

Annexure "A"

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,
MPUMALANGA DIVISION (MAIN SEAT)

Case Number: 304/2021

1.	REPORTABLE: YES/ NO
2.	OF INTEREST TO OTHER JUDGES: YES/NO
3.	REVISED.
7/10/2021	
DATE	[SIGNED] SIGNATURE

In the Ex Parte Application of:

MR LIMDUMISA HOPEWELL MAKAMU

Applicant

For his admission of a Legal Practitioner (Advocate) of the High Court of South Africa in terms of the Legal Practice Act 28 of 2014

This judgment will be electronically furnished to the applicant and published on the SAFLII website. The judgment must be deemed to be delivered at 09:00 on 27 October 2021.

N.P. RS

JUDGMENT

Coram: Mashile J et Roelofse AJ:

Roelofse AJ

Introduction

[1] The applicant applied for his admission and enrolment as legal practitioner in terms of the provisions of the Legal Practice Act, 28 of 2014 (*"the Legal Practice Act"*). The applicant applies to be admitted and enrolled as an advocate without a Fidelity Fund Certificate.

[2] The applicant qualifies to apply to be admitted and enrolled in terms of the now repealed Admission of Advocates Act 74 of 1964 (*"the Admission of Advocates Act"*) read together with section 115 of the Legal Practice Act. The applicant fulfilled satisfied? Instead of 'fulfilled') (requirements for a Bachelor of Laws degree on 1 January 2018. The degree has not yet been conferred upon the applicant by the University because the applicant still owes the University money. In terms of the Rules under the Legal Practice Act, the applicant is required to attach a certified copy of his degree certificate to the affidavit in support of his application. Save for the absence of the applicant's degree certificate, the applicant has complied with all the requirements for his admission and enrolment.

The issue

[3] The issue to be decided is whether this court can admit the applicant in the absence of his degree certificate. To address the issue, the relevant provisions of the Admission of Advocates Act (which governed the admission and enrolment of advocates prior to 1

November 2018), the Legal Practice Act (which, from 1 November 2018, governs the admission and enrolment of all legal practitioners) and the Rules that were promulgated in terms of the Legal Practice Act must be traversed.

[4] Put in simple terms - has the applicant succeeded in bridging the divide between the Admission of Advocates Act and the Legal Practice Act, therefore entitling him to be admitted and enrolled as an advocate.

[5] The answer to the question is more perplexing than one may think. One may easily be tempted to merely accept that the applicant is entitled to be admitted and enrolled by virtue of the transitional provision provided for in the Legal Practice Act¹. In essence, the transitional provision provides that any person who was, immediately before 1 November 2018 entitled to be admitted and enrolled as an advocate, attorney, conveyancer or notary would, after the commencement of the Legal Practice Act, also be entitled to be admitted and enrolled in terms of the Legal Practice Act.

[6] The requirements and procedure for admissions and enrolments as an advocate under the Admission of Advocates Act (under which the applicant would have qualified to be admitted if it was not for the repeal of the Act) and the Legal Practice Act differ. I proceed to set out where they differ.

Admissions and enrolment under the Admission of Advocates Act

[7] Prior to 1 November 2018, (2018) the admission of advocates was governed by the Admission of Advocates Act, the whole of which was repealed by section 119(1) of the Act on 1 November 2018. The relevant provisions of the Admission of Advocates Act are set out in the footnote below for ease of reference.²

[8] The requirements for admission in terms of the Admission of Advocates Act were as follows: the applicant had to: be over the age of twenty-one years; be a fit and proper person; be duly qualified; be a South African citizen or had to be lawfully admitted to the Republic; and, if the applicant was previously an attorney, his name had to be removed from the roll of attorneys.

[9] In terms of section 3(2) of the Admission of Advocates Act, a person was deemed to be duly qualified to be admitted as an advocate if the person has (had) satisfied all the requirements for the degree of *baccalaureus legum* of any university in the Republic after completing a period of study of not less than four or five years, depending upon whether the applicant first obtained a bachelor's degree other than a *baccalaureus legum*. In terms of the Admission of Advocates Act, the conferral of the LLB degree, after having satisfied the requirements for the degree, was not a requirement for admission and enrolment.

Admissions and enrolment under the Legal Practice Act

[10] Certain provisions of the Legal Practice Act commenced on 1 February 2015. The Regulation of Legal Practitioners and Candidate Legal Practitioners as located in Chapter 3 of the Legal Practice Act. Chapter 3 of the Legal Practice Act commenced on 1 November 2018.

[11] After 1 November 2018, all persons intending to be admitted and enrolled as an advocate, attorney (collectively now referred to as legal practitioners), notary or conveyancer must make application to the court in terms of the Act to be admitted as such. The Legal Practice Act is the only portal through which a legal practitioner (whether as an attorney or as an advocate) can now enter the legal profession (or progress therein as conveyancer and/or notary).

[12] Applications for admission and enrolment are governed by section 24 of the Legal Practice Act. The relevant part reads as follows:

- "24. (1) A person may only practise as a legal practitioner if he or she is admitted and enrolled to practise as such in terms of this Act.*
(2) The High Court must admit to practise and authorise to be enrolled as a legal practitioner, conveyancer or notary or any person who, upon application, satisfies the court that he or she—
(a) is duly qualified as set out in section 26;
(b) is a—
(i) South African citizen; or
(ii) permanent resident in the Republic;
(c) is a fit and proper person to be so admitted; and
(d) has served a copy of the application on the Council, containing the information as determined in the rules within the time period determined in the rules."

[13] To practice as a legal practitioner, a person must be admitted and enrolled in terms of the Legal Practice Act, irrespective whether the person qualified to be admitted before or after the commencement of the Legal Practice Act. The only gateway to admission and enrolment as a legal practitioner is through the Legal Practice Act and, as will be set out hereunder, the Rules made thereunder.

[14] The fit and proper person requirement in section 24(2)(c) of the Legal Practice Act has a bearing in this matter as will be shown later.

