

THE HIGH COURT OF SWAZILAND

CHARLES CARL SNYMAN

Petitioner

Civil Case No. 1962/99

Coram

ANNANDALE ACJ MAPHALALAJ

For the Petitioner;

MR. V. DLAMINI

Amicus Curae:

MR. S. SIMELANE

JUDGMENT

(17/06/2004)

ANNANDALE ACJ ET MAPHALALAJ

The Petitioner has filed a petition in terms of the provisions of the Legal Practitioner's Act for readmission and enrolment as an attorney of the High Court of the Kingdom of Swaziland. The Petitioner was admitted and enrolled as an attorney of this court on the 27th November 1985 and was removed from the roll of attorneys on the 12th June 1991 on the ground that he had conducted himself unprofessionally and further contravened Section 13 (1) of the Legal Practitioner's Amended Act 1988 in that he failed to furnish an audit certificate as required by the aforesaid Act.

At the commencement of the petition we invited amicus curae to assist us in this matter.

In support of his petition the petitioner states the following:

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"Your petitioner has learnt through bitter experience and in future shall not allow laxity to set in regarding his duties as an attorney. Further, your petitioner has no intention to set up practice on his own for the next five years but is intent on serving under the supervision of attorneys".

In paragraph 14 of his petition he continues to aver as follows:

"In consequence upon all the facts stated above your petitioner humbly submits that he has rehabilitated and therefore now is a fit and proper person to be re-admitted as an attorney of this court."

He also annexed a certificate from the messenger of court in the District of Manzini one Duncan Thring to the effect that he has known the petitioner for a period of over fifteen years and that recently the petitioner has assisted him in his duties and in his opinion he is a fit and proper person to be re-admitted as an attorney of the courts of Swaziland.

He further annexed an affidavit of Mr. Titus Mdumo Mlangeni who is a practising attorney of this court, who expresses the opinion that the petitioner is a fit and proper person to be re-admitted as an attorney of this court and that he certainly deserves a second chance.

Initially the petition was opposed by the Bar Council of the Law Society of Swaziland in an opposing affidavit by the then President of the Law Society of Swaziland. Various grounds were advanced for its opposition and for present purposes it is not necessary to consider them, as subsequently in an affidavit dated the 10th September 2003 by its current President Mr. S.M. Kubheka, the opposing affidavit was withdrawn. He further states in the said affidavit that the Bar Council of the Law Society of Swaziland has no objection to the re-admission of the petitioner as an attorney of the High Court of the Kingdom of Swaziland.

The Attorney General has also filed his Certificate in terms of Section 30 of the Act signifying that he has no objection to the petitioner being re-admitted and enrolled as an attorney of this court subject to two conditions. Firstly, that the petitioner shall

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upon re-admission practice as a professional assistant under the direct and personal supervision of a senior attorney for a period not exceeding five (5) years from date of re-admission, during which period the petitioner shall not be eligible to practice for his own account. Secondly, the agreement between the petitioner and the senior attorney is to be communicated to the Attorney General and the Registrar of the High Court.

It is trite law that the issue as to whether a petitioner is a fit and proper person to be re-admitted is a question of fact. The petitioner though bears the onus of proving on a balance of probabilities that he has reformed himself. According to what was held in the case of *Nathan vs Natal Law Society* and another 1999 (1) S.A. 706 (C) such onus was no heavier in applications for re-admission than in the case of ordinary applications for admission to the profession.

In the Transvaal Provisional Division case of *Kaplan vs Incorporated Law Society, Transvaal 1981 (2) S.A. 762 (T)* Boshoff JP when considering a similar section in South Africa being Section 15 of the Attorneys Act No. 53 of 1979 held inter alia that the section leaves with the court a discretion to decide whether or not an Applicant is a fit and proper person to be admitted as an attorney. In exercising its discretion whether or not the Applicant is a fit and proper person to be re-admitted as an attorney, the court will have to consider his personal qualities and decide whether he is fit and proper in relation to such matters as prestige, status and dignity of the profession, and the integrity, standards of professional conduct and responsibility of practitioners. In the case where an Applicant was previously struck off the roll for unprofessional, dishonourable or disgraceful conduct it would at least be necessary for him to satisfy the court that he has undergone a complete and permanent reformation in respect of such conduct. In this regard the investigation of the court would relate to (a) the nature and particulars of the conduct that gave rise to the striking off, (b) the behaviour of the Applicant after the conduct became known and (c) the question of whether it could with complete confidence be accepted that the Applicant is a fit and proper person to be re-admitted as an attorney in relation to the matters mentioned above.

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In the present case, it would appear to us that the petitioner has indeed made a full disclosure of all the relevant facts giving rise to his misdemeanour. It would also appear to us that the petitioner has rehabilitated himself as evidenced by what has been stated by the messenger of court in *Manzini Mr. D. Thring*. The affidavit of attorney Mr. T. Mlangeni further lends more weight towards the conclusion that the petitioner is now a fit and proper person to be re-admitted. Furthermore, the Attorney General has also put his full weight in favour of the re-admission of the petitioner. The Bar Council of the Law Society of Swaziland also supports the petition. Therefore the cumulative effect of all these facts leads us to conclude that the petitioner has discharged his onus of proof that he is a fit and proper person to be admitted. We are however, in agreement with the Attorney General that such re-admission should be accompanied by certain conditions and in this regard Mr. Simelane who acted as *amicus cunae* agreed with us.

We also wish to put it on record that we are indebted to the useful submissions made by Mr. Simelane in his role as *amicus cunae* where he went beyond the call of duty in assisting us.

In the result, it is ordered that subject to compliance with the following conditions, the petitioner is re-admitted to be enrolled and to practice as an attorney of the High Court of Swaziland:

(1) That the petitioner practises under the direct and personal supervision of a senior attorney as a professional assistant for a period of five years. During this period, the petitioner shall not be permitted to practice for his own account. This period may be ameliorated after the lapse of three years, by way of a substantively motivated application to court, supported by the Law Society, the

Attorney General and the supervising senior attorney, whereby good cause may be shown to dispense with the further supervising of the petitioner.

(2) All books of account inclusive of the Trust Account which relate to the petitioner shall be audited by an independent certified auditor every six months from the date that the petitioner commences to practice as an attorney. Within a period of twenty one days after the expiry of such

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period at six months, the auditor's report shall be filed with the Registrar of the High Court, the Attorney General and the Secretary of

the Law Society, failing which the re-admission of the petitioner shall be deemed to have lapsed, unless leave of court has been sought and obtained to file such auditor's report within such further period as ordered by court.

(3) The supervising senior attorney, whose role shall be subject to prior approval by the Attorney General, shall be obliged to certify the good conduct of the petitioner every six months to the Registrar of the High Court, the Attorney General and the Secretary of the Law Society, within a period of fourteen days after the expiry of such period of six months,

(4) Proof of payment by the petitioner of his contribution to the Fidelity Trust Fund shall be filed annually, not later than the commencement of the High Court legal year, with the Registrar of the High Court, the Attorney General and the Secretary of the Law Society, failing which the re-admission of the petitioner shall be deemed to have lapsed, unless leave of court has been sought and obtained to file such proof of payment within such further period as ordered by court.

JP ANNANDANLE ACJ

S.B. MAP HAL ALA J

Delivered on.....17th.....June 2004