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Please quote our reference number on all correspondence:

Your ref.:

Our ref.: 5192/2020/ T Mvunyiswa/ (ZL)

11 November 2020

PERSONAL & CONFIDENTIAL

Mr JF Louw
Lionel Murray Schwormstedt & Louw Inc Attorneys
Po Box 4612
Cape Town
8000

By email: jflou@iafrica.com

Dear Sir,

RE: COMPLAINT AGAINST MR N L RAMULIFHO OF RAMULIFHO ATTORNEYS

We acknowledge receipt of your notice of appeal received by our office on 9 November 2020.

We note however that your appeal is lodged without the benefit of the substantive reasons for the committee's recommendations and that you have not requested same. We therefore attach the substantive reasons for your attention and are of the view that the appeal will be incomplete without them. The full recommendation was not provided initially to avoid any prejudice to the parties in the matters before Gauteng Regional Division of the High Court, under case no 23291/19.

We further advise that at this stage, an internal appeal against the finding of the IC is not possible due to the fact that the Appeal Tribunal and Legal Services Ombud have not yet been established by the Minister of Justice and Constitutional Development. You are therefore advised to proceed with the appeal or review of the IC decision in the High Court, should you wish to do so.

We trust that you find the above in order.

Yours faithfully,



T. MVUNYISWA
LEGAL OFFICER: DISCIPLINARY DEPARTMENT

IC 8

Reference 5192/20
Attorney Ramulifho, Lesley Nkhumbuleni (M22159)
Complainants Louw, Jacques Floris (Attorney), Joseph Raymond and Geffen, Nathan
Date 13th October 2020

- 1 **Attorney Lesley Nkhumbuleni Ramulifho** is the respondent in this matter ('the Respondent'). He faces a complaint lodged with the Gauteng Provincial Office of the Legal Practice Council ('the LPC') by **Attorney Jacques Floris Louw** in his personal capacity as well as in his capacity as the representative of **Messrs Raymond Joseph and Nathan Geffen** ('the Complainants').
- 2 The matter served before me acting as an Investigating Committee in terms of section 37.1 of the Legal Practice Act¹ ('the Act') read together with Rule 40 (**Investigation of alleged misconduct**) of the Rules of the Legal Practice Council (**PART X : Disciplinary**) promulgated under the Act ('the Rules').
- 3 The matter was determined on the papers. There was no appearance by any party. The legal officer of the LPC, Mr T Mvunyiswa, played no part in the investigation.
- 4 The complaint is set out in a letter to the LPC dated 1st May 2020² read together with an affidavit dated 4th May 2020 deposed to by Attorney Jacques Floris Louw in his personal capacity as well as in his capacity as the representative of the other Complainants, namely Joseph Raymond and Geffen Nathan.³ The affidavit is supported by several annexures ('the Complaint').
- 5 In the letter to the LPC dated 1st May 2020⁴ which forms part of the Complaint, the Complainants allege:-

"In court papers and under oath, Mr Ramulifho, who is a party to the proceedings, has:

1 28 of 2014
2 Pages 306 and 307 of the bundle
3 Pages 308 to 323 of the bundle
4 Paragraphs 1, 2 and 3, pages 306 and 307 of the bundle

5.1 *Referred to documents which were fraudulently fabricated either by him or under his direction; and*

5.2 *Confirmed under oath that the fabricated documents reflected the truth, when he would have known the falsity of the statement; and*

5.3 *Caused to be produced a document which purported to be an affidavit of another attorney, Etienne Naude, which contained a forged signature of Naude and was used to "confirm" statements of Ramulifho which Ramulifho knew to be false and in an attempt to hide another possible crime."*

6 In a letter to the LPC dated 23rd June 2020⁵ the Complainants allege:-

"... However the facts are that

2.1 *The attorney wilfully made false statements under oath;*

2.2 *Confirmed the under oath the correctness of falsified documents when he knew that they were false;*

2.3 *Conspired to produce a falsified affidavit of another officer of the court and member of the LPC (Mr Naude can confirm), .."*

7 **Common Causes**

The following constitutes common causes:-

7.1 that Denzhe Primary Care ('Denzhe') received lottery grants from the National Lotteries Commission ('the NLC');

7.2 that at all material times, the Respondent was a member of Denzhe;

7.3 that Mr Raymond Joseph ('Joseph') wrote a range of articles relating to the management of lottery grants advanced to Denzhe by the NLC. Mr Nathan Geffen ('Geffen') as editor of a news publication *GroundUp* published those articles;