[15] The requirements to qualify for admission and enrolment are set out in section 26 of the Act:

- "26. (1) A person qualifies to be admitted and enrolled as a legal practitioner, if that person has—*
(a) satisfied all the requirements for the LLB degree obtained at any university registered in the Republic, after pursuing for that degree—
(i) a course of study of not less than four years; or
(ii) a course of study of not less than five years if the LLB degree is

preceded by a bachelor's degree other than the LLB degree, as determined in the rules of the university in question and approved by the Council; or

(b) subject to section 24(2)(b), satisfied all the requirements for a law degree obtained in a foreign country, which is equivalent to the LLB degree and recognised by the South African Qualifications Authority established by the National Qualifications Framework Act, 2008 (Act No. 67 of 2008); and

(c) undergone all the practical vocational training requirements as a candidate legal practitioner prescribed by the Minister, including—

(i) community service as contemplated in section 29, and

(ii) a legal practice management course for candidate legal practitioners who intend to practise as attorneys or as advocates referred to in section 34(2)(b); and

(d) passed a competency-based examination or assessment for candidate legal practitioners as may be determined in the rules.

(2) An attorney qualifies to be enrolled as a conveyancer, if he or she has passed a competency-based examination or assessment of conveyancers as determined in the rules by the Council.

(3) An attorney qualifies to be enrolled as a notary, if he or she has passed a competency-based examination or assessment for notaries as determined in the rules by the Council."

[16] Section 26(1)(a) of the Legal Practice Act does not include the deeming provision in section 3(2) of the Admission of Advocates Act. The conferral of an LLB degree, after having satisfied the requirements for the degree to be conferred, is, in terms of section 26(1)(a) not a requirement.

The transitional provision in section 115 of the Legal Practice Act

[17] Section 115 of the Legal Practice Act provides for the transition in respect of admissions and enrolments between the Admission of Advocates Act and the Legal Practice Act. Section 115 provides as follows:

"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)³, 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."

[18] Ex Parte Goosen and Others 2019 (3) SA 489 (GJ) described the meaning and function of section 115 of the Legal Practice Act as follows⁴:

"The work that the text of section 115, itself, performs is, first, to require a court exercising the power in terms of section 24 of the LPA to recognise that a class of candidates exists who, had they sought admission under the AAA or ATT would have succeeded in being admitted as advocates or attorneys. The persons in this category may be "admitted and enrolled as such in terms of this Act." This must mean that once an "entitlement" is shown to have been admitted as an advocate and an attorney when the AAA and ATT were in force they will be admitted "in terms of this Act (ie the LPA) as LPs and enrolled as advocates and attorneys by the LPC in accordance with their vocational training credentials. That effect is what results from the use of the phrase "as such in terms of this Act". In short, although the "credentials" for admission are those set out in the AAA and ATT, "admission" is as an LP in terms of the LPA".

Procedure for admission as a legal practitioner

[19] Section 95 of the Legal Practice Act empowers the Minister to make Rules pertaining to a variety of issues. It is the enabling legislation that empowers the Minister to make rules pertaining to admissions and enrolments of legal practitioners. Section 95(1)(k) of the Legal Practice Act is of specific importance for purposes of this judgment. The section reads that the Minister may make Rules relating to:

"the information which must be submitted to the Council when a person applies to court for admission as a legal practitioner and the time period within which that information must be submitted as contemplated in section 24 (2) (d);"

[20] Applications for admission and enrolment as legal practitioners are made to the High Court in terms of section 24(2) of the Legal Practice Act, read with Rule 17⁵ of the

Final Rules per sections 95 (4) and 109 (2) (b) read with sections 97 (1) and 109 (2) and (3) of the Legal Practice Act (*"the Rules"*).

[21] In addition, and in the case of prospective advocates, Rule 3A of the Uniform Rules⁶ still applies as same was not abolished by the Rules Board after the coming into effect of the Legal Practice Act. Rule 3A is not in issue in this application as the applicant has complied with its provisions.

[22] Rule 17 of the Rules prescribes the procedure for the admission and enrolment of all legal practitioners. For completeness's sake, I set out the entire Rule 17 in the endnote.⁷ Some provisions of Rule 17 apply only to prospective attorneys or advocates, and some apply to both. All the requirements provided for in the Rule for applications for admission and enrolment, either as an advocate, attorney, conveyancer or notary in terms of the Legal Practice Act must be complied with.⁸

[23] The provisions of Rule 17(6)(3) are peremptory and are important in the context of this application. It provides:

"17.6 Copies of the following documents must be attached to the founding affidavit of the applicant, whether for admission as an attorney or as an advocate, and must be certified as being true copies of the originals by a notary public or by a commissioner of oaths:

.....

17.6.3 degree certificate or certificates of the applicant; "

[24] The provisions of Rule 17(6)(3) that the applicant for admission must attach his/her degree certificate or certificates is an additional requirement not required by the provisions of section 26(1)(a) which only requires that the applicant has satisfied all the requirements for the LLB degree.

The applicant's omission in the present application

[25] I turn to the present application and refer to the facts before us to the extent that same are relevant for purposes of deciding the applicant's application for admission and enrolment.⁹

[26] The applicant studied at the University of Venda where he has satisfied all the requirements for the LLB degree. However, the degree was not conferred upon the applicant at a graduation ceremony that was held on 17 May 2018 because the University refuses to do so as the applicant still owes the University an amount of R 15 084.80.¹⁰

[27] Annexure "SN4" to the founding affidavit records as follows:

"REMARKS

STUDENT FULFILLED REQUIREMENTS FOR A BACHELOR OF ARTS IN CRIMINAL JUSTICE ON 01 JANUARY 2016 AND IT WAS FORMALLY AWARDED ON 11 MAY 2016

STUDENT FULFILLED REQUIREMENTS FOR A BACHELOR OF LAWS ON 01 JANUARY 2018 AND IT WILL BE FORMALLY AWARDED ON 16 MAY 2018"

The Transcript of the applicant's academic record was signed for the University Registrar on 2 March 2018. The degree certificate would have been conferred upon the applicant on 19 May 2018 had the applicant not been in debt with the University.

[28] The applicant relies upon section 115 of the Act in that he has duly satisfied all the

requirements entitling him to be admitted and enrolled as an advocate¹¹ notwithstanding that the applicant failed to comply with the provisions of Rule 17.6.3.

