"REPORTABLE"

IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO: 6980/2001

In the matter between:

JACOB JOHANNES DE BEER
Applicant

and

THE LAW SOCIETY OF THE CAPE OF GOOD HOPE
Respondent

JUDGMENT : FRIDAY, 13 FEBRUARY 2004

TRAVERSO, DJP :

[1] This is an application for the admission of the Applicant as an attorney of this Court.

[2] In the present proceedings the Law Society did not intervene and resolved to abide the decision of the Court.

[3] This matter has a long history. This history is dealt with in some detail in a judgment delivered pursuant to a prior application on 25 April 2002 by Cleaver, J (Potgieter, AJ concurring) in Case Numbers 6980/2001 and 4032/2000. I believe that it is prudent to set out a brief chronology of the events preceding the present application:

3.1 On 23 March 1999 the Applicant and his twin brother launched a vicious attack on one General Guyt and his wife, during which they seriously assaulted General and Mrs. Guyt. As a result of the aforegoing, General Guyt lodged a criminal complaint and also instituted civil proceedings.

3.2 A little more than a year later, (31 May 2000), the Applicant launched an application for his admission as an attorney. In that application the Applicant dealt with this incident as follows:

> "Nieteenstaande bovermelde is ek aangekla van die misdaad van aanranding welke saak tans teen my hangende is in die Pretoria se Distrikshof. 'n Siviele aksie is ook voortspruitend uit bogemelde klagte teen my ingedien welke aksie ook tans hangende is in die Landdroshof, Pretoria. Dit is my respekvolle submissie ***dat die Staat kwaadwillig is in hierdie vervolging aangesien ek oor 'n goeie verweer beskik en die moontlikheid dat 'n geregshof***

> ***'n skuldigbevinding teen my sal vel, onwaarskynlik is.*** ***Wat die siviele aksie betref het ek reeds my regsverteenwoordigers opdrag gegee om 'n teeneis namens my in te stel juis oor dieselfde redes as wat in die strafvervolging bestaan. Dit is verder my submissie dat die misdaad waarvan ek beskuldig word geen element van oneerlikheid bevat nie en, behalwe vir die skade wat hierdie klagte alreeds aan my en my familie veroorsaak het, ek verder ernstig finansieël en anders benadeel sal word sou die Agbare Hof hierdie aansoek weier juis op grond van die omstandighede bovermeld."*** (Emphasis supplied)

3.3 General and Mrs. Guyt intervened in the aforesaid proceedings, and opposed the application for the Applicant's admission. From their affidavits it appears that the Applicant and his brother initially alleged that General and Mrs. Guyt were attacked by *"two black men"* and the Applicant and his brother assaulted these two black people, ostensibly in defence of the Guyts'. In later statements the Applicant alleged that he acted in self defence.

3.4 It is evident from the affidavits filed in support of the criminal case that the State had more than sufficient evidence to warrant a prosecution of the Applicant and his brother and that there was never any suggestion that the prosecution could be malicious ("*kwaadwillig*").

3.5 A perusal of the pleadings in the civil matter also indicates that

the Applicant never filed a counterclaim as suggested by him.

3.6 The criminal proceedings were brought to a halt by reason of the fact that the Magistrate recused herself. In the meantime and by virtue of the Guyts' opposition to the Applicant's application for admission as an attorney, the Applicant entered into negotiations with them and the civil claim was settled. The Applicant and his brother paid a sum of money to the Guyts' and the Guyts' in turn undertook to withdraw their opposition to the Applicant's admission.

3.7 Because of the opposition to the Applicant's application, the Law Society conducted a hearing at which the allegations of assault were investigated. During that hearing the Applicant admitted that he was guilty of the alleged assault, and expressed his regret about the incident. Accordingly, the Law Society resolved that if a certificate of *nolle prosequi* could be obtained, they would not oppose his admission. What is of great significance is that the Applicant, in his endeavours to persuade the Law Society not to oppose his application repeatedly stated (on oath) that the crime of which he was accused of did not contain any element of dishonesty and therefore should not stand in his way to be admitted as an attorney. The Applicant was therefore acutely aware that dishonesty would be an obstacle for his admission - yet lying is the one thing that he persisted in relentlessly.

3.8 On 10 July 2001 the application was again enrolled and came before Nel, J. In that application the Applicant, contrary to his evidence at the Law Society meeting again denied that he was guilty of assault. Because of this apparent contradiction, Nel, J called for clarification.

3.9 Accordingly the following order was made:

> "***By navraag ontken applikant dat hy skuldig is aan 'n aanranding. Dit strook nie met mededelings aan Wetgenootskap nie. Voordat applikant toegelaat kan word behoort aansoek na verhoor verwys te word om te bepaal waaraan, indien enige gedrag hy hom aan skuldig gemaak het. Aansoek word teruggetrek.***"

3.10 Despite this order the application was again enrolled on 3 August 2001 on the same papers. On that occasion Traverso, DJP and Van Reenen, J made the following order:

> ***"Saak word teruggetrek. Dit word gelas dat tensy daar 'n formele aansoek om kondonasie gerig word aan Traverso, ARP en van Reenen, R, sal die saak nie weer op hierdie stukke ter rolle geplaas word nie."***

3.11 Five days later a fresh application was launched. That is application which came before Cleaver J and Potgieter, AJ to which reference has been made in paragraph [3] above. One would think that

by now the Applicant would have realised that his lack of candour and contradictory statements played a role in the Court's reluctance to admit him as an officer of the Court. But it seems that still the penny had not dropped! In the founding affidavit he pertinently denies that he assaulted either one of the Guyts'. It was only in his oral evidence before Cleaver, J and Potgieter, AJ that he admitted his part in the assault.

