REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 14/33278

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

....
DATE SIGNATURE

In the matter between:

THE PRETORIA SOCIETY OF ADVOCATES Applicant

And

MOKHELE JOUBERT SALEMANE First Respondent

THE SOCIETY OF ADVOCATES
WITWATERSRAND LOCAL DIVISION Second Respondent

SUMMARY

Advocate – admission – academic requirements in terms of s 3 of the Admission of Advocates Act 74 of 1964 ("*the Advocates Admission Act*") – the first respondent having a B.Proc degree for which he studied for a period of 5 years at university – successfully applying for admission as an advocate – first respondent, contending that he was properly qualified as envisaged in s 3(2)(a)(i)(aa) or 3(2)(i)(bb) of the Advocates Admission Act – application for

admission as an advocate not opposed by Advocates' Societies due to administrative oversight – subsequent application by Society of Advocates based on Uniform Rule 42(1)(a) on grounds that order was erroneously sought and erroneously obtained by first respondent due to first respondent not being in possession of requisite LLB degree and therefore not qualified to have been admitted as advocate of High Court – first respondent's interpretation of provisions of sec 3 of the Advocates Admission Act flawed and untenable – order purportedly admitting first respondent as advocate reviewed and set aside – court *a quo* not having been appraised fully of first respondent's academic qualification – applicant not obliged to show good cause – declaratory order not appropriate.

J U D G M E N T

MOSHIDI, J:

INTRODUCTION

[1] This matter essentially concerns the issue of the proper and requisite academic qualification for admission as an advocate.

[2] Mr Joubert Mokhele Salemane ("*the first respondent*") applied to this local division for admission as an advocate. On 13 April 2011, he was duly admitted as such by Willis J (as he then was), with Kolbe AJ concurring.

THE RELIEF SOUGHT

[3] In the notice of motion, the Pretoria Society of Advocates ("*the applicant*"), seeks relief in the following terms:

> "*1. That the order of Willis J and Kolbe AJ in case no. 2011/02593, dated 13 April 2011, be rescinded and set aside;*
>
> *2. That the first respondent be ordered to pay the costs of this application on the scale as between attorney and own client;*
>
> *3. That such further or alternative relief be granted to the applicant as the Honourable Court should deem fit and proper.*"

The Society of Advocates, Witwatersrand Local Division, is cited as the second respondent.

THE BACKGROUND

[4] The background to the matter may be described as follows: the first respondent's application for admission as an advocate of the High Court was dated 21 November 2010. The application was duly served on both the present applicant and the second respondent on 17 February 2011.

[5] In the founding affidavit, Mr J G Bergenthuin SC, the chairman of the applicant, explained the usual procedure adopted or which ought to have been adopted, by the applicant's offices, upon receipt of applications of this nature. This was that the application is promptly given to one of two honorary secretaries of the Bar Council in order to peruse, investigate and report back

to the administrative clerk. In this matter, the honorary secretary concerned made a note on the application to the following effect:

> "*We refer to the above matter set down for the 12 April 2011, the applicant has not attached a LLB Certificate to his application. Kindly file a supplementary affidavit enclosing an LLB degree.*" (*sic*)

The procedure further required that the administrative clerk to communicate with both the first respondent and the registrar, recording any concerns about the application. The registrar would cause any objections or reservations to be placed on the court file and drawing the applicant's concerns to the first respondent and as well as to the court's attention. However, the latter part of the usual procedure was not followed strictly in the present matter, as seen below.

[6] From the founding papers it appeared that there was a misunderstanding and surely, a miscommunication between the administrative secretaries of the applicant and the second respondent, even though they were aware of the blatant shortcoming in the first respondent's application for admission. In my view, not much significance ought to be placed on such misunderstanding since it could not be of any advantage to the first respondent's case, on the merits of this matter, in the end.