[29] The application was served upon the Legal Practice Counsel as required by section 24(2)(d) of the Legal Practice Act read with Rule 17(7) of the Rules. The Legal Practice Council confirmed that it has no objection to the applicant being permitted to practice and authorised to be enrolled as a legal practitioner.

[30] The applicant's view is that his inability to attach a degree certificate while satisfying the requirements for the degree (as contemplated in section 26(1)(a) must not prevent his admission because he is entitled to be admitted as an advocate under the Admission of Advocates Act. For this proposition, the applicant relies on the transitional provisions of section 115 of the Act. In his heads of argument, the applicant makes the following submission:

"The AAA Act [sic] [the Admission of Advocates Act], simply requires an applicant among other requirements to prove that he or she has satisfied the requirements of an LLD (you probably meant LLB) degree. There was no need to produce the degree certificate as it is now required in terms of the LPA Rules. It is important to mention that even the LPA Act [the Legal Practice Act] does not require the provision of a degree certificate. It is only the rules that require same.It is significant to mention that the custodian of the LPA and its rules, The Legal Practice Council has not objected to the admission of the applicant notwithstanding the absence of the degree certificate."

[31] The applicant relies on the authorities in Ex Parte Feetham 1954 (2) SA 486 NM and Ex Parte Tlotlego, case number 2017/34672 where the applicants in those applications were admitted in the absence of their degree certificates.

[32] In Ex Parte Feetham at 570 D-E, in considering the predecessor to the Admission

of Advocates Act¹², Holmes J said:

"Furthermore, the Legislature was more concerned with the learning of an applicant than his status, for in effect it excluded honorary degrees in favour of degrees obtained by examination. For these reasons it seems to me that the intention of the Legislature in the 1946 Act was that the relevant qualification should be the applicant's passing of the LL.B. examination, and not the extraneous act of the university in conferring the degree."

[33] Victor J of the Gauteng Local Division in Ex Parte Tsegae Tlotlego¹³, was confronted with a similar situation as in this application. The applicant was unable to produce her degree certificate as she had not made payment of her fees to the university, and they would not issue her degree certificate.

[34] The Practice Manual of the Gauteng Provincial Division, Pretoria and the Gauteng Local Division, Johannesburg requires that:

"A copy of a degree certificate or other documentary proof should be attached if the applicant is not in possession of the required degree certificate due to his failure to pay tuition fees. This must be explained and proof of any arrangement entered into with the institution to effect payment of the outstanding amount must be provided."

[35] Victor J, said as follows:

"[11] The valuable features of a legal system must be aimed at humans flourishing in the legal order. It must be fair and not static or divorced from the political reality of the day. The inability of students to pay tuition fees is the reality of our times and current circumstances

[12] Our law must be flexible not rigid when confronting the problems of the day which in this case is the poverty of students not being able to enter the legal profession unless as the practice directive suggests they have made payment arrangements with the university. In other words the courts become a role player/ gatekeeper in the debtor/creditor relationship between student and University.

Flexibility of the Law

[13] *The central question is whether the law should have sufficient flexibility without compromising its basic norms to reach a solution to this problem. It can never be that the courts must act as a gatekeeper against the interests of a student in poverty.*

[14] *A certain norm or category becomes fully legal, i.e. truly binding for the community, only if it fulfils certain requirements determined by this external environment. These can be requirements such as "goodness" or "justice," and also those of "efficiency" or "fidelity." The inability of the law graduate in the context of poverty is a fact that acquires a "legal validity," or in other words, the context of the student in poverty is transformed into legally relevant consideration. Gatekeeping of students in poverty cannot be a basic norm which must remain as a practice in our courts. Debtor and creditor relationships are between the student and the University and not the basis for the courts to keep law graduates out of their profession. There are sufficient procedures in place for a creditor to recover moneys owed to it. Keeping a law graduate out of the legal profession is not an appropriate legal tool to satisfy the debt collections."*

[36] Feetham and Tlotlego were decided before the Legal Practice Act and its Rules came into force. As set out above, Rule 17 presently govern the procedure for the admission of legal practitioners while section 26 sets out the requirements for admission and enrolment.

[37] The requirement that an applicant must attach his/her degree certificate as provided for in the Practice Manual of the Gauteng Provincial Division, Pretoria and the Gauteng Local Division, Johannesburg is now prescribed in Rule 17(6)(3).

[38] In Ex Parte: Steyn and Others (2313/19; 2748/19; 2749/19; 1623/19; 2166/19; 2140/19; 2588/19 3054/19; 2136/19; 3043/19; 4011/19; 2078/19; 3366/19) [2019] ZAMPMBHC 1; 1991/2017 (13 December 2019)¹⁴, the court had to consider whether Rule 17 applies to the applicants for admission in that application (all of whom relied upon the transitional provision); if the Rule applied, whether the applicants complied therewith and whether section 26 of the Legal Practice Act is applicable to the applications. In the

judgment, the court set out the Old Scheme in terms of which advocates and attorneys were admitted, the New Scheme that was brought about by the Legal Practice Act and the Minister's powers to make regulations.

[39] At paragraphs 50 and 51 of the judgment, the court said:

"The Rules

[50] The Rules were published by the National Forum. The National forum was established under Chapter 10 of the Act as a body corporate with full legal capacity. The National Forum ceased to exist on 31 October 2018 when section 120(4) of the Act came in operation.

[51] On 20 July 2018, the National Forum, in Government Notice 401, published the Rules. The National Forum, in the notice, recorded as follows:

"The National Forum on the Legal Profession ("the National Forum"), a transitional body established in terms of Chapter 10 of the Legal Practice Act 28 of 2014 ("the Act"), hereby publishes the Rules required by sections 95 (1), 95 (3) and 109 (2) (a) of the Act.

The National Forum considered the comments received from interested parties after publishing a draft of the Rules in Government Gazette No. 41419 dated 2 February 2018, as required by sections 95 (4) and 109 (2) (b) read with sections 97 (1) and 109 (2) and (3) of the Act as amended by the Legal Practice Amendment Act 16 of 2017.

