

DISTRIBUTABLE (7)

PATRICIA ANN STEVENSON
v
**(1) ESTATE AGENTS COUNCIL (2) REGISTRAR OF THE
ESTATE AGENTS COUNCIL**

**SUPREME COURT OF ZIMBABWE
ZIYAMBI JA, GOWORA JA & MAVANGIRA JA
HARARE, OCTOBER 2, 2015**

T Stevenson, for the appellant

A Demo with him *K Tundu*, for the respondents

GOWORA JA: This is an appeal against a judgment of the Administrative Court. At the onset of the hearing we invited counsel to address us on the validity of the appeal. Having heard argument we have concluded that notwithstanding its many defects, the Notice of Appeal is not fatally defective.

The notice itself complies with the Rules. Although the grounds and relief sought contain irrelevant matter, we are of the view that in the exercise of our discretion we can excise the irrelevant matter so that that the sole ground of appeal before this Court is whether or not the Administrative Court erred in finding that it did not have jurisdiction to order the second respondent to enter the appellant's name on the register of Estate Agents.

The relief sought was for an order that the second respondent enters the appellant's name on the register of Estate Agents and costs of suit in the court below.

As to the merits of the appeal, the appellant was, in 1993, struck off the Register of Estate Agents after having been found guilty of disgraceful conduct by the first respondent. Her appeal against that penalty was dismissed and the penalty upheld by the Supreme Court in 1996.

On 8 December 2014, the appellant applied to the first respondent to be reinstated to the Register of Estate Agents. On 11 December 2014, the first respondent refused the application on the grounds that, and I quote, "Once a member has been deregistered, he or she cannot be reinstated."

Aggrieved by this decision she appealed to the Administrative Court which dismissed the appeal on the grounds that it had no jurisdiction to grant the order sought.

Before us, counsel for the appellant contended that while the Estate Agents Act [*Chapter 27:17*], (the "Act") does not confer power of restoration of an estate agent to the register of Estate Agents after deregistration, nevertheless the court *a quo* should have read that power into the Act since it was an obvious omission. He submitted further that the court does have that power and urged this Court to read into the Act a provision which enables the appellant to be restored onto the register of Estate Agents.

Mr *Demo* however argued that the court cannot be asked to legislate for Parliament.

In our view, the concession by Mr *Stevenson* that no power is conferred either on the first respondent or the Administrative Court to grant the relief sought determines this appeal. In order to interrogate what powers are bestowed on the Council and the Administrative Court in relation to the dispute before the court, it becomes necessary to have regard to the provisions relating to qualifications for registration, the manner of registration and the effect of deregistration. S 25 of the Estate Agents Act, which sets out the criteria for registration is in the following terms:

“25 Qualifications for registration

For the purposes of this Part, a person shall be qualified to be registered as an estate agent if—

- (a) he has attained the age of majority; and
- (b) he—
 - (i) has passed such examination conducted or recognised by the board of examiners in terms of section twenty-six; and additionally, or alternatively
 - (ii) holds such qualification recognised by the board of examiners in terms of that section; as, in the opinion of the board of examiners, is sufficient for registration; and
- (b) he meets the requirements relating to practical experience specified in the Schedule; and
- (d) he has not, during the period of five years immediately preceding his application, been found guilty of any offence involving dishonesty.”

Although the section specifies the question of dishonesty as a factor for consideration for disqualification, an examination of the Act in general terms reveals that there is

emphasis on the integrity of persons qualifying for registration as estate agents. Section 29, in terms of which the Estate Agents Council considers applications for registration brings this point to the forefront. The section in question provides:

“29 Procedure by Council in connection with application for registration

(1) If an applicant for registration—

- (a) is qualified in terms of section twenty-five; and
- (b) in the Council’s opinion, is otherwise a suitable person for registration;

the Council shall direct the Registrar to register the applicant.

(2) If the Council decides that an applicant for registration is not a suitable person to be registered by reason of—

- (a) his physical or mental health; or
- (b) the fact that he is not of good character or reputation; or
- (c) any conduct of his which, if he had been registered, would have constituted unprofessional, dishonourable or unworthy conduct;

the Council shall give written notice to the Registrar and the applicant of its decision and of the reasons for its decision.”

In *casu*, the appellant was found guilty of dishonourable conduct by the Council and the result was that she was deregistered, a penalty which was upheld by this court. Whilst the Act provides for deregistration, it has not provided for a situation where an agent in the situation in which the appellant finds herself can be reinstated. The procedure for discipline under the Act is provided in s 31 in the following terms:

“31 Disciplinary powers of Council

(1) If, after due inquiry, the Council decides that a registered estate agent—

- (a) is not a suitable person to remain registered; or

- (b) has been guilty of unprofessional, dishonourable or unworthy conduct or negligence in his capacity as an estate agent; or
- (c) without derogation from the generality of paragraph (a) or (b), has contravened section 4 of the Prevention of Discrimination Act [Chapter 8:16];

or where a registered estate agent has been convicted of any offence involving dishonesty, the Council may do one or more of the following—

- (i) direct that his registration be cancelled or that he be suspended from practice as an estate agent for a period determined by the Council;
- (ii) order him to pay the expenses incurred in holding the inquiry and expenses incidental to the inquiry or any part of those expenses;
- (iii) order him to reimburse the injured party for the direct or indirect loss suffered by such party as a result of the conduct of the registered estate agent;
- (iv) impose a penalty, not exceeding an amount equivalent to a fine of level six, which penalty shall be payable to the Council; [Paragraph amended by section 4 of Act 22 of 2001]
- (v) censure him;
- (vi) caution him;

and the Council shall give notice thereof and the reasons for its decision to the Registrar and the registered estate agent concerned.”

That there is no provision in the Act for reinstatement onto the register for persons who have been deregistered is obvious and this much is conceded by Mr *Stevenson* on behalf of the appellant. That notwithstanding, counsel has made what can only be termed an ingenious submission to the effect that the absence of a provision providing for reinstatement on to the register should not deter the court from granting the relief sought. It was his further argument that whilst there is no provision for reinstatement to the register, the Act does not prevent

reinstatement and that, as a consequence, this court had the power to restore the appellant onto the register. He argued further that the court, including the Administrative Court, should read such power into the provision as that was the clear intention of the Legislature. He opined that it could not have been intended that once an estate agent had been deregistered such deregistration was for all time. In the same breath however, he accepted that for a court do so would be tantamount to legislating for Parliament.

The Act does not endow the Council with the power to reinstate an agent to the register once such agent has been struck off. The Administrative Court, as conceded by the appellant, does not have such a power under the Act. It is trite that it is not for this court to assume a power where none is provided for in the enabling legislation. It is not within the province of the courts to legislate for Parliament whose intention is to be deduced from the clear wording of the statute. Counsel has not argued that there is an ambiguity in the relevant sections providing for disciplinary actions and the sanctions attendant on a finding of guilt. The suggestion that this court imports provisions from statutes wherein the reinstatement of professionals in similar circumstances as the appellant is provided for is misplaced. If the Legislature had intended to make provision for deregistered estate agents to be reinstated on the register it would have done so. It chose not to do so and the court cannot read into the Act what is not provided for.

Accordingly, no basis has been established for interfering with the decision of the court *a quo*.

It is therefore the unanimous decision of this Court that the appeal ought to be, and is hereby, dismissed with costs.

ZIYAMBI JA: I agree

MAVANGIRA JA: I agree

Thompson Stevenson & Associates, appellant's legal practitioners

Chihambabkwe, Mutizwa & Partners, respondent's legal practitioners