



IN THE HIGH COURT OF SWAZILAND

Case no. 1022/2013

In the matter between:-
Exparte application of:-

ARMAND MATTHEW PERRY

Petitioner

Neutral citation: *Armand Matthew Perry* (1022/13) [2013] SZHC283
(16th December 2013)

Coram: HLOPHE J
For Petitioner: Mr. P. Flyn
For the Law Society: Mr. L. Howe
Date Heard: 24/10/2013
Delivered: 16/12/2013

Summary:

Petition for admission to practice and enrolment as an attorney of the High Court of Swaziland – Petitioner alleges to have been admitted to practise law in the United States of America and also to be admitted to practice as a solicitor in the Courts of England and Wales – On this basis alone Petitioner prays to be admitted to practice as an attorney of this court in line or as

provided for by section 6 (1) (e) of the Legal Practitioners Act, 1964 – Application opposed on the basis that Petitioner is not ordinarily resident in Swaziland; has not been shown to be a fit and proper person and lastly and most importantly, his academic qualifications are unknown and he does not state them – He has just been admitted in England and Wales and allegedly does not qualify to be admitted in Swaziland where such qualifications are not disclosed or where he does not disclose what was considered before his admission in England and Wales – Section relied upon allegedly discriminatory or if not it should be interpreted restrictively by this court as its provisions are allegedly absurd – Court not convinced from the papers that Petitioner is ordinarily resident in Swaziland – In so far as no academic qualifications are disclosed and in so far as there is no disclosure of whether Petitioner did undergo training equivalent to Articles of Pupilage section calls for a restrictive interpretation – Approach suggested by Petitioner would defeat spirit of the Constitution on Equality, consequently Petition cannot succeed – Petition dismissed.

JUDGMENT

- [1] The Petitioner seeks an order of this Court admitting him to Practice and Enrolment as an attorney of this Court. The petition is said to be founded on section 6 (1) (e) of the Legal Practitioners Act, 1964.
- [2] The petition aforesaid was served on both the Attorney – General and the Law Society of Swaziland. It merits mention that the Attorney –

General did not oppose the application and did not even attend Court on the day the matter was meant to be heard. Clearly, the implication in the Attorney – General’s stance is that they would abide this Court’s decision. Only the Law Society of Swaziland filed opposing papers and also appeared in Court during the hearing of the matter to advance its position on the matter.

[3] The facts of the matter are common course, and are briefly that the Petitioner instituted proceedings for his admission to practice and enrolment as an attorney of this Court. It is contended that the Petitioner is a resident of Swaziland following his having been contracted as a Legal Advisor to the Council of Non – Governmental Organizations (CANGO).

[4] The Petitioner has annexed to his papers letters by one Peter Ehrenkranz M. D. MPH and Benjamin Renchart who both seek to attest that the Petitioner is a fit and proper person who qualifies to be admitted to practice and enrolment as an attorney of this Court. The Law Society has a problem with this certification and contend that it cannot be everyone who so attests or certifies but it has to be one who understands what it takes for an attorney to be said to be fit and proper. It is contended such can only be attested to by an attorney. I must say that whereas I think it would be relevant and neater if certified by an attorney, I do not think that anything detracts if it is made by any other elderly person who establishes in his papers that he is a responsible person, to whom the Petitioner is known.

- [5] There is also annexed to his papers, a document signed by one Antony Townsend who describes himself *ex facie* the document as the Chief Executive Officer of an organization or entity that calls itself the Solicitors Regulation Authority (SRA). The document confirms that the Petitioner “has complied with the SRA Training Regulations 2011 and is of a suitable character to be a solicitor and is therefore admitted as a solicitor of the Senior Courts”. The Courts referred to are those of England and Wales. As to what the Examination in question entailed and what it was aimed at achieving, there is no information.
- [6] Another document signed by the same Antony Townsend, is written the following words in bold letters, across its face the: “Certificate of Good Standing.” Below the said words appears the following:-

“I hereby certify that Armand Matthew Perry of 2384 Tuttle Lane, Lumni Island, Langley Washington, 98262, United States of America, was admitted on 02 April 2013 as a Solicitor of the Senior Courts of England and Wales and is on the roll of Solicitors of that Court.

He has not been struck off the roll, nor suspended from practice, and is of good standing as a Solicitor. He does not hold a current practising certificate and is therefore not entitled to practice as a Solicitor of England and Wales.”

