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**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO: 10845/23P

In the ex parte application of:

BONGEKILE ADONICA GASA
(Identity Number: 9[...])

APPLICANT

ORDER

The following order is made:

The application is dismissed.

JUDGMENT

Pietersen AJ (Henriques J concurring):

Introduction

[1] The applicant, Ms Gasa, approached this court during 2023 for admission and enrolment as a legal practitioner in terms of s 24 of the Legal Practice Act 28 of 2014

(the LPA). In her notice of motion, the applicant sought to be admitted as an attorney. She also sought condonation for her non-compliance with rule 17.2.9 of the South African Legal Practice Rules (the LPC Rules), and, further, that an order be made directing that the applicant's practical vocational training contract entered into on 20 February 2021 be deemed not to be *void ab initio* and that the service rendered thereunder be deemed not to be ineffective, as contemplated by rule 22.1.5.2 of the LPC Rules.

The issues

[2] The main issue before us is whether the applicant is a fit and proper person to be admitted as a legal practitioner. Flowing from this issue is the secondary issue of what disclosure is required of an applicant for admission and what consequences may flow from a failure to make adequate or proper disclosure in an *ex parte* application for admission.

Background facts

[3] The applicant stated in her founding affidavit that she completed her legal qualifications during 2020 and subsequently, on 10 February 2021, entered into a contract of practical vocational training with her principal, Mr Andre Pieter Vos (Mr Vos), who was practising at the time as an attorney and director of Norton Rose Fulbright (NRF) in Sandton, Gauteng (the contract). The contract was duly registered with the Legal Practice Council (LPC), Gauteng. The applicant recorded in her founding affidavit that she was bound in terms of this contract to serve her principal and to undergo practical vocational training (training) for a period of two years. The contract was registered on 15 March 2021 with the commencement date of 25 January 2021.

[4] It is undisputed that the applicant served her articles diligently under the direct personal supervision of Mr Vos, as well as the direct personal supervision of certain of Mr Vos's co-directors of NRF, particularly when the applicant had to work remotely during the Covid-19 pandemic. The applicant placed before this court email correspondence which contains glowing reports from directors of NRF, which seem to confirm that she executed her contract diligently.

[5] After completing her training on 9 February 2023, at the request of Ms Allison Patricia Williams (Ms Williams), who the applicant mentored with in the Durban office, she was offered a position as a trainee associate at NRF in the intellectual property department, pending her admission. As a consequence, she relocated from Gauteng to KwaZulu-Natal.

[6] Of particular relevance to this judgment is the evidence produced by the applicant in her founding affidavit under the heading 'Business other than that of candidate legal practitioner'. The applicant deals with this aspect extensively in no less than 21 paragraphs. In these paragraphs, the applicant disclosed that she held the position of a director of a company during her period of service as a candidate legal practitioner in terms of the contract of practical vocational training. The applicant, therefore, stated that she is unable to comply with rule 17.2.9 of the LPC Rules which requires of an applicant to state that he or she held no other position other than that of candidate legal practitioner during the period of service under a contract of practical vocational training.

[7] As a result, the applicant accepted that the facts contained in her affidavit may reveal a breach of rule 22.1.5.1 of the LPC Rules and she requested the court to make a declaratory order directing that her contract of service shall not be *void ab initio*, as contemplated by rule 22.1.5.2 of the LPC Rules.

[8] The applicant disclosed that she became the sole director of a company, Garris & Projects (Pty) Ltd (Garris) and that she held a 100% 'member's interest' (presumably shareholding) in this company. She was 20 years old when she became a director of Garris and in her second year of studies at university. She remained a director of this company during her period of training.

[9] The applicant stated that Garris was established as a domestic cleaning service company and it operated as such on a very small basis, and continues to do so. She stated that the company employs three employees and that she has never taken a dividend from the company and does not receive a salary. The income was only used to pay employees' wages and cover overhead costs.

[10] The applicant maintained in her founding affidavit that by holding the position as director of Garris, she was, in fact, not occupying an office or position as contemplated by rules 17.2.9 and 22.1.5.1, but accepted that on a so-called 'broad interpretation', it could be said that she thereby engaged in a business other than that of a candidate legal practitioner. However, the applicant was adamant to point out that holding this office as director in no way interfered at all with her training as a candidate legal practitioner.

[11] The applicant stated in her founding affidavit that when she entered into the contract, she was not aware of the requirement that a candidate legal practitioner may not hold any other position during the period of training. The applicant stated that she did not receive any correspondence from the LPC after her contract was registered, advising her that holding the office of director in any company required the prior written approval of the LPC. It is not clear on what basis this allegation is made and why the LPC would have been aware of the applicant's business ventures.

