

SOUTH AFRICA / JUDGMENT

Jelal v South African Legal Practice Council (2367/2019P) [2022]

ZAKZPHC 3 (19 January 2022)

[2022] ZAKZPHC 3

COURT

Kwazulu-Natal High Court, Pietermaritzburg

BEFORE

Mngadi, Olsen

CASE / FILE NUMBER

2367/2019P

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IN

THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL

DIVISION, PIETERMARITZBURG

CASE

No: 2367/2019P

In

the matter between:

SHIREEN

JELAL APPLICANT

and

THE

SOUTH AFRICAN LEGAL

PRACTICE

COUNCIL RESPONDENT

ORDER

1. The

application for readmission as a legal practitioner (attorney) is dismissed

2. No

order as to costs.

JUDGMENT

Mngadi J: (Olsen J concurring)

- [1] The applicant seeks an order readmitting her to practice as a legal practitioner and having her name re-enrolled on the Roll of legal practitioners (attorneys). The application is not opposed.
- [2] The applicant is a former attorney. The respondent is the South African Legal Practice Council a body constituted in terms of the provisions of the Legal Practice Act No. 28 of 2014. (the LPA). The LPA is the successor to the KwaZulu-Natal Law Society established in terms of the repealed Attorneys Act 53 of 1979.(the repealed Act)
- [3] The applicant, having been admitted as an attorney in terms of s15 of the repealed Act in 1998, was struck off the roll of attorneys on 20 November 2007. She seeks re-admission contending that she is now rehabilitated and she is a fit and proper person to be re-admitted to practice as an attorney.
- [4] The LPA has no provisions regulating the re-admission of persons previously removed or struck off the roll. Section 24 of the LPA provides that the High Court must admit to practice and authorise to be enrolled any person who upon application satisfies the court that he or she is a fit and proper person to be so admitted. These provisions are construed as also setting criteria for an application for re-admission. The provisions of ss15(3) and 16 of the repealed Act provided that a court may, on application in accordance with the provisions of the Act, re-admit and re-enrol any person who was previously admitted and enrolled and has been removed from or struck off the roll as an attorney , if such a person in the discretion of the court is a fit and proper person to be re-admitted and re-enrolled and the court is satisfied that he has complied with the provisions stipulated for first admission. It follows that whenever a person is seeking admission whether for the first time or not, she must satisfy the court that, apart from satisfying other requirements, she is a fit and proper person to be admitted or re-admitted.
- [5] The South African Legal Practice Council is a statutorily created body. It stands in a position of authority of its members. It is bound by the law to oversee issues that affect the regulation of the profession of legal practitioners. At the core of it, is its disciplinary power over its members to ensure that proper standards of the practice of the profession for the benefit of the public, its members and the administration of justice are maintained.
- [6] For both re-admission and first admission the primary requirement is the same, however, the enquiry relating thereto

differs. On application for the first admission, conduct which could disqualify the applicant, was notionally the conduct of a person before he realised or fully realised the demands and the requirements of being a legal practitioner, and whether such conduct or propensity towards a particular conduct, is likely to affect him in a role, which he has never played. Whereas on re-

admission the Court is dealing with a person who, despite having served articles, taken an oath and practised, has behaved in such a manner as to have rendered him or her not fit and proper to remain on the Roll (Law Society , Transvaal v Behrman 1981

(4) SA 538 (A) at 540E-G).

[7] The court in deciding whether the person is a fit and proper person to be admitted as a legal practitioner, in the exercise of its inherent jurisdiction, conducts a factual enquiry. The onus is on the applicant to be discharged on a balance of probabilities that a person is a fit and proper person to be readmitted. The inherent jurisdiction entails regulating the conduct of the practitioners and prescribing the general lines within which they are to be permitted to exercise the privilege conferred upon them as legal practitioners. (See Behrman at 556/7). The profession is an honourable profession that demands high ethical standards. See Swartzberg v Law Society of Northern Provinces [2008] ZASCA 36; [2008] 3 All SA 438(SCA); 2008(5) SA 322 (SCA) at para [18]

