

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: **0978/2021**

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
<u>2023/05/10</u>	<u></u>
DATE	SIGNATURE

In the ex parte application:

THULANI AMBROSE VATSHA

Applicant

and

THE JOHANNESBURG SOCIETY OF ADVOCATES

Amicus Curiae

Neutral Citation: *Thulani Ambrose Vatsha v The Johannesburg Society of Advocates*
(0978/2021) [2023] ZAGPJHC 453 (10 May 2023)

JUDGMENT

Sutherland DJP:

Introduction

[1] The applicant, Thulani Ambrose Vatsha, seeks to be admitted as a legal practitioner and be enrolled as an advocate. There is a single controversy.

The crucial consideration which governs his application is whether the applicant has established that he is a fit and proper person to be admitted to practice. In the other aspects pertinent to the application, no controversy exists.

- [2] The applicant has previous convictions for theft and for escaping from custody. He was sentenced to 6 lashes for shoplifting in 1989 when he 16 years old. He was sentenced to two years' imprisonment for escaping from police custody on 2 May 2002 when he was 29 years old. He had participated in a robbery in which sharp instruments were brandished. The robbery charge was not prosecuted, apparently for lack of evidence. The fact of the commission of the crime of robbery was volunteered by the applicant in an application for a presidential pardon for the crime of escaping from custody to explain why he was initially arrested. The pardon application was an annexure to the initial founding papers.¹
- [3] The consequence of this personal history meant that the applicant was *prima facie* unfit to be admitted to practice. It was incumbent upon him to adduce evidence to rebut that inference. Albeit in the context of a re-admission application, the test for being fit and proper, in the context of prior dishonourable conduct, is captured in *Ex Parte Aarons (Law Society, Transvaal intervening) 1985 (3) SA 287 (T)* where at 291A – E, it was held:

‘The *onus* is accordingly on the applicant, as a first step, to convince the Court on a balance of probabilities:

"... that there has been a genuine, complete and permanent reformation on his part; that the defect of character or attitude which led to his being adjudged not fit and proper no longer exists; and that, if he is re-admitted, he will in future conduct himself as an honourable member of the profession and

¹ The pardon application has not progressed at all. On 14 June 2021, an email was received by the applicant pointing out the inadequacies of the application. No attempt has been made to address the criticisms listed. The writer of the email stated that failure to amplify the application by December 2021 would result in the file being closed. That is the ostensible fate of the pardon application.

will be someone who can be trusted to carry out the duties of an attorney in a satisfactory way as far as members of the public are concerned."

(*Behrman's case supra* at 557B - C, *per* CORBETT JA.)

In considering whether this *onus* has been discharged the Court must:

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

(*Kudo v Cape Law Society* 1972 (4) SA 342 (C) at 345H - 346, as quoted with approval in *Behrman's case supra* at 557E.)

The above considerations are not necessarily exhaustive and

"... the weight to be attached to them must naturally vary with the circumstances of the case. They all, however, relate to the assessment of the applicant's character reformation and the chances of his successful conformation in the future to the exacting demands of the profession he seeks to re-enter."

[4] The norms articulated in this passage were reiterated by Wallis JA in describing the considerations that underpin the concept of a person who is fit and proper to be charged with the responsibility of being a legal practitioner. In *General Council of the Bar of South Africa v Geach* 2013 (2) SA 52 (SCA) at paras [126] to [128] he held:

'[126] A person can only be admitted to practise as an advocate if they satisfy the court that they are a fit and proper person to be admitted as such. Central to the determination of that question, which is the same question that has to be answered in respect of attorneys, is whether the applicant for admission is a person of 'complete honesty, reliability and integrity'. The court's duty is to satisfy itself that the applicant is a proper person to be allowed to practise and that admitting the applicant to the profession involves 'no danger to the public and no danger to the good name of the profession'. In explaining the reasons

for this I need go little further than the words of Hefer JA in *Kekana v Society of Advocates of South Africa*, when he said:

'Legal practitioners occupy a unique position. On the one hand they serve the interests of their clients, which require a case to be presented fearlessly and vigorously. On the other hand, as officers of the Court they serve the interests of justice itself by acting as a bulwark against the admission of fabricated evidence. Both professions have strict ethical rules aimed at preventing their members from becoming parties to the deception of the Court. Unfortunately, the observance of the rules is not assured, because what happens between legal representatives and their clients or witnesses is not a matter for public scrutiny. The preservation of a high standard of professional ethics having thus been left almost entirely in the hands of individual practitioners, it stands to reason, firstly, that absolute personal integrity and scrupulous honesty are demanded of each of them and, secondly, that a practitioner who lacks these qualities cannot be expected to play his part.'

The need for absolute honesty and integrity applies both in relation to advocates' duties to their clients and their duties to the courts. In the past, applicants for admission as an advocate, who were unable to demonstrate those qualities of honesty and integrity, had their applications refused.

