# REPUBLIC OF SOUTH AFRICA

**IN THE HIGH COURT OF SOUTH AFRICA**

**(GAUTENG DIVISION, PRETORIA)**

**DATED 18/08/2023**

**CASE NO'S 2023-063575 and 2023-063923**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

Date: 18/08/2023

In the *ex parte* applications of:

**SIYABONGA G GALELA** **APPLICANT 1**

**And**

**MAGGIE MPHOLEFOLE** **APPLICANT 2**

(For their admission as a Legal Practitioners and enrolment as attorneys in terms of the Legal Practice Act 28 of 2014)

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**JUDGEMENT**

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**Johnson AJ:**

*Introduction*

1. The Applicants appeared before us together with 9 other applicants on 14 August 2023 as applicant no's 3 and 10 respectively, for their admission as Legal Practitioners and enrolment as attorneys in terms of the Legal Practice Act 28 of 2014. For the sake of convenience and this judgement, they are renumbered to applicants 1 and 2. After having read the applications, we were not satisfied that they were fit and proper persons to be admitted, and requested their advocates to addresses us fully regarding our concerns.

*Applicant 1*

2. Applicant 1, who is represented by Advocate Mohammed, stated under oath in her founding affidavit at par 8 that she had complied with the requirements for the BA (Law) and LLB degrees, and submitted a certified copy of a statement by Wits of her academic record as confirmation. She did not disclose a LLB certificate, as is customary in proceedings of this kind.
3. In par 10 she stated that she did not hold any position, or engage in any business whatsoever, other than that of a candidate legal practitioner. She further confirmed that she entered into a written PVT contract for a continuous period of 2 years from 1 February 2021 until 31 January 2023.
4. After the submission of her affidavit to the LPC, they requested her for reasons, *inter alia*:

    4.1 why she did not attach her LLB degree; and

    4.2 why she did not disclose that she held an active directorship/membership during the period of her service as a

candidate attorney. She was alerted to the fact that the company concerned was only deregistered in 2023, which meant that she held the directorship during the period she served under the Practical Vocational Training Contract. She was further requested to submit the exact date when her director/membership in the enterprise commenced, and to submit an annexure to her supplementary affidavit of when or if she resigned;

4.3 her failure to obtain prior written consent from the Council as is prescribed by Rule 22.1.5.1 to hold any such director/membership of the said enterprises during the period of her service as a candidate attorney;

4.4 to disclose her duties/functions in the said enterprise, the extent of such duties/functions, when such functions were performed and complete details of any income derived therefrom, if any;

4.5 to clearly record that having held such positions during the period of her service in terms of the contract, did not interfere with her daily duties as a candidate attorney;

4.6 to address the effect of holding any such position or engaging in other business on the prescription in clause 1.4 of the contract;

4.7 to clearly disclose whether she disclosed to her principal that she held such positions during the period of service in terms of the contract.

5. In her supplementary affidavit and in response to why she did not discover her LLB certificate, she said: “7. The LPC has requested that I disclose the reasons for not attaching my BA Law and LLB degrees. The University of the Witwatersrand does not issue degree certificates to graduates who are

in arears." In short, she did not pay her dues to the University. The reasons for this neglect, has not been forthcoming.

6. In response to her failure to disclose her directorship, she acknowledged that she became a director of Varsigor Solutions (Pty) Ltd in 2014. Her functions initially entailed the development of business plans and strategies, the technical development of the app, researching potential businesses and advertisers, liaising with them, and attending to the enterprise's social media accounts. The company ceased trading in 2017, was completely dormant and entered the deregistration process. She was under the impression that it had finally deregistered and ceased to exist. That is why she failed to obtain written consent from the LPC, or disclose her directorship. There was no interference with her daily duties or proper training as a candidate attorney during her PVT contract.

*Applicant 2*

7. In the founding affidavit par 12.1 of applicant 2, who was represented by Adv Radebe, she declares that she did not, during her Practical Vocational Training " …….occupy any office or engage in any other business other than that of a candidate legal practitioner."

8. In Par1.4 of her Practical Vocational Training Contract which she entered into with her principal Ms Mosake on 6 August 2019, she undertook not to engage in any business whatsoever other than that of a candidate attorney, unless the written consent of the principal and the LPC had been granted.

9. On 18 July 2023 the LPC sent her an email to point out shortcomings in her founding affidavit to her application for admission as an attorney, the most serious one which was her allegation referred to above. They in fact

discovered that she held active directorships/memberships in six enterprises during her service as a candidate attorney for which she did not apply for consent. Her principal Ms Mosaka confirmed in an affidavit that the applicant had not disclosed that she held positions of a member/directorship to various enterprises.

