

IN THE HIGH COURT OF LESOTHO

In the Application of :

KELELLO MOJELA LEROTHOLI Applicant

and

REGISTRAR - MEDICAL, DENTAL & PHARMACY COUNCIL	1st Respondent
MEDICAL, DENTAL & PHARMACY COUNCIL	2nd Respondent
MINISTRY OF HEALTH	3rd Respondent
ATTORNEY-GENERAL	4th Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai on the
23rd day of October, 1989.

On 27th September, 1989 the applicant herein filed, with the Registrar of the High Court, an urgent application in which he moved the court for a Rule Nisi calling upon the Respondents to show cause why :

"1(a) First and Second repondents shall not be ordered to register the applicant as an intern at Queen Elizabeth II Hospital in accordance with the provisions of the Medical, Dental and Pharmacy Order of 1970 as amended, such registration taking effect from the date Applicant applied for registration;

2/ (b)

- (b) First and Second Respondents shall not be restrained from imposing illegal re-examination of Applicant as a condition for registration, by which First and Second Respondents are acting ultra vires;
 - (c) Third Respondent or any of his servants shall not be restrained from removing or in any way tampering with the Applicant in doing his practicals at Queen Elizabeth II hospital as medical intern.
2. Directing the Respondents to pay the costs of this application jointly and severally, the one paying the other being absolved;
 3. Granting the applicant such further and/or alternative relief;
 4. That prayer 1(a), (b) and (c) operate with immediate effects as an interim order pending the outcome of this application."

The application was moved, ex-parte, before me on the same day, 27th September, 1989 when I granted the Rule Nisi in terms of only prayers 1, 2 and 3 i.e. not in terms of prayer 4. The first and second respondents intimated their intention to oppose confirmation of the rule. The third and the fourth respondents did not file notice of intention to oppose confirmation of the rule. It may, therefore, be safely assumed that they are prepared to abide by whatever decision will be arrived at by the court.

Both the founding and the answering affidavits were filed by the applicant and the Respondents, respectively. No Replying affidavit was filed by the applicant.

3/ It may,

It may, however, be mentioned that on 19th October, 1989 whilst writing this judgment a document purporting to be the Replying affidavit and bearing the Registrar's rubber stamp impression of the same date, 19th October, 1989, was brought to my chambers by my Secretary. I refused to accept the document. My reason for so doing was that I had already heard arguments in this matter on 18th October, 1989, the date for which the case was set down for hearing by the applicant himself. If the applicant set down the case for hearing it means he did not wish to file the Replying affidavit and the pleadings were, therefore, closed. That being so, the applicant could not, in all fairness, be allowed to file any further affidavits especially after the Respondents had already completed their arguments. Indeed, the Registrar ought not to have accepted this belated filing of the Replying affidavit.

In as far as it is relevant, the facts disclosed by the affidavits were briefly that on 15th October, 1988 a degree of Doctor of Medicine was conferred upon the applicant by the American University of the Caribbean. The applicant, who is a citizen of Lesotho, apparently returned home. According to him, on 26th January, 1989, the applicant lodged with the first Respondent an application for registration as an intern at Queen Elizabeth II hospital. The date on which the applicant lodged his application is, however, disputed by the Respondents in whose answering affidavits aver that it was on 10th January, 1989 that the application was lodged.

It is significant that neither the applicant nor the Respondents have annexed the application or a copy thereof as a proof of the date on which it was lodged with the first Respondent.

4/ This court cannot,.....

This court cannot, therefore, determine on affidavit papers the exact date on which the application was lodged.

However, whether it was on 10th or 26th January, 1989 that the application was lodged is not so material. The important thing is that on one hand the applicant contends that once he has submitted the application supported by his qualifications the Respondents are, in law, bound to register and issue him with a certificate enabling him to serve his period of internship at Queen Elizabeth II hospital. They have not. Instead they require him to sit for an examination as a condition for his registration and issue of a certificate enabling him to serve internship. This the Respondents are not empowered to do by law. Their action is, therefore, ultra vires hence this application.

On the other hand, the contention of the Respondents is that the University at which the applicant studied and obtained his qualification is not one of those gazetted or prescribed in Lesotho. In order to recommend to the Minister responsible to Gazette or prescribe the university the second Respondent requires the applicant to sit for an examination so as to enable it to assess the courses or the standard of the courses, offered at the university from which he (applicant) has studied and obtained his qualification. The Respondents concede, therefore, to have declined to register and issue the applicant with a certificate enabling him to serve, internship at Queen Elizabeth II hospital.

It is worth noting that although it seems to be common cause that the applicant's application for registration as an intern was, for reasons already stated, turned down by the registering

authority the actual letter by which the application was refused is not annexed. Para. 11 of the applicant's founding affidavit refers to such letter as annexure "E" which is, however, clearly a letter written by the applicant's father and not the registering authority.

S.21(1)(b) of the Medical, Dental and Pharmacy Order, 1970 stipulates that any person who is aggrieved by the refusal of the registering authority to have him registered (as a medical practitioner) may, within three (3) months, approach the High Court for relief against such refusal. The letter by which the applicant's application for registration was turned down by the Registering authority will dispel any doubt about the date on which the application was refused. For obvious reasons the importance of annexing such letter cannot, therefore, be overemphasized.