[8] The person seeking re-admission must show that there has been a genuine, complete and permanent reformation on his/her part. He/she must demonstrate that the defect of character or attitude which led to his/her being adjudged not fit and proper no longer exists and that if he/she is re-admitted he/she will in future conduct himself/herself as an honourable member of the profession. He/she must show that he/she will be someone who can be trusted to carry out the duties of an attorney in a satisfactory manner. The idea is to protect the members of the public and the administration of justice by ensuring as far as possible that persons occupying offices of legal practitioners are fit and proper persons. (See Behrman at 557B-D)

[9] In Kudo v Cape Law Society 1972 (4) SA 342 (C) Van Winsen J stated (at 345H-346A):

‘ In considering whether this onus has been discharged the Court will have regard to the nature and degree of the conduct which occasioned

applicant’s removal from the Roll, to the explanation, if any, afforded by him for such conduct which might , inter alia, mitigate or even perhaps aggravate the heinousness of his offence, to his actions in regard to an enquiry into his conduct and proceedings consequent thereon to secure his removal, the lapse of time between his removal and his application for re-instatement, to his activities subsequent to removal, to the expression of contrition by him and its genuineness, and to his effort at repairing harm which his conduct may have occasioned to others.’

This approach was endorsed in Behrman at 557. In other words, the enquiry is whether the applicant has shown that he/she is now a person who can safely be trusted

faithfully to discharge all the duties and obligations appertaining to the profession of an attorney. The conduct of the applicant pre striking off from the Roll up to the launching of the application for re-admission is subject to scrutiny. See *Johannesburg Society of Advocates and Another v Nthai and Others* (879/2019; 880/2019) [2020] ZASCA 171; 2021 (2) SA 343 (SCA); [2021] 2 All SA 37 (SCA) (15 December 2020) at [18].

[10] The LPA refers also to the applicant satisfying the respondent whether he/she is a fit and proper person to be admitted. In *Behrman* at 557 it was held that it is not a condition precedent to re-admitting a person to practice that the Law Society should first

be satisfied as to his/her fitness to be re-admitted but the Court gives considerable weight to the views of the Law Society. In my view, the weight to be given to the attitude of the Law Society will be determined by the soundness of the reasons for its attitude.

[11] The applicant for re-admission, although citing the Law Society as an interested party, is seeking the relief from the court. He/she has a duty to act in good faith and to make disclosure of all material facts. If any material facts are not disclosed, whether they be wilfully suppressed or negligently omitted, the court may refuse to grant the relief. The test for re-admission is stricter than that for first admission. (See *Kudo v Cape Law Society* 1977(4) SA 659(A) at 676D)

[12] The facts in this matter are the following. The applicant was born in 1971. She completed matric in 1988. She obtained the degree of Baccalaureus Procuracionis (B. Proc.) in 1996. She served articles of clerkship for a period of two years. In 1998, she was admitted as an attorney and she commenced practising as such for her own account.

[13] The applicant states that in her practice she was extremely successful. She assisted the South African Human Rights Commission in their investigations. She was appointed as and acted as the Chairperson of the Rates Appeal Board for the Richmond Municipality. She was retained by the Richmond Municipality as its attorney. One of her clients until his death was the known Sifiso Nkabinde. She involved herself in the affairs of the Richmond area community. She also worked for the Truth and Reconciliation Commission as evidence leader.

[14] The applicant states that her mother who was 49 years old died on 10 May 2002 when she suffered a sudden heart attack. She had an extremely close relationship with her. The death of her mother devastated her. She crumbled emotionally. She neglected her duties as an attorney. She suffered from depression. She attempted committing suicide on ten (10) occasions. In 2004, she happened to see her medical file. It surprised her that it was so thick. It contained details of her treatment for depression. It dawned on her that she was on a road to self-destruction. She resolved to change her situation. She decided to seek professional help and she resolved to change. She consulted a psychiatrist, Dr Miseer. She was admitted as an in-patient for period of two (2) weeks. She remained under treatment until February 2005 when Dr Miseer advised her that she had fully recovered. The treatment helped her to be more rational, emotionally stable and to be focused. It assisted her to find herself

religiously and spiritually. She has never again thought of committing suicide. She has regain her zest for life and the ability to interact with both successes and challenges in life. The applicant attached a psychologist's report by Junica Ramsoorooj dated 28 July 2021. It indicated that the applicant was assessed in terms of her depression and levels of concentration. The report records that the psychologist

