TAONA SIBANDA

and

SILVESTER HASHITI

versus

DAVID OCHIENG

and

RADZAI MAHERE

and

THABANI MPOFU

and

FIROS GIRACH

and

MEHTA DEEPAK

and

LEWIS URIRI

and

THEMBI MAGWALIBA

and

ERIC W.W MORRIS

and

RICHARD M. FITCHES

and

ZVIKOMBORERO CHADAMBUKA

and

PETTY KACHIDZA-MAZHUNDE

and

RAMBAYI CHINGWENA

and

THE ADVOCATES’ CHAMBERS ASSOCIATION

and

THE BAR ASSOCIATION OF ZIMBABWE

and

THE LAW SOCIETY OF ZIMBABWE

HIGH COURT OF ZIMBABWE

MTSHIYA J

HARARE, 25, 26 and 28 September, 2012

and 03 October, 2012

*Ms B Mtetwa,* for the applicant

*Mrs N Moyo,* for the 1st , 4th , 9th and 11th respondents

*Mr D Drury,* for the 2nd , 5th and 12the respondents

*Mrs Njerere,* for the 6th , 7th and 10th respondents

*Ms L. Chimuriwo,* for the 3rd respondent

*Mr F Girach,* for the 13th respondent

*Advocate Morris,* for the 8th and 14th respondents

*Ms A Chirisa,* for the 15th respondent

MTSHIYA J: This is an urgent chamber application wherein the applicants pray for a provisional order in the following terms:

**“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 Respondent.
2. The regulatory framework imposed on the Applicants on 22 August 2012 be and is hereby declared a nullity.
3. The resolution 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 background to the relief sought is as follows:

The first applicant registered as a legal practitioner on 29 February 2012. The second applicant, is also a registered legal practitioner. His date of registration is not indicated in the papers.

On 14 February 2012, before his registration, the first applicant applied to the thirteenth respondent to be admitted as “a pupil and member.” He states that in March 2012 the thirteenth respondent responded to his application in terms similar to those given to the second applicant on 15 May 2012 when he (second applicant) was admitted to advocates’ chambers. The said letter, authored by the secretary of the thirteenth respondent, reads as follows:

“**RE: ADMISSION TO THE ADVOCATES’ CHAMBERS**

I refer to your application for admission to the 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 distinguished members of the profession in this Chambers (*sic*) will assist you in your professional development.”

The second applicant joined the thirteenth respondent on 1 June 2012. The above terms and conditions applied to both applicants.

It is common cause that the applicants were duly issued with practicing certificates by the fifteenth respondent describing each of them as “Advocate.” The certificates were endorsed with a condition that the applicants could not operate trust accounts.

In addition to the terms contained in thirteenth respondent’s letter of 15 May 2012, the first applicant says his pupil Master confirmed the terms and conditions as follows:

“a) I would report to my pupil master any matters on which I would require

guidance and supervision;

b) I would be entitled to receive briefs and instructions from law firms in my own

name and as a pupil advocate;

c) That my master would countersign any work I had done as a form of quality

control;

d) That I would also be under the general supervision of other senior members of

the Bar and that in the unlikely event of being briefly to appear in a matter in

which my master had been briefly in opposition, any other senior member of

the bar would countersign such work;

e) That I would get assignments from my master or any other member of

Chambers and if they were satisfied with my input, I would be entitled to co-

authorship of the document, e.g. Heads of Argument;

f) That I would have a right of audience in all courts of law in Zimbabwe and all

other quasi-judicial hearings which allow legal representation;

g) That my master would determine the duration of my pupilage taking into

account my performance, competence and general profession development.

Until such time that my master indicated I was ready to be weaned, I would

remain under pupilage.”

The second applicant confirms the above in the following terms:

“3. I confirm that I joined the Advocates Chambers as a member under pupilage

on the 1st, June 2012 and I refer to Annexure “E” of the 1st Applicant’s Affidavit hereto which is the admission letter sent to me by the 3rd Respondent in his capacity as the Secretary of the Advocates Chambers. As is clear from the contents of Annexure “E”, I was admitted on certain conditions which included being issued with a practicing certificate by the Law Society of Zimbabwe, being subject to the Bar Rules and Constitution and to the Constitution of the Advocates’ Chambers, being allocated a room in Chambers upon the payment of the required sum of money, and that I would be a pupil under the supervision of senior members of Chambers. I wish to highlight the terms under paragraph 2 of Annexure “E” which state as follows: “As an Advocate you will not be allowed to accept any work other than from a duly licenced legal practitioner/attorney solicitor”. I highlight this sentence as it appears that some of the Respondents are under the misapprehension that the title “Advocate” never applied to me and that I was not entitled to directly receive work in my name.

