



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

**CASE NO.: 34502/2010**

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
_____	_____
DATE	SIGNATURE

In the matter between:

GRAND VALLEY ESTATES (PTY) LTD

First Plaintiff

AND ELEVEN OTHERS

2nd to 12<sup>th</sup> Plaintiffs

And

MPUMALANGA TOURISM AND PARKS AGENCY

First Defendant

AND TWENTY FOURTH OTHERS

2nd to 24<sup>th</sup> Defendant

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**JUDGMENT**

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**SARDIWALLA J:**

## INTRODUCTION

[1] This is an application to declare the trial a nullity based on defendants' interpretation of the Legal Practice Act. The defendants interrupted the Special Trial by interposing the evidence of Ms. Marli Meyer an official of the Legal Practice Council on 3 May 2023. The relief sought by the defendants is to have the Special Trial, that has ran for 114 court days, to be declared a nullity on the basis that advocate Jacques Joubert is not a duly admitted and enrolled advocate in terms of the Legal Practice Act.

## BACKGROUND

[2] Advocate Joubert was admitted and enrolled as an advocate of the High Court of South Africa on 14 October 1991. He practiced as a member of the Cape Bar between 02 December 1991 to 31 October 2001 and thereafter from 04 February 2004 to 30 November 2006. He resigned from the Cape Bar Council in 2006 and pursued to practice law in Canada, however his name was never removed from the roll of advocates. He return to South Africa in 2009. He worked primarily as a civil mediator in the legal profession. In 2014, Adv. Joubert was approached by the Plaintiff Mr. Fred Daniel to assist him in resolving dispute with certain government defendants by way of mediation.

## THE APPLICATION

[3] The defendants raise an issue with certain legal proceedings in the matter in terms of their damages claim may be vitiated, namely the proceedings prior to Adv. Joubert taking active steps to be registered with the Regulator, the LPC, with a legal practitioner number.

The defendants raised issue with whether the provisions made in Section 30 and 33 of the LPA disqualify Adv. Joubert from representing any party in a trial conducted in the High Court of South Africa.

The defendants raised an issue regarding the definition of the LPA and the provisions of Section 30, 33 and 93(1) and 93(2), which by the interpretation of the defendants do not permit Adv. Joubert to act in any professional capacity on behalf of any party in any court in the Republic of South Africa.

The defendants raise issue regarding Adv Joubert's annual membership fees due to the LPC.

## THE EVIDENCE

[4] Ms Marli Meyer is a Senior Legal Officer of the Professional Affairs Department which consists of the Candidate Legal Practitioner Unit, as well as the Records Unit. She was subpoena by the defendants, dated 30 March 2023. She testifies that in respect of existing Advocates at the time of the commencement of the LPA. It is procedure that an information sheet is used and not a formal application in terms of Section 30 for the enlistment of Advocates and Attorneys enrolled before 2018. She further testifies that, Adv Hellens completed likewise information sheet, with the required annexures in order to update their records. There is no formal application submitted to the LPC. She further testifies that in her reply to Adv Hellens letter she specifically wrote that Advocate Joubert is considered to be enrolled in terms of Section 114(1) of the Legal Practice Act. In terms of the legislation there is no an onus on the applicant. In terms of Section 114(1) that onus was in fact on the Registrars of the Court – The Registrar of every division of the High Court had to provide the LPC with that information. The Director General must as soon as possible after the appointment of the Council's Executive Officer. The Law Society immediately prior to the date.

The onus was not on the existing Advocates directly to furnish LPC with that information. It that was merely an attempt to get all Advocates admitted and enrolled prior to the LPA to ensure that all practitioners are reflected on the LPC records. She states that it is still an ongoing process obtained information from the NPA, from Courts, from Advocates directly in order to update their records. The enrolment of the existing Advocates in terms of the Admission of Advocates Act which the Law Society immediately prior to the date must enlist. She responded to Adv Hellens question, “**he became enrolled for the first time on 1 September 2022 on your records.**” ,clearly specifying, that Adv Joubert reflected on their records from 1 September 2022 and that he has been enrolled as from 14 October 1991 to date. Re-affirming that Adv Joubert is properly enrolled as a practising advocate. I see it pointless to elaborate further on this point as the defendant’s issues in dispute has been fully resolved with the above evidence by their own witness.

