

**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

CASE NO: 881/2018

Reportable: NO

Of Interest to other Judges: NO

Circulate to Magistrates: NO

In the matter between: In the *EX PARTE* application of:

TLALENG ALINA MHLEKWA

Applicant

(For her admission and enrolment as an Attorney,
Conveyancer and Notary of the High Court)

CORAM: MHLAMBI, J *et* OPPERMAN, J

HEARD ON: 15 SEPTEMBER 2022

ORDER ON: 15 SEPTEMBER 2022

JUDGMENT BY: MHLAMBI, J

DELIVERED ON: 16 November 2022. These reasons were handed down electronically by circulation to the parties' legal representatives by email and released to SAFLII. The date and time for the hand-down are deemed to be 14h00 on 16 November 2022

Introduction

[1] The applicant is a 49-year-old black woman who applied for admission as a legal practitioner, a notary, and a conveyancer. On 9 September 2010, she was convicted of the theft of money from the Guardian's Fund. The offence was committed on 12 April 2001 as she, in her capacity as an Assistant Master, counter-signed a Guardian's Fund cheque in the amount of R 181 858.12. She was 27 years old at the time and had served in that position for about seven and a half months. She pleaded not guilty to the charge and pursued the matter unsuccessfully to the apex court. In this application, she still maintained her innocence. It is this attitude that the respondent contended militated against her permanent reformation.

[2] The question that seeks an answer is: Can a person who maintains his/her innocence despite a conviction be regarded as a fit and proper person in terms of the Legal Practice Act?

[3] On 15 September 2022, I, sitting as a member of the full court, granted an order as follows:

"1. The applicant complies with all the requirements to be admitted and enrolled as an attorney, notary, and conveyancer.

2. The applicant is admitted to practice as a Legal Practitioner, notary, and conveyancer, and the Legal Practice Council is authorised to enrol the applicant as an attorney, notary, and conveyancer.

3. Each party is to pay its own costs".

Background

[4] The application

4.1 The application for admission as a legal practitioner, notary and conveyancer was filed on 21 February 2018 and served on the Secretary of the erstwhile Law Society of the Free State, the Director of Public

Prosecutions for the Free State, the Master of the High Court, and the Department of Correctional Services. It was set down for hearing on 19 April 2018 but was postponed to 10 May 2018 to enable the Law Society to consider the application. The application was favourably considered subject to the applicant providing confirmation that her sentence was completed¹.

4.2 The Department of Correctional Services confirmed on 2 May 2018 that the applicant had completed her sentence and that she had shown excellent insight into her whole behaviour, changed her ways, and was committed to making a success of her life². On the same day, the Law Society issued a certificate to the effect that the applicant had satisfied the Council that she was a fit and proper person to be admitted as provided by the Attorney's Act³.

4.3 On 10 May 2018, the Presiding Judge removed the matter from the roll. The reason therefor appears from the letter dated 4 July 2018 addressed, at the instance of the Presiding Judge, to the Chief Executive Office of the erstwhile Law Society of the Free State which reads as follows:

“The Judge raised concerns that although the applicant mentioned her previous conviction(s), she continued to deny responsibility and relied steadfastly on the defence that was rejected throughout up to the Constitutional Court. To this extent she was advised to supplement her papers to deal with this aspect.

The society in this matter did not participate in the proceedings but filed an affidavit endorsing the application. It is unclear on what basis did this society conclude that the applicant was a fit and proper person to be admitted as an attorney. The Judge found it prudent that notwithstanding the decision not to

¹ Paragraphs 3.7 to 3.9 of the Answering Affidavit, page 465 of the Indexed Papers.

² Page 434 of the Indexed Papers.

³ Section 16 (a) (Act 53/1979); page 433 of the Indexed Papers and Paragraphs 3.9 of the Answering Affidavit on page 465 of the Indexed Papers.

oppose, the Society must be invited to appear and advanced(sic) submissions in this matter to assist the court to exercise its discretion”⁴.

4.4 The Council, having considered the Judge’s comments, requested the applicant to supplement her application to deal with the aspects raised by the Judge⁵. On 3 October 2018, the applicant served a supplementary affidavit⁶, the salient portions of which read as follows:

“4.

