Source: Law Reports Series/All South African Law Reports/Law Reports/1997/Volume 2/Society of Advocates of Natal and the Natal Law Society v Merret [1997] 2 All SA 273 (N)

Society of Advocates of Natal and the Natal Law Society v Merret
[1997] 2 All SA 273 (N)

Division:	Natal Provincial Division
Date:	7 March 1997
Case No:	2716/96 & 2970/96
Before:	Howard JP and Levinsohn J
Sourced by:	A Van Zÿl SC and RJ Seggie

• Editor's Summary • Cases Referred to • Judgment •

Attorneys – Right of Appearance in Courts Act 62 of 1995 – Section 5(1) – Right of appearance in High Court and as an attorney – Attorney deliberately misleading a High Court in a divorce action – Attorney not a fit and proper person to have the right to appear before the High Court or to remain on the roll of attorneys.

Attorneys – Standard of conduct applicable to advocates also applicable to attorneys – Requirement that advocates should be honest and truthful in their dealings with each other and the court applied equally to attorneys – "The proper administration of justice could not easily survive if the professions were not scrupulous of the truth in their dealings with each other and with the Court".

Attorneys – Striking off – Attorney deliberately misleading a High Court in a divorce action – Court finding that it could never implicitly trust or believe what the attorney told it from the bar, even though he protested that he had learnt his lesson and would never repeat his "error".

Civil procedure – Consolidated application by Law Society and Society of Advocates – Attorney deliberately misleading a High Court in a divorce action – Attorney not a fit and proper person to have the right to appear before the High Court or to remain on the roll of attorneys.

Editor's Summary

The Respondent, an attorney, had represented a plaintiff in a divorce action. The client's husband's attorneys indicated that they intended to defend the matter. The Respondent, however, at some stage set the action down for hearing on the unopposed roll. He also launched an application in terms of Rule 43 of the Uniform Rules of the Supreme Court for interim maintenance and a contribution towards costs. When the divorce action was heard, the Respondent informed the court that the defendant's attorneys had been notified that the matter was proceeding on an unopposed basis – in fact the said party was unaware of the same. The court granted a divorce order and the Respondent telefaxed a copy thereof to the defendant and demanded payment of the maintenance provided therein. The defendant subsequently applied for and was granted a rescission of the divorce order.

In a consolidated application, the Society of Advocates of Natal sought an order in terms of section 5(1) of the Right of Appearance in Courts Act 62 of 1995 for the withdrawal of the Respondent's rights of appearances in the High Court, and the Natal Law Society sought an order that the Respondent's name be struck-off the roll of attorneys, notaries and conveyancers. The application was based on the allegations that, in the divorce action, the Respondent had deliberately misled the court, and was therefore not a fit and proper person to appear in the High Court or to practise as an attorney. The Respondent denied that he had deliberately or dishonestly misled the court.

Held – The Court considered whether or not the Respondent was a fit and proper person to have the right to appear before it or to remain on the roll of attorneys. The Respondent, pursuant to an order in terms of Rule 6(5)(*g*) of the Uniform Rules of the Supreme Court, was cross-examined on the questions whether he: (i) had deliberately misled the High Court, and (ii) believed that the defendant's attorneys had known that the divorce was proceeding on an unopposed basis.

In the Court's view, the Respondent "made a patently dishonest attempt to excuse his misleading reply on the basis that he did not fully understand the question or appreciate its significance. The Respondent, as an attorney with years of experience involving divorce work, would have often heard judges asking whether the other party's attorneys had been notified of the unopposed divorce date, so as to ensure that the lack of opposition was not due to inadvertence or error.

The Court held that the Respondent's evidence was evasive, inconsistent and thoroughly unsatisfactory. His alleged grounds for believing that the defendants' attorneys had known that the matter was proceeding were so implausible in the circumstances that the Court concluded that he did not honestly believe that to be the case. It was clear that he had misled the judge, and it was overwhelmingly probable that he did so deliberately.