[7] It is common cause that pursuant to the order purportedly admitting the first respondent as an advocate, and on 2 July 2012, he applied for pupilage to the applicant for the year 2013. It is also common cause that in both his application for admission, and the application for pupilage, the first respondent

stated his academic qualification to be Baccalaureus Procurationis ("*B.Proc*"), obtained at the University of Durban-Westville (KwaZulu-Natal) in 1994. Based on the fact that in the application for pupilage, the first respondent attached the court order admitting him as an advocate, it appeared that the full extent of the deficiency in his application was still not realised. As a consequence, he was admitted as a pupil member of the applicant on 28 November 2012. This was unfortunate in the extreme. The long and short of all this unfortunate incident and administrative oversight on the part of the advocates' societies was that the applicant, on 10 September 2013, resolved, "*that the Professional and Ethics Committee be instructed to apply for a rescission order in the South Gauteng High Court for Salemane's admission as an advocate*". This led to the present application in which the applicant contended that '*the first respondent was not duly qualified to be admitted as an advocate of this Honourable Court and that the order was therefore erroneously sought and erroneously granted*'. This, in the absence of the applicant, and on the basis that the first respondent had not complied with the peremptory requirement for admission as an advocate, i.e. being in possession of an LLB degree. The applicant stated that it did not oppose the first respondent's application for admission as an advocate, because it reasonably believed that the application would be opposed by the second respondent instead, which did not happen.

THE FIRST RESPONDENT'S OPPOSING PAPERS

[8] The first respondent, in what I conceive as a rather surprising and quite uncharacteristic move, filed opposing papers. He denied that the order purporting to admit him as an advocate was sought and granted erroneously. He also denied that he did not possess a Bachelor of Laws ("*LLB degree*"). He contended, and which was common cause anyway, that in January 1990, he enrolled for the B.Proc degree at the University of Durban-Westville, as a full-time student. He completed his studies in 1994. The B.Proc degree was conferred upon him during May 1995. The first respondent further contended that the period of study mentioned above, i.e. January 1990 to December 1994, covered at least 5 years of study, and that his B.Proc degree is equivalent to the LLB degree. Based thereon, so the contention continued, the first respondent was duly qualified to be admitted as an advocate, as envisaged in sec 3(2)(b) of the Advocates Admission Act, and that consequently, the impugned order was correctly granted on 13 April 2011. In further advancing his argument, that he had duly '*complied with the peremptory requirements as advocate*', the first respondent attached to his answering papers, a certificate of good character, annexure "B", issued by the Faculty of Law, University of Durban-Westville, KwaZulu-Natal, ("*the certificate of good character*") on 12 July 2011. I shall deal in more detail with the certificate of good character later in the judgment. At the hearing of the matter before us, the first respondent, who appeared in person, repeated fundamentally the submissions contained in the answering papers.

THE SUBMISSIONS OF THE SECOND RESPONDENT

[9] In its answering papers, the second respondent, through its chairman, Mr P F Louw SC, did not oppose the application as such. However, the second respondent expressed the view that the first respondent should never have been enrolled as an advocate since he lacks the prescribed academic qualification. The second respondent also dealt with other issues, such as how the administrative oversight occurred leading to the admission of the first respondent.

THE LEGAL REQUIREMENTS

[10] Section 3 of the Admission of Advocates Act 74 of 1964 ("*the Advocates Admission Act*") deals with the admission of persons to practise as advocates. Subsection (2) of this section, in particular, provides as follows:

> "*(2) The following persons shall for the purposes of paragraph (b) of subsection (1) be deemed to be duly qualified, namely:*
>
> *(a) Any person who –*
>
> *(i) (aa) has satisfied all the requirements for the degree of baccalareus legum of any university in the Republic after completing a period of study of not less than four years for that degree; or*
>
> *[Item (aa) substituted by s. 1 of Act No. 78 of 1997.]*
>
> *(bb) after he or she has satisfied all the requirements for the degree of bachelor other than the degree of baccalaureus legum, of any university in the Republic or after he or she has been admitted to the status of any such degree by any such university, has satisfied all the requirements for the*

degree of baccalaureus legum of any such university after completing a period of study for such degrees of not less than five years in the aggregate; or

(ii) has satisfied all the requirements for a degree or degrees of a university in a country which has been designated by the Minister, after consultation with the General Council of the Bar of South Africa, by notice in the Gazette, and in respect of which a university in the Republic with a faculty of law has certified that the syllabus and standard of instruction are equal or superior to those required for the degree of baccalareus legum of a university in the Republic;

[Para. (a) amended by s. 1 of Act No. 73 of 1965, substituted by s. 1 of Act No. 39 of 1977, amended by s. 1 of Act No. 17 of 1987 and substituted by s. 2 of Act No. 106 of 1991, by s. 2(a) of Act No. 55 of 1994 and by s. 1 of Act No. 33 of 1995.]

