

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

CASE NO: 30717/2008

In the *Ex parte* matter of

LESIBA BENJAMIN RASEBOYE

7/8/2009

APPLICANT

(For his admission as an Attorney)

Reasons JUDGMENT

MAVUNDLA J,

- [1] On the 18 June 2009 I, with Mr. Justice Mabuse A.J. concurring, admitted the applicant as an attorney of the High Court of South Africa and stated that I would, in due course, furnish the reasons for so admitting the applicant.
- [2] This judgment is precipitated by the fact that the applicant's principal refused to sign an affidavit confirming that the applicant was a fit and proper person to be admitted as an attorney of this court. The applicant's principal ("Mogashoa") has also filed an opposing affidavit denying that the applicant has gained experience or sufficient experience in certain disciplines of practice. He has further denied that the applicant has completed the prescribed period of articles of clerkship, alleging that he terminated the services of the applicant prematurely.

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(2) OF INTEREST TO OTHER JUDGES: YES/NO	<input checked="" type="checkbox"/>
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2009/08/07 DATE	 SIGNATURE

- [3] This resulted in the applicant's application for admission being postponed. The Law Society of the Northern Provinces ("the Law Society"), in compliance with the order issued by Rabie J, with Makgoka AJ concurring on 16 March 2009, held a meeting between the applicant and Mr. Mogashoa to investigate the allegations contained in the affidavit of Mogashoa and to determine whether the applicant was a fit and proper person to be admitted as an attorney of this Court.
- [4] The aforesaid order directed Mogashoa to forthwith supply the Law Society or the personnel or committee appointed to conduct the investigation with all relevant information and documentation as may be required by the Law Society in respect of the aforesaid investigations. Mogashoa was further ordered to attend meetings or hearing of the Law Society to which he might be summoned and to remain in attendance until he was excused.
- [5] In this regard, the Law Society has directed a letter dated 12 June 2009 to the Registrar of this Court stating that Magashoa has failed to submit any substantiating documents to the Committee and that the allegations in his opposing affidavit of 26 August 2008 remain unsubstantiated. It is further stated in the letter that there remains a dispute of fact as to whether the applicant has completed the minimum period of articles of clerkship prescribed by the Attorneys Act 53 of 1979, as amended ("the Act").

- [6] The Law Society has also attached a copy of the transcript of the hearing that was held between the applicant and Mr. Mogashoa as directed by the order of Rabie J and Makgoka AJ. In the said transcript, the Law Society has concluded that there is a dispute of fact and that therefore they recommend that the matter should be referred to oral evidence, where the parties could be cross examined.

BACKGROUND FACTS

- [7] The applicant is a South African citizen born on 23 April 1977¹. The applicant passed his matriculation examination². The applicant obtained his Bachelor of Laws (LLB) degree from the University of The North³. He entered into a contract of articles of clerkship with his principal, an attorney of this court, Mr. Ntheletseng Jacob Mogashoa of Polokoane (Pietersburg) for a duration of one year as from 3 March 2003⁴. The contract was duly registered by the Law Society (Law Society) under number 603/ 2003 on 29 April 2003, in accordance with the provisions of section 5 of the Act.

¹ The applicant has attached a certified copy of his identity document marked annexure "MN1".

² A certified copy of his Senior Certificate marked annexure "MN2" is attached to his papers.

³ A certified copy of his LLB degree certificate is attached as annexure "MN3".

⁴ A copy of this contract is attached as annexure "MN5" is attached.

- [8] The applicant attended and completed the full time practical legal course at the School of Legal Practice in Polokwane (formerly Pietersburg) during the period of 8 January 2002 to 20 June 2002 for 6 (six) months, which course is approved by the Law Society of the Northern Provinces for the purposes of section 7(5) of the Attorneys Act. The applicant has attached to his affidavit copies of the Practical Examination for Attorneys Certificate of Examination showing that he has sat for and passed the practical examination, in particular Parts I, II, III and IV, as prescribed in terms of section 14 of the Act.
- [9] The applicant has attached an unsigned affidavit of his principal, Mogashoa, in terms of which the latter was supposed to confirm that in his opinion the applicant was a fit and proper person to be admitted as an attorney of this Court.
- [10] In his affidavit, the applicant has explained that after he passed the Attorneys admission examination in May 2007, he informed Mogashoa of his result and requested to see him with regard to his application for his admission as an attorney. Furthermore he stated that Mogashoa indicated to him that he did not finish his article of clerkship and at one stage Mogashoa dropped the phone on him. According to the applicant, during June 2007 he had a meeting with Mogashoa at his offices in Polokwane and the latter told him that he did not serve his articles with him and refused to discuss the matter further with him and directed him to leave his offices. The applicant further says that he once

more went to see Mogashoa at Mankweng Magistrate Court where he was acting as Magistrate, but Mogashoa told him that he was not prepared to sign the applicant's application.