4. I confirm that I duly met all the conditions set out in Annexure “E” and that I

indeed subjected myself to the Bar Rules and Constitution and to the

Constitution of the Advocates’ Chambers. I confirm that prior to applying to

join the Advocates Chambers, I had done extensive consultations on the

workings of Chambers and in particular I consulted the then Chair of

Chambers, Advocate Happious Zhou and the Secretary, Advocate Thabani

Mpofu, the third respondent herein. I confirm that both Advocate Zhou (now

Justice Zhou) and Advocate Mpofu confirmed the admission terms and

conditions as set out in Annexure “E” and I then resigned my employment

with Messrs Dube, Manikai & Hwacha to join Chambers in the belief that the

terms set out in Annexure “E” and as elucidated in my enquiries and

consultation with the then Chair and Secretary would be binding on all

concerned and would not be altered or changed outside the Bar Rules and

Constitution and the Constitution of the Advocates Chambers and without any

due process where rights that would have accrued to me could be unilaterally

changed by the other member.

1. Based on these representations by the then Chair and the current Secretary, the third respondent herein, I duly commenced my practice as a pupil Advocate under Advocate Girach as my Master. I conducted my practice in terms of the conditions set out in my admission letter and received briefs in my own name although all my work went out countersigned by my Master or other senior member of Chambers.”

The applicants state that the legal fraternity was advised of their positions through the following memorandum, again authored by the secretary of thirteenth respondent:

“PLEASE BE ADVISED THAT the following is a list of members of the Advocates’ Chambers Association practicing as Advocates at Advocates’ Chambers, 13th Floor, Old Mutual Centre, Harare as at the 1st June 2012.

Morris E.W.W

Fitches R.M

Molita D.S

Uriri L

Mpofu T

Chadambuka Z.T

Ochieng D

Chingwena R

Mahere F

Girach F

Mangaliba T

Morris-Davies A

Kachidza-Mazhude P

**PUPILS**

Sibanda T

Bwanali R

Hashiti S.M

1. Chambers now has three (3) pupils all of whom will remain under the supervision of the senior members of the Chambers. All the work they do will be countersigned by their pupil Masters”

The above memorandum was copied to:-

Registrar, Supreme Court

Registrar, High Court

Registrar, Labour Court

Registrar, Administrative Court

It is important to note that the second pupil, Bwanali,R, mentioned in the above memorandum, is not a party to these proceedings.

On 7 August 2012 the applicants were advised of new rules that would regulate their pupillage. The following were the new rules:-

**“REGULATORY FRAMEWORK GOVERNING PUPILLAGE AT ADVOCATES’ CHAMBERS**

I. **Interpretation**

1. A “pupil” shall be any person admitted to pupillage by the Advocates’ Chambers Association and who qualifies to be registered as a legal practitioner under the Legal Practitioners Act (Chapter 27:07).
2. A “master” shall be a member of the Advocates’ Chambers Association in charge of a pupil.

II. **General**

1. The rules set out herein are not exhaustive and are intended for the guidance of pupils admitted to pupillage at Advocates’ Chambers. They do not cover every point that may arise in practice. Any member who requires advice as to a matter of conduct or etiquette whether covered by these rules or not should seek the advice of the Chairman of the Advocates Chambers Association.

III. **Acceptance of briefs**

1. A pupil shall not accept a brief in his or her own name.
2. Any instructions to a pupil shall be in the form of a brief to the pupil’s master.
3. A pupil shall not render any professional services save in cases referred to in (4) and (5) above.

IV. **Appearances**

1. A pupil shall not receive instructions to appear in a court, other than the Magistrates Court, in the absence of his master.
2. A pupil shall account for his or her whereabouts during working hours to his or her master.

