

IN THE COURT OF APPEAL OF SWAZILAND

HELD AT MBABANE APPEAL NO. 4/87

In the matter between:

ROSE S'BONGILE MKHONTA APPELLANT

versus

ATTORNEY GENERAL RESPONDENT

CORAM:  
MELAMET J.P.

WELSH J.A.

KOTZE J.A.  
J U D G M E N T

MELAMET, J.P.

(6.10.1987)

This Appellant comes on appeal to this Court against an order of the High Court that she is required to serve a period of three years of articles of clerkship as a prerequisite for her admission as an attorney of the High Court.

It is contended that the learned Judge in the Court a quo erred and should have found that she is required to serve only a period of two years alternatively one year of articles in terms of the Legal Practitioners Act No. 15 of 1964.

On appeal the argument that she was obliged to do only one year of articles was abandoned.

The Appellant is the holder of a Bachelor of Arts in Law degree of the University of Swaziland and has served a period of two years under articles. It is not disputed that she is a fit and proper person to be admitted as an attorney and the only bar to her admission was that it was held by the Court a quo that she was required to serve three years of articles and had only served a period of two years.

The Appellant although it is not specifically alleged brought her application for admission as an attorney under the provisions of Section 6(1)(c) (iv) of the Legal Practitioners Act.

The Legal Practitioners' (Examinations) Regulations of 1966 which prescribed the examinations which any person referred to in Section 6(1)(c)(iv) or in Section 8 of the Act is required to pass before being admitted and enrolled

2

as an attorney were amended by Legal Notice No. 107 of 1986 to include the examination prescribed by the University of Swaziland for the degree of Bachelor of Arts in Law.

As set out above the only issue is whether the Appellant has complied with the Act in regard to service under articles.

Section 9 of the Act provides in subsection b(ii) that every person intending to serve an attorney under articles shall produce to the Attorney General, inter alia, a certificate that he has "satisfied all the requirements for a degree at any University in the United Kingdom or for a degree approved by regulations under Section 2(a) at any University of the United Kingdom."

The Act envisages that different qualifications are required as an entitlement to enter into articles of clerkship and subsequently to be admitted and enrolled as an attorney under the Act. This distinction is recognised in that under the provisions of subsection 33(2)(a) of the Act the Chief Justice is empowered after consultation with the appointed committee by Notice in the Gazette to make regulations to determine and prescribe the degrees which shall be approved for the purposes of Section 9(b)(ii) and paragraphs 1 and 2 of the Schedule - under subsection 33(2)(b) he is empowered to regulate by notice the examinations every person referred to in Section 6(c) (1)(iv) or Section 8 shall be required to pass before being admitted and enrolled as an attorney under the Act.

The qualifications set will obviously not be the same at these two stages and with respect I am of the opinion that this was where the Court a quo erred in its approach to the application and which led to the observation that the regulations were contradictory or not clear.

On the 14th January 1966 the Chief Justice acting under the provisions of Section 33(2) of the Act prescribed inter alia:-

3

"2. The degrees (not being honorary degrees) which are hereby approved for the purposes of section 9(b)(ii) of the Act are as follows:-

(a) in terms of paragraph 1 of the Schedule to the Act, any Bachelors', Masters', or Doctors' degree in law of the University of Botswana, Lesotho and Swaziland or of any university in the Republic of South Africa or Rhodesia;

(b) in terms of paragraph 2 of the Schedule to the Act any Bachelors', Masters' or Doctors' degree in arts, literature, science, medicine, commerce or economics of the University of Botswana, Lesotho and Swaziland or of any university in the United Kingdom, the Republic of South Africa or Rhodesia."

It is obvious from the reference to Subsection 9(b)(ii) of the Act that the Chief Justice was acting in this regard under the provisions of Subsection 33(2)(a) of the Act.

The Schedule to the Act in terms of Subsection 7(1) determines the period of articles to be served by a person desiring to be admitted as an attorney.

Paragraphs 2 and 5 of the Schedule which are as follows are relevant to the present application:-

"2. In the case of any person who has satisfied all the requirements for a degree, not being an honorary degree, at any university in the United Kingdom of Great Britain and Northern Ireland or of such degree as is approved of in regulations made by the Chief Justice under section 33(2)(a), the term shall be two years.

5. The period of service under articles which the clerk is required to serve shall be determined by the qualifications possessed by the clerk at the time the articles are entered into. (Amended L.22/1965.)."

The Applicant was in possession of a degree in Arts of the University of Swaziland at the time she entered articles and was thus required in terms of paragraph 2 of the Schedule to serve only a period of two years under articles. This she has done and I can see no bar to the admission of the Appellant as an attorney of the High Court.

4

The appeal against the decision of the Court a quo is upheld and the application is referred back to the High Court for the Appellant to be admitted as an attorney of the High Court.

D.A. MELAMET,

JUDGE PRESIDENT

I agree

R.S. WELSH J.A.

I agree

G. P. C. KOTZE J. A.

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