The Court accordingly held that the Respondent was not a fit and proper person to have a right to appear before it or to remain on the roll of attorneys. In addition, the Court pointed out that the same standard was required in

relations between advocates and between advocates and attorneys – "the proper administration of justice could not easily survive if the professions were not scrupulous of the truth in their dealings with each other and with the Court". The Court, referring to the judgment of *Swain v Society of Advocates, Natal* 1973 (4) SA 784 (A), held that it could never implicitly trust or believe what the Respondent told it from the bar, even though he protested that he had learnt his lesson and would never repeat his "error". The requirement that advocates should be honest and truthful in their dealings with each other and the court applied equally to attorneys and, in view of the Respondent's demonstrable lack of integrity, the Court held that the Respondent's name should be struck from the roll of attorneys.

The application was granted.

Notes

For Civil Procedure, see *LAWSA* (Vol 3, paragraphs 1-768)

For the Right of Appearance in Courts Act 62 of 1995, see *Butterworths Statutes of South Africa* 1996 (Vol 1)

Cases referred to in judgment

("**C**" means confirmed; "**F**" means followed and "**R**" means reversed.)

Ex parte *Swain* 1973 (2) SA 427 (N) – **C**

Swain v Society of Advocates, Natal 1973 (4) SA 784 (A) – **F**

Judgment

Howard JP

In this consolidated application the Society of Advocates of Natal seeks an order in terms of section 5(1) of Act 62 of 1995 for the withdrawal of the respondent's rights of appearance in the High Court; and the Natal Law Society applies for an order that his name be struck off the roll of attorneys, notaries and conveyancers. Both applications are based on allegations to the effect that in a divorce action heard by Niles-Dunér AJ in the Durban and Coast Local Division on 28 March 1996 the respondent deliberately misled the court, and is therefore not a fit and proper person to appear in the High Court or to practise as an attorney.

It is not disputed that the respondent did mislead the court on the occasion referred to, but he denies that he did so deliberately or dishonestly. In order to decide that issue it is necessary to examine the history of the divorce action and the respondent's conduct in relation thereto in some detail.

The respondent acted for the plaintiff in the divorce action, Mrs Jennifer Horsley who was married in community of property to Dr Hilton Horsley, a medical practitioner who resides and practises at Port Shepstone. On 16 January 1996 the respondent issued summons on behalf of his client claiming a decree of divorce, custody of the minor child of the marriage, maintenance for herself at the rate of R6 500 per month, for the minor child at the rate of R1 000 per month together with all medical and educational expenses, and the appointment of a liquidator to liquidate and distribute the joint estate. The summons was served on 22 January 1996 and Dr Horsley instructed an attorney, Mr JM Murray of

Mooney Ford & Partners to represent him. Murray telephoned the respondent on 2 February to say that he would submit proposals for a settlement

of the action, and this was followed by his letter to the respondent dated 6 February, the body of which reads:

> "We write merely to confirm that Hilton Horsley has instructed us to act for him in this matter and to inform you that within the next ten days to two weeks we propose submitting a substantive settlement offer for your client's consideration.
>
> We confirm that as the summons was served on 22 January 1996, client has until 20 February 1996 to enter his appearance to defend, should it be necessary, as for some generous reason beyond our comprehension he was given 21 days within which to register his defence."

By letter dated 19 February, which the respondent received the next day, Murray submitted his client's settlement proposals. The net value of the estate was said to be R670 156 and Mrs Horsley was offered assets worth R304 000 plus maintenance at the rate of R3 000 per month for only twelve months. Dr Horsley conceded that his wife should have custody of the child and offered to pay her medical and related expenses, school fees and R700 per month for her maintenance. On 20 February the respondent discussed these proposals telephonically with Mrs Horsley who had by then moved to Cape Town. She rejected the offer out of hand and instructed him to set down the divorce action for hearing immediately, but he persuaded her to submit a counter offer. In a letter to Murray dated 27 February the respondent rejected Dr Horsley's offer of settlement and submitted a counter proposal to the effect *inter alia* that he pay his wife R300 000 in cash, provide her with a residence worth R250 000 and pay maintenance for her at the rate of R10 605 per month. He stated that his client required immediate payment of this maintenance failing which an application in terms of Rule 43 for interim maintenance and a contribution towards costs would be launched. He discussed this proposal telephonically with Mrs Horsley on 27 February and made a note of the conversation, which reads:

