

SOUTH AFRICA / JUDGMENT

**Alves and Others v Legal Practice Council
(7528/19; 6990/19; 6541/19; 6661/19; 6900/19;
3043/19; 6155/19; 6156/19; 6845/19) [2019]
ZAWCHC 96; 2019 (6) SA 18 (WCC) (31 July 2019)
[2019] ZAWCHC 96**

COURT

Western Cape High Court, Cape Town

BEFORE

Hlophe, Baartman

CASE / FILE NUMBER

7528/19; 6990/19; 6541/19; 6661/19; 6900/19;
3043/19; 6155/19; 6156/19; 6845/19

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No.: 7528/19; 6990/19; 6541/19; 6661/19; 6900/19; 3043/19; 6155/19
6156/19; 6845/19

In the matter between:

Reeva Joy Alves and Eight Similar Cases v Legal Practice Council

Date: 31 July 2019

REASONS

FOR THE ORDER MADE ON 21 JUNE 2019

HLOPHE, JP

- [1] On the 7 June 2019 Madam Justice Baartman and I heard unopposed admission applications in open court. Matters number 1 to number 9 on the roll were all opposed. Accordingly we directed that the applicants in those matters would not be admitted. Counsel in those matters were asked to prepare and file two sets of papers and heads of argument for the court. The applicants were furthermore advised by the registrar that they would not be admitted on the 7 June 2019 because their applications were opposed by the Legal Practice Council. In all the other matters before us on 7 June 2019 applicants were admitted as legal practitioners and immediately enrolled as either advocates or attorneys. In view of the

urgency of the matter, we decided that the matter should be fully argued and decided as quickly as possible before the next round of admissions on 02 August

2019. All the 9 matters were heard together on 21 June 2019. Thereafter an order was made directing the South African Legal Practice Council to remove each of the Applicants from the roll of attorneys and enrol each of the Applicants to the roll of advocates. We indicated that the reasons for granting that order would follow.

[2] Briefly stated, the facts giving rise to these applications were that in all the matters before us, the applicants wanted to have their names removed from the roll of attorneys and be enrolled as advocates. The central issue for determination by this court is whether the applicants, all being admitted legal practitioners and enrolled as attorneys, are entitled to rely on section 115 of the Legal Practice Act 28 of 2014 (LPA) to be enrolled by the Legal Practice Council as Advocates of the High Court. All of them have successfully undertaken practical training as candidate attorneys, passed board examinations, and found to be fit and proper by the High Court. The applicants submit that they are entitled to rely on section 115 of the LPA read with the recent decisions of *Ex parte Goosen* 2019 (3) SA 489 (GJ) (a full bench decision) and *Ex parte Bakkes* 2019 (2) SA 486 (ECG). The respondent on the other hand submits that the conversion mechanism in section 32 of the LPA should be utilised by the applicants and not section 115 of the LPA, because section 115 only applies to people or applicants who have never been admitted as legal practitioners before.

[3] Section 32 of the LPA is the new mechanism with which Legal Practitioners could convert from being enrolled as attorneys to advocates or vice versa and it states;

“32 Conversion of enrolment

- (1) (a) A legal practitioner may, at any time, as determined in the rules and upon payment of the fee determined by the Council in the rules, apply to the Council to convert his or her enrolment as an attorney to that of an advocate and vice versa.
- (b) An advocate practising as such referred to in section 34 (2) (a) (i) may, at any time, as determined in the rules and upon payment of the fee determined by the Council in the rules, apply to the Council for the conversion of his or her enrolment to that of an advocate practising as such referred to in section 34 (2) (a) (ii) and vice versa.
- (2) The Council may impose any conditions as it considers appropriate to give effect to the conversion and the provisions of this Act relating to enrolment.
- (3) The Council may make rules setting out the circumstances under which a legal practitioner can apply for the conversion of his or her enrolment and any requirements such legal practitioner must comply with.”

However at this moment the applicants cannot apply for conversion under section 32 because firstly they are required to undergo a specialized training course in advocacy and there is no course available in Cape Town. Secondly, and in any event not all of the applicants have rights of appearance in the High Court as required by section 25(3) of the LPA.

[4] Section 24(1) of the LPA provides that:

“24. Admission and enrolment.—(1) A person may only practise as a legal practitioner if he or she is admitted and enrolled to practise as such in terms of this Act.

- (2) The High Court must admit to practise and authorise to be enrolled as a legal practitioner, conveyancer or notary or any person who, upon application, satisfies the court that he or she —
- (a) is duly qualified as set out in section 26;
 - (b) is a—
 - (i) South African citizen; or
 - (ii) permanent resident in the Republic;
 - (c) is a fit and proper person to be so admitted; and
 - (d) has served a copy of the application on the Council, containing the information as determined in the rules within the time period determined in the rules.”

[5] Section 26(1) of the LPA provides:

“26. Minimum qualifications and practical vocational training.—(1) A person qualifies to be admitted and enrolled as a legal practitioner, if that person has—

- (a) satisfied all the requirements for the LLB degree obtained at any university registered in the Republic, after pursuing for that degree—
 - (i) a course of study of not less than four years; or
 - (ii) a course of study of not less than five years if the LLB degree is preceded by a bachelor's degree other than the LLB degree, as determined in the rules of the university in question and approved by the Council; or
- (b) subject to section 24 (2) (b), satisfied all the requirements for a law degree obtained in a foreign country, which is equivalent to the LLB degree and recognised by the South African Qualifications Authority established by the National Qualifications Framework Act, 2008 (Act No. 67 of 2008); and
- (c) undergone all the practical vocational training requirements as a candidate legal practitioner prescribed by the Minister, including—

- (i) community service as contemplated in section 29, and
- (ii) a legal practice management course for candidate legal practitioners who intend to practise as attorneys or as advocates referred to in section 34 (2) (b); and
- (d) passed a competency-based examination or assessment for candidate legal practitioners as may be determined in the rules.”

