



**IN THE HIGH COURT OF SOUTH AFRICA
[EASTERN CAPE DIVISION – MAKHANDA]**

REPORTABLE

CASE NO.: CA&R54/2025

DATE DELIVERED: 15 APRIL 2025

In the matter between:

THE STATE

and

LEON KING

REVIEW JUDGMENT

ROBERSON J:

[1] This matter was sent on special review by the Magistrate, East London, with a request that the uncompleted proceedings be set aside as a nullity.

[2] The accused was charged with assault with intent to do grievous bodily harm and at his trial was represented by Mr A K Nongendzi, an admitted advocate of the High Court. Prior to the trial proceeding, when asked by the presiding magistrate in the reception court if he had been briefed, Mr Nongendzi said that he was acting *pro bono* for the accused.

[3] The trial proceeded as far as the defence case, at which stage the presiding magistrate, following a query to the Legal Practice Council (the LPC), was informed by the LPC that Mr Nongendzi was “not registered on the records of the Legal Practice Council”. According to the presiding magistrate when Mr Nongendzi was informed of this response from the LPC he promised “to fix the problem”. He never returned to court to continue with the trial.

[4] According to a letter from the magistrate, Mr Nongendzi was admitted as an advocate on 28 March 2017, when he was a state prosecutor. A copy of the court order admitting him was provided. During 2017 he was prosecuted for driving under the influence of alcohol and was convicted. He only returned for sentencing two years later, by which time he had absconded from his post as a prosecutor. Thereafter he appeared as an advocate for accused persons.

[5] When the matter came before me, I requested opinions from the Eastern Cape Society of Advocates and the Office of the Director of Public Prosecutions, Makhanda. The question I posed was whether or not Mr Nongendzi had a right of appearance in view of the fact that it appeared that he had not applied for enrolment in terms of s 30 (1) (a) of the Legal Practice Act 28 of 2014 (the LPA), which provides:

“30. Enrolment with Council. — (1) (a) A person duly admitted by the High Court and authorised to be enrolled to practise as a legal practitioner must apply to the Council in the manner determined in the rules, for the enrolment of his or her name on the Roll.”

[6] I also raised s 34 (2) of the LPA, which provides for the circumstances in which an advocate may render services for a fee, and its application if Mr Nongendzi was acting *pro bono*.

[7] I received very helpful and comprehensive opinions from Mr Beyleveld SC, the Chairman of the Eastern Cape Society of Advocates, and Mrs Turner, Deputy Director of Public Prosecutions, Makhanda. I am very grateful to them for the time and effort they expended in order to assist in the matter.

[8] Mrs Turner consulted the LPC with regard to Mr Nongendzi's status. Its Legal Officer: Professional Affairs advised that Mr Nongendzi's name does not appear on the roll of legal practitioners, that he is not a legal practitioner and that he does not have a right of appearance in court.

[9] Mr Nongendzi was admitted as an advocate prior to the coming into operation of the relevant sections of the LPA on 1 November 2018. Section 114 (1) of the provides:

“114. Existing advocates, attorneys, conveyancers and notaries.—

(1) Any person who has been admitted by the High Court and authorised to be enrolled as an advocate, attorney, conveyancer or notary in terms of any Act in the former Republic of South Africa and former homelands which is still applicable before the date referred to in section 120 (4), must be regarded as having been admitted to practice and, where applicable, subject to any condition imposed by the High Court, must be enrolled as a legal practitioner, conveyancer or notary in terms of this Act, subject to the terms of any order of court whereby any such person has been suspended from practice as an advocate, attorney, conveyancer or notary.”

[10] As Mr Beyleveld stated, the crisp issue is whether or not Mr Nongendzi is entitled to practise without an application to the LPC for the enrolment of his name on the roll of legal practitioners. I respectfully agree with his opinion that a purposive interpretation of s 114 (1) of the LPA means that Mr Nongendzi, although admitted as an advocate, must still be enrolled in order to be entitled to practise.

[11] Mr Beyleveld pointed out that s 30 of the LPA is peremptory and highlighted certain provisions in s 30. Section 30 (4) provides that the LPC must keep a roll of legal practitioners; s 30 (4) (a) provides that a document issued by the LPC certifying that a person has been admitted and enrolled to practise as a legal practitioner is *prima facie* proof of the facts stated in the document; and s 30 (5) provides that the Registrar of the High Court which orders the admission and authorisation of a person

to practise and be enrolled as a practitioner must forward a certified copy of the order to the LPC.

[12] Mrs Turner also referred to Mr Nongendzi's obligation to follow the prescribed procedure for enrolment. She stressed the importance of enrolment in enabling the LPC to carry out its legislated functions, such as the regulation of the affairs of legal practitioners and the regulation of the conduct of legal practitioners so as to ensure accountability.

[13] Section 24 (1) and s 25 (1) of the LPA are instructive and were referred to by Mr Beyleveld in support of his opinion that the LPA envisages two requirements to practise: admission and enrolment. Section 24 (1) provides:

“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.”

“Legal Practitioner” as defined in s 1 of the LPA means “an advocate or attorney admitted and enrolled as such in terms of sections 24 and 30, respectively”.

[14] Even if it is accepted that Mr Nongendzi was acting *pro bono*, he was still purporting to act as a legal practitioner when he represented the accused.

Section 25 (1) of the LPA provides:

“Right of appearance of legal practitioners and candidate legal practitioners.—(1) Any person who has been admitted and enrolled to practise as a legal practitioner in terms of this Act, is entitled to practise throughout the Republic, unless his or her name has been ordered to be struck off the Roll or he or she is subject to an order suspending him or her from practising.”

[15] In my view s 24 (1) and s 25 (1) of the LPA leave no doubt that in order to practise and appear in court, a practitioner must be enrolled in terms of s 30 of the LPA.

[16] It follows that, not having been enrolled as a legal practitioner, Mr Nongendzi did not meet the definition of a legal practitioner, was not entitled to practise and had no right of appearance when he represented the accused in the matter under review.

[17] It bears mentioning, as Mrs Turner pointed out, that Mr Nongendzi's conduct in holding himself out as a legal practitioner is prohibited by s 33 (2) of the LPA. In terms of s 93 (2) of the LPA a person who contravenes the provisions of s 33 commits an offence for which a penalty is prescribed.

[18] Mr Nongendzi's representation of the accused was a fundamental irregularity rendering the proceedings a nullity. (See *S v Mkhise*; *S v Mosia*; *S v Jones*; *S v Le Roux* 1988 (2) SA 868 (AD) at 875G.)

[19] The following order will issue:

- 19.1 The proceedings against the accused in the Magistrate's Court, East London, under case number A1140/2023, are reviewed and set aside.
- 19.2 Should the prosecution of the accused commence de novo, the trial must be held before a different magistrate.

J M ROBERSON
JUDGE OF THE HIGH COURT

I agree

N MOLONY
ACTING JUDGE OF THE HIGH COURT