During the meeting with Judge Mathebula, the concern was raised that I continued to deny responsibility and relied steadfastly on the defence that was rejected throughout up to the Constitutional Court. The learned Judge indicated that he would communicate the concerns to the Law Society.

8.

Regarding the concern raised by the learned Judge, it is correct that I have always denied my involvement in the fraudulent scheme perpetrated at the Master’s office and it is also correct that I pursued various appeal processes culminating in an application for leave to appeal to the Constitutional Court, which was dismissed.

9.

*I attach affidavits from Andries Masoanganye and Abdul Ahmed (my two co-accused in the criminal case) who both agreed to sign affidavits that confirm the version I have maintained for years. The affidavits are attached as **annexures “SA3” and “SA4”**. I fully appreciate that the weight of the affidavits is likely to be negatively influenced by the*

⁴ Page 519 of the Indexed Papers; Paragraph 3.12 of the Answering Affidavit.

⁵ Paragraph 3.13 of the Answering Affidavit and page 520 of the Indexed Papers.

⁶ Indexed pages 527 to 529.

background of the deponents, but I placed them before the Honourable Court nonetheless.

10.

I beg the honourable court to consider that I was acting within my rights to appeal. My version has always been consistent and I consistently acted in good faith in the belief that the appeal held prospects. I respectfully submit that it will be unfair to hold this against me as I never made myself guilty of abusing any process, nor did I act disrespectfully or inappropriately in any manner.

11.

When I was being considered for parole, the Parole Board suggested that my application might be considered more favourably if I were to admit my involvement in the scheme, but I simply could not. I informed the Board that if they were not prepared to approve my application unless I made the admission, I should rather remain incarcerated. The application for parole was however granted.

12.

I am still unable to admit committing the offence of which I was accused and convicted and I cannot, in good conscience, make any statement to the contrary.

13.

I however beg the Honourable Court to consider that the dismissal of the application for leave to appeal to the Constitutional Court marked a distinct turning point in my life and brought me to realise that my attitude and especially my unwillingness to take responsibility for my prior conduct was wrong. I also realised that I would have to come to terms with my conviction of a serious criminal offence and also the

sentence which was imposed. I gave my full co-operation to the Correctional Officials and benefited from intensive rehabilitation and reformation courses.

14.

It is my respectful submission that setting admission of guilt as an absolute requirement for admission is not reasonable or fair and that each matter has to be considered on its facts and merits.⁷

15.

I submit with the greatest of respect, that I am fit and proper to be admitted on basis of the considerations in the founding affidavit (particularly paragraph 18 thereof) notwithstanding my inability to admit guilt. I have to especially emphasise the positive effects that the ordeal has had on my personal and professional life.”

4.5 In his affidavit, Andries Masoanganye, the erstwhile Master of the High Court, stated that his testimony during the trial was not honest as he was fearful that he would be imprisoned and as a result did not give truthful evidence⁸. He deposed to the affidavit in order to clear his conscience as he had nothing to gain thereby⁹. He was approached by Patrick Mogorosi who was an employee of the law firm, AK Ahmed Attorneys, and requested to approve the payment of funds from the Guardian's Fund inappropriately and without such funds being due and payable¹⁰. In order for payments to be effected from the Guardian's Fund, cheques had to be signed and then counter-signed by a second person. He identified Mrs Mhleka, the applicant, who was not familiar with insolvent estates and still in training, to counter-sign the cheque. He knew that she being inexperienced, would not question such payment. Documents were shown to Mrs Mhleka to

⁷ Pages 467 to 468 of the Indexed Papers.

⁸ Para 2 of his affidavit on page 535 of the Indexed Papers.

⁹ Para 3 of his affidavit.

¹⁰ Para 4 of his affidavit.

substantiate such payment¹¹. The applicant had no knowledge of the scam he had with Mr Mogorosi as she was never approached to participate therein nor did she receive or was considered to receiving a benefit therefrom¹².

4.6 A confirmatory affidavit by Abdul Ahmed was also attached in which he stated that he was the accused in the relevant criminal case with the Master and the applicant.