[12] The applicant went to great lengths in her founding affidavit and numerous subsequent supplementary affidavits to explain that Garris is a small company with operations 'at a low scale' and only generating 'about R15 000.00 per month'. The applicant said that these revenues go towards overheads. The applicant further stated in her founding affidavit:

'Save for my role in controlling the company's bank account and payment effected therefrom, I have not been actively involved in the running of the business nor did I receive any payment for holding a position as director of the company.'

[13] The applicant also stated at paragraph 46 of the founding affidavit:

'I do not enjoy a profit from the company. It provides support to the three employees. I have never supplemented my candidate legal practitioner salary with money from the company. All money received by the company was paid directly into the business account and all business related transactions were effected therein.'

[14] Further, at paragraph 53 of the founding affidavit, the applicant stated:

'In short, I did not receive any remuneration for holding the position of director and it certainly did not interfere in any way with my proper training as a candidate legal practitioner. If anything, even though there was virtually no 'directing' to do, and the company operations were so low-key, I suspect that the little experience I did gain will only stand me in good stead in the practice of an attorney.'

[15] In an affidavit deposed to on 25 October 2023 and submitted to the LPC, Mr Sentebale Makara (Mr Makara), a director of NRF, stated that the applicant approached him, during the course of her training, for advice after she encountered a scam on social media relating to an investment. Mr Makara indicated in his affidavit that during the course of the conversation with the applicant, she disclosed that she was trying to generate additional income through investments and a cleaning business of which she was the director. It was during this discussion that he informed her that it was not permissible for her to have any pecuniary interest while undergoing her training and to receive remuneration other than that of a candidate legal practitioner.

[16] Mr Makara proceeded to advise the applicant during this conversation that her directorship of her company, in which she held a 100 percent member's interest (shareholding), was impermissible and she could only have done so with the prior written consent of the LPC. He advised her to seek the assistance of NRF's compliance department, and particularly that of Mr Hugh Bissett, being NRF's General Counsel and Head of Compliance. He was not certain whether the applicant sought such assistance.

[17] NRF initially supported the applicant's application for admission but subsequently withdrew such support in November 2023. Mr Vos, in a supplementary affidavit deposed to on 3 November 2023, stated that he had no direct knowledge of the above facts disclosed by Mr Makara but assumed those facts to be correct. He therefore withdrew his support of the application. Ms Williams also indicated in her supplementary affidavit that she had initially supported the application and filed an affidavit in support thereof. However, in the initial affidavit for the applicant's admission, the applicant had informed her at the end of January 2023 that she had never taken a dividend from the company nor did she receive a salary and that it employed three black adult women. The applicant informed her that she played a

limited role in the running of the company, which was restricted to controlling the bank accounts and payments effected therefrom and had not been actively involved in the running of the business.

[18] Ms Williams's support of the applicant's admission ended upon her return from leave in September 2023, when she became aware of the judgment in *Ex Parte Galela and Another*.¹ As a result of this, she then held a meeting with the applicant to discuss her admission. It was during the subsequent meeting on 4 September 2023 that the applicant disclosed to her for the first time that the business bank statements reflected references to 'director wages'. The applicant was vague in her explanation about the payments. Ms Williams informed the applicant that she was concerned about the subsequent disclosure, as this contradicted what she had said under oath in her initial application for admission and what she had initially told her.

[19] As a consequence, she informed the applicant that given the judgment in *Galela (Gauteng)* and her recent additional disclosures regarding the details of the bank statements and alleged payments relating to director wages, she could no longer support her application for admission. Ms Williams indicated that during the course of this conversation, she suggested to the applicant that she redo her practical vocational training and 'to think about matters'.

[20] On 8 September 2023, Ms Williams discussed the applicant's admission with the directors of NRF and involved the HR team. The HR team conducted an investigation into the applicant's conduct and concluded that there was sufficient evidence to institute disciplinary proceedings against the applicant. As a consequence of this, Ms Williams then instructed NRF's IT department to retrieve emails exchanged between the applicant and the LPC from her NRF email address. Amongst these was an email submitted to the LPC on 13 September 2023, asking the LPC for assistance regarding her non-compliance with rule 17.2.9 as well as a draft affidavit. Ms Williams discovered that this affidavit had been sent to the LPC without her knowledge or consent, and against her specific instruction and advice to the applicant that she could no longer support her application for admission.