V. **Charging of fees**

9. A pupil shall not charge fees in his own name.

10. The pupil’s master shall decide upon the fees to be charged by a pupil in

respect of any work done.

11. In so deciding, the master may consult his or her pupil.

VI. **Touting**

12. A pupil shall not tout or advertise in any way.

13. A pupil shall not represent to any person, directly or indirectly, that he or she

is an advocate.

VII. **Practicing Certificates**

14. A pupil may hold a practicing certificate.

15. A practicing certificate held by a pupil shall not bear the title “Advocate”

16. A practicing certificate held by a pupil shall bear an endorsement indicating

that the pupil can only accept instructions under the supervision of the pupil’s

master.

17. Pupillage shall be for a period of not less than 36 months.

18. Upon the expiry of a pupil’s pupilage contract, a pupil may apply to the

Advocates Chambers Association for admission as a member

19. A pupil shall be allocated a room or part of a room for the duration of his

pupilage contract.

20. A pupil shall be liable to pay the rental costs of a room or part of a room

allocated to him or her.

21. A pupil who fails to observe these rules will risk termination of his pupilage

contract.

22. An ad hoc disciplinary committee shall be constituted by the Chairman to

handle any complaints of misconduct by a pupil.”

The above rules were later sent to each applicant (pupil) on 22 August 2012 under cover of a short letter which read as follows:-

“Pursuant to the Extraordinary General Meeting of the 7th of August 2012, find hereto attached a copy of the regulatory framework under which you are required to operate forthwith. You are required to sign a copy of this letter and deliver it to Advocate Mahere to signify your receipt and acceptance of the terms set out therein. Should you fail to sign and deliver the letter by close of business on the 29 of August 2012, your pupillage contract will be deemed to be terminated with effect from that date.

We look forward to providing you with a rewarding and fruitful pupillage”

The applicants responded to the above letter on 30 August 2012 through a memorandum addressed to the secretary of the thirteenth respondent and copied to:-

- All members of the Advocates’ Chambers Association

- Secretary of the Bar Council of Zimbabwe, and

- Secretary of the Law Society of Zimbabwe

In their memorandum the applicants rejected the new regulations. In the main they stated:

“5. We categorically reject to be bound by the principle and terms of the so called

regulatory framework or any regulatory framework outside the Legal

Practitioners Act [Chapter 27:07] (“the Act”). From the outset, the so called

regulations are lacking in informing us under what authority they are being

made. They deliberately avoid associating themselves with the Act despite

mention of the same in the first clause. The spirit of the Act is such that no

rules or regulations or amendment of such rules, shall affect the right to

practice of a registered legal practitioner who was entitled to practice as such

before the date of commencement of the rules, regulations or amendment, as

the case may be. To suggest otherwise and to give an ultimatum coupled with

threats of dismissal from the Chambers, would not only be tainting these

proposed regulations with gross illegalities but would also be suggestive of the

sheer ineptitude and mala fides of the framework’s draftsman or draftswoman.

