


REPUBLIC OF SOUTH AFRICA



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

CASE NO: 78556/2015

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED.
20 JUNE 2016	
DATE	SIGNATURE

In the matter between

WEBBSTOCK, MATHEY RALPH

Applicant

and

THE LAW SOCIETY OF THE NORTHERN PROVINCES

Respondent

JUDGMENT

MADIMA, AJ

[1] The applicant seeks admission as an attorney of the High Court of South Africa. He is some two years late. But for an ill-advised *let us kill two birds with one stone* arrangement with his father, the applicant would have been admitted in 2014. The respondent opposes the application.

[2] Mr Mathey Ralph Webbstock matriculated at the end 2008. He secured for himself a place and bursary to read for the *Baccalaureus Legum* ("LLB") degree at the University of the Witwatersrand (WITS). Parallel with his studies, he entered into a five (5) years contract of articles of clerkship ("the contract") with Anthony John Webbstock ("the principal") of Tony Webbstock Attorneys of Alberton North. The principal is also the applicant's father. The applicant commenced his employ with attorney Webbstock on 23 February 2009, and his first year of law at WITS as a full-time student at about the same time.

[3] The contract was duly lodged by the principal with the Secretary of the Law Society of the Northern Provinces ("the respondent") for registration in terms of the Attorneys Act 53 of 1979 ("the Act") on 24 March 2009. The respondent confirmed the registration of the contract in a letter dated 26 March 2009. Importantly the letter *inter alia* stated that "*The fact that your contract has been registered does not mean that you will be entitled to admission and you should acquaint yourself with the requirements of the Attorneys Act in this regard*".

[4] In his application for the registration of the contract with the respondent, the applicant, *inter alia* attached proof of his registration at WITS for the LLB degree as well as proof that he had obtained the university scholarship award. In his response to WITS in a letter dated 16 January 2009 the applicant stated *inter alia* that

"Thank you for your letter of 01 January 2009 from which I note that I have been offered a place in Bachelor of Laws, Full Time, First Year, in 2009. I have pleasure in accepting this offer subject to the conditions set out in your letter." (applicant's emphasis)

[5] The applicant completed his law degree at the end of 2012 and was capped on 26 March 2013. He continued in his employment with attorney Webbstock until 23 February 2014, his last of the five years of the contract. The applicant remained in the employ of attorney Webbstock post the expiry of the contract.

[6] On 18 July 2014 he launched an application for his admission as an attorney in the High Court. The respondent, upon learning that the applicant had studied full-time for the LLB degree, reminded the applicant of the provisions of sections 6 and 7 of the Act. The sections provide that a candidate attorney was required to perform his duties without interruption during normal working hours during the whole period of the contract of articles of clerkship. Failure to do so may result in irregular service under articles.

[7] The respondent advised the applicant thus *"Since it appears that your articles may not have been regular in accordance with the ordinary interpretation and application of the Act, you must consider applying for condonation in terms of section 13(2) of the Act and/or section 13(3) insofar as it may be necessary"*. The respondent further requested the applicant to depose to a supplementary affidavit wherein he must (a) *clearly and in detail set out how many hours of each normal working day during the normal/standard week consisting of five days (5) working days from Monday-Friday since commencement of your articles of clerkship you were not performing articles due to your attendance at the University for the purpose of obtaining your LLB degree during normal working hours*, (b) *clearly and in detail set out how many hours of each normal working day during the normal/standard week consisting of five days (5) working days from Monday-Friday since commencement of your articles of clerkship you were performing service as a candidate attorney during normal working hours*, (c) *attach any relevant documentation as proof of the above*, (d) *how many normal/standard working days from Monday-Friday during each year of the five years of your*

articles you were absent from articles for the whole day for the purposes of any kind of leave (annual, sick, study etc) (e) explain on what basis the Law Society and the Court must accept that you complied with the requirements of section 6 and 7 of the Act during your period of articles of clerkship as is recorded in paragraphs 9.4.1 and 9.4.3 of your founding affidavit – if you for at least a period of four years thereof attended classes for the full-time study of your LLB degree at the University during the normal working hours of a normal working day, studied for and written examinations, (f) address any other relevant matters that arises as a result of having disclosed the above details and (g) confirm that there are no criminal proceedings pending against you”.