⁵

Paragraphs 2.1; 2.2 and 2.3, pages 429 and 430 of the bundle

- 7.4 that the nub of the publications was the averment that in 2016, Denzhe paid to *Ocean Basket* an amount of **R264 240.34** (*two hundred and sixty-four thousand two hundred and forty Rand and thirty-four cents*) and an amount of **R271 000.00** (*two hundred and seventy-one thousand Rand*) each in respect of the Respondent's personal businesses - being two *Ocean Basket* franchises;
- 7.5 that the Respondent was aggrieved by the publications and on 9th April 2019, together with a company styled Ramulifho Incorporated Attorneys, sought an urgent interdict from the High Court of South Africa, Gauteng Division, Pretoria under case number 23291/19 against Joseph, *Ground Up*, *The Citizen Newspaper*, the National Lottery and the *Daily Meverick Newspaper*;
- 7.6 that the application ('the Interdict Application') was struck for lack of urgency;
- 7.7 that Joseph then penned further articles (published in *Ground Up*) which:-
- 7.7.1 he alleged that the Respondent paid **R5 000 000.00** (*five million Rand*) from funds which belonged to Denzhe to Etienne Naude Attorneys as part payment of the purchase price of **R11 000 000.00** (*eleven million Rand*) for a house in the Mooikloof Equestrian Estate;
- 7.7.2 he questioned the veracity of the Respondent's claims:-
- 7.7.2.1 that the money paid by Denzhe to *Ocean Basket* in the amounts of **R264 240.34** and **R271 000.00** were loans;
- 7.7.2.2 that such loans were re-paid by the Respondent to Denzhe.

8 Non-Profit Organisations

- 8.1 Denzhe occupies a central position in the disjuncture which is before me in regard to which, and arising from the contents of the Complaint read in its entirety, it would be safe to infer:-
- 8.1.1 that Denzhe is a Non-Profit Organisation ('NPO'); and

- 8.1.2 that Denzhe is registered in terms of the Nonprofit Organisations Act⁶ ('the NPO Act').
- 8.2 I make the inferences on the grounds that if Denzhe was not a NPO registered in terms of the NPO Act, it would be unlikely that lottery grants would have been advanced to it by the NLC.
- 8.3 That brings me to the genesis of my discomfort which I raise at this stage because, *inter-alia*, of the immediate and substantial risk inadequate regulatory oversight poses to Social Development in this country in the hope that the Complainants will discuss my comments with the relevant authorities, not excluding the Registrars of NPOs as well as the NLC.
- 8.4 My comments, in summary, are:-
- 8.4.1 only organisations registered under the NPO Act acquire the *de jure* status of non-profit organisations;
- 8.4.2 for any NPO to benefit from a lottery grant advanced by the NLC, it (the NPO) must be registered in terms of the NPO Act which prescribes, as a pre-requisite to registration, compliance with the provisions of Sections 12(2) and 12(3) of the NPO Act;
- 8.4.3 using money which belongs to a NPO for any purpose extraneous to the object for which the NPO is constituted is a particularly serious matter, the gravity of which is not ameliorated even if such use was a legitimate loan;
- 8.4.4 it is highly unlikely, indeed improbable, that the Registrar of NPO would register an NPO whose constitution allows for loans to its members : it is suggested that it is equally unlikely that the constitution of Denzhe in its original form allows for loans to its members which leads to the incontrovertible inference that payment to *Ocean Basket* whether in the form of a loan or otherwise, was in the preponderance of probability not in compliance with its (ie Denzhe's) own constitution signalling for a scrutiny of its financial records by the Registrar of NPOs;

8.4.5 the matter is serious : the Financial Intelligence Centre identified NPO's as entities which are susceptible to abuse for, *inter-alia*, purposes of money laundering. It has published a white paper titled *Public Compliance Communication*⁷. Its aim, as declared in the document, is to combat the Financing of Terrorism and Money Laundering relative to Nonprofit Organisations which is "*identified by the Financial Action Task Force (FATF) as entities, which are susceptible to abuse by criminals for terrorist financing and money laundering. This PCC provides guidance to the NPO sector, NPO Regulators and third parties dealing with NPOs, regarding measures that could be implemented in order to combat terrorist financing and money laundering risks within the NPO sector.*"

9 I will now turn to the Complaint in regard to which I have substantial issues:-

- 9.1 a common thread running through each of the individual complaints alleges that the Respondent swore to the truth under oath of facts which he knew were not true and thus committed perjury;
- 9.2 the perjury, so it is alleged, was committed in both the Respondent's personal capacity as a businessman as well as in his capacity as a legal practitioner;
- 9.3 the allegations, if true, would indicate professional misconduct on the part of the Respondent if it was committed in the Respondent's capacity as a legal practitioner;
- 9.4 the allegations constituting the Complaint are presented on the basis of the Complainants' belief without the benefit of judicial scrutiny or reasonable and credible verification;
- 9.5 with judicial scrutiny, alternatively reasonable and credible verification absent, the allegations are hearsay and cannot with any degree of comfort be relied upon - accepting them as presented would be reckless, speculative and prejudicial to the Respondent;
- 9.6 the allegations must first be tested by an authority other than the LPC or be

supported by reasonable and credible verification and then the relevant finding or appropriate verification must be presented to the LPC for investigation of possible misconduct.

