



**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 granted:

1. The application for leave to appeal is dismissed.
2. There is no order as to costs.

JUDGMENT IN APPLICATION FOR LEAVE TO APPEAL

Henriques J (Pietersen AJ concurring):

Introduction

[1] This is an application for leave to appeal against the judgment and order granted pursuant to an application for the admission of the applicant as a legal practitioner

delivered on 25 March 2026, refusing the applicant's admission and enrolment as a legal practitioner. Leave to appeal is sought to the full court of this division, alternatively the Supreme Court of Appeal.

[2] In dismissing the application for admission and the ancillary relief, this court was of the view, on a conspectus of the papers filed, that the applicant was not a fit and proper person for admission. This was based on, inter alia, what emanated from the affidavits and annexures filed by the applicant, and concessions rightfully made by her counsel during the hearing of the application. In summary, some of the more pertinent considerations were:

- (a) the applicant signed her practical vocational contract without reading it;
- (b) the applicant did not make full disclosure in her founding affidavit in support of her *ex parte* application for admission in September 2023, at a time when she knew her holding an interest in Garris & Projects (Pty) Ltd (Garris) had not been disclosed;
- (c) she signed the supplementary affidavit prepared by counsel, knowing it contained inaccuracies and contradicted what she had said in the initial founding affidavit and had reported to the directors of Norton Rose Fulbright, being Mr Makara and Ms Williams, during her various interactions with them;
- (d) the founding affidavit in support of the application for admission delivered in September 2023, together with the supplementary affidavits subsequently filed thereunder, made the following express allegations in paras 46 and 53 of the founding affidavit that the applicant received no remuneration from the companies. After the court directed the delivery of certain financial information, including bank statements and annual financial statements of Garris, which the Legal Practice Council investigating committee did not have, and on an analysis thereof, it was found that the applicant derived a benefit which she did not make full disclosure of, as required and was not honest in her disclosures;
- (e) the applicant further averred in the initial application for admission that she played no active role in the companies, which also appeared to be incorrect;
- (f) she breached her fiduciary duties as a director of the company Garris in contravention of the Companies Act 61 of 2008;

- (g) when considered in totality, her nondisclosure was not negligent but was deliberate and amounted to lying under oath and evinced a lack of honesty, integrity and trustworthiness, which were essential qualities for any member of the attorney's profession; and
- (h) given the aforementioned, she had not shown good cause for condoning her non-compliance with the Legal Practice Act 28 of 2014.

Grounds of appeal

[3] The grounds upon which the applicant seeks leave to appeal are set out in a detailed notice dated 16 April 2026. They can be summarised as follows:

- (a) The judgement is vitiated by material misdirections of fact and law and this court failed to properly exercise its discretion judicially in determining the 'fit and proper' enquiry in relation to the applicant;
- (b) The court failed to have regard to the fact that the applicant made full disclosure and her failure to disclose, if any, was negligent conduct, which did not support a finding of her not being fit and proper warranting a dismissal of the application;
- (c) The court ought to have followed *Siyabonga Gugulethu Galela (Ex parte application)*,¹ and ought to have found her non-compliance negligence and admitted the applicant; and
- (d) The court failed to have regard to the proportionality aspect of the effect of the order when not granting admission.

[4] Because of the above, the applicant submits that there are reasonable prospects of another court coming to a different decision. In addition, she submits that there are compelling reasons to grant leave to appeal, as envisaged in s 17(1)(a)(ii) of the Superior Courts Act 10 of 2013 (the Act), as the appeal raises compelling issues of legal principle regarding:

'1.5.1 the proper distinction between negligent non-disclosure and intentional dishonesty in admission proceedings

1.5.2 the proper approach to rehabilitation and proportionality in first-time admission

¹ *Siyabonga Gugulethu Galela (Ex parte application)* [2024] ZASCA 176 (*Galela*).

applications;

1.5.3 the extent to which youthful inexperience and contextual mitigating factors bear upon the fit and proper enquiry.’

The test in an application for leave to appeal

[5] Applications for leave to appeal are governed by s 17 of the Act. Section 17(1)(a)(i) makes provision for leave to appeal to be granted where the presiding judge is of the opinion that:

‘(i) the appeal would have a reasonable prospect of success...’

[6] Under s 17(1)(a)(ii), a court hearing an application for leave to appeal is to consider whether:

‘(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.’

[7] Reasonable prospects of success have previously been defined to mean that there is a reasonable possibility that another court may come to a different decision.²

[8] With the enactment of s 17 of the Act, the test has now obtained statutory force and is to be applied using the word ‘*would*’ in deciding whether to grant leave. In other words, the test is would another court come to a different decision? In *Mont Chevaux Trust v Goosen*,³ the Land Claims Court held, albeit obiter, that the wording of the subsection raised the bar for the test that now must be applied to any application for leave to appeal. In *Notshokovu v S*,⁴ it was held that an appellant faces a higher and more stringent threshold in terms of the Act when compared to the provisions of the repealed Supreme Court Act 59 of 1959.

