

**SAFLII Note:** Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

- (1) REPORTABLE: YES/NO
- (2) OF INTEREST TO OTHER JUDGES: YES/NO
- (3) REVISED

**Case No: 31371/2019  
4/7/2019**

In the *ex parte* application of:

**GAWULA, NEVILLE**

(Identity No: [...])

Applicant

(For his admission and enrolment as a Legal Practitioner in terms of the Legal Practice Act 28 of 2014)

---

**JUDGMENT**

---

**HF JACOBS, AJ:**

**INTRODUCTION AND STATUTORY SETTING:**

[1] The applicant applies for his admission as a legal practitioner in terms of section 24 of the Legal Practice Act, 28 of 2014 ("the LPA")<sup>1</sup> and for enrolment as an attorney. When the matter was called and after considering submissions made on his behalf, the application was postponed at the instance of the applicant to enable him to consider supplementing his founding papers. At the time of the

---

<sup>1</sup> The LPA came into operation on 31 October 2018.

postponement we indicated that we would supply reasons and the order later. The reasons herewith.

[2] The applicant is a 50-year-old male. On 8 May 2017 the applicant registered a contract of articles of clerkship in terms of the provisions of section 5(3) of the Attorneys Act, 1979 ("the Attorneys Act"). At that time section 4(b) of the Attorneys Act, 1979 required from a person intending to serve under articles of clerkship to submit to the Secretary of the Law Society concerned, in addition to other requirements, *"proof to the satisfaction of the Society that he or she is a fit and proper person"*. The rules promulgated in terms of the LPA contain a similar provision. Such proof is required at two stages of registration. *First*, a prospective practitioner must satisfy the statutory body concerned (the Law Society before the advent of the LPA and thereafter the Legal Practice Council) that, at the time of registration of his or her contract for articles of clerkship or contract for vocational training, he or she is a fit and proper person. The *second* occasion on which an applicant has to prove so, is at his or her admission as an attorney or legal practitioner.

[3] Rule 17 of the rules promulgated in terms of the LPA lists, *inter alia*, the documents that must accompany an affidavit presented by an applicant in support of an application to Court for admission as a legal practitioner. Sub-rule 17.2.14 reads as follows:

*"17.2 An application for admission and enrolment in terms of rule 17.1 must be in writing and must be accompanied by an affidavit by the applicant setting out the following information supported, where applicable, by documentary evidence:*

*17.2.1 ...*

*...*

*17.2.14 confirmation that the applicant is a fit and proper person to be admitted, including a statement as to whether -*

*17.2.14.1 the applicant has any previous criminal convictions or has any criminal*

*investigations pending. If there have been any proceedings as contemplated in this sub-rule, or if any such proceedings are pending, the applicant shall set out full details thereof.*

*17.2.14.2 the applicant has been subject to previous disciplinary proceedings by the Council or any Law Society, university or employer, or whether any such disciplinary proceedings are pending. If there have been any proceedings as contemplated in this sub-rule, or if any such proceedings are pending, the applicant **shall set out full details thereof;**"*

[4] Section 24 reads as follows:

**"24 Admission and enrolment**

- (1) *A person may only practise as a legal practitioner if he or she is admitted and enrolled to practise as such in terms of this Act.*
- (2) *The High Court must admit to practise and authorise to be enrolled as a legal practitioner, conveyancer or notary or any person who, upon application, satisfies the court that he or she -*
  - (a) *is duly qualified as set out in section 26;*
  - (b) *is a-*
    - (i) *South African citizen; or*
    - (ii) *permanent resident in the Republic;*
  - (c) *is a fit and proper person to be so admitted; and*
  - (d) *has served a copy of the application on the Council,*

*containing the information as determined in the rules within the time period determined in the rules.*

- (3) *Subject to subsection (1), the Minister may, in consultation with the Minister of Trade and Industry and after consultation with the Council, and having regard to any relevant international commitments of the Government of the Republic, make regulations in respect of admission and enrolment to -*
- (a) determine the right of foreign legal practitioners to appear in courts in the Republic and to practise as legal practitioners in the Republic; or*
  - (b) give effect to any mutual recognition agreement to which the Republic is a party, regulating -*
    - (i) the provision of legal services by foreign legal practitioners; or*
    - (ii) the admission and enrolment of foreign legal practitioners."*