4.7 On 13 March 2019, the Legal Practice Council, addressed a letter to the registrar of this court, stating that the Admission Assessment Committee of the Free State Provincial Legal Practice Council, considered and approved the applicant's application for admission. The council had no objection to the applicant's admission as an attorney and the granting of the applicant's prayers were left to the court to decide¹³.

4.8 On 6 June 2019, the application served before the same Judge that issued the following order:

"1. The Legal Practice Council is invited as amicus curiae to submit written and oral submissions why the applicant is considered to be a fit and proper person to be admitted as a Legal Practitioner of this court despite her averments in her papers of innocence in the light of her criminal conviction.

2. The written submissions (if any) must be served on the applicant and filed on/or before 5 July 2019.

3. The applicant is granted leave to supplement her papers, if she so chooses, on/or before 26 July 2019.

4. The amicus curiae must file the heads of argument on or before 08 August 2019.

¹¹ Para 6 of his affidavit.

¹² Para 8 of his affidavit.

¹³ Page 459 of the Indexed Papers.

5. *The applicant must file the heads of argument on or before 15 August 2019.*

6. *The matter is postponed to 19 August 2019 before the full court of this division*¹⁴.

4.9 On 10 July 2019, the Legal Practice Council (*“the LPC”*) addressed a letter to the Judge President of the Free State High Court, requesting a postponement of the date within which to make submissions as requested by the court, to 5 August 2019 and to file heads of argument, if any, on 12 August 2019 for the following reasons:

“1. The decision not to oppose the application was taken by the erstwhile Council at the time of its existence. As a result, neither the LPC nor the newly established Provincial Council of the LPC considered nor resolved on the matter.

*2. The matter is currently referred to the Provincial Council for consideration. As a result, we request the Court to afford the Provincial Council an opportunity to consider the application and revert to the court on its resolution on the matter”*¹⁵.

4.10 The management committee of the LPC considered the application on 18 July 2019 and on 29 July 2019, the committee, having noted that the erstwhile Council of the Free State Law Society resolved not to oppose the applicant’s admission application, resolved that the application be opposed and the decision of the erstwhile council be rescinded¹⁶. The application was removed from the roll on 19 August 2019.

4.11 Following the removal of the application from the roll of 19 August 2019, the LPC obtained a copy of the record of the criminal proceedings in

¹⁴ Pages 540 to 541 of the Indexed Papers.

¹⁵ Paragraph 3.20 of the Answering Affidavit.

¹⁶ Paragraphs 3.21 to 3.22 of the Answering Affidavit.

the North West High Court, Mafikeng, as well as various applications for leave to appeal to the full bench, the Supreme Court of Appeal and the Constitutional Court¹⁷.

4.12 The LPC filed its opposing affidavit on 7 April 2021 whilst the replying affidavit was filed on 9 November 2021. The matter was set down for hearing on 15 September 2022.

The employment history

[5] The applicant was appointed as a legal administrative officer in January 1997 at Jure Consultant which later converted to a firm known as Elna Wessels Attorneys in Bloemfontein. On 12 February 1998, she was employed as principal deeds controller at the Bloemfontein Deeds Office and was transferred in January 2000 to the King Willam's Town Deeds office and promoted to Chief Deeds Controller. She worked as an Assistant Master at the Mafikeng office on 4 September 2000 where she reported to the then Master, Mr Masoanganye. After the latter was charged with theft, she was requested to assist the investigators by providing necessary information and explanations regarding procedures which she duly did. She was transferred to the Bloemfontein Master's Office in June 2002 and continued to assist the investigators at the Mafikeng Master's Office whenever called upon. She was promoted to the position of Deputy Master at the Master's Office in 2003 and was required to serve as Head of the Office on various occasions between 2003 and 2004. She was suspended in 2004 when she was linked with the Mafikeng Master's theft charges, but was acquitted during the disciplinary hearings in early 2005. She continued to work for the Master's Office until December 2013 when her appeal to the full bench was dismissed.

[6] After her release in November 2014, she took up a position as a consultant at Werner Vermaak Attorneys on 20 January 2015, a position she has filled to date.