(b) any person who before the commencement of this Act passed any examination or satisfied all the requirements for any degree which in terms of any law repealed by section thirteen would immediately before such commencement have entitled him to be admitted to practise as an advocate of any division on compliance with any other requirement of the said law with regard to matters other than such examination or degree;

(c) any person who –

(i) at the commencement of this Act was registered as a student at a university referred to in section one of the Admission of Advocates Act, 1921 (Act No. 19 of 1921), and was engaged in a course of study with a view to obtaining a certificate, diploma or degree referred to in the said section; and

(ii) has satisfied all the requirements for the said certificate, diploma or degree and has on or before the thirty-first day of December, 1974, passed the examination in Roman-Dutch law and the statute law of the Republic referred to in section two of the said Act or is in terms of the said section not required to pass the examination in both or either of the said subjects;

(d) any person who –

(i) at the commencement of this Act was registered as a student at any university or university college

in the Republic for the degree of baccalaureus legum; and

(ii) has satisfied all the requirements for the said degree;

(e) any person who –

(i) at the commencement of this Act was registered as a student at any university or university college in the Republic for a degree in any faculty and was engaged in a course of study for such degree, the successful completion of which would in accordance with the regulations of such university or university college then in force, entitle him to be exempted from a portion of the examination for the degree of baccalaureus legum; and

(ii) has satisfied all the requirements for the said degree and the said degree of baccalaureus legum." (underlining added)

Section 3(4) of the Advocates Admission Act provides that any person admitted and authorised to practise and to be enrolled as an advocate in terms of subsection (1), shall be enrolled as an advocate on the roll of advocates. The Advocates Admission Act defines "*advocate*" to mean an advocate of the Supreme Court.[1] The Concise Oxford Dictionary defines '*advocate*', *inter alia,* as "*a person who pleads a case on someone else's behalf*".[2]

[11] By way of some historical case law: in *Jasat v Incorporated Law Society Natal*,[3] the Court was concerned with the applicant's qualification for admission as an advocate since the applicant alleged that he fell within the

[1] See sec 1 of the Advocates Act.
[2] 10ed.
[3] 1969 (1) SA 437 (N).

terms of paragraph 4 of the First Schedule to the Attorneys Admission Act 23 of 1934. The applicant also alleged that in terms of sec 3(2)(b) of the Advocates Admission Act, he was duly qualified to be admitted as an advocate of the Court, based on his admission and enrolment as a barrister-at-law in England at the time of the commencement of the Advocates Admission Act. At p 439 of the judgment, the Court said that:

> "*… The essential pre-requisite of due qualification in terms of sec 3(2)(b) is that specified examinations must have been passed or the requirements for specified degrees satisfied. The examinations or degrees in question are specified by reference to the laws repealed by sec 13. It is clear, therefore, that one who seeks admission as an advocate in terms of sec 3(2)(b) must necessarily satisfy the Court that he has passed any of the indicated examinations or satisfied the requirements for any of the specified degrees.*"

See also *Ex Parte Feetham,*[4] where the Court dealt with an application for admission as an advocate in circumstances where, although the applicant had attained the LLB degree, such degree had not yet been officially conferred upon him. In granting the application, and furnishing reasons therefor, the Court said that the intention of the Legislature, was that the relevant qualification should be the applicant's passing of the LLB examination, and not the extraneous act of the university in conferring the degree.

The matter of *Jasat* went on appeal. In dismissing the appeal, and in an unanimous decision, the Court said:

[4] 1954 (2) SA 468 (N).

