

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

JUDGMENT

CASE NO: HC-MD-CIV.MOT-EXP-2019/00141

In the *ex parte* Application of:

ALEX 'MABUKU' KAMWI KAMWI

APPLICANT

For admission and authorisation to practise as a legal practitioner

Neutral Citation: *Ex Parte Kamwi* (HC-MD-CIV-MOT-EXP-2019/00141)
[2020] NAHCMD 152 (7 May 2020)

CORAM: MASUKU J

Heard: 28 January 2020

Delivered: 7 May 2020

Flynote: Legislation – Legal Practitioners Act, 1995 s 4 and 5 on admission and authorisation to practise as legal practitioners – requirements and qualifications for admission discussed – Civil Procedure – failure to state allegations of fact and recording bare denials in an answering affidavit – Rules of Court – rule 72 – whether it applies to applications for admission of legal practitioners, which is governed by rule 80 – rule 128 – authentication of documents and effect of failure to comply therewith.

Summary: The applicant is a Namibian male adult. He approached the court for the fourth time, seeking admission and authorisation to be admitted as a legal practitioner. These three previous attempts were unsuccessful. The Law Society of Namibia, (LSN) opposed the application on the basis that the applicant does not qualify to be so admitted because he does not hold the qualifications mandatorily prescribed by the Legal Practitioners' Act.

Held: that the application for admission and authorisation to practise as a legal practitioner is not an ordinary *ex parte* application for the reason that the LSN is served with the application. For that reason, it need not make a case regarding its interest in terms of rule 72(4) before it can oppose an application.

Held that: applications for admission are *sui generis* and are governed by rule 80, owing to LSN's especial position as the *custom morum* of the profession, as envisaged in s 42(k) of the Act.

Held further: that the applicant did not have the signatures to his degree from the Open University of Tanzania, authenticated in terms of rule 128 and for that reason, the court would not have regard thereto in considering the application.

Held: that the applicant did not comply with the mandatory requirement in terms of which he is required to serve a period prescribed doing practical legal training and did not sit for and pass the mandatory Legal Practitioners' Qualification Examination prescribed in the Act. He therefor did not qualify to be admitted and authorised to practise as a legal practitioner.

Held that: the comments made by the Supreme Court about his proficiency in English did not serve to qualify him to be admitted as a legal practitioner in view of his failure to comply with the statutory requirements.

Held further – that the comments by Angula DJP, which the applicant deliberately took out of context to serve his cause, have been clarified by the

learned Judge in a judgment and do not serve as a statement rendering him qualified to be admitted and enrolled as a legal practitioner.

Held: that a person desirous of being admitted as a legal practitioner, should demonstrate that he or she has utmost good faith and should not deliberately twist words wrongly and create a narrative designed to suit his cause. This very act may render him or her not a fit and proper person to be admitted.

The application was thus dismissed with costs

ORDER

1. The Applicant's application for admission and authorisation as a Legal Practitioner, in terms of the provisions of Section 4 of the Legal Practitioners' Act, 1995, is hereby dismissed.
2. The Applicant is ordered to pay the costs of the application, consequent upon the employment of one instructing and one instructed legal practitioner.
3. The matter is removed from the roll and regarded as finalised.

JUDGMENT

MASUKU J:

Introduction

[1] The admission and enrolment of a person as a legal practitioner of this court, is, on all accounts, a truly special occasion. It translates a person, simply on admission and taking the prescribed oath, from a layperson, to an

officer of this court. It is also the culmination of hard work, dedication, discipline, consistency and sacrifice, to mention but a few virtues.

[2] This exhilarating occasion has eluded the present applicant on a few occasions. His dogged determination, however, to have his celebratory day, has seen him, after incurring a few losses before this court, ascending the hill, to the Supreme Court, on appeal. He received no joy in his sojourn up the hill either.

[3] It is fitting to state that the applicant is a truly indefatigable character. He appears yet again before this court, knocking on the very same door that has previously denied him ingress into the profession – the sense of thrill and exhilaration that accompanies admission and enrolment, as aforesaid.

[4] The sole question for determination before court is whether the omens, so to speak, are good insofar as the applicant is concerned this time around. Will he succeed or meet the same fate as on previous occasions? This judgment answers that very question in the succeeding paragraphs.

Background

[5] The applicant Mr. Alex Mabuku Kamwi Kamwi, is an adult Namibian male. He hails from Katima Mulilo, in the Zambezi Region of this Republic. As indicated above, he is before court seeking an order that he be admitted and enrolled as a legal practitioner in terms of the provisions of s. 5 of the Legal Practitioners' Act¹, ('the Act').

