

THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 2025-232168

In the matter between:

EMER ANNE MUSSELWHITE

Applicant

and

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

First Respondent

THE CHAIRPERSON OF THE SOUTH AFRICAN

Second Respondent

LEGAL PRACTICE COUNCIL

THE WESTERN CAPE PROVINCIAL COUNCIL OF THE

Third Respondent

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

THE WESTERN CAPE PROVINCIAL DIRECTOR:

Fourth Respondent

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Coram: Henney *et* Wille, JJ

Heard: 21 August 2026

Delivered: 2 September 2026

*Admission as an Advocate of the High Court - Foreign Legal Degrees – “Recognition”
Requirement and the Requirement of “Equivalence” Considered - Application Granted.*

ORDER

The following order is granted:

1. The applicant, by virtue of having been awarded a Bachelor of Laws (Honours) and Master of Laws degrees in the United Kingdom, has satisfied all the requirements for a law degree obtained in a foreign country which is equivalent to the South African LLB degree and recognised by the South African Qualifications Authority established by the National Qualifications Framework Act, 67 of 2008.
2. The first respondent is directed to issue the applicant with a certificate of good standing within five (5) days from the date of this order, or alternatively, indicate in writing, with specific detail, why the applicant will not be issued a certificate of good standing.
3. The applicant is permitted to approach Justice Henney and Justice Wille on **18 September at 09h00** with a view to presenting her application for her admission as a legal practitioner and authorising her enrolment as an advocate of the High Court of South Africa in terms of section 24 (2) read with section 26 of the Legal Practice Act, 28 of 2014.
4. The respondents, jointly and severally (the one paying the others to be absolved), shall be liable for the costs incidental to this application from 9 December 2025 (excluding the costs of the hearing on 8 December 2025) on the scale as between party and party, including the costs of two counsel on scale C to be taxed or agreed.

JUDGMENT

WILLE, J (unanimous):

INTRODUCTION

[1] This is an opposed application concerning the academic requirements for entering the legal profession as an advocate. For the purposes of clarity, the aggrieved candidate will be referred to as the applicant, and the respondents will be collectively referred to as the respondents.¹

[2] The applicant holds two law degrees from foreign jurisdictions. The applicant wants this court to order that her law degrees meet the requirements of section 26(1)(b) of the Legal Practice Act.²

[3] She contends that her two law degrees are at least equivalent to a Bachelor of Laws (LLB) degree obtained in this country and should be recognised by the respondents and by our qualification regulatory authority.³

[4] The applicant argues that she has met all the requirements for her enrolment and admission as an advocate. The respondents strenuously oppose the application and contend that her law degree (Bachelor of Laws - Honours) does not meet the equivalency requirements for an LLB degree obtained in South Africa, and that the applicant should not be admitted as an advocate. This notwithstanding that the applicant also has a legal LLM degree.⁴

CONTEXT

¹ The respondents are all regulatory bodies.

² The Legal Practice Act, 28 of 2014 (the "LPA").

³ South African Qualifications Authority (SAQA).

⁴ The applicant has also achieved a Masters Degree in Law from a foreign University.

[5] The applicant has obtained the following degrees:

- (a) A Bachelor of Arts Degree from Ireland.
- (b) A Master's Degree in Education from America.
- (c) A Bachelor of Laws Degree (Honours) from England, and
- (d) A Master's Degree in Law from England⁵.

[6] The applicant's case is that her Bachelor of Laws Degree (Honours) from England meets the equivalence standard on its own. Furthermore, because she also holds a Master of Laws (LLM), she has exceeded the minimum requirements for equivalence with a South African LLB degree.⁶

[7] The respondents are not in a position to meaningfully dispute that the applicant's Bachelor of Laws Degree (Honours) is not equivalent to the South African LLB degree. They are also not in a position to dispute that her total (composite) legal qualifications exceed our LLB-level of legal education. Thus, factually, she is more qualified than is required by the intervening legislation.⁷

[8] What the respondents do admit is that the applicant has specific advanced legal qualifications comparable (but not equivalent) to our LLB degree. They also agree she is an accomplished legal scholar with substantial legal education.⁸

[9] This notwithstanding, the respondents argue that the applicant does not meet the statutory requirements for admission. Their opposition seems to rely on a narrow and strict interpretation of the law that ignores the applicant's actual level of education.⁹

[10] The applicant has passed the examination set by the General Council of the Bar (the GCB) and the GCB's separate competency examinations. In addition, the

⁵ This is common cause.

