

IN THE COURT OF APPEAL OF LESOTHO

C OF A (CIV) N0.23/09

CIV/ADM/08/08

In the matter between:

PAUL MOSA MOSUOE

APPELLANT

And

LAW SOCIETY OF LESOTHO

RESPONDENT

**CORAM: Grosskopf, JA
Smalberger, JA
Gauntlett, JA**

Heard: 16 October 2009

Delivered: 23 October 2009

*Legal Practitioners Act, 1983 – requirements for admission
as an attorney in Lesotho – person qualified (other than by
citizenship or permanent residence) for admission in South
Africa – his refusal or failure to sit examinations of Law Society of
Lesotho – dismissal by High Court of application for admission upheld.*

JUDGMENT

GAUNTLETT, JA.

[1] This appeal has been heard on an expedited basis, following a significant delay by the court a quo (Monapathi J) in handing down his judgment.

[2] The appeal lies against the dismissal of an application for admission and enrolment of the appellant as an attorney of the High Court of Lesotho in terms of s.15 read with ss. 9, 12 and 19(1) of the Legal Practitioners Act, 11 of 1983 (“the Act”), and further in that regard seeking an order that:

“a. *the requirements for serving of articles of clerkship in terms of section 15 as read with sections 9, 12 and 19(1) be and is hereby waived;*

b. *condonation be granted in terms of section 19(3) as read with section 43(2)(b)”.*

[3] The appellant’s case is, at its core, that he is entitled to admission and enrolment as an attorney in Lesotho because he is fully qualified to

enrolment and admission in the Republic of South Africa, save for his lack of citizenship or permanent residence status in that country (see section 15 (1) (b) (ii) of South Africa's Attorneys Act, 53 of 1979, as amended). He argues for a waiver by the court of the usual requirements for admission in Lesotho, on the strength of what he contends is a purposive construction of the relevant provisions.

[4] The appellant is a citizen of Lesotho, currently unemployed. In 2005 he obtained a LLB degree from the University of Fort Hare and in 2006 a certificate from the School of Legal Practice of the Law Society of the Cape of Good Hope. In the same year he registered and served his articles of clerkship under Mtotywa Attorneys, King William's Town, Eastern Cape. Upon completion of his articles he sat and passed the attorneys' admission examinations set by the Cape Law Society.

[5] In the light of the attainment of these qualifications, the appellant contends that he should, without more, now be admitted and enrolled as an attorney in Lesotho, and that to the extent that provisions of the Act stand in the way, compliance with these should be waived by the court.

[6] The Law Society opposes the application on the basis that the appellant was at least required to pass practical examinations as prescribed in Lesotho, pursuant to the provisions of s. 8(c)(iv) read with s. 43(2)(b) of the Act. In fact, at an initial hearing in the High Court, the Law Society on 12 May 2008 undertook to “*convene a special attorneys’ examination for the [appellant] within 30 days*”.

[7] Some 37 days later the appellant applied to be admitted and enrolled, on the basis that the Law Society had not “*convened*” the examination within the prescribed time period. To this its Secretary-General responded. He states in his affidavit that he was shocked to learn that an undertaking he had made in the judge’s chambers “*that within 30 days I could make arrangements to have examinations set for the nearest possible date*” had been converted (evidently at the instance of the appellant’s counsel) into an order-and in different terms. In fact, the Law Society had managed to arrange with the convener and examiners for the examinations to take place on 16 July 2008.

[8] The Law Society duly advertised the examination date, on the High Court premises “*and other areas where we know that candidate attorneys go on a regular basis*”. In its opposing affidavit filed and served on 20 June 2008, it “*still urge[d] applicant to register for those examinations*”. He did not do so. Nor in his replying affidavit did he deny knowledge of the examinations, or otherwise explain his failure to sit them. Evidently when the matter was heard on 23 July 2008, his counsel, Mr Fosa, stated from the Bar (the judgment records) that he and the appellant “*had not been aware that such examinations had been set*”. The court *a quo* states that “*I thought it was less than candid*”. On the evidence that conclusion certainly appears warranted.

[9] The essential question for determination on appeal is thus whether, in the absence of sitting and passing the written examinations set by the Law Society, the appellant is nevertheless entitled to his admission as an attorney of Lesotho.

