

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO: 10641/2020

- (1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED: NO

Date: 28 March 2022

  
E van der Schyff

In the matter between:

GABAIKANGWE EVELYN THENDELE

FIRST APPLICANT

ZWELIBANZI SOLUMBA THENDELE

SECOND APPLICANT

and

LEGAL PRACTICE COUNCIL

FIRST RESPONDENT

MINISTER OF JUSTICE AND  
CORRECTIONAL SERVICES

SECOND RESPONDENT

MINISTER OF HIGHER EDUCATION  
AND TRAINING

THIRD RESPONDENT

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JUDGMENT

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Van der Schyff J

- [1] The first and second applicants are persons on whom the degree *baccalaureus procurationis* was conferred (“BProc-graduates”) during May 1997 and May 1999 respectively. During May 2019, they applied for and obtained employment with law firms as candidate attorneys. They concluded practical vocational training contracts (“PVT contracts”) with their principals and sought to have it registered with the Legal Practice Council (“LPC”). The LPC refused to register the said PVT contracts. The applicants were informed that as of 1 November 2018, and due to the provisions of s 26 of the Legal Practice Act 28 of 2014 (“LPA”) and Regulation 6 of the LPA Regulations under section 109(1)(a), that the LPC could not register a PVT contract if candidates possessed only a *baccalaureus procurationis* (“BProc”) degree.
- [2] On 27 May 2019 the second applicant addressed a letter to the LPC taking issue with the refusal and requesting the LPC to register his PVT contract. The letter served before a Professional Affairs Committee of the LPC and the applicant was informed that it was precluded from registering the PVT contract in view of the provisions of s 112(2) of the LPA. The LPC indicated that this position might be prejudicial to candidates in the applicant’s position and suggested that the applicant consider approaching the High Court for an order to resolve the problem. In a letter dated 5 August 2019 the applicants demanded registration of their PVT contracts. On 13 September 2021 the LPC, after highlighting the provisions of regulation 6 and s 26, informed the applicants that it could not register the PVT contracts.
- [3] The applicants subsequently launched an application seeking, *inter alia*, the following relief:
- i. A declaration that s 26(1)(a) of the LPA read with regulation 6 of the Regulations published in terms of s 190(1)(a) of the LPA is unconstitutional and invalid to the extent that it precludes BProc graduates from registering practical vocational training contract, formerly known as articles of clerkship in pursuance of their admission as legal practitioners in South Africa;
  - ii. A declaration that the LPC’s interpretation of s 112(2) of the LPA as excluding the registration of the practical vocational training contracts formerly known

as articles of clerkship, for BProc graduates is unconstitutional and invalid; alternatively

- iii. A declaration, in the event that the LPC's interpretation of s 112(2) of the LPA is correct, that s 112(2) of LPA is unconstitutional and invalid;
- iv. A declaration that BProc graduates who registered for a BProc degree at a South African university after 1 January 1999 and who fully comply with the requirements of the Attorneys Act 53 of 1979 may, from the date of the order granted, be admitted as attorneys under the LPA;
- v. That the LPC be directed to register the PVT contracts of the first and second applicants and any other BProc graduates who wish to register such PVT contracts;
- vi. That the registration of the applicant's PVT contracts be registered retrospectively from 29 May 2019 being the date on which the LPC first refused to register the applicants' PVT contracts.

[4] Subsequent to the application being launched, the applicants and the second respondent agreed that the application for declaring ss 26(1)(a) and 112(2) unconstitutional, be postponed *sine die*. The applicants and the first respondent, likewise agreed to an order declaring that the applicants are not precluded from registering their PVT contracts by virtue of them being BProc-graduates and an order providing for the retrospective registration of the said PVT contracts. The applicants and the first respondents differ as to whether the court should order that s 26(1)(a) and 112(2) and regulation 6 are to be read to include BProc-degree holders until Parliament amends the LPA explicitly to include reference to BProc-holders (the applicants' view), or whether regulation 6(1) of the regulations be read with s 112(2) to provide for the registration of PVT contracts of BProc-graduates (the first respondent's proposition).

[5] Section 112(2) of the LPA provides as follows:

'Any person upon whom the degree *baccalaureus procurationis* was conferred by a university of the Republic, is regarded as being qualified to be admitted by the court and enrolled as an attorney by the Council as if he or she held the degree *baccalaureus legum*, if all the other requirements in the Attorneys Act

are complied with: Provided that such person has not later than 1 January 1999 registered for the first-mentioned degree.’

- [6] Section 112(2) is one of the transitional arrangements contained in the LPA and regulates the admission of BProc-graduates.<sup>1</sup> Through s 112(2) the validity of a BProc-qualification for purposes of being admitted as an attorney is maintained. I agree with Mr. Groom, the first respondent’s legal representative, that s 112(2) does not regulate or prevent the registration of the applicants’ PVT contracts, nor does it generically prevent the registration of the PVT contracts of BProc-graduates.
- [7] While s 112(2) prescribes the compliance requirements imposed on BProc-graduates in pursuit of enrolment and admission, s 112(2) does not provide for the regulatory oversight that is to be exercised by the LPC as regulator. Regulation 6 specifically provides for the ‘Practical vocational training requirements that candidate attorneys must comply with before they can be admitted by the court as legal practitioners.’
- [8] Regulation 6, however, makes reference to s 26 to create the minimum qualification criteria required for a person to enter into a PVT contract. The first respondent submits that it is a creature of statute, and since the applicants did not meet the criteria set out in regulation 6, the LPC could not lawfully register the applicants’ PVT contracts in terms of regulation 6.
- [9] A Full Court of this Division has already held in *Ex Parte Goosen*<sup>2</sup> that the effect of the LPA is deliberately to revolutionise the regulation of the South African Legal Profession. The Court held that the net effect of s 26(1) D), read with s 112 and Rule 21 is to preserve the right of a candidate attorney who seeks enrolment to rely on pre-LPA vocational training to qualify to be admitted as an LP and for the Court to authorise the LPC to enrol the newly admitted LP as an attorney. In my view, s

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<sup>1</sup> According to the first respondent 1 January 1999 is the last date on which students could register for a BProc-degree at tertiary institutions. Since both the applicants registered for their respective BProc-degrees prior to this date, the reference to a date in the section is not relevant for the present purposes.

