ANTONIO & DZVETERO LEGAL PRACTITIONERS
TENDERO DZVETERO
TAPSON S T DZVETERO
versus
THE EXECUTIVE SECRETARY OF THE LAW SOCIETY
THE LAW SOCIETY OF ZIMBABWE COUNCIL
THE LAW SOCIETY OF ZIMBABWE

HIGH COURT OF ZIMBABWE
CHINAMORA J
HARARE, 22 June 2020, 17 July 2020 & 23 September 2021

Opposed application

Adv S Hashiti, for the 1st and 2nd applicants
Adv T Mpofu, for the 3rd applicant
Adv F Chinwawadzimba, for the respondents

CHINAMORA J:

Introduction:

The 2nd and 3rd applicants are registered legal practitioners who practice in partnership under the name Antonio & Dzvetero Legal Practitioners. This is an application brought in terms of section 27 (1) of the High Court Act *[Chapter 7:06]*, as read with Order 33 of the High Court Rules, 1971 (the previous Rules), and the common law. In addition, the application relied on section 14 of the High Court Act, the Administrative Justice Act *[Chapter 10:28]*, and the Constitution of Zimbabwe. The applicants cited the Executive Secretary of the Law Society in his official capacity as the official, vested by section 74 of the Legal Practitioners Act *[Chapter 27:07]*, with responsibility for receiving and processing applications for practicing certificates of legal practitioners. Also cited was the Law Society Council as the body established with responsibilities conferred on it by section 51 of the Legal Practitioners Act. Finally, the application cited the Law Society of Zimbabwe, which is the regulatory of registered legal practitioners.

Background

The facts giving rise to the present application are fully set out in the affidavits filed by respective the parties. On 29 March 2019, the respondents delivered a letter dated 28 March 2018 to the 3rd applicant advising him that the 1st applicant had been placed under curatorship. Additionally, the letter informed the applicants of the respondents' decision to refer a complaint against the 3rd applicant to the Legal Practitioners Disciplinary Tribunal. The complaint was by Mr and Mrs Chitagu. The letter is in the following terms:

> **"re: Complaint – Rufu Makoni Legal Practitioners representing Mr and Mrs Chitagu**
>
> Council at its meeting of 26 November 2018 considered the complaint against you and your responses.
>
> Council noted that you failed to prove the authenticity of the order that you used to effect transfer despite the undertaking you made to the Secretary. You also failed to furnish any reasons for failing to honour the undertaking.
>
> Council further noted that your conduct is unprofessional, dishonourable and unworthy in that you instituted and used a fraudulent court order to effect transfer of property. This has the potential to bring the name of the profession into disrepute.
>
> Council resolved that you be referred to the Legal Practitioners Disciplinary Tribunal (LPDT) for an enquiry into your suitability to continue practicing and that this matter be joined with the other application in which you were referred to the LPDT.
>
> Council further resolved that meanwhile your firm be placed under curatorship. Find attached a list of curators that was approved by Council for your consideration.
>
> Let us kindly have your preferred curator within the next ten days.
>
> Yours faithfully
>
> E MAPARA
> EXECUTIVE SECRETARY"

A second letter dated 27 March 2019, which was received from the respondents, notified the 3rd applicant that his practicing certificate had been withdrawn for failing to fulfil an undertaking to surrender the said practicing certificate. It is worth capturing what this letter says:

> **"Re: Withdrawal of Practicing Certificate**
>
> I refer to the meeting held in my office two weeks ago in which I advised you that your 2019 practicing certificate was issued out to you in error.
>
> I requested you to surrender the practicing certificate and you undertook to do so. You have not fulfilled your undertaking. Failure to fulfill an undertaking is in itself an act of misconduct. Through this letter, I am hereby formally revoking the practicing certificate issued to you under Dzvetero and Company Legal Practitioners for the year 2019.

> By copy of this letter, I am advising all stakeholders that you are not a holder of a practicing certificate for the year 2019.
>
> Yours faithfully
>
> E MAPARA
> EXECUTIVE SECRETARY"

At this juncture, it is crucial to state that the applicants filed a supplementary affidavit which appears on page 173 of the record. Because of the matters raised in that record, and for the sake of completeness of the record, it is important to comment on that affidavit.

