

IN THE HIGH COURT OF LESOTHO

In the matter between :

MOSITO LEHANA
MAAPARANKOE MAHAO
BAHOLO MATOBO

1st Applicant
2nd Applicant
3rd Applicant

and

THE LAW SOCIETY OF LESOTHO
THE REGISTRAR OF THE HIGH COURT

1st Respondent
2nd Respondent

JUDGMENT

Delivered by the Honourable Mr. Justice T. Monapathi
on the 28th day of September, 1995

Section 6 (1) (c) (iii) of the Legal Practitioners Act No.11
of 1983 reads:

"A person who applies to be admitted and enrolled as
an advocate shall produce to the satisfaction of the
High Court proof that :

- (a)
- (b)
- (c)

(iii) has satisfied all the requirements for a
degree of Bachelor of Laws of the National

University of Lesotho."

I have not seen how this section would be ambiguous nor how it brings about absurdity. I would not see how a strained interpretation would be necessary. Neither would a broad interpretation be necessary where there is no ambiguity. As long as it is borne in mind that it is the University which spells out whether a student has satisfied all the requirements for a degree it is difficult to see how a Court of Law would determine in what manner a student has satisfied the requirements for a degree of Bachelor of Laws. It is the University which prescribes how the requirements have been satisfied.

Indeed "in the past the Court has felt that it is a master in its own house in construing its rules relating to admissions to the profession, and that it has looked at the intellectual attainment of an applicant rather than his status as a graduate which, through adding to his dignity does nothing to advance his learning (Ex parte Feetham 1954(2) SA 468 (N), I do not see the job of the Court as being to assess if the University has correctly decided that a student has satisfied the requirements of his degree. The job of the Court is to accept that the success of a student has been certified by the University. The university can certify in so many ways according to its rules. It may issue out a certificate which is conferred on graduation

to a student who is present or in absentia. It may certify the intellectual attainment by issuing out a transcript of academic record from the office of the Registrar. In each and all the transcripts of the Applicants which are signed by the Senior Assistant Registrar (Academic), on the 9th August 1995, on behalf of the Registrar it is endorsed that the transcripts of academic record are for completion of the requirements for the degree of Bachelor of Laws and that this has been confirmed by Senate on the 22nd June 1995.

I have been referred to various decisions of Courts which I have found to be very useful. The judgment in the consolidated cases of Thulo Mahlakeng and Others vs Lesotho Law Society CIV/APN/135/84, CIV/APN/136/84 AND CIV/APN/141/84 per Cotran CJ (unreported) was concerned with whether degree holders who were entitled to receive a degree of Bachelor of Laws of the National University of Lesotho were: "if anything else was in order entitled to admission as advocates and now the problem is whether the text used in section 6 (1) (c) (iii) of the new Act had intended those degree holders to set for a further examination called the Bar Practical Examination set by the Law Society." or the "Chief Justice" or whether that provision applies only to these citizens of Lesotho who had obtained a degree of Bachelor of laws from a university outside Lesotho and wait to be admitted to practice as advocates" (page 2-3) The Chief justice then went

on to order that the applicants shall be admitted upon producing to the Registrar copies of their degrees to be awarded on the 29th September 1984. Incidentally what was before the Chief Justice was the only problem of the writing of Bar examinations. I am not convinced of the soundness in policy of the requirement for production of degree certificates. Anyway the Chief Justice did not attempt to justify his conclusion.

The special circumstances of the case of FL Surties v Solicitor-General 1978 LLR 414 called for an attitude by Mofokeng J which can only be called a practical and commonsense one. A testimonial of the applicant's professor of law sought to certify that the applicant had passed all examinations required at this university for an L.L.B. degree and that she would be entitled to the award of her degree at the next graduation ceremony. The learned judge felt that: This document cannot obviously be a certificate of the degree referred to in the petition. In my opinion the best person to say whether or not a candidate has satisfied the requirement for a degree at a university would be the Registrar and, most certainly, not any of the professors engaged at such a university." The reasons behind the requirement that it shall be the Registrar who vouches for that the Applicant has satisfied the requirements for a degree is a sensible one when the central position of a Registrar in the University administration is taken into account. I do not think

it is fair that, having produced a transcript, the Law Society should now insist that it must be under the hand of the Registrar. It suffices if an honest statement is made from the office of the Registrar by any of the officers subordinate to him, clearly authorized by reason of their clear functions, to make the statement. Presumably that is how the University is run.

This requirement that Court must be satisfied by clear evidence is a salutary one. It is not nevertheless practical to require an applicant to discharge the onus in the strict manner as required in *Ex parte Seward Brice* K.C. 1902 TS 2 at 4 and *Ex parte Van Den Bergh* 1924 TPD 117. Each case has still to be dealt with on its own merits. Hence a matter of a student's qualification from the National University of Lesotho should not cause heavens to fall when it is in fact not denied that a student has satisfied the requirements. It is also very easy to go on saying an allegedly false averment. A clearly technical objection in the circumstances is unhelpful and it is to some extent frivolous. It is simply unwise to insist on production of a certificate after conferment of a degree of a ceremony which adds nothing but dignity to the graduate. In fact it is a result of intellectual attainment and satisfaction of the requirements of the degree that a graduant is ultimately conferred with a degree at a ceremony..

I quite share the sentiment of the learned judge in FL Surtie's case that confusion ought to be avoided by adherence to the strict rules. The Law Society adds turbulence to stable waters by its unrealistic opposition where a more liberal attitude is called for. As long as it is born in mind that it is the Court which has to be convinced that the requirements have been satisfied. Indeed this Court is a Court which deals with the requirement of a profession of which it is part and has sufficient knowledge of.

The meaning of sec. 6 (1) (c) (iii) of the legal Practitioners Act 1987 is clear and not dubious. So that "if the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those in their natural and ordinary sense" being the words of Tindal CJ in the Sussex Peerage case (1844) 11 Cl and Fin 85. In addition the words of Lord Reid in Pinner vs Everett 1969 (3) All ER 257 at 2589 have real relevance where he says "In determining the meaning of any word or phrase in a statute the first question to ask is always what is natural or ordinary meaning of that or ordinary meaning of what word or phrase in its contexts in the statute? It is only when the meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature that it is proper to look for some other possible meaning of the word or phrase".

I cannot believe that it was the intention of the legislature that a certificate issued after conferment of a degree of at a graduation ceremony is the only proof or satisfaction of requirements of a degree. That is why the learned author of LAWSA Vol 14 says at paragraph 235 at page 223. "It should be noted that the mere satisfaction of all requirements for the required degree is adequate for admission as an advocate. The degree need not necessarily have been conferred".

I allow the application. Each party is to bear its own costs.

T. MONAPATHI
JUDGE

28th September, 1995

For the Applicants : Mr. Phoofolo

For the Respondents : Mr. Khaue