[6] His application is vehemently opposed by the Law Society of Namibia on grounds that shall be traversed as the judgment unfolds. It suffices, for present purposes, to state that the Law Society of Namibia, (LSN), adopts the view that the applicant does not meet the statutory requirements for admission and authorisation to practise.

¹ Act No. 15 of 1995.

The applicant's case

[7] The applicant, as demanded by the Act, filed an affidavit in support of his application. In it, he alleges that the application is brought in terms of rule 72 of this court's rules. He states that he is the holder of a Bachelor of Laws Degree (LLB), from the Open University of Tanzania. He alleges further that the degree he obtained, is an equivalent of the qualification in law, required by s 5 of the Act.

[8] He deposes further that he has successfully undergone and completed a practical legal training course and that this was in June 2008, and whose duration, was for period of two years. This course, he further deposes, was provided by the Oxbridge Academy, Stellenbosch, Republic of South Africa. He alleges further that he upgraded this qualification in the year 2015, by having same endorsed by the South African Institute of Management (SAIM), for short.

[9] It is the applicant's further deposition that he has passed the Legal Practitioners' qualifying examinations and that he has the experience and practical knowledge or skills necessary for him to practise law. In support of this assertion, the applicant annexes a certificate from Oxbridge Academy, which reflects that he passed his course *cum laude*.

[10] This certificate is *ex facie* for 'Meritorious Achievement In A Particular Field of Study & For Unremitting & Unstinting Pursuit of Academic & Scholarly Excellence. It appears to have been issued in the year 2008. The importance of quoting what the applicant's qualifications are, will become apparent as the judgment unfolds, particularly considered in view of the LSN's bases of oppositions. For the sake of completeness in this regard, the applicant further attached a certificate from the said Oxbridge Academy, issued in June 2008, for a Diploma in Legal Studies, which consisted of Legal Principles, Legal Practice Business Practice and Governance.

[11] The applicant further deposes that he is the holder of a diploma, majoring in Paralegal studies. This qualification was issued by Thompson Education Direct, United States of America. He claims further that the course he passed include both theory, practice and procedures and that he passed all the practical examinations and has obtained the practical skills and knowledge necessary for the practice of the law. Finally, in this particular regard, he submits that he is the holder of a Bachelor of Laws Degree and which eminently suits him, I may add, to be admitted as a legal practitioner of this court.

[12] Besides alleging that he meets the statutory requirements in s 4 and 5 of the Act, and to which I shall turn in due course, the applicant cites certain cases in which he appeared in person, the Supreme Court² commented favourably on his command and comprehension of the Queen's language, English. He concludes that the court, in that judgment, concluded for a fact that he is a 'qualified paralegal professional who has completed the training and has passed the exams and have (*sic*) experience, practical knowledge or skills to practice law as such'.³

[13] It is the applicant's further deposition that the Supreme Court 'accepted as a fact that I have undergone and completed a practical legal training as is evident on annexure AK34 read with OA4 for two years provided by Oxbridge Academy, Stellenbosch, as endorsed by the South African Institute of Management. He also states that the 'court was satisfied that I am a fit and proper person to be so admitted and authorised to practice in the field law.'⁴ He makes other allegations that I am of the view should not burden this judgment any further.

[14] It would, however, be remiss of me and probably unfair to the applicant, not to mention another case that he featured in. This was a case between the parties as they appear before me in the instant case. In that

² Kamwi v Duvenhage and Another (SA 22/2018) [2009] NASC 16 (13 November 2009).

³ Para 5.43 of the Applicant's Founding Affidavit.

⁴ Para 5.4.4 of the Applicant's Founding Affidavit.

case, Angula DJP presided. He is alleged to have 'authoritatively made a pronouncement as follows:

“You cannot give evidence now. You are a lawyer now.”

[15] He concludes on that case by stating that the court, per Angula DJP, 'held me as a person duly trained and duly qualified to give legal advice to people and to represent them in court, and to draft legal documents for them. That I should conduct myself in the manner other lawyers conduct themselves before court.'

The LSN's position

[16] In view of what appears to be formidable representations of his suitability and fitness by the applicant, what is the position of the LSN? The answer can be short. The LSN takes the view that the applicant is not entitled to the order he seeks. This is primarily because he has not met the mandatory requirements of the Act relating to qualifications for admission and fitness to be admitted and authorised to practise as a legal practitioner in this jurisdiction.