[11] The applicant has stated in his affidavit that he is a fit and proper person to be admitted and enrolled as an attorney of this Court. He says further that there has never been any disciplinary proceedings instituted against him by his erstwhile employer, university, Law Society or any body nor are there any such proceedings; his estate has never been sequestered; there is no civil action pending against him; he has never been convicted of any criminal offence nor are there any criminal proceedings pending against him.

[12] The applicant has further stated in paragraph 8 of his affidavit that he continuously served Jacky Mogashoa Attorneys under the direct supervision of his principal Ntheletseng Mogashoa and received training and gained experience in the following:

- "8.2. 1 The general practice and administration of attorney's office"
- 8.2.2 Magistrate's Court procedures in both trials and application matters;
- 8.2.3 Magistrate's Court appearances and attending to taxation matters;
- 8.2.4 Debt collections in the Magistrate's Court;
- 8.2.5 Drawings of bills of costs and attending to taxation thereof;

- 8.2.6. Labour Law practices and procedure;
- 8.2.7 Motor vehicle accident claims;
- 8.2.8 Drafting of various types of contracts;
- 8.2.9 High Court litigation, including the preparation of pleadings in divorce matters;
- 8.2.10 Criminal Court practice and procedures.

[13] The applicant stated, *inter alia*, that he has not been convicted of any criminal offence and, to the best of his knowledge, there is no criminal case pending against him. The applicant further stated that there is no civil action instituted or pending against him, that there was no disciplinary action pending against him by his employer or the Law Society; that he has never been previously admitted as an advocate or as an attorney of the division of this court; and that he has paid the prescribed fees in terms of Section 18(a) of Attorneys' Act. This is confirmed by the official stamp of the Law Society dated 27 August 2009, certifying that the provisions of section 19(1) and (2) of the Act have been complied with.

[14] The applicant has also attached a copy of a letter from the Road Accident Fund dated 30th July 2008 in which letter it is confirmed that he was employed as a Legal Costs Officer based in the Head Office in Pretoria. His duties entail, *inter alia*, "settling bills of costs on behalf of the Road Accident Fund, consulting and briefing of external attorneys and advocates; advising both plaintiffs' and defendants' attorneys regarding

costs to be paid; advising members of the public in relation to the RAF Act; legal research; advising attorneys in relation to RAF tariff for fees; making sure that all claims lodged with the Road Accident Fund complied with the RAF Act; advising members of the public in general regarding how claims are lodged and what is required to lodge such claims.

[15] The applicant attached his supplementary affidavit in which he seeks condonation for the late application for his admission. The reasons for this late application is, according to the applicant, due to the fact that he was busy writing practical examinations, as required by Section 14(1)(a),(b) and (c) of the Attorneys' Act. He passed his examinations on May 2007. I am of the view that the explanation of the applicant for his absence from office is reasonable and justifies that condonation should be granted.

[16] Mogashoa, in his opposing affidavit, denies that the applicant served continuously and without interruption, under his supervision from 3rd March 2003 and furthermore states that he dismissed the applicant during November 2003 for his pecuniary interest in his company. He has further alleged that the applicant collected money from clients in court and failed to submit such monies to his firm. Mogashoa denies that the applicant gained experience: in collection matters; drawings of bill of costs and attending to taxation thereof; labour law practices and procedure; drafting of various types of contracts

and High Court litigation, including the preparation of pleadings in divorce matters. He further states that he summarily dismissed the applicant for his misconduct and that the applicant never challenged that dismissal as he accepted it. He further alleges that the applicant, after he was dismissed, continued to appear unlawfully before courts around Polokwane soliciting money from clients for his own account.

- [17] The applicant, in his replying affidavit, states that he served articles of clerkship under the supervision of his principal Mogashoa continuously and without interruption from 3 March 2003 until 4 March 2004, when the contract of articles expired. The said articles were duly registered with the Law Society under 603/2003. The applicant further denies that he was dismissed from his position as a candidate attorney at anytime and that he had any pecuniary interest in his principal's firm. He denies that collected monies from clients at court and failed to submit such monies to his principal's firm. He further states that when he was a candidate attorney, he never breached any contract of articles and furthermore that the allegations levelled against him by Mogashoa are fabrications calculated to deny the applicant his right to be admitted as an attorney of this court. The applicant further states that he gained general practice and administration of attorneys' office, Magistrate's court procedures in both trials and application matters, Magistrate court's appearances with regard to trials and obligations, debt collection in Magistrate courts, drawing of bills

of costs and attending to taxation thereof, labour law practices and procedure, motor vehicle accident claim procedure, drafting of various types of contract, High Court litigation including the preparation of pleadings in divorce matters and criminal court practice and procedure. The applicant further denies that he was summarily dismissed and further states that, according to his records, there was no termination or cession of his contract of articles. He further states that, at all times when he appeared at court around Polokwane, it was at the instructions of his principal Mogashoa. He denies having solicited money from clients for his own account and states that all clients' monies were paid at the applicant's firm and into the trust account.

