

THE LAW SOCIETY OF ZIMBABWE
versus
WASHINGTON MUCHANDIBAYA

HIGH COURT OF ZIMBABWE
CHATUKUTA & MUSAKWA JJ
MR KANOKANGA & MRS S. MOYO
HARARE, 20 May 2016, 30 September 2016, 2 December 2016,
20 & 27 January 2017 & 22 February 2017

LEGAL PRACTITIONERS DISCIPLINARY TRIBUNAL

W. Mandinde, for the applicant
Respondent in person

CHATUKUTA J: The respondent is a registered legal practitioner carrying on the business and practice of a legal practitioner under the name of Muchandibaya and Associates. He is a senior partner in the firm.

The applicant filed the present application seeking the deletion of the respondent from the Register of Legal Practitioners, Notaries Public and Conveyancers. The applicant alleges that the respondent is guilty of unprofessional, dishonourable or unworthy conduct. It further seeks an order that the respondent pays the applicant's expenses incurred in connection with these proceedings.

At the commencement of the hearing on 30 September 2016, the respondent applied for a postponement of the matter in order to enable him to be represented by a legal practitioner by the name of Mr Dhlakama. He indicated that Mr Dhlakama had communicated with him and advised him by e-mail on 26 September 2016 that he was in South Africa and was going to return on 9 October 2016. The application was opposed on the basis that the respondent had had ample time to arrange for legal representation and had failed to do so. The application for postponement was dismissed. We indicated that fuller reasons would follow. These are the reasons:

A postponement is not for the mere asking. A satisfactory explanation must be proffered by the party seeking the postponement on why the matter should not proceed. NDOU J observed in *Ndabezinhle Mazibuko v The Commissioner of Police & Anor* HB 94/06 at p 3 that:

“The granting of such an application is in the nature of an indulgence and it lies entirely in this court’s discretion to grant or refuse the application. But, such discretion must be exercised in a judicial manner. The court should be slow to refuse to grant a postponement where the true reason for the party’s non-preparedness has been fully explained, where the party’s unreadiness to proceed is not due to delaying tactics, and where justice demands that he should have further time for the purpose of presenting its case – *Madnitsky v Rosenberg* 1949(2) SA 392(A) at 399; *Myburgh Transport v Botha t/a SA Truck Bodies* 1991(3) SA 310 (Nms); *Prinsloo v Saaiman* 1984(2) SA 56(O) and *Shapiro v Shapiro* 1904 TS 673.”

The hearing of this matter commenced, on 20 May 2016, with submissions by the applicant. The respondent appeared as a self-actor. He did not intimate then that he required legal representation. The matter was postponed *sine die* to enable the members of the Tribunal to consider the respondent’s counter-statement. Had all the members of the Tribunal been timeously furnished with the counter-statement, the matter could have been concluded on that date. The matter was reset for hearing for 30 September 2016. The respondent was served with the notice of hearing on 16 August 2016. He therefore had an entire month’s notice of the date of continuation of the matter.

Although the respondent submitted that Mr Dhlakama was willing to represent him, he did not indicate when he instructed him. There was no indication when Mr Dhlakama left the country. Both dates were relevant in determining whether or not Mr Dhlakama was aware of the need to appear before the Tribunal before he left for South Africa. There was nothing to show that Mr Dhlakama had been instructed to represent the respondent at the hearing. The respondent failed to explain why Mr Dhlakama did not file an assumption of agency or advise the Tribunal through Registrar if the respondent had indeed engaged his services. In fact, he did not even have the e-mail which he said had been sent by Mr Dhlakama on 26 September 2016. Despite being aware of Mr Dhlakama’s unavailability, the respondent did not have the courtesy of advising the Tribunal through the Registrar or the applicant beforehand. It was clear to us that the application for postponement was an attempt to delay the outcome of the proceedings.

The Tribunal is mindful of the respondent’s entitlement to legal representation. (see *Nhari v Public Service Commission & Anor* 1998 (1) ZLR 574 (HC) at 578 G-579 B and s 69

(4) of the Constitution.) However, such right must be balanced with the interests of the applicant, justice and of the people that the process seeks to protect.

The explanation by the respondent was unreasonable and more particularly from a senior partner of a legal firm whose entire professional career is at peril. The application for a postponement was accordingly dismissed.