[127] These qualities of honesty and integrity must continue to be displayed throughout an advocate's practice. That is apparent from the provisions of s 7(1) of the [Admission of Advocates] Act that reads as follows:

'(1) Subject to the provisions of any other law, a court of any division may, upon application, suspend any person from practice as an advocate or order that the name of any person be struck off the roll of advocates —

. . .

(d) if the court is satisfied that he is not a fit and proper person to continue to practise as an advocate; . . . '

Conduct by an advocate in the course of his or her practice that demonstrates a lack of honesty or integrity has repeatedly been held to lead to the conclusion that they are no longer a fit and proper person to continue to practise as an advocate. Although in these cases the court is usually concerned with conduct in the course of the

advocate's practice, that does not mean that conduct unconnected with practice may not be taken into account in assessing whether the advocate lacks the honesty and integrity to remain in practice as an advocate.

[128] Hefer JA set out the proper approach to an application under s 7(1)(d) of the Act in *Kekana*, where he said:

'In terms of s 7(1) of the Admission of Advocates Act 74 of 1964, as amended, the Court may suspend any person from practice, or order that the name of any person be struck off the roll, if it is satisfied that he is not a fit and proper person to continue to practise as an advocate. The way in which the Court had to deal with an application for the removal of an attorney's name from the roll under a similar provision in the Attorneys, Notaries and Conveyancers Admission Act 23 of 1934, as amended (before that Act was repealed), was considered in *Nyembezi v Law Society, Natal* 1981 (2) SA 752 (A) at 756H – 758C. It emerges from the judgment that the Court first has to decide whether the alleged offending conduct has been established on a preponderance of probability and, if so, whether the person in question is a fit and proper person to practise as an attorney. Although the last finding to some extent involves a value judgment, it is in essence one of making an objective finding of fact and discretion does not enter the picture. But, once there is a finding that he is not a fit and proper person to practise, he may in the Court's discretion either be suspended or struck off the roll.'

The History of the application

- [5] The evolution of the application for admission is pertinent.
- [6] The applicant matriculated in 1998 at the age of 26. He commenced studies for a B Com in 2000, but ostensibly did not complete the course. He ultimately obtained an LLB on 21 May 2019 from UNISA.
- [7] He launched an application for admission to practice on 13 January 2021. In the founding affidavit, in para 29, the applicant disclosed the convictions for theft and for escaping from custody. He attached a SAPS clearance

certificate, dated 22 May 2019, reflecting the two convictions and the sentences imposed. He alleged they had been expunged. This was not correct. The theft conviction had indeed been expunged, *ex lege*, pursuant to section 271B of the Criminal Procedure Act 51 of 1977, because of the elapse of 10 years from the date of the conviction during which period the applicant had not re-offended. That document was omitted from the admission application papers served on the Johannesburg Society of Advocates (JSA).² When the deficiency was pointed out by the JSA, the document was then annexed and in a supplementary affidavit, dated 8 June 2021, the applicant, in paragraph 4, again, incorrectly, alleged that 'my previous convictions have been expunged'. Thus, on two occasions, under oath, the applicant misrepresented the true position. The misrepresentation was never explained in any of the subsequent affidavits filed.

[8] The robbery in which the applicant participated was not alluded to in the founding affidavit. However, annexed to the founding papers was annexure TV 8. The sole reference to this annexure is in para 28 of the founding affidavit in which paragraph the disclosures of the two convictions had been made. The contents of annexure TV 8 are not addressed in the affidavit; the annexure was baldly referenced along with a reference to the annexure TV 7, the SAPS clearance certificate.

[9] Annexure TV 8 is a request for a Presidential pardon, dated 10 October 2019. The application is a handwritten filled-in standard form referencing section 84(2)(j) of the Constitution which empowers the President to consider the 'pardoning or relieving [of] offenders..'. The form requires a motivation to be set out. Further, the form in part 3(c), calls for a 'description of the circumstances why and how the crime was committed'. What the applicant wrote was this:

² In terms of practice in the Division, it is incumbent on an applicant to serve copies of the papers on the Legal Practice Council and on the Bar giving six weeks' notice of the date of the application to facilitate a screening of the application.

'I was in Vereeniging town on this date with my friends from Soweto. While there, we have tried to rob one sports shop using knives. Unfortunately, we could not succeed, as there were police around the corner not far from the shop where we were. We were therefore arrested and detained in Vereeniging police station. Same day at night we tried to or rather attempted to escape but could not. Hence we were sentenced to two years' imprisonment.' The pardon has not been granted and its progress is unknown'.

- [10] The point of significance is that the robbery was plainly an episode that warranted detailed exposition in the affidavit.
- [11] The LPC, upon receipt of the application, invited the applicant to address its 'Admissions and Practical Vocational Training Committee' on 10 May 2021. No information of what transpired in that meeting has been put forward, by either the applicant or by the LPC. The LPC thereafter issued a standard notice of no objection to the applicant's admission to practice. It is self-evidently important what the applicant told the committee and significant that it has never been disclosed. Moreover, what the committee understood it had before it and on what premise and upon what facts it recommended to the LPC not to object is important and it is significant that it has never been disclosed by the LPC.
- [12] Thereafter, apparently, the matter was set down on 10 June 2021, but then withdrawn owing, ostensibly, to the query raised by the JSA, mentioned above.
- [13] Eventually, the matter was again set down on 27 July 2022 upon which date the case came before us for the first time.

