

SOUTH AFRICA / JUDGMENT

Montshiwa; In re: John v Montshiwa (56/2019), Ex parte [2020] ZANWHC 54 (3 September 2020)

[2020] ZANWHC 54

COURT

North West High Court, Mafikeng

BEFORE

Olivier, Mbhele

CASE / FILE NUMBER

56/2019

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IN

THE HIGH COURT OF SOUTH AFRICA

(NORTH

WEST HIGH COURT, MAHIKENG)

Case

no 56/2019

Date

heard: 14 AUGUST 2020

Date

delivered: 3 SEPTEMBER 2020

In

the ex parte application

of:

MONTSHIWA,

GAONE JACK SIAMISANG

Applicant

(For

admission to practice as legal practitioner

and

enrolment as an attorney)

And

in the application of: NKOMO,JOHN
Intervening Party
versus
MONTSHIWA,
GAONE JACK SIAMISANG
Respondent

Coram: Olivier J et Mbhele J

JUDGMENT

IN ADMISSION APPLICATION

REASONS

IN INTERVENTION APPLICATION

OLIVIER J

INTRODUCTION

[1.] This application in terms of the Legal Practice Act[1] is for the admission of Mr G J S Montshiwa as a legal practitioner and for the authorisation of his enrolment by the Legal Practice Council ("the LPC") as an attorney. It was initially set down for 21 February 2020. The applicant also seeks an order "joining" two periods of practical vocational training together and condoning the fact that, according to him, he served 3 years and 7 months thereof in total, instead of the 5 year period for which he had initially signed up. In what follows I will refer to "practical vocational training" as "articles", to the said Act as "the LPA" and to the Rules [2] and Regulations[3] published in terms of the LPA as respectively "the LPA Rules" and "the LPA Regulations". On 21 February 2020 the application was struck off the roll, apparently because there was a notice of the withdrawal of an application with the same case number.

[2.] On 4 March 2020 the LPC for the North West Province issued a letter stating that it had considered the application and had no objection thereto. The applicant then set the application down for hearing on 13 March 2020.

[3.] On 12 March 2020 Mr Jerry Sithole of Jerry Sithole Attorneys in Mmabatho filed a "NOTICE TO OPPOSE" in which he described himself as an interested party and undertook to file an "opposing affidavit" in due course. A copy of this notice was filed with the LPC. The applicant did not wait for Mr Sithole's opposing affidavit. On 13 March 2020 he filed an "Opposing affidavit to Notice to Oppose", with a copy to the LPC. In it he challenged Mr Sithole's standing, took the point that s 116(1) of the LPA rendered Mr Sithole's opposition premature and referred to the judgment in *Nthai v Pretoria Society of Advocates and Others*[4]. He said that Mr Sithole's "conduct of interference" was the result of "bitterness and stupidity" and that it was an "idiotic move ...motivated by stupidity".

[4.] On 13 March 2020 the application was postponed to 20 March 2020, for the applicant to file a supplementary affidavit "explaining the withdrawal of the Application on the 27th day of January 2020 and issuing of an application on the 27th day of JANUARY 2020 and the reasons for same to be struck off on 21st day of FEBRUARY 2020". Mr Sithole's notice of opposition and intended filing of an opposing affidavit, were also debated before this postponement.

[5.] The applicant filed such a supplementary affidavit on 16 March 2020, explaining that an earlier deficient application for his admission had indeed been withdrawn on 27 January 2020, that on the same day the present application was lodged and that the Registrar then allocated the same number to it as the number of the withdrawn application.

[6.] On 18 March 2020 Mr J Nkomo of Nkomo attorneys in Mmabatho filed an application for leave to intervene in the main application . Once again a copy was filed with the LPC. In his founding affidavit Mr Nkomo claimed to have a direct and substantial interest in the relief claimed by the applicant, on the basis that he had, as an attorney, been a member of the legal profession since July 2001 and that he was a Commissioner in the Small Claims Court and therefore a judicial officer.

[7.] On 19 March 2020 the applicant filed an answering affidavit and heads of argument in Mr Nkomo's intervention application. In it the applicant raised a number of objections to Mr Nkomo being granted leave to intervene. He submitted, inter alia, that Mr Nkomo had failed to seek and obtain leave to oppose as envisaged in Uniform Rule 6(4)(b), that Mr Nkomo had no locus standi, that the LPC should have been joined as a party in Mr Nkomo's application, that the Court lacked jurisdiction to entertain the intervention application, that sections 4 and 116(1) of the LPA rendered the intervention application premature and that the application in any event lacked urgency.

[8.] Still on 19 March 2020 Mr Sithole filed what is styled an opposing affidavit, although he was not a party to the application for admission. Once again, a copy was filed with the LPC. A copy of a written objection that the applicant had submitted to the Judicial Service Commission regarding the appointment of Hendricks J[5] of this Court as Deputy Judge President, was attached and Mr Sithole submitted that the language employed by the applicant in that

document was not "the type of language and attitude expected from someone who is aspirant (sic) to become an officer of the Court". In similar vein Mr Sithole also referred to what the applicant had said when he appeared before another Judge of this Court.

[9.] On 20 March 2020 the application for admission was removed from the roll, presumably because of the opposed interlocutory application for leave to intervene, and possibly also because of Mr Sithole's affidavit.