Applicants' supplementary affidavit

It is common cause that under HC 3865/19, the applicants applied to this court for the Law Society of Zimbabwe (the 3rd respondent herein) to be joined to the current proceedings. That application came before Charewa J who, on 19 June 2019, gave an order allowing the joinder. In addition, leave was granted to the applicants "to file supplementary papers in the application for review under case number HC 2813/19 [the application in *casu*]". These papers were filed to enable the applicants to address issues relating to the 3rd respondent who was now a party to the proceedings. Thus, the supplementary affidavit was filed in terms of an order of court. It is properly before this court. The applicants seek a review of a series of actions carried out by the respondents, to wit, the withdrawal of the 3rd applicant's practicing certificate; his referral to the Legal Practitioners Disciplinary Tribunal because of a complaint by Mr and Mrs Chitagu; and the referral of the 3rd applicant to the tribunal in LPTD17/18. From the supplementary affidavit, it is apparent that the decision by the respondents to refer various and different matters to the tribunal for alleged unethical conduct perplexed the 3rd applicant. His complaint in this regard is articulated as follows:

> "If the respondents had determined each case as it came, individually, it probably would not have made a decision to refer me to the Legal Practitioners Disciplinary Tribunal for purposes of enquiry into my suitability to practice. The conduct of the respondents creates an impression that I have been very unethical in 2018. This has the effect of portraying me negatively and creates bias against me upfront. It is intended to mislead the tribunal. In their bunched up letters wherein respondents notified me of their decision to refer me to the Legal Practitioners Disciplinary Tribunal, the respondents do not disclose which other cases they refer to therein which they state to have already referred. Respondents did not even notify me of the stage of their processes and the different stages my matters were at any given time until I requested for such information, and even then I was furnished with a response for only one case".

In one instance, the respondents took a case (involving the ZBC) despite not providing details requested by the 3rd applicant to enable him to defend himself. The applicant also complained that a case which had been resolved was referred to the tribunal, demonstrating lack of investigation prior to referring matters or not giving the applicant a prior chance to be heard.

The applicants were aggrieved by the decision and actions of the respondents, hence their approach to this court with the present application. They amended their draft order and asked the court to grant the relief expressed therein. The application was based on four grounds, namely, illegality, procedural impropriety, gross irregularity and/or irrationality and bias. The order which they prayed for is couched thus:

IT IS ORDERED THAT:

1. The resolution by the respondents of 26 November 2018 concerning and affecting the applicants is hereby declared null and void and set aside.
2. The revocation and withdrawal of the 3rd applicant's practicing certificate in terms of the respondent's letter of 27 March 2019 or resolution of 25 March 2019 be and is hereby declared null and void and set aside.
3. The decision to refer various alleged cases of unethical conduct to the Legal Practitioners Disciplinary Tribunal for determination on 3rd respondent's suitability and fitness to practice as a legal practitioner made by the respondents on 28 May 2018 or otherwise referred to the tribunal under LPDT17/18 be and is hereby set aside.
4. The prosecution of the various cases of alleged unethical conduct by the 3rd applicant referred on 28 May 2018 to the Legal Practitioners Disciplinary Tribunal or otherwise referred to the tribunal under LPDT17/18 by the respondents be and is hereby set aside.
5. Respondents to pay costs of suit on a legal practitioner and client scale.

The respondents opposed the application and the relief sought. However, in their opposing affidavit, the respondents made a certain important, if not significant concession. I will return to address it. The respondents raised three preliminary points, firstly, (a) improper introduction of a

new cause or issues in the supplementary affidavit; (b) failure to comply with Rules 257 and; (c) non-compliance with Rule 259. Let me address these preliminary points.

Points in *limine*

The first objection was that the attack on the referral of the applicant to the tribunal constituted a new cause, and asked for that cause to be struck out. I heard argument from both parties and indicated I would render my ruling in my judgment on the merits. At the hearing the applicants applied for condonation. The second point raised failure to mention the new issues on the face of the application as a non-compliance with Rule 257, which requires the grounds of application to be set out. The grounds of application are indeed provided on the face of the application. This point will not detain me and I dismiss it. The final preliminary point alleged failure to file the application for review within the time stipulated by Rule 259. The respondents vehemently opposed the placement of new issues through the supplementary affidavit. I note that in the case of *Codier v Codier* 1984 (4) SA 524 at 528, cited by Adv Mpofu, the court allowed condonation to enable historical facts to be placed on record. The decision and its rationale are compelling, and I endorse them. I addition, Rule 4C of the High Court Rules allow a departure if justified by the interests of justice. I have also examined whether prejudice would accrue if the indulgence sought was granted. The respondents were able to file their opposing affidavit, meaning that they had an opportunity to relate to the supplementary affidavit. At any rate, the order granted by Charewa J contemplates and, in my view, allows the filing of the supplementary. I find no other interpretation to give to that order. As such I see no prejudice. I grant the application for condonation, and dismiss all the points *in limine.*