[14] The applicant did not turn up at the hearing and the case was struck off the roll. Some hours after the court had risen, he presented himself at the chambers of the Deputy Judge President (DJP) saying that he had lost his way in the Courthouse. He was informed that he would have to re-enrol the matter, but in any event was advised that the papers in the file were inadequate to deal with the issues which have been mentioned above. He was invited to prepare a supplementary affidavit before enrolment and submit it, informally, for scrutiny by the DJP. To facilitate the preparation of cogent supplementation of the papers, the following directive was issued to guide the exercise:

- (1) In respect of the conviction of theft in 1989 a full account must be provided of the circumstances of the offence and the context in which it occurred, including the socio-economic circumstances of the applicant, who was 16 years old at the time. A copy of the court record should be provided, or if not available an explanation proffered why that is so.
- (2) A full account must be given of the incident in 2002 when the applicant was 29 years of age, was a participant in an attempted robbery at knifepoint and his subsequent arrest and escape. A copy of the court records should be provided.
- (3) A full account of what the applicant was doing from the age of 16 up until the age of the application for admission as a legal practitioner. This should be in the form of a chronological list setting out periods and activities indicating the places where the activities were carried out, in what employ the applicant was from time to time and when unemployed how the applicant was financially supported.
- (4) A full chronological account of the application for a pardon.

[15] In due course, the applicant presented a draft supplementary affidavit for scrutiny. The advice given by me was that it remained deficient. I thereupon referred him to a member of the Johannesburg Bar to offer him assistance in addressing the deficiencies. In due course a comprehensive supplementary affidavit, prepared with the assistance of the attorney of record and counsel,

was filed on 24 February 2023. It is that affidavit that purports to address the controversy.

- [16] A Directive was then issued by this court that the JSA and the LPC must submit argument to the court on the propriety of the application. The JSA has done so. The LPC has ignored the directive, in itself a disrespectful act, exacerbated by a dereliction of its duty towards the Legal Profession, no less than towards the court. The LPC had at an earlier stage, on manifestly inadequate papers, merely issued a notice of no objection, when the very least that would have been required from the LPC, when an obvious obstacle to admission was presented, was to address the court on the issues and motivate the stance they took. The unsatisfactory conduct of the LPC is addressed discretely elsewhere in this judgment.

The account given by the applicant of commission of the crimes

- [17] The account given in the affidavit of 12 December 2022 is addressed.
- [18] Despite its length; it is appropriate to cite the affidavit in full as the critical determination must be made upon the totality of the disclosed facts;
1.
 2. I have brought an application for my admission as a legal practitioner and that I be enrolled as an advocate in this court. My application has been before the court. Deputy Judge President issued a directive that I present further material for consideration by the Court in relation to my application.
 3. These are the issues that I am to address: [The text of the Directive cited above is omitted]
 4. I first address the issue of the court records.
 5. I attach the court record in relation to the 1988 conviction. I obtained the information from the clerk of the court of Matatiele. The court book shows that a Mr. Pienaar was the Presiding officer and that a Nel was the prosecutor. It further shows that I

was sentenced to lashes. I could not obtain the charge sheet. I refer to annexure "TAV1", which is a copy of the court book and my correspondence with the court official.

6. I made enquiries at the court in Vereeniging pertaining to my conviction in 2002. Mr Motloenya ("Motloenya"), the Court Manager, advised me that the court record for this conviction does not exist. I refer to Mr Motloenya's letter, marked annexure "TAV2". Ms. Geaniel Davids, my attorney, also made enquiries as mentioned in her affidavit, marked annexure "TAV3".
7. I shall, in dealing with the incidents in 1989 and in 1992, address the following:
 - 7.1. My socio-economic condition at the time of the incidents.
 - 7.2. The circumstances and context leading to incidents.
 - 7.3. The trajectory of my life, including from age 16 to the date of this application.
8. I was born on 15 April 1973. I am one of four children born of my mother. I was born in Matatiele, in the Eastern Cape. I had two older siblings, a brother and a sister. I also had a younger sister. My older siblings were born of a different father to me and my younger sister. My older brother was born in 1965 and my older sister was born in 1968. My father died when I was young, during or about 1981.
9. Our fathers were not present when I was a child. Our mother raised us. She worked as a domestic throughout her life. She did not, however, always have steady employment.
10. My mother did not reside with us but resided at her employers. Our older brother was meant to take care of us. He would sometimes not cook for me and my sister. He sometimes hit my sister and I and would remark that we were not his father's children. I complained to my mother, who reprimanded my brother. My brother promised to change but did not do so. My sister and I would often go to school without food.
11. My mother spoke to my aunt, who agreed to take my sister and I in. It was then that my sister and I went to stay with my aunt. This was in 1989. I was in standard 5 (now grade 7) at school. I was good at school, despite having missed some of my schooling before I went to stay with my aunt. That is why I was older than my classmates. There were, however, other students who were older than me in my class.
12. My aunt had three children of her own. Agnes, born in 1979; Nthabiseng, born in 1983, and Philip, born in 1974. I got along well with my cousins, better than my brother. We attended the same school and I shared friends with Philip.
13. My mother worked in the same town near my aunt's home. My mother would bring groceries at month end. She would also buy clothes for us; including buying