[9] In *Acting National Director of Public Prosecutions and Others v Democratic Alliance in re: Democratic Alliance v Acting National Director of Public Prosecutions*

² *Van Heerden v Cronwright and Others* 1985 (2) SA 342 (T) at 343G-H.

³ *Mont Chevaux Trust v Goosen* 2014 JDR 2325 (LCC) (*Mont Chevaux Trust*) para 6.

⁴ *Notshokovu v S* [2016] ZASCA 112 para 2.

and Others,⁵ the full court considered the test as envisaged in s 17 of the Act, and dealt with the test set out in *Mont Chevaux Trust*, where Bertelsmann J held the following:⁶

‘It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 343H. The use of the word “would” in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.’

[10] In *MEC for Health, Eastern Cape v Mkhitha and Another*,⁷ the Supreme Court of Appeal held as follows:⁸

‘[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.’ (My emphasis and footnote omitted.)

[11] In 2021, the Supreme Court of Appeal in *Ramakatsa and Others v African National Congress and Another*,⁹ held:

‘Turning the focus to the relevant provisions of the Superior Courts Act (the SC Act), leave to appeal may only be granted where the judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard such as the interests of justice. This Court in *Caratco*, concerning the provisions of s 17(1)(a)(ii) of the SC Act pointed out that if the court is unpersuaded that

⁵ *Acting National Director of Public Prosecutions and Others v Democratic Alliance in re: Democratic Alliance v Acting National Director of Public Prosecutions and Others* [2016] ZAGPPHC 489 para 25.

⁶ *Mont Chevaux Trust* para 6.

⁷ *MEC for Health, Eastern Cape v Mkhitha and Another* [2016] ZASCA 176.

⁸ *Ibid* paras 16–17.

⁹ *Ramakatsa and Others v African National Congress and Another* [2021] ZASCA 31 para 10.

there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Compelling reason would of course include an important question of law or a discreet issue of public importance that will have an effect on future disputes. However, this Court correctly added that “but here too the merits remain vitally important and are often decisive”. I am mindful of the decisions at high court level debating whether the use of the word “would” as opposed to ‘could’ possibly means that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.’ (My emphasis and footnotes omitted.)

[12] Again, in 2023, in *Gaone Jack Siamisang Montshiwa (Ex Parte Application)*,¹⁰ the majority of the Supreme Court of Appeal refused leave to appeal since it was ‘not persuaded that another court would reach a different decision from that of the High Court’.¹¹

[13] In this matter, the court has to determine whether another court *would* (my emphasis) come to a different decision and/or whether there are compelling reasons to grant leave to appeal. I have considered the application for leave to appeal, the oral submissions made and the written heads of argument.

[14] The crisp issue which served before us was whether the applicant was a fit and proper person for admission and enrolment. In determining this, considering the non-disclosures, a determination had to be made as to what consequences may flow from a failure to make adequate or proper disclosures in an *ex parte* application for admission.

¹⁰ *Gaone Jack Siamisang Montshiwa (Ex Parte Application)* [2023] ZASCA 19.

¹¹ *Ibid* para 33.

[15] At the hearing of the application to leave to appeal, the argument can be summated as a criticism of the court's finding of dishonesty rendering the applicant not fit and proper for admission as a legal practitioner. This criticism focused on:

- (a) The court's finding of intentional dishonesty, when the applicant's conduct was negligent rather than intentional;
- (b) Considering the above, this court should have instead followed the rationale of *Galela*; and
- (c) The refusal of the application is a disproportionate sanction for the negligent non-disclosure of facts relevant to the admission of the applicant.

[16] It is consequently suggested that, on account of the above arguments, this court should have instead admitted the applicant as a legal practitioner and that another court would likely do so if leave to appeal were to be granted.

[17] The reliance on *Galela* by the applicant is, however, misplaced. In *Galela*, which also involved a non-disclosure around the involvement in a company during the period of candidacy, the supplementary affidavit delivered in that matter provided a full explanation of the non-disclosure. As is recorded in *Galela*:

'[22] Ms Galela also set out further details in respect of her directorship of Varsigator. She and a friend had set up the business on the strength of R300 000 provided by her mother in exchange for a 20 per cent share in the business. This was paid to a company to develop the app. The development ultimately failed and the business did not get off the ground. Varsigator never opened a bank account, it received no income, as a result of which it filed no tax returns. Ms Galela attempted to recoup the monies from the development company and left the process of deregistration to her mother. In hindsight, she acknowledges that this was irresponsible and that she should have driven the process of deregistration of Varsigator, or at least conducted enquiries as to its status at the time of launching her application for admission.