⁶ The respondents say the applicant's LLM degree is of no moment.

⁷ The respondents submit that a composite approach is impermissible.

⁸ It is this equivalence issue that is this core issue in this opposed application.

⁹ The respondents opposition is one of form rather than substance.

applicant has also completed her practical training (pupillage) at the Cape Bar. Thus, the applicant has demonstrated her practical knowledge of South African law.¹⁰

[11] The applicant has also passed both the GCB's admission examinations and the Legal Practice Council's Competency-Based Examination for Advocates. She has also successfully completed her practical legal training, having undertaken pupillage under the auspices of the Cape Bar.¹¹

[12] Because these requirements have been fulfilled, the applicant filed an application for admission as an advocate, which she sought to be heard together with her application for certain specific declaratory relief.¹²

SECTION 26(1)(b) OF THE LEGAL PRACTICE ACT 28 of 2014 (the "LPA")

[13] This section influences two distinct, conjunctive statutory tests for 'foreign' law degree holders seeking admission, namely:

- (a) Recognition by the South African Qualifications Authority ("SAQA"); and
- (b) Equivalence to the South African LLB degree.¹³

[14] The respondents' opposition focuses on two distinct requirements, asserting that the recognition level is the sole 'determinative' of the required statutory equivalence.¹⁴

[15] Section 26(1)(b) provides that a person qualifies for admission if they have:

*'...satisfied all the requirements for a law degree obtained in a foreign country, which is equivalent to the LLB degree and is recognised by the South African Qualifications Authority...'*¹⁵

CONSIDERATION

¹⁰ This does not seem to be disputed by the respondents.

¹¹ The details of these accomplishments have been set out in the admission application filed by the applicant.

¹² This has been dealt with in the order granted in this application.

¹³ This interpretation seems to be disputed by the respondents.

¹⁴ The respondents aver that the test stops finally with the recognition stage.

¹⁵ The important word here is "recognised".

[16] Self-evidently, the text establishes two separate ‘qualifiers’ connected by the conjunction (and), namely:

- (a) **The Recognition Leg:** SAQA must verify that the foreign degree is an authentic credential issued by an accredited foreign institution and place it within the NQF.
- (b) **The Equivalence Leg:** The substance, credits, and learning outcomes of the foreign legal education must be substantially equivalent to, or exceed, those of the South African LLB.¹⁶

[17] The legislature elected not to draft into the section the words ‘recognised as equivalent’ by SAQA. Thus, reading these words (recognised as equivalent) into the statute to merge recognition and equivalence would (in my view) violate the plain grammatical meaning and purpose of the provision. Under the now oft-quoted and settled principles of statutory interpretation, SAQA’s role is confined to evaluating foreign qualifications with reference to the National Qualifications Framework (NQF) benchmark or threshold. It must be so, as a matter of pure logic, that the ultimate determination of academic and practical equivalence for admission to practice vests exclusively within the remit of the High Court following section 24 read with section 26(1)(b) of the LPA.¹⁷

[18] Simply put, the placement of a qualification on the NQF ‘rung of the proverbial education-level ladder’ is meant to provide a broad evaluation of general learning levels. It does not demonstrate, nor is it intended to show, identical purpose, content, or outcomes.¹⁸

[19] The ultimate fate of a highly qualified lawyer (or any highly qualified professional) cannot be determined solely and ultimately by means of a tick-box exercise. This type of exercise is an impermissible approach of form over substance.¹⁹

[20] In addition, the respondents’ mechanical approach excludes candidates whose cumulative educational qualifications exceed the proverbial glass ceiling. Self-evidently,

¹⁶ It is the recognition leg that a High Court must determine.

¹⁷ The court has been given this power in terms of section 24 of the LPA.

¹⁸ It is merely a “tick box” placement on the rung of the ladder.