The conviction

¹⁷ Paragraph 4.1 of the Answering Affidavit.

[7] As an Assistant Master of the High Court in Mafikeng, one of her duties was to counter-sign the cheques that were approved and signed by the Master. She had never worked in the Master's Office before and when the offence took place, she was still undergoing training under the supervision of the Master. In April/ May 2002, the Master was charged criminally for having approved amounts that were suspected to have been irregular. Two years later the applicant was arrested as she was implicated in two charges of theft of which she was convicted of one and acquitted on the other¹⁸.

The LPC's main objectives

[8] The LPC maintains that the applicant is not a fit and proper person to be admitted as an attorney¹⁹ in terms of section 24(2)(c) of the Legal Practise Act and the LPC is highly concerned of:

1. The applicant's lack of honour to the court and lack of reform;
2. The applicant still maintained her innocence notwithstanding a well-reasoned judgment in the court *a quo*, the strong views expressed by the full bench on appeal in the North West High Court, Mafikeng and the dismissal of the application for leave to appeal by both the Supreme Court of Appeal and the Constitutional Court;
3. The applicant showed no remorse and has not accepted the courts' authority which consisted of the North West High Court, the full bench of the North West High Court, the Supreme Court of Appeal and the Constitutional Court;
4. The applicant appeared to have poor insight and reformation could only begin when a person acknowledged that he or she had committed a wrongful act.

¹⁸ Paragraph 16.7 of the Founding Affidavit.

¹⁹ Paragraph 12.7 of the Answering Affidavit.

The replying affidavit

[9] In her reply, the applicant lamented the LPC's opposition to her application, seen in the light that the erstwhile Law Society and the LPC, did not oppose it; the latter, however, decided to do so only after the meeting of its management committee on 29 July 2019. It would appear that the only decision that the LPC subsequently rescinded, was the one taken by the Law Society and not the one taken by itself earlier. The opposing affidavit was silent on the Law Society and the LPC's resolution that she was a fit and proper person to be admitted. She stated that the management committee of the LPC did not have the power and authority to rescind a decision taken by the Council of the Law Society not to oppose her application. The provincial council of the LPC failed to make any determination on the endorsements made by the Law Society and the LPC, declaring her to be a fit and proper person to be admitted. The decisions by those bodies should remain unchanged as the opposing affidavit did not explain to the court how those decisions were reached.

[10] The LPC failed to join the proceedings as *amicus curiae* as requested by the presiding judge on more than one occasion to enable the presiding judge to understand how the Law Society, and thereafter the LPC found her to be a fit and proper person to be admitted. Such a submission would have assisted and enabled the court to properly exercise its discretion to grant or refuse her application²⁰. The meeting of the management committee of the LPC which was held after the court order of 6 June 2019, gave the impression that the LPC may not have been objective in its decision to oppose the application and may have been influenced. That decision to oppose the application, coupled with the long delay in so opposing, seemed to be neither fair nor objective²¹.

[11] The applicant stated that it would appear that Mr Motloun, in his reply, confused what she stated in her founding and supplementary affidavits²². She did not state that she was innocent of the crimes committed and in the same breath stated

²⁰ Paragraph 2.11 and 2.12 of the Replying Affidavit.

²¹ Paragraph 2.25 of the Replying Affidavit.

²² Paragraph 11.2 of the Replying Affidavit.

that she was sorry for having committed those crimes as that would be a contradiction²³. Her reformation was not vested in her acknowledgment of crimes committed and for which she is now sorry. Her reformation lay with her responsibility to be more equipped to prevent actions that may contribute to illegal activities. In her occupation of a position of trust, she must ensure that she has the requisite skills and knowledge to perform the tasks of such a position properly and to ensure that her actions are taken with the necessary care so as to prevent loss²⁴.

[12] This went beyond, not only illegally enriching herself from a position of trust, but also to ensure that her actions, in themselves, did not result in third parties being illegally enriched from her position of trust²⁵. She could not detail how the crimes were committed and how the proceeds were shared by the persons involved due to her not having had personal knowledge thereof²⁶. The aspects of the manner in which the crimes were committed and how the proceeds were shared were later disclosed to her by Mr Masoanganye as stated in his affidavit²⁷. Her version, she maintained, was consistent throughout her Founding, Supplementary and the Replying Affidavits²⁸.

