

SOUTH AFRICA / JUDGMENT

Siyabonga Gugulethu Galela (Ex parte application) (1294/2023) [2024] ZASCA 176 (13 December 2024)

[2024] ZASCA 176

COURT

Supreme Court of Appeal

BEFORE

Nicholls, Molefe, Smith, Unterhalter, Dolamo

CASE / FILE NUMBER

1294/2023

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FLYNOTES:

PROFESSION – Admission –
Full disclosure –
Information applicant obliged to
disclose in ex parte application for admission – High Court
finding that appellant
not fit and proper person – Failure
to disclose directorship of company – Business failed and
company never opened
bank account, received no income and did not
file tax returns – Non-disclosure not intended to deceive –
Failure
to attach LLB certificate due to being in arrears with
fees – Appeal upheld – LPC authorised to enrol
appellant
as legal practitioner – Legal Practice Council
Rules, rule 22.1.5.
THE
SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 1294/2023

In the ex parte application:

SIYABONGA GUGULETHU GALELA APPELLANT

Neutral citation: Siyabonga Gugulethu Galela (Ex Parte Application) (1294/2023 [2024] ZASCA 176 (13 December 2024))

Coram: NICHOLLS, MOLEFE, SMITH and UNTERHALTER JJA and DOLAMO AJA

Heard: 04 November 2024

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 13 December 2024.

Summary: Admission as a legal practitioner – explanation required on failure to attach degree certificates – insufficient disclosure on directorship in a company during practical vocational training – in supplementary papers failures remedied – failure to attach LLB certificate condoned – proper explanation of indebtedness – good cause shown for contravention of Legal Practice Council rule 22.1.5.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Johnson AJ and Bokako AJ sitting as court of first instance):

1 The appeal against the order of the high court is upheld.

2 The order of the high court is set aside and replaced with the following order:

‘2.1 The applicant has shown good cause for contravening rule 22.1.5.1 of the Legal Practice Council (LPC) rules, and it is declared that the practical vocational training contract entered into between the applicant and Dr Eric Levenstein is not void ab initio, and that the service rendered thereunder is effective, as contemplated under rule 22.1.5.2 of the LPC rules;

2.2 The applicant, Siyabonga Gugulethu Galela, be admitted to practise as a legal practitioner and is authorised to be enrolled as an attorney of the High Court of South Africa in terms of s 24(2) of the Legal Practice Act 28 of 2014 (the LPA); and

2.3 The LPC is authorised to enrol the applicant as a legal practitioner
in accordance with the provisions of s 24, read with s 30, of the LPA.’

Nicholls JA (Molefe, Smith and Unterhalter JJA and Dolamo AJA concurring):

- [1] That a legal practitioner should display impeccable integrity and the utmost honesty is unarguable. What courts have grappled with, is what conduct renders a person unfit to be a legal practitioner. The Gauteng Division of the High Court, Pretoria (the high court) held that Ms Siyabonga Gugulethu Galela (Ms Galela), the appellant, was not a fit and proper person to be admitted as a legal practitioner. The primary issue for determination is this: what information was Ms Galela obliged to disclose in her ex parte application for admission, and what consequences flow from the lack of full disclosure?
- [2] The admission of legal practitioners is governed by the Legal Practice Act 28 of 2014 (the LPA). Section 24(6)[1] provides that the high court must admit to practice: a person who is duly qualified; is a South African citizen or permanent resident; who has served an application containing information as determined by the rules; and who is a fit and proper person to be so admitted. Section 26[2] of the LPA sets out the minimum qualifications and the vocational training required. These include having satisfied the requirements for an LLB degree obtained at any registered university in South Africa, after pursuing it for the required number of years.
- [3] Ms Galela launched an ex parte application for her admission as a legal practitioner to the high court in June 2023. She attached a statement of her academic record from the University of the Witwatersrand (Wits) which reflected that she had qualified for a Bachelor of Arts degree on 19 December 2018 and had graduated on 28 March 2019. The academic record for the LLB reflected that she had qualified on 14 December
2020. It did not reflect that she had graduated.
- [4] At the time Ms Galela commenced her admission application, she was employed at Werksmans Attorneys having entered into, and completed, a practical vocational training contract (PVT contract) with a director at the law firm. On receipt of the application, the Gauteng Provincial Office of the LPC drew Ms Galela's attention to two matters. First, the fact that she had not attached her LLB certificate to the application. Second, that she had stated under oath that she did not occupy any other position, nor was she engaged in any other business whatsoever other than that of a candidate legal practitioner. The LPC pointed out that according to

the Companies and Intellectual Property Commission's eServices (CIPC) website, Ms Galela was listed as having held an active

directorship in an enterprise during her period of service as a candidate legal practitioner. She was invited to file a supplementary

affidavit, as was her principal, explaining her failure to obtain prior written consent from the LPC, as required by the rules and to indicate why her LLB degree certificate had not been attached.

