

HC 150/2002

MASIMBA MAVAZA  
versus  
THE LAW SOCIETY OF ZIMBABWE

HIGH COURT OF ZIMBABWE  
CHINHENGO J  
HARARE, 20 March and 14 May 2003

### **Opposed Application**

*Adv. E. Matinenga*, for applicant  
*F. Musakana*, for respondent

CHINHENGO J: The applicant wished to apply to this Court for registration as a legal practitioner. He notified the respondent in terms of s 2(1) of the Legal Practitioners (General) Regulations 1999 (Statutory Instrument 137 of 1999) (“the regulations”) of his intention to do so. The applicant acknowledged receipt of the notice but did not issue a certificate in terms of s 2 of the regulations, nor did it do anything else. The applicant thought that the inaction by the respondent was an attempt to stop him from lodging his application for registration and to deny him access to the High Court which is the final arbiter as to whether or not he may be admitted and enrolled as a legal practitioner. The applicant then lodged this application and sought an order that the respondent, through its Secretary, should furnish this court with a certificate stating that the applicant has given the notice required in terms of the above-mentioned provision of the regulations and that the “applicant be registered without delay”. He also sought an order of costs against the respondent.

The respondent opposed the application on the basis that the applicant is not a fit and proper person to be admitted and enrolled as a legal practitioner. That an applicant must be a fit and proper person before he can be registered as a legal practitioner is a requirement in terms of Section 5(1) (f) of the Legal Practitioners Act [*Chapter 27:07*] (“the Act”).

It seems to me that the relief sought by the applicant creates a problem that whilst I may decide whether or not the respondent should furnish the certificate requested, I cannot order that the applicant be registered forthwith. There is no material placed before me on the basis of which I can issue that order. I would have to be satisfied that the applicant

meets all the other requirements in s 5(1) of the Act. Even though the respondent has accepted that the applicant meets those requirements, it would still be necessary for me to be satisfied that those requirements have indeed been met. It is one thing to compel the respondent to issue the certificate consequent upon a notice of intention to apply for registration as a legal practitioner and quite another thing to decide whether or not an applicant for registration should be registered as a legal practitioner.

In order to make the point clear I must make reference to the relevant statutory provisions: Section 4(1) of the Act provides that-

“Any person who wishes to be registered as a legal practitioner, a notary public or a conveyancer shall make application therefor to the High Court in the form and manner prescribed in regulations.”

Section 5(1) and (3) of the Act provide that -

“(1) Upon application being made to it in terms of section *four* for registration as a legal practitioner, the High Court may grant the application and direct the Registrar, to register the applicant as a legal practitioner if the High Court is satisfied that the applicant -

- (a) has complied with the formalities prescribed in regulations in relation to the application; and
- (b) possesses the qualifications prescribed in rules made by the Council for Legal Education in terms of section *forty nine* and has such practical experience, if any, as may be prescribed in such rules; and
- (c) is normally resident in Zimbabwe or a reciprocating country or has been granted a residential exemption certificate; and
- (d) is of or above the age of twenty-one years; and
- (e) is not an unrehabilitated insolvent or has not assigned his estate for the benefit of or made a composition or arrangement with his creditors, which composition or arrangement has not been rescinded or set aside; and
- (f) is a fit and proper person to be so registered;

and if the High Court is not so satisfied the High Court shall, subject to subsection (3), refuse the application.

(3) Upon good cause shown, the High Court, may condone non-compliance with any technical formality in relation to an application in terms of section *four*.”

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The regulations in s 2(1) provide that -

“Notice of intention to apply for registration as a legal practitioner, notary public or conveyancer shall be given to the secretary of the Society not later than thirty days before the application is made, and such notice shall be accompanied by copies of all documents referred to in paragraphs (a) to (d) of subsection (3) together with a fee of fifty dollars, which shall be paid to the Society.”

One of the documents which must accompany an application for registration as a legal practitioner is, as prescribed by s 2(3)(e) of the regulations a certificate from the Secretary of the Law Society stating that the applicant has given the notice required by subsection (1) of s 2 of the regulations. Section 2(4) of the regulations provides that -

“Upon the hearing of an application for registration, any registered legal practitioner may request the leave of the High Court to appear as *amicus curiae* to oppose the granting of the application.”

