



**REPORTABLE**

CASE NO: SA 39/2020

**IN THE SUPREME COURT OF NAMIBIA**

In the matter between:

**PETER WATSON**

**Appellant**

and

**THE LAW SOCIETY OF NAMIBIA**

**Respondent**

**Coram:** FRANK AJA, ANGULA AJA and UEITELE AJA

**Heard:** 11 April 2022

**Delivered:** 16 June 2022

**Summary:** The appellant is a non-Namibian who applied to be admitted and enrolled as a legal practitioner in Namibia pursuant to s 4 of the Legal Practitioners' Act 15 of 1995 (the Act) upon satisfaction of the criteria set out therein. Of relevance to this appeal is s 5 of the Act which deals with academic and professional qualifications required in order to be admitted and enrolled as a legal practitioner. The appellant's foreign qualifications met the standard of foreign qualifications which the Minister of Justice may recognise under the Act. Appellant approached the Board for Legal Education (the Board) which is empowered to exempt (totally or partially) persons with recognised foreign qualifications from certain professional qualifications ie practical legal training and the Legal Practitioners' Qualifying Examination.

At the time of his application for a Certificate of Exemption, the appellant had been suspended from practise in South Africa and he did not disclose this fact to the Board. The Board issued him a Certificate of Exemption and he completed the Legal Practitioners' Qualifying Examination set by the Board in fulfilment of the conditions of his exemption. He applied to be admitted and enrolled as a legal practitioner of the High Court of Namibia which application was opposed by the Law Society of Namibia (the respondent). The opposition focused on the omission by the appellant to disclose his suspension and the facts surrounding it. The respondent claimed that the appellant was not a fit and proper person to be admitted and enrolled as a legal practitioner in Namibia and it further disputed that the appellant was on the roll of attorneys in South Africa when he made his application in Namibia.

The court *a quo* found that the circumstances in which appellant failed to disclose the fact that he was suspended from the roll of attorneys in South Africa (and further, to establish that he was on the roll of attorneys in South Africa) did not persuade the court *a quo* that he was a fit and proper person to be admitted and enrolled as a legal practitioner in Namibia and that he, in any event, did not establish that his name was on the roll of attorneys in South Africa. The court *a quo* declined his application and the appeal before us lies against this decision of that court.

On appeal, the appellant argued that he was under no duty to disclose to the Board that he was suspended from practise when he applied for his Certificate of Exemption as the Board was solely concerned with the assessment of his foreign qualifications and not to determine whether he was a fit and proper person to be admitted and enrolled as a legal practitioner in Namibia (that requirement was left for the High Court to determine and he did inform the High Court to enable it to make that determination). He further submitted that even if there was a duty on him to disclose his suspension to the Board, the non-disclosure did not impact his character to such an extent that it could be said that he is not a fit and proper person to be admitted and enrolled as a legal practitioner.

The respondent maintained that the appellant was under a duty to disclose the facts of his suspension to the Board. That he was dishonest for not disclosing this to the Board. The respondent further argued that the appellant's dishonesty was evident from the fact that he contended that he was still on the roll of attorneys in South Africa when he was removed from such roll on his own motion.

*Held that*, it is not necessary for the determination of this matter to rule on whether there was a duty on the appellant to inform the Board of his suspension, however the parties to this appeal interpreted s 5(1)(d) of the Act to mean that the Board had to be satisfied that appellant was on the roll of attorneys in South Africa for the purpose of considering his application for an exemption certificate.

*Held that*, the appellant decided on the self-serving interpretation of the Act to avoid having to inform the Board about his suspension and hence not run the risk of his application not being considered. He thus placed a misleading picture before the Board so as to avoid any questions being asked with regard to his suspension.

*Held that*, appellant was at the time, in terms of the order of suspension ' . . . interdicted and restrained from practising as an attorney and/or holding himself out as an Attorney' in South Africa. He acted in defiance of this order when he applied for his Certificate of Exemption in Namibia on the basis that he was still so enrolled as an attorney in South Africa. In view of this interdict, any person acting honestly and with integrity would have informed the Board of the suspension so as to not act contrary to the terms of the interdict.