## THE LAW

[5] **Ex Parte Goosen and Others** where Sutherland JP, as he then was, writing for the full court, had this to say: “There are several provisions in the LPA that regulate and manage the transition from the old regimes.” This case dealt with whether or not, the provisions of Section 115 of the LPA applied to applicants for admission as advocates whose applications for admission were pending in any court on or before 01 November 2018. . Sutherland JP, goes further to state that: “An historical traverse of the legislation regulating admission to practice over the past century is instructive. The occurrence of providing, from time to time, for transitions in legislative regimes regulating admission to practice in not a novelty. The legislature has, relatively frequently, enacted legislation from time to time. Prescribing the requirements for

*admission of both attorneys and advocate. In each instance with the passage of a new piece of legislation, there has been a provision functionally similar to section 115 of the Act.”*

*Section 115 of the LPA reads: “Persons entitled to be admitted and enrolled as advocates, attorneys, conveyancers or notaries. Any person who, immediately before the date referred to in section 120(4), was entitled to be admitted and enrolled as an advocate, attorney, conveyancer, or notary is, after that date, entitled to be admitted and enrolled as such in terms of this Act.” The legislator intended that any applicant before the commencement of the Act that was entitled to be admitted and enrolled as an advocate, attorney, conveyancer, or notary were entitled to be admitted and enrolled as such in terms of the New Act.*

*The objective and effect of the LPA is deliberately to revolutionise the regulation of the South African Legal Profession. The Judge President in amplification of Section 115 of the LPA, goes further to state that the LPA makes clear 7 Section 120(4) of the Legal Practice Act 28 of 2014. However, what is more so interesting is the statement made by the Judge President in terms of Section 114 of the LPA: “Section 114 of the LPA preserves the status of all advocates and all attorneys who enjoyed the status as at 31 October 2018 who are deemed to be legal practitioners and enrolled as advocates and*

*Section 114 of the LPA reads: Existing advocates, attorneys, conveyancers and notaries (1) Any person who has been admitted by the High Court and authorised to be enrolled as an advocate, attorney, conveyancer or notary in terms of any Act in the former Republic of South Africa and former homelands which is still applicable before the date referred to in section 120(4), must be regarded as having been admitted to practice and, where applicable, subject to any condition imposed by the High Court, must be enrolled as a legal practitioner, conveyancer or notary in terms of this Act, subject to the terms of any order of court whereby any such person has been suspended from practice*

*as an advocate, attorney, conveyancer or notary.*

## CONCLUSION

[6] The Legal Practitioner Act in terms of Section 114 is clear that any legal practitioner that was admitted and enrolled prior to the Act coming into effect, remains and enjoys the status of this provision. This in effect tests to the fact that Adv. Joubert was admitted and enrolled as an advocate and was duly authorised to practice within his scope as a legal practitioner in accordance with the legislature. Adv. Joubert conducted himself as set out in the provisions of the Act. The fact that his name was not reflected on the LPC consolidated Roll was due merely to an administrative oversight by the LPC. There is absolutely no merit in the application as there is no doubt that advocate J F Joubert was at all material times duly enrolled as an advocate as required in terms of the Act. The letter dated 14 February 2023, by the LPC confirms the Adv.: Joubert is a practising member of the Legal Practice Council with no prohibitions to continue in his practice or in this matter.

## ORDER

[7] **APPLICATION THEREFORE IS DISMISSED WITH COSTS**

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**SARDIWALLA J**

**JUDGE OF THE HIGH COURT**

## APPEARANCES

Date of Interloctary Application	:	3 May 2023
Date of judgment (Reasosns)	:	8 May 2023
Plaintiffs' Counsel	:	Adv.: J F J JOUBERT
Plaintiffs' Attorneys	:	DLBM Inc Attorneys
1st Defendants' Counsel	:	Adv.: MICHAEL R HELLENS SC & Adv.: H MPSHE
Defendants Attorneys	:	State Attorneys
2nd to 24th Defendants' Counsel	:	Adv.: DJ JOUBERT SC & Adv.: LW DE BEER