[4] It is against this background that the present application should be viewed.

[5] It is common cause that the test which is to be applied in a matter such as this is essentially the same as the test which is applicable to attorneys seeking re-admission. That test is that we must be satisfied that there has been a complete and permanent reformation on the part of the Applicant. See Nathan v Natal Law Society & Another 1999(1) SA 706(C) and more particularly the authorities cited at p. 712 A-G.

[6] The Applicant now admits all these lies, and admits that he continued to lie until Cleaver, J and Potgieter, AJ referred the application for oral evidence. He then realised that he would not withstand cross-examination and decided to start telling the truth. But even then the Court expressed some doubt as to the true reason for the Applicant's new found honesty. Cleaver, J said the following:

"Alhoewel hy in getuienis in hoof gesê het dat hy tot ander en beter insig gekom het toe NEL, R aangedui het dat die saak na mondelingse getuienis verwys moet word, kan dit nie so wees nie, want die tweede

aansoek is eers daarna opgestel en daarin het hy volhard met die leuens. Ek lei af dat dit eerder gebeur het toe hierdie Hof self die saak op 15 Februarie na mondelingse getuienis verwys het."

[7] In my view this is a crucial factor in deciding whether the Applicant should be admitted as an attorney.

[8] In my view it is clear that the Applicant only decided to tell the truth when there was no other way out.

[9] As pointed out by Cleaver, J the Applicant, despite clear indications from three Judges that the application could not succeed in view of the contradictions, made further attempts to have the matter heard without oral evidence. In his affidavits the lies continued. From this it must follow that the Applicant was prepared to take a chance that a newly constituted Court would dispose of the application without hearing oral evidence. In other words he was prepared to use dishonesty as a means to be admitted as an attorney.

[10] This is an aspect with which neither the Applicant nor Mr. Viljoen, who appeared on his behalf, dealt.

[11] In my view this indicates such a serious lack of judgment on the part of the Applicant that it cannot be said that he has truly reformed himself. To stop

lying because there is no other way out is vastly different from realising that dishonesty is wrong and to desist from it irrespective of the consequences.

[12] The Applicant only decided to take the Court in his confidence when he had no choice and had received better advice from Mr. Viljoen. In addition, he only told his parents the truth in reaction to the "*Hof se vermaning*".

[13] In my view, the fact that the Applicant consulted Dr. Teggin to establish whether he was a "*serial liar*" or not, takes the matter no further. On the Applicant's own version he continued to lie, not because of some pathological disorder, but because he wanted to avoid whatever the consequences might have been of his assault on the Guyts'. His dishonesty was a means to an end. To suggest that because Dr. Teggin found that he is not afflicted with a pathological personality disorder, it has been shown that he is permanently reformed, is without substance.

[14] Dr. Teggin states that in his view the Applicant is not an inherently dishonest person. It is now for the Applicant to satisfy the Court that Dr. Teggin is correct in his statement. He must satisfy the Court that he will not in the future lie because it is expedient.

[15] This he has not done. All he has done is to show that he stopped lying

to the Court, not because he realised that what he was doing was wrong, but because he had no choice. He only told his parents the truth in reaction to "*die Hof se vermaning"* and as a means to an end.

[16] In my view the Law Society was correct in their assessment that this application was premature. I accept that the Applicant has suffered financially as a result of his dishonesty, but had he not persisted in it, the outcome of the various applications may well have been different. His persistent dishonesty of course also shows a great lack of judgment.

[17] One does not want to destroy a young man such as the Applicant. What the Applicant must do is to do some introspection about himself and his life. He must satisfy himself that no matter what the temptation, he will not resort to dishonesty as a means towards an end. It is with this in mind that the following order is made:

i) The Application is dismissed with costs.

ii) The Applicant is granted leave to apply for his admission as an attorney, on the same papers duly amplified, when he can satisfy the Law Society and the Court that he is a fit and proper person.

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TRAVERSO, DJP

I agree, and it is so ordered:

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HLOPHE, JP

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Counsel for the Applicant : Adv. H.P. Viljoen SC

Attorneys for the Applicant	**:**	**Messrs. John Smith & Associates**
		(Mr. J.E.H. Smith)
Counsel for the Respondent of the Law Society of the Cape of Good Hope	**:**	**No representation on behalf**
		(Abides the decision of the Court)
Attorneys for the Respondent of the Law Society	**:**	**No representation on behalf**
Date of Hearing	**:**	**8 December 2003**
Date of Judgment	**:**	**13 February 2004**