> "*… Appellant has failed to show that he is 'duly qualified' to be admitted as an advocate by virtue of the plain and unambiguous meaning of the provisions of sec 3(2)(b) of the Act read with the provisions of Rule 36(d). Counsels' concluding submission, based on the contention that sec 3(2)(b) is ambiguous, does not therefore arise for consideration.*"[5]

(*Cf Ex Parte Haddad,*[6] and *In Re Rome*,[7] which dealt with the requirements of sec 3 of the Advocates Admission Act in the context of foreign qualifications, and Lawsa.[8] Similarly, the application in *Nxumalo v Northern Cape Society of Advocates*,[9] although in the context also of foreign qualifications, concerned the requirements for admission as an advocate in terms of the Advocates Admission Act. In dismissing the application, Kgomo J (as he then was), and at p 504 of the judgment, said:

> "*… That the foreign legal qualification for admission as an advocate must not be inferior to the legal qualifications prescribed by the Act. This aspect is not difficult to comprehend. Not even for applicant under whose signature his title is reflected as: 'Legal Advisor, Northern Cape Legislature'. Section 2(1) of the Act makes the injunction that 'no person shall be admitted to practice as an advocate save in accordance with the provisions of this Act. Section 3(1)(b) also provides that an applicant must be "duly qualified". A South African law faculty can partly provide or answer to this requirement. The possession of the appropriate qualifications is a matter of substance without which an application for admission cannot succeed. See University of Cape Town v Cape Bar Council 1986 (4) SA 903 (A); Tyatya v University of Bophuthatswana 1994 (2) SA 375 (B).*"

The matter of *University of Cape Town v Cape Bar Council and Another, supra*, concerned the language requirements as set out in sec 3(2)(a)(i) and (ii) of the Advocates Admission Act. There, it was held, *inter alia*, that:

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[5] See 1970 (1) SA 221 (A) at 227H.
[6] 1954 (2) SA 568 (T).
[7] 1991 (3) SA 291 (A).
[8] 2ed, Vol 14, Part 2, para 117.
[9] [2001] 3 All SA 498 (NC).

> "*The words of s 3(2), clear and unambiguous as they appear to be on the face thereof, had to be read in the light of the subject-matter with which they were concerned, viz the requirements for the LLB degree which had to be obtained by anyone who wished to be admitted to practise as an advocate and that it was logical and reasonable that, when the Legislature prescribed that the curriculum for that degree should contain the language courses mentioned in s 3(2), it intended that those courses should be true university courses, i.e. post-matriculation courses.*"

See too, *Hayes v The Bar Council,*[10] in which, although the applicant had attained the requisite LLB degree for admission as an advocate, his application was declined. There, the Court emphasised that the *onus* was on the applicant to establish that he was a fit and proper person to be admitted as an advocate; that the test is an objective, and factual one; that the court had a duty to ensure that suitors before courts were not exposed to improper officers of the courts; and generally, what was required of an applicant applying for admission as an advocate.[11]

[12] From all the above case law, it is readily plain that the LLB degree has always been the minimum academic qualification required for admission as an advocate. (See Annual Survey, (1964) p 454.) The Qualification of Legal Practitioners Amendment Act,[12] amended, *inter alia*, the Admission of Advocates Act and the Attorneys Act,[13] in order to provide for the requirement of a universal legal qualification in order to be admitted and enrolled to practise as an advocate or an attorney. In essence, and for present purposes, the Qualification of Legal Practitioners Amendment Act introduced the four-year undergraduate LLB degree, and phasing out of the B.Juris and

[10] 1981 (3) SA 1070 (ZA).
[11] See pp 1084 to 1085 of the judgment.
[12] 78 of 1997.
[13] 53 of 1979.

B.Proc degrees. Currently, the now controversial four-year undergraduate LLB is the minimum requirement for most occupations, including the advocacy profession. I make reference to the four-year LLB degree simply to demonstrate, as seen later, that the first respondent does not possess such academic qualification, as well.

