



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO.

(2) OF INTEREST TO OTHER JUDGES: YES / NO.

(3) REVISED.

12/06/14
DATE


SIGNATURE

CASE NO: 47483/2013

12/6/14

In the matter between:

PRETORIA SOCIETY OF ADVOCATES

Applicant

And

NKADIMENG MATTHEW MANAMELA

Respondent

JUDGMENT

TEFFO, J:

- [1] The applicant brought an urgent application for an order that the respondent be interdicted from practising as an advocate of this court

pending the hearing of the application for an order that the name of the respondent be struck from the roll of advocates.

- [2] My brother Bertelsmann J granted the urgent application on 16 August 2013 and the respondent was interdicted from practising as an advocate of this court.
- [3] The applicant also sought an order that the application be referred to the Director of Public Prosecutions ("DPP") for investigation.
- [4] The basis of the application is that the respondent never obtained the LL.B degree required for admission as an advocate.
- [5] Both applications were opposed.
- [6] After the granting of the urgent application in terms whereof the respondent was interdicted from practising as an advocate, the respondent brought an application whereby he sought an order that the urgent application granted by my brother Bertelsmann J on 16 August 2013 interdicting him to practise as an advocate, be reviewed and discharged forthwith.
- [7] The review application was also opposed.
- [8] The review application by the respondent together with the application for the striking off of the name of the respondent from the roll of advocates were heard together.

[9] Prior to the hearing of the two applications referred to *supra* in para 8, the review application was brought on an urgent basis but was struck from the roll with costs due to lack of urgency.

[10] For the sake of convenience I will refer to the application by the applicant as the main application and the review application as an interlocutory application. The application for interdicting the respondent from practising as an advocate will be referred to as portion A of the main application and the application for the striking off of the respondent's name from the roll of advocates will be referred to as portion B of the main application.

Background facts that led to the main application

[11] On 26 October 2009 the respondent brought an application in this court under case number 65590/2009 for his admission to practise as an advocate of the High Court of South Africa.

[12] On 29 January 2010 the applicant brought an application to intervene in the application for the admission of the respondent to practise as an advocate of the High Court of South Africa. Leave to intervene as a party in the application was granted and the application was as a result thereof postponed *sine die* and costs were reserved.

[13] While the application for the respondent's admission to practise as an advocate was still pending in this court, the respondent brought another application for his admission to practise as an advocate under case number 1604/2010 in the Bophuthatswana Provincial Division of the High Court of South Africa (North West High Court).

- [14] In that application the respondent never disclosed the fact that there was a pending similar application in this court.
- [15] In his application for admission to practise as an advocate which came before the High Court in North West, the respondent stated in his founding affidavit in support for his application that the degree of Bachelor of Laws (LL.B) was conferred upon him on 11 April 1999 after he had satisfied all the requirements for the said degree at the University of South Africa (UNISA). He alleged that he had attached a copy of the degree certificate to the application and indicated that the original certified copy will be presented to the court at the hearing of the application. He further stated that he had pursued courses of study for the said degree for a period of four (4) years after he had successfully completed the degrees of Bachelor of Arts (1985), Bachelor of Education (1989), Master of Education (1999) and Doctorate of Education in Philosophy of Education (1993), at the same university (UNISA).
- [16] The applicant alleged in its papers that the respondent has never submitted and/or made available the alleged LL.B degree certificate to this court and/or the North West High Court.
- [17] It was also alleged that the application for the respondent's admission as an advocate that was brought in the North West High Court was never served upon the applicant.
- [18] In his answering affidavit the respondent reiterated that he had completed all the requirements towards an LL.B degree in terms of which he was

entitled to be admitted and enrolled as an advocate of the High Court of South Africa.

- [19] The respondent is a member of the Church Square Association of Advocates.

Averments made in respect of the interlocutory application

- [20] The respondent anticipated the return date for the *rule nisi* with a view to persuade the court for an order discharging the interdict that was granted by Bertelsmann J on 16 August 2013.
- [21] The basis of the application was that Bertelsmann J wrongly found that he did not have an LL.B degree and that since the statements regarding the issuing of the degree were not supported by his academic record, he had failed to prove his credentials and consequently he is not a fit and proper person to practise as an advocate.
- [22] He stated in his founding affidavit that on 14 April 1999, a degree of Bachelor of Laws was conferred upon him by UNISA at a properly constituted congregation of UNISA. He then attached a statement regarding the issuing of a degree certificate and his academic record.
- [23] The issues for determination are whether the respondent did obtain an LL.B degree, and what are the consequences if he lied under oath.
- [24] In terms of section 7(1) of the Admission of Advocates Act 74 of 1964 ("the Act"), as amended, the court may suspend any person from practice, or order that the name of any person be struck off the roll, if it is satisfied

that he is not a fit and proper person to continue to practise as an advocate.