Turning to the merits of the application, the charges against the respondent are stated in the application as follows:

- “4. The Respondent has conducted himself in contravention of the Legal Practitioners Act [*Chapter 27:07*] and has acted in an unprofessional manner in that:
- 4.1 He abused clients’ trust monies, notwithstanding his duty to keep intact the trust funds he held, except to the extent necessary to make payment for which part of the funds was destined;
 - 4.2 He failed to account to client
 - 4.3 He failed, refused or neglected to respond to the Applicant’s correspondence.”

The facts upon which the charges are premised are largely common cause. The following are the facts as set out in the applicant’s Summary of Evidence and in the respondent’s Counter-statement:

On 2 April 2013, the applicant received a complaint from one Patrick Mahwindo (the complainant). The complaint was that the respondent had failed to pay the complainant an amount of \$12 760 that he had lost as a result of the respondent’s unprofessional conduct. The facts giving rise to the loss were that the complainant entered into an agreement of sale for the purchase of a piece of land being Stand 1502 Norton Township of Lot 2 of Knowe, Norton (the property) on 18 December 2012. The agreement was facilitated by Concept Real Estate (Private) Limited. The property belonged to Blessing Gunzo and Wetifa Chafu. The two were purportedly represented in the agreement by one Olismas Kapau by virtue of a Power of Attorney prepared and notarised by Phanel Mazhande. Mazhande was employed as a professional assistant by Muchandibaya and Associates.

The terms of the agreement relevant for the determination of this application were that the purchase price for the property was \$12 000.00. The amount was to be paid in cash by no later than 31 December 2012. Transfer of the property was to be effected by no later than 31 January 2013. The purchase price was to be paid to the sellers upon transfer.

The respondent personally received the purchase price from the complainant on 21 December 2012. The amount was receipted in the Trust Account for Muchandibaya & Associates. The money was handed over to Olismas Kapau through Concept Real Estate on the very day that it was receipted. On 4 January, the complainant paid an additional sum of \$760.00 as transfer fees. It was later established that Olismas Kapau was a fraudster when the sellers disclosed to Concept Real Estate that they had not authorised the sale of their property. The complainant was therefore prejudiced in the sum of \$12 760.00.

On 11 January 2013, Mazhande wrote a letter to the complainant, on behalf of Muchandibaya & Associates, undertaking to recover the money paid out to Kapau and pay the complainant by 31 January 2013. He further undertook that the sum of \$760.00 paid to the firm was going to be refunded by close of business on 16 January 2013. The total sum of \$12 760.00 remains unpaid to date.

By a letter dated 10 April 2013, the applicant's secretary brought the complaint to the attention of Mazhande. The secretary was not favoured with a response to that letter. He wrote another letter on 21 May 2013 which was responded to on 24 June 2014.

On 16 September 2014 the secretary wrote a letter to the respondent bringing to the respondent's attention the complaint from Mr Mahwindo. The respondent was given ten days within which to respond. On 29 April 2016, the applicant filed this application. As at the date of hearing of this application on 20 May 2016, the respondent had not responded to the communication neither has he responded to date.

Mr Mazhande advised him that the purchaser had agreed that the purchase price be immediately disbursed to the sellers and assured him that everything was above board.

The respondent filed a counter-statement opposing the application. In response to the first charge, he submitted that he had not been actively involved in the matter. Mazhande, his professional assistant was seized with the matter. On 21 December 2012, he was given the original title deed of the property by Mazhande. Upon payment of the purchase price by the complainant, he handed the money to Mazhande on the latter's request. Mazhande advised him that the complainant had authorised the release of the money to Kapau and Concept Estate Agents. When he released the money, he had not had sight of the sale agreement and was not aware of its terms and conditions. He did not establish from the complainant if the money should be released neither did he have any written authorisation to do so. He conceded that had he perused the sale agreement he would not have released the money. He therefore had not wittingly or negligently failed to preserve the complainant's funds.

Regarding the second charge, he admitted in oral submissions that an undertaking had been made to pay the complainant. He further admitted that he had not honoured the undertaking. He submitted that he was in the process of mobilising the money to pay the complainant.

In response to the third charge, he admitted receiving the correspondence from applicant's secretary. He submitted that upon receipt of the correspondence he referred same to Mazhande who was familiar with the complaint. He did not see anything wrong with his conduct as the applicant had been communicating with Mazhande on the issue before writing to him. He assumed that Mazhande had responded to the correspondence.