[13] The legal principles set out above, when properly applied to the facts of the instant matter, demonstrate readily that the first respondent's interpretation and understanding of the applicable legal provisions, in particular, sec 3(2)(a), were completely misplaced. In his heads of argument, the first respondent contended that he is properly qualified since he '*has satisfied all the requirements for the degree of baccalaureus legum of any university … after completing a period of study of not less than four years for that degree*', or that he '*has satisfied all the requirements for the degree of baccalaureus* other than the degree of *baccalaureus legum of any university … after he has been admitted to the status of any such degree by any university, has satisfied all the requirements for the degree of baccalaureus legum of any such university after completing a period of study for such degrees of not less than five years in aggregate*' (underlining added).

[14] In short, the first respondent claimed that because he attained the B.Proc degree which he completed over a period of five years (i.e. from 1990 to 1994), and/or that he studied for four years and satisfied all the requirements of the LLB degree, and/or that he satisfied all the requirements of the LLB degree after completing a period of study of not less than five

years, he was entitled to be admitted as an advocate. In essence, the first respondent is equating his B.Proc degree to the LLB degree.

[15] The first respondent's assertions set out above, were both misconceived or untenable, for a number of obvious reasons. The starting point, and rather interesting too, is the observation that, in both his application for admission as an advocate and in his answering papers in the present application, the first respondent omitted to attach either his B.Proc degree certificate or copies thereof. The statement of results he attached instead, as well as the certificate of good character referred to in para [8] of the judgment, do not serve as adequate proof at all. In closing argument, the first respondent confirmed that the latter certificate was obtained by him after his purported admission as an advocate by this High Court.

[16] In any event, even if it were to be accepted in his favour that he possesses the B.Proc degree, it is common cause that the first respondent does not in fact possess an LLB degree. In these circumstances, and having in mind the requisite academic qualifications outlined in the above case law, it can hardly be contended that the first respondent has satisfied the requirements for a four-year *baccalaureus legum* degree or has satisfied the requirements of a bachelor's degree other than a *baccalaureus legum* degree after completing a period of study for such degrees of not less than five years in aggregate. Neither can it be argued that the first respondent attained the four-year LLB degree as envisaged in the Qualification of Legal Practitioners Amendment Act. It appears to me that the provisions of sec 3(2)(a)(i)(aa) and

2(a)(i)(bb) of the Advocates Admission Act should be read together and not, disjunctively. The rest of the provisions of sec 3(2) and sec 2(3) are not relevant for present purposes.

[17] The first respondent's interpretation that a five-year study towards a B.Proc degree, if any, was equivalent to an LLB degree cannot be sustained. It could never have been the intention of the Legislature in the provisions of sec 3(2) of the Advocates Admission Act to equate a B.Proc degree to an LLB degree. This would lead to absurdity. The words used in sec 3(2) above, must be given their plain, ordinary, literal and grammatical meaning as was enunciated in, *inter alia*, *Randburg Town Council v Kerksay Investments (Pty) Ltd*,[14] and *Nyembezi v Law Society, Natal.*[15]

[18] The provisions of sec 3(2) of the Advocates Admission Act make it readily clear that the academic requirement for admission as an advocate is the LLB degree. Indeed, Prof A Boraine, the Dean of the Faculty of Law at the Pretoria University, who has filed a supporting affidavit in favour of the applicant ("*Boraine*"), supported this view. Boraine stated that, pursuant to the abolishment of the B.Proc degree by all universities, a B.Proc graduate who wishes to complete the four-year LLB degree at the University of Pretoria must be registered for an additional two years of study and also do certain modules as attached to his affidavit, as annexure "AB2". In addition, the current four-year LLB degree as offered by the University of Pretoria, differs from the former B.Proc degree, *inter alia*, in that, the four-year LLB degree

[14] 1998 (1) SA 98 (SCA) at 107A-C.
[15] 1981 (2) SA 752 (A) at 757B-E.

requires a dissertation which was not prescribed for the former B.Proc degree; apart from the core subjects, students in their final year are required to do three law subjects as electives for the LLB degree; and that the LLB *curriculum* requires a course in research. Boraine concluded that as far as the present matter is concerned, the first respondent has not obtained the requisite academic qualification as prescribed by the Advocates Admission Act entitling him to be admitted as an advocate of this Court. The first respondent's criticism of Boraine's opinion, including that Boraine does not possess '*all the specific professional attributes*', is '*irrelevant and inadmissible*', had no merit at all, to say the least.