[5] The enquiry into whether an applicant is a fit and proper person is a factual one. Factual evidence presented to a Court does not have to be accepted by the Court even if the evidence is unchallenged. Our Courts do not accept evidence at face value.<sup>2</sup> Evidence is accepted if the quality of the evidence allows it to be accepted.<sup>3</sup>

[6] In the assessment of evidence our Courts distinguish between primary facts and secondary facts. Secondary facts do not constitute evidence.<sup>4</sup> Inference and conclusions can only be drawn from primary facts in the context of legal principles.<sup>5</sup> Along these principles a Court considering an application for the admission of a legal practitioner is obliged to make a value judgment on the

---

<sup>2</sup> *ABSA v Bernert* 2011 (3) SA 74 (SCA).

<sup>3</sup> *Siffman v Kriel* 1909 TS 538; *Katz v Bloomfield & Keith* 1914 TPD 379; *MacDonald v Young* 2012 (3) SA 1 (SCA) at [6].

<sup>4</sup> *Die Oros (Edms) Bpk & Another v Telefont Beverages & Others* 2003 (4) SA 207 (C).

<sup>5</sup> *Moraitis Investments (Pty) Ltd & Others v Mantic Dairy Ltd* 2017 (5) SA 508 (SCA) at [34].

primary evidence placed before it when asked to conclude that an applicant is a fit and proper person to practise as an officer of the Court.

[7] The sole question a Court has to consider when it considers an application for admission of a legal practitioner is whether the facts placed before the Court show the applicant to be of such a character that he or she is worthy to be in the ranks of an honourable profession. An applicant or his principal should inform the Court of previous criminal convictions and the Court should be guided by the view of the law society concerned.<sup>6</sup> The question of a person's fitness to practise as a legal practitioner is one of discretion. The discretion of the Court in this regard is unfettered under common law and in terms of the LPA.<sup>7</sup> If an applicant has exhibited improper or criminal conduct our Courts distinguish between character defects inherent in an applicant and conduct that resulted from a moral lapse brought about by external pressure.<sup>8</sup> A criminal conviction does not *ipso facto* disqualify a person from admission. It is against these general principles that the facts of the present application should be considered.

### **THE FACTS:**

[8] In his founding papers the applicant discloses his previous convictions. The relevant passage reads as follows:

*"14.1 During February 2006, I applied for a position of a Director and November 2007 I applied for a position of a Chief Director. I unlawfully, falsely and with intent to defraud the Department of Justice by submitting two false degrees (ie Baccalaureus Juris (B.Juris) and Baccalaureus Legum (LL.B) thereby misrepresenting the Department that I am the holder of such degrees.*

*14.2 I was immediately suspended from work and disciplinary proceedings were instituted against me.*

*14.3 I never attended the disciplinary hearings as I was a highly embarrassed and depressed and consequently the disciplinary hearing proceeded in my absence. I was then found guilty on two*

---

<sup>6</sup> *Ex parte Mpondo* 1962 (4) SA 324 (E).

<sup>7</sup> *Ex parte Aarons (Law Society, Tvl, Intervening)* 1985 (3) SA 286 (T); Section 44 of the LPA.

counts of fraud and eventually dismissed.

14.4 The Department then laid criminal charges of fraud against me under **case number: CAS 146/08/2011**.

14.5 I pleaded guilty to both counts of fraud in terms of section 112(2) of the Criminal Procedure Act No. 51 of 1977 as amended and entered into a plea agreement in terms of section 105A(1)(b)(i) of the Criminal Procedure Act No. 51 of 1977 as amended. Attached hereto and marked as **annexure 'NG1'** is a copy of my Plea and Sentence Agreement.