10. In her amended notice of motion, she seeks condonation for non-compliance with her obligation to apply for consent to engage in other work than that as a candidate attorney. The extent on her involvement in matters not related to her work as a candidate attorney, is apparent from the her supplementary founding affidavit.

    a. Ramapela and Daughters Printer CC

       The company was incorporated in her name, but was inactive and deregistered during her service as a candidate attorney.

    b. Bambinos Well Baby Clinic

       She is a director of the closed corporation, which is in the process of deregistration.

    c. Mokwape Multi-Purpose Projects Primary

       She was one of 6 directors, but the enterprise was dormant from date of registration around February 2010 due to a lack of funding to start the business.

    d. Nanory (Pty) Ltd

       She was a co-director since the company's registration around December 2015. The business has been dormant since then due to

a lack of business opportunity, and is in the process of deregistration.

She has not received any remuneration for her involvement in any of these businesses, and it did not interfere with her work as a candidate attorney.

e. Mabopane Medical Centre (Pty) Ltd

She was one of 3 directors, which directorship commenced at around 16 February 2021 and is still active. She orders stock and controls it on a monthly basis. She is remunerated for her work. It did however not interfere with training as a candidate attorney.

11. It is for the mentioned reasons that she did not request prior written consent, and failed to disclose her directorships. She therefore seeks condonation for her non-compliance.

12. In her PVT contract she undertook to serve her principal for a period of two years from 6 August 2019 which would terminate on 5 August 2021. According to her supplementary affidavit, her directorship of Mabopane Medical Centre commenced on 16 February 2021, which was 8 months from her contract reaching maturity. Despite that, she failed to disclose her directorship as required.

*Failure of Applicant 1 to produce her LLB degree*

13. As far as applicant 1's failure to submit her LLB certificate is concerned, she has not paid her study fees to the University of the Witwatersrand, hence their unwillingness to issue it. She relies on a certified copy of a

statement by Wits of her academic record, to prove that she had obtained the LLB degree.

14. In *Ex Parte: Makamu* (304/2021) [2021] ZAMPMBHC 1 (7 October 2021) the applicant had not annexed a degree certificate, as was then required by rule 17.6.3, because the university had withheld the applicant's degree certificate because he owed it outstanding fees. The court declared the specific rule17(6)(3) inconsistent with the Constitution to the extent that it did not afford the court a discretion to admit a legal practitioner under the Legal Practice Act 28 of 2014 in the absence of a copy of their degree certificate.

15. In para 57, the court held that rule 17.6.3 offended the spirit, purport, and objects of the Bill of Rights. The rule made it impossible for applicants who seeks admission or enrolment as legal practitioners to make an application for admission without a degree certificate even though they may have complied with the provisions of s 26(1)(*a*). It unfairly discriminates against a person who may not be able to obtain their degree because they still owe their university money, therefore, it violated such applicant's right to equality, human dignity and freedom of trade, occupation, and profession.

16. The court also relied on *Ex parte Feetham* 1954 (2) SA 468 (N), in which Holmes J held 'the relevant qualification should be the applicant's passing of the LLB examination, and not the extraneous act of the university in conferring the degree' and *Ex Parte Tlotlego* (GJ) (unreported case no 2017/34672, 8-12-2017) (Victor J), where it was held that 'the courts become a role player/gatekeeper in the debtor/creditor relationship between student and University.'

17. However, at paragraphs 59 and 60, the court remarked as follows: [59] “The question therefore arises, is a person who owes a debt to a university (as in this instance) and who does not show that debt is going to be purged and how he or she intends to purge the debt a fit and proper person for admission in that such a person is of '*complete honesty, reliability and integrity'*? In this court’s view the answer is no. In the absence of proof that the debt is going to be paid and how it is going to be paid, the high bar for integrity and honesty that is expected from a legal practitioner is not cleared. [60) To say that the court is inadvertently enforcing the university’s debt by requiring form an aspirant legal practitioner to prove that his or her debt is going to be paid is the wrong premise. The court must jealously protect the image and standing of the legal profession. It is part and parcel of the Rule of Law. The court can simply not admit persons who still owe university fees and who, as a result of that, are unable to comply with the provisions of Rule 17 (6)(3) in the absence of evidence over the manner in which the debt is going to be paid. To do so may lead to the unthinkable that a person is admitted, never pays the university, and be allowed to practice, perhaps forever, without a degree certificate.”