[17] The LSN's affidavit is deposed to by its Director, Ms. Margaretha Steimann. In her affidavit, she records that the applicant has, on three previous occasions, applied for admission before this court without success. As stated earlier, she pertinently mentions that LSN, is, in terms of the statutory powers vested in it, by s 42 of the Act, entitled to appear in any court in support of or in opposition to, or to abide by any decision of the court in any proceedings brought in terms of the Act or any other law. This is important and I will revert to it as the judgment unfolds.

[18] Regarding the merits, the Director states that the applicant's application is defective. She denied that the applicant complied with the requirements set out in s 4(1)(b) and s 5 of the Act. Another issue she pertinently raises, is that the applicant's annexures OUT1 and OUT1B, are in

contravention of the provisions of rule 128 of this court's rules. The respondent's affidavit is, on the critical issues, as bare as can be.

[19] I am of the view that the allegations by the LSN, which are in the affidavit, do not deal with the factual bases for the opposition. It is not sufficient, whereas here, the applicant states that he has complied with the requirements for admission and authorisation to practice in terms of the relevant provisions, for the LSN to deny that and make no factual allegations for its opposition, for instance, to state that the applicant has not complied because he has done this or that or has not done this or that in contravention of the applicable legislation. *Hallie Investment 142 CC t/a Wmpy Maerua v Caterplus Namibia (Pty) Ltd*⁵

[20] The ground of opposition must have a factual basis, which can be expanded upon in the heads of argument. In this regard, for instance, even if the basis of the opposition is based on statute, in the sense that it is alleged that the applicant has not complied with the statutory requirements, those requirements should be stipulated and how the applicant has not complied with them. This then enables a person in the applicant's shoes, to file a meaningful reply thereto and which will assist the court, in determining the real issues in dispute, between the parties.

[21] In reply, the applicant took issue with most of the issues raised in the answering affidavit, including the role and status of the LSN and its competence to oppose the application. He even questioned the authority of the LSN's Director, to depose to the affidavit in opposition. Happily, Mr. Kamwi, in argument, was in a more receptive element and abandoned, as I understood, all the issues he had raised in reply and I may say, wisely so, because most of them were really devoid of merit.

Proper procedure in applications for admission – Court criticised.

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⁵ (SA 55/2014) [2015] NASC (December 2015), para 11-13). It is important to note that the case dealt with action proceedings. Nonetheless, the principles are *mutatis mutandis* applicable to application proceedings.

[22] The one issue, that needs to be addressed that the applicant dealt with in his heads of argument, is that out of ignorance, he eventually submitted, he alleged that the LSN was improperly before court, as the procedure for opposing *ex parte* applications, had not been followed. In this regard, it was his view that a notice to oppose should have been filed by the LSN. In this particular connection, he submitted, that the notice to oppose should have been 'supported by an affidavit setting out the nature of that interest and the grounds on which he or she desires to be heard, after which the Registrar must docket-allocate the matter to a managing judge who must set it down for hearing.'⁶

[23] I am of the considered view that this argument misses a very crucial point. Reliance for this argument, is placed on rule 72(4). In this regard, it should be pointed out that this rule does not strictly apply to the LSN where applications for admission, are concerned. I say so because when one reads the rule as a whole, it applies to ordinary *ex parte* applications.

[24] I do not regard applications for admission as ordinary *ex parte* applications because in terms of the law and the Rules of this court, the LSN must be served with the application for admission, meaning it is entitled to notice of any application for admission. For this reason, the law recognises its interest in every application for admission as the *custom morum*, (the custodian of morals) of the legal profession. In other *ex parte* applications, potential respondents may not be served, either because they are unknown, or service on them may serve to fructify the very harm sought to be forestalled in the *ex parte* application.

[25] The fallacy of the applicant's argument becomes plain when one has regard to the notorious fact that rule 72 does not apply to applications for admission. That this is the case can be seen from the fact that the rule-maker, in his wisdom, promulgated a separate and self-contained rule relating to applications for admission, and that is rule 80. It has a different regime to rule

⁶ Rule 72(4) of the High Court Rules.

72 and does not require the LSN to follow the provisions of rule 72. This argument is accordingly doomed to fail and I so hold.

[26] Sight should not be lost of the fact that the LSN has a statutory duty in relation to applications for admission and I dare say, in respect of other applications brought to court, in terms of the Act. In this regard, s 42(k) and to which the Director referred in her answering affidavit, gives the LSN power to, 'appear in support of or in opposition to, or abide the decision of any court, in any proceedings brought in terms of this Act and, if permitted by any other law, such other law.'