The law and its application

[13] The enrolment and admission of legal practitioners are governed by section 24 of the LPA which provides that the High Court must admit to practice and authorise to be enrolled as a legal practitioner, conveyancer, or notary 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

²³ Paragraphs 11.3 of the Replying Affidavit.

²⁴ Paragraph 11.4 of the Replying Affidavit.

²⁵ Paragraph 11.5 of the Replying Affidavit

²⁶ Paragraph 11.7 of the Replying Affidavit.

²⁷ Paragraph 11.8 of the Replying Affidavit.

²⁸ Paragraph 11.9 of the Answering Affidavit

(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.

[14] The erstwhile Attorneys' Act had similar provisions for the admission of applicants as attorneys who had to be fit and proper persons to be so admitted²⁹.

[15] The Law Society was termed a professional association of legal practitioners which is governed by the relevant provisions of the Attorneys Act. Among the statutory objectives of the Society, are the maintenance and enhancement of the prestige, status and dignity of the profession, the encouragement and promotion of efficiency in and responsibility in relation to the profession, the upholding of the integrity of practitioners and of standards of professional conduct, the provision of effective control of the professional conduct of practitioners and the promotion of uniform practice and discipline among practitioners³⁰.

[16] The attitude adopted by the Law Society concerned is an important factor in the application for admission and considerable weight must be given to the attitude adopted by the Law Society³¹. The LPC, for all intents and purposes, stepped into the shoes of the erstwhile Law Society.

[17] The LPC opined that the applicant suggested that the affidavits of her convicted co-accused should have served as "*new facts*" to throw doubts on the correctness of her conviction. This, it was submitted, was certainly not the case as the "*new evidence*" could only assist her if she took it to the previous courts to be heard afresh as was stated in *Ngwenya v Society of Advocates, Pretoria*³². The

²⁹ Section 15 of Act 53/1979.

³⁰ *Law Society, Transvaal v Behrman* 1981(4) SA 538 (A) at 549 A-B.

³¹ *Law Society, Transvaal v Behrman* 1981(4) SA 538 (A); *Kudo v Cape Law Society* 1977 (4) SA 659 (A).

³² 2006 (2) SA 88(WLD); Heads of arguments (LPC) paras 18.4 and 18.6. In this case the court stated that an applicant *may bring new facts to its notice which would throw such doubt on the correctness of his conviction as to justify the Court in hearing the whole matter afresh. Each case will depend on*

conviction stood despite the applicant's protestations of her innocence. She could not claim to be permanently reformed while she continued with such protestations³³.

[18] In *Swartzberg v Law Society, Northern Provinces*³⁴ Ponnann JA stated the following:

“The fundamental question to be answered in an application of this kind is whether there has been a genuine, complete and permanent reformation on the appellant's part. This involves an enquiry as to whether the defect of character or attitude which led to him being adjudged not fit and proper no longer exists. (Aarons at 294H.) Allied to that is an assessment of the appellant's character reformation and the chances of his successful conformation in the future to the exacting demands of the profession that he seeks to re-enter. It is thus crucial for a court confronted with an application of this kind to determine what the particular defect of character or attitude was. More importantly, it is for the appellant himself to first properly and correctly identify the defect of character or attitude involved and thereafter to act in accordance with that appreciation. For, until and unless there is such a cognitive appreciation on the part of the appellant, it is difficult to see how the defect can be cured or corrected. It seems to me that any true and lasting reformation of necessity depends upon such appreciation.” (The underlining my own emphasis).

[19] The present application is an application for admission and not re-admission. It is clear from the above paragraph that it is paramount to establish whether the applicant has undergone a genuine, complete and permanent reformation and an enquiry whether the defect of character or attitude no longer exists.

[20] In her founding affidavit she stated that when she resumed her sentence after the full bench appeal was dismissed in December 2013, she was bitter and resentful

its own circumstances, and no general rule can be laid down which the courts must follow. The whole enquiry is of a disciplinary nature, and how the Court will conduct that enquiry will depend on the circumstances of the case.”

