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

Not reportable
Case no: 261/2023

In the matter between:

NNAPA JOSEPH KHOMARIE **APPLICANT**
[Identity number: **740[…]**]
[For his admission as enrolment as a legal practitioner]

and

THE LEGAL PRACTICE COUNCIL: FREE STATE **RESPONDENT**

Neutral Citation: *Khomarie v The Legal Practice Council: Free State* (261/2023) [2025] ZAFSHC 362 (20 November 2025)
Coram: VAN ZYL J et DE LA REY AJ
Heard: 24 July 2025
Delivered: 20 November 2025
Summary: Admission as a legal practitioner – negligent mistake not indicative of a dishonest person – applicant a fit and proper person to be admitted.

ORDER

1 Nnapa Joseph Khomarie, is admitted and enrolled as a legal practitioner of this Honourable Court and the Legal Practice Council is authorised to enter the name of the applicant on the roll of attorneys of the honourable court in terms of s 24 read with s 30 of the Legal Practice Act 28 of 2014.

2 Each party to pay its own costs.

JUDGMENT

De la Rey AJ

Introduction

[1] The applicant seeks to be admitted as a legal practitioner of the high court of South Africa. An *ex parte* application seeking such admission was initially set down for the hearing on 1 June 2023 but was removed by applicant's attorneys. Even though the application was brought *ex parte* it is opposed by the Legal Practice Council, Free State Provincial Office, hereafter referred to as the LPC. Following the filing of supplementary, opposing and replying affidavits the application was eventually re-enrolled for hearing on the 24th of July 2025. The essence of the LPC's opposition is that the applicant has failed to show that he is a fit and proper person to be admitted.[1]

Background

[2] In his application for admission the applicant avers that he has never applied for admission, nor has he been admitted as a legal practitioner in the Republic of South Africa, nor has he applied for or is he admitted in any other country. The applicant furthermore stated that he has never been subjected to any previous disciplinary proceedings by the respondent or any law society but states that he was subjected to disciplinary proceedings by his former employee the National Prosecuting Authority, which resulted in his dismissal in 2017.

[3] Having considered the application, the respondent in a letter dated 17 March 2023 pertinently addressed the issue of the applicant's previous disciplinary proceedings and stated that the applicant shall set out full details thereof and the mere reference to the proceedings are insufficient for the purposes of the

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[1] Section 24(2)*(c)* of Legal Practice Act 28 of 2014, provides:
'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-
(c) is a fit and proper person to be so admitted.'

admission application. The applicant was thus invited to supplement his papers accordingly and re-deliver same to the respondent.

[4] In a supplementary affidavit dated 24 April 2023 the applicant deals in detail with the events that led to his dismissal at the National Prosecuting Authority, which can be summarised as follows:

(a) The applicant undertook a pre-approved official trip with his private vehicle on 1 May 2017 and whilst enroute he accounted mechanical problems and had to use another vehicle. The applicant was later charged with gross dishonesty relating to the travel claim and was then subjected to a disciplinary hearing. At the disciplinary hearing the applicant sought a postponement as his representative was unable to attend. The request for a postponement was denied by the chairperson and the hearing proceeded whereafter the applicant was dismissed.

(b) The applicant followed an internal appeal process wherein the dismissal was confirmed and later turned to the CCMA where the appeal against the dismissal was again unsuccessful.

(c) In a last attempt the applicant approached the Labour Court under case number JR2935/19 where (according to him) he is currently awaiting a court date.

[5] During the hearing of the application it was clear that the applicant has not proceeded with the Labour Court application, as he is apparently not financially able to do so.

[6] On 15 January 2025 the respondent filed a notice of intention to oppose the application. In opposing the application the respondent in essence states that the applicant despite his dismissal in 2017 by his previous employer failed to make out a case that he is a fit and proper person to be so admitted in that he failed when

registering his contract of articles and later in the founding affidavit of the application under consideration failed to disclose fully the details which led to him being dismissed for gross dishonesty on 18 March 2017.