[8] The applicant withdrew his application for admission as an attorney on the belief that the respondent’s interpretation of sections 6 and 7 of the Act was the correct interpretation. He continued working at the law firm.

[9] The applicant comes before us seeking three alternative prayers for condonation. First, that his irregular service under articles of clerkship entered into with his principal on 23 February 2009 be condoned in terms of section 13(2) of the Attorneys Act 53 of 1979 (the Act) on the ground that such service was occasioned by sufficient cause and is substantially equivalent to regular service. Second, and in the alternative, that the whole or part of the period of articles of clerkship already served prior to obtaining the degree of *Baccalaureus Legum* (“LLB”) be regarded as having been served under articles of clerkship entered into after he had satisfied such requirements. Finally that any period of absence from the office during the period of his service under articles of clerkship exceeding in aggregate thirty (30) working days in any one year of articles, be added to the period of service under the articles of clerkship.

[10] The applicant submitted that he has complied with the provisions of section

6(1)(a) of the Act, namely that he was in the service of the principal as a candidate attorney in the principal's office and under his direct and personal supervision and control. He further argued that he also has complied with section 7(1) of the Act which requires continuous and uninterrupted service under articles of clerkship save for leave which in the aggregate did not exceed 30 working days per year.

[11] The applicant explains rather confusingly that studying "full-time" does not mean full-time or all the time. When he was not attending lectures he was attending to his duties as an articled clerk either at the principal's Alberton office or at their home where he shared offices with the principal. WITS, he claims, is equidistant from the Alberton office and his home. The applicant attached the lectures time table that indicates that his lectures required less than 50% of a normal working week from Monday to Friday.

[12] In addition to the above the applicant submitted that he had a month's academic break in July of every of the four years he spent at WITS as a student. The December – February academic recess afforded the applicant an additional 3.5 months per annum. Accordingly the applicant did not need to attend lectures for four and a half months per year for four years. This meant that he spent the balance of the time amounting to 18 months in the four years he was a student at WITS at the workplace under articles of clerkship.

[13] In summary the applicant seeks condonation on the following grounds:

13.1 during the four years of study he spent 2.7 years under articles of clerkship.

13.2. the total time spent in the workplace after expiry of articles on 23 February 2014 equals 1.5 years

13.4 he would have needed only to spend 2 years or articles after the LLB degree.

[14] The applicant requests the Court also to consider the 1.5 years that he spent while on university breaks to be equivalent to regular service.

[15] The respondent's submission in this regard is that as a result of the applicant's full-time studies, he did not serve attorney Webbstock under contract of articles of clerkship on a full-time basis. Although the Act does not refer to service on a full time basis, this can safely be inferred with reference to the wording of section 6. This fact, so argued the respondent, therefore rendered the contract between the applicant and the principal invalid. This is so because at the conclusion of the contract it was contemplated and understood by the applicant and the principal that the applicant would be attending to his studies on a full time basis during the first four of the five years contract period. By so doing, the applicant has not complied with the provisions of the Act relating to service under articles of clerkship.\

[16] Citing *Law Society of the Northern Provinces v Mahon* 2011 (2) SA 441 (SCA) the respondent submitted that service rendered pursuant to an invalid agreement cannot be condoned. The invalidity of the contract is based on the fact that the applicant and the principal concluded the contract on the basis that the applicant will not be serving under articles of clerkship on a full time basis for the full period stipulated by the Act. The breaks in service during the period of articles of clerkship

envisaged in the Act are *"breaks in service either through accident, as in the case of illness of the clerk, or through a bona fide mistake, or through sufficient cause."*