[27] The trenchant criticism of the court by the applicant for its approach, which as stated above, is in terms of the law and this court's rules, stands to be deprecated in the most emphatic terms. This unwarranted criticism, calls into question the fitness of the applicant to be admitted as he prays. This is because he willy-nilly, but wrongly accused the court of violating constitutional principles, as follows in his heads of argument:

'Only after the application for leave to oppose could have been argued successfully the LSN could then file its notice of intention to oppose and thereafter, file its answering affidavit. This was not complied with by this Court. That is, the Court exercised its discretion outside the parameters provided by the rule and such is illegitimate. Despite my objections to the procedure adopted by this Court, in allowing the LSN to intervene, the judge exercised public powers illegitimately to order as he did. Hence this Court's exercise of public powers (sic) not in accordance with the principle of legality and the notions of basic fairness as protected in the Constitution of Namibia.⁷ (Emphasis added).

[28] Mr. Kamwi was not done with his diatribe. He went on to lecture the court about the principle of the rule of law and the principle of legality. He concluded the diatribe by accusing the presiding judge as follows:⁸

⁷ Para 3.2 of the applicant's heads of argument

⁸ Para 3.5 of the applicant's heads of argument

'The exercise of public powers by His Lordship Mr. Justice Masuku J on 14 June 2019 is neither authorised by Rule 72 (4) of the Rules of Court or the Practice Directions as amended. Hence illegitimate.'⁹

[29] Later on, he said of the presiding judge, 'As he exercised his public powers or performed his functions outside the parameters of Rule 72 (4), the order of 14 June 2019 is illegitimate and unlawful. The doctrine of legality is a means to determine the legality of administrative conduct and is therefore fundamental in controlling and where necessary like in the present matter in constraining the exercise of the Honourable Judge's public powers and functions to what is required in our constitutional democracy.'

[30] Whether decisions of this court amount to administrative acts, properly so-called, as the applicant contends, is a question for another day. In fact, rather than proceeding with the misguided diatribe, the applicant would have been well advised to have channelled his energy towards applying for review of the decision complained of. Criticising the court in respect of a matter over which it is already *functus officio*, having fully and finally exercised its jurisdiction is singularly unhelpful both to the court criticised and the applicant.

[31] During argument, Mr. Kamwi attempted to avoid these serious allegations and the imputations he made, like a plague. I have, notwithstanding his reluctance to deal with these issues, found it fitting that the correct picture be painted to the reader. And more importantly, it is very dangerous when a litigant, who intends being admitted as a legal practitioner, makes such allegations, based on his or her own misguided reading and interpretation of the applicable law.

[32] I should mention that even if Mr. Kamwi was correct that the court had been wrong in its approach, the criticism should have been couched in temperate language. This is what officers of the court are trained to do when traversing such slippery terrain, but in legitimate cases, not informed or

⁹ Para 3.3 of the applicant's founding affidavit.

influenced by personal gain, or fuelled by a misunderstanding and misinterpretation of the law.

The merits

[33] What this court is called upon to consider, is whether the applicant, as he claims, followed the requirements of the Act and thus qualifies to be admitted as a legal practitioner. The LSN says a big NAY! Who is on the correct side of the law in this regard?

[34] In answering this all-important question, it is imperative, at this stage, to have regard to the relevant statutory enactments. The LSN submitted that the applicant should not be admitted for he stands in contravention of s 4(1) (b) and s 5 of the Act. I turn to consider the said provisions below.

[35] Section 4(1) provides the following:

Subject to the provisions of this Act, the Court shall admit and authorise to practise as a legal practitioner any person who, upon application made by him or her, satisfied the Court that he or she –

- (a) is a fit and proper person to be so admitted and authorised;
- (b) is duly qualified in accordance with the provisions of section 5. . .'

[36] I will not quote (c), for the reason that it deals with issues of citizenship or nationality of the applicant. There are no qualms whatsoever about the applicant in this regard, as he is a Namibian citizen in accordance with s 4(1) (c)(i).

[37] It is important, to note, that s 4(1)(b) above, refers to the applicant having to qualify for admission in terms of s 5. In this regard, the applicant should show, to the satisfaction of the court in the application made for admission, that he or she is qualified in terms of s 5. What does this section provide?