1. It is an elementary principle in law that one cannot legislate retrospectively in a manner which adversely affects vested rights and interests. Your regulatory framework flagrantly flies in the face of that well-founded pillar of justice.
2. In terms of the Act, only the Law Society of Zimbabwe (“the Law Society”) has the power to regulate the practice of the profession. This is trite law. You did not cite any provision of the Act which empowers you to legislate. At best, and only at the “club” level, only the Bar Association would be an appropriate body to come up with a position such as one which you overzealously sought to pursue.
3. We were admitted to the Advocates’ Chambers as members under pupilage. That is the only reason why our admission was subject to registration as legal practitioners and to our being issued with valid practicing certificates, appropriately issued to us by the Law Society, recognizing us as advocates. That right and title cannot be taken away by your regulations. For the avoidance of any doubt, our status as members cannot be challenged. We are members of the Advocates’ Chambers and the Bar Association. Since our admission, we are members of the Advocates’ Chambers. Even the purported regulations (without clothing them with any validity), abundant with inelegance as they may be, concede to this status in clause II thereof.
4. The provision that we cannot accept briefs in our own names clearly contradicts the terms of our letter of admission to the bar and is contrary to the rules of the bar which we subscribe to and are binding upon us. This provision seeks to make us employees of our masters, contrary to the Bar Rules. An advocate cannot employ another registered legal practitioner. The provision therefore attempts to rob us of our statutory right. The same applies to the suggestion that pupils should account to their master for hours of work. The position that exists is that our masters should oversee our work and counter-sign our briefs and work as a measure of safeguarding the standard of work coming from the bar and maintain the bar’s reputation. This is entirely acceptable, for it is a reasonable, necessary and proper safeguard, until such a time when the master reposes confidence in the work of a pupil.
5. The statement that only in the magistrate court can we appear without our master is unlawful. It is ridiculous. Our right of audience in the High Court and Supreme Court is anchored, steadfast and secure in the Act and the Regulations in terms thereof. You cannot take away that right. The absurdity of your provision is that while our contemporaries at the side-bar are appearing in the superior courts by themselves, thus gaining extensive knowledge, confidence and experience, we will be relegated to be your messengers to the Magistrates Court, and upon completion of our pupillage we then suddenly expect to get briefs from our contemporaries to appear in the superior courts. This is patently preposterous.
6. In your regulations, you included a clause relating to charging fees. Your clause is inconsistent with our letters of admission and is *ultra vires* the Bar Rules. We are entitled to charge a fee, guide only, and only by the Law Society Tariff.
7. We do not understand the clause on touting as that is a matter of common knowledge and ethics inculcated in us in law school and fully canvassed by the bar rules.
8. An attempt is made to equate our pupillage with that at the side bar. This is an erroneous effort. The only limitation placed upon us upon admission as advocates is that we should not operate a trust account. This mischief simply does not exist in an advocate’s practice and an advocate who does not operate a trust account cannot be encumbered with the same limitations. The practice of an advocate entitles one to practice on his own account. The only limitation in this regard is one placed by the Law Society, thus, he should not operate a trust account as there is a risk that, as a sole practitioner he may abuse trust funds. Where there is no trust account to the question of limitation falls away.
9. It is common cause that if by any chance a member decides to leave the bar and undertake practice of an attorney he/she will be required to undergo the 36 months pupilage again, notwithstanding their years of experience at the Bar. On the other hand, as already intimated herein and elsewhere, attorneys have been accepted to the bar under pupillage”. (My own underlining to emphasize the fact that the applicants were indeed practising on their own account )

Clearly there is no doubt that by declaring that “An advocate cannot employ another registered legal practitioner…. The practice of an advocate entitles one to practice on his own account”, the applicants agree with the opinion of first respondent.

On 3 September 2012 the secretary of thirteenth respondent responded to the applicants memorandum in a way that confirmed the termination of the applicants’ relationship with the thirteenth respondent which took effect on 29 August 2012 - when applicants refused or failed to sign for the new regulatory framework. The letter read, in part, as follows:

“I have received a Memorandum dated 30th August 2012 but placed in my

Cubbyhole on the 31st August 2012. I might, obviously in consultation with

the Chairman, need to call an appropriate meeting to discuss the contents of

that memorandum. For my assistance in pursuing those efforts, I propose

that you clarify the following issues:

1. Since my letter of the 22nd August 2012 indicates that your failure to sign the Regulatory Framework by 29th August 2012 would result in the determination of your relationship with Chambers, (and it being common cause that the deadline has come and gone without such signing or any extension having been sought), in what capacity have you addressed that correspondence to me?,

vi. Having lost your individual Pupil Masters (and it being common cause

that you cannot practice without their supervision), how do you

suppose you could possibly remain at Chambers,

In view of my letter of the 22nd August 2012 as well as my prima facie view on the correctness of your position, I would appreciate a very urgent response. To that end, should I not get your clarification by end of day on the 4th September 2012, I will take it that the matter has been closed. In that event, I will entertain no further correspondence from yourselves on the subject. Be thou guided accordingly.”

In addition to the above, on 3 September 2012 the fourteenth respondent, through its secretary also wrote to the applicants. The letter read, in part, as follows:-

“**RE: YOUR STANDING IN RELATION TO THE BAR ASSOCIATION**

The entire Council has considered your most unfortunate memorandum dated 30

August 2012 and received by each of us the next day.