¹ *Ex Parte Galela and Another* [2023] ZAGPPHC 716 (*Galela (Gauteng)*).

[21] Ms Williams indicated that in the draft affidavit, the applicant confirmed she made four payments between 2021 and 2022 with the reference 'director's wage' and attempted to explain these payments as covering expenses and the purchase of various items. However, these explanations were not substantiated. Ms Williams indicated that at the time, the applicant provided no proof to demonstrate that they were not, in fact, director's wages.

[22] In addition, Ms Williams noted that, in the applicant's draft supplementary affidavit, she indicated that she was active in the business throughout her training and managed the company and attended to her fiduciary duties by the creation of weekly rosters, meetings with the managing employee and the conducting of site inspections. This, according to Ms Williams, was in stark contrast to what the applicant had informed her in their discussion and had said in her initial admission application.

[23] Ms Williams then indicated that, pursuant to preparing for the disciplinary proceedings, she met with counsel from the KwaZulu-Natal Bar, who advised her that disciplinary proceedings were not warranted, as the applicant would have to seek condonation in terms of rule 22 of the LPC Rules and that her practical vocational contract was void *ab initio*. This communication to the applicant is annexed to Ms Williams's affidavit. It is common cause that the disciplinary proceedings were accordingly not proceeded with, and that the applicant's position as a trainee associate was terminated as a consequence of the fact that her practical vocational contract was considered void *ab initio* by NRF.

[24] The application was initially enrolled for hearing during July 2023 and subsequently adjourned to October 2023. During October 2023, the matter was adjourned to 17 November 2023 and the application again did not proceed, as the two supplementary affidavits of Ms Williams and Mr Makara were delivered on 13 November 2023. The LPC also issued a letter of objection on 13 November 2023.

[25] Pursuant to this, the applicant then approached the LPC for its assistance in her admission. An investigating committee was appointed and its mandate was

'to consider and report upon whether the errors and omissions in the applicant's founding affidavit signed on 14 July 2023 have been satisfactorily dealt with and her contraventions explained to allow the LPC to issue a letter of no objection to her admission.'

[26] The investigating committee's mandate was thus confined to dealing with the condonation element of the application. It interviewed the applicant, as well as Ms Williams, Mr Makara and Mr Vos and also requested bank statements from the applicant.

[27] The recommendations of the investigating committee to the LPC can be summarised as follows:

- (a) given the second set of affidavits filed by NRF and the discussion with Ms Williams, it was difficult 'to escape the suspicion that the Applicant tried to play down her involvement with Garris';
- (b) the explanation that senior counsel had changed the essence of what she said in the draft founding affidavit during the 'heavy edit' of her papers may be plausible. However, the applicant signed the affidavit, and if it is inaccurate, she is ultimately responsible for those inaccuracies; and
- (c) the applicant seems to understand that it is totally unacceptable to sign an affidavit which is, in any manner, untrue. She apologised for her mistake in the founding affidavit and apologised again during the interview.

[28] The committee was also requested to comment on whether the LPC should object to the applicant's admission. In answer to the question as to whether the applicant was intentionally deceitful, the committee indicated that the applicant admitted that she was mistaken in a number of respects in her founding affidavit, that she has freely admitted her mistakes, that she had apologised and assured the committee that she has learnt from her mistakes.

[29] The committee, interestingly enough, made the following finding in relation to her involvement in Garris, namely 'that she was more involved in Garris than the founding affidavit discloses'. It was, however, stated that NRF's directors indicated that they were not prejudiced by the applicant's involvement in Garris and the applicant's pecuniary interest in Garris did not interfere with her training, according to

the applicant and the directors of NRF. On the issue of whether the applicant received any remuneration from Garris, the committee found that the answer was not clear. Money received by Garris was, on occasion, transferred into the applicant's personal account. However, this money, she explained, was used to purchase supplies for Garris and she did not personally benefit from it.

[30] The committee indicated that it could not advise whether or not the applicant contravened rule 22.1.5.1 and left it in the hands of the court to determine whether the applicant had established good cause. The recommendation of the committee was that the LPC must not formally object to the admission of the applicant and it was for the court to decide on her suitability. In addition, the LPC was of the view that the applicant had been punished sufficiently and that if condonation is not granted or if she is precluded from entering into a new contract, such punishment exceeded any appropriate sanction. The LPC adopted a supine approach and indicated that the report must be placed before the court and recorded that it has no objection to the applicant's admission.