[38] The provision is headed 'Academic and professional qualifications' and reads as follows:

- '5. (1) A person shall be duly qualified for the purpose of section (4)(1) if –
- (a) he or she holds a degree in law from the University of Namibia, or an equivalent qualification in law from a university or a comparable educational institution situated outside Namibia which has been prescribed by the Minister under subsection (4)(a) for the purposes of this paragraph, and he or she has, subject to subsections (2) and (3), been issued with a certificate by the Board stating that he or she –
 - (i) has satisfactorily undergone practical legal training; and
 - (ii) has passed the Legal Practitioner's Qualifying Examinations;
 - (b) he or she holds a degree, diploma or certificate in law which immediately before the commencement of this Act was prescribed under the Attorneys Act, 1979 (Act 53 of 1979) as a degree, diploma or certificate which entitled a holder thereof to be admitted as an attorney under that Act, and he or she –
 - (i) has, after having obtained such degree, diploma or certificate, either before the commencement of this Act, or by virtue of the provisions of section 94(2), at any time not later than two years after that date, or such longer period as the Minister by notice in the *Gazette* may determine, complied with the provisions of the Attorneys Act, 1979 in regard to service under articles and passed the practical examinations referred to in section 14(1)(a),(b),(c) and (d) of that Act, or such part or parts thereof from which he or she has not been exempted by virtue of the provisions of section 13 or 13 A of that Act; or
 - (ii) was, immediately before the commencement of this Act, exempted by virtue of the provisions of section 13 or 13A of the Attorneys Act, 1979, from service under articles and from passing the practical examinations referred to in subparagraph(i);
 - (c) he or she holds a degree or an equivalent qualification from a university or a comparable educational institution situated outside Namibia which has been prescribed by the Minister under subsection (4)(b) for the purposes of this paragraph and he or she –
 - (i) has undergone a course of one year undergraduate study provided by the Faculty of Law of the University of Namibia and has been certified by the University as having passed all examinations and fulfilled all other requirements of such course; and

(ii) has, subject to subsections (2) and (3) been issued with a certificate by the Board stating that he or she –

(aa) has satisfactorily undergone practical legal training; and

(bb) has passed the Legal Practitioners' Qualifying Examination; or

(cc) he or she holds a degree in law from the University of Namibia, or a degree or equivalent qualification in law from a university of a comparable educational institution outside Namibia which has been prescribed by the Minister under subsection (4)(a) and (b) and who has been issued with a certificate –

(i) by the Minister, after consultation with the Board for Legal Education, stating that he or she has for a continuous period of five years, and to the satisfaction of the Minister, performed duties in the service of the State as –

(aa) a magistrate appointed under section 9 of the Magistrates' Court Act, 1944 (Act No. 32 of 1944); or

(bb) Director of Legal Aid or legal aid counsel appointed under section 3 of the Legal Aid Act, 1990 (Act No. 29 of 1990); or

(ii) by the Attorney-General, after consultation with the Board for Legal Education, stating that he or she has for a continuous period of five years, and to the satisfaction of the Attorney-General, performed the duties in the service of the State as a prosecutor in the office of the Prosecutor-General; or

(d) his or her name appears on the list, register or roll of legal practitioners, advocates or attorneys, or by whatever name called, kept by a competent authority of any country specified in Schedule 3 to this Act, and he or she –

(i) has upon his or her application, been exempted by the Board from complying with the requirements of subparagraph (i) and (ii) of paragraphs (a) and where applicable, has complied with any conditions subject to which such exemption has been granted by the Board; or

(ii) where he or she has not been so exempted, has complied with the provisions of subparagraphs (i) and (ii) of paragraph (a).

(2) The Board shall not for the purposes of paragraph (a)(ii) or (ii)(aa) of subsection (1) or section 6(3) certify that a person has satisfactorily undergone practical legal training, unless the Board, after the consideration of a report by the Director of the Centre –

(a) is satisfied that such person has –

- (i) for the full period that he or she attended the course of post-graduate study; or
- (ii) if such person has already passed the Legal Practitioners' Qualifying Examination, for a period of not less than six months, continuously been attached to a legal practitioner or legal practitioners for the purpose of practical legal training; and

(c) considers the standard of training received by such person as adequate for the purpose of admission as a legal practitioner.

(3) No person shall be permitted to sit for the Legal Practitioners' Qualifying Examination, unless the Board, after consideration of a report of the Director of the Centre, is satisfied that such a person has satisfactorily attended and completed the course of post-graduate study: Provided that a person who holds a degree or equivalent qualification referred to in paragraph (c) of subsection (1), shall not be entitled to commence with and attend the course of post-graduate study, unless he or she has passed all the examinations of the course of the undergraduate study referred to in subparagraph (i) of that paragraph.