CONCLUSION

[19] From the above exposition of the facts, especially the common cause ones, I conclude that the first respondent ought never have applied for admission as an advocate in the first instance. It is readily ascertainable that, had the court *a quo* been appraised fully of the factual position, and had either the applicant or the second respondent opposed the application for admission timeously, the order purporting to admit the first respondent as an advocate of this High Court would never have been granted. In my view, the administrative oversight, to the extent attributable to the applicant and the second respondent ought not now, in retrospect, advantage the first respondent unduly, even though his hopes may have been raised falsely. The first respondent himself, as a prospective '*officer of the court*', at least in his mistaken belief, had the responsibility and obligation to place the correct

factual circumstances of his academic qualification before the court *a quo*. His insistence right up to, and during the hearing of this application for rescission, that he has the requisite academic qualification, and that he was properly admitted, remains puzzling and worrisome. The same applies to the submission in his heads of argument that "*the first respondent further wish to submit that, is currently completing a degree masters in law (research), with modules, research methodology and full dissertation at the University of South Africa, and said degree was enrolled over a period of two years*" (*sic*).

THE APPROPRIATE RELIEF

[20] Based on the above finding, the only issue is what would be the appropriate relief in the circumstances of this matter. The applicant in the notice of motion seeks the rescission and setting aside of the order admitting the first respondent as an advocate on the basis that it was erroneously sought and erroneously granted. The second respondent, although supporting the application, was however concerned that the ambit of Rule 42(1) is not wide enough to accommodate the rescission of the initial order. As an alternative, the second respondent proposed that a declaratory order should be issued - with effect from the date of the order sought to be rescinded - that the first respondent is not duly qualified to be enrolled as an advocate.

[21] The first respondent argued against the granting of a declaratory order on three grounds. These are that the Court may in its discretion decline to

grant such order if the question raised before it is hypothetical, abstract and academic. The other ground was that a declaratory order should not be granted on motion where there is a real and *bona fide* dispute of fact. The final ground was that the Court will not grant a declaratory order where the legal position has been clearly defined by Statute. For the latter ground, the first respondent relied on *Ex parte Noriskin*.[16] In the second ground, the first respondent relied on *Hattingh v Ngake*.[17] The contentions of the first respondent were difficult to comprehend. There is no dispute of fact on the critical issue in this matter that he does not possess an LLB degree, and the provisions of sec 3(2) of the Advocates Admission Act, as interpreted above, are unambiguous and clear.

[22] The final view I take in this matter may be summarised as follows: a declaratory order is not appropriate in the circumstances of this case. This is so since the provisions of Rule 42(1) are sufficient to grant the order sought by the applicant; the prerequisite provisions relating to the academic qualification for admission as an advocate are clear and plain; the first respondent does not have an LLB degree; his interpretation of the applicable provisions is untenable; the Court has no room for exercising its discretion in favour of the first respondent; and there is no dispute of fact. In short, the order he sought for admission was erroneously sought and erroneously granted.

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[16] 1962 (1) SA 856 (D).
[17] 1966 (1) SA 64 (O).

THE RELIEF UNDER RULE 42(1)(a)

[23] The Rule provides as follows:

> "*(1) The court may, in addition to any other powers it may have, mero motu or upon the application of any party affected, rescind or vary:*
>
> *(a) An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;*"

[24] It is by now settled that the applicant, in order to succeed in obtaining an order under subrule 42(1)(a) of the Uniform Rules, must show that the prior order was '*erroneously sought or erroneously granted*'.[18] Once the Court has established that an order was indeed erroneously sought and erroneously granted, it is called upon, without any further enquiry, to rescind or vary the order. See *Tshabalala and Another v Peer.*[19] It is also not necessary for the applicant in such instance to show good cause for the provisions of the subrule to apply. See in this regard, *Topol and Others v LS Group Management Services (Pty) Ltd*.[20] The same approach entails where the judge in granting the impugned order was not aware of certain facts. For example, in *Nyingwa v Moolman NO*,[21] the Court said:

> "*It therefore seems that a judgment has been erroneously granted if there existed at the time of its issue a fact of which the Judge was*

[18] See Uniform Rule 42(1)(a) or Uniform Rule 31(2)(b) or the common law.
[19] 1979 (4) SA 22 (T) at 30D.
[20] 1988 (1) SA 639 (W) at 650D-J.
[21] At 510F-G.