The Rules will be applied by the Legal Practice Council after its establishment in terms of Chapter 2 of the Act and will apply to all legal practitioners (attorneys and advocates) as well as all candidate legal practitioners and juristic entities as defined in the Act [The National Forum's emphasis]. [References omitted]

The judgment found that the Rules are valid and from 1 November 2018 and that all applications to be admitted to practise and authorised to be enrolled must comply with Rule 17.¹⁵

[40] Rule 17 has legislative force as subordinate legislation being lawfully promulgated. Therefore, the requirement in Rule 17(6)(3) must be complied with. Nowhere in the Act or in the Rules is the court given the power to condone non-compliance with the Rule 17. This court cannot simply overlook the provision or condone same for if the court did, it would be subverting the Legislature and the Executive and would be offending the doctrine of separation of power.

[41] However, the court cannot avoid its obligation to prevent a violation of the Constitution – See: Doctors for Life International v Speaker of the National Assembly¹⁶ where it was said:

"[W]hile the doctrine of separation of power is an important one in our constitutional democracy, it cannot be used to avoid the obligation of a court to prevent the violation of the Constitution. The right and the duty of this Court to protect the Constitution are derived from the Constitution, and this Court cannot shirk from that duty."

[42] This was confirmed in Mwelase and Others v Director-General for the Department of Rural Development and Land Reform and Another¹⁷ where the following was said:

"And the courts have never sought to supplant government in its task of implementing legislative and other programmes. They simply could not and cannot. They step in only when persuaded by argument and evidence that they have to correct erroneous interpretations of the law, or intervene to protect rights infringed by insufficient and unreasonable conduct in social and economic programmes. In this, the courts undertake no self-appointed role, but seek only to carry out their constitutionally mandated function with appropriate restraint."

[43] In footnote 97 of Mwelase, the following is said:

"This Court has recognised many, many times that its mandate to ensure all branches of government act in a constitutionally compliant manner does undermine the separation of powers but is in fact an essential feature of the separated

structuring of constitutional power. See, for example, Doctors for Life International v Speaker of the National Assembly [2006] ZACC 11; 2006 (6) SA 416 (CC); 2006 (12) BCLR 1399 (CC) (Doctors for Life) at paras 37-8 and Minister of Health v Treatment Action Campaign II [2002] ZACC 15; 2002 (5) SA 721 (CC); 2002 (10) BCLR 1033 (CC) (Treatment Action Campaign) at para 99."

[44] One way the court is empowered to prevent a violation of the Constitution and the Fundamental Rights contained therein, it to use its power under section 172 of the Constitution in terms of which courts must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency and the courts may make any order that is just and equitable. The orders the court may make include an order limiting the retrospective effect of the declaration of invalidity and an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect.

[45] Section 172(2)(a) of the Constitution provides that the Supreme Court of Appeal, the High Court of South Africa or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a provincial Act or any conduct of the President, but an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court.

[46] This court considered it necessary to invite the views of persons or institutions who may be interested in the subject matter of this application to furnish it with their views on the issues to be decided in this application. It addressed a letter to the interested persons and institutions¹ as follows:

¹ The persons and institutions included: THE APPLICANT, THE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT, THE STATE ATTORNEY, THE LEGAL PRACTICE COUNCIL, THE PROVINCIAL LEGAL PRACTICE COUNCIL, MPUMALANGA, THE UNIVERSITY OF VENDA, THE GENERAL BAR COUNCIL OF SOUTH AFRICA, THE MPUMALANGA SOCIETY OF ADVOCATES, THE NATIONAL FORUM OF ADVOCATES, THE BLACK LAWYERS ASSOCIATION, THE NATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS, THE LAW SOCIETY OF SOUTH AFRICA

RE: EX PARTE MR. LINDUMUSA HOPEWELL MAKAMU / CASE NUMBER: 304/2021

1. **WHEREAS** the applicant applied to this court for his admission and enrolment as legal practitioner (advocate) in terms of section 24(2) read with section 115 of the Legal Practice Act 28 of 2014 ("the Act");
2. **AND WHEREAS** the applicant has failed to comply with the provisions of Rule 17(6)(3) of the of the Final Rules per sections 95 (4) and 109 (2) (b) read with sections 97 (1) and 109 (2) and (3) of the Act ("the Rules") in that the applicant has failed to attach to his affidavit a certified copy of his LLB degree in circumstances where:
 - 2.1. The applicant has fulfilled the requirements for a Bachelor of Laws degree on 1 January 2018 which would have been formally awarded to him on 16 May 2018 had the applicant not been indebted to University of Venda ("the university") in the amount of R 15 084-80;
 - 2.2. The applicant has satisfied all the other requirements presently necessary for his admission and enrolment as legal practitioner (advocate);
 - 2.3. The Legal Practice Council of Mpumalanga has no objection to his admission and enrolment as legal practitioner; and
 - 2.4. The applicant has not furnished any evidence or proof in his application that he has arranged with the university to purge his debt.
3. The applicant would have been entitled to be admitted and enrolled as an advocate under the repealed Admission of Advocates Act 74 of 1964.
4. The court invites the applicant and the listed parties to make representations on the following questions:
 - 4.1. Does the provision in Rule 17(6)(3) of the Rules place an additional duty upon the applicant which are not one of the requirements in sections 24(2) or 26(1) of the Act?;
 - 4.2. If it does, is Rule 17(6)(3) not ultra vires?;
 - 4.3. Is the provision in Rule 17(6)(3) not unconstitutional in that it offends the right to equality, dignity and profession in the Bill of Rights?

- 4.4. *Does the fact that the applicant is indebted to the university without any arrangements made to purge his indebtedness not open to a finding that the applicant is not fit and proper to be admitted and enrolled as a legal practitioner as contemplated in section 24(2)(c) of the Act.*
5. *The applicant and the listed parties are requested to deliver, if they so wish, written submissions on the questions raised in paragraph 4 above.*
6. *The submissions must:-*
 - 6.1. *not exceed 10 pages in double spacing;*
 - 6.2. *be submitted by no later than 16:00 on 15 September 2021;*
 - 6.3. *be addressed to this court's registrar per email at:".*

[47] Regrettably, only three interested parties accepted the court's invitation and furnished it with their views being: the applicant, the Mpumalanga Society of Advocates and the National Forum of Advocates.