[25] There are three steps in the enquiry whether such an action should be taken. First, the court must decide whether the alleged offending conduct has been established on a preponderance of probabilities. Second, it must consider whether the person concerned in its discretion is not a fit and proper person to continue to practise. This involves a weighing up of the conduct complained of against the conduct expected of an attorney (advocate) and, to this extent, is a value judgment. Third, the court must inquire whether in all the circumstances the person in question is to be removed from the roll of attorneys (advocates) or whether an order of suspension from practice would suffice. (*Malan and another v The Law Society, Northern Provinces* [2009] 1 All SA 133 (SCA); *General Council of the Bar of South Africa v Geach and others* 2013 (2) SA 52 (SCA); *Pillay and other related matters v Pretoria Society of Advocates and Another*; *Bezuidenhout v Pretoria Society of Advocates* [2013] 1 All SA 393 (SCA); *Kekana v Society of Advocates of SA* [1998] 3 All SA 577 (SCA); *Jasat v Natal Law Society* 2000 3 SA 44 (SCA)).

[26] In the *Kekana* matter referred to *supra* the appellant was removed from the roll of advocates due to allegations of serious misconduct and dishonesty. The appellant's colleague who was involved in the same incident giving rise to the removal, was suspended from practice for a short period. The court *a quo* rejected the appellant's evidence as untruthful and found that he was not a fit and proper person to continue practising as an advocate. Leave to appeal against the order was granted, but the appellant failed to observe the procedural steps in respect of time limits and had taken no steps to prosecute the appeal. Due to this failure

the appeal was deemed to have been withdrawn in terms of rule 5(4) *bis* (b) of the Uniform Rules of the Supreme Court. In a petition for the reinstatement of the appeal, the appellant did not contest the court *a quo*'s factual findings or the finding that he was not a fit and proper person to continue to practise as an advocate. He argued that the court *a quo* over-emphasised the importance of his perjured evidence and had failed to maintain reasonable parity in its treatment of the offenders whose misconduct did not differ materially. The court held that the appellant's perjury which the court *a quo* rightly took into account was an aggravating feature of the case and which tipped the scale in the decision to strike his name from the roll. The petition was dismissed with costs.

[27] Hefer J made the following remarks in the *Kekana* matter referred to *supra*:

"An advocate should not be allowed to continue practising once he has revealed himself as a person who is prepared to lie under oath. It is a profession which has strict ethical rules aimed at preventing their members from becoming parties to the deception of the court. The preservation of a high standard of professional ethics is left almost entirely in the hands of individual practitioners. Absolute personal integrity and scrupulous honesty are demanded of each of them and a practitioner who lacks these qualities cannot be expected to play his part."

[28] In the *Jasat* matter where the court *a quo* held that the appellant's conduct in advancing a specious alibi defence, knowingly giving false evidence in support of it and calling a witness to support his false evidence, had demonstrated that he was not a fit and proper person to continue to

practise as an attorney and that he should be struck off the roll, the Supreme Court of Appeal (SCA) held that the profession of an attorney was an honourable one and as such demanded complete honesty, reliability and integrity from its members. It further held that but that did not mean that any untruthfulness, however trifling, would render an attorney unfit to practise and liable to be struck off the roll. Scott JA said:

"The appellant's conduct was distinguishable from the sudden impetuous telling of a lie. His conduct constituted a protracted attempt to deceive the courts. He had not only himself committed perjury, but he had suborned another to do so in order to lend credence to his own false evidence. The conduct of the appellant, seen in its totality, was such that there could be no doubt that it demonstrated him not to be a fit and proper person to continue to practise as an attorney."

- [29] In the founding affidavit of Salie Joubert, the applicant relied on the averments made by Gerhardt Otto Waldeck, Manager Student Disciplinary Matters, Office of the Registrar of the University of South Africa (UNISA) and a special representative of senate and Pro-Forma Prosecutor of the University of South Africa (UNISA) wherein he stated under oath that he conducted a search on the respondent and confirmed that no degree has been conferred by UNISA upon the respondent. Waldeck also confirmed that no Bachelor of Law degree or any degree has been conferred upon the respondent. It was also pointed out that 11 April 1999 being the date on which the respondent alleged that the LL.B degree was purportedly conferred upon him, was a Sunday and that no congregation was constituted by UNISA for purposes of conferring degrees upon successful candidates on 11 April 1999 or on Sundays. He

also pointed out that no credit whatsoever was ever obtained by the respondent and no examination was successfully completed by the respondent at UNISA.