- [18] Attached to applicant's papers, is a letter from the Law Society dated the 11th March 2009 addressed to the registrar of this court in respect of the applicant's application which was set down for the 16th March 2009. In this letter it is stated that the request to Mogashoa to attend a meeting with the committee of the Council of the Law Society on 11 September and 14 October 2008 in order to assist the committee in its assessment of the applicant to determine whether he is a fit and proper person to be admitted as an attorney, was unsuccessful. The Law Society further stated that Mogashoa furnished it with the opposing affidavit, which I have already referred to, without including sufficient information to substantiate the allegations he had made against the applicant. Subsequent requests to Mogashoa that he should supplement his opposing affidavit

were unsuccessful. For those reasons the Law Society stated further in its letter that it is unable to make a finding regarding the question whether the applicant is a fit and proper person to be admitted as an attorney and the granting of the applicant's prayers for admission is left to the discretion of the court.

[19] With regard to the recommendation of the Law Society that there is a dispute of fact and that consequently the matter must be referred to oral evidence in order to decide whether this court should follow this recommendation, this court need to be guided by the principles that evolved from *Plascon-Evans v Paints Ltd v Van Riebeeck Paints (Pty) Ltd*.⁵

[20] In the *Plascon-Evans* Corbett AJ⁶ said, inter alia:

"Secondly, the affidavits reveal certain disputes of fact. The appellant nevertheless sought a final interdict, together with ancillary relief, on the papers and without resort to oral evidence. In such a case the general rule was stated by Van Wyk J (with whom Devilliers JP and ROSENOW J concurred) in *Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd* 1957 (4) SA 234 (C) at 235E - G, to be:

"... where there is a dispute as to the facts a final interdict should only be granted in notice of motion proceedings if the facts as stated by the respondents together with the admitted facts in the applicant's affidavits justify such an order... Where it is clear that facts, though not formally admitted, cannot be denied, they must be regarded as admitted."

This rule has been referred to several times by this Court (see *Burnkloof Caterers (Pty) Ltd v Horseshoe Caterers (Green Point) G (Pty) Ltd* 1976 (2) SA 930 (A)

⁵ 1984 (3) SA 623 (A).

⁶ Supra at 634E-635C

at 938A - B; *Tamarillo (Pty) Ltd v B N Aitkin (Pty) Ltd* 1982 (1) SA 398 (A) at 430 - 1; *Associated South African Bakeries (Pty) Ltd v Oryx & Vereinigte Backereien (Pty) Ltd en Andere* 1982 (3) SA 893 (A) at 923G - 924D). It seems to me, however, that this formulation of the general rule, and particularly the second sentence thereof, requires some clarification and, perhaps, qualification. It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. The power of the Court to give such final relief on the papers before it is, however, not confined to such a situation. In certain instances the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or *bona fide* dispute of fact (see in this regard *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at 1163 - 5; *Da Mata v Otto NO* 1972 (3) SA 858 (A) at 882D - H). If in such a case the respondent has not availed himself of his right to apply for the deponents concerned to be called for cross-examination under Rule 6 (5) (g) of the Uniform Rules of Court (*cf Petersen v Cuthbert & Co Ltd* 1945 AD 420 at 428; *Room Hire* case *supra* at 1164) and the Court is satisfied as to the inherent credibility of the applicant's factual averment, it may proceed on the basis of the correctness thereof and include this fact among those upon which it determines whether the applicant is entitled to the final relief which he seeks (see eg *Rikhoto v East Rand Administration Board and Another* 1983 (4) SA 278 (W) at 283E - H). Moreover, there may be exceptions to this general rule, as, for example, where the allegations or denials of the respondent are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers (see the remarks of BOTHA AJA in the *Associated South African Bakeries* case, *supra* at 924A).