[31] Pursuant to the applicant's initial founding affidavit and in order to respond to certain queries raised by the LPC, the applicant delivered a supplementary affidavit. The applicant dealt with the aspect of condonation for her non-compliance with rule 17.2.9 and annexed the bank statement for the business account of Garris for the entire period of her training, being February 2021 to February 2023. The applicant also disclosed for the first time in this supplementary affidavit that during June/July 2022, the company received an amount of R150 000, apparently to attend to the waterproofing of the building to which Garris had been providing cleaning services.

[32] The applicant again reiterated that she does not receive a salary or any remuneration from the operation of the business, but that there were five occasions between 2021 and 2022 where payments with the reference 'director's wage' passed through her personal Capitec account. She indicated that these payments were made to cover overhead expenses and purchase items required for cleaning and were not for her personal use. Her explanation for this was that the company's FNB business card was lost and, as a consequence, the monies were paid into her personal Capitec account. The applicant, therefore, again failed to substantiate these

explanations regarding the director's wages, similar to the position she adopted when this was first queried by NRF during September 2023.

[33] The applicant stated that she was not aware of the director's wage reference until she compiled the requested financial statements. She indicated that she banked primarily with Investec and this was the account into which her salary as a candidate legal practitioner was paid. The Capitec account was for household expenses and she would pay money from her Investec account into her Capitec account. She disclosed that one Mr Roger Norris is a partner in the business and deals with the running of the business, together with Mr Ndumiso Khulusi, who, although an employee, is a managing employee who supervises the other employees which Garris employs. Mr Khulusi seems to be the 'adult male employed as a cleaner' by Garris, according to the draft affidavit submitted by the applicant to the LPC during September 2023. The applicant's allegation in her founding affidavit that Garris only employs three black female employees was therefore not true.

[34] In this supplementary affidavit, the applicant once again indicated that at the time of signing the contract, she did not properly read it or apply her mind to the LPA, as she was involved with induction training and a lot of paperwork. She indicated that she attended to her fiduciary duties as director through one Mr Roger Norris (Mr Norris), who would create weekly rosters, which he ran by her. She would sometimes update these rosters over the weekend, after having a meeting with the 'managing employee', Mr Khulusi. The applicant stated that Mr Norris would attend to the day-to-day running of the business and she would conduct inspections over the weekend if Mr Norris was not present and have a meeting with the managing employee.

[35] Further, according to the applicant, her now referred to as 'ex-partner', Mr Norris, managed the business from its early years while she was at university and throughout her subsequent training. She effected payments on the account when requested to do so but Mr Norris would collect orders of cleaning supplies, purchase uniforms and so forth. She would attend to the payment of the workers' salaries every month end and pay for uniforms or other materials such as chlorine, brooms

and so forth. She would do so when Mr Norris was unable to attend to these himself, as he had access to the business account.

[36] What is noteworthy in the supplementary affidavit filed by the applicant is the fact that she attempted to contradict or dispute the contents of the affidavits filed by the directors of NRF to say that she had disclosed the business in February 2023, that it has a consistent client with an amount of R15 000 being received into the account regularly, and that it received a large payment for a waterproofing job subcontracted from one and the same client. She averred that this disclosure was made in February/March 2023. Subsequently, she had a call from Mr Bissett, who indicated that the problem could be resolved by seeking condonation and that she should seek the assistance of the senior counsel. She indicated that on 15 June 2023, she produced a first draft to Ms Williams and counsel and at all times was honest and transparent about her position in the company, and the income received by the company and that NRF did not raise any concerns.

[37] The applicant further stated that NRF's attitude towards her subsequently changed after *Galela (Gauteng)* was handed down. Despite open communication, she was suspended from work in August 2023, and her contract of employment was terminated on 1 November 2023, without a disciplinary hearing. She maintained that she did not have an opportunity to make full disclosure and share all documents with NRF, as a disciplinary hearing did not proceed.

[38] In addition, she pertinently disputed the contents of Mr Makara's affidavit, specifically that his position, as recorded in the affidavit, was not correct and pertinently indicated that the draft supplementary affidavit was never completed, deposed to or formally served but was a request for guidance and most of the content is incorrect.

[39] A simple analysis of the bank statements annexed to the applicant's supplementary affidavit deposed to on 27 January 2025 raise further unanswered questions. These bank statements were those of Garris and the applicant during her period of training. The bank statements of Garris, which account is held with First National Bank, indicate frequent, sometimes more than once per day, payments with

the reference 'Directors Wage'. The amounts also varied, mostly between R1 000 and R5 000. As the sole director of Garris, it follows that these amounts were paid to the applicant. The applicant has elected not to deal with these payments at all.