The first and most important point to be made is that you are not members of the Bar Association. Not one of you even applied, and you are certainly not in possession of letters accepting you as members of the Bar Association. I also mote that although you are all registered as legal practitioners, your own memorandum establishes that are not yet entitled to practice for your own account. It is thus doubtful whether you are suitable candidates for membership of the Bar Association anyway. The practice of an advocate is of a sole practitioner. In the absence of some general or specific arrangement addressing that concern, the Council might not have regarded it as competent to admit as a member a person who is not yet lawfully entitled to practice for his own account.

These same considerations create doubts as to the propriety of your just-ended tenancy at Advocates’ Chambers. It would appear that a practitioner who has not completed the prescribed 36 month period has no greater right to practice as an advocate than he has to open a firm of attorneys. To the extent that an arrangement might be made to mitigate that position, you correctly observe that it is the prerogative the Bar Association (in consultation, where appropriate, with the Law Society) to define such measures.

It is therefore true that Advocates’ Chambers would have acted outside its powers if it sought to unilaterally create an institution professing to be a system of pupilage. However (as you may have seen from correspondence to which you had unauthorized access), Advocates’ Chambers must have intended to present the proposed framework to the Bar Council for adoption on the proper authority in due course.

I can confirm that, if asked, the Bar Council would likely have urged the Association and the Law Society to ratify a cogent framework that might have permitted you to practice in some capacity. The Bar Council, after all, serves to promote the orderly functioning of the advocates’ profession. Sadly, it seems that your own rejection of that framework stymied the internal process by which Advocates’ Chambers might have reached the stage of making that request to the Bar Council. It would appear that you have thereby frustrated the very process that might have led to you regularizing your position with the Bar Association. We therefore make no comment on the substance of the proposed framework, as it was never before us.

If and when the Bar Association has adopted a system of pupillage, or perhaps when you have earned the right to practice for your own account in the normal course of events, you might wish to apply for membership of the Bar Association. Unless and until you are accepted as such, the Bar Council takes umbrage at your representations that you are members. Given the recent termination of your tenancy at Advocates’ Chambers, no basis remains for you to hold yourself out as advocates. You are reminded to refrain from doing so.”

On 13 September 2012 the applicants addressed the following letter to the Secretary of the fifteenth respondent. (the Law Society of Zimbabwe):-

“**RE: PUPILLAGE REGULATORY FRAMEWORK AND TERMINATION OF PUPILLAGE AND TERNANCY AT THE ADVOCATES’ CHAMBERS**

1. We refer you to the above matter and our previous discussions on the matter.
2. Our efforts to indulge the chairperson of the Advocates’ Chambers with the hope of fostering an agreeable way forward have not been fruitful. The standing position is that our tenancy has been terminated and we should vacate the premises with immediate effect.
3. We take the view that the resolution of this deadlock can be done amicably. Accordingly, we kindly request for your intervention in appointing a third-party as mediator to deal with the following issues:
4. The pupillage regulatory framework
5. The dismissal of the present pupils.
6. The termination of tenancy at the Advocates’ Chambers
7. The way forward
8. Our suggested mediators include Hon. Eric Matinenga, Advocate de Bourbon, Ho. Zhou among any other senior members of the bar, preferably members of the Bar Association of Zimbabwe.
9. We further seek your urgent intervention to ameliorate likely prejudice to members of the public who have instructed attorneys to entrust us with their work. As things stand our access to the Advocates’ has been restricted yet we have briefly in our possession and matters that we are already seized with and we find ourselves as destitute without rooms/offices and without a library to us.
10. We look forward to your imminent response.”

On the same date the fifteenth respondent responded, through its Executive Secretary, in the following terms:-

“I advise that after going through your letter and other correspondence copied to me, my view is that the Law Society cannot intervene in this matter which is essentially a labour matter.

I have arrived at this position after careful consideration of the following issues.

The Advocates Chambers is like a private club which is governed in terms of its own constitution. One joins the Chambers through invitation. In joining the Chambers one is deemed to have accepted to follow the rules of the Chamber as prescribed in the constitution, memoranda, custom and practices. The Law Society of Zimbabwe (LSZ) expects the Chambers to have a comprehensive training regime in place. It will be remiss of a Chamber to take on pupils without putting in place a pupilage training programme.