[10.] On 24 March 2020 the applicant deposed to a further affidavit, the gist of which is that Mr Nkomo had already on 19 March 2020 discussed with Mr T L Seeletso, the applicant's attorney, the fact that there would not be Judges available to deal with the admission application on 20 March 2020, and the applicant went on to raise a whole list of questions about this, inter a/ia how Mr

Nkomo could have known that there would not be Judges to deal with the application and whether Mr Nkomo had perhaps "secretly" met with the Judge President. The conversation between Mr Nkomo and Mr Seeletso was confirmed in an affidavit by Mr Seeletso.

[11.] On 25 March 2020 the applicant addressed a letter to the Minister of Justice and Correctional Services, and inter alia also to the LPC, the Judge President and even the Chief Justice. He attached to it the affidavits that I have just referred to in the previous paragraph. He requested the Minister to establish a Commission of Enquiry to investigate "the relationship between John Nkomo and the North West High Court Bench", and he afforded the Minister until 30 June 2020 to do so.

[12.] On 12 May 2020 the Registrar, instructed by the Judge President, advised the applicant to apply for a date of hearing for his application and to prepare three sets of the papers for three Judges from outside this Division who would deal with the matter. On the same day the applicant responded to this letter. He addressed his letter to the Registrar and to Leeuw JP, with copies to inter alia Mr Nkomo and the LPC. He pointed out that he intended taking the order of Peterson AJ of 20 March 2020 (removing the admission application

from the roll} to the Constitutional Court. He questioned the intention to have the application heard by outside Judges and, in a question obviously directed at Leeuw JP, he asked: "Will you not or have you not already interfere (sic) with the impartiality of the three judges by telling them what you want to happen with my application as you already did to Peterson AJ, how can you justify this because interference is your excellent ability?" He said that he "only {saw} a mockery out of North West High Court under the leadership of Mashangu Leeuw JP". He furthermore stated that he would ensure that "Mashangu Leeuw JP, my enemy will never get away with any unlawful conduct that she may try". He demanded that the whole North West bench be placed on special leave before his application was dealt with.

[13.] On 13 May 2020 Mr Sithole filed a supplementary affidavit, again with a copy to the LPC. The purpose of this affidavit was apparently mainly to deal with an allegation by the applicant that Mr Sithole had authorised his secretary to certify documents.

[14.] On 2 June 2020 Mr Sithole filed an Amended Supplementary Affidavit with the Registrar and again a copy was filed with the LPC. There was no indication in the filing sheet that it had been filed with the applicant or his attorneys. I asked the applicant whether this affidavit had come to his attention. He confirmed that it had, and he stated that he did not respond to it as, according to him, Mr Sithole had not been entitled to file this affidavit. wi!I revert to the contents of this affidavit of Mr Sithole.

[15.] On 29 June 2020 the applicant filed another supplementary affidavit, seeking condonation for its late filing and dealing with the contents of Mr Nkomo's founding affidavit and with the merits of the intervention application.

MR NKOMO'S APPLICATION FOR LEAVE TO INTERVENE

[16.] On 14 August 2020, at the hearing of the admission and intervention applications, we dismissed Mr Nkomo's application and made no costs order in respect thereof. We found it appropriate to dispose of it before considering the case made out by the applicant. What follows are our reasons for that order.

[17.] The applicant's in limine objection regarding urgency had been overtaken by events and he had, as already mentioned, in the meantime filed a supplementary answering affidavit to deal with the contents of Mr Nkomo's founding affidavit. As far as Uniform Rule 6(4)(b) is concerned, it would in the circumstances have been overly technical to distinguish between Mr Nkomo's application for leave to intervene and an application in terms of Uniform Rule 6(4)(b) for leave to oppose.

[18.] There was no merit in the applicant's non-joinder objection. The LPC was not a party in the admission application in which Mr Nkomo wished to intervene. In any event, Mr Nkomo's application was served on the LPC and it elicited absolutely no reaction.

[19.] Mr Nkomo filed a notice in terms of Uniform Rule 30, demanding that the applicant withdraw his supplementary affidavit in the intervention application, as according to Mr Nkomo the applicant had filed it without leave to do so. There would however have been no point in considering that objection, if Mr Nkomo's application fell to be dismissed on the ground that he lacked legal standing in the admission application.

[20.] The applicant's in limine objection that Mr Nkomo lacked legal standing to intervene, is difficult to reconcile with his concession, in paragraph 1.2 of the heads of argument that he initially filed in the application to intervene, that Mr Nkomo "has interest" in the applicant's application to be admitted.

[21.] The applicant submitted, however, that the provisions of sections 4 and 5 of the LPA prevented Mr Nkomo from approaching the Court before having taken up his concerns with the LPC, and that until then the Court would also not have any jurisdiction to entertain Mr Nkomo's objections.

[22.] In terms of section 4 the LPC was established to exercise jurisdiction over all legal practitioners and candidate legal

practitioners, and in terms of section 5(d) one of the objects of the LPC is to "regulate all legal practitioners and all candidate legal practitioners".

