



LAW SOCIETY
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LSSA Advisory

THE PATHWAY TO A NOBLE PROFESSION: BEING A FIT AND PROPER PERSON

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

On 13 December 2024 the Supreme Court of Appeal (SCA) handed down a judgment which has significant implications for aspirant legal practitioners and their principals. The SCA brought to finality an 18-month process which started with an ex parte application (the application) for the applicant's admission as a legal practitioner, initially made to the Gauteng Division of the High Court in June 2023. The applicant commenced her practical vocational training (PVT) contract on 1 February 2021.

The applicant's academic record for her LLB was attached to the application, but not her LLB certificate. The Gauteng Provincial Office of the Legal Practice Council (LPC) pointed this aspect out. The LPC also pointed out that the applicant has 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. However, according to the website of the Companies and Intellectual Property Commission's (CIPC), she was listed as a director of a private company during her period of service as a candidate legal practitioner. She was invited to address such in a supplementary affidavit, which she did. The applicable rule 22.1.5 of the rules of the LPC 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.

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.'

The applicant stated in her supplementary affidavit that during 2014 she became the director of a company which was incorporated with the aim of developing a mobile application to assist students to navigate their university experience. The company was unsuccessful and became dormant from 2017 onwards. It was finally de-registered on 31 March 2023. She further explained that Wits did not issue degree certificates to graduates who are in arrears with their fees. She offered no explanation as to why the fees had not been settled.

On the issue of her undisclosed directorship, the High Court held that: "It is obvious that Applicant did not resign as director. In the circumstances she had a duty to ascertain the true facts, which she failed to do, before making a statement under oath which was at variance with the true facts. That is the least one would have expected from a person who aspires to become an attorney, from whom the highest degree of integrity and responsibility is expected." The High Court quoted with approval an unreported judgment in which it was stated that: "The court can simply not admit persons who still owe university fees and who, as a result of that, are unable to comply with the provisions of Rule 17 (6)(3) in the absence of evidence over the manner in which the debt is going to be paid. To do so may lead to the unthinkable that a person is admitted, never pays the university, and be allowed to practice, perhaps forever, without a degree certificate."

The High Court held that the applicant was not fit and proper to be admitted as a legal practitioner.

The matter proceeded to the SCA where it was agreed that, on both issues, insufficient facts have been presented and further disclosure was necessary before a finding could be made on whether the applicant was a fit and proper person to be admitted as a legal practitioner.

The applicant filed a supplementary affidavit together with a supporting affidavit attested to by her mother. The SCA got a view into the financial position of the applicant, as an aspirant legal practitioner, who had to contribute towards the deteriorating financial position of her family, whilst being obligated to pay her student debt of R143 000. She signed an acknowledgement of debt with the university, which has since been paid in full. The SCA concluded that her non-payment was because of a genuine inability to pay her fees at the time.

The SCA held that: "...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."

The SCA also accepted the applicant's explanation about her directorship in the private company. As summarised by the SCA, "In short, the business failed. As a result [the private company] 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."

The SCA confirmed that the applicant is a fit and proper person to be admitted to the legal profession.

Ironically, the applicant's noble efforts to participate in an entrepreneurial venture at university, which could have potentially aided in paying her university fees and helping her family, almost resulted in her non-admission as an attorney.

The importance of the SCA judgment cannot be understated. Some of the lessons that can be extracted for both aspirant legal practitioners and their principals:

1. Doing due diligence before signing PVT contracts: Aspirant legal practitioners should, before signing the PVT contract, be absolutely clear on any positions as contemplated under rule 22.1.5.1 or, where appropriate, obtain written consent from the LPC. Principals can aid in this process by confirming the broad ambit of this rule and explaining the consequences of non-compliance.
2. Making statements under oath: Aspirant legal practitioners must ensure that all statements made under oath in support of their applications for admission are indeed true and accurate. This holds true for any statements made under oath
3. Providing sufficient facts: Aspirant legal practitioners should, where appropriate, provide sufficient facts to enable a court to make a finding. Outstanding fees are likely to impact on future applications for the admission of legal practitioners. The SCA has now specifically stated that an applicant must put up sufficient evidence to show that he or she is not a recalcitrant debtor. This also means that aspirant legal practitioners should be proactive in settling any outstanding university debt. Principals can help, at the commencement of the PVT contract, by pointing out the challenges that this may pose when applying for admission.

[Click here to read the full judgment.](#)

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