(4) The Minister may from time to time, on recommendation of the Board, prescribe by notice in the *Gazette* –

- (a) for the purposes of subsection (1)(a), any degree or equivalent qualification in law from a university or other comparable educational institution in a foreign country, the legal system of which is based on the common law, shall be accepted as a sufficient qualification for the purposes of that subsection;
- (b) for the purposes of subsection (1)(c), any degree or equivalent qualification in law from a university or other comparable educational institution in a foreign country, the legal system of which is not based on the common law, shall be accepted as a sufficient qualification for the purposes of that subsection.'

[39] It important, for purposes of analysing the above provisions, to state that in terms of s 1, the definition section, 'Minister', is the Minister responsible for Justice. On the other hand, the word 'Board' as used in the Act, 'means the Board for Legal Education established by section 8'. According to that provision, the Board consists of (a) the Chief Justice, the chairperson of the Board; (b) four persons appointed by the Minister, one of whom shall be a

person employed in connection with the training of candidate legal practitioners at the Centre; (c) one legal practitioner in full-time employment, with the State, appointed by the Attorney-General; (d) the Prosecutor-General; (e) the Dean of the Faculty of Law of the University of Namibia: and (f) three legal practitioners appointed by the Law Society Council.

[40] Having regard to what is quoted above, as being the mandatory requirements of the Act, one thing is quite clear and of which the applicant does not make an allegation. It is this – he does not, anywhere, in the founding affidavit, say that he has been issued by the Board, with a certificate stating that he has undergone practical legal training. This is a mandatory requirement of s 5(1)(a)(i). I may, for purposes of completeness, exclude the possibility that he may have attached a certified or any copy thereof to the papers filed of record. I mention this in case it may be argued that he does have that certificate but may have inadvertently forgotten to mention it in the papers.

[41] It is also plain, on the papers that the applicant did not state that he has passed the Legal Practitioners' Qualifying Examination, which is mandatorily required by s 5(1)(a)(ii), quoted above. The evidence of compliance with this requirement, is normally a certificate issued by the Board to the prospective legal practitioner. The applicant has not averred that he sat for this examination and has not attached a copy thereof, certified or not. Clearly, the inference, to reasonably draw from both failures, is that he did not undergo and pass this examination as required in peremptory terms by the Act.

[42] The examination referred to above, is, in terms of the Act, set by the Justice Training Centre, established by the University of Namibia and this is provided under section 16 of the Act. The examination that the applicant claims to have undergone, by his own admission, was offered by the Oxbridge Academy, based in Stellenbosch in South Africa. This institution, is not recognised nor mentioned in the Act and its certificate does not therefor qualify the applicant for admission as a legal practitioner in this jurisdiction.

[43] It should be mentioned, at this juncture, that undergoing practical training and sitting and passing the qualifying examination, are not the only routes through which a prospective legal practitioner, may be duly admitted by the court.

[44] According to section 5(1)(cc)(i) of the Act, a person may be admitted and authorised to practise if he or she holds a degree from the University of Namibia, or any other institution recognised by the Minister in terms of s 4(a) or (b). This person must, in addition thereto, be issued with a certificate by the Minister, after consultation with the Board, that he or she has, for a continuous period of five years, and to the satisfaction of the Minister, performed duties in the service of the State as a magistrate or Director for Legal Aid or legal aid council appointed in terms of the Legal Aid Act. The applicant has made no case for admission under this provision.

[45] The applicant does not make a case under s 5(1)(cc)(ii) of the Act either. That provision entitles a person with a degree from the University of Namibia or a recognised institution gazetted by the Minister and who in addition, has a certificate issued by the Attorney-General, in consultation with the Board. This certificate should state that that person has, for a continuous period of five years performed the duties in the service of the State as a prosecutor in the office of the Prosecutor-General.

[46] Furthermore, the applicant fails to make a case under s 5(1)(d) of the Act. This provision entitles a person whose name is registered in the roll of legal practitioners, advocates or attorneys, in another country, specified in Schedule 3 to the Act, and who has, after applying to the Board, been exempted from with the requirements of s 5(1)(a) or (b) above.

[47] In the premises, the conclusion is inescapable, that the applicant has dismally failed to make out any case for his admission and authorisation to practise as a legal practitioner of this court. It becomes as clear as noonday that he has completely failed to comply with the mandatory provisions of s 4 (1)(b) above, as read with s 5 of the Act.

[48] It must be mentioned in this regard, that the court's hands are tied behind its back in relation to such applications. It has no power or discretion to exercise in cases where an applicant falls foul of any of the above provisions. It is an all or nothing case, unless the requirements are changed or relaxed by the Legislature at some future date. For present purposes, the applicant does not meet the mandatory requirements. This marks the end of his road!