[5] Rule 22.1.5 of the rules of the Council provides:

‘22.1.5.1 A candidate attorney shall not have any pecuniary interest in the

practice and service of an attorney, other than in respect of bona fide remuneration for his or her services as a candidate attorney,

and shall not, without prior written consent from the Council, hold or occupy any office in respect of which he or she receives any form of remuneration, directly or indirectly, or engage in any other business other than that of candidate attorney, where holding that office or engaging in that business is likely to interfere with the proper training of the candidate attorney.

22.1.5.2 If any candidate attorney contravenes the provisions of rule 22.1.5.1 the contract concerned shall be void ab initio and service rendered thereunder shall be ineffective unless the court on good cause shown otherwise directs.’

[6] On receipt of the letter from the LPC, Ms Galela filed a supplementary affidavit. She stated that, in 2014, she became a director of Varsigator Solutions (Pty) Ltd (Varsigator) which was incorporated with the aim of developing a mobile application (the app) to assist students to navigate their university experience, both geographically and with regard to recruitment activities and career opportunities. It appears that the app did not gain much traction, and in 2017 it became impractical for her to pursue any work on developing the app while continuing with her studies.

[7] Ms Galela says that from 2017 onwards the company was ‘completely dormant and had thus entered the deregistration process’. She attached a document from the CIPC eServices biz portal which indicated that the company’s office recorded on 25 February 2017 and 12 June 2019 that there had been no annual returns filed, no payments made and that the company was in the process of deregistration. On 31 March 2023 it was recorded: ‘FINAL DEREGISTRATION DUE TO ANNUAL RETURN NON COMPLIANCE’.

[8] Ms Galela attributes her failure to obtain prior written consent to her belief, genuinely held, that her directorship of Varsigator had automatically ceased once it stopped trading in 2017. She therefore was of the opinion that when she entered into a PVT contract on 1 February 2021, the company had been defunct for some four years. Accordingly, it did not interfere with her practical vocational training.

[9] Ms Galela’s principal at Werksmans Attorneys confirmed under oath that she did not disclose her position as a director of Varsigator but that she performed all tasks assigned to her in a satisfactory manner and her training under the PVT contract was proper and complete. Ms Galela’s mother who was the administrator of Varsigator, confirmed that as from February 2017 her daughter performed no duties or functions as a director of the company which had to all intents and purposes ceased to exist.

- [10] Regarding her failure to attach the LLB certificate, Ms Galela explained that Wits does not issue degree certificates to graduates who are in arrears with their fees. Nonetheless, the academic transcript is proof that she has met the necessary academic requirements for the BA Law and LLB degrees. She provided no information as to why her university fees had not been paid since at least 2020.
- [11] When her application for admission came before the high court, the application of Ms Galela and that of another applicant were stood down to the end of the roll. It appears that Ms Galela's counsel was informed that there was a problem with her admission. Judgment was reserved in these two matters. When judgment was delivered on 18 August 2023 in the high court, the application for the admission of Ms Galela as a legal practitioner was dismissed on the basis that she was not fit and proper.
- [12] The grounds for this finding were twofold. First, with reference to Varsigator, she did not resign as a director. The high court held that it was not open to her, or her principal, to decide whether her business would interfere with her training as a candidate attorney, only the LPC could make that determination. Significantly, she failed to disclose that she was a director of Varsigator, and stated under oath that she did not 'hold any position or engage in any business whatsoever other than that of a candidate legal practitioner...during the period of service of my PVT contract'. Although she was under a duty to ascertain the true status of the business, she failed to do so. Instead, she placed patently untrue facts before the high court. The fact that she believed that the company had been deregistered was not well-founded and in any event did not excuse the fact that she made untrue statements under oath.
- [13] As regards the second ground, namely Ms Galela's failure to produce her LLB certificate as a result of not having paid her fees to Wits, the high court found that it was highly irresponsible for any person to ignore their financial obligations, least of all a person who wanted to become an attorney. The court noted that Ms Galela had proffered no reasons as to why she had reneged on her financial obligations.
- [14] There was no appearance by the LPC to object to the admission of Ms Galela. The high court quite correctly pointed out that the LPC is obliged to do more than merely send an email in which its objections are set out. In such circumstances there should be a substantive contribution by the LPC indicating that it has properly considered the matter and whether it supports the admission or not.
- [15] At the hearing before this Court, it was conceded that insufficient facts had been proffered on both issues, and that further disclosure was warranted, before a determination could be made as to whether Ms Galela was a fit and proper person to be admitted as a legal practitioner. She was obliged fully and candidly to disclose why there was a differentiation between the two academic transcripts which were attached to her papers, the Bachelor of Arts degree certificate and the Bachelor of Laws degree certificate. While inability to pay