first saw the applicant in October 2019. The reason to see the applicant (states the report), was to assess her degree of depression (if any) to understand if her previous trauma were affecting her ability to make effective decisions and to evaluate whether she was eligible to be re-instated as a practising attorney. The report concludes that the assessment in 2019 and in July 2021 found that the applicant was not depressed and she had no other psychological issues that could affect her duties as an attorney. Junica's report is not of any value regarding what caused the applicant to carry out the offending conduct because she first saw the applicant on 3 December 2019. When she saw the applicant there was nothing wrong with the applicant. Concisely, there is no report by any expert attributing the conduct of the applicant to any extraneous factors at any point in time. It is significant that Junica in her report does not mention the applicant receiving any psychiatric or psychological treatment for depression in 2002 or 2003.

[15] The applicant states that her neglect of her duties as an attorney resulted in complaints lodged against her with the KwaZulu-Natal Law Society. She failed to respond to correspondence relating to the complaints. In addition, she

failed to properly attend to her practice as required. The Law Society instituted an investigation against her. On 10 May 2005, the Law Society applied for her name to be struck off the Roll of attorneys and that she be suspended from practice pending the striking off from the Roll. She communicated with the Law Society. She acknowledged her negligent conduct and she sincerely apologised. The Law Society accepted her explanation and it allowed her to practice only as a professional assistant with a firm of attorneys with its permission for a period of three (3) years. The strike off application was suspended.

[16] The applicant states that attorney Zane Haneef agreed to employ her as a professional assistant. On 28 March 2006, the Law Society granted permission to the applicant to be employed by Mr. Hannef. She commenced employment with Mr. Haneef. She dedicated herself to her duties and there were no complaints against her. However the problem was that in 2002 she had been involved in an incident that had not been resolved when she commenced her duties with Mr. Haneef.

The 2002 Incident

[17] The applicant states that in June 2003 she was arrested and criminally charged. She was charged with corruption, theft of a police docket and defeating the ends of justice. The charge of theft of a docket and that of defeating the ends of justice were withdrawn against her. On 30 January 2007, she pleaded guilty to the remaining charge of corruption. The court sentenced her to four (4) years imprisonment wholly suspended for a period of five

- (5) years on certain conditions. Some of the conditions were to pay fifteen thousand rand (R15 000) to SAPS Account Criminal Asset Recovery Account, and she was placed under house arrest and was ordered to do community service.
- [18] The applicant states that she immediately informed the Law Society of her conviction and sentence. She had initially informed the Law Society in 2003 when she was arrested but the Law Society decided to take no action against her because the criminal case was still pending against her. On 16 February 2007, Mr. Haneef too reported the applicant's conviction and sentence to the Law Society. Mr. Haneef having received no response from the Law Society terminated the employment of the applicant on 31 May 2007. The applicant then applied for her name to be removed from the roll of attorneys. The Law Society opposed her application and in turn, it applied that her name be struck-off the Roll. On 30 November 2007, the court struck-off her name from the Roll.
- [19] The applicant explains the background to the criminal charge against her as follows. Her old close friend Vishan Prakash Harrichand was employed as a State prosecutor at Pinetown Magistrate's Court. Harrichand referred five (5) accused charged with robbery to her. She accepted the instructions to represent the accused. She formed the view that the charges against the accused were not sustainable and she did not ask the accused for funds to cover for the trial. She made representations on behalf of the accused to the Senior Public Prosecutor for the charges to be withdrawn. The Senior Public Prosecutor refused to have the charges against the accused withdrawn. She informed the accused and she requested them to provide funds to cover legal fees for the trial. The accused told her that they needed to speak to Harrichand about the money.
- [20] The applicant explains that since Harrichand was away abroad she waited for him to return. Harrichand returned from abroad. Harrichand told her that he had advised the accused's family to pay twenty one thousand rand (R21 000) for him to arrange for the stealing of the police docket so that the charges would be withdrawn against the accused. He told her that the docket was stolen but the charges were not withdrawn because a duplicate docket was reconstructed. Harrichand told her that he was in trouble. The accused were demanding a refund and he did not have the money. Harrichand told her that the accused's family were making threats against his life. He asked her to lend him the money.
- [21] The applicant explains that she saw the accused's family making threats against Harrichand. She felt sorry for him and she agreed to assist him. She intervened between Harrichand and the accused's relatives. The accused's family agreed to accept a refund in weekly instalments of five thousand rand (R5 000). She drew an acknowledgement of debt for the parties and she was paid R2 000. Subsequently, the police raided her offices. She was arrested and charged together with Harrichand. Harrichand has since been admitted as an attorney. With her founding affidavit the applicant put up affidavits from two relatives of the five accused who were involved in the dealings with Harrichand. They are Khayelihle Michael Shoba and Innocent Sibusiso Khumalo.