[17] The Court held further that *"...Plainly, it is only the irregular service of a candidate attorney (as defined) that may be normalized – not irregular service generally."* [at paragraph 7] And further that *"...What emerges from this analysis is that the legislature intended the terms of the clerkship agreement to be the bedrock of the regulatory regime governing candidate attorneys. But it is recognized that the strict application of this regime may sometimes cause hardship. It thus gave the High Court the authority to condone, on sufficient grounds, the irregular service of a candidate attorney. ".....But, it is plain that the High Court's authority to excuse irregular service is conditional upon the candidate attorney having concluded a clerkship agreement in accordance with the Act, in other words, a valid contract of articles.[at paragraph 12] ".....In addition.....service of articles can only be service of articles under a valid contract, and that a court may only consider condoning any irregular service once the validity of the contract has been established."* [at paragraph 13].

[18] In support of the above contention the respondent submitted that the Act described 'articles' as *"....any contract in writing under which any person is bound to serve an attorney for a specified period in accordance with this Act...."*. A candidate attorney is described as *"...any person bound to serve under articles of clerkship or to perform community service under a contract of service..."*.

[19] The respondent contended further that the requisites of section 6(1) of the Act entreats any candidate attorney to serve the whole term of service specified in the articles of clerkship in the office of his principal under his direct personal supervision. 'Whole term' specified in the Act, so argued the respondent, meant that a candidate attorney must serve under articles of clerkship on a full time basis. Referring to section 13(2) of the Act, the respondent submitted that condonation for irregular

service can only be granted if the agreement of articles was validly entered into.

The relevant provisions of the Act

[20] As already stated above the Act defines Articles of clerkship as *Any contract in writing under which any person is bound to serve an attorney for a specified period in accordance with this Act. A Candidate attorney is Any person bound to serve under articles of clerkship or to perform community service under a contract of service.*

[21] Section 2 of the Act provides for the duration of service under articles and states that

- (i). *Any person to be admitted as an attorney, shall serve under articles of clerkship for a period of*
 - (a)
 - (b)
 - (c)
 - (d).
 - (e). *5 years after he has passed an examination referred to paragraph (d).*

[22] The examination referred to in section 2(1)(d) is the National Matriculation Examination. This is the section in terms of which the applicant purported to enter into the contract with the principal.

[23] Section 6 of the Act provides for the supervision over candidate attorneys. Section 6(1) states that

- (1). *without derogating from the provisions of section 10, any candidate attorney shall*

during the whole term of service specified in the articles of clerkship, serve

(a) in the office of his principal under his direct personal supervision or under that of an attorney who is a partner or manager of his principal.

(2). For the purposes of sub-section (1) "office" shall not include a branch office which is under the control of an attorney who is not entitled to have a candidate attorney under articles.

[24] Section 7 of the Act makes provision for the absence of a candidate attorney.

(1) Subject to the provisions of sub-section (2), a candidate attorney may with the consent of his principal, absent himself from office for a period which does not, or for periods which in the aggregate do not, exceed thirty working days in any one year of the articles of clerkship or contract of service.

(2)

(3) If any period of absence from office exceeds, or the period of absence from office in the aggregate exceed thirty working days in any one year of articles of clerkship or contract of service, the period in excess of thirty working days shall be added to the period for which the candidate attorney is bound to serve under articles or contract of service.

[25] Section 13 of the Act provides that

(2) if any person has not served regularly as a candidate attorney, the court, if satisfied that such irregular service was occasioned by sufficient cause, that such service is substantially equivalent to regular service, and that the society concerned has had due notice of the application, may permit such person, on such conditions as may deem fit, to apply for admission as an attorney as if he had served regularly under articles or a contract of service.