[30] In a later affidavit attached to the applicant's opposing affidavit to the respondent's interlocutory application, Waldeck corrected the error in the allegation earlier made that no degree was conferred upon the respondent by stating that the respondent did obtain various degrees in education from UNISA but UNISA never conferred an LL.B degree upon the respondent.

[31] The following was stated in Waldeck's second affidavit:

"3. *I confirm having consulted with Andreas Bernhadus Theron van der Hoven on Monday, 26 August 2013 regarding the status of degrees conferred upon Nkadimeng Matthew Manamela by UNISA. I confirm that Van der Hoven was misunderstood by me in that my affidavit dated 26 June 2013 wrongly indicated that no degree was ever conferred upon Manamela by UNISA.*

4. *Nkadimeng Matthew Manamela was indeed conferred the degrees of Bachelor of Arts, Higher Education Diploma, Bachelor of Education, Master of Education and Doctorate of Education by UNISA. However, no Bachelor of Laws degree or the LL.B degree was ever conferred upon the aforesaid Manamela by UNISA. For purposes of the above, I confirm the following with reference to the annexures to the opposing affidavit of Salie Joubert:*

4.1 *The applicant indeed registered for the LL.B degree for the 1997 academic year as appears from annexures A1 and A2. I point out that the applicant's student number namely 323-112-7 appears on the aforestated document for purposes of registration for the LL.B degree under code 0351- 4 which is the LL.B code. For purposes of registration, the applicant had to pay an amount of R1 800,00 and he registered for three courses and 4 papers namely:-*

- *CLW100-S Constitutional law*
- *CRL100-C Criminal law*
- *MCL101-T Mercantile law 1, paper 101*
- *MCL102-U Mercantile law 1, paper 102*
- *PRL101-3 Private law I paper 101*
- *PRL102-4 Private law I paper 102*
- *UVW1001-A Interpretation of statutes*

4.2 *To have been registered as a candidate for the LL.B degree, the applicant had to hold a Bachelor's degree. The LL.B could not be completed under four years (two years in the case of students who had completed a B.Iuris degree, BLC degree or a B.Proc degree). The Curriculum comprised 12 courses for the first two years and 22 papers for the last two years.*

4.6.7 *The applicant was reinstated for all courses and papers on 13 December 1996. In this regard, reference is made to annexures A2 and D which*

is the complete student academic record for the LL.B degree with reference to the applicant. Annexure D clearly indicates that applicant never remotely qualified for the LL.B degree.

4.6.8 On 19 July 1997, the applicant's registration for UVW100-A, CLW100-S and MCL100T both papers were cancelled programmatically due to non-payment of the outstanding study fees which was R204 000,00. All study fees had to be paid in full before 19 July 1997.

4.11 On annexure E1, it can be seen that the applicant was absent from the examination held on 21 October 1997 and therefore received 'A' for his final percentage. 'A' means absent. The applicant submitted one assignment for which he received 60% which gave him 100 credits which allowed him to write the examination for this course.

4.12 On annexure E3, it is indicated that the applicant was also absent from the writing of the paper PRL101-3. He submitted an assignment before 30 June 1997 for which he received 92% and 100 credit marks which allowed the applicant to write examinations for this paper on 16 October 1997. On annexure E, the applicant was also absent from the writing of the paper PRL102-4. The applicant submitted assignment two before 30 June 1997 for which he received 23%

and 100 credit marks which allowed applicant to write the examination for this paper on 27 October 1997.

- 4.13 As annexure F1 and F2, I enclose a personal letter received from the applicant by UNISA dated 21 January 2006 in which the applicant claimed that he had a housebreak and lost all his degree certificates and in which he requested certification of all his completed degrees. In the letter, he mentioned all his completed degrees by name and correct dates of completion. *No mention was made by the applicant himself that he had allegedly completed prior to 2006 a Bachelor of Law degree. On 21 and 22 February 2006, the University of South Africa generated the requested statements and posted the original statements regarding the issuing of the degree certificates to the applicant. No record was found on all the systems of UNISA that the applicant completed the Bachelor of Laws degree (LL.B) and therefore no statement in this regard was generated nor sent to the applicant by UNISA as appears from annexure G."*

- [32] As to the allegations made by the respondent in the interlocutory application that the LL.B degree certified statement was issued to him on 14 April 1999, Waldeck mentioned in his affidavit that UNISA has no record that annexure "D" (statement regarding the issuing of the degree certificate) was generated nor issued by it. He further stated that the respondent was only registered for one year towards the LL.B degree according to annexures A, B, C and D which cannot be completed in less

than four years. He stated that it would not have been possible for the respondent to complete all the outstanding courses and papers in one academic year to be able to obtain the degree on 11 April 1999 or 14 April 1999 as he alleged. Further to the above Waldeck pointed out that on 14 April 1999, UNISA only awarded degrees obtained from the faculty of Economics and Management Sciences, Arts and Sciences. He stated that no degrees from the faculty of law were conferred on 14 April 1999.

