

DISTRIBUTABLE

(1) TAONA SIBANDA (2) SILVESTER HASHITI
v
DAVID OCHIENG & 14 ORS

**SUPREME COURT OF ZIMBABWE
ZIYAMBI JA, GARWE JA & PATEL JA
HARARE, JULY 23 & OCTOBER 1, 2013**

Appellants in person

P Kachidza, for the first to the twelfth respondents

F Girach, for the thirteenth respondent

D Ochieng, for the fourteenth respondent

M Mahlangu, for the fifteenth respondent

ZIYAMBI JA: In 1981, the legal profession in Zimbabwe was fused. Prior to fusion there were two categories of legal practitioners, namely, attorneys and advocates. The latter could only operate upon receipt of briefs by attorneys. The former, while they freely appeared in magistrates courts, had no right of audience in the superior courts. The advocates were governed by the Bar Association and the Attorneys by the Law Society. Every practising legal practitioner had to be a member, or practise under the auspices of, one of these bodies.

The effect of the Legal Practitioners Act 1981 was that all practising lawyers were called legal practitioners. They were all endowed with the right of audience in the superior courts. Former attorneys began to appear in the High and Supreme Courts no longer

fettered by the need to brief advocates. The former advocates chose to continue with their previous mode of practice. They remained at Advocates Chambers and communicated to the former attorneys their intention to continue as before. As a result, what is now known as a *de facto* bar emerged and is still in existence today.

In 1999, the Legal Practitioners Regulations (“the Regulations”) were published. Section 4 thereof provides, in part, as follows:

4. Practical legal training after registration

- (1) Subject to this section, a legal practitioner shall not commence to practise as a principal, whether on his own account or in partnership or association with any other person, unless he has been employed as a legal assistant for not less than thirty-six months after registration with a legal practitioner who has himself—**
- (a) been in practice in Zimbabwe for at least forty-eight months; and**
 - (b) been approved by the Minister after consultation with the Council for Legal Education and the Council of the Society....”**

The appellants are legal practitioners who were registered in terms of the Legal Practitioners Act. Shortly after their registration and this is common cause, the appellants applied to Advocates Chambers and were admitted thereat as ‘pupils’. It is also common cause that the appellants had not, at the time of their admission to advocates chambers, completed the mandatory (thirty-six) 36 months’ employment in the service of a legal practitioner of four years standing. The letter accepting their application stated as follows:

“I refer to your application for admission to Advocates’ Chambers as a pupil. I am pleased to advise that your application has been successful subject to the following:

1. You will need to be issued with a valid practising certificate by the Law Society of Zimbabwe for the year 2012. If you present this letter to The

Law Society and pay the required amount you will be issued with the certificate.

2. You will be subject to the Bar Rules and Constitution and to the Constitution of the Advocates' Chambers. As an advocate you will not be allowed to accept any work other than from a duly licenced legal practitioner/attorney/solicitor.
3. You will be allocated a room in Chambers upon payment of the required sum of money. You will be advised of the amount by Mrs Benn or by the Honorary Treasurer in due course.
4. You will be a pupil under the supervision of the senior members of these Chambers. All work which you return to instructing legal practitioners must be signed by your pupil Master.

I take this opportunity to welcome you to the Advocates' Chambers and hope that your association with the distinguished members of the profession in this Chambers will assist you in your professional development.”

The appellants were issued with practising certificates as “advocates” and commenced to practise from advocates' chambers. In the appellants' words they complied with the following further terms and conditions imposed on them by the Advocates Chambers (“the thirteenth respondent”)

“They were to report to their pupil masters any matters on which they required guidance and supervision;

They would be entitled to receive briefs and instructions from law firms *in their own name* and as pupil advocates;

Their master would countersign any work they had done as a form of quality control;

They would be under the general supervision of other senior members of the Bar and that in the unlikely event of being briefed to appear in a matter *in which their masters had been briefed in opposition*, any other senior member of the bar would countersign such work;

That they would receive assignments from their masters or any other member of Chambers and if the latter were satisfied with their input they would be entitled to ownership of the documents, for example, heads of argument;

They would have the *right of audience in all courts of law in Zimbabwe* and all other quasi-judicial hearings which allow for legal representation;

Their *masters would determine the duration of their pupillage* taking into account their performance, competence and general professional development. Until such time as their masters indicated that they were ready to be ‘weaned’, they would remain under pupillage.”(My italics for emphasis)

The agreement between the appellants and the thirteenth respondent was clearly contrary to s 4 of the Regulations. By joining Advocates Chambers they were able to practise freely on their own account. They were granted practising certificates as “advocates” by the fifteenth respondent (“the Law Society”), accepted briefs in their own names, charged their own fees and were not accountable for their whereabouts to anyone save that their work was supervised by their “masters”. In their new position as “pupil advocates” they were able to avoid the restrictions imposed on them by s 4 of the Regulations.