(3) the court may, on the application of a candidate attorney who has satisfied all the requirements for a degree referred to in paragraph (a) or (c) of section 2(1) or for the degrees referred to in paragraph (aA) of that section, or for a degree or degrees referred to in paragraph

(aB) or (cA) of that section in respect of which a certification in accordance with those respective paragraphs have been done, and subject to such conditions as the court may impose, order that the whole or any part of the period served by that candidate attorney under articles before he or she satisfied such requirements, shall, for the purpose for his or her admission and enrolment as an attorney, be regarded as having been served after and under articles entered into after he or she satisfied such requirements.

[26] Section 15 of the Act provides that unless cause to the contrary to its satisfaction is shown, the court shall on application in accordance with the Act, admit and enroll any person as an attorney if –

(a) Such person, in the discretion of the court is a fit and proper person to be so admitted and enrolled;

(b) The court is satisfied that such person has satisfied the following requirements

(i).

(ii).

(iii).....

(vi) completed his service under articles or contract of service, or has complied with the provisions of section 2 (1A), within the period of three years preceding his application to the court or within the further period allowed by the court in terms of sub-section (2).

Validity of the contract of articles of clerkship between applicant and principal.

[27] Given the provisions of the Act referred to above, the question is whether a valid contract of articles of clerkship in fact existed between the applicant and the principal.

[28] The validity of the contract of articles of clerkship is determined at the conclusion of the contract. The normal requirements for validity therefore apply. The fact that there was breach, does not affect the validity.

[29] What was contemplated by the applicant and principal at the time of the conclusion of the contract of articles of clerkship is of great importance. It is clear from the facts that despite the commitment to a 5 year contract, both the principal and the applicant understood the terms of the contract to be that the applicant would be studying at WITS on a full-time basis in the first four years of the five year period of the contract.

[30] In his replying affidavit the applicant states that in his application for the registration of the contract of articles of clerkship he attached proof of his registration at Wits. This therefore should mean that the respondent was aware of his situation. The respondent upon receiving the application for registration of the contract informed the applicant in a letter dated 26 March 2009 that *"The fact that your contract has been registered does not mean that you will be entitled to admission and you should acquaint yourself with the requirements of the Attorneys Act in this regard"*. It was therefore incumbent upon the applicant and the principal to ensure that his application complied with the requisites of the Act. The principal has been in practice as an attorney of this court since 1983. He should therefore be *au fait* with the provisions of the Act in this regard.

[31] Where a candidate attorney or his principal did not have the intention that the candidate attorney will be duty bound to serve his principal for the period prescribed by the Act, such contract is not a contract of articles of clerkship in terms of section 1

of the Act. Condonation can, in these circumstances, not be granted in terms of section 13(2) of the Act.

[32] Section 6 of the Act contemplates that a candidate attorney shall throughout the term of his service under articles of clerkship serve in the office of his principal. The service must be done under the principal's direct supervision. Section 7 of the Attorneys Act allows a candidate attorney to be absent from the workplace with leave of the principal for no longer than 30 days in aggregate in any one year of the articles of clerkship or contract of service.

[33] Whether service can be described as regular or irregular depends largely on whether the candidate attorney was in service under a valid contract of articles of clerkship.

[34] Irregular service that may be condoned would constitute breaks in service through accidents such as illness, through a *bona fide* mistake or other sufficient causes as was held in *Ex Parte Couzin* 1929 TPD 238 at 240 and *Ex Parte Pieterse* 2001 (1) SA 1247 (C). It does not seem that the grounds proffered by the applicant would constitute sufficient cause in order to satisfy the requirements of the Act. Those requirements include the existence of a valid contract of articles of clerkship. It is not within the powers of the court to render an otherwise invalid contract, valid.

[35] Of concern to the court are the submissions made on behalf of the applicant more specifically that (a) he was a full time student at WITS between 2009 and 2012, (b) he served his articles of clerkship during the same period of his full time studies at

WITS, (c) he spent time studying during working hours whilst in the office of the principal.