Non-authentication of certificate

[49] There is another non-compliance that should be pointed out and it was raised by Ms. Garbers-Kirsten, for the LSN. It relates to the certificate that the applicant claims he obtained from the Open University of Tanzania. In terms of rule 128, the Vice Chancellor of that university, ought to have had his signature authenticated before the certificates were filed of record in this matter.

[50] The said provision states in subrule 92) that, 'A document executed in any country outside Namibia is, subject to subrule (3), considered to be sufficiently authenticated for the purpose of use in Namibia if it is duly authenticated in that foreign country by –

- (a) a government authority of that country charged with the authentication of documents under the law of that country; or
- (b) a person authorised to authenticate documents in that foreign country, and a certificate of authorisation issued by a competent authority in that foreign country to that effect accompanies the document.'

[51] In the instant case, the signature of the Vice Chancellor or the Deputy, is not authenticated at all in terms of rule 128. It is important to mention that the requirement for authentication, is not an idle or pedantic one. It serves a useful purpose, namely, to verify the identity and signature of the person indicated in the document and which no person in Namibia would be in a position to positively identify and confirm. This is to avoid the possibility of hirelings in foreign countries, signing fraudulent documents and having them

placed before our courts for purposes of deciding matters, thus pulling wool over the court's eyes.

[52] For that reason, and in view of the non-compliance, this court cannot have any proper regard to the unauthenticated certificate filed by the applicant in violation of the said rule. I may mention that the applicant did not, even after the LSN raised this issue, seek to correct or address this shortcoming. I will say nothing more of this issue.

Miscellaneous issues

[53] In his imaginative mind, the applicant went outside the bounds and four corners of the Act, and implored the court to admit him on the basis of certain judgments – one of this court and another of the Supreme Court. I will start with the latter. Before doing so, however, it is important to observe that the applicant appears deliberately, to read words or impute certain consequences to words innocently used by the court and to his advantage.

[54] The applicant alleges, as stated earlier, that in the *Duvenhage* matter, where he appeared in person before the Supreme Court, the Court in that matter stated that it will hold him to the same standards of accuracy, skill and position as a lawyer.

[55] There is no basis in law or fact, for the applicant to come to the conclusion that he invites the court to accompany him to – both parties walking hand in hand, as it were. The court was merely appreciating his command of the English language and his mastery over the presentation of his case and no more. The pat on the back by the Supreme Court cannot be a proper basis for his admission as a legal practitioner. The Supreme Court never had that in mind and would probably be appalled that its innocent congratulatory statements have been elevated, blown out of all proportion and twisted to an end never imagined at the time.

[56] Recently, Sibeya AJ in *Hendrik Christian t/a Hope Financial Services v NAMFISA*,¹⁰ commented about the applicant, who is experienced, like the present applicant, in appearing before the courts. The learned Judge stated that he would not treat Mr. Christian, because of his experience in appearing in court, as a lay litigant. It would be foolhardy, for Mr. Christian, on the strength of those remarks, to then claim admission as a legal practitioner, when the remarks were innocently uttered for a totally different purpose, in a markedly different context and setting.

[57] I should also mention, in this regard, that the Supreme Court is similarly circumstanced as this court. It cannot, with all the formidable and final adjudicative powers at its disposal in its arsenal, decide to admit any person as a legal practitioner if that person does not possess the requirements and attributes stipulated in the Act.

[58] The last case that the applicant sought to claim a right of admission in respect of, is that he personally argued with the LSN before Angula DJP.¹¹ In that case, the learned DJP made remarks to the effect that the applicant cannot give evidence, as he was at that stage 'a lawyer'. The applicant clung to the latter words for dear life, claiming that he had been pronounced by that exalted office of the DJP, as a lawyer, and which should readily entitle him, to unconditional admission, it would seem to me.

[59] I am fortunately placed in a position where I do not have to speak for or interpret the words used by the learned DJP - the circumstances thereof and the context. He did so himself and eloquently, if I may add, at para 24 of the judgment. I will quote him *in extenso*. He, in rejecting the applicant's proposition, said:

'For instance in *Kamwi v Law Society of Namibia*, the applicant cites the incident when he was appearing in person and was busy making oral submissions and then switched from making submissions to giving evidence on the procedure followed by a University in sending examination results to students. The court

¹⁰ HC-MD-CIV-MOT-GEN-2020/00098 NAHCMD 125 (02 April 2020).

