct

. . .

[He] failed to pay the money due to the complainant within a reasonable time despite receiving proof from the complainant that he is the rightful beneficiary of that money.

iii) Charge 3:

Breach of Rule 54.14.14.1 of the Legal Practice Act Rules and Provision 21 of the Legal Practice Council's Code of Conduct

. . .

In that [he], made a withdrawal from the firm's trust account to [himself] when [he is] not the firm's trust creditor, and as such misappropriated funds of client(s).'

[7] On 15 December 2021, Mr Oosthuizen pleaded guilty to all three charges, including misappropriation of trust funds. The DC found him guilty of all three charges in accordance with his plea, and sanctioned him as follows:

'15. The following sanction is confirmed.

Being found guilty on the abovementioned charges, the Respondent:

[15.1] Be suspended from practice or being on the practicing or non-practicing roll for five years.

[15.2] Will pay the fine in the amount of R15 000.00 (fifteen thousand rand) to the Legal Practice Council within 7 (seven) days of this hearing.

[15.3] Shall facilitate the payment of R100 000.00 (one hundred thousand rand), which is held in trust at Honey Incorporated Attorneys to the Complainant, Mr. M Aroonslam.
[15.4] Prior to the lifting of the suspension the Respondent shall undergo the Practice Management Course.'
Mr Oosthuizen, in compliance with the DC sanction, caused the amount of R100 000 to be paid to Mr Aroonslam on 12 January 2022, and paid the R15 000 fine to the LPC on 28 February 2022.

[8] Upon being made aware of the sanction imposed by the DC, the LPC was not satisfied that the sanction fits the seriousness of the acts of misconduct Mr Oosthuizen was found guilty. As a result, on 26 November 2022, the LPC resolved that an application be brought to have Mr Oosthuizen's name struck from the roll of legal practitioners.

[9] In dismissing the LPC's application, the high court held as follows: First, the LPC provided no basis for reconsideration of the sanction, except that the national office apparently considered the sanction to be too lenient. The LPC did not make out a case based on new facts, irrationality of the sanction imposed, or anything of the like. Second, the LPC arrogates to itself the right to revisit the issues which have already been decided. Third, the LPC does not have the authority to vary or revoke any of its decisions, because Mr Oosthuizen has vested rights that would be detrimentally affected if the LPC is allowed to do so. The DC's hearing and imposition of the sanction on Mr Oosthuizen constitute administrative action as defined in the Promotion of Administrative Justice Act 3 of 2000 (PAJA), and that being so, the decision stands and has legal consequences until set aside by a competent court. Fourth, the LPC's application was not made in pursuance of s 40(3) of the LPA.[4] In

[4] Section 40(3)*(a)* of the LPA reads:
'(3) If found guilty of misconduct, the disciplinary committee concerned may call witnesses to give evidence in aggravation of sentence and may—
(a) in the case of a legal practitioner—
(i) order him or her to pay compensation, with or without interest to the complainant, which order is subject to confirmation by an order of any court having jurisdiction in the circumstances in the prescribed manner, on application by the Council;
(ii) impose upon him or her a fine, payable to the Council, not exceeding the amount determined from time to time by the Minister by notice in the Gazette, on the advice of the Council;
(iii) temporarily suspend him or her from practising or from engaging in any particular aspect of the practice of law, pending the finalisation of an application referred to in subparagraph (iv) (bb);
(iv) advise the Council to apply to the High Court for—
(aa) an order striking his or her name from the Roll;

other words, the application was not made based on the fact that the sanction of being suspended from practice or being on the practicing or non-practicing roll for five years imposed upon Mr Oosthuizen by the DC, could only be imposed by the court in terms of s 40(3) of the LPA. Fifth, the application is not based upon any allegation that the sanction imposed by the DC was too lenient, and for that reason, should be set aside and the court to impose the more stringent sanction of striking off Mr Oosthuizen from the roll of legal practitioners. Sixth, the decision in *Eastern Cape Provincial Council of the South African Legal Practice Council v Mfundisi (Mfundisi)*[5] does not find application since the situation in the present matter is akin to a plea of *autrefois convict* in a criminal matter.

[10] For the reasons that follow, I find myself unable to agree with the high court's findings. In its founding affidavit, the LPC squarely raised the inappropriateness of the lenient sanction of suspension imposed on Mr Oosthuizen, instead of the more onerous sanction of being struck off the roll of legal practitioners. The court remains the final arbiter, in the exercise of its discretion, as to whether a practitioner ought to be removed from the roll of attorneys, or whether an order suspending the practitioner would be appropriate in the circumstances. The sanction of suspension imposed by the DC is not final and binding on the LPC. The DC, in any event, did not have the legal authority to impose the sanction of suspension. There was no compromise or *transactio* between the DC and Mr Oosthuizen on the sanction that the DC ultimately would impose, as Mr Oosthuizen would have it. The prosecutor and Mr Oosthuizen simply agreed on a sanction which the prosecutor would suggest to the DC as an appropriate one. It is the DC's prerogative to recommend a sanction which it considers appropriate in all the circumstances. The decision in *Mfundisi* indeed finds application in this case.

