THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 1255/2019

In the matter between:

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL	**APPELLANT**
and	
REEVA-JOY ALVES	**FIRST RESPONDENT**
MITCHELL DE BEER	**SECOND RESPONDENT**
ETIÈNNE MENTOOR	**THIRD RESPONDENT**
JANDRÈ ROBBERTZE	**FOURTH RESPONDENT**
ZELEK SING	**FIFTH RESPONDENT**
STACEY SUNDELSON	**SIXTH RESPONDENT**
MICHAEL MULLER VAN STADEN	**SEVENTH RESPONDENT**
DAVID WHITCOMB	**EIGHTH RESPONDENT**
ADRI THIART	**NINTH RESPONDENT**

Neutral citation: *The South African Legal Practice Council v Alves and Others* (Case no 1255/2019) [2020] ZASCA 170 (14 December 2020)

Coram: MAYA P, SALDULKER and PLASKET JJA and EKSTEEN and UNTERHALTER AJJA

Heard: 13 November 2020

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for hand-down is deemed to be 10h00 on 14 December 2020.

Summary: Legal Practice Act 28 of 2014 – legal practitioners to be admitted and enrolled either as advocate or attorney – s 115 preserves the right of any person who qualified for admission as an advocate, attorney, conveyancer or notary prior to the commencement of the Act to be so admitted thereafter – preservation of right extends ad infinitum – s 32 empowers Legal Practice Council to convert enrolment of a legal practitioner without recourse to the high court – s 32 does not detract from jurisdiction of the high court to order the Legal Practice Council to enrol a legal practitioner as an advocate where the practitioner qualifies for enrolment as such in terms of the Legal Practice Act.

ORDER

On appeal from: Western Cape Division of the High Court, Cape Town (Hlophe JP and Baartman J, sitting as court of first instance):

The appeal is dismissed.

JUDGMENT

Eksteen AJA (Maya P, Saldulker and Plasket JJA and Unterhalter AJA concurring)

[1] The crisp issue in this appeal is whether the first to the ninth respondents (to whom I shall refer, for convenience, as applicants), who had all been admitted and enrolled as attorneys, were entitled to rely on the provisions of s 115 of the Legal Practice Act 28 of 2014 (the LPA) in order to be enrolled as advocates. The Western Cape Division of the High Court, Cape Town (the high court) ruled in their favour and ordered the South African Legal Practice Council (the LPC) to remove their names from the roll as attorneys and to enrol them as advocates. The appeal against this ruling is with leave of the high court.

[2] Prior to the hearing of the appeal, the second to ninth applicants all completed their pupillage at the Cape Bar and the LPC approved the

conversion of their enrolment as attorneys to advocates in terms of s 32 of the LPA. The appeal is accordingly moot in respect of these applicants. However, it remains live in respect of the first applicant. She has taken no part in the appeal and indicated that she would abide the decision of this Court. In addition the Cape Bar sought and obtained leave to be heard as *amicus curiae*.

[3] At the time of the application each of the applicants were, as I have said, attorneys who wished to practice as advocates. Seven of them had been admitted as attorneys prior to 1 November 2018[1] in terms of the Attorneys Act 53 of 1979 (the Attorneys Act). The remaining two (the sixth and ninth applicants) were admitted and enrolled as attorneys in terms of the LPA after it came into operation. Only the first applicant had applied to the LPC, before the application to court, for her enrolment to be converted to that of an advocate in terms of s 32 of the LPA. Her application was refused as she did not meet the requirements laid down by the LPC in its rules. In particular, she had not completed a trial advocacy programme.[2] Hence her application to court.

[4] In her application she relied on the provisions of s 115 of the LPA, as did the remaining applicants. Section 115 is to be found under Chapter 10 of the LPA headed 'NATIONAL FORUM AND TRANSITIONAL PROVISIONS'. The section provides:

[1] The LPC came into full operation on 1 November 2018. Chapter 10 (Transitional provisions) had previously come into operation on 1 February 2015.