The applicable law

Generally, when examining what is required of administrative authorities when making decisions which impinge on the rights of persons subject to their exercise of power, the starting point is section 68 of the Constitution. This section enshrines the right of every person to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair. In addition, the same provision allows any person whose right, freedom, interest or legitimate expectation has been adversely affected by administrative conduct to be given promptly and in writing the reasons for such conduct. The constitutional rights

enumerated above also find expression in the Administrative Justice Act. In this connection, section 3 (1) of the AJA provides that an administrative authority which takes action which may affect the rights, interests or legitimate expectations of any person shall act lawfully, reasonably and in a fair manner and give reasons for its action. It has to be observed that section 3 (2), quite pertinently, states:

> "(2) In order for an administrative action to be taken in a fair manner as required by paragraph (*a*) of subsection (1), an administrative authority shall give a person referred to in subsection (1) –
>
> (*a*) adequate notice of the nature and purpose of the proposed action; and
> (*b*) a reasonable opportunity to make adequate representations; and
> (*c*) adequate notice of any right of review or appeal where applicable".

Once an administrative decision or action does not meet the imperatives of section 68 of the Constitution and section 3 of the Administrative Justice Act, undoubtedly, this court is empowered by section 26 of the High Court Act to review the decision or action complained of. The grounds upon which a review may be brought to this court are outlined in section 27, which states:

> **"27 Grounds for review**
>
> (1) Subject to this Act and any other law, the grounds on which any proceedings or decision may be brought on review before the High Court shall be –
>
> (a) absence of jurisdiction on the part of the court, tribunal or authority concerned;
> (b) interest in the cause, bias, malice or corruption on the part of the person presiding over the court or tribunal concerned or on the part of the authority concerned, as the case may be;
> (c) gross irregularity in the proceedings or the decision.
>
> (2) Nothing in subsection (1) shall affect any other law relating to the review of proceedings or decisions of inferior courts, tribunals or authorities."

See *Ndlovu N.O. v CBZ Bank & Anor* SC 27-17

.

The Applicants' submissions

The gravamen of the applicants' case appears in the grounds for the application, and can be summarized as follows:

1. The purported withdrawal of the 3rd applicant's practicing certificate by the respondents through a letter dated 27 March 2019 is invalid for want of compliance with principles of the Legal Practitioners Act natural justice, administrative justice, procedural fairness and the law. Such decision and action are grossly irregular, irrational and illegal.

2. The resolution and decision of 26 November 2018 by the respondents to place the 1st applicant, namely, Antonio & Dzvetero Legal Practitioners, under curatorship, without due notice and procedure under circumstances whereby the applicants, ordinarily, would have a legitimate expectation to be heard infringes the principles of the Legal Practitioners Act, natural justice, the Administrative Justice Act and section 68 of the Constitution of Zimbabwe.

   2.1 The 2nd applicant was never accorded the opportunity to make representations to the respondents regarding the decision to place the 1st applicant under curatorship, since such a decision would be adverse to the 2nd applicant's interests.

3. The gross irregularity in the process and decision, and the circumstances of this matter in the withdrawal of the 3rd applicant's practicing certificate, as well as the resolution to place the 1st applicant under curatorship have the cumulative effect of creating a reasonable suspicion that there was a real likelihood of bias against the applicants by the respondents present when the said resolution was passed.

The respondents' submissions

As I stated previously, the application was opposed by the respondents. However, the opposing affidavit (in paragraph 2, at page 77 of the record) made a concession, which is dispositive of one of the issues before this court. It is relevant to reproduce the concession in *extenso* in this judgment. It is elaborated as follows:

> "The respondents have no desire to place the 1st applicant under curatorship. They are not opposed to the relief sought in respect of the curatorship. Following the hearing before Honourable Zhou J, in the urgent chamber application HC 2816/19 on 16 April 2019, wherein the same concession was made in the opposing affidavit in that matter and interim granted, 1st respondent has formally communicated to the applicants the rescission of the resolution to place the 1st applicant under curatorship. A copy of the letter to the applicants is attached as "TD1".