³³ Para 18.8: LPC's Heads of Argument.

³⁴ 2008(5) SA 322 (SCA) para 22.

but attended anger management courses that helped her to come to terms with her situation³⁵. The entire ordeal enabled her to learn several invaluable life lessons, one of the most important of which was to be more cautious in accepting the say-so of others without first taking time to consider and evaluate a situation herself.³⁶ She also developed a new appreciation of procedure and accountability and understood more than ever that the consequences of her conduct could be far-reaching and very serious. She fully understood that being an attorney involved a high degree of honesty, reliability, and integrity and that clients as well as the public in general should be able to entrust her with their affairs and money without concern³⁷.

[21] In retrospect, she stated, had she taken a more pro-active approach to her position as an Assistant Master; been more vigilant in the performance of her duties; independently acquired the necessary knowledge of the procedures; policies; and inner workings applicable to her position and scrutinised files and documents, she could have ensured that her actions did not in any way contribute to any crime being committed. It is evident from the affidavits that the applicant has identified and determined her defect of character and attitude and has acted accordingly. The *actus reus* in the crime the applicant was convicted of, was the unlawful signing of a government cheque. The LPC, as per its legal representative, conceded that the applicant did not benefit financially from the commission of the offence.

[22] Unlike the circumstances in *Swartzberg*³⁸, she fell from grace in consequence of an isolated act while she was in her twenties. Hers was not deliberate and persistent dishonesty for personal financial gain over a protracted period. This is buttressed by the following findings in Leeuw JP's findings on judgment and sentence. On judgment, the learned JP stated:

"It is also strange considering the conduct of accused number 1 and number 3 that according to accused number 1 at the time when this cheque was authorised for payment in favour of Mr A K Ahmed Trust, accused number 3

³⁵ Paragraphs 8.4 and 8.5 of the Founding Affidavit.

³⁶ Paragraph 18.11 of the Founding Affidavit.

³⁷ Paragraphs 18.12 and 18.13 of the Founding Affidavit.

³⁸ *Supra* 2008 (5) SA 322 (SCA).

was a trainee, or she was not actually involved in estates dealing with insolvencies. And he also testified that accused number 5 was the one who would be responsible for signing the cheques in that regard. But he decided in this instance, despite the fact that accused number 3 was not involved in insolvency estates, to use a trainee to countersign the cheque in order for him to process payment of this amount."

Of course, the court rejected their version that there was a list of creditors when the payment was authorised.

[23] On sentence, she stated:

"I will, however, in respect of accused number 3 take into account that when this offence was committed, she was not long in that office and that accused number 1 was the mastermind behind all these offences; she was overcome by the influence from accused number 1."

[24] In *Kaplan v Incorporated Law Society, Transvaal*³⁹, a case which was concerned with the re-admission of an attorney who was struck off the roll for unprofessional conduct, it was stated that the phrase "*fit and proper*" person related to the personal qualities of the applicant and that, in deciding whether or not the applicant meets this requirement, the court must consider whether he or she is a fit and proper person "*in relation to such matters as the prestige, status and dignity of the profession, and the integrity, standards of professional conduct and responsibility of practitioners*"⁴⁰.

[25] The court, in investigating whether an applicant has undergone a complete and permanent reformation, will consider (a) the nature and particulars of the conduct that gave rise to the striking-off, (b) the behaviour of the applicant after such conduct became known and (c) the question whether it could with complete confidence be accepted that the applicant is a fit and proper person to be re-

³⁹ 1981 (2) SA 762 (TP).

⁴⁰ Kaplan *supra* at 790 A-C.

admitted as an attorney⁴¹. The nature and the applicant's criminal conduct are known and that she assisted with the criminal investigations after the commission of the crime. The question is whether it can be said with complete confidence that she is a proper and fit person to be admitted as an attorney.