18. We are respectfully in agreement with this finding. We may add that it is in our opinion irresponsible for any person, let alone a person who wants to become a lawyer, to blatantly ignore your financial responsibilities without good reasons to do so.

19. We noted, as far as the Batchelor of Laws qualifications is concerned, that the applicant “Completed all requirements for the qualification” on 14 December 2020. There is however an outstanding balance on her record.

We were not enlightened as to any financial difficulties that the applicant experienced or is experiencing for not fulfilling her financial obligations to her university. We do not know if the fees are still outstanding, and if outstanding, whether the applicant has any prospects of fulfilling her obligation. The statement is dated 15 January 2021, which is 1 year, and 7 months but for 1 day, prior to the application serving before us. If the owed amount is still outstanding, it is nor farfetched to assume that civil proceedings might still be instituted, and that she is witfully disregarding her obligation.

*Failure to disclose directorships*

20. Applicant 1 failed to disclose her active directorship of “Versigator Solutions (Pty) Ltd.“, neither in her initial application, nor at any time prior to or during her PVT contract (02-79). In her founding affidavit, she declared: “I confirm that I did not hold any position, or engage in any business whatsoever other than that of a candidate legal practitioner……during the period of service on my PVT contract.” She was made aware of her failure by the LPC in an email dated 19 July 2023. It was specifically brought to her attention in par 2.7 that it was irrelevant whether the enterprise was active, dormant, or undergoing a deregistration process which had not yet been finalized, or whether she derived an income from it or not. In a supplementary affidavit dated 1 August 2023 she acknowledged that she was a director of Versigator since 2014. By 2017 the company had become dormant and ceased trading. She ceased performing any tasks or duties on its behalf. (02-58). By the time she concluded her PVT contract in 2021, she was under the impression that it was deregistered and that it had

ceased to exist. She did not plead ignorance to her involvement at the start of her contract. Disclosure was relevant at the start of the contract, not on conclusion of the contract.

21. It is obvious that Applicant did not resign as director. In the circumstances she had a duty to ascertain the true facts, which she failed to do, before making a statement under oath which was at variance with the true facts. That is the least one would have expected from a person who aspires to become an attorney, from whom the highest degree of integrity and responsibility is expected.

22. It was argued that she performed no work for the company, but that is not the issue. The issue is that she placed facts before us which is obviously not true.

23. She also fails to mention on what grounds she believed that the company had been deregistered or ceased to exist. We are not convinced that her failure to disclose her directorship is based on well-founded reasons. The fact that she performed her duties as a candidate attorney diligently, does not excuse the fact that she divulged information in her statement which was not true.

24. Rule 22.1.5 provides as follows:

> "A candidate attorney shall not have any pecuniary interests in the practice and service of anattorney, other than in respect of bona fide remuneration for his or her services as a candidateattorney, and shall not, without prior written consent of the Council, hold or occupy any office inrespect of which he or she receives any form of remuneration, directly or indirectly, or engage inany other business other than that of candidate attorney, where

holding that office or engaging in that business is likely to interfere with the proper training of the candidate attorney"

25. This rule, specifically the part that relates to the holding an office or engaging in a business that would likely interfere with the proper training of the candidate attorney, was discussed in *Rensburg v South African Legal Practice Council and related matters* [2020] JOL 56977 (GP) The court is of the opinion that the rule, in its current format, makes provision for two scenarios. The first, which is an absolute prohibition, is that a candidate attorney shall not have pecuniary interest in the practice and service of an attorney, other than the remuneration for his/her services as a candidate attorney. In the second, provision is made for a candidate attorney to occupy any office for remuneration or to engage into any other business with the prior written consent of the Council, provided that the holding of such office is not likely to interfere with the proper training of the candidate attorney.

26.At paragraph [18], the court finds as follows: "The question is, with reference to scenario (ii) above, to determine whether the occupying of such office or engaging into any other business is likely to interfere with the proper training of the candidate attorney? Is it for the candidate attorney, the principal of the candidate attorney or the Council to make this determination? In my view it can only be the Council. The candidate attorney or the principal is not authorised in the rule to take the decision. To hold otherwise will defeat the object of the rule. The Council as the guardian of all legal practitioners in the country, has to decide the issue and no one else."