Indeed, it is noteworthy that the letter written by the 1st respondent dated 23 April 2019, which is annexed as "TD1" to the opposing affidavit of the respondents (at page 86 of the record, among other things, reads as follows:

> "We refer to our letter to you dated 28 March 2018 and, specifically, the issue of curatorship raised therein. We advise that the resolution to place your firm under curatorship was rescinded by Council at the meeting held on 25 March 2019".

The concession, I have referred to, is not ambivalent and resolves the question of placing the 1st applicant under curatorship. It is no longer a contested issue in these proceedings, and I will not dwell any further on this subject. I find it necessary to comment on paragraph 3 of the respondents' opposing affidavit (at page 78 of the record), where the following appears:

> "The two outstanding issues arising from this application therefore relate solely to the 3rd applicant and they are:
>
> (a) Whether the withdrawal of his practicing certificate was lawful.
> (b) Whether his referral to the Disciplinary Tribunal in respect of the complaint by Mr and Mrs Chitagu was properly made".

I agree with the respondents' conclusion on the issues that remain for consideration. In respect of the withdrawal of the practicing certificate the respondents argued that it was issued in error. On page 79 of the record, the respondents submitted that:

> "A copy of the resolution to withhold practicing certificates to errant practitioners is attached hereto as "TD2".

The resolution, which appears on pages 87-88 of the record, does not address the withdrawal of the 3rd applicant's practicing certificate at all, as it mentions legal practitioners other than him. To be precise, the resolution makes specific reference to Obedience Machuvaire, Lucy Mukombiwa, Liberty Madamombe, Stephen Marambe, Zwinashe Matangaidze, Luke Musanhu, Milton Goho, Ronald Tapfumaneyi, Jeremiah Zivengwa, Kanokanga and Partners (on behalf of Angeline P Kupara). In generalized terms the resolution concludes:

> "Council has resolved that in future, wherever a member is facing serious allegations and applies for a practicing certificate, guidance should be sought from Council before he/she is issued with a practicing certificate".

On the issue of referral of the Chitagu complaint to the Legal Practitioners Disciplinary Tribunal, the respondents were vehement that the referral is not afflicted by any impropriety. They argued that the suggestion of gross irregularity and bias is baseless and that, in any event, those were arguments to make before the tribunal. They also maintained that the 3rd applicant had been given

any opportunity by the Disciplinary and Ethics Committee (DEC) to respond to the complaint, and that the DEC took into account his responses.

Analysis of the case

This case calls upon this court to consider issues of illegality, procedural impropriety, gross irregularity and/or irrationality and bias. For me to be able to determine whether or not the decision or actions of the respondents can be impugned on the basis of the above reasons, I need to examine what the law says. I begin by looking at the question of illegality to determine whether or not the respondents' actions and decisions were unlawful.

Illegality

In relation to what constitutes a lawful administrative decision, MALABA J (as he then was) in *Delta (Private) Limited v Mpepula* 2004 (2) ZLR 116E-F, appositely underlined that an administrative body cannot make a decision which abolishes statutory rights without affording the affected person the right to be heard. The 3rd applicant averred that he complied with the requirements for the issuance of a practicing certificate for the year 2019 and paid for it before it was issued. He therefore submitted that the respondents acted unlawfully in revoking the practicing certificate in circumstances where he had complied with the requirements of the law. It has not escaped my notice that the letter dated 26 March 2019 does not explain why the respondents assert that the certificate was issued in error and the type of error which they considered warranted the withdrawal of the certificate. This was important, in my view, in order for the 3rd applicant to appreciate that the withdrawal or revocation of the practicing certificate was motivated by a legitimate basis. I add that a person affected by an administrative decision should not be left feeling that the decision has been made for reasons other than those stated. Taking everything in the round, I consider the withdrawal in the circumstances renders the action taken by the respondents a nullity. (See *Muchakata v Netherburn Mine* 1996 (2) ZLR 153 (S).