[40] The applicant's bank statements in respect of her personal bank account held with Capitec Bank were also annexed to this supplementary affidavit. The applicant advised that she 'primarily' banks with Investec Bank but her Capitec account was used for 'household expenses'. These bank statements, over the period of the applicant's training, further reveal numerous credits with references such as 'House Contribution', 'Joint Transfer' and, particularly curious, 'Directors Wages'. As in the case of the bank account of Garris, the 'director's wages' payments were erratic and for various amounts. These payments were not explained by the applicant.

[41] A major delay was caused when the applicant was directed by this court to produce the annual financial statements for Garris. In a subsequent supplementary affidavit deposed to on 29 August 2025, the applicant stated that she only managed to pay the accountant, given her limited financial resources, on 25 July 2025 and that the statements were 'done and then delivered' on 6 August 2025. However, the financial statements annexed to the supplementary affidavit record that they were signed off by the applicant on 31 March 2025 already. The applicant was therefore not honest in her evidence regarding the availability and compiling of the company's financial statements.

[42] Considering the above facts it becomes necessary to first consider the proper approach to non-disclosure in an *ex parte* application for admission.

Court's approach to non-disclosure

[43] In order to ultimately determine the main issue, being whether the applicant is a fit and proper person to be admitted as a legal practitioner, the following authorities require consideration regarding the court's approach to non-disclosure in applications for admission.

[44] In *Ex Parte Swain* this court held:²

‘As was said in *Ex parte Cassim*, 1970 (4) SA 476 (T), the professions of advocate and attorney require the utmost good faith from all practitioners and aspirant practitioners; in my opinion the applicant's failure to disclose material facts in the circumstances of the present case was a failure to show such good faith.’

[45] More recently, in *Makgolo v South African Legal Practice Council* the Gauteng High Court, Pretoria, held:³

‘His reluctance to disclose those facts, combined with the serious omissions of facts as recorded earlier, severely and seriously impact on a character who claims to be a fit and proper person to be admitted as a legal practitioner and to be enrolled as an attorney of this Honourable Court. His integrity has been seriously compromised.’

[46] The Gauteng High Court, Pretoria, also considered the issue of non-disclosure in *Mukwevho v Legal Practice Council*, where it was held:⁴

[12] Even if the court accepts the supplementary affidavits, the facts therein support the contention of the LPC that the applicant is not a fit and proper person to enter the profession. The offending conduct of making a dishonest statement is established on a preponderance of probabilities. Good faith is a *sine qua non* for an application brought *ex parte*. When any material facts are not disclosed, be it wilfully or negligently omitted a court may on that ground alone dismiss an *ex parte* application.

[13] Honesty is considered an important prerequisite for a legal practitioner to be fit and proper. The founding affidavit in paragraph 11.1.2 is untruthful; it emphatically sets out that the applicant was not subjected to previous disciplinary hearings by an employer or has pending disciplinary hearings. Considering that in the most important application, so personal to the applicant; the start of his career, he does not take the court into his confidence, the question begs, why would the applicant take the court into his confidence with less “*important*” applications. Comparing this conduct against the expected conduct of an attorney, the offending conduct is conduct that can never be expected of an attorney.

[14] The attorneys profession is an honourable one and demands “*complete honesty, reliability and integrity from its members.*” I find it necessary to quote paragraph 25 of the respondent’s further supplementary affidavit:

² *Ex Parte Swain* 1973 (2) SA 427 (N) at 429H (confirmed on appeal in *Swain v Society of Advocates, Natal* 1973 (4) SA 784 (A)).

³ *Makgolo v South African Legal Practice Council* [2024] ZAGPPHC 831 para 20.

⁴ *Mukwevho v Legal Practice Council* [2022] ZAGPPHC 962 paras 12-14.

“25. I have learnt from the process of this application that the integrity of a legal practitioner goes beyond what one perceives themselves, but to what the practitioner can disclose which is more likely to influence the Court’s judgment about integrity of a legal practitioner.”

This statement is difficult to understand, but none the less disturbing in that it shows the lack of insight the applicant has with regard to this application. He seemingly thought that the less he discloses the more the Court’s judgment on integrity would be influenced. This candidate is not a fit and proper person to be admitted. The argument was that based on this paragraph the court must find that the applicant had learnt his lesson and it was unlikely that the conduct would be repeated. The tenure of this paragraph does not support such a contention. There is not a single fact to sustain such argument. There also has been no effluxion of time to have this borne out. None of the case law relied on by the applicant is relevant to this application simply because herein dishonesty was proven.’ (Footnotes omitted.)

