



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT. PRETORIA)

CASE NO: 30327/08

In the matter between:

SEJAGOBE JAHANNES PALI

APPLICANT

And

THE LAW SOCIETY OF THE NORTHERN PROVINCES

(Incorporated as the Law Society of the Transvaal)

RESPONDENT

JUDGMENT

MSIMEKI, J

INTRODUCTION

[1] The Applicant was employed as a member of the SAPS on 24 May 1983. He was promoted to the rank of sergeant in 1987. While a sergeant, he was charged with fifteen different charges. These are

- (a) Three counts of abduction (kidnapping);
- (b) Six counts of common assault;
- (c) One count of bribery and corruption, and
- (d) Five counts of rape.

He was convicted of:

- (a) common assault (two counts) and
- (b) rape (four counts) and sentenced to two months

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imprisonment and ten years imprisonment respectively for the common assault and the rape. The Applicant, in the meantime, studied and obtained three degrees, B Juris, LLB and masters degree in law. Upon his release on parole, the Applicant, on 14 November 2002 entered into a contract of articleship with Attorney T Morotolo of Benoni. The Law Society of the Northern Provinces ("the Respondent ") was approached with a request that the Applicant be registered as a candidate attorney in terms of section 4 of the Attorneys Act 53 of 1979. ("The Act"). The Applicant was interviewed by Mr Basson of the Respondent and then invited to meetings of the Council of the Law Society ("the Council") on 6 October 2003 and 4 February 2004. On both occasions the Council found that the Applicant could not be considered a fit and proper person to enable the Respondent to register his contract of articles of clerkship with Attorney Morotolo. The Council's decisions were duly communicated to the Applicant. The Respondent denies that its Council suggested to the Applicant that he submit expert evidence by a psychiatrist or psychologist to the Council. The Respondent further denies that it furnished the Applicant with advice on his application. This application, according to the Applicant, is the result of such advice. The Applicant in his application seeks an order in the following terms:

"(a) Directing the Respondent to register a contract of articles of clerkship entered into by and between the Applicant and attorney T. Morotolo, alternatively, with any other attorney duly admitted to practice as such within the Republic.

(b) Costs of the application

(c) Granting the applicant such further and/or alternative relief as the court may deem fit.”

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[2] The Respondent opposes the application on the basis that:

(a) The relief that the Applicant seeks is a mandatory interdict, an order which seeks to compel the Respondent to register the contract of articles of clerkship, entered into by and between the Applicant and Attorney Morotolo. The order according to it, is an inappropriate remedy in the circumstances.

(b)

(i) the power of discretion exists which is distinct from a mere duty. This, the Respondent avers, is borne out by the provisions of the Act, which, according to it, indicate discretion on the part of the Respondent when deciding whether or not to register a contract of articles.

(ii) his application is not an application for review in terms of the Promotion of Administrative Justice Act no. 3 of 2000 (PAJA), of the Respondent's decision not to register the contract of articles and that the founding affidavit is devoid of the averments in that regard. The Respondent also further avers that the Applicant did not institute review proceedings in terms of Rule 53 of the Rules of this Court.

(c) the Applicant, in his application, should have established all the requirements for a mandatory interdict.

[3] THE ISSUES TO BE DETERMINED

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The issues to be determined are whether:

- (a) the application is flawed by reason of the nature of the relief that the Applicant seeks;
- (b) the Applicant has established all the requirements for the relief that he seeks, and
- (c) the Applicant has appropriately approached the court on the papers before it.

If the application is flawed as stated in (a) above; the Applicant has not established all the requirements for the relief that he seeks and if finally he should have brought an application for review in terms of the Promotion of Administrative Justice Act then it becomes unnecessary for the court to even have to answer the question whether or not the Applicant is “a fit and proper person” for the contract of articles of clerkship to be registered.

[4] COMMON CAUSE FACTS

The following facts are common cause:

- 4.1. The Applicant was charged, convicted and sentenced as shown above;
- 4.2. The Applicant obtained the degrees that he has proved;
- 4.3. The Applicant was interviewed by Mr Basson of the Respondent;
- 4.4. The Applicant was invited to the meetings of the Council which he

attended;

4.5. The Applicant, finally, has brought this application.

[5] To properly deal with the issues before it, the court has to have regard to sections 4(b), 4(A), 4A (b) and 5 (2) of the Act.