[10] Section 8 of the Act provides:

“8. A person who applies to be admitted and enrolled as an attorney shall produce to the satisfaction of the High Court proof that –

(a) he is a fit and proper person to be admitted as an attorney;

(b) he is of or above the age of 21 years; and

(c) either –

(i) he is a Solicitor admitted to practise in other countries and that he remains enrolled as a Solicitor of such Court and is not under any order of suspension in any such courts respectively and has passed practical examinations set by the Law Society.

(ii) he is an attorney in any Division of the Supreme Court of the Republic of South Africa or the Mandated Territory of South-West Africa or in the High Court of Zimbabwe, and that he remains enrolled as an attorney of that Court and is not under any order of suspension in such Court and has passed practical examinations set by the Law Society.

(iii) he has been or is entitled under this Act to be admitted as an advocate of the Courts of Lesotho and has passed the practical examinations referred to in section 43 (4) (a); or

(iv) he has passed the examinations prescribed by the Chief Justice under section 43 (2) (b), and the practical examinations referred to in section 43 (2) (b), and has complied with this Act relating to service under articles and his application for admission and enrolment is made within 2 years

from the date of completion of the articles or within such further period as the High Court may allow in terms of section 19 (3) and thereupon the High Court shall, unless cause to the contrary is shown to its satisfaction admit and enroll that person as an attorney; and

(d) he has an office in Lesotho and that office is manned full-time by an attorney, notary public or conveyancer engaged in full-time practice in Lesotho. The Law Society may however relax this requirement in deserving cases”.

[11] It is evident from these provisions that the qualifications set out in s.8 are mandatory. Thus the court is not given the power to waive the requirement of the minimum age, or of any of the other stipulated requirements, other than as regards sub-section (d). The grant of an express power of waiver in relation to the latter requirement militates, of course, against any contention that it is in some way to be implied in relation to any of the other requirements (*inclusio unius exclusio alterius*). Nor do the other provisions in the Act referred to by the appellant (see paragraph [2] above) confer any such general power on the court to waive the requirements of s.8.

[12] The appellant currently qualifies in respect of none of the requirements. The facts suggest that his current predicament could be addressed either by him

procuring permanent residence status in South Africa and being admitted there, or if that is not practical, by passing the examinations set by the Law Society of Lesotho. His conduct in not availing himself of the opportunity specially created for him by the aforesaid undertaking of the Law Society, and sitting the examinations scheduled for 16 July 2008, is inexplicable. As a result a further year has been lost to him, and instead he has pressed a wholly unmeritorious application to the High Court, and now an appeal to this court.

- [13] The arguments addressed to this court, claiming unfair discrimination and a “*concretization approach*” to statutory interpretation, in which “*the legislative text, the purpose of legislation and the facts of a particulars [sic] case are harmonized to bring the process to a just, purposive and meaningful end within the framework of the purpose of [the] legislation*” are without merit. As indicated, save in limited and specified respects, the provisions of s.8 are mandatory and not discretionary. Their purpose moreover is to protect the public and enhance the legal profession and the quality of its services. These purposes are hardly served by the vague

interpretative approach urged by the appellant, in conflict with first principle and clear authority.

[14] It appears that the costs order granted by the High Court was made per incuriam, as the Law Society sought no such order. On appeal before us, this was readily acknowledged by the Law Society. The Law Society also did not seek a costs order on appeal.

[15] There is one last aspect with which it is unfortunately necessary to deal. This is the delay by the court a quo in making its ruling, and then doing so by making a bare order, with the judgment itself yet further delayed.

[16] Over three years ago, in OTUBANJO v DIRECTOR OF IMMIGRATION LAC (2005 – 2006) 336, we said that in that matter “*the conduct of Monpathi J in making a naked order more than two years after he heard argument on the matter cannot be justified*” (343 H). Now that conduct is repeated. Again there is no explanation in the judgment for the delay. We reiterate what we said then (at 343 H – 346 C) regarding the prejudice to litigants, and the disrepute into which unexplained delays in delivering

judgment bring the judiciary. We again refer this judgment to the attention of the Chief Justice.

[17] The following order is accordingly made:

“The appeal is dismissed, save that the words ‘with costs to Respondent’ are deleted from the order of the court a quo. The Registrar is directed to provide a copy of this judgment to the Chief Justice”.

J.J. GAUNTLETT
Judge of Appeal

I agree.

F.H. GROSSKOPF
Judge of Appeal

I agree.

J.W. SMALBERGER
Judge of Appeal

Appellant in person

For Respondent : Adv. T.J. Mokoko