clothes for my cousins. I did not always receive all the clothes that my mother would buy for me. My mother would say, if I mentioned clothing, that she had bought me clothes which she gave to my aunt. I would then inform my mother that I saw Philip wearing the article that my mother said was bought for me.

14. My aunt did not work. She was not a talkative person. She was good to me and my sister. For example, my sister and I ate as my cousins did. I stopped staying with my aunt when my mother removed me to Johannesburg (Orlando, Soweto), to stay with my uncle.
15. My mother removed me to Johannesburg because I had been arrested and convicted for stealing. She removed me to Johannesburg out of concern that I might become wayward. My removal to Johannesburg came about as described below.
16. I did not have a lunchbox at school when I was staying with my aunt. I would ask my mother for money when she came to visit. I then told her that I wanted to buy sweets which I would then sell at school. My mother gave me R20, which I used to buy the sweets. My mother took me to the shop which was in town (Matatiele) where I bought the sweets.
17. I then started selling sweets at school. I would buy things for my sister with the profit. I also bought food for the family, including bread and Bull Brand about twice a week. There were occasions when I spent more money and would have no money to buy stock and would ask my mother for money. She admonished me to manage money well, telling me that she could not always give me money to buy stock.
18. I had befriended a person by the name of Tumelo who worked for Mr Da Silva, the owner of the shop where I purchased the sweets. Tumelo was older than me. He was about 20 years old and I was 16 years at the time. He was a long-term employee of Mr Da Silva.
19. I told Tumelo on one occasion that I needed stock but had no money. He proposed an arrangement in which he would give me the sweets and then I would pay him back. I would wait at the taxi rank where Tumelo would bring the sweets. Tumelo had also advised me that I could wear certain clothing which would not show that I was carrying sweets in my person.
20. I would then sell the sweets and would pay Tumelo. It was not a once off that Tumelo and I stole from Mr Da Silva. I went to the shop on one occasion in 1989 to obtain sweets. Tumelo was not at work. I moved around the shop and stole two packets of chocolate éclair sweets and one packet of stock sweets. I hid the sweets under my clothes.

21. I was about to leave the store when Mr Da Silva's wife stopped me. Mr Da Silva then grabbed me from behind, putting me back in the store. He searched me and found the sweets, after which he called the police who arrested me.
22. The police first took me to my mother's workplace. The police told my mother that I stole from Mr Da Silva. My mother then accompanied me and the police to the police station, where my mother made a statement. I was kept in the cells until the following day, when I was then taken to court. I was convicted for theft and sentenced to 7 lashes; after which I was released.
23. My mother was disappointed and angry at me. She asked why I stole. I replied that I had no money to buy stock. I told her that I used some of the money to buy food for the family. She then told me that it was not my responsibility to provide for the family and that what I did was a bad thing. She continued that I had to focus on my schooling. My mother and I returned to my aunt's place on my release. My aunt was equally disappointed; including advising me to be careful with whom I associated with.
24. It was known at school that I had been arrested. I explained to the principal what happened and I was told not to repeat what I did. My mother told the principal that I should no longer be allowed to sell sweets at the school.
25. My mother decided to remove me to Johannesburg a week following my arrest and conviction. She was concerned also about the impression that I was making on my sister. My aunt agreed that I should continue my schooling in Johannesburg.
26. I started standard 6 at a Selelekela secondary school in Johannesburg in 1990. I was 17 years at the time. I stayed with my uncle. My uncle lived with his "partner." They were not married. They had two children, Thabo (aged 12) and Tshepiso (aged 9). My uncle had been to prison, but I did not know that at the time.
27. We stayed in a four-roomed house. There were two additional out rooms; one of which was used as a shebeen and the other was used as storage for the shebeen. My uncle ran a shebeen. I helped my uncle by serving customers in the shebeen. I did not drink myself.
28. I was older than the other children at the school, even though I was not the only one. I finished high school in 1998, at the age of 26 years. I stayed with my uncle throughout this period. I was never in trouble as a high school student.
29. I told my uncle, when I was still in high school, that I wanted to start a business. My school had a kiosk and did not allow sales at the school. My uncle introduced me to Bongani Ntuli, who sold fruit at the Mlankunzi train station in Orlando East. Bongani was much older than me and was in his early 30s. I started by observing how Bongani conducted his business before starting my own business. Bongani