[26] In *KwaZulu-Natal Law Society v Singh*⁴², the respondent was a non-practising attorney who was convicted on eight counts of fraud and was sentenced to a term of imprisonment, which was wholly suspended⁴³. The court stated that the mere fact of conviction for an offence, without any regard to its nature and the degree of moral obliquity in the offender which its commission reflects, will not suffice to indicate, even *prima facie*, that the offender is unfit to be an attorney. For a legal practitioner to be said to be unfit to be on the roll, the misconduct complaint must be of a serious nature to an extent that it manifests a character defect and lack of integrity⁴⁴.

[27] The inquiry of whether the person concerned in the decision of the court is not a fit and proper person to continue to practise as an attorney, involves a weighing up of the conduct complained of against the conduct expected of an attorney and, to this extent this entails a value judgment⁴⁵. The question to be asked is if the particular character is so inherently flawed that the person cannot practise. In that case, the court found that the respondent had genuinely, completely, and permanently reformed her criminal character, as a considerable period had lapsed since her conviction, and over the years she had built up a thriving and successful practice.

[28] In *Kaplan*⁴⁶ the applicant furnished affidavits from various prominent individuals who testified that he was a reformed character and was a fit and proper person to be re-admitted. The court expressed the view that the first important point to consider is whether he has shown that he is completely and permanently reformed. The only persons who can competently and validly testify to such a fact

⁴¹ Kaplan *supra* at 790 C-D.

⁴² (1526/2010) [2011] ZAKZPHC 12 (25 March 2011).

⁴³ Para 1 of the judgment.

⁴⁴ Para 30 of the judgment.

⁴⁵ Para 31 of the judgment.

⁴⁶ *Supra* footnote 39.

are persons who know all about his misdeeds and the circumstances in which they were committed; in other words, they must first know about his character or personality traits that gave rise to or caused him to commit his misdeeds before they are able to say that he is completely and permanently reformed in respect of those character or personality traits⁴⁷.

[29] On an evaluation of the affidavits furnished by the applicant the court concluded as follows:

“In the instant case all the witnesses who made affidavits to testify to the fitness and propriety of the applicant to be an attorney, are relatives, friends and personal acquaintances - some for a short period - all laymen who have no knowledge of the demands of the office of attorney. They are in no way qualified to express an opinion on the suitability of any person to be an attorney. It does not appear from their affidavits that they know, and it is in the circumstances most unlikely that they know, the true nature of the crimes committed by the applicant and the circumstances in which he committed them. Their affidavits for this reason only speak about his honesty in handling cash moneys, and then it is not clear whether he handled the moneys unsupervised”⁴⁸.

[30] In the present case, the witnesses who made affidavits to testify to the fitness and propriety of the applicant to be an attorney, are admitted attorneys, two current and a former Assistant-Master, a traditional leader, and a religious pastor. The Assistant-Masters knew the applicant for more than a decade since the time she was the Deputy-Master and still refer, on occasion, estate-related matters to her, some of which are of a complicated nature. The former Assistant-Master is currently employed as an Assistant-Registrar of the High Court. All speak highly of her and more especially her diligence, knowledge, honesty, trustworthiness, reliability, willingness to help and passion for her work.

Is the applicant a fit and proper person?

⁴⁷ Page 793 B-D of the judgment.

⁴⁸ Page 794 E-G of the judgment.

[31] The onus is on the applicant to establish on a balance of probabilities that she is a fit and proper person to practise as an attorney. In the instant case, the only enquiry is whether the applicant has permanently reformed; or stated otherwise, whether she has negated the objections raised by the LPC in its opposition. Before addressing this point, it is appropriate to note that the LPC did not dispute and, in fact, acknowledged that the applicant was well qualified academically⁴⁹, has a good employment record, is experienced in legal matters, and is legally competent⁵⁰. It was also uncontested that she received clean audits since her employment at the Master's Office in Bloemfontein from 2002 to 2013 and maintained an unblemished history of integrity and honesty.

[32] The LPC's concerns were addressed in the applicant's affidavits. The LPC's view of her disrespect for the court *a quo*, was based on the following sentence in her affidavit dated 21 February 2011 in mitigation of sentence: "*I maintain my innocence although I respect the court, and I will take the matter on appeal*"⁵¹. This aspect is traversed in her supplementary affidavit when she stated that she acted in the belief that the appeal had good prospects of success⁵². The dismissal of her appeal marked the turning point in her life and made her realise that her attitude and unwillingness to take responsibility for her previous conduct was wrong⁵³. Her reformation vested in the identification of the defect of character and attitude, and to act in accordance with that appreciation for curing and correcting the defect⁵⁴.