*Held that*, the court *a quo* exercised a discretion essentially based on a value judgment by taking facts placed before it into consideration and it is not for the Supreme Court to simply reconsider the matter afresh and come to a decision and substitute the court *a quo*'s decision with its own if it does not agree with the decision of the court *a quo*.

*Held*, the court *a quo* was correct to be concerned as to the fitness of the appellant to join, what is referred to as an 'honourable profession'. In terms of the test on appeal there is nothing to suggest that the judge *a quo* acted capriciously or upon a wrong principle, without substantial reasons or materially misdirected himself on the facts or the law. Nor was there bias on the part of the judge *a quo*. In the result, this court need not consider whether it would have come to a different conclusion had it been the court of first instance.

It is doubtful that the appellant established that he is duly qualified to be admitted and enrolled as he must for this purpose establish that his name appeared on the roll of attorneys in South Africa when he moved the application *a quo*. As is evident from the order of the South African court that uplifted his suspension, that same court removed his name from the roll and there is no suggestion that this order was ever changed so as to place his name on the roll, albeit as a non-practising attorney. The appeal thus stands to be dismissed with costs.

---

## APPEAL JUDGMENT

---

FRANK AJA (ANGULA AJA and UEITELE AJA concurring):

### Introduction

[1] Appellant, a non-Namibian applied for his admission and enrolment as a legal practitioner in Namibia pursuant to s 4 of the Legal Practitioners Act<sup>1</sup> (the Act). For this purpose, he had to satisfy the criteria set out in s 4 of the Act, namely he had to show that he was, (a) permanently resident in Namibia, (b) was duly qualified to be so admitted and (c) that he was a fit and proper person to be so admitted and enrolled.

---

<sup>1</sup> Act 15 of 1995.

[2] Germane to the decision of the court *a quo* and for the determination of this appeal is s 5 of the Act. This section primarily deals with the academic and professional qualifications needed in order to be admitted and enrolled as a legal practitioner. When it comes to foreign qualifications, the Minister of Justice may recognise certain foreign academic qualifications which was done and which qualifications included those obtained by the appellant in South Africa. With these qualifications he approached the Board for Legal Education (the Board) which is empowered to exempt (totally or partially) persons with recognised foreign qualifications from certain further professional qualifications, ie practical legal training and the Legal Practitioners' Qualifying Examination.

[3] The relevant part of s 5 when it comes to the issuing of exemption certificates by the Board to foreign nationals like the appellant reads as follows:

'5(1) A person shall be duly qualified for the purpose of section 4(1) if –

(a) . . .;

(b) . . .;

(c) . . .;

(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 of this Act, and he or she –

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

[4] The parties to this appeal and their legal practitioners interpreted s 5(1)(d) so as to read it that the Board had to be satisfied that appellant was enrolled in South Africa for the purpose of considering his application for an exemption certificate. In other words, the appellant and his legal practitioners regarded his enrolment in South Africa as a prerequisite for an application to the Board for an exemption certificate.

[5] In support of a certificate for exemption the appellant provided the Board with copies of his admission in South Africa together with an extract from a roll of the relevant law society in South Africa from which it appeared that he was enrolled as a legal practitioner in that country.

[6] However, at the time when he applied for his exemption certificate, he was suspended from practise and this fact was not disclosed to the Board. The Law Society of Namibia (LSN) as respondent in the application for admission and enrolment focused on this omission and its surrounding facts to oppose the application on the basis that he was not a fit and proper person to be admitted and enrolled as a legal practitioner in Namibia. It also disputed that appellant was on the

roll of attorneys in South Africa when he made this application to be admitted and enrolled in Namibia.

[7] The court *a quo* with reference to the principle that a person must show integrity, reliability and honesty to be regarded as a fit and proper person to be admitted and enrolled as a legal practitioner came to the conclusion that the circumstances in which the appellant did not disclose the fact that he was suspended from the roll of attorneys in South Africa was such that he did not persuade the court *a quo* that he was a fit and proper person and hence declined the application. In addition the court *a quo* also found that the appellant failed to establish that he was on the roll of attorneys in South Africa and on this basis also declined the application.