[2] Section 32(3) of the LPA empowers the LPC to make rules setting out the circumstances under which a legal practitioner may apply for conversion of his or her enrolment under that section and to lay down any requirements which such practitioner must comply with.

'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 date referred to in the section is 1 November 2018, the date on which the LPA became fully operational.

[5] The interpretation of this provision in the context of the LPA lies at the heart of the appeal. The principles applicable to the interpretation of documents, including statutes, are well settled. It is however useful to restate the essence of the principles as summarised in *Natal Joint Municipal Pension Fund v Endumeni Municipality*[3] para 18, where this Court stated:

'Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.'

[6] It is convenient first to consider the circumstances which gave rise to the promulgation of the LPA. For centuries, South Africa had been served by a divided legal profession. Prior to the LPA, the admission of advocates was governed by the Admission of Advocates Act 74 of 1964 (the Advocates Act).

---

[3] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] All SA 262 (SCA); [2012] ZASCA 13; 2012 (4) SA 593.

Section 3 of the Advocates Act required an applicant for admission to establish that they were more than 21 years of age, duly qualified, a fit and proper person and a South African citizen. Generally speaking, the qualification required was an LLB degree obtained from a South African university. No further training was required in order to practice.

[7] For many years advocates were organised in various voluntary associations regulated by their respective Bar Councils and affiliated to the General Council of the Bar of South Africa (the GCB). The Bars were self-regulated and the GCB was a federal body established by the Bars. There was no statutory regulatory body. The Bars developed a comprehensive pupillage system to provide vocational training and education to aspirant members. However, advocates were not obliged to be members of a Bar affiliated to the GCB. Various other associations of advocates were established which were not affiliated to the GCB. Some offered vocational training of their own and others did not. Moreover, because the Advocates Act did not oblige advocates to belong to an association a number of admitted advocates practiced outside of any association, without any vocational training and free from any regulation.

[8] By contrast attorneys were regulated by law societies, established by statute, and all attorneys were subject to regulation by these bodies. The Attorneys Act required candidate attorneys who had obtained an LLB degree or BProc degree from a South African university to undergo two years of articles and to pass an admission examination prior to their admission as attorneys. There was accordingly a marked disparity between the admission requirements for advocates and attorneys.

[9] Once admitted as an advocate or as an attorney, a practitioner seeking to convert from one branch of the profession to the other was required first to obtain an order of court removing their name from the roll of one branch and re-enrolment on the other. When an advocate wanted to become an attorney they were required, irrespective of their experience, to first undergo a period of articles before they could be admitted as such. An attorney seeking to become an advocate was entitled (subject to what is set out later) to their immediate admission as such. However, if they wished to practice at a Bar affiliated to the GCB, they were often required by the Bar Council concerned to undergo a period of pupillage before they could obtain membership. These inequalities and perceived obstacles to entry into the profession and transfer between the branches thereof, together with other issues not material to the present debate, gave rise to the LPA.[4] One of the principal purposes of the LPA was to create a single unified statutory body to regulate the affairs of all legal practitioners and all candidate legal practitioners in pursuit of the goal of an accountable, efficient and independent legal profession.[5] It also sought to level the playing field by prescribing compulsory vocational training and a competency-based examination or assessment prior to admission and enrolment for both advocates and attorneys.[6]

[10] The LPA does not purport to merge the functions of advocates and attorneys. It maintains the distinction between advocates and attorneys and acknowledges the different training required for these functions. Thus, a 'pupil' is defined in the LPA as a person undergoing practical vocational

[4] The purpose of the LPA is set out in s 3 thereof.
[5] Section 3*(c)*.
[6] Section 26(1)*(d)*.

training with a view to being 'admitted and enrolled' as an advocate.[7] An 'advocate' is likewise defined as a legal practitioner who has been 'admitted and enrolled as such' under the LPA.[8] Advocates and attorneys collectively are referred to as 'legal practitioners'. Thus, the latter term is defined in the LPA as meaning an advocate or attorney admitted and enrolled as such in terms of s 24 and 30 respectively.[9] The distinction is material.