[23] Ms Galela's supplementary affidavit has set out a proper explanation as to why she did not disclose that she was a director of Varsigator. In short, the business failed. As a result Varsigator never opened a bank account, received no income and did not file tax returns. In my view her non-disclosure, albeit negligent, was not intended to deceive nor did the directorship interfere with her proper training...'

[18] Unfortunately, this explanation bears little resemblance to the applicant's disclosures. Contrary to the failure to disclose by the applicant in *Galela*, the applicant in this matter did not merely forget to disclose details relating to Garris. Instead, and as recorded above, she made positive assertions of fact that were untrue. These include averring that she received no income (when she did), and that she had virtually no active role in the companies (when, again, she did).

[19] Further, the additional disclosures made by the applicant (while still unsatisfactory), were only drawn out after her erstwhile employer filed an affidavit raising concerns, an investigation by the Legal Practice Council was held, and orders for disclosure were made by this court.

[20] It remains unclear how any court could in those circumstances conclude that the applicant's conduct was not intentional. If it was an innocent mistake that was made, and setting aside the impropriety of 'accidentally' giving incorrect evidence on oath in an *ex parte* application, the applicant would have immediately apologised, explained the oversight, and disclosed all relevant information. She would not have, as she did, made incorrect positive assertions and waited for this court and third parties to obtain the further information to gainsay the allegations made in the founding affidavit.

[21] Instead, the irresistible conclusion is that the applicant's conduct was deliberate and that she had hoped that, if the contents of the founding affidavit had remained uncontested, the falsity of the allegations would not have been discovered. The applicant had clearly been untruthful with this court and done so to gain a personal advantage.

[22] In *Vatsha v Johannesburg Society of Advocates*,¹² Sutherland DJP made a pertinent summary in the context of an admission application as to the ethical requirements of a lawyer:

¹² *Vatsha v Johannesburg Society of Advocates* [2023] ZAGPJHC 453 (*Vatsha*) para 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.’

[23] Unfortunately, the current applicant’s conduct was of the kind deprecated in *Vatsha*. The applicant chose to give false testimony to increase her chances of admission.

[24] The applicant should have made a full disclosure, recognise the flaws in her conduct, and strived for better. The applicant, instead, sought to hide the truth, and when the truth was revealed by third parties, she sought, instead, to try to minimise the impact of this evidence. This is not the conduct that is to be expected of a person who is fit and proper to become a legal practitioner.

[25] While this finding of the applicant’s conduct makes the argument of proportionality academic, it shall, nonetheless, briefly be dealt with.

[26] A court determining an application for admission does hold a discretion. However, the argument of proportionality is misplaced in such an application. The argument is premised upon the incorrect assumption that the refusal of relief for admission is a punishment for non-disclosure.

[27] The function of the court in determining an application for admission is to make a finding whether the applicant is fit and proper to be admitted. Improprieties such as non-disclosures and giving false testimony, of course, influence this finding, but a refusal of an application for admission is not a punishment but rather a finding that an applicant is not fit and proper.

[28] The argument of proportionality would therefore have been misplaced in any event.

[29] Because of the above, the court is of the view that the applicant enjoys no prospects of success on appeal and consequently the application for leave to appeal under s 17(1)(a)(i) must fail.

[30] As for the leave to appeal under s 17(1)(a)(ii), applications for leave to appeal under this subsection are not an ever-available alternative. While the phrasing of the section is deliberately broad, it is typically employed in circumstances of conflicting judgment, novel questions of law, matters of public importance, or some other issue that typically demands the attention of more than just the litigating parties in that particular matter.

[31] None of the grounds raised by the applicant under s 17(1)(a)(ii) is of importance beyond the applicant's personal desire to be admitted. While an attempt has been made to frame the applicant's concerns in broader terms to satiate the requirements of s 17(1)(a)(ii), they are actually nothing more than a rephrased complaint of this court's findings of the applicant.

[32] Accordingly, no basis has been made out for the court to give leave under s 17(1)(a)(ii), there being no substantial and compelling basis to do so.

[33] It is for these reasons that I am of the considered view that the applicant has not satisfied the threshold for leave to appeal as required in s 17(1)(a)(i) and (ii) of the Act.

Order

[34] Consequently, the following order is granted:

1. The application for leave to appeal is dismissed.
2. There is no order as to costs.

HENRIQUES J

I agree.

PIETERSEN AJ

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Date of Judgment: 25 March 2026
 Date of application for leave to appeal: 02 July 2026
 Judgment in application for leave to appeal: 08 September 2026

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 9h30 on 08 September 2026.