(bb) an order suspending him or her from practice;
(cc) an interdict prohibiting him or her from dealing with trust monies; or
(dd) any other appropriate relief;
(v) advise the Council to amend or endorse his or her enrolment;
(vi) order that his or her Fidelity Fund certificate be withdrawn, where applicable;
(vii) warn him or her against certain conduct and order that such warning be endorsed against his or her enrolment; or
(viii) caution or reprimand him or her;'

[5] *Eastern Cape Provincial Council of the South African Legal Practice Council v Mfundisi* [2022] ZAECMKHC; [2023] 1 All SA 90 (ECG).

[11] Proceedings such as the present are not ordinary civil proceedings but are *sui generis* in nature. In this regard, Kroon J said the following in *General Council of the Bar of South Africa v Matthys*:[6]

'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.'[7]

[12] In *Van den Berg v General Council of the Bar of SA*,[8] Nugent JA observed:

'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.'

[13] The court remains the final arbiter, in the exercise of its discretion, as to whether a practitioner ought to be removed from the roll of attorneys or whether an order suspending the practitioner would be appropriate in the circumstances. Section 44(1) of the LPA provides:

'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.'

[14] The answer to the question whether s 40(8) of the LPA[9] precludes the LPC, or the relevant Provincial Council, as the case may be, from seeking relief outside of the sanction deemed appropriate by the DC, necessarily raises the proper interpretation of s 40(8). The application of the triad – words, context and purpose – in the

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[6] *General Council of the Bar of South Africa v Matthys* 2002 (5) SA 1 (E) para 4.1.
[7] *Johannesburg Society of Advocates and Another v Nthai and Others* [2020] ZASCA 171; 2021 (2) SA 343 (SCA); [2021] 2 All SA (SCA) paras 23-25.
[8] *Van den Berg v General Council of the Bar of SA* [2007] ZASCA 16; [2007] 2 All SA 499 (SCA) para 2.
[9] Section 40(8) of the LPA reads as follows:
'The Council must give effect to the advice and decision of a disciplinary committee.'

interpretative exercise,[10] leads to the inevitable conclusion that the content of the ruling, and the sanction deemed to be appropriate by the DC, is not final and binding on the LPC.

[15] As was said in *Mfundisi*:

'[54] The disciplinary committee is a disciplinary body, established by the Council in terms of section 37 of the Act and is tasked with the conduct of disciplinary hearings subject to the provisions of section 39 of the Act and the rules determined by the Council.

[55] It is the Council that is the statutory, regulatory authority, and which acts as the *custos morum* of the profession and accordingly it is the Council that has the power to institute legal proceedings to inter alia, achieve its objects set out in section 5 of the Act, which as previously stated, includes the promotion and protection of the public interest; the regulation of all legal practitioners; and the enhancement and maintenance of the integrity and status of the legal profession.

[56] If regard is had to the wording of section 40(8), due consideration being had to the factors enunciated in *Natal Joint Municipal Pension Fund v Endumeni Municipality and Capitec Bank Holdings Limited and another v Coral Lagoon Investments 194 (Pty) Ltd and others*, it is clear that the purpose of the said section is to ensure that the Council acts upon all infractions, as determined by the disciplinary committee.

[57] Nowhere in the sub-section under consideration, or in the broader context of section 40, does the legislation make the content of the ruling, and the sanction deemed to be appropriate by the disciplinary committee final and binding on the Council.'

[16] Recently, the same conclusion was reached by the Western Cape Division of the High Court in *South African Legal Practice Council v Swartz*,[11] wherein it was held:

'In summary, the DC is a disciplinary body established by the LPC in terms of section 37 of the LPA and is tasked with conducting disciplinary hearings subject to the provisions of sections 39 and 40 of the LPA together with the LPA Rules. The applicable sections of the LPA and the relevant clauses of the LPA rules do not make the content of a ruling by a DC, nor the sanction deemed appropriate by such DC final and binding on the LPC. Accordingly, the LPC is empowered, in terms of section 40(3)(a)(iv) of the LPA, to bring this application and have the respondent suspended from the roll of practitioners or have her name removed from the roll of legal practitioners even though such relief differs from the sanction and

[10] *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para [18]; *Capitec Bank Holdings Limited and another v Coral Lagoon Investments 194 (Pty) Ltd and Others* [2021] ZASCA 99 paras 49-53.

[11] *South African Legal Practice Council v Swartz* [2025] ZAWCHC 60 para 37.

recommendations of the DC. Consequently, the argument that the decision of the DC is binding on the LPC falls to be rejected.'