It is obvious that the Chamber sought to introduce a framework for such pupillage through its memorandum of the 22nd August 2012. The framework was objectionable to you. Whilst you sought to have an opportunity to discuss the objectionable portions of the framework, your principals did not grant that and instead insisted on you signing acceptance of the framework. You refused to do so leading to the termination of your tenancy at the Chambers.

I acknowledge that as a result you find yourself holding briefs but with no means to act on them. You have no offices and no access to a library nor to any other basic necessities of effectively discharging your mandate in terms of the briefs you hold. Your right to hold a practicing certificate and to practice has fallen away.

The termination of your tenancy breaches no Law Society regulations. It is not wrong for the Chambers to put in place a training framework for the pupils it takes on. The introduction of this may have been done in a “cleaner” way but the principle is not wrong.

**Arbitration**

The LSZ is of the view that it cannot impose itself on the parties to a dispute. Having regard to our views expressed above the LSZ sees no scope for involving itself in any form of arbitration in this matter.

**Current Briefs**

I would suggest that you retrieve your briefs and advise the court and the clients o this unfortunate development.

**Your Status**

In view of the loss of your tenancy at the Chambers, you can no longer remain entitled to practice using your current practicing Certificates. You have the following options at your disposal:-

1. You find a new Principal in which case you need to apply for a new Practising Certificate or
2. You negotiate a settlement with your ester while Principals and therefore seek for a settlement in which case you retain your Practising Certificate or proof of settlement.

If I do not hear from you within the next forth-eight hours you are ordered to surrender your current Practising Certificates to my office.

Please note that this position has been taken in consultation with Council.”

On 20 September 2012 the applicants’ Legal Practitioners addressed the following letter to the thirteenth respondent:

“I have been consulted by Messrs Hashiti and Sibanda regarding the dispute on the regulatory framework governing your pupils. Having perused the correspondence exchanged, the various instruments that govern your association and having served at Chambers in the early years of my career, I am of the view that this matte ought to be resolved amicably and without any litigation. Your Association is a member of the World Bar Council which seeks to uphold all aspects of fair play and in my view it would cause the local Bar incalculable harm to be embroiled in litigation where it will be alleged that the Bar has failed to follow due process in dealing with its pupils. Would your Committee be willing to meet with me as a matter of urgency in an endeavour to find an amicable solution to the dispute.”

The dispute remained unresolved and on 24 September 2012 the applicants filed this application on an urgent basis.

The parties appeared before me on 25 September 2012. I urged the parties to consider an amicable settlement. To that end I postponed the matter to 26 September 2012.

On 26 September 2012 the parties advised me that there was no possibility of an amicable settlement. On the same date almost all respondents filed opposing papers – which papers I and the applicants’ legal practitioners had had no time to read. I again postponed the matter to 28 September 2012.

When the hearing of the matter commenced on 28 September 2012, two preliminary points were raised.

The first issue was that the 1st – 12th respondents had been misjoined to the proceedings.

It was argued that their citation in their individual capacities was irregular since they had no authority to implement the order sought.

The second issue, raised on behalf of fourteenth respondent, was that the order sought was incompetent because it would perpetuate an illegality.

In view of the issue of illegality that was raised, I then indicated that arguments or submissions on that issue would naturally lead to a consideration of the merits of the matter before me. I believed a determination of that issue would dispose of the matter. That approach was generally accepted by the parties.

I shall now deal with the preliminary issues that were raised.

Upon reading the opposing papers to this application I had hoped that the applicants would concede on the issue of misjoinder. I was, unfortunately terribly wrong. I had formed that impression because I believed the thirteenth and the fourteenth respondents, as entities capable of suing and being sued, were the possible implementers of the relief sought. In any case the applicants, including their Legal Practitioner, had directed all their correspondence to the thirteenth respondent.

The respondents (1st -12th) submitted that it was wrong for applicants, who are Legal Practitioners, to sue them in their personal capacities. The applicants, it was argued, knew the correct parties to be cited but they had deliberately proceeded to join the individual respondents (first-twelve) either as a way of forcing them to compromise or simply to embarrass them. Such conduct, it was argued, merited costs on a higher scale.