In any event, it must be observed that S.17 of the Medical, Dental and Pharmacy Order, supra, provides :

"17. The minister may from time to time, after considering any recommendation of the council, prescribe by regulation the degree, diploma, or certificate granted after examination by a University, Medical School, Dental School, Pharmaceutical Society or other examining authority, which, when held singly or conjointly with any other degree, diploma or certificate shall qualify the holder thereof for registration in the several registers under this order." (my underlining)

6/ It is common

It is common cause that by Legal Notices 3/72, 12/72 and 9/73 the minister has, pursuant to the provisions of the above cited section, prescribed or listed several universities, medical schools, dental schools etc of which degrees, diplomas or certificates qualify the holders thereof for registration in several registers under the Medical, Dental and Pharmacy Order, 1970. The American University of the Caribbean at which the applicant admittedly studied and obtained his degree is not listed amongst the universities prescribed by the abovementioned Legal Notices nor have I been referred to any other Legal Notice under which this particular university is prescribed in terms of the provisions of S.17 of the Medical, Dental and Pharmacy Order, 1970.

I have underscored the word "shall" in the above cited section 17 of the Medical, Dental and Pharmacy Order 1970 to indicate my view that it is only when and if the minister responsible has by regulation, prescribed a university that it becomes imperative for the holder of a qualification obtained therefrom to be registered in the several registers under this Order. The subsection reads :

- "(1) The council shall maintain in its office,
- (a) a provisional register of all persons who have applied to be registered in terms of this section but who cannot immediately be registered for the reason that their certificates of degrees or diplomas or other certificates relating to their qualifications have not yet been approved by the minister in terms of section 17;

7/ (b)

(b) a register of all medical practitioners, dental surgeons and pharmacists practicing in Lesotho; and

(c) a register of all medical practitioners who are undergoing training as interns in terms of section 16 (1A)." (my underlining)

Assuming the correctness that the American University of the Caribbean from which the applicant has obtained his qualification is not as yet prescribed in terms of the provisions of S.17 of the Medical, Dental and Pharmacy Order, 1970 it necessarily follows that the applicant cannot be heard to say the first and second Respondents, who are the registering authority must enrol him under either register (c) or register (b). In my view the applicant can only be provisionally enrolled under register (a) i.e. temporarily and pending the approval of his qualifications by the minister responsible in accordance with the provisions of section 17 of the order.

I was told in argument that the register referred to under S.14 (1) (a) is meant for people who come to Lesotho after they have been practising medicine in other countries.

I have underlined the words "all persons" in the above cited S.14(1) (a) to indicate my view that the register therein referred to caters for all medical practitioners whose qualifications are awaiting the minister's approval in terms of the provisions of S. 17 of the Order regardless of whether they have previously been practising medicine elsewhere or are fresh from school and, therefore, intend to be enrolled as interns.

8/ I now turn

I now turn to the requirement that the applicant should write an examination. It is to be borne in mind that S.17 of the Medical, Dental and Pharmacy Order 1970 enjoins the minister to act after considering the recommendation of the second Respondent. The law gives no guideline as to what the second Respondent must take into account in recommending to the minister that any given qualification should be prescribed. However, I am of the view that the second Respondent must, at all times, ensure that only qualifications of generally approved standard in the field of medicine are recommended to the minister for approval. Failure to do so may result in serious repercussions in the sense that if the second Respondent were to recommend for approval by the minister qualifications that are not of generally approved standard in the field of medicine, sooner or later, people who should not be practising medicine in this country would find themselves meddling with the health of members of the public.

The argument of the Respondent is that the applicant is the first graduate of the American University of the Caribbean to apply for registration as a medical practitioner in this country. The Respondents do not, therefore, know whether or not the standard of medical courses taken at that university is comparable to the standard of similar courses taken at other approved medical universities. It seems to me that the purpose of the examination which the applicant is to be subjected to is not directly to have him registered as an intern. Registration as an intern depends simply on Applicant's qualifications being prescribed in terms of Section 17 of the Medical, Dental and Pharmacy Order, 1970. The Examination is to enable the second Respondant to assess the standard of the courses in which the

Application obtained his qualification with a view to making a recommendation to the minister that the qualification should be prescribed in terms of S.17 of the Medical, Dental and Pharmacy Order, 1970. Assuming the correctness of the Respondents' contention that the applicant is the first graduate of the American University of the Caribbean to apply for enrolment as an intern in this country I find nothing unreasonable in the requirement that he should be examined to ascertain that his qualifications are of the standard generally approved in the field of the medicine and a recommendation should, therefore, be made that they be prescribed in terms of S.17 of the Medical, Dental and Pharmacy Order, 1970.

From the foregoing it is obvious that the view that I take is that the conduct of the Respondents in this case cannot be faulted. I would accordingly discharge the Rule with costs.

B.K. MOLAI

JUDGE

23rd October, 1989.

For Applicant : Mr. Hlaoli

For Respondent : Mr. Sello.