14.6 Following my guilty plea, I was consequently sentenced to 3 (Three) years or 36 (Thirty-Six) months correctional supervision; 5 (Five) years term of imprisonment which was wholly suspended for 3 (Three) years as well as 16 (Sixteen) hours per month of community services. I attach hereto a copy of my sentence marked as **annexure 'NG2'.**"

[9] In his plea and sentence agreement in terms of section 105A(1) of the Criminal Procedure Act 51 of 1977 the following summary of the relevant facts appear:

"3.1 In February 2006 and November 2007 the Accused applied to the Department of Justice and Constitutional Development for the posts of Director: Policy Research and Co-ordination and Chief: Director Research, respectively.

3.2 The Accused unlawfully, falsely, with the intent to defraud and to prejudice or potential prejudice of the Department of Justice and Constitutional Development, gave out and pretended that he is the holder of degrees of Baccalaureus Juris and Baccalaureus Legum.

3.3 By means of the aforementioned misrepresentations he induced the Department of Justice and Constitutional Development to employ him as Director: Policy Research and Co-ordination and Chief-

---

<sup>8</sup> Law Society, *Cape v Peter* 2009 (2) SA 18 (SCA).

*Director Research."*

[10] The balance of the evidence shows that the applicant was employed by the Department of Justice as Chief Director from 2006 until 2012 when he was dismissed . For years he lived with his fraud and did not bother to appear at his disciplinary hearing when held accountable. The applicant does not *"set out full details"* of his fraud. Not a shred of evidence is presented of when and how he misled his erstwhile employer. Did he mislead his employer twice? Once in February 2006 and once in November 2007? In his 29 page founding affidavit the applicant quotes legislation and refers to other matters but deals with his previous convictions in less than two pages. The applicant annexes psychologists' report and testimonials of university staff but no detail is supplied of the charges he faced during his disciplinary hearing which took place at the end of his fraudulent conduct. No detail is given whether the applicant was caught or whether he confessed of own accord to his crimes. No facts are supplied how and on what income the applicant and his family lived since his dismissal or whether or not he obtained other employment.

[11] The plea and sentence agreement show that to have been finalised during September 2012. In paragraph 16.2 of his founding affidavit the applicant states that: *"In January 2013 I registered for a 4 (Four) LL.B. degree at University of Witwatersrand (Wits University). In December 2016 I completed the LL.B. degree within 4 (Four) years and the said LL.B. degree was awarded to me by Wits University, after I complied with all the requirements thereof."* The applicant, therefore, earned an income determined by his misrepresentations to his erstwhile employer for more than half a decade. After his dismissal he went to university to complete his LL.B. degree after a three month break.

[12] In paragraph 17.3 of the same affidavit the applicant states that he made *"full disclosure and presentation regarding the circumstance surrounding [his] previous convictions."* The disclosure the applicant allegedly made to the Law Society is not attached to the founding papers. It is not clear what the disclosure comprised. That evidence is, in my view, crucial in the application for admission to place the Court in a position to consider whether the applicant is a fit and

proper person to be admitted. No information whatsoever is supplied by the applicant in his founding affidavit who the members of the committee or council of the Law Society were at the time who considered him to be a fit and proper person. No record of those proceedings, no decision or any other evidence in that regard is supplied by the applicant. The applicant's papers seem to have been formulated to present evidence that registration of his contract of articles of clerkship by the law society lends his application for admission to Court a modicum of merit.

[13] The applicant finds himself in a position similar to that of a practitioner who had been struck from the roll of attorneys and who has to convince a Court that he has expressed contrition and repentance and furthermore to convince that his expression of contrition and repentance are genuine. The following dictum of the Supreme Court of Appeal in *Swartzberg*<sup>9</sup> is in our view apposite:

*“[28] The appellant had a heavy onus to discharge. He had to prove to the satisfaction of the court that, by reason of his complete and permanent reformation, he is in no way likely to fail in the future to discharge all of the obligations appertaining to his profession. In the case of a serious defect of character, reformation is known to be difficult and, therefore, to establish reformation as sufficiently probable, might require more cogent evidence than in respect of a less serious fault. (Kudo v Cape Law Society 1977 (4) SA 659 (A) at 6760 - E.) Little, if anything, is put forward by the appellant that might mitigate the heinousness of his conduct. Moreover, it must count against the appellant that his misdeeds were committed when he was no longer a young man. For, even at that mature age, the appellant was lacking in the most basic standards of his profession. He displayed a contempt for the law, the courts and for honest dealings with his clients, at least one of whom occupied a position of particular vulnerability in relation to him. Simply put, the appellant was everything that an attorney ought not to be.*