[23.] On the other hand, section 44 provides that the provisions of the LPA "do not derogate in any way from the power of the High Court to adjudicate upon and make orders in respect of matters concerning the conduct of a legal practitioner, candidate legal practitioner or a juristic entity" and that nothing contained in the LPA "precludes a complainant or a legal practitioner, candidate legal practitioner or juristic entity from applying to the High Court for appropriate relief in connection with any complaint or charge of misconduct against a legal practitioner, candidate legal practitioner or juristic entity".

[24.] On the face of it opposing an application for admission would not be tantamount to seeking "appropriate relief in connection with any complaint or charge of misconduct" and there is no indication that such a complaint or charge was laid with the LPC prior to the lodging of Mr Nkomo's application.

[25.] The case made out by Mr Nkomo was also not based on the provisions of section 44 and it is trite that an applicant has to make its case in the founding papers[6] This would also apply to the requirement of locus standi.

[26.] It has in any event been held that it is generally "undesirable" that an individual becomes involved in disciplinary matters concerning attorneys. This should be left to the body or society which is tasked "to regulate the affairs of attorney to uphold the standards of professional conduct and to take appropriate action against attorneys guilty of misconduct" and which is "in the true sense of the word the guardian of the prestige, status and dignity of the profession" [7] In this case that "body" or "society" would at the time of Mr Nkomo's application have been the LPC for the North West Province. There is no reason why this principle should not also apply where a legal practitioner like Mr Nkomo feels that an applicant (for admission as a legal practitioner) is not a fit and proper person to be admitted.

[27.] However, where that body fails in its duties, the position would be different and an individual practitioner may then have the right to approach the Court for appropriate relief[8]. The situation could be likened to the so-called Beningfield exception which affords a beneficiary of a Trust or estate legal standing where the trustees fail to act or act improperly[9]

[28.] As already pointed out, the LPC indicated that it had considered the application and that it had no objection to the granting of the relief sought by the applicant, in other words the "joinder" of the two periods of articles, the condonation of the shorter period of articles and the admission of the applicant. As will appear in due course the LPC could, with all due respect, not have considered the admission application properly. In fact, the LPC never even responded to any of the affidavits and documents filed with it by Mr Sithole and Mr Nkomo, which contain information that is clearly highly relevant to whether the applicant is a fit and proper person to be admitted.

[29.] The problem was that Mr Nkomo did not in his founding affidavit make out a case that he had the right to act in a representative capacity, in the place of the LPC and on behalf of the profession. He did not, for example, make the allegation that he had first brought the information in his affidavit and the annexures thereto to the attention of the LPC; and that the LPC should have acted on that information and had failed to do so.

[30.] On this basis Mr Nkomo's application to intervene could not succeed and when I raised with him my concerns about his focus standi and the cases that I have already referred to, Mr Nkomo wisely decided to abide. Mr Nkomo did however not need to apply for leave to intervene in order to bring relevant information to the attention of the Court and the LPC. Proceedings like these are sui generis and the Court is entitled to regulate its own procedure in this regard[10] This Court would therefore be entitled to have regard to the information supplied by Mr Nkomo, even

if he did not have the legal standing to be a party in the application[11]

[31.] The applicant sought punitive costs against both Mr Sithole and Mr Nkomo. There was no basis at all for ordering Mr Nkomo to pay the costs of his unsuccessful application for leave to intervene, let alone punitive costs. There is no indication that he brought his application with any other motive than to bring information to the attention of this Court or that he stood to gain personally if the admission application were to fail. No costs order was therefore made in that application.

MR SITHOLE'S "OPPOSITION" OF THE APPLICATION FOR ADMISSION

[32.] Mr Sithole has, unlike Mr Nkomo, not sought leave to intervene, and he is therefore not a party in this application. It is not clear on what basis he believed that he was entitled to oppose the application for admission. On the day of the hearing there was, however, no appearance by or on behalf of Mr Sithole.

[33.] As a concerned practitioner and a member of the profession which the applicant seeks to join, he was however in my view entitled, and even obliged, to make relevant information available to the LPC, and in view of the fact that this application was at that stage already pending, also to this Court.

[34.] What has already been said as regards costs (when dealing with Mr Nkomo's application), would also apply to Mr Sithole, and no order will therefore be made as to any costs which the filing of Mr Sithole's affidavits may have occasioned.

THE CASE MADE OUT IN THE FOUNDING PAPERS

[35.] The case made out by applicant in founding, and to which the LPC had no objection, will first of all be dealt with, in other words without taking the Sithole and Nkomo information into account. The applicant followed the rather unusual approach of having Mr Nyoka represent him only for purposes of his own application. He chose to appear in person in the intervention application and to deal with the affidavits of Mr Nkomo and Mr Sithole.

[36.] In my view there are fundamental flaws in the case made out by the applicant in founding, as supplemented by his and Mr Vere's supplementary affidavits of 12 February 2020.

Articles

[37.] The applicant's case regarding his articles, very briefly, is that he initially entered into a 5 year contract of articles with Mr L W Vere of Vere Attorneys in Mmabatho. It was registered on 2 September 2014. That period of articles was interrupted when he resigned on 5 August 2016.