[7] The Petitioner avers that following his admission in England and Wales referred to above, he is entitled to be admitted and enrolled as an attorney of this Court. This he says is in line with section 6 (1) (e) of the Legal Practitioners Act, 1964 whose requirements he says he meets. The section concerned reads as follows:-

“Section 6 (1) Every person who applies to be admitted and enrolled as an attorney shall produce to the satisfaction of the High Court proof that:-

(e) he has been admitted as a barrister or solicitor in England, Scotland or Ireland and no proceedings to remove or suspend him from the roll are pending or contemplated.”

[8] According to the Petitioner, since he was, on the 2nd April this year, 2013, admitted as a Solicitor in England and Wales in terms of the documents referred to above which are annexures to his petition, he prays for an order of Court admitting him to Practice and Enrolment as an attorney in Swaziland. His entitlement to such admission and enrolment he submits stems or arises from section 6 (1) (e) of the Legal Practitioner’s Act, 1964, which only requires that one be admitted as a Solicitor or barrister in England and Wales for him to be admitted as an attorney in Swaziland. It is clear that the extent of the Petitioner’s contention is that by simply stating that he was admitted to Practice in England and Wales, he does not even need to disclose his academic

qualifications nor does he need to disclose what his admission entailed vis –a –vis training. A locally trained attorney is enjoined to undergo or serve Articles of Clerkship of and above his having to produce proof of his recognition form a disclosed University.

[9] The Law Society denies that simply because of his admission as a Solicitor in England and Wales, the Petitioner is entitled to be admitted in Swaziland. It is contended that section 6 (1) (e) should be read together with and in the spirit of the other subsections of section 6 (1) as well as the Constitution which emphasise equality as a fundamental principle. Firstly, the Petitioner has to show as required in section 6 (1) (a) that he is ordinarily resident in Swaziland and that he was a fit and Proper person to be admitted as such meanwhile section 6 (1) (b) requires proof that he is above the age of 21 years.

[10] It was further contended that given that the other subsections of section 6 (1) require academic qualifications to be proved by a Petitioner, the current Petitioner should not be admitted because he was failing to disclose his own Academic Qualifications. As I understood this argument, these Academic Qualification were a *sine qua* nor for one to be admitted as an attorney in Swaziland and perhaps anywhere in the World. It was contended further that the other sections contemplating the admission of already admitted attorneys like in cases of one from South Africa, Namibia, Botswana, Lesotho and Zimbabwe, require one to produce proof that he had practised at least for two years before such a petitioner can be admitted as an attorney in Swaziland. This, Mr.

Howe argued, was meant to ensure that the standards are not lowered and that the Law Society as a Regulatory Body, ensures that that is the case which should start off with the training entailed.

[11] It was contended that in so far as section 6 (1) (e) sought to suggest that Practitioners recently admitted in England can or qualify to be admitted in this jurisdiction without any proof of their having attained academic qualifications and received sufficient training in preparation for practice was discriminatory and/or absurd and was against the Constitution and necessitated that this Court interpreters them restrictively so as to avoid enforcing the alleged discriminatory and or absurd provision. It was argued further that this Court should refuse to enforce a legislation that apparently discriminates by suggesting that certain intending practitioners are, because of the place from where they come, superior and deserved to be treated differently and better than the others.

[12] In reply Mr. Flyn who represented the Petitioner contended that the latter was ordinarily resident in Swaziland because he was lawfully here under a permit that allowed him to reside in Swaziland until the 26th August 2014. He submitted that even before this permit, which was issued in September 2013, the Petitioner was already lawfully in Swaziland by virtue of his permit hitherto existing which expired on the 26th August 2013. It was contended the said permit had had to expire without the matter being finalized because the Respondents were the ones who delayed the hearing of the matter before the expiry of that permit.

- [13] Furthermore the Petitioner was said to be a fit and proper person because of the letters written of him to that effect. Mr. Flynn argued it did not matter who certified him to be a fit and proper person so long as it was someone who knew him to be having integrity and honesty.
- [14] Replying on the contention that section 6 (1) (e) had to be read and interpreted in the spirit of the other provisions of section 6 (1) which required academic qualifications to be disclosed as well as for the petitioner to have practised for more than two years if he was already admitted, Mr. Flynn contended that since the Petitioner complied with all the other sub sections, there was no need to read them into section 6 (1) (e) as that section was a stand alone section. He denied it was absurd or even that it was discriminatory.
- [15] Section 6 (1) (e) of the Legal Practitioner's Act 1964, is on the face of it a bad and unfair section. The Law Society would in my view not be faulted for viewing it as discriminatory. This is because whereas all those intending to be admitted in Swaziland are required to be holders of at least a Bachelor's Degree from Universities in their countries and also that they should have been in practice for more than two years at least, that is not what is required of one admitted as a Solicitor or barrister in England, Scotland, Ireland and Wales in terms of the section. In fact such a person is entitled to merely produce proof that he has been admitted as such there. He does not even have to disclose whether he does have any Academic Qualifications as well as what