- [22] Shoba in his affidavit explains that he began to know Harrichand in 2000 whilst Harrichand was a prosecutor at Hammarsdale. He paid Harrichand R500 and a case against him for unlawful possession of a firearm disappeared. In 2002, Harrichand requested him to liaise with the family of the five accused along the lines that payment of a sum of money would see the case against the accused disappear. He attended to that. Harrichand wanted R22 000 but the family of the accused raised and paid R15 000. When the matter was being remanded the applicant as an attorney for the accused was paid R500. He then received complaints that the case was not withdrawn. He told Harrichand to refund the money.
- [23] Khumalo in his affidavit explains that one of the arrested persons was his neighbour and he was keen to assist him. He learnt of the prosecutor in Pinetown who could arrange that the case disappear. He met the relatives of the other accused. The prosecutor told them to raise R25 000. He raised R7 000 and the others raised R8 000. They met with Harrichand and they gave him R15 000. After a week he and two others went to Harrichand at his office in Pinetown and they gave him R5 000. After about a week he gave R1 000 to Harrichand and he told him that they would not give him more money since the accused were still in custody.
- [24] Khumalo explains that at the beginning of 2003 Harrichand told them to get an attorney to apply for bail for the accused. The applicant was pointed out to them as the attorney to attend to the bail application for the accused. On three occasions when the accused were appearing in court, R500 was paid to the applicant. The court refused to release the accused on bail. The case was set down for hearing. They then decided to demand the refund of the money from Harrichand. Harrichand refunded R5 000. Thereafter the police arrested them.

Period after Struck Off from the Roll

- [25] The applicant states that after she was struck-off the Roll she relied on her relatives for financial support. In 2008, she started a business consultancy with Goodman Goqo. She wrote a letter to the Law Society advising that she was starting a business. They had agreed with Goqo relating to the sharing of fees. She realised after a period that Goqo was avoiding paying her share of the fees. She terminated the relationship with Goqo. She then depended again on her relatives for financial support. This situation, which was embarrassing to her continued until 21 May 2015 when her father passed away.

Bethlehem Conviction

- [26] The applicant states that on 16 February 2012 she was convicted in the Bethlehem Magistrate's Court for impersonating an attorney in contravention of s83(1) of the Attorneys Act No. 53 of 1979. She pleaded not guilty to the charge. The Court after hearing evidence convicted her. She was sentenced to pay a fine of R2 000. On 6 November 2017, the Bloemfontein High Court dismissed her appeal against both conviction and sentence. On 17 May 2018, the Supreme Court of Appeal refused her application for special leave to appeal.