37. I was arrested for robbery in 2002. This came about as follows. I, together with about five other individuals who also sold products in the trains, would observe, when purchasing supplies in Vereeniging, that other sellers seemed to have money. These were other sellers who were purchasing stock. We observed, on occasion, two men buying supplies money on them.
38. I together with my accomplices accosted the two men and robbed them of their money. There were six of us involved in the robbery. We robbed the two men of their money and cell phone; after which we fled. We were however apprehended by security personnel. The police were called and we were arrested and taken to the Vereeniging police station, where we were charged with common robbery.
39. We used screwdrivers to commit the robbery. My accomplices were not my friends. I associated with them only in the trains where we all sold items. I was not involved in the initial planning of the robbery. I became aware that the robbery would occur just before it occurred. I was not aware, before arriving at the marketplace, that there was to be robbery at that time. This is not to say that I was unaware in the past of discussions amongst our group that there were some people at the marketplace whom we believed had money. I was therefore aware, generally, of the possibility that a robbery could occur.
40. We were kept in the cells overnight at the police station and were taken to court the following day. We were then remanded to the Leeuhof prison. We returned to court a week later and mentioned that we did not have attorneys. We were denied bail and were returned to prison.
41. We subsequently, and I do not recall the period, were taken to court for a second appearance. We escaped from the holding cells on that occasion. The escape occurred as follows. There were several other people, who were not in my group, who were also in the holding cells. A policeman came to the holding cells during lunch, to bring food to other inmates. I later saw the inmates leaving the holding cells, saying that the gates were open. They went up the stairs into the courtroom. We then realised that the gates to the holding cells were unlocked and we followed suit, leaving the holding cells and escaping through the court.
42. I went to a taxi rank and took a taxi to Orlando. My uncle told me to return to the police station and that I could not stay with him. My uncle then took me to his friend in Dlamini. I went to my uncle's home a week later to fetch clothes. I was apprehended by the police and returned to prison.
43. I was charged with escaping from custody and was sentenced to imprisonment for a period of 2 years. The charge for common robbery was withdrawn in 2003 for

lack of evidence. I was released from prison in 2004 on completion of my sentence for escaping from custody.

44. I returned to stay with my uncle on my release. He warned me against Bongani, the person whom he introduced to me when I started selling vegetables and who was the leader in our group that committed robbery. It was then that I learned that my uncle had been imprisoned before.
45. My uncle introduced me to a new business of selling cooked tripe. He lent me money in this regard. I did the selling at home. I later added uncooked tripe. My customers included pensioners to whom I sold on credit. I operated the business from my uncle's property between 2004 and 2007. I hired a bakkie in 2007, which allowed me to expand the area to conduct sales. I was then able to make sales in Orlando, Diepkloof, and Kliptown. I continued making sales in 2008 and 2009. I was staying with my uncle throughout.
46. I re-enrolled for my studies at UNISA in 2010. I hired Sifiso and Moeketsi to assist me in selling tripe. They would cut and deliver the tripe to customers. This remained the case through 2013, during which period I was staying with my uncle.
47. I completed my studies with UNISA in 2013. I then enrolled for the degree of Bachelor of laws, also with UNISA, in 2014. I started my LLB in August of that year. I received credit for some of the courses during my Bachelor of Commerce degree. This resulted in my completing the LLB degree over a shorter period.
48. I also applied, in 2014, for a position as an administrative officer at UNISA. I was hired on a one-year fixed contract. I started the job in September, 2014. My work included capturing information, allocating tutors, and giving advice through the UNISA student portal. The contract terminated in 2015, which is also the year my mother died of a stroke.
49. I applied for articles in 2016. I registered articles with Mr. Pieter Jacobus Botha, of the law firm Botha (David H) Du Plessis and Kruger Inc. I still had to complete my LLB at the time and, for that reason, my articles were registered for 3 years.
50. I was serving articles in 2017. I continued staying with my uncle. I continued with my business and had then employed the two assistants as permanent employees. My uncle was helping out in the business whilst also operating his shebeen.
51. My uncle died in 2018. His house was left under my care, and I continued residing at his house. I continued with my business and with my articles. I later ceded my articles to the firm of Ramsurjoo and Du Plessis. Mr Cobus Du Plessis was my principal. I did not complete my articles at the firm of Ramsurjoo and Du Plessis.
52. I graduated with the LLB degree in 2018. I wrote papers 1 and 2 of the board exams in August 2018. I passed both papers. I had also registered, in 2018, for a

course called "Risk Compliance and Governance" offered through WITS University. I completed the course in 2018.