The significance of s 2(4) of the regulations is that the opposition to the granting of an application for registration as a legal practitioner can only be made at the hearing and by a legal practitioner who has been granted leave by the High Court to appear before it and oppose the application. This highlights the remark I have already made that the relief sought by the applicant that he be admitted forthwith is inappropriate at this stage. I must make it clear that in my view the giving of notice to the Law Society was not intended to constitute the Law Society into an arbiter as to whether an applicant meets the requirements of s 5(1) of the Act. It is the High Court alone which determines whether or not an applicant may be registered as a legal practitioner. In this view therefore the respondent was not entitled to refuse to issue the certificate referred to in s 2(4) of the regulations. There is a clear distinction drawn between an application for first admission as a legal practitioner and an application by a legal practitioner whose name has been deleted from the register to have his name restored to the register. The former is provided for in s 5 of the Act and in s 2 of the regulations and the latter is provided for in s 32 of the Act. In terms of s 32(2) of the Act an application for restoration to the register shall be accompanied by a recommendation in support thereof from the Council of the Society. Not so with the application for first admission. In respect of the latter all that the

Law Society is required to do is to provide a certificate stating that the applicant has given the notice required by s 2(1) of the regulations. As to the distinction between an application for first admission and an application for re-admission or restoration to the register see *Kaplan v Inc. Law Society, Transvaal*, 1981 (2) SA 762 (AD) at 768G-770F. The situation in *In re Chikweche* 1995 (1) ZLR 235 (S) which was referred to by counsel is clearly distinguishable. In that case it was at a hearing that the learned judge declined to permit the appellant (applicant for registration) to take the oath of loyalty and office because, in the judge's view, he was not a fit and proper person or he did not satisfy the rule of practice that lawyers should be formally dressed, tidy and well groomed when appearing in court. The correct procedure to adopt is that upon receiving a notice of intention to apply to be registered as a legal practitioner, the Law Society should issue a certificate required in terms of s 2(3)(e) of the regulations and then after an application has been lodged an opposition may be lodged as contemplated by s 2(4) of the regulations.

The present application was argued before me as if I was also required to determine the substantive application for registration. That application can only be heard if such has been placed before the court. I could have proceeded to determine the issue whether or not the applicant is a fit and proper person as argued before me but I think that it would be wrong to do so because (a) the other requirements have not been shown to have been complied with; and (b) the matter involves a prospective legal practitioner and the Law Society who should both be correct in the procedures which they adopt. I cannot therefore determine the issue whether or not the applicant is a fit and proper person because there is no application before me for the applicant's admission to the profession. I will however issue part only of the relief sought by the applicant which will result in the respondent issuing the certificate requested of it.

With regard to the costs of this application I was referred to the case of *Prokureursorde Van Transvaal v Landsaat* 1993 (4) SA 807 in which it was held that where a Law Society is carrying out its function as a supervisor of attorneys in the interest of the public and the court, it would be wrong to apply the normal civil law rules concerning costs and make an order of costs

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against it. I think, however, that the situation in the present case is different. There was no reason at law for the respondent to refuse to issue the certificate in view of the clear provisions of the Act and the regulations which, needless to say, do not empower the respondent to withhold the certificate. A reading of those provisions should have alerted the respondent to the requirement that it should issue the certificate and that if it or any other legal practitioner wished to oppose the applicant's admission, they could only do so as provided in s 2(4) of the regulations at the stage when the application has been lodged and a hearing is held. As I think that the Law Society was well intentioned the question of costs should be held over for determination at the hearing of the application for registration. I accordingly order that:

1. The respondent shall, through its Secretary furnish the High Court with a certificate stating that the applicant has given notice required by s 2(3)(e) of the Legal Practitioners (General) Regulations 1999 (S.I. 137 of 1999).
2. The costs of this application are held over for determination at the hearing of the applicant's application for registration.

*Musunga & Associates*, applicant's legal practitioners.  
*Messrs Mapombere & Associates*, respondent's legal practitioners.