[8] The appeal lies against this decision of the court *a quo*.

#### Test on appeal

[9] As the court *a quo* exercised a discretion which is essentially based on a value judgment taking cognisance of the facts before it, it is not for this court to simply reconsider the matter afresh and come to a decision and substitute its decision for that of the court *a quo* should it not agree with the decision of the court *a quo*.

[10] The narrow compass of the powers of this court on appeal is summarised by Cloete JA in the case of *Botha v Law Society, Northern Provinces*<sup>2</sup>, in the South African Supreme Court of Appeal as follows:

---

<sup>2</sup> *Botha v Law Society, Northern Provinces* 2009 (1) SA 227 (SCA) at 230F-G.

'That discretion is an example of a "narrow" discretion. The consequence is that an appeal court will not decide the matter afresh and substitute its decision for that of the court of first instance; it will do so only where the court of first instance did not exercise its discretion judicially, which can be done by showing that the court of first instance exercised the power conferred on it capriciously or upon a wrong principle, or did not bring its unbiased judgment to bear on the question or did not act for substantial reasons, or materially misdirected itself in fact or in law.'<sup>3</sup>

[11] I am cognisant of the fact that the above principle was expressed in a situation where the removal or suspension from the roll was under consideration. I am however of the view that the conduct which leads to such sanctions will of necessity also be a bar to an admission and enrolment as in both scenarios the person would not be a fit and proper person to remain on the roll or to be admitted to the roll.

#### The facts

[12] The appellant, having obtained the necessary academic qualifications and having undergone the required practical legal training in South Africa was admitted and enrolled by the Supreme Court of South Africa (Natal Provincial Division) as an attorney in that division. As the order indicates, it was granted as the appellant was 'duly qualified to practise and to be admitted' and it was thus ordered that he be enrolled as such by the proper officer.

[13] The appellant practised as an attorney up to 2006 when he closed his practice. When he closed his practice, he returned his client's files to them together with the relevant documentation such as pleadings, invoices and notes. He thus retained only

---

<sup>3</sup> See also comments in *Kekana v Society of Advocates of South Africa* 1998 (4) SA 649 (SCA) at 654G.



the electronic records of his trust account and business banking account. He further submitted his 'complete written up trust books of account to (the relevant) law society including all reconciliations, client ledgers and reporting documents with all the relevant bank statements . . . '.

[14] What the appellant did not do was to furnish the said law society with an audit certificate as required by South African law. According to him, he did not do so as he was planning to move to Namibia and had no intention to practise in South Africa again. In addition, he stated that his financial position at the time was such that he could not afford an auditor. He moved to Namibia in the course of 2006.

[15] His omission to furnish the law society with an audit certificate caused that society to obtain an unopposed order against him in terms whereof he was suspended from practise pending the lodging of an auditor's report and/or satisfactory explanation of any findings arrived at by such auditors. This court order further interdicted and restrained the appellant 'from practising as an attorney and/or holding him out as an attorney' during his suspension.

[16] For appellant to be admitted and enrolled as a legal practitioner in Namibia based on his South African qualifications, he needed a Certificate of Exemption from the Board certifying that he was exempted (partially or totally) from having to obtain the Namibian professional qualifications. In a letter to the Board in support of an application for a Certificate of Exemption he attached copies of the court order admitting and enrolling him in South Africa as well as a copy of a certificate entitling

him to appear in the courts of that country. In the body of the letter he states 'I had previously practised as a general practitioner for my own account since 1977 until 2006 and my name appears on the roll of attorneys in the Republic of South Africa'.

[17] For the purpose of obtaining the exemption certificate from the Board, the appellant thought he had to establish that 'his name appears on the list, register or roll of legal practitioners, advocates or attorneys, or by whatever name called, kept by the competent authority tasked with this' in Natal which is the province of South Africa where he was admitted as an attorney. He did this by submitting the order referred to above when he was admitted and enrolled as an attorney in South Africa. He did not disclose to the Board that at the time, he was suspended from practise by an order of the court in South Africa. The Certificate of Exemption was issued in those circumstances during July 2013.