27. And at par [25]: "I am of the view that the wording in rule 22.1.5.1 is clear and that a candidate attorney must obtain prior written consent to hold such

office and/or to receive remuneration as set out in the rule. It is not for the candidate attorney to decide whether the holding of such office is likely to interfere with his/her training. If that was allowed, there will be no norm to be applied what is meant with 'likely to interfere with the training of the candidate attorney' and it will defeat the purpose of the rule. The purpose of the rule is clearly to guard against candidate attorneys becoming involved in other business whilst undergoing the proper envisaged training as a candidate attorney." We respectfully agree with this interpretation.

28. The argument of Applicant 2 in par12.2.5 of her supplementary affidavit, amplified by Adv Radebe during argument, that she attended her Practical Vocational Training with LEAD full time night classes for 1 year, and that her involvement in the company Mabopane Medical Centre did not interfere with her proper training as a candidate attorney, therefore does not hold water.

*Fit and proper persons*

29. The questions that needs answering, is whether the applicants are fit and proper persons to be admitted as attorneys if consideration is given to their conduct. The answer is unfortunately no.

30. In *General Council of the Bar of South Africa v Geach 2013 (2) SA 52 (SCA*) at para [126] the court held as follows:

> "A person can only be admitted to practise as an advocate if they satisfy the court that they are a fit and proper person to be admitted as such. Central to the determination of that question, which is the same question that has to be answered in respect of attorneys, is whether the applicant for admission is a person of 'complete honesty, reliability and integrity'. The court's duty is to satisfy itself that the applicant is a proper person to be allowed to practise and that admitting the applicant to the profession involves 'no danger to the public and no danger to

the good name of the profession'. In explaining the reasons for this I need go little further than the words of Hefer JA in *Kekana v Society of Advocates of South Africa*, when he said:

> 'Legal practitioners occupy a unique position. On the one hand they serve the interests of their clients, which require a case to be presented fearlessly and vigorously. On the other hand, as officers of the Court they serve the interests of justice itself by acting as a bulwark against the admission of fabricated evidence. Both professions have strict ethical rules aimed at preventing their members from becoming parties to the deception of the Court. Unfortunately, the observance of the rules is not assured, because what happens between legal representatives and their clients or witnesses is not a matter for public scrutiny. The preservation of a high standard of professional ethics having thus been left almost entirely in the hands of individual practitioners, it stands to reason, firstly, that absolute personal integrity and scrupulous honesty are demanded of each of them and, secondly, that a practitioner who lacks these qualities cannot be expected to play his part."

*View of the LPC*

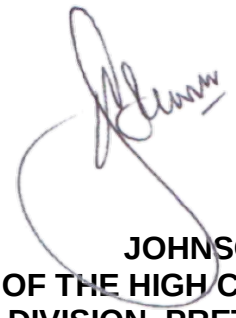
31. The LPC was of the view in both cases, that it had no objection for the admissions of the applicants to be admitted to practice as Legal Practitioner and enrolled as attorneys. As the conduct of the applicants in our opinion contain an element of impropriety, the stance of the LPC is a matter of concern. We have taken note of the remarks of the Court in *Thulani Ambrose Vatsha v The Johannesburg Society of Advocates* (0978/2021) [2023] ZAGPJHC 453 (10 May 2023) at para [32]: "It seems that a rule of practice

needs to be introduced in terms of which the LPC is required to provide a court with more than a mere notice of no objection and for the courts to insist on a clear statement that the application has been considered and that the admission is supported or not supported. In the case of any qualitative dimensions, an expression of a view about the propriety of the admission should be made. In cases of applications to be enrolled as an advocate, the Bar can be relied upon to make a substantive contribution, but where the applicant seeks to be enrolled as an attorney the role of the Bar is absent. In a case such as this, the failure of the LPC to actively make a contribution is unacceptable".

*The Order*

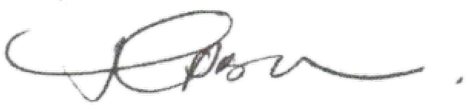
01 The second applicant was in wilful breach of the rules of the LPC and the application for condonation is refused;

02 The applications of both the Applicants are dismissed.



**JOHNSON AJ**
**ACTING JUDGE OF THE HIGH COURT**
**GAUTENG DIVISION, PRETORIA**

I agree.



**BOKAKO AJ**
**ACTING JUDGE OF THE HIGH COURT**
**GAUTENG DIVISION, PRETORIA**

Heard on: 14 August 2023

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Date of Judgment: 18 August 2023

*This judgment was handed down electronically by circulating it to the parties and/or parties' representatives by email and by uploading it to CaseLines.*