



**IN THE SUPREME COURT OF NAURU
AT YAREN
CIVIL JURISDICTION**

Miscellaneous Proceedings No 76 of 2015

IN THE MATTER of Legal Practitioners Act 1973

IN THE MATTER of Legal Practitioners
(Admission) Rules 1973

AND IN THE MATTER of an application for
admission as a Barrister and Solicitor by
DAVID ARMSTRONG LAMBOURNE

Before:	Madraiwiwi CJ
For the Petitioner:	V Clodumar on limited instructions
For the Respondent:	GE Leung
Date of Hearing:	Friday 6 November 2015
Date of Decision:	Friday 13 November 2015

CATCHWORDS:

Legal Practitioners Act 1973-Petition for admission-Section 9 (3)-Suitability of applicant-A fit and proper person-Particular circumstances of the case-Respondent's objections not established-Application granted.

RULING

1. This is an application by way of a petition for temporary admission dated 3 July 2015 to practice as a barrister and solicitor by David Armstrong Lambourne (the "Petitioner") made pursuant to the Legal Practitioners Act 1973 and the Legal Practitioners (Admission) Rules.
2. The relevant provisions of the governing legislation which are applicable to the Petitioner are set out below for completeness-

"3. (1) The Chief Justice shall have the power to admit as a barrister and solicitor any person duly qualified for admission in accordance with the provisions of this Act:

Provided that the Chief Justice may, upon cause shown refuse to admit any person as a barrister and solicitor notwithstanding that he may have the qualifications aforesaid...

4. (2) Where a person applying to be admitted to practise as a barrister and solicitor does not ordinarily reside in Nauru and does not sign the undertaking specified in the last preceding subsection, he shall, if admitted, be admitted to practice in respect of only such causes on matters as the Chief Justice shall direct.

5. Every person shall be qualified for admission as a barrister and solicitor who has attained the age of twenty-one years, has such legal experience required under the provisions of the next following section as applicable in his case and either-

- (a) has been admitted as a barrister or solicitor in England, Northern Ireland or the Republic of Ireland, as an advocate or law agent in Scotland or as a barrister and solicitor, in Australia, New Zealand or in any other country which may from time to time after consultation with the Chief Justice be notified by the Minister in the Gazette; or
- (b) has obtained a degree in law of any university approved by the Minister after consultation with the Chief Justice.

(6). (1) The legal experience required of a person applying for admission as a barrister and solicitor shall be that he has-

- (a) practiced on his own account for a period of not less than one year in any one or more of the countries specified in section 5 or in any other country which may from time to time after consultation with the Chief Justice be notified by the Minister in the Gazette;
- (b) ...
- (c) been engaged for a period of one year on legal work in the chambers or office (sic) of a practising barrister advocate solicitor, barrister and solicitor or law agent or in the legal department of a Government or of a local authority in any such country or in Nauru; ...

(2) The practice referred to in paragraph (a) of the preceding subsection shall have been carried on in any one or more of the countries after admission as a barrister, advocate, or law agent in such country or countries. The pupillage (sic), legal work or course of practical instruction specified in paragraphs (b), (c) and (d) of the preceding subsection may have been completed or carried out either before or after admission as a barrister, advocate, solicitor, barrister and solicitor or law agent in any such country...

9. (1) Every application for admission to practice as a barrister and solicitor shall be by way of petition to the Chief Justice in such form and manner as may be prescribed by rules forthwith upon the filing thereof the Registrar shall deliver a copy to the Minister. The Registrar shall, after making or causing to make such inquiries into the character, qualification and experience of the applicant as he shall deem necessary, submit to the Chief Justice a confidential report regarding the suitability or otherwise of such applicant for admission as a barrister and solicitor.

(2) Where the applicant does not ordinarily reside in Nauru and does not annex to his

Petition the undertaking referred to in paragraph (b) of section (1) of section 4 of this Act, the petition shall contain details of the causes or matters in respect of (sic) he wishes to be admitted to practice.

(3) Upon application for admission being made under the provisions of subsection (1) of this section and after considering the confidential report of the Registrar and any written communication received from the Minister and upon proof to his satisfaction of the qualification and suitability of the applicant and upon production of such testimonials as to character as he may require, the Chief Justice may by writing under his hand and in such manner and form he may from time to time think fit, admit the applicant to practice as a barrister and solicitor.

(4) All reports and communications under this section shall be absolutely privileged.