¹¹ HC-MD-CIV-MOT-GEN-2019/00095 NAHCMD 532 94 December 2019, para 24.

reminded him that he could not give evidence because “You are a lawyer now”. It was clear that the court was simply reminding him that he was playing a role of a lawyer at that juncture and not a role of a witness. The applicant now claims that this statement is “an authoritative pronouncement by this court that I cannot give evidence now. I am a lawyer now”. He uses this statement to advance his claim that he is a qualified lawyer. He goes further to elevate the statement to the status of a “ruling”. In this connection this court is of the view that the applicant’s approach is transparently disingenuous if not an unfair misrepresentation or manipulative presentation of the real facts.’

[60] I cannot say more. It is clear that Angula DJP threw out the applicant’s argument with both hands, as opportunistic in the circumstances. It is mind-blowing, that despite the veiled criticism levelled at him by the learned DJP, the applicant still has the temerity to come to this court, seeking to stand on a limb that the DJP painfully excised from his body and without ceremony.

[61] Persons, who wish to be admitted and authorised to practise as practitioners of this court, no matter the level of desperation attaching to them or their cause, should on no account, resort to deliberately twisting the words of the court, to suit their self-serving narrative. They should exhibit *uberimma fides*, (utmost good faith), in all their dealings. The type of behaviour the applicant engaged in, does not enamour a potential legal practitioner or his or her cause to the court, even if the legal practitioner would otherwise have qualified to be admitted.

Conclusion

[62] In view of the analysis above, it is the considered view of the court that the applicant has failed to make any case for his admission and authorisation to be admitted as a legal practitioner of this court. With his naked failure, to comply with the mandatory provisions of the Act, relating to admissions, his case cannot conceivably succeed. His insatiable desire to be admitted and authorised to practise, alone, without the contemporaneous and necessary compliance with the legislative solitudes, expressed in the Act, make the case one for inevitable failure.

Costs

[63] The applicable position at this juncture is trite. Costs are in the discretion of the court. That having been said, the law is that costs will normally follow the event. The applicant has been unsuccessful in his latest attempt to don the legal practitioners' stately robes. The LSN, which has successfully opposed the matter, should not be out of pocket in the circumstances.

[64] Ms. Garbers-Kirsten, argued, and forcefully too, that the applicant has failed on this ill-fated mission on three previous occasions, being in 2004, before Van Niekerk J; 21 June 2016, and again 23 April 2019, before Angula DJP. She moved the court to order the applicant to pay the costs on a punitive scale because his papers have again been found to be defective, to mark its disapproval of his conduct. She further moved the court to issue an order that the applicant should not move a fresh application before he has settled the costs of this application.

[65] I am of the view that the applicant has no room to avoid paying the costs. Furthermore, this is a matter, on account of its seriousness and possible implications for the LSN, in its role and duty as the *custom morum* of the legal profession, one that deserved the employment of instructed counsel. I am not, however, persuaded that it is a proper case to mulct the applicant in punitive costs.

[66] Although his conduct may understandably irk the LSN, I interpret his actions as those of a person, who would move both heaven and earth, at one go, in order to be admitted as an officer of this court. To order punitive costs, in the circumstances, may be regarded as a decision that may cause a chilling effect on those who may wish to access and practise this profession, whether rightly or wrongly.

[67] Having said this, it is probably opportune to send a warning to the applicant. In view of the previous failures in his unquenchable quest to be admitted as a legal practitioner, time may come for this court, where reliance for admission is based on these spurious grounds, with no foundation in the Act, to let loose its entire ire on him. This would be communicated by an appropriate punitive order as to costs.

[68] No case has been made in the papers, for ordering the applicant not to bring another application, without having paid the costs of this application. There is no allegation in the papers that there are previous bills of costs outstanding from the applicant. In the premises, I am of the view that there is no need to make any special order prohibiting him from moving a further application, apart from what I stated in the immediately preceding paragraph. If there are outstanding bills of costs, the LSN has remedies at its disposal, as it would also have, if he brings another application, without settling the costs of the present application.

Order

[69] In the premises, the order that commends itself as being condign, all the circumstances, taken into account, is the following:

4. The Applicant's application for admission and authorisation as a Legal Practitioner, in terms of the provisions of Section 4 of the Legal Practitioners' Act, 1995, is hereby dismissed.
5. The Applicant is ordered to pay the costs of the application, consequent upon the employment of one instructing and one instructed legal practitioner.
6. The matter is removed from the roll and regarded as finalised.

T.S. Masuku
Judge

APPEARANCES:

Applicant: A. Kamwi, in person.

Respondent: H. Garbers-Kirsten
Instructed by Kopplinger Boltman