[18] During 2014 the appellant applied for admission as a legal practitioner in Namibia. He did not persist with that application 'due to the merit of the objections raised by the Namibian Law Society regarding my continued suspension' in South Africa.

[19] Appellant, still desirous of being admitted as a legal practitioner in Namibia, thus went to work to address his suspension in South Africa. He approached the relevant law society in that country pointing out among others that there was never any shortfall in his trust account, that no complaints were forthcoming after he closed his practise and despite the fact that he did appoint auditors they could not express a

final opinion on this trust account as his erstwhile clients to whom he had returned their files with source documents could not all be traced. The law society advised him to approach the relevant High Court in South Africa for an order to uplift his suspension.

[20] The appellant then did this. According to him, his suspension was uplifted and his name was moved to the list of non-practising attorneys as he did not intend to practise as such again in South Africa. In fact, in the penultimate paragraph of his founding affidavit in this application, he spells out his position very clearly as follows:

‘In the circumstances I respectfully submit that I remain a fit and proper person to practise as an attorney of the above Honourable Court and that my suspension ought to be uplifted in the circumstances. However, due to the fact that [I] shall seek admission in the Namibian High Court, it follows that my name should be removed from the practising roll of attorneys in the Republic of South Africa.’

[21] Neither the order sought in the notice of motion in respect of the aforesaid application nor in the copy of the court order, is there any indication that the appellant’s name was to be moved to a list of non-practising attorneys. The relief sought in the notice of motion read as follows:

- ‘1. That the order granted by the Honourable Court under case number 519/06 suspending the applicant from practising as an attorney of the High Court of South Africa be uplifted;
2. That the Appellant’s name be removed from the roll of Attorneys of the High Court of South Africa, Kwa-Zulu-Natal Division.’

[22] The relief granted by the court is contained in a court order dated 7 December 2017 which is attached to the founding affidavit in the current application. This order simply restates the relief sought in the notice of motion verbatim. Thus, notwithstanding the statement in the penultimate paragraph in the founding affidavit quoted above made in support of the application, the relief sought by the applicant remained the removal of his name from the roll and that is exactly what the court order directs.

[23] Despite the clear wording of the court order the relevant law society issued a 'certificate of good standing' in respect of the appellant on 26 March 2018 certifying that he was admitted in 1997, that it was not aware of any order suspending him from practise nor was there any such application pending and that he is entitled to practise as such in that country. When this discrepancy was brought to the attention of the law society, the aforesaid 'certificate of good standing' was revoked and the appellant's name was removed from the roll as per the order of the High Court of that province. No explanation however was given as to the cause of the mistaken understanding of the court order except that somebody from the disciplinary committee apparently informed the said law society that the court order sanctioned the transfer of the appellant's name from the list of practising attorneys to the list of non-practising attorneys in that country.

### Evaluation

[24] The thrust of the submission on behalf of the appellant to this court is that there was no duty on him to disclose the fact that he was suspended from practise when he applied for his Certificate of Exemption to the Board as the latter was solely concerned with the assessment of his foreign qualifications and not whether he was a fit and proper person to be admitted and enrolled as a legal practitioner in Namibia. This latter requirement was one left for the High Court to determine when considering his application to be admitted and enrolled as a legal practitioner in Namibia. It is accepted that he had to inform the High Court of the fact of his suspension and that this fact was relevant to determine whether he was indeed a fit and proper person to be so enrolled. Appellant did so inform the High Court. Secondly, it was submitted that even if there was a duty to disclose the fact of his suspension to the Board, that the non-disclosure did not impact his character to such an extent that it could be said that he was not a fit and proper person to be admitted and enrolled as a legal practitioner. In this regard it is submitted that the non-disclosure to the Board was based on a *bona fide* interpretation of the Act, that the Board was mainly concerned with vetting his foreign academic qualifications and was not required to determine whether he was a fit and proper person for admission in Namibia as a legal practitioner as this was in the High Court's domain where he did disclose the fact of his suspension.