- [33] It is clear from Waldeck's affidavit and annexures attached to it that the respondent was not one of the successful candidates upon whom the LL.B degrees were conferred in 1999.
- [34] It is common cause between the parties that the respondent did not file a replying affidavit to his interlocutory application. It is evident from the papers filed of record that after the service of the respondent's interlocutory application on the applicant, the applicant had to verify its facts as alleged in the main application and in response to the respondent's interlocutory application. A proper investigation was done as to whether indeed the respondent had satisfied the requirements of an LL.B degree as he had alleged in his papers.
- [35] In its opposing affidavit by Salie Joubert reference is made to the affidavit of Waldeck which has been discussed *supra* together with the annexures attached to it. Despite all these allegations against him, the respondent chose not to reply to the applicant's opposing affidavit to the interlocutory application. The allegations therefore remain uncontested.

[36] In paras 20-22 *supra* I dealt with averments made by the respondent in respect of interlocutory application. No grounds have been set in respect of the review application. Counsel for the applicant submitted that it is impossible to review and discharge an interim order. He further pointed out that the proper approach that the respondent should have taken was to seek an order for the upliftment of the interim relief and/or for the discharge of the *rule nisi*. I agree with counsel for the applicant's submissions in this regard and it is my view that the interlocutory application by the respondent is bound to fail as it does not have any merit.

Portion B of the main application – application for striking off the name of the respondent from the roll of advocates

[37] The respondent raised a number of issues with regard to the authority of Waldeck to depose to an affidavit whereby he make allegations about UNISA's affairs. He specifically contended that it is not clear as to whether Waldeck deposed to his affidavit in his official capacity as a representative of UNISA or in his personal capacity. Furthermore he contended that it is not clear whether Waldeck was duly authorised to depose to his affidavit by UNISA. This is an application for portion B of the application. Portion A of the application has already been dealt with. Issues raised by the respondent are not new issues. They were obviously entertained by my brother Bertelsmann J when he dealt with portion A of the application.

[38] It is clear from the papers filed of record that the respondent never presented a certified copy of his LL.B degree at court (be it the North West High Court and/or this court).

[39] The respondent alleged in two different affidavits that the LL.B degree was conferred upon him on two different days. Initially in his affidavit opposing the main application he stated that the degree was conferred upon him on 11 April 1999 which happened to be a Sunday. After it was proved to him that 11 April 1999 was a Sunday, in his founding affidavit for interlocutory application, he changed and said the date was wrong as according to the certified statement for the degree, the degree was conferred upon him on 14 April 1999. From Waldeck's affidavit it became evident that no law degrees were conferred upon students on the alleged date. In any event without repeating the contents of Waldeck's affidavit which remain uncontested, it is Waldeck's testimony that the certified statement of an LL.B degree that the respondent alleges was conferred upon him on 14 April 1999 was not issued or generated by UNISA. Furthermore according to Waldeck, his investigation revealed that the respondent was registered for an LL.B degree at UNISA in 1997, he was absent from the examinations for courses he registered for and he never passed any of the courses he was registered for in that academic year. His investigation also revealed that because the respondent did not have a B.Iuris, B.Proc or a BLC degree, he could not have completed the LL.B degree he was registered for in 1997 in less than four years. The documents attached by Waldeck to his affidavit tally with the outcome of his investigation in that there was no way in which the respondent could have completed all the LL.B degree courses in 1999 taking into account that his registration for the LL.B degree was from 1997. It follows therefore that there is merit in the allegation that no LL.B degree was conferred upon the respondent in 1999.