[11] The admission of all legal practitioners, both advocates and attorneys, is governed by the provision of s 24. It stipulates that no one may practice as a legal practitioner (that is either as an advocate or as an attorney) if they are not admitted and enrolled to practice 'as such' in terms of the LPA. The LPA does not provide for practice as a legal practitioner. It provides for three forms of practice, as an attorney, as an advocate practicing on a referral basis only and as an advocate accepting work directly from the public.[10] Section 24 accordingly requires a court to admit a legal practitioner either as an advocate or as an attorney and to authorise the LPC to enrol them as such.

[12] The maintenance of a roll of legal practitioners is entrusted to the LPC. In doing so it was required at the commencement of the LPA to consolidate the rolls of admitted attorneys and advocates which existed prior to the LPA into one roll[11] referred to in s 30(3). New entrants to the profession are required to apply to the LPC for enrolment against payment of a prescribed

---

[7] A 'candidate attorney' is similarly defined as a person undergoing vocational training with a view to being 'admitted and enrolled as an attorney'.
[8] 'Attorney' bears a corresponding meaning.
[9] 'Candidate legal practitioner' is similarly defined as being persons undergoing vocational training either as a candidate attorney or as a pupil.
[10] Section 34.
[11] Section 114.

fee.[12] Once a legal practitioner has been admitted and acquired the authority of the high court to be enrolled, they are entitled to be enrolled as such, subject to payment of the prescribed fee, and the LPC has no discretion to decline enrolment. The roll must reflect the form of practice pursued by the practitioner and the particulars of the order of court in terms of which they were admitted.[13]

[13] The LPA regulates the professional conduct and disciplinary proceedings in respect of legal practitioners.[14] It is, however, only the high court that can strike their name from the roll of legal practitioners[15] and it retains the jurisdiction to adjudicate upon and make orders in respect of matters concerning the conduct of legal practitioners.[16]

[14] All of these provisions reinforce the fact that legal practitioners, whether practicing as advocates or attorneys, are officers of the high court. They are admitted by the court which authorises their enrolment in the practice in which they are qualified and they owe a special ethical duty to the court. The high court retains the oversight over their conduct and the jurisdiction to pronounce on matters concerning their conduct. To this extent they practice under the auspices of the high court.

[15] Against this background, the provisions of s 115 must be construed in the context of the LPA as a whole, with due regard to the history giving rise

---

[12] Section 30(1)*(b)*(i).
[13] Section 30(3)*(a)* and *(b)*.
[14] Chapter 4 s 36-44.
[15] Section 40(3)*(a)*(iv).
[16] Section 44.

to its existence and the purpose to which it is directed. On behalf of the appellant three arguments were advanced as to why the applicants could not avail themselves of the provisions of s 115. Firstly, it was contended that on a proper construction of the LPA, s 115, being a transitional provision, applied only to applications for admission which were pending on 1 November 2018. As none of the applicants had lodged an application for admission prior to the commencement of the LPA, s 115 did not apply to them. Secondly, save for the sixth and ninth applicants, who were admitted as attorneys after the LPA came into effect, the remaining applicants did not qualify for admission as advocates under the Advocates Act immediately before 1 November 2018 because the Advocates Act required that an attorney had first to remove their name from the roll of attorneys before being able to qualify for admission as an advocate. They had not done so. Thirdly, it was argued that the LPA placed the process of enrolment in the hands of the LPC, including the conversion of an enrolment, and accordingly, where an applicant sought to convert their enrolment from that of an attorney to an advocate they were obliged to do so in terms of s 32 of the LPA. The result, it was contended, was that the high court did not have the jurisdiction to make the order which it did.