[47] The Gauteng High Court, Pretoria, further considered the issue in *Vatsha v Johannesburg Society of Advocates*, where it was held:⁵

‘This failure advertises the applicant’s inability to appreciate the sacrosanctity of full and frank disclosure, a critical dimension of an ethical lawyer’s character.’

And on the consequences of a failure to make full disclosure, the court further held:

‘[28] The myriad pressures of lawyering are not to be regarded lightly. The perpetual exposure to clients in distress is one of the sources of a lawyer succumbing to the temptation to take a short cut or bend the rules because of the subjective moral conviction that the client deserves to triumph. This misconduct derives not from evil but from a misplaced instinct to champion one’s client. Similarly, financial success in practice is hard won and in no few examples have lawyers lost their way while traversing the valley of the shadow of poor cash-flow by deluding themselves that a little pragmatism can be justified because it is only temporary. Engaging with clients and opponents in a manner that avoids conflicts of interests requires a keen and meticulous grasp of the role of a lawyer. Being able to withstand forceful personalities who, with either charm or bombast, can overwhelm the timid is a core attribute of the kind of character that a lawyer simply has to have. It is for these reasons that a person to be fit and proper to bear the burdens of being an officer of the court must have a strong character and have an instinctive inward and unseen integrity no less than an outward and visible ostensible honesty.

[29] The clearing of the required threshold has not been demonstrated in this case. Expressions of remorse might open the door, but what must be paraded is concrete

⁵ *Vatsha v Johannesburg Society of Advocates* [2023] ZAGPJHC 453 para 20.

evidence of a self-awareness of the character defect, not merely sincere regret. Carelessness with truth and accuracy about the facts, a lack of full and frank disclosure, and a denial of full responsibility for the deeds do not meet the test of being fit and proper to don the mantle of a legal Practitioner.’

[48] Therefore, flowing from the reasoning of the court in *Vatsha v Johannesburg Society of Advocates*, the main issue needs to be determined, being whether the applicant is a fit and proper person for admission as a legal practitioner. The determination of this issue is dispositive of this application and removes the need to consider the relief in paragraphs 1 and 2 of the notice of motion, i.e. condonation. Before condonation can be granted the court needs to be satisfied in any event that the applicant has demonstrated ‘good cause’ and in deciding on her admission as a legal practitioner, that she is a ‘fit and proper’ person to be admitted as such.

What is meant by ‘fit and proper’?

[49] The Supreme Court of Appeal (SCA) in *Gaone Jack Siamisang Montshiwa (Ex Parte Application)*⁶ recently held as follows on what is generally meant by ‘fit and proper’:

[33] ... The courts in this country and elsewhere have identified certain qualities for a fit and proper person as envisaged in the LPA. These include integrity, hard work, dignity, honesty, fairness and respect for legal order.

[34] The expression “fit and proper” is not defined in the LPA. There is also no single test for determination of what constitutes a fit and proper person for purposes of admission into the legal profession. Section 5 of the LPA, however, sets out one of the objectives of the Act as to “determine, enhance and maintain appropriate standards of professional practice and ethical conduct of all legal practitioners and all candidate legal practitioners’. In terms of s 24(2)(c) of the LPA only fit and proper persons may be admitted by courts as legal practitioners.

[35] In *Australian Broadcasting Tribunal v Bond* the court described the expression fit and proper as follows:

“The expression “fit and proper person”, standing alone, carries no precise meaning. It takes its meaning from context, from the activities the person is or will be engaged in and the ends to be served by those activities. The concept of ‘fit and proper’ cannot be entirely divorced from the conduct of the person who is or will be engaging

⁶ *Gaone Jack Siamisang Montshiwa (Ex Parte Application)* [2023] ZASCA 19.

in those activities. However, depending on the nature of those activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it indicates that, in certain contexts, character (because it provides indication of likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.” (Footnotes omitted.)