> "Att Jenny on tel. Went through settlement proposals with her. She said she was sure he would not accept and was a complete waste of time and wants to proceed to court immediately – no money and is tired of sleeping on the floor and sharing space with the children and living of charity of her brother who also has no money. Told her I had done Rule 43 which was on its way because even if I set it down – he would enter an appearance to defend and we should try and get interim maintenance as quickly as possible. Told her it would be at least a month before we got date on unopposed roll and told me to set it down immediately. She said she was going to tell Hilton that she and her children were desperate and that she wanted the divorce as quickly as possible and would not tolerate any further ducking and diving on his part."

The Rule 43 application was supported by an affidavit drafted by the respondent and sworn by Mrs Horsley, in paragraph 6 of which she stated that:

> "The Respondent' attorneys have indicated that they will be entering an appearance to defend. I have been advised that it will be some considerable time before the issue is settled and I will be entitled or (*sic*) receive my half share of the community estate and pending a Resolution of the matter, I am in need of maintenance for myself and the minor child."

On 28 February the respondent proceeded to set the action down for hearing on the unopposed roll. The date initially chosen was a public holiday but this was changed to 28 March and the respondent advised his client accordingly on

7 March. His note of that conversation records that Mrs Horsley said that she would make the necessary bookings but that she had no money and would have to telephone her husband "re money". In the meantime the Rule 43 application was launched on 12 March.

By letter dated 14 March, which the respondent received on 15 March, Murray rejected Mrs Horsley's settlement proposals in the following terms:

> "Our client has given his careful consideration to your letter of 27 February 1996.
>
> He regards your client's maintenance claim in respect of herself as outrageous in the extreme and has no intention of meeting same.
>
> It is noted that your letter makes no mention of her employment intentions.
>
> Our respectful suggestion is that your client bring a Rule 43 application and the sooner the better so that her claims

might be reduced to realistic and reasonable proportions."

On 25 March Mrs Horsley telephoned and spoke to the respondent's secretary, Mrs Ellis, who made the following note of the conversation:

"*25/3/96*

HORSLEY DIVORCE

Jenny tel. And wanted to know what was happening. She thinks Hilton is going to accept and let divorce go through. Worried about how she can afford airticket. Told her to ask her husband. She said travel agents were on her back and wanted to issue. I checked told her nothing had come in. She should however hold on with the issue until I get back to her."

The respondent testified that Mrs Horsley telephoned him on 26 March and that the following file note accurately reflects what she told him on that occasion:

"Jenny tel. She said she received a letter from the bank which says she cannot withdraw any more money as she is R12 000,00 overdrawn and hubby is not putting any money in her account. She said she tel. bank manager and asked him to release funds so that she could fly up to Durban and get divorced – he said he would have to tel. Hilton and discuss it with him. Hilton told bank manager that he was not prepared to pay for her to fly to Durban and would not authorise release of any further funds to her from bank account. He said he was insulted that he had to pay for her to come to Durban for the divorce. She says that Hilton is really trying to put boot in and that her friend Anita Hulley with whom she was going to be staying and who was going to Court with her. Tel her back and said that her husband (Calvin), after telling Hilton that Anita was going with her and that she was staying there, threw a complete wobbly and would not have her staying with them as he works with Hilton and would cause a terrible embarrassment to them. She was hoping after divorce his bitterness would not affect Megan as they should really stay friends for her sake. The bank manager said that she could pay for her airfare on her credit card. She says she has R100,00 left in cash. She does not know how she is going to feed her children."