[16] Section 115 is set out earlier. Ordinarily where the legislature intends that a transitional provision would apply only to proceedings commenced prior to the promulgation of the Act concerned it says so in terms. An example of such a provision is found in s 116(2) of the LPA which provides:

‘Any proceedings in respect of the suspension of any person from practice . . . which have been instituted in terms of any law repealed by this Act, and which have not been concluded at the date referred to in section 120(4), must be continued and concluded as if the law had not been repealed . . .’

[17] No similar intention appears from the provisions of s 115. On the contrary, s 115 applies to any person who immediately before the commencement of the LPA was entitled to be admitted and enrolled as an advocate, attorney, conveyancer or notary. It contains no limitation to this right. On a consideration of the language used in the light of the ordinary rules of grammar and syntax the section must be interpreted to mean that 'whoever can show that they satisfied the criteria in s 3 of the [Advocates Act] and, had an application been made whilst the [Advocates Act] was still in force, were entitled to admission'.[17] The purpose to which the section is directed is to preserve the rights of those who qualified for admission and enrolment prior to the LPA to be admitted and enrolled thereafter under the LPA. Mr Koen, on behalf of the LPC, was constrained to acknowledge that the interpretation contended for by the LPC would require a considerable reading-in to the section of words which do not appear therein. The reading-in would require, in relevant part, that s 115 is interpreted to mean: 'Any person who, immediately before the date referred to in s 120(4), had made an application and was entitled to be admitted and enrolled'. He contended, that reading-in such additional words was the only manner in which to give meaning to the section as a transitional arrangement. The argument cannot be sustained. Section 115 finds application in respect of candidates who qualified for admission prior to commencement of the LPA. It preserves their right to be admitted under the LPA. The position was captured thus by Robeson J in *Ex parte Bakkes and Similar Cases*:[18]

'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

[17] See *Ex Parte Goosen and Others* [2019] ZAGPJHC 68; 2019 (3) SA 489 (GJ) para 51.
[18] *Ex Parte Bakkes and Similar Cases* [2019] ZAECGHC 3; 2019 (2) SA 486 (ECG) para 12.

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.'

[18] The vast majority of candidates for admission may be expected to be young persons setting out upon a career in the practice of law, who have acquired their qualifications in the not too distant past. Section 115 may indeed be relied upon *ad infinitum* by any person who qualified prior to the commencement of the LPA, however, the legislature must be taken to have foreseen this when preserving their rights. The numbers of such people will be relatively small and would inevitably dwindle and eventually disappear. It is in this respect that the provision is transitional.[19]

[19] I turn to the second argument advanced on behalf of the LPC. Section 3 of the Advocates Act sets out the requirements which had to be met for admission as an advocate under that Act. It required an applicant who had previously been admitted to practice as an attorney to satisfy the court, inter alia, that their name had been removed from the roll of attorneys on their own application.[20] It was a prerequisite for admission as an advocate. The requirement had a history of its own which developed from the divided profession which existed in South Africa prior to the LPA. When the

[19] Ibid para 13.
[20] Section 3(1)*(d)* of the Advocates Act.

Advocates Act was first enacted s 3(1)*(d)* contained, after the words '. . . on his own application', the following:

'. . . and that for a continuous period of not less than six months immediately before the date of his application to be so admitted he has in no way been associated or connected with the practice of, or acted directly or indirectly as, an attorney, notary or conveyancer in the Republic or elsewhere . . .'[21]

[20] The rule originally arose from a judicial practice developed in the early 1900s of a 'cooling off' period.[22] The requirement was however deleted from the Advocates Act by s 16 of the General Law Amendment Act 29 of 1974. Thereafter a practice developed for attorneys who wished to be admitted as advocates to seek in one application the simultaneous removal of their name from the roll of attorneys and their admission as an advocate.