[50] In *Kaplan v Incorporated Law Society, Transvaal*,⁷ the following was held regarding the concept of ‘fit and proper’:

‘We are now in a position to look more closely at the provisions of s 15 and more particularly at the words “fit and proper person” as used therein. They are used in relation to a person who applies to be admitted and enrolled as an attorney. Taken by themselves they have a variety of dictionary meanings which include in the case of “fit”, adapted, adjusted, qualified or suited to some purpose, competent and deserving; and in the case of “proper”, excellent, admirable, commendable, fine, goodly, of high quality, of good character or standing, honest, respectable, worthy, fit, apt, suitable; see, eg, the *Oxford English Dictionary* sv “fit” and “proper”. In the case of *Simango v Buitendag NO and Another* 1943 WLD 85 at 92 MURRAY J expressed the view that the term “fit and proper” did not contain two distinct ideas. In none of the cases to which he had referred had it been suggested that “proper” connoted anything more than “fit” or that a “fit and proper” person differed for example from a term such as “good and sufficient cause” in the conveyance of two distinct ideas. Be that as it may, it is an expression of wide import and its meaning will have to be determined in the context in which it is used, both in the immediate context of the section and in the general context of the Act having regard to the apparent scope and purpose of the Act and, within limits, its background.’

And further:⁸

‘In exercising its discretion whether or not the applicant is a fit and proper person to be re-admitted as an attorney, the Court will have to consider his personal qualities and decide whether he is fit and proper 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, the kind of personal qualities in respect of which a Law Society has to be satisfied in terms of s 16 as mentioned earlier in this judgment.’

⁷ *Kaplan v Incorporated Law Society, Transvaal* 1981 (2) SA 762 (T) at 782A-E

⁸ *Ibid* at 790A-B.

[51] This court further directed the applicant to address it on her compliance with her fiduciary duties as director of Garris, considering what has been stated by the applicant regarding her involvement in the company. This issue is of particular relevance when the issue of the applicant being a fit and proper person for admission as a legal practitioner is considered.

[52] Regarding the applicant's fiduciary duties the applicant submitted, repeatedly, that it is a small company and that she attended to her fiduciary duties 'through Roger Norris' and 'through effective communication with all employees...'. This approach falls significantly short of what is required of a director. In terms of s 76 of the Companies Act 71 of 2008 (the Companies Act):

'(3) ...a director of a company, when acting in that capacity, must exercise the powers and perform the functions of director—

- (a) in good faith and for a proper purpose;
- (b) in the best interests of the company; and
- (c) with the degree of care, skill and diligence that may reasonably be expected of a person —
 - (i) carrying out the same functions in relation to the company as those carried out by that director; and
 - (ii) having the general knowledge, skill and experience of that director.'

[53] The duties of directors are only partially codified in the Companies Act and the common law remains in force.⁹ The requirement that a director shall exercise his or her powers in good faith, for a proper purpose and in the best interests of the company is therefore anything but new.¹⁰

[54] It is so that a director of a company is entitled to rely on various persons for assistance. Section 76(5) of the Companies Act provides:

- '(5) To the extent contemplated in subsection (4) (b), a director is entitled to rely on —
- (a) one or more employees of the company whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;

⁹ *Mthimunye-Bakoro v Petroleum and Oil Corporation of South Africa (SOC) Ltd and Another* 2015 (6) SA 338 (WCC) para 61.

¹⁰ *Modise and Another v Tladi Holdings (Pty) Ltd* [2020] ZASCA 112; [2020] 4 All SA 670 (SCA) para 35.

- (b) legal counsel, accountants, or other professional persons retained by the company, the board or a committee as to matters involving skills or expertise that the director reasonably believes are matters –
 - (i) within the particular person's professional or expert competence; or
 - (ii) as to which the particular person merits confidence; or
- (c) a committee of the board of which the director is not a member, unless the director has reason to believe that the actions of the committee do not merit confidence.'

[55] Notwithstanding the assistance available to directors in terms of s 76(5) of the Companies Act, it is clear that only some duties may properly be left to an employee or official, as the case may be, and neither the Companies Act nor the common law allows for a director to effectively abandon his or her duties and entrusting those duties to a manager, as the applicant did. It remains that a director may not accept information and advice blindly. On the contrary, a director must give it due consideration and exercise his or her own judgment in the light thereof. A director may not shelter behind culpable ignorance or an alleged failure to understand the company's affairs.¹¹

[56] The applicant's abandonment of her duties as director and her explanation that such duties were effectively delegated to Mr Norris are therefore in breach of the duties of a director, contained in the Companies Act and the common law.¹² The applicant's conduct in this regard goes beyond that of mere incompetence¹³ and is in breach of her fiduciary duties as director to act with the necessary care, skill and diligence and in good faith, in the best interests of the company for a proper purpose.