Mrs Horsley flew to Durban for the undefended divorce and the respondent consulted with her before the hearing on 28 March. There had been no communication between the respondent and Murray since the letter dated 14 March, in which Murray had rejected Mrs Horsley's maintenance claim as "outrageous in the extreme" and had invited a Rule 43 application. The Rule 43 application had been served on Dr Horsley on 25 March.

When the matter was called the following exchange took place between the presiding judge and the respondent:

"MR MERRET: M'Lady, I appear in this matter.

NILES-DUNÉR AJ: Yes.

MR MERRET: After service of the summons the defendant contacted his attorneys who indicated they were going to defend the matter and they were going to make settlement proposals. I intend asking for the appointment of a liquidator. The settlement proposals came to nought. I ask leave to hand in the letter confirming that that was what was intended but there's been no appearance and no settlement has been achieved.

NILES-DUNÉR AJ: Yes, do the attorneys who are representing the defendant know the matter is going to proceed today on an unopposed basis?

MR MERRET: They know that we are proceeding. They have not filed an appearance."

The letter which the respondent handed in at that stage was Murray's first letter dated 6 February

In fact neither Dr Horsley nor his attorneys knew that the action had been set down for hearing on 28 March or that it would proceed on that day on an unopposed basis. The respondent telefaxed a copy of the divorce order to Dr Horsley on 29 March and demanded payment of the maintenance provided therein by 1 April 1996. He also arranged for an employee of the liquidator to arrive unannounced at Dr Horsley's consulting rooms to take possession of the estate pursuant to the order of court.

On 1 April 1996 Dr Horsley was granted a rule *nisi* calling upon Mrs Horsley to show cause against an order rescinding the decree of divorce, with costs against the respondent *de bonis propriis*. In an affidavit which was drafted by or on the advice of the respondent Mrs Horsley initially opposed the rescission, substantially on the ground that the applicant (Dr Horsley) knew that she was proceeding with the divorce action and was coming to Durban for the hearing. The respondent filed a supporting affidavit in which he sought to justify his conduct in setting down and proceeding with the divorce action on an undefended basis without further notice to Murray. His attitude at that stage, which is apparent from the affidavit and his letter to Murray dated 9 April annexed thereto, was that the grant of the order in the circumstances

described was not due to any fault of his, but was solely attributable to Murray's negligent failure to deliver notice of intention to defend timeously. His explanation for telling the judge that the defendant's attorneys knew that the matter was proceeding on 28 March on an unopposed basis was that:

(a) his client having informed him that Dr Horsley knew that she was proceeding with the divorce and was coming to Durban for the hearing, he "presumed" that Dr Horsley would have told his attorney as much; and

(b) he accordingly informed the presiding judge that Dr Horsley "and to my mind his attorneys" knew that the divorce was proceeding.

Of course the record of the proceedings on 28 March demonstrates that the respondent did not inform the presiding judge that Dr Horsley and presumably his attorneys knew that the divorce was proceeding. His reply to the judge's question conveyed, and could only have been intended to convey, that the attorneys actually knew that the matter was proceeding that day on an unopposed basis. Be that as it may, the divorce order was rescinded by consent and

the respondent eventually (on 5 June 1996) agreed to pay the costs of the application *de bonis propriis*.

By the time he came to deliver affidavits in opposition to the present application the respondent's attitude towards the conduct of litigation had changed somewhat, as is evident from paragraphs 9 and 10 of his affidavit in the application brought by the Society of Advocates:

"9. However, as time passed, I have come to look more critically at my own conduct. I now realise and fully accept that the approach I took was wrong. I think that a contributory factor was that my judgment was clouded by an approach which was (incorrectly) too formalistic. My approach was that if the Defendant had not entered an appearance to defend the Plaintiff was entitled to proceed on an unopposed basis. I was taught during my articles of clerkship and have consistently followed a formal basis to litigation on the basis that the action be conducted in the strict parameters of the Rules of Court. In the circumstances I have come to realise that the strictly formalistic approach should be tempered by having regard to the wider aspects of each particular case. I therefore did not give sufficient thought to the implications of an exchange of correspondence relating to settlement of the divorce which continued after the time of entry of appearance had expired.