[6] Section 3(1) of the Admission of Advocates Act 74 of 1964 (the AAA), which has been wholly repealed by the LPA, provides:

“3. Admission of persons to practise as advocates.—(1) Subject to the provisions of any other law, any division shall admit to practise and authorize to be enrolled as an advocate any person who upon application made by him satisfies the court—

- (a) that he is over the age of twenty-one years and is a fit and proper person to be so admitted and authorized;
- (b) that he is duly qualified;
- (c) that he is a South African citizen or that he has been lawfully admitted to the Republic for permanent residence therein and is ordinarily resident in the Republic;
- (d) in the case of any person who has at any time been admitted to practise as an attorney in any court in the Republic or elsewhere, that his name has been removed from the roll of attorneys on his own application; and
- (e)”

[7] Section 115 LPA provides:

“115. Persons entitled to be admitted and enrolled as advocates, attorneys, conveyancers or notaries.—Any person who, immediately before the date referred to in section 120 (4), was entitled to be admitted and enrolled as an

advocate, attorney, conveyancer or notary is, after that date, entitled to be admitted and enrolled as such in terms of this Act.”

[8] What is envisioned by the LPA was well put in Goosen at para 9 where the court stated that:

“The objective and the effect of the LPA is deliberately to revolutionise the regulation of the South African Legal Profession. The LPA regime is a stark contrast from the two former regimes which were distinctly asymmetrical. The gateway to admission as an advocate was section 3 of the AAA. The gateway to admission as an attorney was section 15 of ATT. Each section provided for admission to practice "on application", but the criteria were different. The material attributes alone are addressed in this judgment. To satisfy the requirements of section 3 of AAA a person had to be 21 years of age, possess an LLB degree and be of good character (ie, to be fit and proper). Significantly, no vocational training or in - service training was required. By contrast, to satisfy the requirements of section 15 of the ATT a person had to be 21 years of age, possess an LLB degree, be of good character and

furthermore, serve a prescribed period of articles and pass an examination in prescribed subjects. The LPA unambiguously prescribes vocational training as a sine qua non for admission to practice and unequivocally repudiates the anomaly that has existed in respect of advocates under the repealed AAA regime, in terms of which advocates, unlike attorneys, could be unleashed on the litigating public, bereft of any vocational training whatsoever. Thus, an unpalatable anachronism has been extinguished.”

- [9] Roberson J in the Bakkes matter held that section 115 should be interpreted to mean what it says, namely persons who qualified for admission and enrolment under the old Act prior to 1 November 2018 are entitled to be admitted and enrolled as advocates. Furthermore her ladyship stated at para 12 that:

“To require such a person to satisfy the requirements of the old Act and the LPA in order to be admitted, would unfairly require such persons to be dually qualified, and would negate the provision in the section that they are entitled to be admitted if they were so entitled prior to November 2018”

- [10] At all times it is imperative to interpret legislation in a sensible, business-like manner and take into account both the text and the context. One must look to promote the spirit, purport and objects of the Bill of Rights as enshrined in the Constitution. It is also trite that there is a presumption in our law that legislation should not be interpreted as having a retrospective effect, unless the contrary intention is clear. In the absence of such a clear intention, an individual’s rights must be preserved by new legislation. See *S v Mhlungu And Others*

[1995] ZACC 4; 1995 (3) SA 867 (CC) para 65, *Cape Town Municipality v F Robb & Co Ltd* 1966

- (4) SA 345 (C) at 351, per Corbett J and also see *Shewan Tomes & Co Ltd v Commissioner of Customs and Excise* 1955

- (4) SA 305 (A) at 311H, per Schreiner ACJ. Surely in my view this is precisely what section 115 of the LPA seeks to achieve. There is in my judgment no ambiguity in section 115 of the LPA. Mr. Koen for the respondent, argued that the facts in the Goosen and the Bakkes cases should be distinguished from the current matter, because in those two matters the applicants were not yet admitted in the

profession. In the current case he argued, the applicants had already been admitted as attorneys and now seek to convert from being

enrolled as attorneys and to be admitted and enrolled as Advocates. Therefore, according to him, section 115 only applies to applicants

that are new in the profession and have never been admitted as legal practitioners. In this matter the applicants have already been admitted as attorneys and now want to convert and be admitted as advocates.

- [11] If one takes this argument to its logical conclusion it leaves those that have been in the profession as attorneys in a worse off position compared to new applicants who are fresh from University and can simply be admitted as legal practitioners and enrolled as advocates.

It must be noted that the LPC has not opposed the applications of other pupil members of the Cape Bar to be admitted as advocates who have not previously been admitted as legal practitioners, regardless of the fact that some of them have never completed any formal training to become advocates, nor have they written bar exams. Surely a situation of that nature is untenable and it could not have been the intention of the legislature to hinder or prevent the admission of trained and experienced legal practitioners in the profession. As we have said earlier, legislation cannot be interpreted to thwart people's rights. In actual fact its objective is to ensure that such experienced legal practitioners are retained in the profession. Which therefore means that section 115 of the LPA as a transitional provision could be used to good effect to ensure that those individuals are not lost in the profession.

- [12] Having read the documents filed of record and having heard counsel in the matter, we had no hesitation in granting the order referred to above, namely admitting the applicants as legal practitioners and ordering the LPC to enroll them as advocates.

HLOPHE JP

I AGREE

BAARTMAN J

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