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[38.] On 8 August 2016 he joined the firm of attorneys Moetsi Maredi Inc, in Mahikeng. He and Mr K A Moetsi signed documentation to have his contract with Mr Vere ceded to Mr Moetsi, but Mr Vere then refused to sign the documentation. According to the applicant he brought this to the attention of Ms Jenny Lee of the Law Society of the Northern Provinces [12] She advised him to

enter into a new contract with Mr Moetsi and the applicant says that she told him that the LPC would "accept" both contracts. According to the applicant he then entered into a new contract with Mr Moetsi on that same day, 8 August 2016. He says this contract was lodged with the Law Society within the prescribed 2 month period [13]

[39.] The applicant goes on to say that, when he later phoned the Law Society to follow up on "the confirmation" of his contract, he was informed that the "format" of the 8 August 2016 contract was wrong and that he needed to sign a new contract, which the Law Society emailed to him on that same day. The applicant says he cannot recall the date of this conversation, but he says that he and Mr Moetsi indeed signed this contract too and lodged it with the Law Society.

[40.] The applicant refers to the 8 August contract and the later one as respectively the first and second contracts (with Mr Moetsi). He acknowledges that his "contract of clerkship" was registered by the Law society with effect from only 17 May 2017, but he submits that since neither the first nor the second contract was ever "informally or formally rejected", he "believes" that his articles "were formally registered with effect from the 08th August 2016 as the contract was lodged within two months". The applicant goes on to say that "no reasonable explanation was tendered to (him)" for what he refers to as the "late registration of (his) articles" and he reiterates that he therefore "believe(s) that this court will accept (his) articles[14] having been with effect from the 08th August 2016 because there is no prejudice on the part of the society".

[41.] The applicant says that he served his articles of clerkship with Mr Moetsi's firm until 27 March 2018 and that, if his period with Vere Attorneys is added to this period, he has effectively served articles of clerkship for a period of approximately 3 years and 7 months.

[42.] The applicant goes on to say that he obtained the required academic qualification in 2019, that he has passed the competency based examinations referred to in s 26(1)(d) LPA and has attended the required programme of structured course work as envisaged in LPA Regulation 6, and he requests that the fact that he served less than 5 years under articles, be condoned [15].

[43.] In view of the fact that the applicant had not, at the times of his contracts with Mr Vere or Mr Moetsi, obtained the required legal academic qualifications, a period of 5 years "service under articles" would indeed have been required in terms of section 2(1)(e), read with section 2(1)(d) of the now repealed Attorneys Act. In terms of section 13(3) of the Attorneys Act the Court could however order that the whole or part of such service before qualifying for the degree be "regarded as having been served after and under articles entered into after he or she satisfied such requirements". When the LPA became fully operational in November 2018 it repealed the Attorneys Act, but at the same time provided[16] that "any period of practical vocational training undergone with an attorney or advocate before the date referred to in section 120 (4) [17] must be regarded as having been a period of practical vocational training under supervision of a legal practitioner". S 119 (3) of the LPA provides that anything done in terms of inter alia the Attorneys Act "remains valid if it is consistent with (the LPA)" and that it will be "deemed to have been done in terms of the corresponding provision of (the LPA)".

[44.] LPA Rule 22.1.7.2 does provide the Court with a discretion to add a period of articles under a cancelled or abandoned contract to a period served under a subsequent contract[18]

[45.] The question that must however be considered, is whether the relief sought in paragraphs 1 and 2 of the Notice of Motion should be granted on the case made out by the applicant in his founding papers.

[46.] In paragraph 10.3 of his founding affidavit the applicant stated that the document annexed thereto as annexure 'K' was a copy of the 8 August 2016 Moetsi contract, in other words the first one concluded by him and Mr Moetsi. According to the index to Bundle 'A' in the admission application, annexure 'K' should be the document at pages 53 to 59 of that Bundle. When one turns to the document filed at those pages, it turns out not to be marked as an annexure, but it is quite clearly not a copy of a contract signed on 8 August 2016. Instead it purports to be a copy of "Articles of Clerkship" entered into between Mr Moetsi and the applicant on 20 September 2016. This is presumably the contract referred to by the applicant as the "second" contract.

[47.] The document marked annexure 'O', which appears at page 69 of this Bundle, does purport to be a copy of a "CONTRACT OF SERVICE" concluded by the applicant and Mr Moetsi on 8 August 2016.

[48.] Ordinarily the period of articles undergone by an applicant would be calculated from the date of registration of the contract by the Law Society (now the LPC). If the contract is submitted within two months of its conclusion, the date of its conclusion will be the date of its registration. If not, it will be registered as soon as it is received.

[49.] It is significant that the document marked annexure 'O' bears the stamp of "The Law Society of Transvaal", certifying that the contract which was concluded on 8 August 2016, was registered on 17 May 2017. This date of registration was confirmed in a letter of the Law Society of the Northern Provinces to the applicant, dated 27 June 2017. The document purporting to be the second contract does not contain any indication of when, if ever, that contract was registered.

[50.] The date of 17 May 2016 begs the question whether the first contract was indeed lodged within the prescribed 2 month' period from the date that it was concluded, as alleged by the applicant in paragraph 10.4 of his founding affidavit. This is obviously important for purposes of calculating the period of articles undergone by the applicant under the supervision of Mr Moetsi.