[36] There is little doubt that the above arrangements were made possible because of the special relationship between the applicant and the principal. No principal should allow his articulated clerk to study full time for his law qualification and serve his articles of clerkship at the same time. Their agreement would best be described as a sham and intended to deceive the Law Society, and make possible the applicant's premature admission to the attorneys' profession.

[37] Amazingly the applicant equates attending lectures, studying, reading, completing assignments and attending examinations during office hours as substantially similar to serving under a contract of articles of clerkship. He states that all candidate attorneys study, read and complete assignments during office hours. The applicant submits that studying law and service under a contract of articles cannot be separated. This cannot be what is contemplated by the Act in the training and regulation of the business of attorneys.

[38] The fact that the applicant also was absent for a period in excess of 30 days per year from the workplace whilst pursuing his law studies compounds his challenges. Being absent from the workplace for full time studies does not in my view constitute sufficient cause of such absence meriting condonation. The applicant conceded, however, that attending lectures during the day falls foul of section 6 of the Act.

[39] The principal is largely to blame for the applicant's dilemma. He was admitted as an attorney of this Court in 1983. It does not seem that he has learned much during all of that period as an attorney. I find particularly sad the principal's submission that the applicant had complied with the provisions of section 15(1)(b)(vi) of the Act by serving 5 years of his articles of clerkship. The principal knows full well that his statement made under oath is not correct. Stating that the applicant served continuously without interruption or break save for period leave which in the aggregate did not exceed 30 working days per year, is also false.

[40] Sections 15 and 11 of the Act allow, the Court, under certain circumstances to condone and modify the periods of clerkship. *Barnard and Another v Law Society, South West Africa 1989 (1) SA 739 (SWA)*. The above two sections would not be applicable to the applicant because his contract of articles of clerkship is not one contemplated by the Act.

[41] Only irregular service under a valid contract of articles of clerkship can be condoned by the court. *Bosman v Prokureursorde van Transvaal 1984 (2) SA 633 (T)*. The courts are very strict when dealing with irregular service. In *Bosman supra*, a principal already had the maximum permissible number of articulated clerks articulated to him. He caused the registration of a contract of his articulated clerk with another attorney but retained the articulated clerk in his employ. The court held that the arrangement never gave rise to a valid contract of articles of clerkship contemplated by section 6 of the Act. See also *Ex Parte Singer: Law Society of the Transvaal Intervening 1984 (2) SA 757 (A)*.

[42] The invidious position that applicant finds himself in, is due to his and his principal's doing. Had both elected to do the right thing, applicant would by now be an admitted attorney of this court. It is my view that the reason the applicant was in a position to attend full-time at WITS and allegedly full time in articles with the principal was because the principal is his father. Both should have recognized this apparent conflict of interest. Both were blinded by familial ties. Applicant would not have been allowed to conduct his affairs accordingly with a third party attorneys firm with no ties to his father.

[43] The applicant's situation is novel. I have searched for authority that would justify the court to grant him the relief he seeks. The closest authority appears to be *Ex Parte Edwards and Another* 1995 (1) SA 451 (C) where relief was granted to the applicant where the articulated clerk and principal had not entered into articles of clerkship because the principal had been incorrectly advised by the law society that he did not by reason of section 3(1)(i)(i) qualify to enter into a contract of articles of clerkship. The Court granted the order declaring that the whole period of two years' employment by the applicant with the attorney to be regarded as equivalent to regular service as if served under a registered contract of articles.

[44] I accept that the facts in *Edwards supra* are distinguishable from the instant case. Of importance is that *Edward* was criticized in *Tshabalala v Natal Law Society* 1996 (4) SA 150 (N) where the court held that only irregular service as a candidate attorney may be made regular, and not irregular service generally. The court has the power in terms of section 13(2) of the Act to condone irregular service provided there was sufficient cause and service substantially equivalent to regular service *Ex Parte*

Feinstein 1984 (1) SA 796 (T).