- 10 I would like to refer to the some of the contents of a letter written by Attorney Louw to the LPC dated 23rd June 2020⁸ in which he says:-

"1 *Ad Paragraph 1*

The complaint was made in affidavit form to confirm the strength of the complainants' conviction and for ease of form. The writer did not present it as proof, but as evidence. Moreover, the complaint called for the LPC to investigate and not to make findings based solely on the affidavit. Nevertheless, to avoid the point being taken further, I attach copies of the confirmatory affidavits executed by the other complainants. The delay has been occasioned by Covid-19 caution." (emphasis added)

10.2 *"... However the facts are that*

2.1 *The attorney wilfully made false statements under oath;*

2.2 *Confirmed the under oath the correctness of falsified documents when he knew that they were false;*

2.3 *Conspired to produce a falsified affidavit of another officer of the court and member of the LPC (Mr Naude **can confirm**), .." (emphasis added)*

- 11 The contents of the letter are contradictory in a material respect in that he is at one saying that the "**... complaint was not presented as proof, but as evidence ...**" and then alleges that "**... the facts are that ...**"

- 12 The contents of that letter has yet another significance : in reference to Attorney Naude he says that "**.. (Mr Naude **can confirm**) ..**". That is unfortunate. No meaningful significance can be visited upon that statement without reasonable and credible verification from Attorney Naude.

- 13 At this point I would like to mention that is not the charge of this Committee to wade

8

Paragraph 1 page 429 of the bundle

through documents searching for conduct which could possibly found an indictment based on an infraction of the provisions of the Legal Practice Act or the Rules of the Legal Practice Council. Indeed that is not permissible - see *Incorporated Law Society, Transvaal vs Meyer and Another, 1981 (3) SA 962 (T)*. The complainant must identify the conduct which constitutes the grievance and direct the attention of this Committee to such conduct. The Complainant must not expect this Committee to search for offending conduct. In this regard I also refer to rule 39.2 which provides:-

"Members of the public who wish to lodge a complaint of misconduct against a respondent must do so in writing. A complaint shall set out clearly and concisely the specific acts or failures to act which give rise to the complaint of misconduct."

14 It is not necessary to deal in detail with each of the individual complaints as all of them are afflicted with similar flaws. However, in order to illustrate the weakness in the Complaint I will highlight some issues.

15 **The Respondent's Founding Affidavit**

15.1 As stated above, relative to the Interdict Application, the Respondent filed a founding affidavit dated 26 March 2019⁹ in respect of which an affidavit by Ms Takalani Tshikalange dated 3rd December 2018 ('the Tshikalange Affidavit')¹⁰ was used in support.

15.2 The Complainants have the following issues with the Tshikalange Affidavit:-

15.2.1 Ms Takalani Tshikalange *"purportedly made various claims that directly contradict her earlier statement ... made to the South African Police Services"* (emphasis added);

15.2.2 Attorney Louw says:-¹¹

"24 On an inspection of the Tshikalange Affidavit we found the signature of Ms Tshikalange suspect. The following was found:-

9 Paragraph 20, page 313 of the bundle

10 Pages 325 to 332 of the bundle

11 Pages 314 and 315, paragraphs 24; 25 and 26 of the bundle

24.1 *The signatures on the Tshikalange Affidavit and the Tshikalange Statement are on the face of it significantly different.*

2.4.2 *The content of the Tshikalange Affidavit and the Tshikalange Statement are irreconcilable.*

2.4.3 *On the Tshikalange Affidavit the pages other than the signature page are initialled with the initials in print form TT. [The relevance of this manner of initialling will become apparent when I address the complaint in 40 below]*

25 *Joseph informs me that Tshikalange has, in an interview, denied that she signed the Tshikalange Affidavit. On 16 and 18 March 2020 I contacted Tshikalange's attorney, Moleko Ratau, of Johannesburg. He told me that his client is not the person who deposed to an affidavit in support of Ramulifho in December 2018. However, numerous subsequent attempts to obtain further confirmation from Mr Ratau remain unanswered. I attach hereto a transcript of a WhatsApp conversation between Joseph and Tshikalange on 8 October 2019, marked JFL*