After going through the respondent's counter-statement, it has escaped us why the respondent has denied that he is guilty of all the charges preferred against him. His counter-statement contains admissions of unprofessional conduct. The respondent cannot deny being aware of the sale agreement which was concluded from the onset when he:

1. personally received the money paid by the complainant and receipted it in the Trust Account on 21 December 2012, only 3 days after the conclusion of the agreement;
2. had earlier on 21 December 2012 been handed the original title deed by Mazhande.
3. handed the money to Mr Mazhande after Mazhande had advised him that the complainant had agreed to the immediate release of the money to the purported seller's representative and Concept Real Estate (Private) Limited.

The respondent admits conducting himself as above without examining the sale agreement. As he rightly stated in his counter-statement, had he examined the agreement, he would have noted that clause 2.1 of the agreement provided that the purchase price was payable to the sellers upon registration of transfer of the property into Mahwindo's name. He would have noted that the clause was a special condition. The parties to the agreement must have placed importance on clause 2 hence referred to its contents as special conditions. The respondent asserted that he released the purchase price to Mazhande for further release to the seller's special attorney on the mere request of his professional assistant without written confirmation of such instruction from the buyer. Any diligent legal practitioner would not, confronted with such a provision, have released the money without the written approval/authorisation of the buyer. Further, a more diligent legal practitioner would not have released the money without having sight of the agreement first. In the absence of written authority, the least that the respondent should have done was to confirm directly with the

complainant that he was consenting to the release of the money. Thereafter, the general degree of skill reasonably to be expected of a lawyer and conveyancer would have been to caution the purchaser, in writing, against the decision to release the purchase price to the seller's special attorney prior to the registration of the transfer.

The respondent is not just any legal practitioner, he is the senior partner in the firm with the responsibility of supervising and mentoring junior legal practitioners under him. His assertion that he acted as he did because Mazhande, a professional assistant, had assured him that everything was above board clearly reflects either his lack of appreciation of his role as a senior partner or connivance with Mazhande and Kapau to prejudice the complainant. There is no explanation in his counter-statement what he understood the assurance to mean. A senior legal practitioner would be expected to have been satisfied that the necessary inquiries had been made with the Registrar of Deeds to ascertain the authenticity of the title deed and that the accuracy of the identity of the owners of the property and that of their purported special attorney had been properly verified. Had this been done diligently there would have been a paper trail of all the inquiries which the respondent would have perused and independently satisfied himself that everything was indeed above board.

The respondent assertion that it is Mazhande who released the money to Concept Estate (Private Limited) is controverted by Mazhande in his correspondence to the applicant dated 24 June 2014. Mazhande stated that he was advised that the complainant had authorised the release of the funds to the seller. The import of Mazhande's letter is that he is not the one who released the money as alleged by the respondent. The letter was annexed to the respondent's counter-statement. Having placed inconsistent statements before the Tribunal, it was imperative that the respondent explain the contradiction. No such explanation was forthcoming. Further, the respondent did not place before the Tribunal the outcome of Kapau's arrest. The complainant, having denied authorising the release of the money and the respondent, having failed to prove that there was such authorisation, the only conclusion that can be deduced therefrom is that the respondent, acted in connivance with the fraudster, Kapau.

The respondent did not dispute that he was liable to make good the prejudice suffered by the complainant. He therefore was supposed to account to the complainant for the prejudice. In a correspondence dated 11 January 2013 from Mazhande to Mahwindo, the respondent undertook to pay back the money. As of the date of hearing, after a period of three years, the respondent had not made good his undertaking.

Regarding the third charge, upon receiving a complaint against a legal practitioner, the applicant's secretary may, in terms of s 61 (1) (c) of the Law Society of Zimbabwe By-Laws, 1982 (SI 314 of 1982) invite the legal practitioner to comment on the complaint. The respondent does not dispute receiving correspondence from the applicant inviting him to personally comment on the complaint by Mr Mahwindo within 10 days of the date of the letter. His explanation that he gave the correspondence to Mazhande is a flimsy one. The applicant was not soliciting a comment from Mazhande through the respondent. Such comment had already been given by Mazhande. It is clear from his response that even after handing the correspondence to Mazhande, the respondent did not follow up with Mazhande to ensure that a response was forwarded to the applicant. The correspondence has remained unanswered since September 2014. Failure to respond to the correspondence is clearly a violation of the Legal Practitioners Act.

