



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIVIL APPEAL CASE NO: 368/2016

In the matter between:

ERIC NDWAMATO NWEDO

PETITIONER

AND

THE LAW SOCIETY OF SWAZILAND

FIRST RESPONDENT

THE ATTORNEY GENERAL

SECOND RESPONDENT

Neutral citation: *Eric Ndwamato Nwedo vs The Law Society of Swaziland and Another (368/2016) [2016] SZHC 54 (01/03/2016)*

CORAM:

M.C.B. MAPHALALA, CJ

Summary

Civil Procedure – Petition for the right of audience in terms of section 5 (2) of the Legal Practitioners Act No. 15 of 1964 as amended – the Petitioner should establish on a balance of probabilities that good cause exists to grant the right of audience – the essential elements of good cause considered – held that the Petitioner has not established good cause – accordingly, the petition is dismissed – no order as to costs.

JUDGMENT
1st March 2016

- [1] The petitioner seeks the right of audience to appear before the Industrial Court as an advocate in terms of section 5 (2) of the Legal Practitioners Act No.15 of 1964 as amended in a matter that was scheduled to be heard on the 29th February and 1st March 2016 respectfully.
- [2] It is common cause that the petition was lodged on the 24th February 2016, and, it was duly served upon the Law Society as well as the Attorney General as required by sections 28, 29 and 30 of the Legal Practitioners Act No.16 of 1964 as amended. The three Attorneys involved in the matter appeared before the Chief Justice on the 25th February 2016 with regard to the petition. It became apparent during their appearance that the petition was strenuously being opposed by the Law Society as well as the Attorney General's Chambers. Accordingly, the Chief Justice set time limits for the filing of further papers, and, the matter was postponed to the 1st March 2016 for hearing. Similarly, the petitioner's attorney was advised to approach the Industrial Court to postpone the main matter pending the determination and finalization of the present petition. The main matter involves *Swaziland Transport and Allied Workers Union v. Unitrans Swaziland (Pty) Ltd* Case. No. 485/202013.
- [3] It is not disputed by the parties that the petitioner is a South African citizen residing in Johannesburg, South Africa. The petitioner was born on the 2nd March 1973 in South Africa; his birth certificate as well as his identity document are annexed to the petition.

- [4] It is further not disputed that the Petitioner was awarded the degree of Bachelor of Laws by the University of South Africa on the 5th May 2015, a degree of Magister Philosophiae in Labour Law and Employment Relations at the Rand Afrikaans University on the 11th April 2002, the degree of Baccalaureus Artium Cum Honoribus in Labour Relations by the Rand Afrikaans University on the 16th March 1999 as well as the degree of Baccalaureus Procurationis by the University of Venda on the 10th May 1996. The academic certificates of the Petitioner have been duly annexed to the petition.
- [5] It is also not disputed that the petitioner was admitted to practice as an advocate of the High Court of South Africa on the 1st May 2015, and, on the 1st December 2015, he was admitted to the Johannesburg Society of Advocates. The petitioner is entitled to practise in the Supreme Court of Appeal, the High Court and other courts in South Africa.
- [6] The Petitioner contends that he has the necessary expertise and experience in labour matters; hence, he has been briefed to argue the matter pending before the Industrial Court because of its importance and complexity. He further contends that the importance and complexity of the matter requires senior counsel who has the requisite expertise and experience; however, it is apparent from the court record that the petitioner is merely a Junior Counsel having been admitted as an advocate in South Africa on the 1st May 2015. Furthermore, the complex issues alluded in the petition have not been disclosed. Similarly, the importance of the matter has not been disclosed.

[7] Another contention made by the petitioner is that he is “a fit and proper person” within the meaning of the Legal Practitioners Act; however, no verifying affidavit by an independent person has been annexed to the petition in support of this averment. Furthermore, he has failed to satisfy the Court that he has the necessary expertise and knowledge to handle the matter pending before the Industrial Court. Similarly, it was incumbent upon the petitioner to further demonstrate that all admitted counsel in Swaziland lack the necessary expertise to handle the matter, and, that those who are capable to do so are not available to accept the brief.