- [40] The fact that the respondent changed his statement with regard to the date as to when the LL.B degree was conferred upon him in the interlocutory application from 11 April 1999 to 14 April 1999, is a clear indication that he lied under oath in his application for admission as an advocate before the North West High Court by alleging that the LL.B degree was conferred upon him on 11 April 1999.
- [41] That allegation was never corrected until the present application. He continued to lie even in the interlocutory application by alleging that the LL.B degree was conferred upon him on 14 April 1999 for the reasons highlighted *supra* in para 39.
- [42] I still cannot find any acceptable explanation as to why the respondent launched an application for his admission as an advocate in the North West High Court while he had initially done the same in this court. Is it because the applicant intervened in the proceedings for his application for admission in this court and because he knew that he did not have an LL.B degree as he alleged, he realised that this fact was going to be picked up because of the intervention by the applicant?
- [43] When he was asked during argument as to why he failed to disclose to the North West High Court that there was a pending similar application in this court, his response was that the application in this court was withdrawn. In his affidavit opposing the main application, he stated that the application was withdrawn. No notice of withdrawal of the application was furnished to the court to prove this allegation. He conceded during argument that he was obliged to disclose the status of the application that he initially brought in this court to the North West High Court taking into account that the application was *ex parte*.

[44] The discrepancies in the dates on which the respondent alleges that the LL.B degree was conferred upon him by UNISA, his failure to furnish the North West High Court with the LL.B degree certificate, although he stated in his application that the original certified copy will be presented to the court during the hearing of the application, suggests that when he applied for his admission he knew that he did not have an LL.B degree but proceeded with his application. This is evident from the fact that he still fails to furnish this court with the LL.B degree certificate. The allegations in the letter he wrote to UNISA in 2006, in which he requested copies of his degree certificates after a housebreaking at his place where the certificates were kept, that no mention of an LL.B degree was made, were never challenged. These allegations are evidence that prior to 2006 the respondent never obtained an LL.B degree from UNISA.

[45] I am therefore satisfied from these facts that the applicant had established the offending conduct of the respondent on a preponderance of probabilities.

[46] I have already ruled in para 40 *supra* that the respondent lied under oath in his application for admission as an advocate before the North West High Court. I find that he also lied before this court in his opposing affidavit to this application and in his founding affidavit for his interlocutory application.

[47] I have referred to numerous case law as to the consequences of lying under oath by a practitioner (attorney/advocate). These professions are honourable professions which have strict ethical rules which are aimed at preventing their members from becoming parties to the deception of the

court. It is expected from members of these professions to display absolute personal integrity and scrupulous honesty (the *Kekana* matter referred to *supra*).

[48] The conduct of the respondent, seen in its totality, is such that there could be no doubt that it demonstrated him not to be a fit and proper person to continue to practise as an advocate.

[49] Section 3 of the Act reads:

"3. Admission of persons to practise as advocates

(1) *Subject to the provisions of any other law, any division shall admit to practice and authorise to be enrolled as an advocate any person who upon application made by him satisfy the court-*

- (a) *that he is over the age of 21 years and that he is a fit and proper person to be so admitted and authorised;*
- (b) *that he is duly qualified;*
- (c) *that he is a South African citizen or that he has been lawfully admitted to the Republic for permanent residence ...*
- (d) *in the case of any person who has at any time been admitted to practise as an attorney in any court in the Republic or elsewhere, that his name has been removed from the roll of attorneys on his own application; and*
- (e) *..."*

- [50] The respondent has failed to show on his papers that he satisfied all the requirements for the LL.B degree he alleges was conferred upon him by UNISA as contemplated in section 3(1) (b) of the Act.
- [51] Up to now no copy or original certificate for the LLB degree was furnished to this court and/or the North West High Court where the respondent was admitted to practise as an advocate.
- [52] The respondent does not therefore have the necessary qualifications to enable him to be admitted to practise as an advocate.
- [53] He was therefore not supposed to have been admitted as such by the North West High Court.
- [54] I am therefore persuaded that this application should succeed.
- [55] The applicant prayed for costs on a scale as between attorney and client. Given the nature of the application I am of the view that the court will be justified in granting costs on a scale as between attorney and client.
- [56] In the result I propose the following order:
- 56.1 that the application to review and discharge the order granted by Bertelsmann J on 16 August 2013 is dismissed with costs;
- 56.2 that the name of the respondent be struck from the roll of advocates;

56.3 that the respondent be ordered to pay the costs of this application on a scale as between attorney and client;

56.4 that this application is referred to the Director of Public Prosecutions for investigation.



M J DEFFO (Ms)
JUDGE OF THE GAUTENG DIVISION, PRETORIA

I agree and it is so ordered:



R TOLMAY (Ms)
JUDGE OF THE GAUTENG DIVISION, PRETORIA

COUNSEL FOR THE APPLICANT: J DE BEER
INSTRUCTED BY: BERNHARD VAN DER HOVEN ATTORNEYS
COUNSEL FOR THE RESPONDENT: IN PERSON
INSTRUCTED BY: SENANYA INC
DATE OF HEARING: 20 MARCH 2014
DATE OF JUDGMENT: 13 JUNE 2014