

SOUTH AFRICA / JUDGMENT

Bakkes and Five Similar Cases (3211/18), Ex parte [2019] ZAECGHC 3; 2019 (2) SA 486 (ECG) (18 January 2019) [2019] ZAECGHC 3

COURT

Eastern Cape High Court, Grahamstown

BEFORE

M Roberson

CASE / FILE NUMBER

3211/18

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION, GRAHAMSTOWN

CASE NO: 3211/18

DATE HEARD: 11/12/2018

REASONS AVAILABLE: 18/01/2019

In the matters between

Ex parte DRIAN HENDRIK BAKKES and Five Similar Cases

REASONS

FOR ORDERS

ROBERSON J:-

- [1] On 11 December 2018 I granted orders in all the above matters admitting the applicants as advocates of the High Court of South Africa. I indicated that my reasons for granting the orders would follow which they now do.
- [2] Prior to the hearing of these cases, a judgment of the Gauteng Local Division, Johannesburg, was brought to my attention by the Secretary of the Eastern Cape Society of Advocates. This was the judgment delivered on 29 November 2018 in Ex Parte Goosen, case number 2018/36880 and seven other applications, in which the applicants sought their admission as advocates. All the applications were referred to the full court in terms of s 14 (1) (b) of the Superior Courts Act 10 of 2013.

[3] The referral arose from conflicting judgments in the Gauteng Local Division concerning whether or not persons who had obtained their LLB degrees prior to 1 November 2018 could be admitted as advocates without having achieved the minimum qualifications for admission and enrolment as provided for in the Legal Practice Act 28 of 2014 (the LPA), the remaining provisions of which came into operation on 1 November 2018 (with a few exclusions).

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

“(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:

“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 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, provided:

“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 3 (2) of the AAA provided for persons deemed to be “duly qualified”. These were persons who had satisfied all the requirements for the LLB degree after completing a period of study of not less than four years or satisfied other academic requirements set out in the subsection.

[8] In the judgment of the Gauteng Local Division, Modiba J, with Ramapuputla AJ concurring, pointed out the differences between the requirements in the two Acts, in particular the requirements for vocational training, a competency assessment or examination, and community service. Vocational training and an examination were only required for admission as a member of any of the Societies of Advocates.

[9] Modiba J referred to s 115 of the LPA which provides:

“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.”

Section 120 (4) provides for the coming into operation of the remaining provisions of the LPA.

[10] Modiba J stated as follows at para [8] of the judgment:

“It is unclear from [s 115]:

8.1 whether the applicants ought to be admitted even though they do not comply with the requirements of the [Legal Practice Act]; if so

8.2 whether the exemption from complying with the new admission requirements is available indefinitely to all applicants who were entitled to be admitted prior to 1 November 2018.”

[11] Modiba J expressed the concern that if both the above questions were affirmatively answered, the result would be a dual admission scheme, one for persons who obtained their LLB degrees prior to 1 November 2018, and the other for those who obtained their LLB degrees thereafter. Modiba J said it was doubtful, given that the LPA repealed the AAA, that the legislature intended to establish such a dual admission regime. It was therefore necessary, so he stated, to establish the meaning of this ambiguous legislation and a full court decision would bring about legal certainty regarding the admission requirements for those persons who obtained their LLB degrees prior to 1 November 2018.

[12] I am respectfully of the view that there is no ambiguity in s 115 of the LPA. It is clear from the section that persons who qualified for admission in terms of the AAA prior to 1 November 2018 are entitled to be admitted and enrolled as advocates. The reference to admission and enrolment “in terms of this Act” means in my view nothing more than that the LPA may be used as a vehicle for the admission of such persons, given that the AAA has been repealed. To require such a person to satisfy the requirements of the AAA 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 and enrolled if they were so entitled prior to 1 November

2018. This could not have been the intention of the legislature.

[13] A dual admission system is not in my view in conflict with the LPA. Section 115 clearly recognises different requirements for admission and enrolment prior to and from 1 November 2018 onwards. Such a system will in any event eventually disappear. More and more applicants will have obtained their LLB degrees from 1 November 2018 onwards, and the number of applicants who obtained their LLB degrees prior to 1 November 2018 will diminish.

[15] These were my reasons for granting the orders.

J M ROBERSON

JUDGE OF THE HIGH COURT

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