53. LexisNexis employed me as a compliance officer in 2019. This was a one-year contract. I was based at Woodmead. Gregory Chamberlain was my line manager. I continued with my business in Soweto. One of my assistants left in 2019. I continued to reside at my uncle's house.
54. My contract with LexisNexis terminated in July 2020. My business at home was not doing well. I had money but my supplier no longer allowed me to keep produce with him. This meant that I kept small portions at home because I did not have a big enough fridge. My business was also affected by COVID. Customers stopped coming to make purchases. It was said that people selling in townships were not complying with COVID rules.
55. I closed my business sometime in June or July 2020. I had savings both from my business and from my employment. I also had the support of my girlfriend, who was employed. That is how I earned my living.
56. I eventually took up employment with Dube Leslie attorneys sometime in August or September 2020. I was employed by Dube Leslie Attorneys from August or September 2020 until March 2022. I knew Mr Dube from BDK Attorneys, where he was a candidate attorney. He started his practice in 2019. I assisted Mr Dube in his practice, including performing administrative work.
57. I sat for the two outstanding board papers, namely wills and estates and bookkeeping in 2021. I passed wills and estates but failed bookkeeping. I did not complete my articles of clerkship. I also did not write all the board papers.
58. I lodged an application for my admission as an advocate on 12 January 2021. The Legal Practice Council required that I appear before that body because of the disclosures in my application about my criminal record. I explained the circumstances as I have done in this affidavit. I subsequently received correspondence from the LPC that the LPC did not object to my admission as an advocate. That letter appears on Caselines, 0-15 in my application.
59. I took up employment with Themba Makhubo Attorneys in March 2022, who remains my employer to-date.
60. The Johannesburg Society of Advocates raised various questions pertaining to my application. Those questions appear in their letter in annexure "TVV1", Caselines 014-4 to my application.
61. My response to the issues raised by the Johannesburg Society of Advocates is as follows. I have two criminal records. The first concerns my theft of sweets from Mr

Da Silva's shop in 1988. The second concerns my escape from custody in connection with the robbery at Vereeniging in 2002.

62. I have come to understand that the conviction for the crime pertaining to Mr Da Silva's shop had the possibility of a payment of a fine, with the result that the conviction becomes expunged after a period of 10 years. The conviction for escaping from custody cannot be expunged because a fine cannot be paid, the conviction can be expunged only on a presidential pardon.
63. I have applied for a presidential pardon. I started the application sometime in February 2020. I had my fingerprints taken in February 2020 at a police station. I then took the fingerprints to the Criminal Records Centre in Pretoria. I was given a reference number for purposes of obtaining a clearance certificate. A clearance certificate is a record of crimes for which a person has convictions. I subsequently received the certificate from the Department of Justice. Annexure "TAV4" is a copy of the certificate.
64. I was told the following when I went to the Department of Justice. I was informed that officials at the Department will expunge the conviction for stealing sweets on my behalf and that there was no need for me to apply for expunge that conviction because it had been more than 10 years since the conviction. I was told that I had to apply for a presidential pardon to expunge the conviction for escaping from custody. I was given forms for applying for a presidential pardon. The above events occurred, as best as I recall, in February 2020.
65. I submitted my application for a presidential pardon, with the Department of Justice in Pretoria in 2020. I was told that it was a lengthy process which could take 2 to 3 years. I do not recall the name of the official who told me. I was not given a reference number on lodging the application.
66. I did not hear anything about the application. I then went to the offices of the Department of Justice to make enquiries. This was during COVID. People were not allowed to enter the building. I was told that I should await communication that will come by email. I received no communication. I made multiple enquiries in 2020 regarding my application, with no response to my enquiries other; than that I should expect communication via email.
67. I moved, in November 2021, from my uncle's house in Orlando to Florida, and moved in with my girlfriend who is now my wife. We have two children. One is 13 and the other is 5 years old. My wife is originally from Dlamini, in Soweto where we met. As mentioned before, I stayed at my uncle's house in Orlando. My wife works at a call centre for Nedbank. We met in 2007 and have been together since.

68. I continued making enquiries regarding my application in relation to my pardon application for the 2002 conviction. I called at the offices of the Department of Justice in Pretoria in June 2021, where I met Mr Eugene Shongwe; an employee who promised to help me regarding my application. Mr Shongwe told me that he could see my name in the system and gave me a reference number, namely "9/5/5/2 Pardon TAVASHA". I received an email, on 14/6/2021, from Ms Adele Steyn of the Department of Justice, advising that my application had been allocated to her "today". Annexure "TAV5" is a copy of the email. I liaised with Ms Steyn in 2021. She told me that the application was a lengthy matter which could take at least three years.
69. I received an email from Mr Steyn in 2022, saying that she had left the Department of Justice and that another person was dealing with my application for a pardon. Annexure "TAV6" is a copy of the email. I went to the Department of Justice sometime in April 2022 to enquire about who would be assisting me in my pardon application. Mr Shongwe informed me that Ms Liana Nieuwoudt was the person dealing with my application. I wrote to Ms Nieuwoudt on 10/5/2022 enquiring about my application. Annexure "TAV7" is a copy of my email. She replied on 15/6/2022 and advised that the matter had left her office and was enroute to the President. I understood that the application would have also gone through the Minister of Justice beforehand. Annexure "TAV8" is a copy of the email by Ms Nieuwoudt.
70. I went to the office of the Presidency at the Union Buildings in June 2022 to enquire about my application. I was told that Mr Geoffrey Mphaphudi was the person dealing with these applications but that he was not at work, having taken ill. I was given his mobile number and spoke with him. He told me that there were no applications before he went on leave and that he would be back at work after a week and further that he would give me more information once he was back at work.
71. I was copied in an email by Mr Mngodi Dlamini to Mr Mphaphudi on 7 July. Mr Mngodi asked about my application. Annexure "TAV9" is a copy of the email. The correspondence essentially revealed that there was no application at the Presidency.
72. I then went to the Department of Justice in Pretoria, to make further enquiries. Mr Shongwane informed me that Ms Nieuwoudt was unavailable to see me. I subsequently sent emails to Ms Nieuwoudt. Annexure "TAV10" sets out copies of the emails. I have not received responses to my e-mails. I therefore have no information concerning the status of my application.

