

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO. 32662/2014

DATE: 30 OCTOBER 2014

In the *ex parte* application of:

MEGAN B OOSTHUIZEN

APPLICANT

Identity number [...]

and

RHODERICK CHARLES CHRISTIE

INTERESTED PARTY/

FORMER PRINCIPAL

JUDGMENT

BOTES AJ

1. INTRODUCTION

1.1 The Applicant applies to this Court to be admitted as an attorney in accordance with the provisions of Section 15 of the Attorneys Act, No 53 of 1979 (hereinafter referred to as “*the Act*”).

1.2 The Applicant submits that she has fulfilled all the requirements to be admitted and enrolled as an attorney of this Court.

1.3 The Interested Party (hereinafter referred to as “*Mr Christie*”) is the Applicant’s former principal. The Applicant and Mr Christie entered into a contract of articles of clerkship on 3 January 2012, in terms of which the Applicant undertook to serve Mr Christie as a candidate attorney for a period of two years. The

aforementioned contract was registered with the Secretary of the Law Society of the Northern Provinces (hereinafter referred to as “*the Law Society*”) on 15 February 2012, under contract no. 180/2012.

1.4 The Applicant served her period of articles until 14 February 2014. An altercation occurred between the Applicant and Mr Christie, which resulted in the irretrievable breakdown of the relationship between them.

1.5 The Applicant requested Mr Christie to depose to an affidavit in support of her application. Mr Christie refuses to support the Applicant in her application to be admitted as an attorney of this Court on the basis that he is of the opinion that she is not a “*fit and proper*” person to be admitted as an attorney.

2. THE REQUISITES TO BE ADMITTED AS AN ATTORNEY

2.1 Unless cause to the contrary is shown to the satisfaction of the Court, it must, on application made in accordance with the Act, submit and enroll a person as an attorney, if:

2.1.1 he or she, in the discretion of the Court, is a fit and proper person to be so admitted and enrolled; and

2.1.2 It is satisfied that he or she has met the following requirements or, where applicable, has been exempted therefrom in terms of the provisions of the Act, namely that:

i) he or she is 21 years of age or older;

ii) he or she is a South African citizen or has been lawfully admitted to the Republic for permanent residence and is ordinary resident in the Republic;

iii) he or she has satisfied all the requirements for the LLB degree referred to in Section 2(1)(a) of the Act, or for a degree or degrees referred to in Section 2(1)(aA) of the Act, after pursuing for that degree, or degrees, a course of study referred to in Section 2(1)(a) or (aA) of the Act, as the case may be;

iv) has passed the practical examinations; and

v) during his or her term of service under articles or contract of service, or after the expiry of articles or contract of service, has attended a training course approved by the Law Society, or in the case of Section 2A(c), has attended a training course approved by the Law Society and has completed such training course to the satisfaction of the Law Society.

2.2 We are satisfied that the Applicant has complied with all the requirements referred to and contained in paragraph 2.1 *supra*.

3. **MR CHRISTIE'S OBJECTIONS**

3.1 Mr Christie deposed to an affidavit on 3 July 2014 in which he opposes this application. The basis of Mr Christie's opposition is captured and formulated in paragraph 6 of his affidavit where he states the following:

"I depose to this affidavit in order to oppose the Applicant's admission as an attorney. I do not do so lightly nor do I have any personal axe to grind with her. I have given much consideration to the position I have adopted in this application. However, as her principal, I am required to confirm under oath that she is fit and proper to be admitted as an attorney. I decline to make such a statement in such circumstances, for the reasons given below. I cannot, in clear conscience, ignore various aspects of her conduct and let her loose on the profession and public" so to speak. If one reads between the lines, the Applicant is angry that I declined to make any offer of full time employment with the firm. I have my reasons and these are given below."

3.2 Mr Christie opposes this application on the following three grounds:

3.2.1 The Applicant breached clear directives in respect of office rules, conduct rules and practice directives, in particular she brought a laptop into the firm;

3.2.2 The Applicant's conduct at Court including the failure to open duplicate files, the removal of matters from the roll, etc. clearly prejudiced a client; and

3.2.3 The Applicant lodged a complaint with the CCMA and misrepresented to that legal body that she was in an employment relationship.

3.3 Mr Christie addressed an e-mail to the Applicant on 7 March 2014 in which he placed the following on record:

"- I decline to sign your affidavit for various reasons. Accordingly I provide my consent to a cession of your clerkship to another principal.

- I also don't intend to waste any further time on your affairs and will not be entering into any further correspondence with you.

- The issues raised in your correspondence will be addressed at the correct forum and my

failure to respond does not constitute an admission that such allegations are correct.