[48] The applicant submitted that referred the court to a recent decision of the Eastern Cape Division of the High Court in Ex Parte Drian Hendrik Bakkes Case No: 3211/18 and Five Similar Cases at Paras. 12 and 13 where it was said that:

"[12]I am respectfully of the view that there is no ambiguity in s 115 of the LPA. It is clear from the section that persons who qualified for admission in terms of the AAA prior to 1 November 2018 are entitled to be admitted and enrolled as advocates. The reference to admission and enrolment "in terms of this Act" means in my view nothing more than that the LPA may be used as a vehicle for the admission of such persons, given that the AAA has been repealed. To require such a person to satisfy the requirements of the AAA and the LPA in order to be admitted, would unfairly require such persons to be dually qualified, and would negate the provision in the section that they are entitled to be admitted and enrolled if they were so entitled prior to 1 November 2018. This could not have been the intention of the legislature.

[49] This court respectfully disagrees with the dictum in Ex Parte Drian Hendrik Bakkes. The Legal Practice Act is the only way in which a prospective legal practitioner can enter

the profession – he or she has no choice in that regard. It is not an issue of being dually qualified. Qualifications is one thing. How those qualifications are confirmed in an application for admission is another thing. The way qualifications are confirmed is prescribed by Rule 17(6)(3).

[50] The National Forum of Advocates submitted:

"The payment or non-payment of the amount the University claims from Mr Makamu is not the concern of this Honourable Court and cannot be an impediment to his admission as an advocate. Universities cannot expect this Court to act as their debt recovery agent and they must manage their own financial affairs and if needs be resort to legal action to recover outstanding fees."

[51] The Mpumalanga Society of Advocates argued that with regards to the applicant's indebtedness to the university, the Society says:

*".....the Honourable Court is not entitled to involve itself in the contractual relationship between the University and the applicant. To that end, we refer the Honourable Court to the case of **Ex Parte Tlotlego (2017/34672) [2017] ZAGPJHC**, wherein the High Court refused to apply its practice directive which required candidates who do not possess copies of Degree certificates to prove that an arrangement was made between the applicant and the university.*

Save for the aforesaid, the Society makes no contribution to the question of the applicant's fitness to be admitted and enrolled.

[52] With regards to the question whether the Rule is ultra vires, the Society argues the following:

".....the rule properly construed, does not exclude other proof that the requirements of an LLB Degree have been met.

In the circumstances we submit that the rule may be interpreted as including other types of proof that the requirements of the LLB Degree have been satisfied, thus making it unnecessary to consider the constitutional validity of the rule.

We submit that the court must interpret rule 17(6)(3) contextually and purposefully and give it a wider meaning rather than a narrow meaning. As alluded to above, to give rule 17(6)(3) a narrow meaning would lead to absurdity in that a transcript, a document on which the degree certificate is founded on will be excluded as proof that the requirement of an LLB Degree has been satisfied."

[53] This court does not agree with the Society's aforesaid submissions. The court must exercise caution to read provisions into legislation. There can be no other meaning attributed to the text of the Rule, namely that certified copies of an applicant's degree certificate/s must be attached to the affidavit in support of the admission application.

[54] The Legal Practice Council had no objection to the applicant being admitted and enrolled. This is despite the absence of his LLB degree certificate. Did the Legal Practice Council condone the applicant's remiss? It appears so because they did not object to his admission. Does the Legal Practice Council have the power to condone non-compliance with the Rule. For the answer to that question, one must turn to Rule 13 which determined the LPC's Executive Committee's powers. It provides:

"The Council shall determine the powers of the executive committee established in terms of section 20 of the Act. The executive committee shall have only those powers which are delegated to it from time to time by the Council, and the Council may at any time revoke any powers so delegated."

[55] There is no evidence before this court showing why the LPC did not object to the applicant's application for admission and enrolment. In any event, although we do not express ourselves on this issue, this court is of the view that even if the executive committee

was given the power to condone compliance with the provisions of the Rule, such power would be *ultra vires*.

[56] Rule 17(6)(3) goes beyond what section 26(1)(a) requires. Notwithstanding, the Minister was empowered in terms of section 95(k) of the Legal Practice Act to make rules over “....*the information which must be submitted to the Council when a person applies to court for admission as a legal practitioner and the time period within which that information must be submitted as contemplated in section 24 (2) (d);*” Rule 17(6)(3) is therefore not *ultra vires* – the Minister exercised his power and made the Rule.

[57] However, in this court’s view, Rule 17(6)(3) offends the spirit, purport and objects of the Bill of Rights. Rule 17(6)(3) makes it impossible for applicants who seeks admission or enrolment as legal practitioner to make application without a degree certificate even though they may have complied with the provisions of section 26(1)(a). The effect of Rule 17(6)(3) therefore is that same unfairly discriminates against persons who may not be able to obtain their degree certificates because they still owe their universities money. This discriminates between fully paid-up students and others that are not so fortunate. In doing so, Regulation 17(6)(3) violates such applicants’ right to equality¹⁸, human dignity¹⁹ and freedom of trade, occupation and profession²⁰. Afterall, the words of Holmes J²¹ “..... *the relevant qualification should be the applicant's passing of the LL.B. examination, and not the extraneous act of the university in conferring the degree*” and the words of Victor J “....*[I]n other words the courts become a role player/ gatekeeper in the debtor/creditor relationship between student and University.*” still hold true. Save that now, the executive, through Rule 17(6)(3) became the role player and gate keeper.

The “fit and proper” requirement

[58] Section 24(2)(c) requires that a person is fit and proper to be admitted and enrolled.

In General Council of the Bar of SA v Geach & Others²², the following was said over this requirement for admission:

"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. ... The need for absolute honesty and integrity applies both in relation to advocates' duties to their clients and their duties to the Courts. In the past, applicants for admission as an advocate, who were unable to demonstrate those qualities of honesty and integrity, had their applications refused."

[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 is a person 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 of 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 from 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.

[61] But all may not be lost for persons in the applicant's position. The court has a duty, when interpreting any legislation, promote the spirit, purport and objects of the Bill of Rights. In doing so, the court may act in terms of section 172(2)(a)²³ which provides that this court may make an order concerning the constitutional validity of an Act of Parliament but that an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court.