[21] I revert to the provisions of s 115. In *Goosen* the full court correctly considered the meaning of 'entitled' in the section. It held:[23]

'The word "entitled" is a common enough term. "Entitled to be admitted and enrolled" is the phrase to be given meaning. The concept of an entitlement is consistent only with the existing possession of a right. The Oxford English Dictionary . . . defines the term as the giving of a "rightful claim" to anything. The term "entitled" in the context of s 115, and indeed the context of the LPA has no convoluted inner, obscure meaning. It is simply shorthand for saying that the candidate fulfilled all the [Advocates Act] . . . criteria at a time when that candidate could have brought an application, ie before 1 November 2018. As the "right" to which a candidate is "entitled" is extinguished on 31 October 2018, the answer to the question whether one can apply after 31 October 2018, is answered purely

[21] See *In Re Rome* 1991 (3) SA 291 (A) at 308C-D.
[22] See *Ex Parte Plowden-Wardlaw* 1903 TS 35; *Ex Parte Beyers* 1904 TS 567.
[23] *Goosen* fn 16 above para 26.

by whether the substance of the rights in s 3 of the [Advocates Act] . . . can survive the repeal. It is the function of s 115 to preserve those "entitlements" or "rights".'

[22] So, were the applicants entitled prior to the commencement of the LPA to their admission as advocates? It is common cause that each of the applicants met all of the requirements of s 3 of the Advocates Act, save that their names remained on the roll of attorneys. After the 'cooling off' period was removed from the provisions of s 3 any admitted attorney who met the requirements for admission as an advocate was entitled in one application to the removal of their name from the roll of attorneys and their admission as an advocate. That right the applicants acquired prior to the commencement of the LPA. To hold otherwise would be overly technical and would undermine the purpose of the section. For these reasons the second argument, too, cannot be sustained.

[23] The third argument advanced relates to the provisions of s 32 of the LPA. Section 32 empowers the LPC to convert an enrolment from one form of practice to another without recourse to the high court. The section is designed to facilitate such movement and to eliminate the obstacles and inequalities which previously impeded it. To that end the council is empowered by subsec 32(3) to make rules setting out the circumstances under which a legal practitioner may apply to it for conversion of their enrolment and the requirements such legal practitioner must comply with. Thus the LPC may, by its rules, enable experienced practitioners to move from one form of practice to another, without undergoing all the vocational training prescribed under s 26 for admission to and enrolment in such practice. As a matter of logic, however, in my view, it cannot demand that an attorney seeking to convert their enrolment to an advocate must first attain a greater qualification

than that set by the LPA for admission by the high court. To the extent that it did so in respect of the first applicant it exceeded its powers.

[24] While s 32 does entrust the regulation of conversion to the LPC, its power is not exclusive because legal practitioners under the LPA retain the right to be enrolled as advocates under the preservation of rights in s 115. There is nothing in s 32, or in the structure of the LPA as a whole, which suggests that the high court is precluded from admitting, and authorising the enrolment of, a practitioner who previously practiced as an attorney, as an advocate, in circumstances where the legal practitioner qualifies for admission as an advocate in terms of the LPA. In these circumstances there is no basis for the exercise of powers by the LPC under s 32. The conversion is in effect done by the high court under the preservation provision. For the reasons set out earlier the applicants all qualified for admission as advocates in terms of s 115.

[25] There remains the issue of costs. The appeal is a matter of considerable interest and importance to the legal profession in seeking clarity on the interpretation of the LPA. In these circumstances, fairly, neither the LPC nor the *amicus curiae* sought an order for costs.

[26] In the result the appeal is dismissed.

J W EKSTEEN

ACTING JUDGE OF APPEAL

Appearances

For appellants:	S Koen
Instructed by:	Bisset Boehmke McBlain, Cape Town
	Webbers, Bloemfontein
Amicus Curiae:	D Borgström SC (with him T Sarkas)
Instructed by:	Riley Incorporated