[25] On behalf of the LSN it was submitted that there was a duty on the appellant to disclose the fact of his suspension to the Board and that he was dishonest to not disclose this fact to the Board. It was submitted that his dishonesty was also evident from the fact that the appellant contended that he was still on the roll of attorneys in

South Africa when he was removed on his own motion from such roll. In these circumstances the court *a quo* was justified to find that he was not a fit and proper person to be admitted and enrolled as a legal practitioner.

[26] In my view it is not necessary for the determination of this matter to decide whether there was a duty on the appellant to inform the Board of the suspension. It is not clear to me that s 5(1)(d) requires that the appellant had to be on the roll of attorneys in South Africa as a prerequisite for the Board to consider his application for exemption. The point however is that the appellant was of the view that this was a prerequisite.

[27] As the appellant thought it was a prerequisite for him to be on the roll of attorneys when he applied for the Certificate of Exemption from the Board, it was expected from him as an honest and reliable person with integrity not to misrepresent the position to the Board. Here it must be borne in mind, that, in the mind of the appellant if he could not show that he was so enrolled, the Board would not consider his application for exemption.

[28] It must also be borne in mind that it is expected from a legal practitioner to be a person of a certain character as he is about to join an honourable profession and not a commercial enterprise.<sup>4</sup> I can do no better than to quote the following extract from

---

<sup>4</sup> I am not suggesting that one is not bound by the dictates of honesty when seeking to make a living by way of commercial enterprise but one would not be bound by the strict rules of the legal profession as to conduct in the furtherance of the administration of justice.

the judgment of Fagan AJP in *Gamiet v Cape Law Society* who put the matter as follows:

'The trust and confidence reposed by the public and by the Courts in practitioners to carry on their professions under the aegis of the Courts must make the Courts astute to see that persons who are enrolled as attorneys are persons of dignity, honour and integrity.'<sup>5</sup>

For Namibian purposes, the word attorney in the above extract should be replaced with the phrase 'legal practitioner'.

[29] Firstly, it is clear from s 5(1)(d) that what is intended was a roll of persons that would be similar in foreign jurisdictions to legal practitioners as is known in Namibia. For a legal practitioner to be admitted and enrolled in Namibia by definition means a person who has 'been admitted and authorised to practise as a legal practitioner'. It is clear that where an endorsement is made on the roll behind the name of any legal practitioner to the effect that he or she is suspended, it follows that such legal practitioner concerned is, during the course of such suspension, not authorised to practise. In other words, while suspended, such person is for all material purposes not on the roll in the sense that he or she is not entitled to practise law. *Prima facie*, in my view, this means such person cannot rely on s 5(1)(d) as the whole purpose with reference to the roll of the foreign country in that section is to indicate that such person has 'been admitted and authorised to practise' as a legal practitioner in the foreign jurisdiction. Where such person cannot practise in such foreign jurisdiction

---

<sup>5</sup> *Gamiet v Cape Law Society* 1950 (2) SA 706 (C) at 708.

because he or she has been suspended, it means for all practical purposes that such person has been removed from the roll while the suspension is in force. As I shall point out below, this situation was further exacerbated by the fact that the order of suspension expressly interdicted the appellant from representing himself as an attorney whilst the suspension remained in place.

[30] I cannot accept that the appellant had no doubt that his interpretation was sound. According to him the fact that his suspension was endorsed next to his name had no effect as far as his enrolment was concerned in the sense that his name was still on the roll. He must have realised that the disclosure of his suspension may cause him problems with the application for exemption because if the Board was not with him, in respect of his view, that would be the end of his application. Instead of being open with the Board, he adopted an interpretation favourable to him and used this as a justification to mislead the Board. He attaches the order of the court in terms whereof he was enrolled and states categorically that he is still 'on the roll of attorneys in South Africa' without qualification. It is worth pointing out again that the South African court order specifically stated that as the appellant is 'duly qualified to practice and to be admitted as an attorney . . . it is hereby ordered that his name be enrolled as such by the proper officer'. Clearly, as a result of his suspension at the time he was no longer 'qualified to practise' in South Africa. I have little doubt that the appellant decided on the self-serving interpretation of the Act to avoid having to inform the Board about his suspension and hence not run the risk of his application not being considered. He thus placed a misleading picture before the Board so as to avoid any questions being asked with regard to his suspension. In addition, he was at



the time, in terms of the order of suspension ‘. . . interdicted and restrained from practising as an attorney and/or holding himself out as an Attorney’ in South Africa. He clearly acted in defiance of this order when he applied for his Certificate of Exemption on the basis that he was still so enrolled as an attorney in South Africa. In view of this interdict, any person acting honestly and with integrity would have informed the Board of the suspension so as to not act contrary to the terms of the interdict.

