

SOUTH AFRICA / JUDGMENT

Sebatsana (022746/2023), Ex parte [2024] ZAGPPHC 784 (7 August 2024)

[2024] ZAGPPHC 784**COURT**

North Gauteng High Court, Pretoria

BEFORE

J P Vorster, E van der Schyff

CASE / FILE NUMBER

022746/2023

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REPUBLIC
OF SOUTH AFRICA
IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
CASE NO: 022746/2023

1.

REPORTABLE: NO

2.

OF INTEREST TO OTHER JUDGES: NO

3.

REVISED: NO

DATE: 7/8/2024

SIGNATURE OF JUDGE:

In the ex parte

application of:

MALESELA
SHARLOTTE SEBATSANA
Applicant
And
THE SOUTH AFRICAN
LEGAL PRACTICE
COUNCIL
Intervening Party

JUDGMENT

VORSTER AJ (Van der Schyff J concurring)

[1] On 2 August 2024, the following order was granted by this Court:

- a. The Applicant is admitted as a legal practitioner of the High Court of South Africa in terms of section 24(2) of the Legal Practice Act 28 of 2014 (“the Act”) as amended; and
- b. The Legal Practice Council (the “LPC”) is authorized to enrol the Applicant as a legal practitioner in accordance with provisions of section 24 of the Act, read with

section 30 thereof.

[2] This judgment contains the reasons for the above order.

[3] In dealing with the requirement that the Applicant must be a fit and proper person to be admitted as a legal practitioner, the Applicant disclosed the following in her founding affidavit:

- a. In the latter part of 2016, while she was employed by the National Health Laboratory Services as a medical technologist, she faced disciplinary charges because she fell asleep during the night shift and she was dismissed for dereliction of her duties during

2017. She worked the night shift during the relevant period as she was studying for her LLB degree at the North West University. At the time of the incident she was 6 months pregnant and she avers that she was constantly requesting to be released from the night shift as she had to work 12 hours without a break. She confesses that the sleeping on the job caused some critical work not to be done. She states that she learned from her mistake, apologised for her transgression and took full responsibility for the complications she caused her employer, especially because it involved the lives of other people.

- b. In 2019 during her fourth year at University she had participated in a group assignment. What transpired is that the submission time was due and some of the group members and the Applicant had not finished the assignment. A few members of the group decided that one will do one question and the other a different question of the assignment and then swop answers. As a result the Applicant was charged with plagiarism. She pleaded guilty and took full accountability and as punishment, had to forfeit the module involved. She accordingly had to register for a single module the following semester in order to meet the LLB requirements.

- [4] In response to these disclosures the Provisional Affairs Committee (“PAC”) of the LPC requested the Applicant to file a supplementary affidavit and remove her application from the roll. She was also required to appear before the PAC in order to determine whether she is a fit and proper person to enter the legal profession by way of admission as an attorney. She was further requested to submit to the Council any documentation in relation to disciplinary matters.
- [5] The Applicant complied with these requests and in April 2023 provided detailed documents relating to her disciplinary hearing at the National Health Laboratory Service as well as a letter dated 12 April 2023 from the University. This letter confirmed the Applicant’s conviction which followed on the entering into of a plea agreement with the University and indicated that the Applicant had attended remedial programs as part of her sanction. The University confirmed that the Applicant has never committed further misconduct and was fully rehabilitated and supported her admission, confirming that she is indeed a fit and proper person for purposes of her admission application.
- [6] Having considered the Applicant’s submissions the PAC recommended to the LPC (also referred to as the Council) that the Applicant be regarded as fit and proper to be admitted as a legal practitioner.
- [7] The LPC raised concerns that the Applicant’s misconduct involved dishonesty and that there appeared to be a lack of remorse on her part. The Applicant was required to provide a psychological report for further consideration to the LPC.
- [8] The Applicant complied with this requirement. Having considered the psychological report, the LPC noted that it was not favourable, in that the psychologist expressed the view that although the Applicant was indeed a fit and proper person who could be admitted to practice, she should be monitored for a period of 12 months.
- [9] In the circumstances the Council did not support the Applicant’s admission application and decided to oppose the application should the Applicant proceed with it. The Applicant was further requested to withdraw the admission application and consider bringing an admission application after the expiry of a period of 12 months and that such application be supported by a recent psychological report.
- [10] However, the Applicant, no doubt on the strength of the recommendation of the PAC in her favour, decided to proceed with her admission application. Thereupon the LPC intervened in the application and filed an affidavit setting out the grounds for its opposition thereto.
- [11] The opposition was based on the Applicant’s misconduct and what the LPC considered to be her dishonesty and lack of remorse. The LPC assisted the Court by elaborating on these grounds of opposition in the affidavit. It is not necessary to repeat the content of the LPC’s affidavit in detail. By way of summary:

- a. The LPC pointed out that the Applicant had referred the unfair dismissal dispute to the CCMA indicating that she was innocent and unfairly dismissed and, when the CCMA ruled in favour of the employer, the Applicant appealed against this decision.
- b. The LPC highlighted that it was stated on behalf of the employer during the appeal that no request had ever been made by the Applicant to her manager to be relieved of her duties during the night shift and that the Applicant had been untruthful in this regard.
- c. It was pointed out that the Applicant had not provided the Court with any documentary proof that she had apologised for sleeping on duty and took full responsibility for the complications caused to her employer and it was submitted that the Applicant's appeal of the sanction of dismissal and her referral to the CCMA, indicated the contrary.
- d. The LPC also made extensive reference to the content of the clinical psychological report which is dealt with separately below.