[51.] The applicant states that the first contract was received by the Society, together with the incomplete cession documents, on 27 September 2016. In this regard he refers to a copy of a document purportedly issued by the courier company SkyNet, annexed to his affidavit, from which it appears that one Jenny Lee received a parcel from the applicant on 27 September 2016. The SkyNet document does not, however, specify what it was that the applicant had on that occasion sent to Ms Lee.

[52.] The date of 27 September 2016 could be argued to be more in line with the contents of the parcel having been the second contract referred to by the applicant, which purports to have been signed on 20 September 2016. There appears to be no reason why the applicant would have

delayed dispatch of the first contract until then. If indeed it was however the first contract, the question would be why the Law Society would only have registered it on 17 May 2017. If, on the other hand, it was the second contract that Ms Lee received on 27 September 2016, the question would be why that contract was not registered, with effect from 20 September 2016 (the date of its conclusion), instead of registering the earlier contract with effect from the much later date of 17 May 2017.

[53.] The applicant also says that Ms Lee of the Law Society confirmed receipt of the first contract during a telephonic conversation between them on 28 September 2016. He goes on to say, however, that during that conversation Ms Lee told him that the so-called screening documents had been sent to Mr Moetsi and that the applicant should, when those documents arrived, call the Law Society "to arrange the person who (would) be screening (him)". He does not say if the screening documents arrived and if he made the call.

[54.] The applicant did apparently not, when he received the Law Society's letter of 29 June 2017, confirming the date of registration of his first contract with Mr Moetsi as 17 May 2017, take issue with that, and the question is obviously why not.

[55.] No copy of the email under cover of which the correct form for the second contract was according to the applicant sent to him, is attached to the founding affidavit.

[56.] The statement that there was never an objection to the first Moetsi contract is, even on the applicant's own version, in any event not correct, because according to him the Law Society sent him a different contract form which had to be signed.

[57.] To sum up as far as the periods of articles of the applicant are concerned:

58.1 LPA Rule 17.3 requires an applicant to provide the Court with the "exact dates" of his or her articles. In light of the inconsistencies pointed out above, the present applicant cannot be said to have complied with this requirement.

58.2 The date of registration of a contract of articles is, as already explained, regulated by law and therefore what the applicant "believes" and what Ms Lee may have conveyed to him in this regard are not relevant considerations.

58.3 If the applicant did indeed submit the first Moetsi contract to the Law Society within 2 months of its conclusion, he would have been entitled to have the date of its conclusion as the date of registration, and to have his period of articles with Mr Moetsi calculated from that date. That he did not take issue with the Law Society's letter of 29 June 2017, renders the applicant's version improbable.

58.4 The Law Society would by law have been obliged to register the first Moetsi contract with effect from 8 August 2016 if that contract was indeed received by the Society within 2 months of 8 August 2016, and the fact that it did not, is a strong indication that the first Moetsi contract was only received by them some time before 17 May 2017, but not within 2 months from 8 August 2016.

58.5 The LPC should have picked up on the anomalies that exist on the case made out by the applicant and should have advised him accordingly. However, it was ultimately the applicant that had to make out a case and the absence of an objection by the LPC is not decisive.

[58.] In terms of LPA Rule 17.7 all attachments to the applicant's affidavit should in any event have been "clearly marked". They are not. I have already referred to the confusion around annexures 'K' and 'O'. Two different annexures are marked as annexure 'P'. The attachments

which should according to the index^[19] be annexures 'A' to 'I', 'Q', 'R1', 'V' and 'W', are not marked at all. The attachment which should according to the index and the founding affidavit be annexure 'N' (confirmation of the registration of the Vere contract) is not among the annexures at all.

Fit and proper

[59.] According to the applicant the reason why he left Mr Vere was his "unhappiness" with the way that Mr Vere had treated him. I have already referred to the fact that Mr Vere had then, on the applicant's own version, refused to sign the cession of their contract to Mr Moetsi. This undoubtedly called for an explanation, but neither the applicant nor Mr Vere did so in the founding papers. That Mr Vere would in these circumstances have been willing to declare that the applicant is a fit and proper person to be admitted and enrolled as an attorney is, on the face of it, strange.

[60.] It was only in an affidavit by the applicant in the Nkomo application that he stated that Mr Vere had refused to sign the cession documents because he did not want to lose the services of the applicant. This case should have been made out in the applicant's founding affidavit, which would have afforded Mr Vere the opportunity to respond to this allegation. The applicant was obliged to make a full and frank disclosure of all relevant information^[20], and he clearly did not do so in his founding affidavit as far as his articles with Mr Vere is concerned.

[61.] The same applies to the fact that, while the applicant has disclosed the existence of a costs order made against him in an application that he brought against the President of the Republic of South Africa, the Judicial Services Commission and Justice Hendricks, he has not disclosed why it was a punitive costs order, whether he has paid those costs and, if not, what the reason for this is.

Structured course work

[62.] According to the attendance report attached to the founding affidavit^[21] the applicant attended and completed structured course work "that exceeded the minimum 150 notional hours". The report is dated 25 October 2019, but it does not state when the applicant registered for the course or when he completed it. It does state that the course was approved in terms of the LPA "for the purpose of Regulation 6{1}(a) of the Regulations that were promulgated by the Minister of Justice in terms of section 109 of the LPA".