¹⁹ This type of test is in my view impermissible.

exceeding the minimum statutory requirement would satisfy the equivalence test. Put another way, a mechanical statutory scheme that accepts a bachelor's degree cannot rationally exclude a candidate holding an advanced postgraduate degree.²⁰

[21] This is where the respondents take issue. They say that SAQA's NQF 7 certificate recognition remains immutable because, in legal terms, it is an unreviewed administrative decision, thereby preventing the applicant from obtaining relief from this court. I disagree because this is a flawed and isolated approach that euthanises the court's jurisdiction, in terms of section 24 and 26(1)(b), to make a determination on equivalence.²¹

[22] Put another way, SAQA lacks the necessary statutory jurisdiction to make a determination of equivalence. SAQA says so itself and has expressly refused to make a determination on equivalence. Thus, there is no administrative decision that falls to be impugned.²²

[23] Viewed from a structural perspective, recognition and equivalence are two legally discrete requirements, each performed by different statutory bodies for completely different purposes. The first step is that of authenticity. Once this has been done, SAQA places the recognised education qualification on their rung of the NQF educational ladder.²³

[24] With this placing, the role of SAQA comes to an abrupt end. The authority to assess substantive equivalence on a composite and holistic basis vests with the High Court. In this specific case, the applicant's combined BA Law (Honours) and LLM degrees exceed the academic curriculum of our domestic LLB degree, and thus the equivalence requirement under section 26(1)(b) is more than satisfied.²⁴

[25] Section 26(1)(b) provides for a textual split and thus sets out distinct, conjunctive tests as follows:

(a) Obtaining a foreign law degree.

²⁰ More cannot be interpreted as less.

²¹ Section 24 of the LPA would become superfluous.

²² SAQA themselves concede that they do not exercise an equivalence role.

²³ This is a mechanical tick box approach.

²⁴ The respondents maintain that the applicant's LLM degree is irrelevant.

- (b) Recognition determined by SAQA, and
- (c) Equivalence determined by the High Court under Section 24.²⁵

[26] The applicant contends that the respondents conflate recognition and equivalence by attempting to read words into the statute. I agree. I say so because SAQA's mandate is that of a macro-level framework placement. SAQA itself has repeatedly disclaimed assessing substantive professional equivalence.²⁶

[27] Turning now for a moment to the details of the applicant's educational qualifications. The applicant completed a BA Law (Honours) and a legal LLM, matching and exceeding the local five-year postgraduate South African LLB pathway.²⁷

[28] The applicant's BA Law (Honours) serves the identical purpose as the South African LLB, thereby qualifying graduates to enter practical vocational training for the Bar. The applicant accumulated 540 legal credits (360 plus 180), exceeding the standard 480 credits for a domestic LLB.²⁸

[29] The University of Cape Town evaluated the applicant's BA Law (Honours) degree as equivalent to an NQF 8 - professional LLB Bachelor's degree and advised that she would have been entitled to enter a master's-level study at UCT. The applicant successfully completed pupillage at the Cape Bar and passed both the GCB exams and LPC competency examinations. Thus, the holding of an advanced postgraduate law degree (NQF 9) demolishes the assertion that her legal education is somehow deficient.²⁹

[30] The respondents' argument that SAQA's NQF 7 certificate is an unreviewed administrative decision that bars relief is unfounded. SAQA never made an administrative decision on statutory equivalence under Section 26(1)(b), as it disavows jurisdiction to do so.³⁰

²⁵ The High Court, ultimately in terms of section 24 of the LPA determines admission.

²⁶ The respondents are unable to take issue with the position adopted by SAQA.

²⁷ This cannot be disputed.

²⁸ This is not disputed.

²⁹ More cannot be interpreted as less.

³⁰ SAQA says this is not their function.

[31] I say this because of SAQA's own position in this matter. They spell out their mandate, *inter alia*, in the following terms:

*'...SAQA's mandate is derived from the National Qualifications Framework Act, 2008 (Act 67 of 2008). Under this legislation, SAQA evaluates foreign qualifications through a two-phase process...'*³¹

[32] Most importantly, they say the following:

*'...It remains the responsibility of other stakeholders within the value chain, such as professional bodies, education and training institutions, employers, to mention but a few, to make decisions regarding admission to practice, registration, employment or professional designation...'*³²

[33] And further:

*'...Although the SAQA Certificate of Evaluation may form part of the requirements, it is a secondary document and should not be considered in isolation. It should always be presented together with your actual qualification documents, which are your primary documents...'*³³

[34] Self-evidently, a statute setting a minimum requirement cannot rationally be construed to exclude candidates who exceed that minimum threshold. Denying entry based on a rigid, clerical NQF checklist violates Sections 9 and 22 of our Constitution, and runs contrary to the respondents' own transformative purpose of removing artificial barriers to entry into the legal profession.³⁴

[35] It must be emphasised that this judgment does not establish a blanket precedent or lower the barrier for foreign-qualified applicants. Rather, it affirms a highly demanding, fact-

³¹ The letter from SAQA dated 11 November 2025.

³² The email from SAQA dated 15 July 2025.