[8] Section 5 (2) of the Legal Practitioners Act No. 15/1964 as amended provides the following:

“Notwithstanding subsection (1), the Chief Justice may for the purpose of any particular case or matter grant a right of audience in the Courts of Swaziland or before any quasi-judicial tribunal in Swaziland to any person who, being otherwise eligible for admission, is not a citizen of Swaziland or ordinarily resident or practising as an advocate therein, in order to enable such person to appear as Counsel in any such case or matter.”

[9] Sections 28-30 of the Legal Practitioners Act provide for the procedure dealing with petitions for admissions and enrolment:

“28. Any person who wishes to be admitted and enrolled as a legal practitioner or who wishes to be granted a right of audience in any particular case or matter shall, by written petition, apply to the High Court after serving a copy of such petition upon the attorney General and the Secretary of the Law Society as provided by section 30.

29. Every person who applies to the High Court to be admitted and enrolled as a legal practitioner shall, in addition to such further information as the Attorney General may require, furnish him with the following information:

(a) that the person is a fit and proper person to be so admitted and enrolled.

(b) if the person was a legal practitioner in any court, that, save for the purpose of complying with section 6 (1) (e) and section 20, he has not been struck off the roll of such court or suspended from practice for improper or unprofessional conduct and that no proceedings are pending to strike him off such a roll or to suspend him from practice on any such grounds.

30. (1) Any person who applies to be admitted or re-admitted as a legal practitioner or for a right of audience shall, at least twenty-one days before the date of his application, deliver to the Attorney General and the Secretary of the Law Society together with this notice of application, a copy of his petition for admission or re-admission or right of audience and a copy of all affidavits, certificates and other documents or papers which are referred to or connected with the application.

(2) Upon production to the Attorney General and the Secretary of the Law Society as provided in subsection (1), of the notice of application and a copy of the petition, affidavits, certificates and other documents or papers and upon payment of such fees as may be prescribed in terms of section 33 (1), the Attorney General and the Secretary of the Law Society shall if satisfied that the applicant has complied with the provisions of subsection (1), certify on such application that the provisions of this section have been complied with.

(3) Unless certificates have been obtained from the Attorney General and the Secretary of the Law Society as required by subsection (2), the applicant shall not be entitled to proceed with his application to court.

(4) In the case of an application for the grant of a right of audience, if the High Court is satisfied that such application is of sufficient urgency and that it is appropriate, having regard to all the circumstances, to reduce the period of notice specified in subsection (1) it may reduce such period to not less than two days but only after the applicant has given notice to the Attorney General and the Secretary of the Law Society of his intention to present his application in terms of this subsection.

(5) The Attorney General and the Law Society shall be entitled to be represented at the hearing of an application for admission, re-admission or right to audience.”

[10] It is common cause that the petition is opposed by the Attorney General as well as the Law Society; and, in my view, they are justified to do so. The Legal Practitioners Act gives the Chief Justice the discretion to determine whether the petition for the right of audience to an advocate should be granted. In exercising his discretion in terms of section 5 (2) of the Legal Practitioners Act No. 15/1964 as amended, the Chief Justice should satisfy himself that the petitioner has established on a balance of probabilities that good cause exists to grant the right of audience sought. The instructing attorney should depose to an affidavit of the specific needs for the services of a non-resident advocate:

See the judgment of Hannah CJ in the matter of Collin Pieter Van Vuuren Civil Case No. 1093/1986.

[11] Nathan CJ in *ex parte* Barolsky 1977 – 1978 SLR at 33 had this to say:

“In terms of section 5 (2) of the Legal Practitioners Act 15/1964 the Chief Justice has a discretion whether or not to grant the application, and in my view some good cause for granting of the application must be shown. What will amount to good cause naturally depends upon the circumstances of each particular case, but I think it should be clearly understood that the Chief Justice will not act as a rubber stamp and automatically grant the right of audience merely because the applicant desires this. Some reason should be advanced as to why the ordinary requirements for admission as set out in section 5 (2) should be relaxed.”