The thirteenth respondent therefore acted outside its powers by creating a system of pupillage which is not provided for in the Act or Regulations. By accepting the appellants into chambers on the terms set out in its letter it was assisting the appellants to infringe the law. The thirteenth respondent woke up to this fact and, in an attempt to redress the matter without causing undue harm and distress to the appellants, held a meeting of its members at which it revised the terms of the appellants’ “pupillage” in an endeavour to bring their arrangement within the confines of the Regulations. The revised terms were embodied in a document entitled “Regulatory Framework Governing Pupillage at Advocates Chambers”. In terms thereof, the appellants could no longer be called “advocates” and their practising certificates would not describe them as advocates; they could not accept briefs in their own names nor could they charge fees in their own names; they could not appear in the superior courts in the absence of their masters; their practising certificates would bear an endorsement that the pupils could only accept instructions under the supervision of their

masters; the pupillage would be for thirty-six (36) months and the pupils were to account to their masters for their whereabouts.

The regulatory framework was communicated to the appellants under copy of a letter dated 22 August 2012. They were required to sign the letter signifying their acceptance of the framework which contained the terms on which they would thenceforth operate. They were to deliver the signed copies to the thirteenth respondent by close of business on 29 August 2012 failing which their ‘pupillage contract’ would be deemed terminated with effect from that date.

The appellants were highly incensed by the letter. They considered the regulatory framework to be an infringement of their rights. They refused to sign the letter and insisted on their ‘right’, as set out in their letter of admission, to practise in terms of that letter. They were, they claimed, not practising as principals but as ‘pupil advocates’. They maintained that they had a right to use the title ‘advocate’ which right could not be taken away by the thirteenth respondent. They filed an urgent application in the High Court seeking the following relief.

“TERMS OF FINAL ORDER SOUGHT:

That you show cause to this Honourable Court why a final order should not be made in the following terms:

1. The terms and conditions which applied to the Applicants at the time of their admission be and are hereby declared to be binding on the Respondents.
2. The regulatory framework imposed on the Applicants on 22 August 2012 be and is hereby declared a nullity.
3. The resolutions of the meeting of 7 August 2012 be and are hereby declared null and void.
4. That the Respondents who oppose the application pay the costs.

INTERIM RELIEF GRANTED:

Pending determination of this matter, the Applicant is granted the following relief:-

1. The Applicants' tenancy at 13th Floor Old Mutual Centre be and is hereby restored.
2. The Respondents be and are hereby ordered not to interfere with the Applicants' practice in any manner contrary to the terms and conditions which applied to the Applicants at the time of their admission.
3. That those Respondents who oppose the application pay the costs thereof."

The application was dismissed. The learned judge was of the view that the appellants were practising on their own account as principals in breach of s 4 of the Regulations. It is against this judgment that the appellants have appealed.

Thirteen grounds of appeal were raised by the appellants. However the crux of the matter is whether the court was correct in its finding that the 'pupillage' of the appellants was contrary to the provisions of s 4 of the regulations. A determination of this question would dispose of the appeal.

It was submitted by Mr Mahlangu for the Law Society, that the appeal was academic since the appellants had already surrendered the practising certificates (describing them as advocates) and had obtained employment as legal assistants with firms of legal practitioners in compliance with s 4 of the Regulations. However, the appellants were of the contrary view as, so they claimed, there were other advocates chambers from which they could operate as pupils if the appeal was to be determined in their favour.

The provisions of s 4 of the Regulations are mandatory. The appellants could not lawfully practise as legal practitioners on their own account except in compliance therewith. They would therefore have had to have been employed by legal practitioners of a minimum of four (4) years standing for a period of three (3) years before they could practise on their own account.

The fact that they accepted briefs in their own names, charged their own fees and accounted to no one for their time, was evidence that they were practising as principals on their own account. The letter of admission from Advocates Chambers could not legalise their unlawful conduct. The court *a quo* was therefore correct both in its assessment of the law and in its refusal to grant the order sought.

On the question of costs, which normally follow the event, the respondents generously declined to pursue their prayers for costs as prayed in their opposing affidavits.

In the circumstances the appeal lacks merit and it is hereby dismissed.

GARWE JA: I agree

PATEL JA: I agree

Mtetwa & Nyambirai, appellants' legal practitioners

Messrs Coghlan, Welsh and Guest 1st, 4th, and 11th Respondents' legal's practitioners

Lawman Chimuriwo 3rd Respondent's Legal Practitioner

Messrs Honey & Blanckenberg 2nd, 5th, 6th, 7th, 10th and 12th Respondents' Legal Practitioners

Messrs Gill, Godlonton & Gerrans 15th Respondent's Legal Practitioners