


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2017/34672

(1)	<u>REPORTABLE: YES</u>
(2)	<u>OF INTEREST TO OTHER JUDGES: YES</u>
(3)	<u>REVISED.</u>
	
.....	08 December 2017
SIGNATURE	DATE

In the *ex parte* application of:

**TSAGAE TLOTLEGO**

Applicant

---

**J U D G M E N T**

---

**VICTOR, J:**

[1] My brother Mangena AJ and I admitted Adv. Tlotlego Tsagae as an advocate. Advocate G. Olwagen-Meyer of the Johannesburg Bar requested this court to give reasons.

[2] One of the difficulties leading up to this matter resulted in Adv., Tsagae Tlotlego having to amplify her application as she unable to produce her

degree certificate as she had not made payment of her fees to the University and they would not issue the necessary degree certificate.

[3] There are many law graduates who experience financial difficulty in paying their university fees resulting in their not being awarded the LLB degree certificates necessary for admission.

[4] The Admission of Advocates Act 74 of 1964 provides as follows:

**“3 Admission of persons to practise as advocates**

**(1)** Subject to the provisions of any other law, any division shall admit to practise and authorize to be enrolled as an advocate any person who upon application made by him satisfies the court-

(a) that he is over the age of twenty-one years and is a fit and proper person to be so admitted and authorized;

(b) that he is duly qualified;

(c) that he is a South African citizen or that he has been lawfully admitted to the Republic for permanent residence therein and is ordinarily resident in the Republic;

(d) ...;

**(2)** The following persons shall for the purposes of paragraph (b) of subsection (1) be deemed to be duly qualified, namely:

(a) Any person who-

(i) (aa) has satisfied all the requirements for the degree of *baccalaureus legum* of any university in the Republic after completing a period of study of not less than four years for that degree; or

[Item (aa) substituted by s. 1 of Act 78 of 1997.]

(bb) after he or she has satisfied all the requirements for the degree of bachelor other than the degree of *baccalaureus legum*, of any university in the Republic or after he or she has been admitted to the status of any such degree by any such university, has satisfied all the requirements for the degree of *baccalaureus legum* of any such university after completing a period of study for such degrees of not less than five years in the aggregate; or'

[5] The above provision does not expressly state that a degree certificate must be handed to court but of course that would be the best evidence. The practice has been to insist on an original degree certificate and in its absence proof of a payment proposal with the University to show that provision has been made for the payment of fees. The lack of a degree certificate has been somewhat ameliorated by the Practice Manual of the Gauteng Provincial Division, Pretoria and the Gauteng Local Division, Johannesburg. Provision is made that where a degree certificate evidencing that a LLB degree certificate is absent due to failure to pay the tuition fee, an applicant for admission as an advocate must provide proof of a payment arrangement entered into with the university to effect payment of outstanding amounts.

*'A copy of a degree certificate or other documentary proof should be attached if the applicant is not in possession of the required degree certificate due to his failure to pay tuition fees. This must be explained and proof of any arrangement entered into with the institution to effect payment of the outstanding amount must be provided. See Practice Manual of GNP page 80.'*

This is the same approach in *Ex Parte Haddad* 1954 (2) SA 568 (T). See also *Ex Parte Feetha* 1954 (2) SA 468 (T).

[6] Adv. Tlotlego Tsagae had exhausted all efforts and avenues to raise the required funds to pay off outstanding fees so that the degree could be conferred upon her. She could not find gainful employment and approached Adv. Semenya SC of Pitjie Chambers of the Johannesburg Bar requesting financial assistance. Pitjie Chambers agreed to pay the outstanding university fee as part of their transformation and social initiative projects. I am also aware that Adv. Epstein SC of Maisels Chambers has also introduced a similar initiative. There may be other similar initiatives at the Bar. These initiatives are laudable and in the true spirit and moral convictions of the members of the Bar.