³³ The email from SAQA dated 15 July 2025.

³⁴ The Constitution of the Republic of South Africa, 1996.

intensive inquiry reserved for the High Court's inherent and statutory jurisdiction under section 24 read with section 26(1)(b) of the Legal Practice Act 28 of 2014.³⁵

[36] This court does not find that a foreign law degree automatically satisfies section 26(1)(b). Instead, it informs a cumulative, holistic assessment of the applicant's specific academic history. Future applicants holding only an undergraduate foreign degree without substantial postgraduate augmentation may not satisfy this standard set in this judgment.³⁶

[37] I say this because the core basis for the ruling is that the applicant's formal legal education exceeds the domestic LLB benchmark both qualitatively and quantitatively because of : (a) the 'credit load' namely 540 credits across her BA Law (Honours) and LLM, is well above the 480 credits required for a South African LLB and, (b) the NQF level, as the applicant held an NQF Level 9 (Master of Laws) qualification, surpassing the minimum statutory entry threshold of NQF Level 8.³⁷

[38] Thus, an applicant with a standard foreign bachelor's degree lacking sufficient credits or a postgraduate qualification cannot claim parity under this rationale. Besides, the applicant has been vetted by a top-tier South African Law Faculty (The University of Cape Town), which formally assessed her credentials as equivalent to an NQF 8 professional LLB for admission into master's-level study at UCT.³⁸

[39] The risk that foreign applicants might enter practice without South African legal knowledge is neutralised on these facts because the applicant completed the full practical pipeline by:

- (a) Completing practical vocational training (pupillage) at the Cape Bar.
- (b) Passing the General Council of the Bar (GCB) examinations, and
- (c) Passing the respondents' own Competency-Based Examinations for Advocates.³⁹

³⁵ The "floodgates" argument is not sustainable.

³⁶ This will be judged on a case by case basis and is case specific.

³⁷ This cannot be seriously disputed by the respondents.

³⁸ This, too is not disputed.

³⁹ The applicant achieved this with flying colours.

[40] Put another way, what is of importance is the statutory division of labour. SAQA handles credential authentication, while the High Court assesses substantive legal equivalence under section 26(1)(b). Because this inquiry turns entirely on whether a candidate's composite education, credits, and demonstrated local proficiency match or exceed the domestic standard, the threshold remains exceptionally high and strictly circumscribed to exceptional individual circumstances.⁴⁰

COSTS

[41] Punitive costs are sought against the respondents for alleged obstructive and high-handed conduct, including raising objections seven months late, barring examination access the day before the proposed sittings, and failing to act as an objective *amicus curiae* in assisting the Court. I don't see it that way. The respondents' function is crucial.⁴¹

[42] I say this because the respondents perform a 'crucial' statutory gatekeeping function in regulating admissions to the profession for the ultimate testing of equivalence issues before a High Court. This function was undoubtedly undertaken and was necessary.⁴²

[43] However, it must have become glaringly apparent to the respondents that their position was tenuous and that they should have recalibrated it and their response after the order granted on 8 December 2025.⁴³

[44] Thus, the respondents could have, and should have, acted differently after the order granted on 8 December 2025, and must therefore be held liable for the costs of the application from 9 December 2026 onwards.⁴⁴

ORDER

[45] I propose the following order be granted:

⁴⁰ The applicant more than meets the minimum threshold.

⁴¹ The respondents function was crucial but only to a certain stage or point in this unfortunate litigation.

⁴² The respondents could have performed this function in a more amicable way.

⁴³ When the order was granted by my brother, Justice Henney.

⁴⁴ There was no need to oppose the application after the order by Justice Henney.

1. The applicant, by virtue of having been awarded a Bachelor of Laws (Honours) and Master of Laws degrees in the United Kingdom, has satisfied all the requirements for a law degree obtained in a foreign country which is equivalent to the South African LLB degree and recognised by the South African Qualifications Authority established by the National Qualifications Framework Act, 67 of 2008.
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4. The respondents, jointly and severally (the one paying the others to be absolved), shall be liable for the costs incidental to this application from 9 December 2025 (excluding the costs of the hearing on 8 December 2025) on the scale as between party and party, including the costs of two counsel on scale C to be taxed or agreed.

WILLE, J

I agree, and it is so ordered:

HENNEY, J

APPEARANCES

FOR THE APPLICANT

ADVOCATE: M SEALE SC

ADVOCATE: M MATWA

FOR THE RESPONDENT

ADVOCATE M ADHIKARI