The respondent is found guilty of unprofessional, dishonourable or unworthy conduct bringing the name of the legal profession into disrepute.

Turning to sentence, the applicant has prayed for the respondent's deregistration. The respondent submitted, in mitigation, that he holds BL and LLB degrees and has been in practice since 1991. The legal profession has been his career of choice and has been his mainstay. He has never been found guilty of any other act of misconduct. He submitted that his moral blameworthiness was minimal and related to his failure to supervise his assistant. The acts giving rise to the conviction were orchestrated by some criminal elements and his firm was as much a victim as their client. His firm was not involved during the early stages of the chicanery but only got involved when payment of the purchase price was made. He personally became aware that a complaint on the transactions had been filed with the applicant in 2016 as the applicant had been communicating directly with his assistant, Mazhande. He further was not personally involved in the matter as evidenced by the fact that the complaint by the applicant had initially been against his assistant.

He tendered to compensate fully the complainant's loss. It was only possible to do so if he was allowed to continue practising. He submitted that he delayed compensating the complainant because he was waiting to recover the money from Kapau. The delay to compensate when the need to do so arose was as a result of an error in judgment.

He further conceded that he was not a visitor before the tribunal. He submitted that he appeared before the tribunal in 2006 for failure to appear in court on behalf of a client after being duly instructed to do so. The issue did not involve trust funds.

The applicant persisted with its prayer that the respondent be deregistered. It was submitted that the respondent was placing all the blame on his professional assistant and attributing everything to poor judgment.

In order to arrive at an appropriate sentence, it is necessary to consider the respondent's degree of negligence. The respondent's conduct, in our view, amounts to gross negligence. What constitutes "gross negligence" was aptly discussed in *S v Chaita* 1998 (1) ZLR 213. CHINHENGO J (as he then was) remarked at 221 D:

"REYNOLDS J in *Mtizwa's* case supra explained the meanings of gross negligence and recklessness. He said at 233G-234A:

'Gross negligence' is simply a very serious or aggravated form of ordinary negligence - negligence of a high degree (see *S v Smith & Ors* 1973 (3) SA 21 (T)). In *Drake v Power* (1961) 46 MPR 91, a Canadian case cited by *Saunders Words and Phrases Legally Defined* vol 3 p 332, the expression 'gross negligence' is usefully defined as implying 'conduct in which there is a marked departure from the standards by which responsible and competent drivers habitually govern themselves'".

Whilst the meaning of gross negligence was discussed in the context of a road traffic offence, the meaning equally applies in the present case. The conduct of the respondent went beyond that of a responsible and competent legal practitioner. The Tribunal finds that the conduct, having amounted to gross negligence, was unprofessional, dishonourable and unworthy of a legal practitioner.

The issue is whether or not the conduct of the respondent warrants deregistration. Deregistration is the ultimate sentence that the Tribunal can impose for the most serious offence. (See *Chizikani v The Law society of Zimbabwe* 1994 (1) ZLR 382 at 390 F-391 B.)

In determining whether or not the offence is that serious to warrant the ultimate sentence, the Tribunal must be guided by the applicant's view. In this regard I refer to *Law Society of Zimbabwe v Sheelagh Cathrine Stewart* HC-H- 39 – 89 where it was observed at p 6 that:

"In an application, such as this, the court is not dealing with a normal civil or criminal case where the parameters of the sentence are defined by the amount of the claim or by judicial precedent. The Law Society petitions the Tribunal to discipline the delinquent practitioner in a manner it sees fit, if the Tribunal finds that the practitioner has been guilty of unprofessional, dishonourable or unworthy conduct. Such proceedings (before a court) have been described as being *sui generis* (see Wessels, C.J. in *Solomon v Law Society of the Cape of Good Hope*, 1934 AD 401 At 408). "The law Society is an exclusive professional organisation". And where such a Society is of the opinion that the particular offender is no longer suitable as a member thereof and should be prevented from practising the profession concerned, serious consideration should be given to that opinion. (per M T Steyn, J. in *Law Society of the O.F.S. v Schoeman*, 1977 (4) SA 588 at 603 A (in translation).