- [21] From the a transcript of the meeting held between the committee of the Law Society and the applicant and Mogashoa on the 18 May 2009, it can be noted that Mogashoa, on his own

admission, did not report to the Law Society that he had since terminated the services of the applicant, as he alleged. Section 11 (1) of the Attorneys Act demands of the principal of the concerned candidate whose contract of articles of clerkship is terminated, for whatever reason, to report in writing to the Law Society such cancellation. The allegation of Mr. Mogashoa that he terminated the services of the applicant is not supported by any empirical evidence.

[22] Mogashoa says that he does “not have any objection” to the applicant “being admitted”⁷. Mogashoa contemptuously says: “**MR MOGASHOA:** That is why I say you can go and inform that Judge that myself, I do not have any objection if he is admitted. If he finds, if he reads those papers and finds that he be admitted, let him admit him, I do not have to interrogated for somebody’s admission...”⁸

[23] Mogashoa had alleged that the applicant had taken moneys from clients at court and had failed to account for such moneys. In support of these allegations, he submitted an affidavit in which the accusations were directed against a certain Mr. Ledwaba and not the applicant⁹.

⁷ Page 24 line 10-11. Vide also at page 13 of the transcript at line 4-12:

“**DR CURLEWIS:** Do I understand you correctly, is it your version that you stick to the truthfulness of this affidavit, but on the same hand you conveyed to us that you do not want to oppose his admission as an attorney?”

MR MOGASHOA: No, I said that on several times that I am not, even himself, I told him that no, I cannot sign your affidavit. You can go there, let the Court admit you, I do not have a problem with that one...”

⁸ At page 14 line 7—11 of the transcript.

⁹ At page 10 line 15 of the transcript:

[24] The allegations made by Mogashoa that the applicant collected moneys from his clients without accounting therefore, are premised on hearsay evidence. When he was asked about the names of his sources he was unable to furnish them. He further stated that this happened in 2003 and now, in 2009, he responds by saying that how could he be expected to remember events that took place in 2003.

[25] Mogashoa arrogantly states that he has produced 10 (ten) attorneys. If that is the position, it begs the question of how he trained those attorneys if he denies that the applicant has gained any experience from his practice in some of the respects, which I have already referred to herein above.

[26] The applicant has produced proof that he has passed the examinations prescribed in terms of section 14 of the Act. This is a clear that the applicant has gained sufficient experience to be admitted as an attorney of this Court.

[27] I am of the view that, even if this matter were to be referred for oral evidence, nothing much would be gained out of this

"MR BENNETT:MR MOGASHOA, what I still do not understand and perhaps.. I am reading this thing and it is in respect of Mr. Ledwaba, how is this relevant to Mr. Raeboye's application? Mr. Mogashoa gives an illogical explanation in this regard: "MR MOGASHOA: That is why I say that they were together. If that person maybe... you see, the clients are no longer responding well, because like that man, we abandoned his case although he paid the money, so he how will he co-operate.." I can only surmise that even if the matter were to be referred to oral evidence, on the basis of the aforesaid response, Mr. Mogashoa would be unable to get any client who would come to support his allegations against the applicant.

exercise. I say so because Mogashoa has been unable to produce any affidavit from any of his clients who allege that the applicant collected money from them without accounting thereof to Mogashoa's office. It is also evident from the transcript of the Committee established by the Law Society to investigate Mogashoa's allegations, even if he can be afforded time to look to those clients, he will never be able to locate them. Besides, he says that this happened in 2003 and he cannot be expected to remember things that happened then. Furthermore, I take note of the fact that Mogashoa has not laid any charge of theft against the applicant, nor did he report the alleged conduct or misconduct of the applicant to the Law Society. He has also not furnished any supporting affidavit from any of his general staff members corroborating the allegations that the applicant was dismissed from his duties.

[28] I am of the view that the allegations by Mogashoa against the applicant and his denials that he has gained experience "are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers"¹⁰ and I accordingly reject his allegations against the applicant. I accept the version of the applicant that he has completed the period of his candidacy with the applicant in accordance with his contract and that he has gained sufficient experience to be admitted as an attorney of this Court. I find that there is no tangible evidence upon which this court can conclude that the applicant is not a fit and

¹⁰ Vide Plascon- Evans supra at 635A

proper person to be admitted as an attorney of this Court and for that reason, I find that he is a fit and proper person to be admitted as an attorney of this Court.

[29] The above is the consideration that moved me to admit the applicant as an attorney of this Court.


N.M. MAVUNDLA
JUDGE OF THE COURT

I AGREE .


P M MABUSE
ACTING JUDGE OF THE COURT

DATE OF HEARING : 18 JUNE 2009
DATE OF JUDGEMENT : 5 AUGUST 2009
APPLICANT'S ATT : MOADI ATTORNEYS
APPLICANT'S ADV : MR. LEBALLO