25 *In the circumstances, we believe that:*

26.1 *The Tshikalange Affidavit was not signed by Tshikalange and is a forgery.*

26.2 *The statements made by Ramulifho in the Founding Affidavit under oath relating to the Tshikalange Affidavit are false and made by Ramulifho knowing that they were false."*

15.3 **My concerns with the Complainants' allegations regarding the Tshikalange Affidavit are the following:-**

15.3.1 **Contradictory Statements**

What proof is there that the Respondent confirmed the correctness of falsehoods in the Tshikalange Affidavit knowing them to be false?

15.3.2 Signatures

15.3.2.1 do any of the Complainants hold any qualifications or experience in document examination sufficient to render credibility to the allegation that Ms Tshikalange signatures are suspect?

15.3.2.2 my personal experience is that even today there are many clients who sign affidavits by appending thereon their initials - the Complainants' averment to the contrary needs merely to be stated to be rejected.

15.3.3 Denial by Ms Tshikalange and her Attorney, Mr Moleko Ratau

The allegations in this regard

"Joseph informs me that Tshikalange has, in an interview, denied that she signed the Tshikalange Affidavit. On 16 and 18 March 2020 I contacted Tshikalange's attorney, Moleko Ratau, of Johannesburg. He told me that his client is not the person who deposed to an affidavit in support of Ramulifho in December 2018"

may very well be true but with reasonable and credible verification absent, the allegations are hearsay and cannot with any degree of comfort be relied upon.

15.3.4 Moreover the allegations that *"The Tshikalange Affidavit was not signed by Tshikalange and is a forgery"* and *"The statements made by Ramulifho in the Founding Affidavit under oath relating to the Tshikalange Affidavit are false and made by Ramulifho knowing that they were false"* are allegations and need to be tested by an authority other than the LPC to have any value for purposes of determining whether or not there is misconduct on the part of the Respondent.

15.4 In the result I cannot accept the Complaint in so far as it relates to Tshikalange

Affidavit not only because it is inadequately presented but also because it lacks reasonable and credible verification. As stated above, accepting the allegations as presented would be speculative and prejudicial to the Respondent.

16 The Interdict Application

16.1 Relative to the Interdict Application, the Respondent filed:-

16.1.1 a founding affidavit dated 26 March 2019¹²

16.1.2 a replying affidavit in replication to:-

16.1.2.1 the answering affidavit of Joseph and Ground Up; and

16.1.2.2 Joseph's supplementary answering affidavit.

16.2 It is in regard to the affidavits filed by the Respondent in the Interdict Application that the Complainants are aggrieved about. Attorney Louw says:-

16.2.1 *"This complaint relates to what my clients and I believe to be fraudulent documents created by and perjury committed by Ramulifho, in the Interdict Application. In some instances, our complaint is based on strong suspicion. In other instances, the probabilities of fraud and perjury are overwhelming. I will highlight each instance separately."*¹³

16.2.2 *"The complaints all relate to, what Joseph, Geffen and I believe to be, false statements in the Founding Affidavit, the First Reply and the Second Reply, as well as falsified documents annexed to the affidavits and confirmed by Ramulifho under oath as the truth. Over and above the false statements and fraudulent documents, we also allege that Ramulifho has falsified or caused to be falsified an affidavit by Etienne Naude, a senior attorney of Pretoria ("the Naude Affidavit")." (emphasis added).*¹⁴

¹² Paragraph 20, page 313 of the bundle

¹³ Paragraph 8, page 310 of the bundle

¹⁴ Paragraph 16, page 312 of the bundle

16.3 This part of the Complaint is thus based on the version of the Respondent relative to the Interdict Application which, in the belief of the Complainants, constitutes an intentional falsehood uttered under oath.

16.4 Once again there is no judicial scrutiny or reasonable credible verification that would remove the allegation from the realm of speculation.

17 Proof of Re-payment of R264 240.34 and R271 000.00

17.1 As stated above, using Denzhe's money would be contrary to the provisions of the NPO Act. It matters not if it was a loan or not.

17.2 Whether or not the amounts advanced to Ocean Basket were repaid is a matter of fact which must be conclusively determined by an authority other than the LPC as it relates to private conduct. If the result of such testing supports the allegation of the Complainants that the Respondent swore to a falsehood, to then present the finding (supporting their allegations) to the LPC for investigation of possible misconduct on the part of the Respondent.