[57] An applicant for admission who has acted in breach of her fiduciary duties as a director during her period of practical vocational training is not a fit and proper person for admission as a legal practitioner. Furthermore, the applicant has not only failed to properly disclose to this court her interest in Garriss but was also exposed as

¹¹ *Howard v Herrigel and Another NNO* 1991 (2) SA 660 (A) at 674E-G, with reference to what Margo J said in *Fisheries Development Corporation of SA Ltd v Jorgensen and Another; Fisheries Development Corporation of SA Ltd v AWJ Investments (Pty) Ltd and Others* 1980 (4) SA 156 (W) at 166D-E.

¹² *South African Fabrics Ltd v Millman NO and Another* 1972 (4) SA 592 (A) at 596E-F; *Da Silva and Others v CH Chemicals (Pty) Ltd* [2008] ZASCA 110; 2008 (6) SA 620 (SCA) para 18.

¹³ *Mirchandani v Unica Iron & Steel (Pty) Ltd and Unica Iron & Steel (Pty) Ltd v Mirchandani* [2022] ZASCA 58 para 13.

untruthful in her papers regarding the extent of her involvement with Garris and the financial benefit she derived as a director of the company.

Conclusion

[58] The applicant, in our view, is not a fit and proper person to be admitted as a legal practitioner. We do not reach this conclusion lightly and are mindful of the effect of such conclusion on the applicant. But she is a mature young woman – counsel advised us she is presently 30 years old. She is by all accounts an intelligent woman. What we cannot ignore are the following aspects, which counsel, in the best traditions of a legal practitioner, was constrained to concede:

- (a) When she signed her practical vocational contract, she did so without reading it;
- (b) She knowingly signed the supplementary affidavit prepared by counsel, after what she terms the 'heavy edit', having read it, knowing it contained inaccuracies and contradicted what she had said in the initial founding affidavit and what she had initially reported to Mr Makara and Ms Williams;
- (c) That the court has had the benefit of further affidavits and bank statements as well as the annual financial statements of Garris, which the LPC and investigating committee did not have;
- (d) That if, on an analysis of the financials and bank statements, it is found that the applicant did derive a benefit, then she did not make a full disclosure as required and was not honest in her disclosures on oath; and
- (e) Then is not a fit and proper person to be admitted as a legal practitioner.

[59] In her supplementary affidavit deposed to on 27 January 2025, the applicant admitted that she did not disclose the five 'Director Wages' references. However, the applicant referred to this omission as a 'misnomer' and proceeded to qualify any payments received as not received for her 'livelihood...save for these amounts which occurred five odd times throughout the 24 month period'. As indicated above, the applicant failed to deal at all with the extensive 'Directors Wages' and other credits recorded in her personal bank account held with Capitec Bank.

[60] An analysis of the bank account statements of the applicant and Garris during the period of training removes any doubt that may have existed regarding the

applicant's involvement with Garris and the financial benefit she derived from the company. The applicant failed to disclose these facts to this court.

[61] The applicant has also been found as untruthful on other material facts, such as the availability of the company's annual financial statements and the payment made in respect thereof.

[62] The conduct on the facts is not one envisaged by the SCA in *Siyabonga Gugulethu Galela (Ex parte application)*,¹⁴ where her non-disclosure, albeit negligent, was not intended to deceive. On those facts the SCA was satisfied that the company concerned never opened a bank account, received no income and did not file tax returns. The facts herein paint a vastly different picture, particularly where it concerns the applicant's non-disclosure of her pecuniary interest during training and the benefits she derived from the company. In our view, such non-disclosure by the applicant amounted to lying under oath and 'evidences a lack of honesty, integrity and trustworthiness, all of which are essential qualities for any member of the attorneys' profession'.¹⁵

[63] The applicant has, therefore, failed to make a complete disclosure of her pecuniary interest in Garris, acted in breach of her fiduciary duties as a director of Garris and has been untruthful in her affidavits before this court, in more than one respect. The applicant is therefore not a fit and proper person for admission as a legal practitioner.

Order

[62] In the result, I make the following order:

The application is dismissed.

PIETERSEN AJ

¹⁴ *Siyabonga Gugulethu Galela (Ex parte application)* [2024] ZASCA 176.

¹⁵ *Ex Parte Mdyogolo* 2017 (1) SA 432 (ECG) para 34.

Case Information

Dates of hearing: 17 March 2025, 04 April 2025, 14 November 2025

Date of judgment: 25 March 2026

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This judgment was handed down electronically by circulation to the parties' representatives by email, and released to SAFLII. The date and time for hand down is deemed to be 9h00 on 25 March 2026.