[62] In this court's view, Rule 17(6)(3) is unconstitutional to the extent that it does not allow any discretion on the court's part to consider applications where an applicant owes tuition fees but presents evidence that the debt will be purged whereafter the degree will be conferred i.e thereby establishing that the applicant is person of 'complete honesty, reliability and integrity'.


[63] No doubt that there may be persons who may wish to apply to be admitted as attorneys who face the same difficulty as the applicant in this application. Therefore, the order that will be made is not to be understood to be confined to persons intending to apply for admission and enrolment as advocates as Rule 17(6)(3) applies to all aspirant legal practitioners.

[64] In the premises, the following order is made:


- (a) It is declared that Rule 17(6)(3) of the Final Rules per sections 95 (4) and 109 (2) (b) read with sections 97 (1) and 109 (2) and (3) of the Legal Practice Act 28 of 2017, as amended (*"the Rule"*), is inconsistent with the Constitution to the extent that does not afford the court with a discretion to

admit a legal practitioner under the Legal Practice Act in the absence of a copy of his/her degree certificate;

- (b) The applicant is admitted to practice and authorised to be enrolled as a legal practitioner (advocate);
- (c) The order in paragraphs (a) above is suspended pending confirmation of same by the Constitutional Court;
- (d) The order in paragraph (b) is suspended pending the confirmation of the order in paragraph (a) above, alternatively, until the applicant has complied with the provisions of the Rule.


Roelofse AJ
Acting Judge of the High Court

I agree.


Mashile J
Judge of the High Court

DATE OF HEARING: 13 August 2021

DATE OF JUDGMENT: 7 October 2021

APPEARANCES

FOR THE APPLICANT: Adv TS Ngwenya
INSTRUCTED BY: Bhila and Thobela Attorneys

¹ Section 115 thereof.

² Section 1 of the Admission of Advocates Act defines "rules" as "rules made or remaining in force in terms of section forty-three of the Supreme Court Act, 1959 (Act No. 59 of 1959)";

Section 2 of the Admission of Advocates Act provides as follows:

"Persons to be admitted to practise as advocates only under this Act, and manner of making applications.

- (1) After the commencement of this Act no person shall be admitted to practise as an advocate save in accordance with the provisions of this Act.*
- (2) Any application pursuant to the provisions of this Act shall be made in the manner prescribed in the rules."*

Section 3 of the Admission of Advocates Act provides as follows:

"Admission of persons to practise as advocates.

- (1) Subject to the provisions of any other law, any division shall admit to practise and authorize to be enrolled as an advocate any person who upon application made by him satisfies the court—*

- (a) that he is over the age of twenty-one years and is a fit and proper person to be so admitted and authorized;*
 - (b) that he is duly qualified;*
 - (c) that he is a South African citizen or that he has been lawfully admitted to the Republic for permanent residence therein and is ordinarily resident in the Republic;*
 - (d) in the case of any person who has at any time been admitted to practise as an attorney in any court in the Republic or elsewhere, that his name has been removed from the roll of attorneys on his own application; and*

- (2) The following persons shall for the purposes of paragraph (b) of subsection (1) be deemed to be duly qualified, namely:*

- (a) Any person who—*
 - (i)*
 - (aa) has satisfied all the requirements for the degree of baccalaureus legum of any university in the Republic after completing a period of study of not less than four years for that degree; or*
 - (bb) after he or she has satisfied all the requirements for the degree of bachelor other than the degree of baccalaureus legum, of any university in the Republic or after he or she has been admitted to the status of any such degree by any such university, has satisfied all the requirements for the degree of baccalaureus legum of any such university after completing a period of study for such degrees of not less than five years in the aggregate; or*
 - (ii) "*

³ Section 120(4) provides:

"The remaining provisions of this Act come into operation on a date, after the commencement of Chapter 2, fixed by the President by proclamation in the Gazette. That date was fixed as 1 November 2018.

⁴ At paragraph 25.

⁵ GN 401 of 20 July 2018: Final rules as per section 95 (1), 95 (3) and 109 (2) of the Act (Government Gazette No. 41781).

⁶ Rule 3A provides as follows:

"3A. Admission of advocates.

(1) Subject to the provisions of rule 6 in so far as they are not inconsistent with the provisions of this rule, a person applying for admission to practise and for authority to be enrolled as an advocate shall, at least six weeks before the day on which his application is to be heard by the court—

(a) give written notice to the registrar of the date on which the application is to be made;

(b) (i) deliver to the registrar the original and a copy of the documents in support of the application and an affidavit stating his identity number and whether or not he has at any time been struck off the roll of advocates or suspended from his practice by the court;

(ii) deliver to the registrar an affidavit from his attorney or a commissioner of oaths stating that the attorney or commissioner of oaths has examined his identity document and that the attorney or commissioner is satisfied that the applicant is the person referred to in the identity document;

(bA) if he previously was admitted or practised as an attorney, submit to the registrar a certificate from the law society of the province in which he was so admitted or practised to the effect that, in the opinion of the law society concerned, he is a fit and proper person;

(c) serve a copy of the documents and affidavit referred to in paragraphs (a), (b) and (bA) on the Secretary of the Bar Council or the Society of Advocates of the division concerned.

(2)

(3) If the applicant at any time prior to the hearing of the application delivers any documents or declarations, other than the documents or affidavit referred to in paragraphs (b) and (bA) of sub-rule (1), to the registrar, he shall forthwith serve a copy thereof on the Secretary of the Bar Council or the Society of Advocates of the division concerned.

(4)

(5) Any person who is admitted to practise and authorised to be enrolled as an advocate shall upon being so admitted and authorised take an oath or make an affirmation before the registrar in court, which shall be subscribed by him in the form set out hereunder, namely—

*"I,
do hereby swear/solemnly and sincerely affirm and declare that I will truly and honestly demean myself in the practice of advocate according to the best of my knowledge and ability, and further, that I will be faithful to the Republic of South Africa."*

⁷ "17.1 A person seeking to be admitted to practise and to be authorised to be enrolled as an attorney or as an advocate under the Act –

17.1.1 must apply to a High Court in terms of the provisions of section 24(2) of the Act; and

17.1.2 must simultaneously lodge an application in terms of sections 30(1)(a) and 30(b)(iii) of the Act with the Council, through the Provincial Council where the applicant intends to practise (or in the case of a person who does not intend to practise, where that person is ordinarily resident), for the enrolment of his or her name on the roll of attorneys or advocates, or on the roll of non-practising attorneys or advocates, as the case may be, which application shall be

treated as an application subject to the condition that the applicant is duly admitted by the High Court and authorised to be enrolled as a legal practitioner in terms of section 30 of the Act.