[63.] In his founding affidavit the applicant himself did not, however, rely on the provisions of LPA Regulation 6(1)(a). He relied on the provisions of "Regulation 6{1}(b) read with Regulation 6(3)" of the LPA Regulations.

[64.] The provisions of LPA Regulation 6{1}(a), and the notional minimum of 150 hours, apply where articles are served after the person has qualified for the required degree and where the structured course work is completed either during the articles or within 12 months after the termination thereof. No part of the applicant's articles was undergone after he qualified for his degree. Even if this is however to be deemed to have been the case, there is no evidence that the applicant's structured work course was completed during any part of his articles, or even within 12 months thereafter.

[65.] The provisions of LPA Regulation 6(1)(b) require "not less than 400 notional hours" which would have been inconsistent with the certificate relied upon by the applicant.

[66.] The provisions of LPA Regulation 6(3) would be applicable where the candidate had, before the date referred to in s 120(4) of the LPA, registered for attendance at a "Practical Legal Training School of the law Society of South Africa for purposes of the Attorneys Act" and where he or she had completed that course within 12 months after such registration. Where this is the case, attendance at such a course would be regarded as attendance of a course as referred to in LPA Regulation 6(1)(a) and {b}. There is no evidence that the applicant registered for the course (to which the report pertains) before the date referred to in s 120(4), which is 1 November 2018.

Maximum number of candidate attorneys

[67.] There is one final aspect of the case made out in the applicant's founding affidavit that needs to be considered. The applicant stated that neither Mr Vere nor Mr Moetsi had more than 3 candidate attorneys at the time of his articles with them. This would have complied with the provisions of s 3(3) of the Attorneys Act, and also with LPA Regulation 6(8), read with LPA Regulation 6(S)(b).

[68.] In their supporting affidavits both Mr Vere and Mr Moetsi however claimed that their firms had been "certified and accredited" by the LPC and that they had therefore been entitled to have up to 6 candidate attorneys[22] They did state that they never exceeded the maximum number of 6 candidate attorneys, but this obviously left open the possibility

that they may indeed have had more than 3 candidate attorneys under their supervision, which would be inconsistent with what the

applicant stated in his founding affidavit.

[69.] Although one wonders why the LPC would specifically have approved these two firms of attorneys to be institutions as contemplated in LPA Regulation 6(S)(f), the LPC has not responded to what Mr Vere and Mr Moetsi have stated. The fact remains, however, that neither Mr Vere nor Mr Moetsi confirmed the applicant's averment that they did not at the relevant times engage more than 3 candidate attorneys, which confirmation was required by LPA Rule 17.4, read with LPA Rule 17.4.4.

THE INFORMATION IN THE NKOMO APPLICATION

[70.] I do not intend to deal in detail with all the allegations in the founding affidavit of Mr Nkomo and in the applicant's answering affidavits. I will limit my remarks to aspects with a bearing on whether the applicant has made full disclosure of all relevant information

and on whether he is a fit and proper person to be admitted to practice as a legal practitioner.

[71.] In his founding affidavit the applicant disclosed that there is a maintenance judgment and order against him. In paragraphs 23 and 24 of his founding affidavit Mr Nkomo refers to an application (the interdict application) that the applicant brought to prevent the implementation of an emoluments attachment order which was clearly aimed at the deduction of maintenance from the applicant's salary at Mr Moetsi's firm. It appears from paragraph 8 of the applicant's founding affidavit in the interdict application, which affidavit was deposed to on 6 March 2018 and therefore long before he deposed to his founding affidavit in the present application, that the applicant at that stage not only had to pay the initial R620.00 per month, but also an additional amount of R310.00 per month towards arrears. That he must have defaulted on the initial order, is also borne out by the fact that the emoluments attachment order was made. I will, however, assume in favour of the applicant that, when he deposed to his founding affidavit in the present application, he was no longer in arrears with his maintenance.

[72.] What is however of much more importance, is the applicant's response to Mr Nkomo's submissions about the judgment of the Magistrate in the Maintenance Court, which forms part of the papers attached to Mr Nkomo's founding affidavit in respect of the interdict application. In paragraph 24 of his founding affidavit Mr Nkomo submitted that the applicant had in the maintenance judgment been found "to have misled the court by not disclosing the source of his alternative income which amounted to R11 095.00", and that this finding has not been overturned on appeal or review.

[73.] In paragraph 13 of his answering affidavit in the Nkomo application the applicant responded to this as follows:

74.1 He said that Mr Nkomo had failed to prove that he violated the maintenance order.

74.2 He said that Mr Nkomo was misinterpreting the Magistrate's judgment in the maintenance case and that he was in fact never found to have misled the Court or to have failed to disclose income, and he seems to imply that the Magistrate erroneously found that he had failed to prove that he owed an amount to the University of South Africa.

[74.] I have already pointed out that it is clear, even from the applicant's own affidavit in the interdict application, that he must indeed at some stage have "violated" the maintenance order.

[75.] Furthermore, the applicant's interpretation of the judgment in the maintenance case is quite clearly wrong. The Magistrate never found that he had failed to prove that he owed the university R11 095.00. The Magistrate found that he had failed to disclose the source of the money with which he had settled that debt, quite clearly because he would not have been able to do so on the income that he had indeed disclosed. It was on this basis that the Magistrate made the unequivocal and unambiguous findings that the applicant must have had "another source of money that he did not disclose to the court", that he was "not honest in disclosure of his financial position" and that his 'Failure to disclose finances' impacted negatively on his defence.