<sup>2</sup> *Ex Parte Goosen and Others* (2018/2137) [2019] ZAGPJHC 68.

112(2) likewise preserved the right of a candidate attorney to rely on the pre-LPA BProc-qualification obtained to be admitted as an attorney.

- [10] Since the applicants agreed to postpone the issue of the constitutionality of ss 26(1)(a) and 112(2) of the LPA *sine die*, I cannot bind any other court with my view on the issue, and I refrain from expressing it. I am alive to the Constitutional Court's warning that 'When reading in, a court must ensure that the resulting provision 'is consistent with the Constitution and its fundamental values and ... interfere[s] with the laws adopted by the Legislature as little as possible.'<sup>3</sup> Since all the parties are in agreement that it was not the aim of the legislature to exclude BProc-graduates from being admitted as attorneys, a view that I share, the current issue regarding the registration of the applicants' PVT contracts can be resolved by reading regulation 6 as though the phrase 'or obtained a *baccalaureus procurationis* degree as referred to in s 112(2) of the Act' appear after the word "Act" in subregulation (1), in order for regulation 6 to read as follows:

(1) Any person intending to be admitted and enrolled as an attorney must, after that person has satisfied all the requirements for a degree referred to in sections 26 (1) (a) or (b) of the Act, **or obtained a *baccalaureus procurationis* degree as referred to in section 112(2) of the Act**, serve under a practical vocational contract with a person referred to in subregulation (5).

- [11] The applicants seek an order that they are not precluded from being admitted as attorneys by virtue of them being BProc graduates. Such an order will, in my view, be superfluous in light of the transitional provisions of s 112(2) of the LPA.
- [12] The applicants seek a costs order against the respondents. The first respondent contends that it acts as the guardian of the legal profession and should be considered as an *amicus*. Some confusion is created by the wording of s 112(2): 'if all the other requirements in the Attorneys Act are complied with', and the LPC

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<sup>3</sup> *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* 2000 (2) SA 1 (CC) para [74].

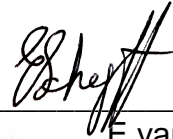
cannot be faulted for refusing to register the applicants' contracts. No mechanism was provided for the LPC to register the applicants' contracts. In light of the postponement of the issue regarding the constitutionality of the sections and because the LPA and its regulations do not provide for the registration of PVT contracts by BProc-graduates, it is just and fair if the parties carry their own costs.

## **ORDER**

### **In the result, the following order is granted:**

1. The application for constitutional invalidity of sections 26(1)(a) and 112(2) of the Legal Practice Act, 28 of 2014 is postponed *sine die*;
2. The first and second applicants are not precluded from registering practical vocational contracts by virtue of them being persons upon whom the degree *baccalaureus procurationis* was conferred;
3. The Legal Practice Counsel is ordered to register the practical vocational training contracts of the First and Second Applicants from the date of their first attempt to register said respective practical vocational training contracts, provided that all the other requirements of the Legal Practice Act, 28 of 2014, and the Rules and Regulations promulgated thereunder, relevant to the registration of a practical vocational training contract, were complied with;
4. The Legal Practice Council must deliver proof of such registration, or if it is found that there was non-compliance with requirements of the Legal Practice Act, 28 of 2014 and the Rules and Regulations promulgated thereunder relevant to the registration of a practical vocational training contract, an exposition of such non-compliance, to the applicants within 10 days of this order;
5. The Legal Practice Council is authorised to register the lawful practical vocational training contract of any person upon whom the degree *baccalaureus procurationis* was conferred as provided for in section 112(2) of the Legal Practice Act 28 of 2014, who wish to register a practical vocational training contract, provided that all the other requirements of the Legal Practice Act, 28 of 2014, and the Rules and Regulations promulgated thereunder, relevant to the registration of a practical vocational training contract, are complied with;

6. Regulation 6(1) of the Regulations under section 109(1)(a) of the Legal Practice Act, 28 of 2014 is to be read to include persons upon whom the degree *baccalaureus procurationis* was conferred as provided for in section 112(2) of the Legal Practice Act 28 of 2014, until Parliament amends the Act and/or Regulations to provide for the registration of practical vocational training contracts of persons upon whom the degree *baccalaureus procurationis* was conferred;
7. The second respondent is, by agreement, ordered to provide for the registration of practical vocational training contracts of persons upon whom the degree *baccalaureus procurationis* was conferred as provided for in s 112(2) of the Legal Practice Act 28 of 2014 within 24 months of this order;
8. All parties are to pay their own costs.




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E van der Schyff

Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

Counsel for the applicants:	Adv. A Rawhani-Mosalakae
Instructed by:	Centre for Applied Legal Studies
For the first respondent:	Mr. L Groom
Instructed by:	Rooth & Wessels Inc.
Date of the hearing:	1 March 2022
Date of judgment:	28 March 2022