(5) ... "

3. The Petitioner's application is opposed by the Secretary of Justice (the "Respondent") by way of an affidavit sworn on 18 September 2015. There are a plethora of grounds prayed in aid by the Respondent as set out in paragraphs 6 and 11 of the said affidavit and Annexure "LA 1" thereto. These can be related most closely to the issue of the "suitability" for admission of the Petitioner to practice in the courts of Nauru as stipulated in section 9 (3) of the Act; connoting more generally the question of 'character'.
4. Exception is also taken by the Respondent to the alleged failure of the Petitioner to conclusively substantiate his qualifications and experience as required by sections 5 and 6 of the Act.
5. Suffice it for the Court to observe, with respect, that the Respondent is being unduly pedantic. It accepts unreservedly that the Petitioner's certificate of admission as a barrister of the Supreme Court of New South Wales and certificate of admission as barrister at law of the Supreme Court of Queensland satisfies the provisions of section 5 (a) without more. Further, that his term as Secretary for Justice here from March 2010 to December 2011 (attenuated as it was) fulfilled the provisions of section 6 (1) (c) of the Act. Those criteria may be characterised as the technical aspects of the application and shortly dealt with.
6. The Respondent has been further exercised by the Petitioner's propensity for public comment on the events occurring in Nauru over the recent past (Annexures "LA 5, 6 and 7" Respondent's affidavit in Opposition). The observations may be characterised as an amalgam of fair comment, intemperate and patronising asides with others bordering on the egregious in the context of a small, proud island nation with a poignant and at times tragic history that often feels hostage to external forces. While no doubt causing offence in some quarters, the Court will err on the side of circumspection and focus on what is the essence of the Respondent's objection: the Petitioner's suitability and character.
7. The Court has before it for consideration the following documents-
 - (i) Petition for admission dated 3 July 2015;
 - (ii) Outline of Petitioner's submissions dated 8 September 2015;
 - (iii) Supplementary affidavit of Petitioner dated 8 September 2015;
 - (iv) Testimonial of Kearneth Nanei as to Petitioner's character dated 8 September 2015;

- (v) Testimonial of Hon Marcus Stephen as to Petitioner's character dated 8 September 2015;
 - (vi) Further submissions dated 17 September 2015;
 - (vii) Affidavit of Respondent in Opposition dated 18 September 2015;
 - (viii) Respondent's submissions in Opposition dated 3 October 2015;
 - (ix) Second further submissions of the Petitioner dated 12 October 2015;
 - (x) Letter to the Registrar from Chief Justice Geoffrey Eames dated 6 September 2015;
and
 - (xi) Confidential report of the Registrar.
8. As for the testimonials submitted by the Petitioner, it is usual practice to provide references from professional colleagues who can attest to competence and suitability concerns more generally. On that premise, Mr Stephen's affidavit would, with respect, not pass muster although Mr Nanei as the counterpart of the Respondent in the Bougainville Autonomous Region is entitled to be given due weight and recognition. The Respondent takes issue with Mr Nanei's state of knowledge about the determination of the Petitioner's contract as Secretary for Justice in 2011, which issue the Court will canvass anon.
9. Learned counsel for the Respondent submitted that no weight should be given to my learned predecessor's correspondence as it was not properly before the Court. However, a closer reading of section 9 (3) of the Act gives it a certain latitude, and as the parties have chosen to focus on the contents of the confidential memorandum of 15 November 2011 (Annexure "LA 2") the objection is overruled and due consideration will be given it.
10. In addition, the Respondent contended that Article 15 of the Constitution of Nauru required petitions seeking temporary admissions for specific cases to include visas. That without a visa, the Petition could not be validly presented. This is a novel proposition which the Court finds difficult to accept. The matter before it for determination is about its exercise of a discretionary power conferred by the Act and the procedures prescribed thereunder. The decision about visas lies properly elsewhere and is not within the purview of the Court presently.
11. The starting point of the exercise of the Court's discretion whether or not to grant the Petitioner's application is the issue of "suitability" referred to in section 9 (3) of the Act and morphing more generally under the rubric of "character" of which mention is also made. Gordon J in *Ex parte Meagher* stated the proposition as follows:

"By s.10 of the Charter of Justice, this Court is only entitled to admit to practice as solicitors men who are "fit and proper persons." By the words "fit and proper possessed of a moral integrity and rectitude of character, so that they may safely be accredited by the Court to the public with their most intimate and confidential affairs persons" is meant persons who have been proved to the satisfaction of the Court not only to be possessed of the requisite knowledge of law, but above all to be without fear that that trust will be abused."