happened leading to his admission, that is did he undergo any examinations preparing him for Practice. Clearly a person who was admitted whilst fresh from school may not be allowed to Practice Law whether he was admitted in England or anywhere else. Of course the same thing applies to one who has no legal qualifications. It does not mean that simply because for some reason he had to be admitted in England, he then had to be accepted without questions in Swaziland. That would clearly defeat the establishment of the Law Society of Swaziland as a Regulatory Body and I have no hesitation is not what was intended by the Legislature. It makes matters worse for the Petitioner in my view where it is disclosed *ex facie* his own papers that although admitted as a solicitor in England and Wales he is however not entitled to practise as a solicitor there as he does not hold a practice certificate.

- [16] As the section stands it does not allow the Law Society as a Regulatory Body nor even the Court, to ascertain if indeed the person applying for admission does hold Academic Qualifications and whether he did indeed undergo training preparing him for Practice as is the case in this jurisdiction where one is required to serve articles of Pupilage and set on Examination. It would be different if this information was being volunteered and disclosed by the Petitioner of his own accord in my view. The Petitioner's Petition does not disclose what academic qualifications the Petitioner holds and from which University, just as it does not annex any certificate proving such. The same thing applies to a disclosure of whether or not he received training in England leading to

his admission there as a Solicitor. It worsens his case in my view that when this Court enquired if the Petitioner was prepared to disclose such and avail the appropriate certificates for inspection by the Law Society, Mr. Flyn could only say that the certificates were there but they were not required by the section and were therefore not going to disclose them. Whilst that could be true, the question remains as to how is the Regulator expected to effectively carry out its functions if such vital information would be withheld. Furtherstill how can this Court boldly admit such a Petitioner if it is not sure he has the qualification and that he has been prepared for practise to uphold standards and ethics in the practise of law.

[17] Whilst the case could be different on the section as regards one who discloses his qualifications including one who discloses he underwent an equivalent training to our articles of Pupilage here or any other preparatory training, the same thing cannot be said for one who makes no such vital disclosures thereby making it impossible for the Regulatory body to play its statutory role.

[18] I therefore do not think that the intention of the legislator when enacting the amendment to the Legal Practitioner's Act in 1993, as expressed in section 6 (1) (e) was to say the Law Society should not perform its regulatory functions vis –a –vis one admitted in England as a Barrister or Solicitor. I agree with Mr. Howe that the section concerned calls for an interpretation so that the spirit of the same section and the Constitution is not defeated. Clearly if in terms of section 6 (1) (d), the

Legislator would insist on academic qualifications being disclosed together with a specific period of practice in case of one already admitted there it, can never be interpreted to mean that one admitted in England does not even have to allege and prove his academic qualifications above not disclosing whether or not he did undergo specific training preparing him for the practice of law which is a highly regulated industry, even if he would not be required to serve a specific period of practice.

[19] On the contention that the Petitioner was not ordinarily resident in Swaziland, I cannot help but agree with Mr. Howe. The Petitioner according to his own assertions is allowed to remain in the country on a dependent's pass to his wife until sometime in August 2014. He is otherwise here for a definite period as opposed to one who is here for an indefinite one. I was referred to the case of *Exparte Flynn* 1979-81 SLR. I however have no doubt that in that particular case the Petitioner was residing in the country and had done so for a considerable period and was also to remain in the country for an indefinite period. By analogy, this is in my view similar to the effect of the law of domicile which is dependent on whether one's stay in a certain place is for a fixed period or for an indefinite one such that one who remains indefinitely without an intention of leaving at some stage, is entitled to be taken as one who could remain forever.

[20] I am therefore not convinced that the Petitioner here can be said to be ordinarily resident in the country when he is allowed to remain there for

a specific period. This is because, his position is not so different from that of a visitor who is in the country for a specific period, at the arrival of which he should leave. I do not think one from this jurisdiction would be admitted as an attorney in any Foreign Jurisdiction simply because he is to stay there for a long time before he leaves.

[21] In view of the foregoing considerations the Petitioner's petition cannot succeed and I accordingly dismiss it with no order as to costs in view of what Mr. Howe submitted with regards their stance towards costs as a Regulatory Body.

Delivered in open Court on this theday of December 2013.

N. J. HLOPHE
JUDGE OF THE HIGH COURT