[17] The test to determine whether a person is fit and proper to be a legal practitioner is well established. It is a three-stage enquiry:

'The first enquiry is to determine whether the offending conduct has been proven on a balance of probabilities. Once this is shown, the second enquiry is to determine whether the person is a fit and proper taking into account the proven misconduct. The final enquiry is to determine whether the person concerned should be suspended from practice for a fixed period or should be struck off the roll. The last two enquiries are matters for the discretion of the court, which involve a value judgment.'[12]

[18] I am satisfied that the three charges of misconduct which were brought against Mr Oosthuizen before the DC, have been proven on a balance of probabilities. In answering the next question - whether Mr Oosthuizen is a fit and proper person – his conduct must be weighed against what is expected from an attorney of the High Court. Mr Oosthuizen's conduct displays a lack of integrity and dishonesty. Mr Aroonslam addressed various letters to Mr Oosthuizen imploring VDT to pay the money owing to him. Mr Oosthuizen simply failed to respond. Eventually, Mr Aroonslam appointed Olivier & Malan Attorneys, who also addressed a letter dated 21 February 2017 to Mr Oosthuizen in which a demand was made for payment of the amount due to Mr Aroonslam. That too was to no avail. After Mr Aroonslam had laid a complaint with the LPC, Mr Oosthuizen, under oath, told the IC that he denied any allegations that the money was received in the trust account of VDT, or that these funds were ever paid out illegally. Despite admitting in these proceedings that he made withdrawals from VDT's trust account for his own benefit, although he was not a trust creditor, he denies that he misappropriated trust funds. I agree with the LPC that this denial exhibits his lack of insight into his conduct.

[19] Mr Oosthuizen told the DC that he sustained a severe brain injury in a motor vehicle accident during 2019, which injury made it impossible for him to continue practising as an attorney other than on a part-time basis. Yet, in his answering affidavit in these proceedings he states that because of his brain injury he will never be able to

[12] *Hewetson v Law Society of the Free State* [2020] 3 All SA 15 (SCA) para 4.

practise as an attorney on any basis whatsoever. His contradictory version in this regard leads to the ineluctable inference that Mr Oosthuizen is now attempting to establish that there is no likelihood of him misappropriating trust funds in the future. Of concern is also his lack of candour. In his answering affidavit, he states that his motivation for pleading guilty before the DC was also to protect other people who might be implicated in the misconduct. Who are they, and why did he try to protect them? I am in all the circumstances satisfied that Mr Oosthuizen is not a fit and proper person to practise as an attorney.

[20] I now turn to the question whether Mr Oosthuizen should be suspended from practice as an attorney for a fixed period, or ought to be struck off the roll of legal practitioners. In *Law Society of the Cape of Good Hope v Budricks*,[13] this Court stated:
'The suspension of his suspension from practice is entirely incompatible with the finding that he was not a fit and proper person to continue practising and resulted in the anomalous situation that a person who had explicitly been pronounced unfit to do so, was allowed to continue his practice. (Logically, a striking off order or an order of suspension from practice should only be suspended if the court finds that the attorney concerned is a fit and proper person to continue to practice but still wishes to penalise him.)'

[21] In *Geach*,[14] this Court said:
'It follows that generally a practitioner who is found to be dishonest should in the absence of exceptional circumstances expect to have his name struck from the roll.'

[22] No exceptional circumstances have been shown to exist. The only appropriate sanction, therefore, is to strike Mr Oosthuzen's name from the roll. It is settled that in matters of this kind the adverse costs award should be on an attorney and client scale.[15]

[23] In the result, the following order is made:

1. The appeal is upheld with costs on an attorney and client scale.
2. The order of the high court is set aside and replaced with the following:

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[13] *Law Society of the Cape of Good Hope v Budricks* [2002] ZASCA 51; [2002] 4 All SA 441 (SCA); 2003 (2) SA 11 (SCA) para 7.
[14] *Geach* para 87.
[15] *Pretoria Society of Advocates v Van Zyl* [2019] ZASCA 13 para 30.

‘(a) The respondent’s name is struck from the roll of legal practitioners of the High Court of South Africa.

(b) A fine of R15 000.00 is to be paid by the respondent to the Free State Provincial Council of the Legal Practice Council within seven days of this order.

(c) The respondent must facilitate the payment of R100 000.00, which was held in trust by Honey Attorneys, to the complainant, Mr Aroonslam.

(d) The respondent must forthwith surrender and deliver to the Director of the Free State Office of the South African Legal Practice Council his certificate of enrollment as an attorney.

(e) The respondent is to pay the costs of the application on an attorney and client scale.’

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P.A. MEYER
JUDGE OF APPEAL

Appearances

For appellant:	N Snellenburg SC with M S Mazibuko
Instructed by:	Amade & Company Incorporated, Bloemfontein
For respondent:	S Grobler SC
Instructed by:	Peyper Attorneys, Bloemfontein.