

IN THE HIGH COURT OF LESOTHO

In the Application of :

ALEXIS TSOTANG MONYAKO Applicant

and

THE LAW SOCIETY Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 16th day of November, 1984.

This is an application by the applicant for an admission as an Attorney.

Briefly the facts are that in 1956 the applicant obtained a Degree of Bachelor of Arts from the University of South Africa in the Republic of South Africa. In 1970 while serving as a magistrate in Lesotho he satisfied the requirements for the Attorney's admission examination of the same University.

On 13th April, 1978, the applicant entered into Articles of clerkship with the late Attorney Kolobe Motlamelle. The Articles were to be served by the applicant for a period of three years in terms of sections 8 and 9 of the Legal Practitioners Act No. 11 of 1967. Following the death of Attorney Kolobe Motlamelle on 27th September, 1979, the Articles were ceded to Attorney A.P.S. Mda. For reasons which are not material for the decision in this matter, the Articles were subsequently ceded to Attorney W.M. Tsotsi under whom the applicant has, on 27th July, 1984, satisfactorily completed service of his Articlanship. Wherefore the applicant applies for admission as aforesaid.

2/ The application

The application was opposed by the respondent on the grounds that the applicant had not passed the examinations required by Section 8(c)(iv) of the Legal Practitioners Act No. 11 of 1983 and the papers filed on his behalf by his Attorney of record were teeming with a number of irregularities. An application for correction/condonation of the irregularities in the papers was filed and not opposed. I am, therefore, prepared to grant the application.

However, the problem still exists that the applicant has not passed the examinations. While on this point, it is significant to observe that the applicant entered into his service of Articles under the now repealed Legal Practitioners Act No. 11 of 1967. Naturally he accrued certain rights and obligations under the provisions of that Act. I am not aware of any provisions under the new Legal Practitioners Act No. 11 of 1983 which abrogate applicant's rights and obligations under the old Act. In other words, the new Act does not have retrospective effect and the applicant's case must, in my view, be dealt with under the provisions of the old and not the new Act.

It is apparent from the facts that the basis upon which the applicant seeks admission as an Attorney is that he has satisfactorily served Articles and that is, indeed, common cause.

As the application falls to be governed by the provisions of Section 7(c)(iv) of the now repealed Legal Practitioners Act No. 11 of 1967 and not Section 8(c)(iv) of the new Legal Practitioners Act No. 11 of 1983 it is helpful to focus attention on the provisions of the former section which read, in part:

- "7. Every person who applies to be admitted and enrolled as an Attorney shall produce to the satisfaction of the High Court proof that -
- (a)
-
- (b)
-
- (c) he -
- (i)

3/ (ii)

- (ii)
- (iii)
- (iv) has passed the examinations prescribed by the Chief Justice under paragraph (b) of subsection (2) , and the practical examination referred to in paragraph (a) of subsection (4), of section thirty-four and has complied with the provisions of this Act relating to service under articles and his application for admission and enrolment is made within a period of two years from the date of completion of the articles or within such further period as the High Court may allow in terms of subsection (3) of section eighteen;"

(My underlining)

It has been contended in argument that this Court has inherent jurisdiction to exempt applicant from the requirement of passing the examinations contemplated in the Act on the grounds that no such examinations had been prescribed by the Chief Justice; the applicant had passed Attorney's Admission Examination of the University of South Africa which is of a higher standard than the examination normally prescribed for Attorneys in this country and as a magistrate in Lesotho the applicant had acquired experience in the procedure followed in the various courts of Lesotho which procedure is the subject matter of the practical examination envisaged by the practical examination referred to under paragraph (iv) of subsection (c) of the above quoted section 7.

The argument clearly implies that prospective candidates for admission as Attorneys do normally write examinations notwithstanding that "no such examinations had been prescribed by the Chief Justice." That being so, I find it difficult to apprehend the argument that the applicant should be exempted from passing the prescribed examinations because the Chief Justice has not prescribed any such examinations.

As regard the Attorney's Admission Examination which the applicant has passed with the University of

South Africa that seems to me an Educational Qualification which entitles him to serve a shorter period of Articleship. It is certainly not the examination envisaged under the provisions of Section 7(c)(iv) of the Legal Practitioners Act No. 11 of 1967.

I have underscored the word "shall" in the above cited Section 7(c)(iv) of the Legal Practitioners Act No. 11 of 1967 to indicate my view that the requirements for passing the examinations and service of the Articles are mandatory and the court has, therefore, no descretion in the matter. If it were to exempt the applicant in any of these requirements, this court would, no doubt, be acting ultra vires.

Having satisfactorily completed his service of Articles, it seems to me that, the applicant had, of necessity, to pass within 2 years of completion the examinations contemplated under the provisions of Section 7(c)(iv) of the Legal Practitioners Act No. 11 of 1967. There was no way he could circumvent the examinations.

In the premises, I take the view that this application ought not to succeed and it is accordingly dismissed.

B.K. MOLAI,

JUDGE

16th November, 1984.

For Applicant :Mr.Nthethe

For Respondent : Mr. Moiloa.