73. I had in the meantime, in March 2022, taken up employment with Makhubu Attorneys. The practice is based in Soweto. I am employed as the office manager. My work entails administrative work, keeping of the diary, and attending to court documents.
74. My mother died of a stroke in 2015. My sister was employed by the Department of Social Development in the Eastern Cape. She started as an intern and was later offered full-time employment. My sister died of COVID in 2020. My other sister has also died. I am survived by my older brother, who is based in Bizana in the Eastern Cape. I reside with my wife and our two children in Florida, Johannesburg.
75. I am unable to annex confirmatory affidavits by officials from the Department of Justice and Constitutional Development. I am informed that those officials do not depose to confirmatory affidavits. I refer to annexure "TAV11" in this regard.
76.
77. I have strived to be an upstanding person. I am remorseful for the offences that I committed. My children will, in due course, read this affidavit and will understand part of the life that their father lived. It is my wish that they would grow up to be better people than me.'

[19] Prior to the hearing before the court, the JSA sent a query to the applicant dated 20 February 2023. The JSA informed the applicant that what was set out in the affidavit did not meet the threshold set by the case-law to demonstrate an awareness of the defect of character and setting out facts that demonstrated that the applicant had overcome the defect of character. The JSA also told the applicant that he had not given any detail of what was exchanged during the meeting with the LPC committee. The purpose of this alert was to give the applicant a chance to amplify the affidavit.

[20] The applicant's response in an affidavit of 24 February 2023 was to suggest, implausibly, that the affidavit had satisfactorily answered these questions. The answer to the alert was that the contents of the very affidavit being criticised '...should appease theconcern....' of the JSA. This response is a blatant evasion. Second, the further alert that there was no disclosure of substance about what was said at the LPC committee meeting was likewise ignored and

an evasive reply was given. In both respects, there has been a clear failure to give a full and open account. This failure advertises the applicant's inability to appreciate the sacrosanctity of full and frank disclosure, a critical dimension of an ethical lawyer's character.

[21] There are several aspects of the applicant's account of the robbery which are troublesome in two respects. First, on the allegations of fact set out in various documents, there are inconsistencies which point to untruthfulness or, at best, a cavalier approach to the truth by the applicant. Doubt in this regard is fatal to the application. Second, the account points towards a deficiency in his character which he has neither recognised, nor embraced. In the absence of acknowledgement there can be no progress to overcoming the defect. These character defects are dealt with hereafter.

[22] The account given to the President in the pardon request differs in material respects from what was related in the latest affidavit. The initial affidavit was bereft of an account. The material differences are tabulated:

- 1.1 In the pardon account he stated that he was with friends from Soweto; in the later account the co-robbers were merely acquaintances he knew from hawking on trains.
- 1.2 In the pardon account he and his co-robbers robbed a sports shop at knife point. In the latter account, he and 6 co-robbers, all train hawkers, robbed two other hawkers at a marketplace whilst brandishing screwdrivers.

[23] These are two materially different accounts. As was raised in the hearing, are these two versions of one incident or was there more than one robbery? There was no attempt to reconcile these versions.

- [24] In the latest account, the applicant endeavours to evade responsibility for the crime. He now denies expressly that the accomplices were his friends. He claims not to have been involved in the planning. The robbery, as described, must have been a planned venture, not an impulsive affair. The robbery occurred at the 'marketplace' and he was unaware of the venture before arriving at the marketplace— he merely was aware of the 'possibility'.
- [25] Two aspects are plain. First the allegations to distance himself from the deed are implausible. Second, were the account to be taken at face value, it must mean that the applicant is highly susceptible to the influence of other people in a circle of mere acquaintances. Herein lies an echo of his childhood escapade stealing from the shop, supposedly, under the influence of 'Tumelo' who was an employee of the shop from which the sweets were stolen. There he participated in systematic and repeated thefts until clumsily exposing himself to being caught out. These facts and considerations point towards a serious character flaw. These papers display no grasp of an awareness of this character flaw, still less, a cogent explanation that he has been able to overcome his vulnerability.
- [26] The several affidavits from employers which are offered in the papers are all bland and superficial, recording merely the fact of the employment relationship. In none of them is there a character reference. It is not disclosed whether any of them are familiar with the criminal activity of the applicant. The applicant refers to having registered articles with an attorney which were thereafter ceded to another attorney. No copies of the agreements are attached. It is puzzling how he could have registered articles given the convictions, but an attorney confirms, on affidavit, that articles were registered. Moreover, did he disclose the convictions to either principal? He abandoned his 'articles' before completion: why? Thereafter he has worked in an administrative capacity for two more attorneys. None of the employers allude to any insight into the extent to which the applicant is capable of independent judgment free from undue influence.