Section 4 (b) provides that:

“Any person intending to serve any attorney under articles of clerkship shall submit to the secretary of the society of the province in which the service under such articles is to be performed, the following, namely -

(b) proof to the satisfaction of the society that he is a fit and proper person and that... (my emphasis).

Similarly, a candidate Attorney intending to perform community service in terms of Section 4 A (b) of the Act shall also submit proof ‘to the satisfaction of the Law Society that he/she is a fit and a proper person.’ (my emphasis).

This, according to Mr Lamey who appeared on behalf of the Respondent, denotes that the Respondent is called upon to exercise a discretion when determining whether or not an applicant is a ‘fit and proper person.’ The standards and norms of the profession, according to him, are paramount, and having due regard to them, as he correctly points out, results in a value judgment by the Respondent.

This submission has merit.

The Respondent will only be satisfied that one is ‘a fit and proper person’ after it will have exercised a discretion. Section 5 (2) of the Act provides that:

“The secretary of the society concerned shall, on payment of the fees prescribed

under section 80, examine any articles or contract of service lodged with him and shall, if he is satisfied that the articles are or contract of service is in order and that the council has no objection to the registration thereof, on payment of the fees so prescribed register such articles or contract of service and shall advise the principal and candidate attorney concerned of such registration in writing by certified post.” (my emphasis).

The secretary of the Law Society in the same vein, once satisfied that the articles are or contract of service is in order and that the Council has no objection then proceeds to register the articles or contract of service. This simply means that the Council will object to the registration of such articles or contract of service if it is not satisfied that the person is ‘fit and proper.’ The Council, in so doing, exercises its discretion. See in this regard *Prince v President, Cape Law Society, and Others 2000 (3) SA 845 (SCA) at 856 J and at 857 E.*

[6] Mr Lamey submitted on behalf of the Respondent that the Respondent’s decision to object to the registration of the Applicant’s articles of clerkship and the reasons therefor appear more fully in the Respondent Answering Affidavit. The submission is correct. The Answering Affidavit clearly evinces that the Respondent, in deed, exercised its discretion before arriving at the decision to object to the registration of the Applicant’s articles of clerkship. The interview that Mr Basson had with the Applicant and the meetings that the Council had with him are a further indication that the Council did not lightly take its decision. It really gathered the relevant facts and information before it arrived at the decision. Mr Lamey correctly submitted that the Applicant’s remedy was supposed to have been an application for review in terms of the Promotion of Administrative Justice Act. The application, according to him, ‘is not with reference to its contents or form in

which it is brought, an application for review in accordance with PAJA'. It is further submitted on behalf of the Respondent which also so avers, that the Applicant did not institute review proceedings in terms of Rule 53 of the Rules of this court either. Both the submissions, in my view, have merit.

[7] The Act clearly gives the Respondent a discretion to exercise when determining whether or not an applicant 'is a fit and proper person.' It, indeed, would have been a different story had the Act imposed a duty on the Respondent to register the contract of articles without at the same time giving it the discretion which is apparent from the Act. This also happens to be the correct view of Mr Lamey.

[8] It must be remembered that for the relief that the Applicant seeks all the requirements for the granting of such relief are paramount and they must all be established before the court can grant the order. This, the Applicant, has clearly not done.

[9] Mr Mangolele on behalf of the Applicant conceded that the Act has given the Respondent the discretion to exercise in matters such as the Applicant's and that the correct route to take in the event that the Applicant was not satisfied with the Respondent's exercise of its discretion would have been to institute review proceedings.

[10] Mr Mangolele's submission that the Applicant is now a completely different person, rehabilitated and requiring to be given a second chance, in light of what I have referred to above, takes the Applicant's case nowhere. The papers before the court do not allow it to come to the rescue of the Applicant. The above considerations, in my view, clearly show

that the Applicants' application stands to be dismissed with costs.

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[11] It is, indeed, unnecessary for the court to decide on whether the Applicant 'is a fit and a proper person' for the Respondent to register the articles of clerkship.

[12] In the result, the Applicant's application is dismissed with costs.

W M MSIMEKI

JUDGE OF THE HIGH COURT

Heard on: 09 February 2009

For the Applicant: Adv Mangolele

Instructed by: T. Morotolo Attorneys

For the Respondents: Mr A. T. Lamey

Instructed by: Rooth Wessels Motla Conradie Inc.