10. I now fully also appreciate the importance, in circumstances such as those of the present case, of not merely informing the presiding judge of my conclusion but of setting out the underlying facts upon which I based my conclusion. I now also realise that in circumstances such as the present I should in any event have made a point of expressly notifying defendant's attorneys that the Plaintiff would be proceeding with the divorce on an unopposed basis."

In paragraph 50 of the same affidavit he said that based on what his client had told him telephonically before leaving Cape Town, together with what she told him in consultation prior to the hearing, he "believed that her husband knew that the divorce was proceeding and that his attorneys also knew." He added that it simply did not occur to him that the attorneys would not have known.

On 14 February 1997, pursuant to an order in terms of Rule 6(5)(*g*), the respondent presented himself for cross-examination on the question whether he deliberately misled Niles-Dunér AJ on 28 March 1996, and whether he believed that Murray knew that the divorce was proceeding on an unopposed basis on that date. He testified that his belief was based on the file note of the telephone call from Mr Horsley to Mrs Ellis on 25 March, on what his client told him telephonically on 26 March (as reflected in the file note of that date) and on what she told him in consultation on 28 March. The file notes of the telephone calls on 25 and 26 March afford vital corroboration of the respondent's evidence regarding the basis of his belief, but he failed to annex them to his affidavit in the rescission application or his affidavits in this application, and he had no explanation for the omission. This gave rise to the suspicion that these file notes may have been fabricated subsequently to the delivery of the affidavits, but I accept their authenticity. Taking them at face value, the information recorded could not possibly have convinced the respondent that Murray knew that the matter would proceed unopposed on 28 March. As at 25 March Mrs Horsley only *thought* that her husband was going to "accept and let the divorce go through." And the respondent's alleged belief that Dr Horsley knew

that the matter was proceeding on 28 March is said to have arisen from what Mrs Horsley said the bank manager said Dr Horsley had said when asked to provide funds for her to fly to Durban "for the divorce"; or from what Mrs Horsley said Anita Hulley said her husband said that he had told Dr Horsley about her staying with them and Anita accompanying her to court. Nowhere does the respondent say that he was told that Dr Horsley knew that the matter would be heard on 28 March. He did testify that when he consulted with his client on 28 March she said that she was pleased for the child's

sake that the matter was proceeding amicably, and thereby gave him to understand that it would not be opposed. But I cannot accept that he genuinely believed at that stage that Dr Horsley had capitulated to his wife's demands, for they had been poles apart and her claim for maintenance had been rejected as outrageous in the extreme two weeks earlier.

In none of his affidavits did the respondent suggest that he did not understand the import of the question

> "Yes, do the attorneys who are representing the defendant know the matter is going to proceed today on an unopposed basis?"

He could hardly have done so because he has more than 20 years' experience as an attorney, much of it involving divorce work, he had often heard judges asking this sort of question and knew that the reason for their doing so was to ensure that the lack of opposition was not due to inadvertence or error. He conceded all of this when cross-examined by Mr *Wallis* for the Society of Advocates, and yet he made a patently dishonest attempt to excuse his misleading reply on the basis that he did not fully understand the question or appreciate its significance. The record has been transcribed and the passage in question is the following:

> "Now why did you answer in that way? --- Well I knew from Mrs Horsley, what she told me, that she was satisfied that her husband knew that the divorce was proceeding. I didn't in fact have direct knowledge as to whether the attorneys knew, and my answer was incorrect. I should have stated that I did not have direct knowledge that the attorneys ... (intervention)
>
> **HOWARD JP** Well did you say you didn't have direct knowledge that the attorney knew, did you have indirect knowledge that the attorney knew? --- M'Lord I presumed with Dr Horsley ... (intervention)
>
> I asked you whether you had indirect knowledge. You know what I mean. --- Other than – no.
>
> No? Your answer is no? --- No.
>
> And the question that Niles-Dunér AJ asked you, just remind me what it was. --- Sorry, 'Yes, do the attorneys who are representing the defendant know the matter is going to proceed today on an unopposed basis?'
>
> Yes now that question related to the knowledge of the attorneys? --- Yes.
>
> Not the plaintiff or the defendant? --- That's correct, M'Lord.
>
> Did you understand it to relate to the attorneys? --- M'Lord, looking at it now I do. At the time I had in my mind that my client knew and I had presumed that the attorneys knew, but the answer is wrong.
>
> Mr Merret, the question I asked you is a simple one. Did you understand at the time that question was posed, that she was – the learned Judge was referring to the attorneys, the knowledge of the attorneys? --- M'Lord, I didn't listen to the question correctly and I didn't respond correctly to the question.

> Are you prepared to answer my question? --- M'Lord, I know that it related to the attorneys.
>
> You say now you know it related to the attorneys. I asked you whether you understood it to relate to the attorneys and you know very well that that refers to the time the question was posed. --- M'Lord, at the time I didn't.
>
> You didn't understand it was relating to the attorneys? --- M'Lord, at the time that the question was asked, I did not fully appreciate the significance of the question.
>
> You say you didn't fully understand that it related to the attorneys? --- Well M'Lord, my knowledge only came from my client and I knew – and if I had stopped and focused correctly I would have known that I didn't – that the attorneys did not know.
>
> Mr Merret, we're talking now about your understanding, not of what your client told you, but your understanding of what the Judge asked you. When she said, 'Yes, do the attorneys who are representing the defendant know the matter is going to proceed today on an unopposed basis?', did you understand that she was asking you whether the attorneys knew, or whether somebody else might know? --- M'Lord, she was asking about the attorneys.
>
> Did you understand that at the time? --- Yes, M'Lord, and – but I also understood it to relate to both Dr Horsley and to the attorneys.
>
> Yes, and your answer when you said, 'They know that we are proceeding, they have not filed an appearance', who were you referring to? --- M'Lord, I was referring to the defendant and his attorneys generically. I didn't separate the defendant and the attorneys in my mind."

That evidence was evasive, inconsistent and thoroughly unsatisfactory. Having regard to the context in which it was

posed the respondent could not have misunderstood the question or its import or significance. He had been astute to inform the judge that no settlement had been achieved, that the defendant's attorneys were aware of the date by which a notice of intention to defend had to be delivered and that none had been delivered. By his lights he was perfectly entitled to obtain the order his client wanted that day, but he had refrained from telling Murray what was going on behind his back and must have realised that if Murray was notified he would almost inevitably take steps to rectify his omission to deliver a notice of intention to defend. On his own showing the respondent expected a notice of intention to defend after the settlement negotiations broke down, and his clerk was sent on 26 March to check that no such notice had been filed at court. According to the respondent this was a routine procedure, and when he went to court on 28 March he duly noted that no notice of intention to defend had been filed. His explanation for not asking Murray whether he was defending the action was the following:

> "Why didn't you phone Mr Murray and ask? --- Well at that stage I had understood from my client in her discussion with Hettie Ellis, that her husband wasn't going to defend it.
>
> Based on her discussions with the bank manager? --- Well on whatever it was based on, I don't know. I just saw the note, I don't know what it was based on, that discussion."

The question posed by Niles-Dunér AJ was an awkward one for the respondent to answer truthfully. He was under pressure from his client who was insisting on a quick divorce and had spent money she could ill afford in flying to Durban for the hearing that day. He had sedulously refrained from giving Murray notice of