In this regard, De VILLERS, J. said in *Transvaak Incorporated Law Society v K.*, 1950 (4) SA

449 at 454-455

“The Law Society are custodians of the honour of their profession and their vigilance in bringing misconduct on the part of practitioners to Court is a matter that the Court appreciates. Their opinion is entitled to be given due weight. When the form a view as to what the punishment should be and ask for a particular form of sanction, the Court is loathe not to fall in with the suggestion unless there is a reason to mete out a lesser punishment.”

The rationale for placing reliance of the opinion of the Law Society is also found in *Chizikani v The Law Society of Zimbabwe (supra)* at 390 C-E where GUBBAY CJ (as he then was) remarked that-

“In the first place, lawyers as a professional class live by their own high code of ethics and their own moral standards. Every legal practitioner owes a duty to his colleagues to uphold those standards of the profession to which he belongs. Secondly, if legal practitioners, as a professional group, are to earn a respected position as guardians, not only of public, but also of private, interest, then every legal practitioner must live up to the principles of decency in the relationship of a trustee to the goods and monies entrusted to him by the person who has sought his protection. A legal practitioner who breaches this trust casts a shadow on the good name of the rest, and also remains a danger to the unsuspecting public, unless his name is expunged from the register of legal practitioners. See generally in this regard *Law Society, Transvaal v Matthew* 1989 (4) SA 389 (T) at 394 B-396 H.”

It was further remarked at 392 B- E that:

“In applications by the Law Society for the disciplinary action to be taken against a member, the paramount considerations are maintaining the integrity, dignity and the respect the public must have for officers of the court, no less than the Law society’s desire to protect members of the public from unscrupulous persons operating behind the colour of their profession. The question is: Is the appellant a fit and proper person to be a member of the honourable society? Any colourable conduct sufficiently grave to attract popular dissatisfaction with the profession must be visited with sanctions befitting such conduct. This in *Reyneke v Wetszenootskap Van Die Kaap Goeie Hoop* 1994 (1) SA 359 (AD) at 361 I the headnote reads:-

“That although the charges against the appellant and the findings of the Court *a quo* did not relate directly to his professional practice as such in that he had not acted to the detriment of his client nor stolen from his practice, and although these factors elicited a measure of sympathy for the appellant, the fact remained that he was guilty of two serious transgressions which reflected upon his honesty and integrity and which detracted from his fitness to practice as an attorney.”

The respondent’s conduct warrants the imposition of the ultimate censure. Our view is bolstered by the following factors that we consider to be aggravating.

It is common cause that the respondent has not compensated the complainant. It was necessary to have done so in 2013 when he became aware that the complainant had been prejudiced because of the negligence of his professional assistant. It has taken him four years to personally make an undertaking to compensate the complainant. It serves no purpose to

apportion blame to his professional assistant as he actively participated in causing the complainant prejudice by releasing money to a fraudster without having carried out due diligent inquiries into whether or not it was proper to release the money. He did not understand that “the buck stops with him” as the principal. The explanation that he was waiting to recover money from Kapau so as to compensate the complainant is clearly indicative of a lack of appreciation of his responsibility not only as a legal practitioner of 26 years’ experience but also as a principal of a legal firm. His responsibility was to fully immediately compensate the complainant and look to recover from Kapau later. During inquiries by the Tribunal it became apparent that in fact Kapau absconded in 2015 and has not been accounted for. The respondent did not compensate the complainant after Kapau’s abscondment in 2015 to date. The lack of comprehension of his responsibilities (or be it error in judgment) for such a senior legal practitioner renders him not suitable to continue practising the profession.

The respondent sought to downplay/underplay his moral blameworthiness. He submitted that his misdemeanour was that he failed to supervise a professional assistant. He considered his moral blameworthiness to be very minimal and not warranting deregistration. The respondent seemed to have overlooked the fact that he was directly involved, as he had admitted in his response to the application to have received original title deeds from Mazhande on 21 December 2012 and received payment from the complainant which money he later handed over to Mazhande.

What is even more aggravating for the respondent is that he sought to mislead the Tribunal regarding his conviction under case number LPDT 8/13. Firstly he sought to mislead the Tribunal that the conviction was in 2006 when in fact he was convicted and reprimanded recently in 2014. It is not clear whether the respondent thought that a 2006 conviction would not be aggravating.