[7] It is furthermore evident from the opposing affidavit that the respondent is of the opinion that the failure by the applicant to admit any fault in regards to the dismissal for gross dishonesty and the fact that the dispute is still subject to adjudication by the Labour Court which is now pending for over six years fails to satisfy the requirement of showing that he is a fit and proper person to be so admitted. In essence the respondent argues that due to the incomplete disclosures by the applicant and considering the considerable weight placed on the dishonourable discharge from his former work 'as an officer of this court', that he is not a fit and proper person to be admitted as a legal practitioner of this court.

[8] In reply, the applicant, in regard to the allegation of non-disclosure stated that he, at the time when he registered his contract of articles did not know that he had to disclose the previous dismissal and that he had no malicious intention in that regard. The applicant reiterated that in his initial founding affidavit he already revealed the fact that he was dismissed by the National Prosecuting Authority following the disciplinary proceedings and avers that after having filed the supplementary affidavit which dealt with the queries of the respondent, he was of the genuine belief that his exposition of the details was sufficient. In relation to the respondent's assertion that the applicant has failed to show remorse or admit guilt the applicant states that he will not simply do so in order to be admitted as a legal practitioner and that he holds firm views on his innocence against the decision by the disciplinary tribunal.

[9] The applicant furthermore states that on 13 June 2023 he attached the Professional Affairs Committee's documentation and that as such he has prior to the hearing of this application completed full disclosure as required by the respondent. From the founding affidavit filed in the Labour Court a clearer picture emerges as to what exactly transpired that led to the applicant's dismissal from the National Prosecuting Authority.

[10] It appears that the applicant was required to attend a workshop arranged by the National Prosecuting Authority, Bloemfontein and the trip required him to pre-apply indicating which make of transport he will use. The applicant, in the requisite form indicated that he would use his private vehicle being an Audi 2L to attend to the training in Bloemfontein. After commencing the trip using the vehicle as aforesaid the vehicle encountered technical problems. He had by that time already travelled approximately 30 km.

[11] He immediately went back home to exchange the vehicle and collected a Volkswagen Polo 1.4 L capacity to complete the trip. He arrived at Bethlehem at around 07h00. After the training was concluded the applicant called the Chief Prosecutor's office and he requested them to prepare his Subsistence & Travelling claim form (S & T form), he went to her office and signed the claim form and left the receipt for the toll fees and KFC with her. He signed the claim form without noting the mistakes in it and as such the incorrect engine capacity appeared on the claim form.

[12] Based on the aforesaid it was the employer's stance that he should have received payment that was based on a 1.4 L engine and not a 2 L engine and that the loss to his employer amounted to R704.50. Based on the aforesaid so-called misrepresentation on engine capacity the applicant was dismissed as aforesaid.

[13] In essence, it is thus the case for the applicant that he mistakenly signed the wrong S & T form without noticing the difference in engine capacity of the vehicles and the costs associated therewith as listed therein. Applicant furthermore requested his employer at the time to consider an apology in refunding the money, the R704.50 but they refused to do so.

Law

[14] Section 24 of the Legal Practice Act 28 of 2014 states:

'2 The High Court must admit to practice and authorise to be enrolled as a legal practitioner, conveyancer or notary or any person who, upon application, satisfied 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.

[15] The simple question for this Court is thus whether the applicant has demonstrated in his application including the supplementary documentation eventually filed that he can be regarded as a fit and proper person to be admitted.

[16] The enquiry applicable in deciding whether a person is a fit and proper person to be so admitted is trite and has been set out as follows by the Supreme Court of Appeal in *South African Legal Practice Council v Kgaphola and Another*,[2] as follows:

'The proper approach to misconduct complaints against legal practitioners is well-established and has been applied in many cases. It is a three-stage enquiry. First, a court determines whether the complaint has been established on a balance of probabilities. This is a factual enquiry. If established, the court enquires whether the practitioner is fit to remain on the roll of legal practitioners. If he or she is not, the court must, in the third stage, determine a sanction: whether the legal practitioner's name should be removed from the roll or merely be suspended from practice for a determinate period. In the second and third stages, a court exercises discretion.'

[17] It is common cause that the applicant was dismissed as aforesaid and it stands undisputed that although full details of his dismissal eventually surfaced, the applicant was less than frank in his founding affidavit. This Court thus only have to decide whether considering the totality of the evidence, the applicant is a fit and proper person to be admitted as a legal practitioner.

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[2] *South African Legal Practice Council v Kgaphola and Another* [2025] ZASCA 66 (*Kgaphola*) para 19.