- [27] The applicant explains the circumstances leading to her conviction and sentence by the Bethlehem Magistrate's Court as follows. She received a call from Adv. Dheoduth (her friend) that their friend, an attorney Naveen Govender, had briefed Dheoduth bail application for a relative of Naveen, one Morgan. Morgan was arrested at O.R. Tambo International Airport on a warrant issued by the Bethlehem Magistrate's Court. Dheoduth told her that Naveen was not available as he was in India. She agreed to assist. She phoned around and she could not find an attorney prepared to act as an instructing attorney because of the stipulation that Naveen would pay such attorney his fees only when Naveen returned from India. She told Dheoduth that she could not find any person.
- [28] She explains that after about three days Dheoduth told her that the application for bail for Morgan was done and it was refused. He had instructions from Naveen to bring a new bail application on new facts. Dheoduth requested her to research the merits of the matter. She agreed to assist Dheoduth as well as Naveen. She received the necessary documents from Naveen's office and she assisted Dheoduth. Dheoduth requested her to assist him with transport to Bethlehem. She drove with Dheoduth to Bethlehem in her father's vehicle. They arrived at court and Dheoduth introduced himself to the prosecutor. He introduced her as Jelal. Dheoduth went with the prosecutor to the magistrate's chambers. She stood in the passage.
- [29] She explains that in Court Dheoduth discussed the matter with the investigating officer. The investigating officer persisted that he was opposing bail. She told Dheoduth in the presence of the investigating officer that if bail is refused the matter should be taken on appeal. The investigating officer did not take kindly to that. The proceedings started in court. The applicant sat in the public gallery behind the accused's box. During the proceedings, Dheoduth called her to come in front to assist him to find a section in the Criminal Procedure Act. She did so. The applicant during the break met the magistrate at the entrance of the building. She asked the magistrate for directions to the nearest pharmacy. She wanted to buy tablets for a headache.
- [30] The applicant states that the bail application on new facts was refused. Dheoduth discussed the matter with Morgan advising him of the options available to him. The applicant stood and chatted with the prosecutor about general matters and exchanged phone numbers. Morgan gave Dheoduth his bankcard stating that there was a sum of R10 000 that can be used for legal expenses. The applicant wrote the Pin code given by Morgan down. Dheoduth, using Morgan's card, withdrew a sum of R10 000. He gave the applicant a sum of R6 500 which was R3 000 for herself and R3 500 to refund the people who lent her money for the trip to Bethlehem.
- [31] The applicant states that she told Dheoduth to tell Naveen to pay her as agreed for the time and services she rendered. She tried to phone Naveen but he did not take her calls and he did not return her calls too. Thereafter she was told that the police were looking for her. The police told her that Morgan opened a case against her for theft of R10 000. It was claimed that she presented herself as an attorney for Morgan. Morgan with Naveen made the claim

when he lodged another bail application. He claimed that his initial bail application without his knowledge was done by an attorney who had been struck off the roll, which meant that those proceedings were null and void. The court granted him bail

of R10 000.

The Bux matter

[32] The applicant states that in 2015 Bradley Naidu of Bradley Attorneys asked her to assist him with typing and research. Mr. Naidu was her friend from their school days. He approached her because his eyesight was deteriorating due to his diabetic condition. She used to refer many of her business consultancy clients who had legal matters to him. She states that her cousin Osman referred to her a business client Mr Younis Bux. Osman informed her that he had lent Mr. Bux a substantial sum of money, and that Mr Bux was not repaying the loan because his debtors were not paying him. Osman requested her to meet with Mr. Bux. She met with Mr. Bux and she realised that it was a legal matter. She referred them

to Mr. Naidu. She spoke to Mr. Naidu and he agreed to meet with them. She accompanied Mr. Naidu to Mr. Bux's home. Mr. Bux agreed to retain Mr. Naidu's services.

[33] The applicant explains that the issue of Mr. Bux resulted in High Court litigation. She assisted with communication between the parties due to Mr. Naidu's poor eyesight and Mr. Bux not having transport to Mr. Naidu's office. The trial did not proceed on the dates the matter was set down for hearing. The Bux's family became furious with Mr. Naidu, herself and the advocate briefed in the matter. They demanded a refund of the money they had paid. She explained that no money was paid to her. The Bux's family reported the matter in the media. They also opened a case with the police and they reported the matter to various institutions. They alleged that fraud was perpetrated against them. The prosecution declined to prosecute the matter.

[34] The applicant attached seven (7) character referral letters. Two character letters are from business associates, one from a friend who is an attorney, one from an attorney who employed the applicant for six months and another from an advocate the applicant used to brief. One letter is from the Deputy Mayor of EThekweni Municipality. The last letter is from the Chief Operations Officer of the South African Human Rights Commission. (SAHRC). The letter from the SAHRC confirms that the applicant worked for the Commission from June 2012 to December 2012 and that she did very good work. The letter from the Deputy Mayor unfortunately talks about the work the applicant did with a certain businessperson for the community without specifying whether the writer actually worked with the applicant and, if so, for how long.