The papers before me show that the 3rd applicant complains that his practicing certificate was withdrawn or revoked contrary to the provisions of the Legal Practitioners Act, principles of natural justice, administrative justice, procedural fairness and the law. Put differently, the submission proffered is that the respondents acted ultra vires the requirements of the Legal Practitioners Act, the Constitution and the Administrative Justice Act. Thus, the premise of the 3rd

applicant's contention necessarily impels me to examine how practicing certificates are issued and revoked. The Legal Practitioners Act contains provisions which govern this area. In this regards, section 76 of the Act provides that:

> "(1) Subject to subsection (2), a practicing certificate shall be valid –
> (a) For a period of twelve months from the 1st January next following the application therefore; or
> (b) If the applicant so requires, from the date of its issue until 31st December of the year in which it is issued.
> (2) A practicing certificate issued to a legal practitioner –
> (a) whose name is deleted from the register ;or
> (b) who is suspended from practice in terms section twenty-eight or thirty shall cease to be valid from the date of such deletion or suspension, and the legal practitioner or former legal practitioner concerned shall forthwith return the practicing certificate to the secretary of the Society for destruction".

It is important as well to consider the provisions governing how practicing certificates are issued and withdrawn or revoked. Applications for practicing certificates are done in terms of section 74 of the Legal Practitioners Act, while section 75 governs their issuance, renewal and refusal. The documents and payments required when submitting an application are listed in section 74 (2) of the Act. Section76 deals with the tenure of practicing certificates. In the context withdrawal of the certificates, I must look at how they may be withdrawn or revoked. Section 78 of the Legal Practitioners Act stipulates that:

> (1) <u>If, after due inquiry, the Council of the Society is satisfied that a legal practitioner has not complied with any term or condition of a practising certificate held by him</u>, the Council of the Society may withdraw the practising certificate and, if it does so, shall direct the secretary of the Society to advise the legal practitioner accordingly.
> (2) A legal practitioner whose practising certificate has been withdrawn in terms of subsection (1) shall, upon being advised of the withdrawal, forthwith return the practising certificate to the secretary of the Society for destruction". **[My own emphasis]**

The above provision, when unpacked, reveals the following. Firstly, a legal practitioner's practicing certificate may be withdrawn if he or she has not complied with a term or condition of the practising certificate. The second one is that an inquiry has to be conducted by the 2nd respondent before such a certificate is withdrawn. Thirdly, section 78 is explicit that it is the 2nd respondent that has the statutory power to withdraw the practicing certificate. Finally, the 1st respondent's role is to advise the legal practitioner of the decision of the Council of the Law Society. For the avoidance of doubt,

the unambiguous language of section 78 leave no room for the 1st respondent to withdraw or revoke the 3rd applicant's practising certificate on behalf of the 2nd respondent.

Against this background, I now proceed to examine if the allegations by the applicants can be sustained. The reason for revoking the 3rd applicant's practising certificate is provided in the letter authored by the 1st respondent dated 27 March 2019. The letter states, in the relevant part, that the said practising certificate was issued in error. The ground for withdrawing a practising certificate is stated in section 87 (1) of the Legal Practitioners Act, namely, that the lawyer concerned has failed to comply with a condition of the practising certificate. I have not seen anything in the letter of 27 May 2019 alluding to such a non-compliance. Therefore, no basis founded on section 87 (1) existed for revoking the certificate. My next observation is that, once the 1st respondent formed the view that the certificate should be withdrawn, an enquiry ought to have been conducted as required by section 87 (1). Such a course was, in any event, consistent with section 68 of the Constitution, which accords every person the right to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair. Besides, the necessity of such an enquiry is buttressed by section 3 of the Administrative Justice Act.

I go on further to state that, even if section 87 (1) did not call for an enquiry, I would still consider the actions of the respondents irregular on a different basis. Since they took a decision which adversely affected the 3rd applicant's rights and legitimate expectations, section 68 of the Constitution, section 3 of the Administrative Justice Act and the common law principles of natural justice dictate that the 3rd applicant should have been heard before his practicing certificate was revoked. (See *Health Professions Council v McGowan* 1994 (2) ZLR 392 (S). It is evident from the letter of 27 March 2019 that the enquiry contemplated by section 87 (1) was not carried out. In the absence of an enquiry, it can be little doubted that the respondents acted *ultra vires* the requirements of the Legal Practitioners Act. It is trite that a decision which is ultra vires the law is a nullity. (See *Kambasha Bros & Anor v Thompson & Anor* 1971 (1) SA 155 (SR).