17.2 An application for admission and enrolment in terms of rule 17.1 must be in writing and must be accompanied by an affidavit by the applicant setting out the following information supported, where applicable, by documentary evidence:

17.2.1 confirmation of the jurisdiction of the Court;

17.2.2 his or her full names, date of birth, identity number and residential address;

17.2.3 confirmation that the applicant is a South African citizen or is a permanent resident of the Republic;

17.2.4 confirmation that the applicant has satisfied all the requirements for a degree referred to in section 26(1) of the Act after pursuing for that degree a course of study referred to in that section;

17.2.5 a statement whether the applicant intends to be enrolled and to practise as an attorney or as an advocate and, in the case of an advocate, whether the applicant intends practising with or without a fidelity fund certificate, or whether the applicant does not intend to practise;

17.2.6 the physical address of his or her main office and of every branch office and of every building at and from which he or she practises, and its postal address, and telephone numbers, mobile telephone numbers, fax numbers, email addresses and other electronic communication contact particulars, if any;

17.2.7 in the case of an attorney, whether he or she conducts practice –

17.2.7.1 for his or her own account and if so, whether alone or in partnership (stating the full names of his or her partners) or as a member of a commercial juristic entity (stating the full names of his or her members); or

17.2.7.2 as an employee;

17.2.8 the name under which the firm of which he or she is the proprietor or a member, or by which he or she is employed, conducts practice.

17.2.9 confirmation that the applicant had no pecuniary interest in any law practice and that he or she held no other position than that of candidate legal practitioner during the period of service under the contract of practical vocational training or supervision, or proof that the applicant had such pecuniary interest or held such other position with the prior written approval of the Council;

17.2.10 confirmation that the applicant has undergone all the prescribed practical vocational training requirements as a candidate legal practitioner, referred to in section 26(1)(c) of the Act;

17.2.11 confirmation that the applicant has passed the competency-based examination or assessment for candidate legal practitioners, referred to in section 26(1)(d) of the Act;

17.2.12 confirmation that the applicant has complied with the requirements for community service, if applicable, where that community service is a component of practical vocational training by candidate legal practitioners, pursuant to the provisions of section 29 of the Act, or proof that the applicant has been exempted from performing community service;

17.2.13 if a period of more than one year has elapsed between the date of completion of the practical vocational training contract and the date of the application, a statement as to the activities of the applicant during that period;

17.2.14 confirmation that the applicant is a fit and proper person to be admitted, including a statement as to whether

17.2.14.1 the applicant has any previous criminal convictions or has any criminal investigations pending. If there have been any proceedings as contemplated in this sub-rule, or if any such proceedings are pending, the applicant shall set out full details thereof;

17.2.14.2 the applicant has been subjected to previous disciplinary proceedings by the Council or any law society, university or employer, or whether any such disciplinary proceedings are pending. If there have been any proceedings as contemplated in this sub-rule, or if any such proceedings are pending, the applicant shall set out full details thereof;

17.2.14.3 the estate of the applicant has been sequestered, provisionally or finally, or whether there is any application for the sequestration of his or her estate which is pending; where the estate of the applicant has been sequestered, the applicant must state whether or not he or she has been rehabilitated.

17.2.15 confirmation that the originals of all attachments to the affidavit will be made available to the Court on the date of the hearing of the application.

17.3 A person seeking to be admitted to practise and to be authorised to be enrolled as an attorney must include in the affidavit in support of the application (in addition to any other information to be provided in terms of this rule) –

17.3.1 confirmation that the applicant has served under a practical vocational training contract, stating the dates of filing and registration of that contract and the period served by the applicant under that contract;

17.3.2 confirmation by the applicant that his or her principal was entitled to enter into the contract of practical vocational training;

17.3.3 confirmation by the applicant that service under the contract of practical vocational training was performed under the direct supervision of the principal or of another attorney in the firm of the principal;

17.3.4 confirmation that the applicant was not absent for more than 30 working days during any one year of service under the contract of practical vocational training;

17.3.5 confirmation by the applicant of the exact dates served under the practical vocational training contract;

17.3.6 a statement as to the type of legal experience gained by the applicant whilst serving under the contract of practical vocational training.

17.4 An applicant for admission to practise and to be authorised to be enrolled as an attorney shall attach to his or her application a supporting affidavit by the applicant's principal containing the following information:

17.4.1 confirmation of the exact dates that the applicant served under his or her supervision or that of another attorney in terms of the contract of practical vocational training;

17.4.2 in relation to the principal:

17.4.2.1 a statement that he or she –

17.4.2.1.1 has been practising as an attorney for his or her own account or as a partner in a firm of attorneys or as a member of a professional company continuously for three years or for periods of three years in the aggregate during the preceding four years; or

17.4.2.1.2 has practised as a professional assistant in a firm for a period of five years within the preceding six years; or

17.4.2.1.3 has practised as a professional assistant in a firm for a period of two years in the preceding five years and has practised as an attorney for his or her own account or as a partner in a firm or as a member of a professional

company continuously for two years or for periods of two years in the aggregate during the preceding four years at the date of commencement of the contract of practical vocational training;

17.4.2.2 where the applicant has undergone practical vocational training with a law clinic or with Legal Aid South Africa, or with another entity accredited by the Council to provide practical vocational training, that his or her principal is or at all relevant times was in the full time employment of the law clinic or of Legal Aid South Africa or with such other entity, and has practised as an attorney or advocate, as the case may be continuously for three years, or for periods of three years in the aggregate during the preceding four years, prior to the date of commencement of the practical vocational training contract;

17.4.2.3 where the applicant has undergone practical vocational training with the State Attorney, that his or her principal has practised the profession of an attorney as the State Attorney, Deputy State Attorney, Senior Assistant State Attorney or Assistant State Attorney in the office of the State Attorney or any branch thereof continuously for four years at the date of commencement of the practical vocational training contract;

17.4.3 that he or she has continued to practise as aforesaid during the period of the contract of practical vocational training;

17.4.4 that he or she was at no time during the course of the contract of the practical vocational training in question a principal to more than three candidate attorneys, or where the principal was employed at a law clinic or at Legal Aid South Africa that he or she was at no time during the course of the contract of the practical vocational training in question a principal to more than six candidate attorneys;

17.4.5 confirmation that in his or her view the applicant is a fit and proper person to be admitted and enrolled as an attorney.