Analysis

[35] The applicant had as at 9 June 2020 attended and completed the Practice Management Training Course offered by the Law Society of South Africa. She has explained her interaction with the respondent in preparation for the application for readmission application, and her seeking permission to be employed by an attorney, but such interaction is not relevant for purposes of this application. In addition, after it was insisted that costs incurred be repaid in full, the applicant says she has fully reimbursed the respondent for all the costs relating to her strike-off application and the Legal Practitioners Fidelity Fund

claims. The Law Society claimed payment of R265 000 from the applicant before it could take a decision relating to her

application for readmission. The applicant consistently requested a breakdown of the amount claimed from her but the respondent did not furnish the requested breakdown. The applicant paid part of the money claimed from her and the LPC took a decision not to oppose her application for readmission.

[36] The respondent explained the process followed in considering an application for readmission in a letter to the applicant dated 14 August 2020 as follows. Once all application papers have been filed, the matter is referred to an Interviewing Committee. The Interviewing Committee, which may interview the applicant, prepares a report, which is placed before the Professional Affairs Committee. The latter makes a recommendation to the Disciplinary Oversight Committee, which in turn makes a recommendation to the Council. The applicant states that after she was interviewed she was requested to furnish an updated psychologist's report, which she did, namely, the report by Junica Ramsoorj dated 28 July 2021. Therefore, it may be accepted for purposes of the application that the applicant has complied with all the formal requirements set by the LPA for readmission as an attorney. The central issue is whether she has proved that she is a fit and proper person to be readmitted as a legal practitioner. The applicant initially opposed her strike-off application but eventually the order was taken by consent.

[37] The Law Society sought the suspension of the applicant from practice on the following averments, namely:

1. Breach of the Rules of the Law Society relating to unprofessional and unworthy conduct. 2. Contravening Rule 20(5) in that she submitted a Rule 21A certificate not in compliance with requirements.
3. Having received money from a client, she failed to distribute the money in terms of the administration order. 4. Fined for failure to respond to a complaint and failure to pay a fine. 5. Failure to respond to correspondence and telephone calls by a fellow attorney.
6. Failure to settle counsel's account.
7. Failure to provide client with progress accounts. 8. Failure to pay over trust interest.

9. Submitting a qualified audit report.

In my view, although each complaint alone might arguably not be regarded as a serious transgression, they cumulatively entitled the Law Society to seek the suspension of the applicant from practice.

[38] The Law Society sought to strike the name of the applicant off the roll of attorneys solely on the basis of her criminal conviction in the Harrichand matter. The Law Society contended that it had agreed to the suspension of the applicant in order to give her an opportunity to redeem herself but she had not used that opportunity. In my view this was not correct because the crime for which the applicant was convicted was committed before the suspension from practice of the applicant. However, the crime for which the applicant was convicted and sentenced was serious. The Law Society pointed out that the applicant had brought an application for the removal of her name from the Roll to avoid being struck off the Roll. The Court granted an order in the following terms: 'That the Respondent's name be struck-off the Roll of Attorneys of this Honourable Court and that the Respondent is hereby interdicted and restrained from practising and/or holding herself out as an attorney of this Honourable Court.' It seems clear that in connection with the Bethlehem matter the applicant also acted in contempt of court. Similarly, in the Bux matter she held herself out as an attorney and from her version touted for Mr Naidu over a period.

[39] It may be difficult to judge a person from the manner she reacted to a particular event. However, in 2002 the applicant had been practising on her own account for about four years, running a successful practice. She was 31 years old. Her mother passed away suddenly due to a heart attack. It must be accepted that her mother was very close to her, providing emotional support. However, in my view, what caused the applicant to crumble and be unable to recover for an extended period has not been properly explained. She has not furnished any reports relating to any treatment that she received at the time. She also in her previous court application did not attach any report by medical experts. She explains that since it was fourteen (14) years ago when she was treated by Dr Miseer her medical file could not be traced for Dr. Miseer to prepare a medical report for her. In my view, her reasons for her failure to attend to her practice during those years are not fully disclosed.