*[29] To the extent that the appellant suggests that he has atoned for his wrongdoing, the atonement, in my view, was neither spontaneous nor*

---

<sup>9</sup> *Swartzberg v Law Society, Northern Provinces* 2008 (5) SA 322 (SCA) at [28] - [32].



voluntary, but rather contrived and induced by a desire for self-preservation. Thus, for example, the appellant has never, in the many years that have since passed, contacted either Mr Bambise or any of the other victims of his misdeeds to ascertain whether the fidelity fund of the Law Society has made good the financial loss suffered at his hands.

[30] Where the professional misconduct consists, as here, of theft, one would imagine that it would be relatively easy to establish that the person has undergone complete and permanent reformation. That could be done by placing evidence before a court that the individual concerned has for some length of time handled money without supervision and has proved his honesty. Obviously in the light of his somewhat chequered work history since the striking-off, no such evidence could have been adduced.

[31] It would be no exaggeration to say that, on such evidence as there is, the appellant has demonstrated a propensity toward inherent dishonesty. It may, in those circumstances, perhaps be postulated that the nature of the appellant's original lapse speaks of a defect of character incapable of reformation. But, to go so far as accepting such immutability of character may well be unnecessary. For in a case such as this, where proof of complete and permanent reformation is difficult because of the moral turpitude of the misdeeds committed by the appellant, the evidence tendered by the appellant falls far short of that proof.

[32] Where a person is struck off the roll for the kind of conduct encountered here, he must realise that his prospects of being readmitted to what after all is an honourable profession, will be very slim indeed. Only in the most exceptional of circumstances, where he has worked to expiate the results of his conduct and to satisfy the court that he has changed completely, will a court consider readmission at all (*Visser v Cape Law Society* 1930 CPD 159 at **160**).<sup>10</sup>

---

<sup>10</sup> See also *Law Society, Transvaal v Behrman* 1981 (4) SA 538 (A) at 5578-C; *Kudu v Cape Law Society* 1972 (4) SA 342 (C) at 345H-346A; *Ex parte Aarons (Law Society, Transvaal, Intervening)* 1985 (3) SA 286 (TPD) at 300G; *Aarons v Law Society of Transvaal (Society of Advocates of Witwatersrand Intervening)* 1997 (3) SA 750 (TPD) at 7568.

[14] The same onus has to be discharged by an applicant for admission as a legal practitioner if he or she had been convicted of fraud. A conviction of fraud has several consequences in law. It may lead to a disqualification to become a director of a company,<sup>11</sup> register as a public accountant,<sup>12</sup> practice as an architect,<sup>13</sup> practise as an engineer,<sup>14</sup> obtain a Fidelity Fund Certificate in terms of the Estate Agency Affairs Act<sup>15</sup> to mention a few. The following dictum in *Geach*<sup>16</sup> illustrates the underlying principle:

*"Lawyers, because of the adversarial nature of litigation in this country, will never be universally loved by the public. That is not to suggest that as members of a distinguished and venerable profession they do not occupy a very important position in our society. After all they are the beneficiaries of a rich heritage and the mantle of responsibility that they bear as protectors of our hard-won freedoms is without parallel. As officers of our Courts lawyers play a vital role in upholding the Constitution and ensuring that our system of justice is both efficient and effective. It therefore stands to reason that absolute personal integrity and scrupulous honesty are demanded from each of them. It follows that generally a practitioner who is found to be dishonest should in the absence of exceptional circumstances expect to have his name struck from the roll."*

[15] In the same judgment<sup>17</sup> Wallis and Leach JJA stated the following:

*"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'.*

---

<sup>11</sup> Section 69 of the Companies Act, 71 of 2008.