**What happens to a law graduate who is not a beneficiary of a transformation or social programme?**

[7] The question for determination is what happens to those law graduates who have passed and who may not benefit from the transformation and social initiatives of the Bar. Like Adv. Tsagae there are law graduates who have not been able to make arrangements for payment of fees until assisted by Pitjje Chambers. Those law graduates may not be fortunate enough to benefit from the Bar's transformation and social initiatives.

[8] Their promise of hope to enter the legal profession is dashed. It would seem therefore that our courts must recognise that an individual graduate's poverty may result in grave prejudice at a personal level and prevent entry in the labour market in their chosen profession. The dignity of the legal graduate is impaired and results in a situation where the poverty of the individual results in a form of culpability of that individual or a form of blameworthiness because the person is too poor to pay. In my view this results in unequal treatment of a student too poor to pay and amounts to a form of victimising those graduates who are too poor to pay.

[9] It calls into question whether our court directives to insist that the applicant must have made satisfactory arrangements to pay their outstanding fees with the university may result in the problems referred to above. Can the admission of a law graduate to the profession be conditional upon our courts acting as an overseer of the debtor/ creditor relationship between student and the University?

[10] In answering this question it is necessary to consider the development of our constitutional jurisprudence which is aimed at solving practical problems and bringing about solutions that are fair and just. John Finnis in an article '*The Authority of Law in the predicament of contemporary social theory*'<sup>1</sup> raises the argument that the 'effort of legal theory should be to discern principles for solving practical problems' ... based on 'principles that

---

<sup>1</sup> 1 Notre Dame J.L. Ethics & Pub. Pol'y 115 (1984-1985)

are fair reasonable, efficient..’ He opines that it is ‘preferable that legal theory is not to ignore lack of consensus about solutions to practical problems’. If the lack of consensus between university and student re payment of fees is to result in a refusal to admit a law graduate by reason of he or she not being able to reach consensus with the university on a payment plan then the law still has to look at reaching a solution to this practical problem. The answer is not to punish, prejudice or regard the student who is in a state of poverty as blameworthy.

[11] The valuable features of a legal system must be aimed at humans flourishing in the legal order. It must be fair and not static or divorced from the political reality of the day. The inability of students to pay tuition fees is the reality of our times and current circumstances

[12] Our law must be flexible not rigid when confronting the problems of the day which in this case is the poverty of students not being able to enter the legal profession unless as the practice directive suggests they have made payment arrangements with the university. In other words the courts become a role player/ gatekeeper in the debtor/creditor relationship between student and University.

### **Flexibility of the Law**

[13] The central question is whether the law should have sufficient flexibility without compromising its basic norms to reach a solution to this problem. It can never be that the courts must act as a gatekeeper against the interests of a student in poverty.

[14] A certain norm or category becomes fully legal, i.e. truly binding for the community, only if it fulfils certain requirements determined by this external environment. These can be requirements such as “goodness” or “justice,” and also those of “efficiency” or “fidelity.”<sup>2</sup> The inability of the law graduate in the context of poverty is a fact that acquires a “legal validity,” or in other words,

---

<sup>2</sup> See Finis above

the context of the student in poverty is transformed into legally relevant consideration. Gatekeeping of students in poverty cannot be a basic norm which must remain as a practice in our courts. Debtor and creditor relationships are between the student and the University and not the basis for the courts to keep law graduates out of their profession. There are sufficient procedures in place for a creditor to recover moneys owed to it. Keeping a law graduate out of the legal profession is not an appropriate legal tool to satisfy the debt collections.

[15] It is for these reasons that I conclude that the requirement as set out in the practice manual of an applicant having to prove a payment arrangement with the University is unnecessary for the reasons stated.

[16] Applicants to the profession of advocates shall from henceforth only satisfy the provisions s 3 of Admission of Advocates Act 74 of 1964.




---

**M VICTOR**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

I agree:

---

**MANGENA**  
**ACTING JUDGE OF THE HIGH COURT**  
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

COUNSEL FOR THE APPLICANT

ADV G OLWAGEN-MEYER