[76.] That the applicant has, at best for him, failed to interpret the Maintenance Court's

judgment

correctly and that the Magistrate's finding of dishonesty has been left unchallenged, cast serious doubt on the allegations of the applicant, Mr Vere and Mr Moetsi that the applicant is a fit and proper person to practice as an attorney.

[77.] This is exacerbated by the inappropriate language employed by the applicant in his response to some of the other contents of Mr Nkomo's founding affidavit. He called Mr Nkomo's judgment in a matter in the Small Claims Court "idiotic" and "barbaric" and said that it demonstrated the same level or lack of knowledge that one would expect from "a passionate first year first semester law student".

[78.] When I asked the applicant in argument whether he regarded this as appropriate language for a legal practitioner to use, he at first seemed to insist that it was. Immediately thereafter he conceded, however, that the language was indeed inappropriate, but said that he was emotional at the time. The problem is, however, that this was, as would already have appeared from the above, not the only time that the applicant resorted to this kind of language. The type of language used by the applicant, and his dear lack of respect for at least the position of leeuw JP, and for that matter anyone who would dare to cross him, would also have appeared from parts of his letters that I have quoted above. At best for the applicant, and if one accepts that the applicant used that language and tone in moments of emotional stress, it raises serious questions about his ability to exercise restraint when under pressure.

[79.] At the conclusion of his argument in respect of the information supplied by Mr Sithole and Mr Nkomo the applicant became quite agitated, gestured wildly with his arms and told us that he was not surprised by the fact that we had decided to have regard to that information and that no Judge was going to stop him.

THE SITHOLE INFORMATION

[80.] Very much the same lack of respect appears from documents attached to Mr Sithole's Amended Supplementary Affidavit. In letters the applicant for example addresses and refers to Judges by their names and without reference to their titles.

[81.] In a complaint which the applicant filed with the Judicial Conduct Committee against Djadje J, he complained that her conduct had resulted in Mr Moetsi telling him (on 2 October 2017) to stay away from the High Court, and he stated that this decision of Mr Moetsi had "affected {his} chances to acquire more litigation knowledge before the High Court". This is borne out by the contents of a letter^[23] which Mr Moetsi addressed to the Judge President of this Division, dated 16 October 2017. In it Mr Moetsi made reference to a meeting at the chambers of Leeuw JP. He recorded that he had discussed the matter with the applicant and that the applicant would "no longer be visiting the North West High Court's establishment to perform any official duties for or on behalf of Moetsi Maredi Inc".

[82.] This would mean that the applicant could for a large part of his period of articles at Mr Moetsi's firm not have gained experience in High Court litigation. This needs to be explained by both the applicant and Mr Moetsi, because the impression created by both of them in their affidavits is that the applicant had over the whole of his time with Mr Moetsi gained experience in, inter alia, High Court litigation.

[83.] Mr Moetsi also needs to explain why he now regards the applicant as a fit and proper person to practice, inter alia in the North West High Court, if in October 2017 he apparently did not regard him as a fit and proper person to represent his firm there.

[84.] Then there is the letter which Leeuw JP addressed to Ms Bios of the Judicial Services Commission on 16 March 2018^[24] In paragraph 6 of the letter Leeuw JP recorded that Mr Moetsi had informed her that the applicant was "not a registered candidate attorney but just a clerk in his employ". According to what both the applicant and Mr Moetsi have now said in their affidavits in the present application, the applicant's period of articles with Mr Moetsi would only have come to an end on 27 March

2018. It goes without saying that this too calls for an explanation by both the applicant and Mr Moetsi.

[85.] One of the documents attached to Mr Sithole's Amended Supplementary Affidavit [25] is a copy of a letter dated 3 April 2018, addressed by the applicant to Moetsi Maredi Inc. In it the applicant recorded that the Law Society had advised him, during a telephone conversation on 27 March 2018, that he had completed his articles and that he was entitled to resign on one months' notice. This letter is irreconcilable with the statement,

[86.] In another letter (dated 7 June 2018) by the applicant of which there is a copy attached to Mr Sithole's Amended Supplementary Affidavit, the applicant informed Ntsamai Attorneys, Mahikeng, that he had resigned at Moetsi Maredi Inc on 31 May 2018.

[87.] Another of the annexures to Mr Sithole's Amended Supplementary Affidavit appears to be a letter, dated 24 January 2019, addressed by the applicant to the LPC. The first page of the letter does not form part of this attachment, but on page 20 thereof the applicant concluded by requesting certain information from the LPC. Before that conclusion, however, the applicant took pains to complain about how Mr Moetsi had reacted to the meeting with the Judge President and had started "harassing" him with "baseless and unfounded allegations". He stated that this had led "to the unlawful and irrational decision", presumably by Mr Moetsi, of terminating his contract in March 2018, without affording him the right to be heard. It is not necessary to point out the obvious differences between this and his other versions about the end of his time with Mr Moetsi's firm.