<sup>12</sup> Section 37(2)(d) and (3) of the Auditing Professions Act 26 of 2005.

<sup>13</sup> Architectural Professions Act, 44 of 2000.

<sup>14</sup> Section 19(3)(a) of the Engineering Professions Act 46 of 2000.

<sup>15</sup> Section 27(a)(ii) of Act 112 of 1976; *Estate Agency Affairs Board v Mclaggan & Another* 2005 (4) SA 531 (SCA).

<sup>16</sup> *General Council of the Bar of SA v Geach & Others* 2013 (2) SA 52 (SCA) at par 87.

<sup>17</sup> See paragraph 126.

*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. ... 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."*

In our view those requirements apply to all legal practitioners.

[16] The evidence relied on by the applicant includes testimonials or statements by a clinical psychologist and a mentor. The opinions therein expressed constitute, in our view, secondary evidence in an application for admission. Such evidence can only be considered in proper context of the primary facts relevant to the conduct of the applicant that led to his conviction and dismissal. Those primary facts are not set out by the applicant. The applicant has not "set out full details" of his misconduct.

[17] On his or her admission a legal practitioner takes the following oath or affirmation:

"I \_\_\_\_\_ swear/affirm that I will truly and honestly demean myself in the practice of

#### LEGAL PRACTITIONER

*According to the best of my knowledge and ability;  
And further that I will be faithful to the Republic of South Africa.  
Will uphold and protect the Constitution and the human rights entrenched in it,  
And will administer justice to all person without fear, favour or prejudice,*

*In accordance with the Constitution and the Law."*

[18] By making the oath a legal practitioner undertakes to do and to act in the manner our law expects of him or her. A legal practitioner is a guardian of the law. Our Courts rely on the honesty and integrity of its officers. Our Courts should never have to doubt the honesty and integrity of those whose names appear on the roll of legal practitioners. The LPA imposes a duty on the Legal Practice Council and records the objects of the Legal Practice Council in Chapter 2 of the LPA. The objects of the Legal Practice Council include the obligation to promote and protect the public interest, regulate all legal practitioners and all candidate legal practitioners, enhance and maintain the integrity and status of the legal profession, determine, enhance and maintain appropriate standards of professional practice and ethical conduct of all legal practitioners and all candidate legal practitioners and to uphold and advance the rule of law, the administration of justice, and the Constitution of the Republic.<sup>18</sup>

[19] The Legal Practice Council, like its predecessors, the Law Societies, features as *censor morum* of the profession. It guards the guardians and should in applications such as the present one insist that an applicant places all available evidence before Court to enable the Court to exercise its statutory function to determine whether an applicant before it is a fit and proper person to be admitted and enrolled as a legal practitioner. The Legal Practice Council failed to do so in the present application and should assist in the administration of the LPA. We make an order that will, in our view, guide the Legal Practice Council in that regard.

[20] Had senior counsel who appeared for the applicant not requested the postponement we would have dismissed the application for admission.

Under the circumstances we make the following order:

1. The applicant's application for admission shall not be enrolled before the applicant has served on the Legal Practice Council and placed on the

---

<sup>18</sup> See section 5 of the LPA.

court file the following documents:

- 1.1. all documents presented by the applicant or on his behalf to the Law Society of the Northern Provinces prior to and during his application to the said law society to register his articles of clerkship attached to the founding papers as annexure "NG10";
- 1.2. the full record of the proceedings before the Law Society of the Northern Provinces and the reasons for its decision when it registered the applicant's contract of articles of clerkship attached to the applicant's founding affidavit as annexure "NG10"; and
- 1.3. an affidavit of the Director-General of the Department of Justice and Constitutional Development, or a person designated by the said Director-General, supplying full details of the applicant's employment by the said Department and to supply a copy of all documents presented by that department to the Prosecuting Authority which led to the applicant's conviction of fraud as set out in his founding affidavit.

---

**H F JACOBS**

ACTING JUDGE OF THE HIGH COURT  
PRETORIA

I agree.

---

**T A N MAKHUBELE**

JUDGE OF THE HIGH COURT  
PRETORIA