17.5 An applicant for admission to practise and to be authorised to be enrolled as an advocate shall attach to his or her application (in addition to any further information to be included in terms of this rule) a supporting affidavit by the applicant's training supervisor containing the following information:

17.5.1 confirmation that he or she is a practising advocate, or has been accredited by the Council to act as a training supervisor of pupils for purposes of practical vocational training or is employed by an entity which has been accredited to provide supervisors who are qualified to act as training supervisors to pupils;

17.5.2 confirmation of the exact dates that the applicant served under the supervision of his or her training supervisor;

17.5.3 confirmation that in his or her view the applicant is a fit and proper person to be admitted and enrolled as an advocate.

17.6 Copies of the following documents must be attached to the founding affidavit of the applicant, whether for admission as an attorney or as an advocate, and must be certified as being true copies of the originals by a notary public or by a commissioner of oaths:

17.6.1 identity document of the applicant;

17.6.2 where the surname of the applicant does not correspond with the applicant's name in the application, or with any other documents attached to the application, a marriage certificate or other proof to reflect the reason for the discrepancy;

17.6.3 degree certificate or certificates of the applicant;

17.6.4 the relevant practical vocational training contract (in the case of an application for admission as an attorney) or written confirmation that the applicant has registered with a person or entity accredited by the Council to supervise the practical vocational training of pupils (in the case of application for admission as an advocate);

17.6.5 written confirmation from the Council confirming that the contract of practical vocational training or of supervision, as the case may be, has been registered with the Council;

17.6.6 where applicable, an agreement relating to the cession of the contract of practical vocational training and written confirmation from the Council that the cession of the contract has been registered;

17.6.7 in the case of an application for admission as an advocate intending to practise with a Fidelity Fund certificate, proof that the applicant has satisfied the requirements of the Council in terms of section 85(1)(b) of the Act in relation to a legal practice management course, and has passed the examination required to be passed by attorneys so as to reflect that the applicant has the required knowledge of accounting for the keeping of accounting records referred to in section 87 of the Act and for compliance with the accounting rules published by the Council from time to time;

17.6.8 attendance report issued in respect of attendance of the applicant at a practical legal training course approved by the Council.

17.7 The original and two copies of the application must lie for inspection with the Council for a period of not less than one month. The application must be properly prepared and bound with an index, all pages of the application must be paginated at the top right hand corner of every page, and all attachments must be clearly marked when the application is served on the Council.

17.8 The Council may require that the information referred to in this rule 17 be submitted in a form to be determined by the Council.

17.9 An application in terms of this rule 17 must be accompanied by proof of payment of the fee payable in terms of rule 2.

17.10 Subject to compliance with rules 27.1 to 27.9, and upon receipt by the Council of a copy of an order by the High Court admitting the applicant to practise and authorising him or her to be enrolled as a legal practitioner, the Council shall place the name of the applicant on the roll of attorneys or of advocates, or on the roll of non-practising attorneys or advocates, as the case may be, to be kept in terms of rule 28.

17.11 The Council must cause to be enrolled as an attorney or as an advocate, as the case may be, every person who is to be regarded in terms of section 114(1) of the Act as having been admitted to practice as an attorney or as an advocate, subject to any condition imposed by the High Court in relation to the admission of that person and subject to the terms of any order of court whereby any such person has been suspended from practice as an attorney or as an advocate, as the case may be."

⁸ See: Ex Parte: Steyn and Others (2313/19; 2748/19; 2749/19; 1623/19; 2166/19; 2140/19; 2588/19 3054/19; 2136/19; 3043/19; 4011/19; 2078/19; 3366/19) [2019] ZAMPMBHC 1; 1991/2017 (13 December 2019) at paras 57 and 58.

⁹ The only relevant issue was that the applicant's LLB degree certificate has not yet been conferred upon him. The applicant has complied with the other provisions of section 24, Unifor Rule 3A and Rule 17.

¹⁰ In paragraphs 10.2 and 10.3 of the founding affidavit the applicant states as follows:

"In 2017 I satisfied the requirement for the degree of bachelor of laws (LLB) at the University of Venda, which degree was not formally convert upon me at a graduation ceremony held at 17 May 2018 due to financial reasons as I still owe the University of Venda the sum of R 15 084.80 therefore degree certificate is due to financial reasons, however, I attached here to a copy of my academic transcript confirming the completion of my LLB degree marked annexure "SN4".

I have satisfied the requirements for the degree of Bachelor of Laws (BA.LLB) after having studied for a period of not less than (5) years."

¹¹ Paragraphs 15.1 and 15.2 of the founding affidavit.

¹² Admission of Advocates Amendment Act 39 of 1946.

¹³ (2017/34672) [2017] ZAGPJHC 376 (8 December 2017).

¹⁴ Available on the Internet at: <http://www.saflii.org/za/cases/ZAMPMBHC/2019/1.html>

¹⁵ At paragraph 55

¹⁶ 2006 (6) SA 416 (CC); 2006 (12) BCLR 1399 (CC).

¹⁷ [2019] ZACC 30 at para. [51].

¹⁸ Section 9 of the Bill of Rights.

¹⁹ Section 10 of the Bill of Rights.

²⁰ Section 22 of the Bill of Rights.

²¹ *Loc cit* para. 32.

²² 2013 (2) SA 52 (SCA) at para. 87.

²³ Which reads:

"The Supreme Court of Appeal, the High Court of South Africa or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a provincial Act or any conduct of the President, but an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court."