17.3 In so far as proof or the lack thereof of re-payment of R264 240.34 and R271 000.00 by the Respondent to to Denzhe I cannot accept the Complainants' version:-

"that Ramulifho committed an act of perjury by referring thereto in the Founding Affidavit and the First Reply;

that Ramulifho possibly committed the fraud, but probably associated himself with the fraud after the fraud was committed and thereby participated therein"

or the following submission "... that the overwhelming probabilities are that the two proofs of payment are falsified and accordingly:

that Ramulifho committed an act of perjury by referring thereto in the Founding Affidavit and the First Reply; and

that Ramulifho possibly committed the fraud, but probably associated himself with the fraud after the fraud was committed and thereby participated therein."

18 **The FNB Bank Statement**

The problems set out above (in regard to Proof of Re-payment of R264 240.34 and R271 000.00) also visits the allegations regarding the FNB Bank Statement and my comments are the same.

19 **The Naude Affidavit**

19.1 The Complainants allege:-

"Ramulifho refers to and attaches ... an affidavit which purports to be an affidavit of senior Pretoria Attorney and Conveyancer, Etienne Naude.

He refers to Naude in paragraphs 17.2 and 33.2.1 of the Second Reply and claims that Naude confirms the facts that he attests to in these paragraphs.

...

On Friday 13 March 2020 I called Naude and asked whether he indeed signed LR 2. He had no knowledge of the matter and asked to look at the document. He called me on Monday 16 March 2020 to confirm that the signature on the affidavit was not his and that he did not depose to the affidavit. He further confirmed that the facts claimed by Ramulifho about the payment in the Second Reply, insofar as they relate to him, were not true. His sole involvement with Ramulifho was to act as transferring attorney on behalf of a certain Dr Nel in a property transaction in 2016.

The facts alleged by Ramulifho in paragraphs 17.2 and 33.2.1 are accordingly wilfully fabricated and perjurious.

Following the discussion with Naude, on Tuesday 17 March 2020, I called Werner Pretorius, the commissioner of oaths for the Naude Affidavit. I also sent a copy of LR 2 to him. He confirmed that Naude never appeared before him on 5 March 2020, or otherwise in relation to the Interdict Application. He said he would have recalled it if Naude had appeared before him as a deponent. ...

LR 2 is a fraud and produced solely with the view to support perjurious claims, to mislead the court and, in all likelihood, an attempt to conceal another crime involving dishonesty."

19.2 The allegations regarding the Naude Affidavit are particularly serious which can be determined by the LPC. In the form presented however, without reasonable confirmation or verification by Attorney Naude, the allegations constitute hearsay and to accept them as presented would be speculative and injurious to the Respondent.

20 It is my charge to investigate the complaint and to express whether or not on the basis of available *prima facie* evidence the Respondent:-

20.1 is guilty of misconduct;

20.2 the Complaint should be dismissed on the grounds that the conduct in question does not necessarily warrant misconduct proceedings in which event I must dismiss the Complaint and inform the Council of the LPC, the Complainant and the Respondent of my decision and the reasons for it. In this regard, and without limiting the discretion of the investigating committee, the following may be grounds for determining that the conduct in question does not warrant misconduct proceedings:-

20.2.1 that the Respondent is not guilty of misconduct; or

20.2.2 that the Respondent has given a reasonable explanation for his or her conduct; or

20.2.3 that the conduct of which the Respondent may be guilty is of an inconsequential nature; or

20.2.4 that there is no reasonable prospect of success in preferring a charge of misconduct against the Respondent;

20.2.5 that the Complaint is vexatious or that in all the circumstances it is not appropriate to charge the Respondent with misconduct.

21 I read the entire bundle including the Respondent's answer. Because of the serious flaws in the Complaint, it is unnecessary to deal with the Answer in any detail.

22 I am reminded that the onus is on the Complainant to tender evidence sufficient to


persuade this Committee that a subsequent tribunal might or could reasonably find for the Complainant - refer *De Klerk v Absa Bank Ltd and Others*.¹⁵

23 In accordance with the provisions of Rule 40, I considered the Complaint, the Respondent's answer thereto and further documents submitted and am of the opinion that the Complaint be dismissed on the grounds that the conduct in question does not necessarily warrant misconduct proceedings on the following grounds:-

23.1 that the Respondent is not guilty of misconduct;

23.2 that the Respondent has given a reasonable explanation for his conduct;

23.3 that there is no reasonable prospect of success in preferring a charge of misconduct against the Respondent.



Mr Y Mayet

13th October 2020