[31] The same trend not to fully disclose matters that may be an obstacle to appellant’s admission and enrolment is evident from the explanation in the court *a quo*, relating to the order uplifting his suspension in South Africa. Appellant states that he was suspended but that the suspension was uplifted on 8 December 2017. In support, he refers to the order of the South African High Court in this regard. The order is twofold, (a) his suspension is indeed uplifted and (b) his name is removed from the roll of attorneys. As the order removing him from the roll was presumably not germane to the point he made in respect of his suspension, he does not deal with it at all. He then later in his affidavit avers that his name was not removed from the roll but was moved to the roll of non-practising attorneys to assert his name still appeared on the roll and this together with the Certificate of Exemption means he has the necessary qualifications for admission. In support of this contention that his name, albeit in a non-practising capacity, was still on the roll he refers to a certificate of good standing from the relevant law society which certified that he was still enrolled as an attorney. He clearly did this under the over-optimistic assumption that no one would notice the discrepancy between the court order and the certificate of good standing.

When this did not happen he attached his application to have his suspension uplifted. As is apparent from what I have stated above in this regard, he did mention in his founding affidavit that he wanted to move his name to the non-practising roll but in neither the notice of motion nor in his founding affidavit was this the relief he sought and it is clear that this was not what the court ordered. If the court order mentioned is an error, he should have addressed it by way of an approach to that court to correct the order and not have structured his application in such a way to attempt to gloss over and hide his problem.

[32] In view of what is stated above, the court *a quo* was correct to be concerned as to the fitness of the appellant to join, what is referred to as an 'honourable profession'.

[33] In terms of the test on appeal there is nothing to suggest that the judge *a quo* acted capriciously or upon a wrong principle, without substantial reasons or materially misdirected himself on the facts or the law. Nor was bias on the part of the judge *a quo* even raised. In the result, this court need not consider whether it would have come to different conclusion had it been the court of first instance.

[34] I should mention in passing that on the papers it is in my view doubtful that the appellant established that he is duly qualified to be admitted and enrolled as he must for this purpose establish that his name appeared on the roll of attorneys in South Africa when he moved the application *a quo*. As is evident from the order of the South African court that uplifted his suspension, that same court removed his name from the

roll and there is no suggestion that this order was ever changed so as to place his name on the roll, albeit as a non-practising attorney.

### Conclusion

[35] In the result, the appeal stands to be dismissed and it is only the costs in respect of the application *a quo* and the appeal that needs to be addressed.

[36] The court *a quo* ordered the appellant (applicant *a quo*) to pay the costs of the application. It is common cause that the issue relating to the costs of the application *a quo* was not argued in that court. It was thus open to the appellant to approach that court to reconsider the costs issue. This he did not do. In any event, the legal practitioner for the respondent indicated that it did not intend to seek an adverse costs order against the appellant *a quo* and hence does not object to the order and in fact agrees, that the costs order *a quo* should be altered to the effect that each party must bear its own costs in that court.

[37] As far as the costs on appeal is concerned, I can see no reason why the normal rule that the costs should follow the result should not apply and this is what is sought on behalf of the appellant. I shall make such an order.

[38] In the result I make the following order:

Save for deleting the costs order of the court *a quo* and substituting it for an order that each party bears its own costs, the appeal is dismissed with costs.

---

**FRANK AJA**

---

**ANGULA AJA**

---

**UEITELE AJA**

**APPEARANCES**

**APPELLANT:**

R Heathcote (with him V Kauta)  
Instructed by Legal Assistance Centre

**RESPONDENT:**

U Sibolile-Katjipuka  
Of Nixon Marcus Public Law Office