[40] The Harrichand matter is very disturbing. Harrichand was a close friend of the applicant. His misconduct covered a long period. The applicant held onto to the matter with no cover for trial. The inference is almost inescapable that she was giving an opportunity to Harrichand to carry out what he was involved in. The The applicant knew what Harrichand was engaged in. The stealing of police dockets is a very serious matter. It undermines a foundation of the justice system. The involvement of prosecutors and attorneys in such a practice must be visited with strict censure.

[41] The Bethlehem matter and the Bux matter are blatant acts flouting not only the provisions of s 83(1) of the Attorneys Act but also a court order of this court. On 30 November 2007 when the applicant's name was struck-off the Roll, the court interdicted her from practising and or

holding herself out as an attorney. In about a year from that date, she was already holding herself out as an attorney. She was assisting counsel as if she was an instructing attorney. She even demanded to be paid for the services she rendered which were services to be rendered by an instructing attorney. She dabbled in the practice of an attorney creating confusion for the authorities and for clients or members of the public. In Bethlehem, the entire bail process, due to her fault, had to be rerun. It created an additional expense to the fiscus and brought disrepute upon the administration of justice.

- [42] It took years for the applicant to qualify as an attorney. She appears to have the technical aptitude to practice as an attorney. She has no other profession and she is entitled, all other things being equal, to practise her profession in her country. She is a woman and she comes from a previously disadvantaged group. The Constitution acknowledges the oppression suffered by women and implores state institutions to empower women. On the other hand, the administration of justice for the benefit of all of us must jealously safeguarded. The issue is not whether the applicant has suffered enough by being kept out of the profession, but whether the applicant is a person who can safely be trusted to faithfully discharge all the duties and obligations relating to the profession of an attorney. The court must ensure as far as possible that the readmission of an attorney does not pose a risk to the public's trust and confidence in the profession. The standard to be met where the offending conduct has an element of dishonesty is onerous. The applicant must show that she has worked to expiate the character associated with the offending conduct and that she has completely changed. (See *Visser v Cape Law Society* 1930 CPD 159 at 160.) In *Nthai* para
- [17] it was said the onus is on the applicant to convince the court on a balance of probabilities that there has been a genuine, complete and permanent reformation of character, and that if readmitted the applicant will in future conduct herself as an honourable member of the profession. She must show that her readmission poses no risk.
- [43] Changing completely starts with an appreciation of the need for change. There must be a genuine appreciation of the character defects to be discarded. The applicant attempts to explain and find an excuse for the offending conduct. This points to a lack of appreciation of the damage caused by the offending conduct. It shows that the applicant does not properly understand the high ethical standards of the profession. It shows her to be a person who is likely to reoffend. (See *ExParte Aarons* 1985 (3) SA 286(T) at 294G-H.) In *Nthai* at [36], the court held that it is crucial for a court to determine what the particular defect of character or attitude was. More importantly, it is for the applicant to first, properly and correctly, identify the defect of character or attitude involved and thereafter to act in accordance with that appreciation. For until and unless there is such cognitive appreciation it is difficult to see how the defect can be cured or corrected since any true and lasting reformation depends on such appreciation.
- [44] The applicant did not succumb to a sudden temptation resulting in an isolated incident of offending conduct. She is close to falling into a category of a serial offender; there is evidence of a propensity for offending conduct. Her transgression goes to the core of a

conduct that cannot be tolerated from a member of the attorneys' profession, which demands high ethical standards for the integrity of the profession. She portrays herself as a person too eager to help, which finds some support in the character reference letters. This may be part of her character defect, but what we are looking for is that she has discarded the character defect which contributes or leads to her offending. Up to May 2018 she was challenging her Bethlehem conviction. When that ultimately failed, within a year, in April 2019, she launched her application for readmission. There is no evidence that she has reflected upon her conduct in Bethlehem, and genuinely repented. She immediately embarked on collecting evidence to support the readmission application. The referral letters have no substance and they are of very little weight. They do not address the issue of defect of character followed by genuine, complete and permanent reformation.