-The manner in which you have sought to address various my concerns is disappointing but such merely confirms the wisdom of not offering you a position at this firm.”

3.4 Mr Christie briefed counsel to prepare heads of argument for purposes of him opposing this application. In the heads of argument counsel alluded to the three issues which are raised by Mr Christie in opposition of this application (the three issues identified in paragraph 3.2 *supra*), but furthermore directed our attention to the following:

“If something goes wrong in the future and the principal failed to alert the Honourable Court and potential affected parties to a potential problem, at best, his professional reputation and own integrity will be compromised, and at worst, he may very find himself liable (sic). ”

3.5 We are unable to understand the relevance of the aforesaid submission which is contained in counsel’s heads of argument. Mr Christie's fear or concern that he will attract liability in the event that the Applicant is found to be liable, in her professional capacity as an attorney, is fundamentally misconstrued and ill-founded in law.

4. THE ROLE WHICH THE LAW SOCIETY PLAYS IN APPLICATIONS OF THIS NATURE

4.1 The Law Society protects the interests of the public in its dealings with attorneys. In fulfilling this duty or responsibility it submits to the Court facts which it contends constitute unprofessional conduct and then leaves the Court to determine how it will deal with the individual. See: **Solomon v Law Society of the Cape of Good Hope 1934 AD 401 at 409**; and **Transvaal Incorporated Law Society v K 1950(4) SA 449 (T)**.

4.2 When the Law Society has information before it which indicates that a member has been guilty of unprofessional conduct, it must investigate the information and take appropriate action.

4.3 It is of the utmost importance that a practitioner should be appraised of a complaint, and afforded an opportunity of answering it before the drastic step of bringing him or her before the Court on a complaint of unprofessional conduct is taken. See: **Ford v Law Society of Rhodesia 1977(4) SA 175 (RAD)**.

4.4 Natural justice requires that when a complaint of misconduct is levelled against a practitioner it should be set out in terms which leave him or her in no doubt at all as to its precise nature. Where a practitioner’s integrity and future are at stake, the need for clarity, certainty and reasonable particularity in complaints brought against him or her can hardly be over-stressed.

4.5 The Law Society constituted a Committee (the Articles and Admissions Committee) to consider this

application and Mr Christie's objections. The Committee invited Mr Christie to attend its meeting on 8 July 2014 to discuss all the issues and objections raised by Mr Christie in his affidavit, but Mr Christie, for reasons unknown to us, declined to attend.

4.6 The Committee invited the Applicant to address all the issues that Mr Christie raised in his affidavit to enable it to make a recommendation to the Council of the Law Society. The Committee was of the view that the Applicant sufficiently addressed all the issues which were raised by Mr Christie in his affidavit and recommended to the Council that the Applicant is, notwithstanding Mr Christie's opposition to the application, a fit and proper person to be admitted as an attorney, which recommendation was approved by the Council of the Law Society.

4.7 The Law Society addressed a letter, dated 12 August 2014, to the Registrar of this Court in which it confirmed that the application complies with the provisions of the Act and that the granting of the Applicant's prayers is left in the discretion of this Court.

5. CONCLUSION

5.1 We are not impressed by Mr Christie's conduct in that he failed or omitted to attend the meeting which was scheduled for 8 July 2014. Mr Christie is a senior officer of this Court and it is expected of him to assist the Law Society in its investigation to establish or determine whether or not the Applicant is a fit and proper person to be admitted as an attorney of this Court. Mr Christie's failure to attend the aforementioned meeting is unbecoming of a senior attorney. In our view the Law Society should investigate Mr Christie's conduct in this regard and Mr Christie should be requested by the Law Society to furnish it with reasons why he decided or elected to ignore their invitation to attend the meeting that was scheduled for 8 July 2014. We expect from a senior attorney to co-operate and assist the Law Society with its investigation, specifically in the light of the severity of the objections raised by Mr Christie in his affidavit. We therefore take a dim view of Mr Christie's attitude and conduct insofar as his refusal to attend the aforementioned meeting is concerned.

5.2 In our view the Applicant has complied with all the provisions of the Act insofar as her application to be admitted as an attorney of this Court is concerned. A proper case has been made out and we are satisfied that the Applicant is a fit and proper person to be admitted as an attorney of this Court.

The Applicant is therefore admitted as an attorney of this Court and she may come forward to take the prescribed oath.

BOTES F W

ACTING JUDGE OF THE

HIGH COURT, PRETORIA

I agree

PHATUDI A M L

JUDGE OF THE HIGH

COURT, PRETORIA

On behalf of the Applicant: C/O De Jager & Kruger Inc

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No Appearance