[12] His Lordship Chief Justice Hannah further held that an application for the right of audience in terms of section 5 (2) of the Legal Practitioners Act should be brought on Notice of Motion because of the need for the instructing attorney to show good cause.

His Lordship Hannah CJ in the Collin Pieter Van Vuuren’s case also said the following:

“Rule 6 provides that every application shall be brought on notice of motion save where proceedings by way of petition are prescribed by law. Turning to the Legal Practitioners Act, one finds that applications for admission as a legal practitioner, which term includes advocate as well as attorney, must be by way of petition but an application for right of audience in terms of section 5 (2) is not of course, an application for admission.

It is an application of a much more limited nature. As an application brought in terms of section 5 (2) cannot be equated

with an application for admission and as it is only in the case of an application for admission that the Act prescribes that the proceedings must be by way of petition, I am of the opinion that section 5 (2) applications fall within the general words of Rule 6 and should be brought on notice of motion.”

[13] The Petitioner has failed to establish that good cause exists for the Court to grant him the right of audience. The instructing attorney has not deposed to an affidavit justifying the need for a non-resident advocate and why local advocates cannot properly handle the matter pending before the Industrial Court. The petitioner is not a Senior Counsel; he has been in practice as an advocate since 1st May 2015. Other than his academic qualifications which are not disputed, the petitioner has not shown that he has the necessary expertise to handle the matter. Similarly, the importance and complexity of the matter has not been disclosed which could justify engaging Senior Counsel let along the petitioner. What is even more puzzling is that the instructing attorney is considered as one of the best legal minds in labour issues in this country, and, however, he has been in private practice for a period exceeding twenty years; however, he has briefed a Junior Advocate with less than ten months experience in the practice of the law.

[14] The Legal Practitioners Act requires that the petitioner should be a fit and proper person. The Petitioner contends and makes the allegation in the petition that he is a fit and proper person to be granted the right of audience. In addition the petitioner has deposed to a verifying affidavit that he is a fit and proper person to be granted the right of audience. However, it is well-settled in our

law that the verifying affidavit should be deposed by an independent person from his personal relationship with the petitioner for an acceptable length of time.

- [15] The Supreme Court of Swaziland had occasion to deal with the issue of whether a petitioner seeking the right of audience was fit and proper. In a unanimous judgment of the Supreme Court in *Armand Mathew Perry v. The Law Society of Swaziland* Civil Appeal Case No. 03/2014 at para 11 and 12, the Court had this to say:

“11. While a member of the legal profession is eminently suited to make such a recommendation, there are certainly other prominent, well-known and well-respected members of the community who are perfectly capable of doing so. These include members of several professions such as chartered accountants, the holders of certain offices such as the Governor of the Central Bank, Members of the Legislature, Chiefs, members of the clergy, senior members of established educational institutions and ranking officers of the disciplined forces and services.

12. A necessary and essential factor is that the person recommending the applicant must be able to do so from his or her personal relationship with the applicant for an acceptable length of time. He or she must have something more than a nodding acquaintance with the applicant. Their relationship ideally should have been one which allowed the sponsor adequate opportunities to assess the character of the candidate and to make a proper evaluation of his or her suitability for enrolment, and of his or her possession of the many worthy attributes which would ground proper recommendation.”

[16] I am not persuaded that this is a proper case where I should exercise my discretion in terms of section 5 (2) of the Legal Practitioners Act No. 15 of 1964 as amended. Accordingly, the petition is hereby dismissed.

M.C.B. MAPHALALA
CHIEF JUSTICE

For the Petitioner:

Attorney Musa Sibandze

For First Respondent

Attorney Lucky Howe

For Second Respondent:

Crown Counsel Vikiinduku Manana