[88.] It is obviously also difficult to understand how Mr Moetsi would, against this background, later have been prepared to certify that the applicant is a fit and proper person to be admitted.

LPC

[89.] As would have appeared from what I have already said, there are countless aspects of the application and of the information provided by Mr Nkomo and Mr Sithole that on the face of it called for investigation, and I find it extremely disappointing, and indeed disturbing, that none of them

elicited any reaction at all by the LPC. The LPC is now the "truly a statutory custos morum of the profession, the guardian of the prestige, status and dignity of the profession and the public interest in so far as members of the public are affected by the conduct of members of the profession to whom they had stood in a professional relationship"[26]

CONCLUSION

[90.] Although I would, as I have already indicated, not even on only the applicant's founding affidavit have been prepared to grant him any of the relief sought by him at this stage, the fact is that the information supplied by Mr Nkomo, and also by Mr Sithole, is highly relevant and, on the face of it, reflects negatively on whether the applicant is a fit and proper person to be admitted.

[91.] In my view the application should therefore be dismissed.

[92.] I do nevertheless think that this judgment must be brought to the attention of Mr Vere, Mr Moetsi and the LPC. This may enable them to address the issues already referred to, should the applicant lodge a new application for his admission.

[93.] In the premises the following orders are made:

1. REASONS FOR OUR JUDGMENT IN MR NKOMO'S APPLICATION FOR LEAVE TO INTERVENE ARE HANDED DOWN IN PARAGRAPHS [16] TO [31] ABOVE.
2. THE APPLICATION FOR ADMISSION OF MR G JS MONTSHIWA TO PRACTICE AS LEGAL PRACTITIONER AND FOR AUTHORISATION TO BE ENROLLED AS AN ATTORNEY, INCLUDING THE RELIEF SOUGHT IN PARAGRAPHS 1 AND 2 OF THE NOTICE OF MOTION DATED 24 JANUARY 2020, IS DISMISSED.
3. THE REGISTRAR MUST ENSURE THAT COPIES OF THIS JUDGMENT ARE FURNISHED TO MR VERE OF VERE ATTORNEYS, TO MR MOETSI OF MOETSI MAREDI INC, AND TO THE NORTH WEST PROVINCIAL OFFICE OF THE LEGAL PRACTICE COUNCIL.

NORTH WEST DIVISION (EX NORTHERN CAPE DIVISION)

I concur.

MBHELEAOJP

NORTH WEST DIVISION (EX FREE STATE DIVISION)

For the applicant:

Mr GJS MONTSHIWA (In person)

MR X NYOKA (oio TL Seeletso Attorneys, Mahikeng)

For the intervening Party: MR J NKOMO (In person)

(Nkomo Attorneys, Mmabatho)

[1] 28 of 2014

[2] Published in terms of sections 95(1), 95(3) and 109(2) of the LPA in Government Notice 401 in Government Gazette 41781 of 20 July 2018, as amended.

[3] Published under section 109(1)(a) of the LPA in Government Notice R.921 in Government Gazette 41879 of 31 August 2018.

[4] (6271/18) [2019] ZALMPPHC 23 (24 May 2019)

[5] As he then was.

[6] Compare Democratic Alliance v Kouga Municipality and others [2014] 1 All SA 281 (SCA) para [18]

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- [7] Hurter and Another v Hough 1987 (1) SA 380 (C) at 382 F & 384B-C (also reported at [1987] 1 All SA 272)
- [8] Hurter v Hough en 'n Ander 1989 (3) SA 545 (C) at 551A-B (also reported at [1989] 1 All SA 57 (C)); See also Graham and Another v Law Society, Northern Provinces and Others (Road Accident Fund Intervening) 2014 (4) SA 229 (GP) para's [78J] & [79]
- [9] Compare Gross and Others v Pentz [1996] ZASCA 78; 1996 (4) SA 617 (A) at 628 G-H
- [10] Hurter and Another v Hough, supra, at 3811 -382A and 384 C-D
- [11] Compare Nthai v Pretoria Society of Advocates and Others, supra, para [76]
- [12] The LPA only became fully operational on 1 November 2018.
- [13] See s 5(1) of the Attorneys Act, 53 of 1979, and compare LPA Rule's 22.1.2.2 and 22.1.2.4.
- [14] Presumably with Mr Moetsi.
- [15] Para 2 of the Notice of Motion.
- [16] In section 112 thereof.
- [17] Which was to be 1 November 2018.
- [18] Compare s 11(2) Attorneys Act.
- [19] See pages 22 to 68, 76, 77 and 80 to 87.
- [20] See Northern Cape Society of Advocates v Mziako 2018 JDR 0782 (NCK) para [38]
- [21] At page 76
- [22] See LPA Regulations 6(5)(f) and 6(8).
- [23] Marked "KAKAPA O1" and attached to Mr Sithole's Amended Supplementary Affidavit.
- [24] Annexure '5' to Mr Sithole's Amended Supplementary Affidavit.
- [25] Annexure 'GJSMI 7'
- [26] Veriava and Others v President, SA Medical And Dental Council, and Others 1985 (2) SA 293 (T) at 307B; Compare Botha v Law Society, Northern Provinces [2008] ZASCA 106; 2009 (1) SA 227 (SCA) para [21]

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Prepared on 11 October 2026 · Esheria