[27] The account of his early life is, in several respects, a familiar tale of poverty and deprivation. The shoplifting episode in the context of his youth and social circumstances is, in our view, not an obstacle *per se* to his admission. The episode of the robbery committed as part of a gang with weapons, and the boldness of an escape, calls for keen scrutiny of the character of the applicant. The narrative of his adult life, although it demonstrates commendable efforts to improve his life, falls short of convincing us of his suitability to be admitted to practice. The robbery was committed at a mature age and at a time after he had become a student. The varying accounts give rise to scepticism about their reliability. Whether he made proper disclosure to his principals during his period of serving articles is undisclosed and the decision to abandon that career path is unexplained. What he told the LPC is undisclosed. That *mea culpa* in paragraph [77] of the affidavit in which he states he has remorse is bland.

The attributes of ethical lawyering

[28] The myriad pressures of lawyering are not to be regarded lightly. The perpetual exposure to clients in distress is one of the sources of a lawyer succumbing to the temptation to take a short cut or bend the rules because of the subjective moral conviction that the client deserves to triumph. This misconduct derives not from evil but from a misplaced instinct to champion one's client. Similarly, financial success in practice is hard won and in no few examples have lawyers lost their way while traversing the valley of the shadow of poor cash-flow by deluding themselves that a little pragmatism can be justified because it is only temporary. Engaging with clients and opponents in a manner that avoids conflicts of interests requires a keen and meticulous grasp of the role of a lawyer. Being able to withstand forceful personalities

who, with either charm or bombast, can overwhelm the timid is a core attribute of the kind of character that a lawyer simply has to have. It is for these reasons that a person to be fit and proper to bear the burdens of being an officer of the court must have a strong character and have an instinctive inward and unseen integrity no less than an outward and visible ostensible honesty.

[29] The clearing of the required threshold has not been demonstrated in this case. Expressions of remorse might open the door, but what must be paraded is concrete evidence of a self-awareness of the character defect, not merely sincere regret. Carelessness with truth and accuracy about the facts, a lack of full and frank disclosure, and a denial of full responsibility for the deeds do not meet the test of being fit and proper to don the mantle of a legal Practitioner.

[30] The conclusion to which we must come is that the application cannot succeed.

The conduct of the LPC in this matter

[31] The conduct of the LPC in this case is disappointing. The ostensible indifference to a material issue in this application is inexplicable. It seems as if the process of vetting applications for admission is regarded as a merely administrative ritual in which no qualitative application of mind is required. The contrast between the meticulous scrutiny by the LPC of admission applications for omissions or potential ambiguities in the formal averments required in an application and a failure to appreciate the need to address the qualitative aspects of the application is striking. True enough, an interview was arranged with the applicant: but to what effect? The failure to share the

substance of the exchanges and the rationale (if any) that informed the decision not to object reflects a lack of appropriate insight by the LPC into its role.

- [32] It seems that a rule of practice needs to be introduced in terms of which the LPC is required to provide a court with more than a mere notice of no objection and for the courts to insist on a clear statement that the application has been considered and that the admission is supported or not supported. In the case of any qualitative dimensions, an expression of a view about the propriety of the admission should be made. In cases of applications to be enrolled as an advocate, the Bar can be relied upon to make a substantive contribution, but where the applicant seeks to be enrolled as an attorney the role of the Bar is absent.³ In a case such as this, the failure of the LPC to actively make a contribution is unacceptable. A copy of this judgment shall be forwarded to the Chair of the LPC for the taking of remedial action.

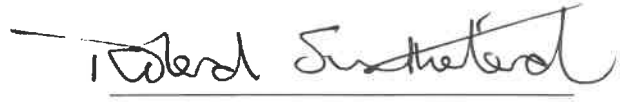
Thanks to Bar and Counsel

- [33] The contributions made at the request of the court by Mr Barry Gilbert and Ms Khosi Pama-Sihunu for the Bar, and by Mr Tererai Mafukidze and Ms Geniel Davids of Davids Attorneys who appeared for the applicant, *pro bono*, is appreciated and our thanks are due to them all.

The Order

The application is dismissed.

³ See: *Johannesburg Society of Advocates & another v Nthai and Others* 2021 (2) SA 343 (SCA) at esp paras 24-30.



I. Sutherland

Sutherland DJP (with whom Molahlehi J concurs)

Heard: 24 March 2023

Judgment: 10 May 2023

For the Applicant, *pro bono*, at the request of the court:

Adv T Mafudikadze,

Instructed by Davids
Attorneys.

Ms G Davids.

For the *Amicus Curiae*, at the request of the court:

The Johannesburg
Society of Advocates

Adv B Gilbert,

With him Adv K Pama –
Sihunu,