debts is not necessarily a ground for an adverse finding as to a candidate's suitability to become a legal practitioner, absent an adequate explanation, there may well be grounds to find that Ms Galela is a recalcitrant debtor and therefore not fit and proper. On the papers before us the only information provided was that she was in arrears with her fees. Therefore although she had completed the requirements for the qualification, she was 'not in possession of [her] LLB degree.'

- [16] As to Varsigator, a more detailed explanation was provided but this too was insufficient. She stated that she did not ever derive an income from the company, and from 2017 did not perform any functions as a director. More was required than the bald assertion that it was a non-trading company which had been deregistered in 2023. More concerning is that the directorship was not disclosed in her original application, but only upon this being investigated by the LPC.
- [17] This Court decided that it was in the interests of justice to allow Ms Galela an opportunity to address these two issues more comprehensively, in another supplementary affidavit, rather than remitting the matter back to the high court.
- [18] In her further supplementary papers, Ms Galela provided a detailed explanation regarding her failure to pay her university fees. Her mother also provided an affidavit in which she set out fully what led to her being unable to pay her daughter's fees. At the beginning of 2020, Ms Galela signed an acknowledgment of debt with Wits as she had been unable to make full payment since
2018. The financial situation of her family deteriorated and once she commenced her PVT at Werksmans Attorneys, she contributed to the household expenses. This was confirmed by Ms Galela's mother. In short, Ms Galela stated that she was not a recalcitrant debtor, rather she was unable to pay the large sum of more than R143 000 which was owing to Wits. Significantly, the amount has now been settled and there is no longer an outstanding amount owing to Wits.
- [19] Ms Galela, relying on the ex parte application of Tlotlego,[3] believed that it was unnecessary to provide any further details as to why she had not paid her university fees. The high court set aside a practice directive in the Gauteng Division requiring proof of a payment arrangement entered into with the university regarding payment of the outstanding fees, where a degree certificate had not been attached due to failure to pay tuition fees. It held that the absence thereof could not disqualify a legal graduate from entering the profession, and it was not the preserve of the court to oversee the debtor/creditor relationship between a former student and the university.[4]
- [20] As such, the high court in Tlotlego found that evidence of a payment arrangement to satisfy the court that the debt with the university would be purged, was not relevant to the evaluation of fitness and propriety. It held that courts should never act as a 'gatekeepers of students in poverty'.[5]

[21] It is correct that courts will not keep a poverty stricken graduate out of the legal profession. However, where an applicant for admission as a legal practitioner fails to attach a degree certificate, a full and detailed explanation for this omission must be provided. There may well be grounds for condoning the lack of a degree certificate, but this will not always be the case. The

applicant has to put up sufficient evidence to show that she is not a recalcitrant debtor. Any person who deliberately and intentionally

fails to pay their tuition fees, when they have the means to do so, or at least to make some inroads in the reduction of their

indebtedness, is not a person of impeccable honesty and integrity and thus is not a fit and proper person to enter the legal profession.

[22] Ms Galela also set out further details in respect of her directorship of Varsigator. She and a friend had set up the business on the strength of R300 000 provided by her mother in exchange for a 20 per cent share in the business. This was paid to a company to develop the app. The development ultimately failed and the business did not get off the ground. Varsigator never opened a bank

account, it received no income, as a result of which it filed no tax returns. Ms Galela attempted to recoup the monies from the

development company and left the process of deregistration to her mother. In hindsight, she acknowledges that this was irresponsible

and that she should have driven the process of deregistration of Varsigator, or at least conducted enquiries as to its status at the time of launching her application for admission.

[23] Ms Galela's supplementary affidavit has set out a proper explanation as to why she did not disclose that she was a director of Varsigator. In short, the business failed. As a result Varsigator never opened a bank account, received no income and did not file tax returns. In my view her non-disclosure, albeit negligent, was not intended to deceive nor did the directorship interfere with her proper training. There are sufficient grounds for this Court to condone her non-compliance with rule 22.1.5. In addition, I am satisfied that her reason for non-payment of her university tuition is not due to any dishonesty on her part but rather a genuine inability to pay her fees at the time. These have now been paid in full. In the circumstances I am of the view that Ms Galela is a fit and proper person to be admitted to the legal profession.