[45] Service of articles can only be service of articles under a valid contract. The court may only consider condoning any irregular service once the validity of the contract has been established. *Ex Parte Traverso* 1977 (1) SA 791 (C) at 793A-D, *Bosman v Prokureursorde Van Transvaal* 1984 (2) SA 633 (T) at 636 F-G, *Tshabalala v Natal Law Society* 1996 (4) SA 150 (N) at 152C-G. The arrangement between the applicant and the principal which purported to be a contract of articles of clerkship does not pass muster.

[46] There is little doubt that the applicant has suffered great inconvenience, and will continue to do so by remaining outside of the attorneys' profession. I am also alive to the fact that courts must be compassionate. Legal questions however must be resolved without regard to sentiment or sympathy as was held in *Ex Parte Venter* 1954 (3) SA 567 (O) at 569D-E in *Mahon supra*, paragraph 33A-B.

[47] There is no provision in the Act to register a second contract of articles of clerkship after the event. This option is therefore not available to the applicant. Similarly, the applicant cannot benefit from the extension of his contract because there never was a valid contract in the first place. Only valid contracts of articles of clerkship can be extended. *Ex Parte du Plessis (Prokureursorde, Transvaal Toetredend)* 1989 (2) SA 602 (T).

[48] Apart from the ad hoc employment of the applicant between 2009 and 2012, he has spent the years 2013, 2014 and 2015 as well as part of 2016 in the employ of

the principal or at least at Webbstock Attorneys INC. His functions were similar to those performed by a candidate attorney. This employment was served outside of any contract of articles. This period can also not be considered irregular service because irregular service can only be condoned where a valid contract of articles existed. The applicant finds himself in a bind.

[49] Because the applicant was never a candidate attorney as defined in the Act, it would seem that the only option available to the applicant would be to enter into a valid contract in terms of the Act if he wishes to be admitted and enrolled as an attorney. There is no any other way.

[50] The short cut approach to the *killing of two birds with one stone* has backfired badly and delayed the applicant's entry into the attorneys' profession by more than two years. Hopefully, the applicant has learnt his lesson. Hopefully the applicant shall in the future shy away from attempting to beat the system by opting for quick fixes.

[51] I am bound to consider the adequacy of the applicant's grounds for condonation. I have. They limp. They hobble badly. The explanation offered by the applicant and principal does not present reasonable sufficient cause as described in *Ex Parte Pieterse supra*. I am therefore unable to come to applicant's assistance.

[52] The only way out of this bind is for the applicant to enter into a valid 2 year contract of articles with the principal or any other attorney that qualifies to take on an articulated clerk.

[53] It is common cause that the applicant has satisfied all of the other requisites for admission save for service under articles of clerkship. This he must still do if he wishes to be admitted as an attorney of this Court.

[54] I find that the applicant has not made out a case for condonation and for his admission and enrolment as an attorney of this Court.

[55] Consequently I make the following Order:

1. The applicant's application for condonation is dismissed.
2. The applicant's application for admission and enrolment as an Attorney of the High Court of South Africa, Gauteng Division is dismissed.
3. The applicant to pay the costs of the respondent on the scale as between attorney and client.



TS MADIMA: AJ

ACTING JUDGE OF THE HIGH COURT

I CONCUR



M JANSEN: J

JUDGE OF THE HIGH COURT



On behalf of the Applicant: Mr R.J.A Joubert
Attorneys for Applicants: Tony Webbstock Attorneys c/o Rontgen & Rontgen
012 481-3555 / 011 640 3534
E-Mail: twebbstock@debtadmin.co.za

On behalf of the First Respondent:

Instructed by: Mr P.J Smith
Rooth & Wessels INC
Pretoria
Tel: 012 452-4123
E-Mail: admissions@lsnp.org.za

Date of Hearing: 19 April 2016

Date of Judgment: 20 June 2016