[45] The state evidence in the applicant's trial at Bethlehem was that of the magistrate, prosecutor and investigating officer concerned in the bail application. Each of them testified to the effect that the applicant introduced herself to each of them, individually, as the attorney representing Mr Govender, the applicant for bail. The magistrate rejected as false the applicant's denial of that evidence. The applicant was found to have lied in circumstances where, if she was telling the truth, the conclusion must be that the magistrate, prosecutor and the investigating officer lied. The appeal court held that the trial court was "correct in its assessment of evidence and credibility findings." In the

judgment

on sentence the trial magistrate had this to say. "I have observed you throughout the proceedings. You branded everybody or every person who testified against you as a liar by denying some obvious facts that you in fact introduced yourself as an attorney and you knew that that is what you did, but be it as it may you held that you did not utter those words. That in itself shows that you don't show any remorse for what you have done on that particular day, 9 January 2009." Nothing has changed. The applicant comes before us persisting in her contention that a magistrate, prosecutor and investigating officer gave false evidence. All she says is that, "on subsequent reflection", this was "perhaps not a case of whether or not I held myself out to be a practising attorney but rather the effort I could have made to ensure that there was absolute[ly] no confusion regarding the capacity in which I assisted Mr Govender's instructing attorney and counsel." In fact the Bethlehem case did concern whether the applicant held herself out as an attorney. The fact that she shows no appreciation of the enormity of her accusation that two officers of the court gave false evidence against her perhaps goes some way to explaining why the applicant comes under the impression that this court can sweep the credibility findings in the Bethlehem case under the carpet and place its trust in her assertion that she will take what she calls "more care" not to create false impressions in future. That approach on her part shows no remorse, and little if any understanding of the absolute importance, and foundational nature, of the obligation of every officer of the court to behave with integrity at all times with regard to court proceedings; and when the officer is a practitioner, not knowingly (nor negligently, for that matter) to mislead the court.

- [46] In my view, the applicant has not demonstrated that she is a fit and proper person to be readmitted to legal practice. She has not shown that if readmitted she is not likely to err again. I find, regrettably, that her application for re-admission fails.
- [47] The LPC is accountable to the court. It is incumbent on it to report to the court on a disciplinary matter before court involving its members. It must report on how it dealt with the matter and indicate its view on the relief sought from the court. In this matter, we initially only had a letter from the LPC, which was addressed to the Registrar of the court. It stated that the LPC has considered the application of the applicant for re-admission and that it will not oppose the application for re-admission. This is not enough, in particular, in an application for re-admission where the applicant's proven past dishonesty looms over the enquiry as to whether the applicant is a fit and proper person to be re-admitted. The LPC has a duty to assist the court to arrive at a correct decision. The LPC has amongst its statutory objects the enhancement and maintenance of the integrity and status of the legal profession. Professional bodies are the custodes morum of the profession. They act in the interest of the legal profession, the court and the public, protecting and promoting the status and dignity of their profession. See Nthai at [35].
- [48] The LPC in this matter was content to simply write a letter addressed to the Registrar recording that it had taken a decision not to oppose the applicant's application for readmission. It furnished no reasons for its decision. It made no comment on the main issue of whether in its view the applicant has permanently reformed. This is despite the fact that the LPC is required to certify compliance with the provisions of the LPA in applications for readmission and that it is incumbent of the LPC to make an assertion to the Court, if it is so satisfied, that the applicant is a fit and proper person to be re-admitted to the profession. See Ex Parte: Van Schalkwyk (422/2017) [2021] ZANWHC 23 (19 August 2021) at [3-8]
- [49] In this matter, we insisted that we needed to hear the views of the LPC and we postponed the matter for that purpose.

Subsequently, an affidavit and heads of argument were furnished by the LPC, which we appreciate. We are not satisfied that the affidavit delivered on behalf of the LPC reveals a clear rational basis for the decision not to oppose the application. However, the conduct of the LPC not being the central issue in the case, our concerns were not dealt with fully enough in argument, and we should say no more about it.

[50] I propose the following order:

1. The application for readmission as a legal practitioner (attorney) is dismissed
2. There is no order as to costs.

—

Mngadi, J

I agree, it is so ordered.

- _____

Olsen , J

APPEARANCES

Case Number :

2376/2019P

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DURBAN

For the respondent : N. Jooste

Instructed by :

Venns Attorneys

PIETERMARITZBURG

Heard on :

1 December 2021

Judgment

delivered on : 19 January 2022

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