I turn to the act of withdrawing the practicing certificate. It must be recalled that responsibility for withdrawing or revoking (to borrow the 1st applicant's language) vests in the 2nd applicant. Section 87 of the Legal Practitioners Act says so expressly. Let me revisit the letter of 27 March 2019 to determine if the decision to withdraw the practicing certificate was made by the

Council of the Law Society. The letter plainly discloses that the decision was made by the 1st respondent and not the Council. It reads as follows:

> "Through this letter, I am hereby formally revoking the practicing certificate issued to you under Dzvetero and Company Legal Practitioners for the year 2019".

I note, firstly, that the 1st respondent did state that the decision to withdraw the practicing certificate was made by the Law Society Council. In this respect, I have observed that the 1st respondent's letter dated 28 March 2018 is specific that the decision and resolutions referred to were made by the 2nd respondent. The conclusion is easy to reach that the 1st respondent exercised powers he did not possess in terms of the law. Consequently, the decision he made to withdraw the 3rd applicant's practicing certificate cannot be sustained. For this and all the reasons evident from the foregoing analysis, that decision is a nullity and should be set aside. (See *Muchakata v Netherburn supra* and *McFoy v United Africa Co Ltd* (1961) 3 All ER 1169 at 1172). Next, I will look at whether the conduct of the respondents is impugnable for want of procedural propriety.

Procedural impropriety

I have already dealt with the respondents' failure to conduct the enquiry envisaged by section 87 (1) of the Legal Practitioners Act when the 3rd applicant's practicing certificate was revoked. No clearer demonstration of a procedural impropriety is required. It was further argued, for the applicants, that when the respondents referred the complaint in LPDT17/18 that referral was not procedural. The applicants argued that the process by which a complaint is placed before the tribunal (as laid down in section 3 of the Regulations) was not followed.

The regulations require an application to be made, and further stipulate what the application must contain. Additionally, they prescribe what the tribunal must do after receiving the application. I agree with Counsel for the applicants that the Law Society Disciplinary Tribunal is required to consider the application first, since a referral done in the manner indicated in the letter of 28 March 2018 falls foul of the requirements of the regulations. The failure to follow the statutory procedure afflicts the resolution, which makes it invalid and liable to being set aside.

The referral is also irregular if one examines an Extract of Minutes of a meeting 3rd respondent held on 26 November 2018, which appear in paragraph 2 on pages 97-100 of the record. In argument, Counsel for the applicants directed the court's attention to the complaint against the

3rd applicant (in paragraph 2 of the Minutes) and his response (in paragraph 2 of the Minutes). Then, Counsel referred to the Disciplinary and Ethics Committee's (DEC) decision on page 100 of the record, which made no mention of the 3rd applicant's defence. The following passage is relevant:

> "2. In response to the allegations, the respondent [3rd applicant in *casu*] stated that:
> (a) He had been approached by Mr David Garonga and Mr Lameck Garonga who wanted their property to be transferred into Mr David Garonga's name from Hamilton Properties.
> (b) He was presented with an agreement of sale which reflected the owner of the property as Hamilton Property Holdings (Pvt) Ltd. He further stated that he filed the court processes against Hamilton Property Holdings under case number HC 5434/10 regarding the issue of transfer of property to his clients. He had then received a draft order with regards to the transfer of the property.
> (c) …
> (d) …
> (e) ---
> (f) --.
> (g) …
> (h) …
> (i) …
> (j) The respondent disputed ever forging anything and had sought clarification from the Registrar's office on the matter.
> (k) The respondent further states that the Registrar had clarified that there seemed to be a typographical emanating from the High Court. He highlighted that the High Court had referenced the wrong case number as HC 5434/11 instead of HC 5434/10.
> (l) It was alleged that this could have been the same case number reflected on the power of attorney to make transfer by the deputy Sheriff. This is also alleged by the respondent that a letter had been written by the Deputy Sheriff to Dzimba, Jaravaza and Associates Legal Practitioners regarding the same subject matter."

The conclusion by the DEC was that the 3rd applicant had failed to prove the authenticity of "his order', yet no finding had been made of whose order it was between the 3rd applicant and Mr Mawere. From its conclusion, it is evident that the DEC had, without clarifying the basis for that position, decided that culpability for the alleged fraudulent order lay with the 3rd applicant. In my view, without that such finding, the resolution should not have been accepted since it had not addressed the issue requiring an answer. Clearly, the referral without a finding on a crucial issue smacks of a procedural irregularity, since the finding of fact should have been the basis for the referral. It is stating the obvious to say that an administrative decision must be supported by evidence. In this regard, it worth noting that the learned author, Cora Hoexter, in *Administrative Law in South Africa*, (1st ed) at 307, made the following germane remarks:

> "This means in essence that a decision must be supported by the evidence and information before the administrator as well as the reason given for it. It must also be objectively capable of furthering the purpose for which the power was given and for which the decision was purportedly taken."