[12] With regard to the content of paragraph [11]b above, Mr Maphutha who appeared for the Applicant, demonstrated during the course of his able argument that the Chairman made no finding of dishonesty on the part of the Applicant.

[13] With regard to the criticism summarised in paragraph [11]c above, Mr Maphutha pointed out that the Applicant had not suggested in her founding affidavit that the apology was made in writing. In this regard, we also respectfully disagree with the submission by the LPC that the Applicant's appeal of the sanction of dismissal and her referral to the CCMA indicated that she had not apologized or taken full responsibility for her actions. In our view the inference which the LPC seeks to draw in this regard

is not justified. The mere exercise by the Applicant of her statutory rights of appeal cannot justify the drawing of an adverse

inference against her.

[14] Although the LPC characterized the psychological report as being unfavourable to the Applicant, we are of the view that, reasonably interpreted, the report is in fact to a very large extent favourable to the Applicant.

[15] The LPC highlighted the following features of the report:

- a. The Applicant attempted to place herself in an overly positive light by minimizing faults and denying psychological problems.
- b. The Applicant may have low self-esteem, may have low energy or lack of enthusiasm, may have problems with somatic distress and may be unusually sensitive to criticism (underlining added).

- c. The LPC emphasised that although the report recommended that the Applicant be admitted as an attorney, this was qualified by the recommendation that she be supervised by a senior colleague for 12 months who must provide a progress report to the Council.
- [16] The LPC also took cognizance of the following favourable aspects of the report:
- a. The Applicant's profile showed that she is a harmonious person who answered questions openly and critically.
 - b. The Applicant presented as a well-adjusted individual, she seemed to be remorseful of her actions and seemed to have been rehabilitated.
- [17] In our view the fact that the Applicant may have attempted to place herself in a overly positive light is not particularly significant in view of the positive findings in the report which are mentioned above and below.
- [18] With reference to paragraph [15]b above, it is clear that the psychologist made no categorical findings, but merely raised the possibility that there might be certain psychological difficulties.
- [19] In our view, the following positive aspects of the report substantially outweigh the few negative aspects highlighted by the LPC:
- a. The Applicant appeared relaxed throughout the session with the expert, was well groomed and kept and maintained appropriate eye contact throughout.
 - b. Her attitude displayed enthusiasm and cooperation with the examiner and her mood appeared stable throughout.
 - c. She displayed appropriate emotional expressions based on the context. Her thought processes appeared appropriate and no suicidal or homicidal ideations were noted.
 - d. Her level of personal insight appeared to be good as evidenced by her ability to fully own and accept responsibility for her behaviour.
 - e. She displayed seemingly effective problem-solving skills with regard to managing affairs and was able to project future plans and goals. She displayed good judgment and ability to apply common sense.
 - f. Her personal adjustment and interpersonal relationships were within normal limits.
 - g. Although there remained room for emotional development, she was not overwhelmed by the demands posed to her and appeared to be in control of her circumstances.
 - h. She presented a picture of someone who is emotionally and psychologically adjusted and has been rehabilitated.

- [20] With reference to the Applicant's decision to persist with this application despite the LPC's request to the contrary, the LPC expressed the view that the "unjustifiable disregard by the Applicant of the Council ...is untenable". In our view this is not a fair criticism of the Applicant. On the one hand, the LPC had the right and duty to place information which it considered to have a bearing on the Applicant's fitness before the Court. However, the Applicant equally had the right to place this application before the Court for the Court's decision. The Applicant was understandably emboldened by the recommendation of the PAC that she was indeed a fit and proper person and could be admitted.
- [21] We do of course acknowledge that the LPC is one of the custodes morum of the legal profession,[1] and that its views warrant serious consideration. It does not follow, however, that an aspirant legal practitioner is duty bound to in all circumstances subscribe to the views expressed by the LPC. In our opinion, the decision by the Applicant to proceed with this application despite the views expressed by the LPC cannot, in all the circumstances, be faulted.
- [22] While differing from the view of the LPC, this judgment should not be construed as being critical of the LPC's conduct in this matter. It is worth reiterating that the LPC not only had the right, but was also duty bound to place all relevant

facts

and arguments before the Court in order to assist the Court to make an informed decision on this very important matter.

- [23] In this regard, we wish to commend Ms Mteto who argued the case for the LPC forcefully, but fairly.
- [24] In view of the foregoing we are satisfied that the Applicant is a fit and proper person to be admitted as a legal practitioner.
- [25] Finally, it is appropriate to record that it is not necessary to deal with any of the formal requirements for admission as a legal practitioner, as counsel were, in our view correctly, in agreement that these requirements had indeed been met and that the only question for decision was whether the Applicant was indeed fit and proper to be admitted.

J P Vorster

Acting Judge of the High Court

E van der Schyff

Judge of the High Court

The reasons for the order granted on 2 August 2024 are handed down electronically by being uploaded to CaseLines.

Appearances

Counsel for the Applicant: M.R. Maphutha instructed by: Sebatsane Attorneys Counsel for the LPC: N.S. Mteto Instructed by Renqe FY Inc Date of Hearing and Order: 2 August 2024 Date of Judgment with reasons: 7 August 2024

[1] See for example Wild v Legal Practice Council 2023 (5) SA 612 (GP), paras. [81] and [82].

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