the hearing and knew that if he was forced to do so at that stage there was little chance of the action proceeding on an undefended basis. His alleged grounds for believing that Murray knew that the matter was proceeding that day are so implausible in the circumstances that I am driven to the conclusion that he did not honestly believe that to be the case. The truthful answer to the judge's question was "I don't know" but he knew that such an answer would almost certainly derail the proceedings and deprive his client of the considerable advantage of a divorce order on her terms. He was not prepared to do that but he shrank from telling the outright, unequivocal lie which the answer "Yes" would have conveyed. Given his tough approach to the conduct of litigation within the strict parameters of the rules, he may have reasoned that having failed to deliver the notice of intention to defend timeously or at all Murray knew or ought to have known that he would proceed on an undefended basis, which would explain the somewhat obscure reply "They know we are proceeding. They have not filed an appearance." It is unnecessary to determine his thought processes with any greater precision, for it is clear that he misled the judge to accept that the defendant's attorneys knew that the matter would proceed that day on an unopposed basis, and it is overwhelmingly probable that he did so deliberately. I am also satisfied that his evidence in this court regarding his understanding of the judge's question, and his alleged belief that Murray knew the matter was proceeding on 28 March, was deliberately untruthful.

It follows, in my judgment, that the respondent is not a fit and proper person to have the right to appear in this court or to remain on the roll of attorneys. Cf. *Ex parte Swain* 1973 (2) SA 427 (N) in which an application for admission as an advocate failed because of the applicant's "reckless inaccuracy under oath"; his "inability or reluctance to tell the truth even when giving evidence under oath"; and the fact that he "had no sense of responsibility towards the truth". At 434H James JP said:

> "Furthermore, it is of vital importance that when the Court seeks an assurance from an advocate that a certain set of facts exists the Court will be able to rely implicitly on any assurance that may be given. The same standard is required in relations between advocates and between advocates and attorneys. The proper administration of justice could not easily survive if the professions were not scrupulous of the truth in their dealings with each other and with the Court. The applicant has demonstrated that he is unable to measure up to the required standard in this matter."

That judgment was upheld on appeal *sub nom. Swain v Society of Advocates, Natal* 1973 (4) SA 784 (A). It is worth quoting from the argument of counsel for the respondent in that appeal (at 786):

> "The appellant's lack of truthfulness, apart from anything else, is a fatal barrier to his admission as an advocate. The simple fact seems to emerge that, if the appellant were admitted, the Court could never implicitly trust in or believe what it was told by him from the Bar."

After his performance before Niles-Dunér AJ on 28 March 1996 and in this court on 14 February 1997, I could never implicitly trust in or believe what the respondent told me from the bar, notwithstanding his protestations that he has learnt his lesson and will never repeat what he chooses to call his "error".

The requirement that advocates should be honest and truthful in their dealings with each other and the court applies equally to attorneys. (See Lewis, *Legal Ethics* (1982) at 11-12). In view of his demonstrable lack of integrity I consider

that the respondent's name should be struck from the roll of attorneys. Mr *Gautschi* who appeared for him did not suggest that any less drastic order would be appropriate in the event of a finding that he had deliberately misled the court. The thrust of Mr *Gautschi's* argument was that the respondent's conduct was careless, silly, unprofessional and totally wrong but not dishonest, and it was only on that basis that he submitted that the proper remedy was disciplinary proceedings before the Law Society rather than a striking-off.

In the result the following orders are made:

(a) The respondent's right of appearance in the High Court is withdrawn in terms of section 5(1) of Act 62 of 1995.

(b) The respondent is ordered to pay the costs of the Society of Advocates of Natal in Case No. 2716/96 and the consolidated application, such costs to include the costs consequent upon the employment of two counsel and to be taxed on the attorney and client scale.

(c) The respondent's name is struck off the roll of attorneys, notaries and conveyancers of this Court, and the Natal Law Society is granted the further orders set out in paragraphs 2 to 11 (inclusive) of the order prayed in the notice of motion in Case No. 2970/96.

Levinsohn J

I agree.

For the Society of Advocates of Natal:

MJD Wallis SC and *LB Broster* instructed by *Stowell & Company Incorporated*, Pietermaritzburg

For the Natal Law Society:

AJ Dickson SC instructed by *Austen Smith (Incorporated with Smythe & Company)*,

For the respondent:

JR Gautschi SC instructed by *Mason Weinberg Incorporated*, Pietermaritzburg