The learned Chief Justice, comprising part of the *coram*, had observed in an earlier passage:

Ex parte Meagher (1918)10 NSWLR 433 at 442.

*"The one and only fact we have to pronounce upon this application is his fitness for the position aspired to by the applicant, and of this fact the same authorities show that the burden of proof lies upon him."*²

12. In *Hughes and Vale Pty Ltd v The State of New South Wales* the phrase "a fit and proper person" was explained as follows:

*"The expression 'fit and proper person' is of course familiar enough traditional offices and perhaps vocations. But their very purpose is to give the widest scope for judgment and indeed for rejection. 'Fit' (or 'idoneus') with respect to an office is said to involve three things, honesty, knowledge and ability: honesty to execute it truly, without malice affection or partiality; knowledge to know what he ought duly to do; and ability as well in estate as in bod, that he may intend and execute his office, when need is, diligently, and not for impotency or poverty neglect it" ... Coke*³

13. The issue of suitability (or whether the Petitioner is a fit and proper person) to be admitted to practice in the Courts of Nauru revolves around the circumstances of the termination of his contract of service on 9 December 2011 (Annexure "LA 4 Respondent's affidavit in Opposition) and more specifically, the adverse inferences and conclusions drawn by the Respondent respectively from the confidential memorandum of Eames CJ and the note entitled 'Issues for Resolution' (Annexures "LA 2" and "LA 3") penned by the learned Resident Magistrate Peter Law.
14. In his confidential report to the Court, the current learned Registrar's predecessor echoed the disquiet of the Respondent in what he considered to be a lack of transparency and honesty on the part of the Petitioner that was fatal to his application for admission. As the Court is of opinion that the objections taken by the Respondent need to be analysed more carefully, it will reserve its position for the moment. In taking issue with the Respondent, it will also addressing the qualms of the former learned Registrar.
15. The letter of termination merely determined the Petitioner's contract in accordance with clause 16.2 of his contract of service dated 4 April 2011 and pursuant to Cabinet Resolution No 335/2011 of 9 December 2011. No reasons were given and certainly no untoward inferences can reasonably be drawn on the face of the correspondence, other than that the Chief Secretary, as head of the Public Service of Nauru, had chosen to apply clause 16.2 to determine the contract as per directive of Cabinet.
16. The Respondent's affidavit in Opposition purports to traverse in great detail the reasons why the Petitioner's contract as Secretary for Justice was terminated. They centre on issues of character and integrity about the Petitioner's dealings with both the former Resident Magistrate Peter Law and Eames CJ as well as seeking to undermine the independence of the judiciary. They are all serious charges and each sufficient on its own to damn the application of the Petitioner if made out.

² *Ex parte Meagher supra* 438

³ (1955) 93 CLR 127

17. Therefore a more searching consideration of Annexures "LA 2" and "LA 3" together with Eames CJ's explanatory letter of 6 September 2015 should be attempted alongside the Respondent's version of events. In doing so, no disrespect is intended. Rather, to ascertain beyond the arid propositions of law and principle that sometimes obscure the field what the Court must explain as follows:

*"The question to be decided is not one of law to be determined by reference to previous decisions. The duty of the court is to determine in what manner the court should exercise its discretion in the particular circumstances of each case. Generalisations relating to questions of character and moral fitness, such as the statement quoted from Ex parte Macauley (1930) 30 SR (NSW) 193 should not be treated as if they were propositions of law."*⁴

18. It is pertinent to note that Eames CJ drafted Annexure "LA 2" as a confidential missal at the request of the Minister of Justice. It was not intended for public disclosure and related to a private and sensitive matter which the administrative head of the Department of Justice sought to raise with the head of the Judiciary of Nauru. With hindsight, one readily assumes that those matters were being ventilated openly, casting a different complexion entirely on what was actually happening.
19. In his subsequent explanatory letter of 6 September 2015, Eames CJ admitted that the Petitioner's conduct was inappropriate but that it neither then as now "rendered him unfit to hold or retain a practising certificate."
20. In Annexure "LA 2" the exchange between the Petitioner and Eames CJ is open to differing interpretations. The one urged upon the Court is that it was a bald attempt to undermine the learned Resident Magistrate Peter Law and thereby threaten the independence of the judiciary. However, a more benign reading of the memorandum does offer another slant. It is that of the administrative head of the Department of Justice raising his misgivings about a judicial officer answerable to the head of the Judiciary. The latter was not persuaded and considered what was being mooted (choosing his words carefully) "suggested a denial of judicial independence..." The discussion then concluded with the consideration of possible options with Eames CJ being concerned about anything less than a nuanced approach to what appeared to be "vague complaints."
21. The learned Resident Magistrate was not as detached in his undated note (written either on or after Friday 18 November, 2011) to a third party headed "Issues for Resolution" (Annexure "LA 3"). Mr Law set out a number of conclusions about the Petitioner's conduct which included undermining his position as Magistrate, attacking the independence of the judiciary, misleading Mr Law about the then government's attitude towards him and behaving in an inappropriate manner towards him, causing Mr Law considerable stress. The Petitioner rejects the conclusions drawn by the latter in paragraph 10 of his Supplementary affidavit, and it is not unreasonable to assume there was a degree of animosity between Mr Law and the Petitioner.