Secondly, he sought to mislead the Tribunal that the circumstances of the case in LPDT 8/13 did not relate to trust funds. It is clear from the application and response in LPDT 8/13 that the respondent was charged with and found guilty of contravening s 13 (1) (a) of the Legal Practitioners Act. The facts giving rise to the conviction were that Muchandibaya & Associates were appointed conveyancers for a property disposed of through Tony West Real Estate. Tony West Real Estate were entitled to agent’s commission upon transfer. The estate agent disposed of the property and the full purchase price, including agent’s commission was paid to Muchandibaya & Associates. Transfer of the property was effected but Muchandibaya

& Associates failed to release the commission to the estate agent. When a complainant was filed with the applicant, the respondent acknowledged owing Tony West Real Estate their commission and pledged to pay \$1 000. At the time of hearing the applicant had paid \$500. The balance was paid during the hearing.

The agent's commission, having been paid to Muchandibaya & Associates constituted trust funds as the respondent was holding the same on behalf of Tony West Real Estate hence the conviction of the appellant for contravening section 13 (1) (a) of the Legal Practitioners Act. It is therefore deceitful of the respondent to have submitted to the Tribunal that he was not found guilty of an offence involving trust funds.

The second charge is as stated by the respondent that he failed to act for a client having been placed in funds. He was ordered by the Tribunal to refund the complainant in the sum of US\$80.00. He further was severely reprimanded for his transgressions. Whilst the matter in LPDT 8/13 was still pending, the respondent found himself on the wrong side of the law again as the present matter happened in 2013.

The web of deception became more compounded with the respondent's counsel submitting that his instructions were that the respondent only received communication from the applicant in 2016. The respondent was well aware that he received the communication in September 2014. In fact, he is the one who placed the communication before the Tribunal by annexing the applicant's letter to his response to the application.

Regarding his failure to respond to the applicant's communication, he submitted that he inadvertently did not respond. Upon receipt of the communication he had requested information from his assistant. He thereafter forgot to follow up with his assistant, Mazhande. His submissions were at variance with his earlier evidence that when he received the communication, he formed the view that Mazhande was in fact better placed to deal with the complaint and he handed over the communication to him to respond to it.

The respondent's counsel had a torrid time responding to the inconsistencies as they were raised by the Tribunal. It appeared that the respondent had also misled his counsel and placed him in an invidious position as he had to shuttle between the respondent and the bar in order to take instructions and make numerous concessions that there were inconsistencies in the respondent's evidence and mitigation.

He also sought to mislead the Tribunal that his firm had nothing to do with the events leading to the conclusion of the agreement. He gave the impression in his summary of evidence that Muchandibaya & Associates only got involved when it came to payment of the

purchase price. However, that is contrary to Mazhande's letter dated 24 June 2014 addressed to the applicant in response on the complaint. The response was annexed to the respondent's "Notice of Opposition". Mazhande narrates in the response that he was approached by Olismas Kapau in November 2012 with indications that Kapau was owed money by Gunzo and Chapu (the owners of the property in issue). Kapau approached him in the company of persons purporting to be Gunzo and Chapu indicating that they wanted to sell their Norton property to raise funds so as to pay what they owed Kapau. Because they resided in the United Kingdom and were due to leave for the United Kingdom, they instructed him to draft a Power of Attorney empowering Kapau to dispose of the property in their absence. He prepared the Power of Attorney on 23 November 2012 which Power of Attorney was later disowned by the real Gunzo and Chapu. Kapau later indicated to him that he had found a buyer for the property. It is clear from the application that the agreement was concluded on 18 December 2012 with Kapau purporting to be representing the owners of the property on the strength of the Power of Attorney executed by Mazhande.

The assertion by the respondent that Muchandibaya & Associates got involved only when payment was being made is therefore patently false. Even if the assertion was true, the respondent was required to exercise even greater diligence.

Having been found guilty, the respondent faces the likelihood of losing entire career. One would expect a show of contrition reflected by candidness with the Tribunal. Respondent's dishonesty gives credence to applicant's contention that he is not fit to remain on the roll of legal practitioners

It is accordingly ordered that:

1. The respondent's name be and is hereby deleted from the Register of Legal Practitioners, Notaries Public and Conveyancers in terms of s 28 (1) (c) (1) of the Legal Practitioners Act [*Chapter 27:07*].
2. The respondent be and is hereby ordered to pay the applicant's expenses incurred in connection with these proceedings.