> *unaware, which would have precluded the granting of the judgment and which would have induced the Judge, if he had been aware of it, not to grant the judgment*." (underlining added)

See also *Promedia Drukkers and Uitgewers (Edms) Bpk v Kaimowitz and Others*,[22] where the same principle was emphasised, and the *dictum* in *Tshivhase Royal Council v Tshivhase; Tshivhase v Tshivhase*[23] at 862H to 863A, was applied.

[25] From the facts of this matter, it is more than plain that had the two Judges who granted the first respondent's admission application been aware of the fact that the first respondent does not possess the LLB degree, they would not have granted the order. I venture to suggest that the first respondent, on his part, as a potential '*officer of the court*', was obliged to place the true facts before the court *a quo*, and not take advantage of the administrative inadvertence of the Bar Council Societies. It is trite that in applications for admission, whether as advocate or attorney, the relevant professional body would intervene invariably if the application is defective and non-compliant with statutory provisions. In any event, the courts have the inherent power to protect and regulate their own process in the interests of justice, as enshrined in sec 173 of the Constitution.[24] In my view, this is such a case where this Court ought to protect, not only professional interest, but also public interest, by not allowing the impugned order to remain extant. "*The High Courts exercise ultimate control over the standards of professional conduct of members of both branches, however. This enables the courts to*

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[22] 1996 (4) SA 411 at 416J to 417.
[23] 1992 (4) SA 582 (A).
[24] The Constitution of the Republic of SA, 1996, at 108 of 1996.

exclude those whom if they regard as lacking integrity and/or the proper respect for the law expected from someone who is regarded as an officer of the court and whose duties to the administration of justice may override his own interests and those of his clients." (See Wille's *Principles of South African Law*.)[25] See also *Aarons v Law Society of Transvaal.*[26] It follows that the applicant has succeeded in making out a case for the relief claimed in the notice of motion. The order relied on by the first respondent must be set aside.

COSTS

[26] I deal with the question of costs. There was no credible reason advanced why the costs should not follow the result which is tritely a discretionary matter. In the notice of motion, the applicant claimed costs on the scale as between attorney and own client. In my view, such a costs order is bordering on excessive punitiveness having in mind the peculiar circumstances of this matter. On the other hand, the first respondent, for some inexplicable reason, persisted throughout in his contention that he was properly admitted as an advocate. This, in the face of the objective evidence to the contrary that he does not possess the requisite academic qualification. In my view, a costs order on the scale as between party and party would be just and equitable in the circumstances of this matter.

[25] 9ed p 137.
[26] 1997 (3) SA 750 (T) at 758F-G.

ORDER

[27] In the result the following order is made:

1. The order of Willis J and Kolbe AJ in case no. 02593/2011 in admitting the first respondent as an advocate of this High Court on 13 April 2011, is hereby rescinded and set aside.

2. The first respondent shall pay the costs of the application.

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D S S MOSHIDI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

I concur:

_____

P A MEYER
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

I concur:

_____

SIKHAKHANE MUZI
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

COUNSEL FOR THE APPLICANT	A T LAMEY
INSTRUCTED BY	BERNHARD VAN DER HOVEN ATTORNEYS
COUNSEL FOR THE FIRST RESPONDENT	M J SALEMANE
INSTRUCTED BY	MHLOBA AND MOSHONA INC
COUNSEL FOR THE SECOND RESPONDENT	NO APPEARANCE
INSTRUCTED BY	MATHOPO MOSHIMANE MULANGAPHUMA INC
DATE OF HEARING	7 AUGUST 2015
DATE OF JUDGMENT	18 SEPTEMBER 2015