I agree with the learned author's views and respectfully endorse them. They are, in my view, eminently compelling, since an administrative decision taken without a factual basis is unreasonable and irrational. Such a decision is reviewable. I will go on to examine the question of gross irregularity/irrationality.

Gross irregularity/irrationality

The point has already been made that the DEC passed the resolution to refer the 3rd applicant to the Legal Practitioners Disciplinary Tribunal without making a crucial finding of fact. The finding that should have been made is who forged the court order which is the subject of the referral. I take the view that a finding or a decision will be considered to be reasonable when there is a material connection between the evidence and the result. Such a connection is explained in the decision maker's reasons. I need to mention that the apparent lack of reference to the 3rd applicant's defence appearing in the Extract of Minutes of the meeting of 26 November 2018 leads to the conclusion that his defence was not taken into account when the DEC passed its resolution. Effectively, what is apparent is that he was denied the right to be heard in violation of the rights guaranteed by the Constitution, Administrative Justice Act and the common law. In this respect, PATEL JA succinctly explained what constitutes acting in a fair manner in *Attorney-General v Leopold Mudisi & Ors* SC 48-15, in the following terms:

> "The obligation to act in a fair manner is further expanded in s 3 (2) of the [Administrative Justice] Act to require the giving of "adequate notice of the nature and purpose of the proposed action" and "a reasonable opportunity to make adequate representations" as well as "adequate notice of any right of review or appeal where applicable".

The conduct of the respondents shows that the applicant did not get a fair hearing in breach of his rights, and cannot escape review.

Bias

The applicants have alleged bias on the part of the respondents. I have dealt with issues of legality, procedural impropriety and irrationality and found that a sufficient basis had been

demonstrated for the court to impugn the conduct and decision of the respondents. While I can say that the failure to observe the dictates of section 68 of the Constitution, section 3 of the Administrative Justice Act and the common law principle of *audi alteram partem*, it may too far-fetched, in my view, to make a definite finding of bias on the part of the respondents. My decision will, therefore, be based on the findings I have made in respect of the other grounds for review advanced by the applicants.

Conclusion

It is apparent from my analysis that I have come to the conclusion that a case for the relief sought in the amended draft order is warranted. Normally costs follow the result. However, there is a rider that costs are in the discretion of the court. The respondents have made a concession where appropriate. It is common cause that the respondents play have a statutory responsibility in regulating the conduct of registered legal practitioners. Having looked at the papers before me, I am unable to say that the respondents acted in bad faith in carrying out their responsibilities. While I can say that they disregarded or failed to observe the law relating to procedural or substantive fairness as set out in the Constitution, Administrative Justice Act, as well as the common law. Certainly, it would be drastic for me to make a finding of *mala fides*. Consequently, in the exercise of my discretion, I have decided not to award costs against them.

Disposition

In the result, I make the following order:

IT IS ORDERED THAT:

1. The resolution by the respondents of 26 November 2018 concerning and affecting the applicants is hereby declared null and void and set aside.

2. The revocation and withdrawal of the 3rd applicant's practicing certificate in terms of the respondent's letter of 27 March 2019 or resolution of 25 March 2019 be and is hereby declared null and void and set aside.

3. The decision to refer various alleged cases of unethical conduct to the Legal Practitioners Disciplinary Tribunal for determination on 3rd applicant's suitability and fitness to practice

as a legal practitioner made by the respondents on 28 May 2018 or otherwise referred to the tribunal under LPDT17/18 be and is hereby set aside.

4. The prosecution of the various cases of alleged unethical conduct by the 3rd applicant referred on 28 May 2018 to the Legal Practitioners Disciplinary Tribunal or otherwise referred to the tribunal under LPDT17/18 by the respondents be and is hereby set aside.
5. Each party shall meet its own costs.

Mushoriwa, Pasi Attoneys, applicants' legal practitioners
Law Society of Zimbabwe, respondents' legal practitioners