[24] In the result, the following order is made:

C HEATON NICHOLLS

JUDGE OF APPEAL

Appearances:

For appellant: R Pearse SC (with S Mohammed) Instructed by: Sami Modiba Attorneys, Johannesburg Hattingh Attorneys Inc, Bloemfontein.

[1] Section 24(2) of the Legal Practice Act provides: ‘(2) The High Court must admit to practise and authorise to be enrolled as a legal practitioner, conveyancer or notary or any person who, upon application, satisfies the court that he or she- (a) is duly qualified as set out in section 26; (b) is a- (i) South African citizen; or (ii) permanent resident in the Republic; (c) is a fit and proper person to be so admitted; and (d) has served a copy of the application on the Council, containing the information as determined in the rules within the time period determined in the rules.’

[1] Section 24(2) of the Legal Practice Act provides:

‘(2) The High Court must admit to practise and authorise to be enrolled as a legal practitioner, conveyancer or notary or any person who, upon application, satisfies the court that he or she-

(a) is duly qualified as set out in section 26;

(b) is a-

(i) South African citizen; or

(ii) permanent resident in the Republic;

(c) is a fit and proper person to be so admitted; and

(d) has served a copy of the application on the Council, containing the information as determined in the rules within the time period determined in the rules.’

[2] Section 26 of the Legal Practice Act provides: ‘(1) A person qualifies to be admitted and enrolled as a legal practitioner, if that person has- (a) satisfied all the requirements for the LLB degree obtained at any university registered in the Republic, after pursuing for that degree- (i) a course of study of not less than four years; or (ii) a course of study of not less than five years if the LLB degree is preceded by a bachelor's degree other than the LLB degree, as determined in the rules of the university in question and approved by the Council; or (b) subject to section 24 (2) (b), satisfied all the requirements for a law degree obtained in a foreign country, which is equivalent to the LLB degree and recognised by the South African Qualifications Authority established by the National Qualifications Framework Act, 2008 (Act 67 of 2008) ; and (c) undergone all the practical vocational training requirements as a candidate legal practitioner prescribed by the Minister, including- (i) community service as contemplated in section 29, and (ii) a legal practice management course for candidate legal practitioners who intend to practise as attorneys or as advocates referred to in section 34 (2) (b); and (d) passed a competency-based examination or assessment for candidate legal practitioners as may be determined in the rules. (2) An attorney qualifies to be enrolled as a conveyancer, if he or she has passed a competency-

based

examination or assessment of conveyancers as determined in the rules by the Council. (3) An attorney qualifies to be enrolled as a notary, if he or she has passed a competency-based examination or assessment for notaries as determined in the rules by the Council.'

[2] Section 26 of the Legal Practice Act provides:

'(1) A person qualifies to be admitted and enrolled as a legal practitioner, if that person has-

- (a) satisfied all the requirements for the LLB degree obtained at any university registered in the Republic, after pursuing for that degree-
 - (i) a course of study of not less than four years; or
 - (ii) a course of study of not less than five years if the LLB degree is preceded by a bachelor's degree other than the LLB degree, as determined in the rules of the university in question and approved by the Council; or
 - (b) subject to section 24 (2) (b), satisfied all the requirements for a law degree obtained in a foreign country, which is equivalent to the LLB degree and recognised by the South African Qualifications Authority established by the National Qualifications Framework Act, 2008 (Act 67 of 2008) ; and
 - (c) undergone all the practical vocational training requirements as a candidate legal practitioner prescribed by the Minister, including-
 - (i) community service as contemplated in section 29, and
 - (ii) a legal practice management course for candidate legal practitioners who intend to practise as attorneys or as advocates referred to in section 34 (2) (b); and
 - (d) passed a competency-based examination or assessment for candidate legal practitioners as may be determined in the rules.
- (2) An attorney qualifies to be enrolled as a conveyancer, if he or she has passed a competency-based

examination or assessment of conveyancers as determined in the rules by the Council.

(3) An attorney qualifies to be enrolled as a notary, if he or she has passed a competency-based examination or assessment for notaries as determined in the rules by the Council.'

[3] Ex parte Tlotlego 2017 JDR 1989 (GJ).

[4] Ibid para 4.

[5] Ibid paras 13-14.

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