[33] I agree with the applicant's counsel that the applicant's choice to follow her conscience, notwithstanding the possible repercussions⁵⁵, is an appreciation by the applicant that dishonesty, simply to facilitate her application for admission, is not something that a fit and proper person would do⁵⁶. *In Vassen v Law Society of the*

⁴⁹ Para 8.2: Answering Affidavit.

⁵⁰ Para 8.1-8.16 of the Answering Affidavit.

⁵¹ Paras 10.9 and 10.10 of the Answering Affidavit.

⁵² Para 10 on page 446 of the Indexed Papers.

⁵³ Para 13 on page 447 of the Indexed Papers.

⁵⁴ Paras 11.4 1 and 11.5 of the Replying Affidavit on page 574 and 575.

⁵⁵ Para 27.8 of the applicant's heads of argument and oral address.

⁵⁶ Para 27.7 of the applicant's heads of argument.

*Cape of Good Hope*⁵⁷ it was stated that the profession of an attorney demanded complete honesty, reliability and integrity from its members.

[34] Professor M Slabbert states in her article⁵⁸ that the reformation approach in *Swartzberg*⁵⁹ appears to accept the premise of the character approach, namely that a criminal record normally exposes a defect in character which is inconsistent with the character expected of members of the legal profession, in particular where the crime involved dishonesty, as this is directly relevant to the requirement of the high standards of integrity and honesty expected of practitioners. However, it also accepts that in certain cases an applicant may demonstrate that he or she is a fit and proper person to be admitted to the profession, notwithstanding the existence of a criminal record, provided he or she can prove that such a defect of character no longer exists. Seen from this perspective, it appears that the reformation approach also contains elements of the duty approach, since the applicant is required to prove that he or she will no longer engage in conduct that is inconsistent with the duty of a legal practitioner to uphold the law.

[35] The question of whether a person is fit and proper is a question of fact, although it involves a value judgment⁶⁰. The sole question that the Court has to decide is whether the facts which have been put before it and on which the person concerned was convicted, show him to be of such character that he is not worthy to be in the ranks of an honourable profession⁶¹. The applicant has made full disclosure of her particular defect of character and attitude to establish whether she has reformed in respect thereof⁶². I am satisfied that she has provided sufficient proof that since the commission of the crime and the conviction, she has genuinely, completely, and permanently reformed herself of the criminal character, and that she

⁵⁷ 1998(4) SA 532 (SCA).

⁵⁸ The Requirement of Being a "Fit and Proper" Person for the Legal Profession": 2011 *PELJ* 14(4) 209-231

⁵⁹ *Supra* paragraph [15] in the text.

⁶⁰ *Thukwane v Law Society, Northern Provinces* 2014 (5) SA 513 (GP) and *Mphatswe v Law Society of the Free State* 2018 JDR 0791 (FB) at para 13.

⁶¹ *Incorporated Law Society, Transvaal v Mandela* 1954 (3), SA 102 (T) at 107 – 108; *Ex parte Krause* 1905 TS 221 at 223.

⁶² *Ex Parte Aarons* 1985 (3) SA 286 (T).

has properly and correctly identified and appreciated the defect of character and attitude involved⁶³.

[36] The following passage in *Kwazulu-Natal v Singh*⁶⁴ is apt:

*“Therefore, I am not satisfied that the respondent is inherently a dishonest person. She has clearly learnt a hard and painful lesson. She now fully understands the extent to which her conduct falls short of the high standards that are expected of an attorney. The repetition of the conduct complained of is, in the circumstances, highly unlikely. See Law Society Cape v Peter **2009 (2) SA 18** (SCA) 24, 24 I.”*

[37] These are our reasons for the order granted.

MHLAMBI, J

I concur

OPPERMAN, J

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⁶³ *Ex parte Aarons*, supra.

⁶⁴ *Supra* at para 48.

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