⁴ *Re Lenehan HCA 45; (1948) 77 CLR 403 (16 December 1948) (per Latham CJ, Dixon and Williams JJ).*

22. The fatal flaw in the Respondent's case about the Petitioner's 'suitability', 'lack of character' or whether he is 'a fit and proper person' to be admitted as a barrister and solicitor in the Courts of Nauru is what the Court would term as a chain of causation consideration. In considering the facts and circumstances of the Petitioner's particular situation, as the authorities cited suggest and the Respondent has so persuasively asserted at pages 6 and 7 of his submissions, there is a break that appears irreparable.
23. Put bluntly, there is no nexus between the letter dated 9 December 2011 determining the Petitioner's contract as Secretary for Justice (Annexure "LA 4") and the reasons advanced in paragraphs 6, 8 (sic), 10 (sic), 11 (sic) and 12 (sic). There is little beyond conjecture, which in the Court's respectful opinion does not tip the balance of probability, about what transpired nearly four years ago to tie the Petitioner's alleged failures of character to Annexure "LA 4". Natural justice requires more from the Respondent if the Court is to exercise its discretionary powers in the manner sought by it.
24. It follows that the Respondent's complaints about non-disclosure and the lack of transparency in relation to the issues raised in Annexure "LA 2" and "LA 3" respectively of the Affidavit of the Respondent in Opposition are better appreciated in the light of the professional relationship at the time between the Petitioner and Eames CJ as well as the personal dynamics between the learned Resident Magistrate and the Petitioner.
25. Therefore, the mandatory requirement expressed by Pagone J in *Frugniet v the Board of Examiners* that: "*His obligation was to disclose matters that could inform a judgment about whether he was a fit and proper person for admission to practice...His task was not to select or edit from his life experiences only some event that might fairly assist in deciding whether the applicant is a fit and proper person at the time of submission*".⁵ ...is not germane given the interpretation the Court has adopted of the documents which form the foundation of the Respondent's robust challenge to the Petitioner's application.
26. For the foregoing reasons, the objections put forward by the Respondent in his Affidavit in opposition dated 18 September, elaborated on further in his written Submissions dated 3 October 2015 opposing the Petitioner's application as a Barrister and Solicitor to the Courts of Nauru, as well as in oral argument by the learned Solicitor General, have not been established in terms of section 9 (3) of the Act.
27. Accordingly, the Court is satisfied as to the qualification and suitability of the Petitioner to be admitted for practice on a temporary basis in terms of the specific matters set out in paragraph 8 of the petition viz:
- a. Matters arising out of the alleged unlawful assembly and subsequent events at Parliament House on 16 June 2015; and
 - b. Appeals under section 41 of the Passports Act 2011 against decisions of the Minister for Justice and Border Control under Part 4 or section 24 of the Act with respect to persons alleged to have been involved in the events referred to in paragraph (a), and related matters.

⁵ (No.1) 2002 VSC 140

28. The Gazette Notice No. 97 of 2015 referred only to *Republic v Hon Mathew Batsiua* (Criminal Case No 21 of 2015), *Republic v Hon Squire Jeremiah & Republic v Hon Spent Dabwido* (Criminal Case No 22 of 2015) and *Republic v Mereiya Halstead & Job Cecil* (Criminal Case No 24 OF 2015). The Gazette Notice is hereby amended in terms of paragraph 8 of the petition pursuant to section 4 (2) of the Act.

The Petition of David Armstrong Lambourne for temporary admission to practice as a Barrister and Solicitor in the Courts of Nauru is granted and there will be no order as to costs.

DATED this 13th day of November 2015.


Joni Madraiwiwi
CHIEF JUSTICE