[18] It is important to note that irrespective of the serious nature of his dismissal from his previous employer the applicant, as is evident hereinbefore, continued in his efforts to review his dismissal as aforesaid.

[19] The fact that the applicant was dismissed for gross dishonesty should be read in conjunction with what actually happened and the question arises whether in those circumstances it is enough to hold that a person has already been in legal practice as a prosecutor at the time of the application for fourteen (14) years which on the face of it appears to be event free and without incident, would then suddenly, because of his signing of an inaccurate requisition form, become an unfit and improper person to be admitted as a legal practitioner. This court in *Ex Parte Mhlekwa*,[3] (*Mhlekwa*) had to consider whether an applicant who had spent a number of years incarcerated having been found guilty of the theft of money from the Guardians Fund whilst being employed at the Master's Office and who maintained her innocence that was ultimately unsuccessful in appealing her conviction up to the Constitutional Court remained a fit and proper person to be admitted as a legal practitioner.

[20] The court concluded that irrespective of the prior conviction it cannot be that an applicant has to admit guilt in order to show that he or she is a fit and proper person to be admitted as a legal practitioner should that person maintain that he or she was not involved in any fraudulent scheme.

[21] Simply put, does a legal practitioner who, on a previous occasion has been found guilty either by a court of law or in disciplinary proceedings but who maintains that they were innocent, have to show remorse before being able to be considered for admission as a legal practitioner. This is a value judgement[4] that must made based on the particular facts of each case.

[22] Whilst respondent submitted that is unclear whether the applicant admits fault or is only aggrieved with the procedure followed, it appears from his supplementary

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[3] *Ex Parte Mhlekwa* [2022] ZAFSHC 317 (*Mhlekwa*) paras 31-36.
[4] *Kgaphola* para 33.

affidavit as well as the Labour Court application that his attempted appeals related to both procedurally and substantively fair process which would encompass the sanction of dismissal.

[23] Whilst it cannot be denied that the applicant, in signing the relevant claim forms, acted in a negligent and irresponsible manner, by failing to ensure that the information contained therein, was correct, his actions cannot be said to have been deliberately dishonest. An insistence that applicant admit to have acted with 'gross dishonesty' would in itself amount to a dishonest admission by the applicant, purely in an attempt to be admitted.[5] This Court finds it hard to believe that a legal practitioner would jeopardise his legal career spanning more than 14 years at the time to obtain an unjustified financial reward of R704.50. The applicant continued in his efforts to clear his name and even offered to refund the amount complained of. The error in judgement by the applicant cannot be said to be so gross and egregious that it manifests a lack of integrity, such that it renders him unfit to be admitted as a legal practitioner.

[24] As held in *Mhlekwa*,[6] citing with approval the passage in *Kwazulu-Natal Law Society v Singh*:[7]

'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.'

It is highly unlikely that applicant would repeat such careless mistake. The evidence does not suggest that the applicant is inherently a dishonest person.

Costs

[25] The applicant did not seek costs in his notice of motion nor in the heads of argument filed on his behalf. Respondent sought cost against the applicant should

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[5] *Mhlekwa* para 33.
[6] Ibid para 36.
[7] *Kwazulu-Natal Law Society v Singh* [2011] ZAKZPHC 12 para 48.

the application be dismissed. The respondent acting *custos morum* cannot be faulted in its opposition to the application and in the circumstances, it would be proper to order that each party will be responsible for its own costs.

[26] In the result the following orders are granted:

1 Nnapa Joseph Khomarie is admitted and enrolled as a legal practitioner of this Honourable Court and the Legal Practice Council is authorized to enter the name of the applicant on the roll of attorneys of the honourable court in terms of s 24 read with s 30 of the Legal Practice Act 28 of 2014.

2 Each party to pay its own costs.

H E DE LA REY
ACTING JUDGE OF THE HIGH COURT

I concur.

C VAN ZYL
JUDGE OF THE HIGH COURT

Appearances

For the applicant:	Adv RJ Nkhahle
Instructed by:	Tshepo Thusi Attorneys Inc
	Bloemfontein
For the respondent:	DS Qwelane
Instructed by:	Qwelane Theron & Van Niekerk
	Bloemfontein.