Ms Mtetwa, for the applicants disagreed. She submitted that the opposing papers revealed contradictory positions being taken by the individual respondents. She also said those who had authored correspondence which affected the applicants were not in a position to confirm whether or nor they had authority to write to the applicants as internal administrative systems in both thirteenth and fourteenth respondents were dysfunctional. That being the case, she went on, it was only proper to cite all the respondents in their individual capacities. There was need to establish the source of authority in both the thirteenth and the fourteenth respondents, she argued.

Ms Mtetwa also said it would not be fair to demand costs from the applicants when it was clear that they acted on the advice of their seniors who were now disowning them. Furthermore the regulatory authority, the fifteenth respondent, had given its blessings to the arrangement.

I am unable to fully go along with the applicants’ arguments. Applicants knew where authority lay and which entities to deal with. As far back as 14 February 2012, first applicant knew who thirteenth respondent was and that is why he directed his application to it. That was the entity that admitted both applicants into pupilage. The applicants’ memorandum of both 27 July 2012 and 30 August 2012 was addressed to the entities that the applicants knew could render the relief they now seek in *casu*. A reading of those documents confirms that the applicants knew who exactly to approach for any requisite relief. The documents do not reveal disfunctionality in both thirteenth and fourteenth respondents. The applicants knew who was terminating or restructuring their pupilage. The applicants are pretty alive to the fact that, working together, the thirteenth, fourteenth and fifteenth respondents are the entities that can attend to the relief they seek.

Regarding the citation of wrong respondents, in *Maxwebo* v *Chairman Public* *Service Commission* HH 125/97, a case referred to in *Matida* v *Chairman, Public Service* *Commission* *& Anor* 1998 (1) ZLR 507 (H), SMITH J had this to say:

“Before concluding, I wish to make an observation on the party cited as respondent. The Chairman of the Public Service Commission was so cited. Although exception was not taken thereto, I consider that it was improper to cite him as respondent. Section 74 of the Constitution establishes the Public Service Commission which consists of the Chairman and not less than two and not more than seven other members. Any findings, ruling or decisions of the Public Service Commission are those of that body and not of the Chairman. Accordingly, the Chairman of the Public Service Commission cannot do anything in the name of the Commission if the majority of members do not agree with him. The distinction is illustrated by the order sought by the applicant. The draft order states that the respondent’s decision to find the applicant guilty of misconduct should be set aside. However, the finding of guilty was not a decision of the respondent. It was a decision of the Public Service Commission. I therefore consider that it was improper to cite the Chairman as respondent. The Public Service Commission should have been cited as respondent.”

Given the legal status of thirteenth, fourteenth and fifteenth respondents, I do not see why the above principles should not apply in *casu*. It is only the thirteenth, fourteenth and fifteenth respondents who can deal with the order sought.

In view of the foregoing, I agree with 1st – 12th respondents that they were indeed misjoined. There was no point in citing 1st -12th respondents because they cannot exercise any individual authority to implement the relief sought. I therefore uphold the point *in limine*.

I am, however, not convinced that an order for costs can be justified when it is clear that the position in which the applicants found themselves was not of their own making. I am of the view that an order for costs should not be made against the applicants. I believe that their dealings with the thirteenth respondent were above board and the applicants believed they were on their way to become fully fledged advocates. Nothing had ever been brought to their attention until the July discussions relating to the issue of pupillage. The circumstances of this case therefore dictate that each party should bear its own costs.

I now come to the second issue raised *in limine*. The issue according to the fourteenth respondent is that in terms of s 4 (1) of the Legal Pratitioners (General) Regulations S.I 137 of 1999 (the regulations) it is illegal for a legal practitioner to practice on his/her own account before the expiration of a period of not les than 36 months from the date of registration.

Section 4 (1) of the said regulations provides as follows:-

“(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-

1. been in practice in Zimbabwe for at least forty-eight months; and
2. been approved by the Minister after consultation with the Council for Legal Education and the Council of the Society.”

The applicants are not covered under the exemptions that are spelt out under the regulations.

Advocate Morris submitted that advocates practice for their own account. This, he said, could not be the position with the applicants until they had completed 36 months employment as legal assistants. He said the order sought by the applicants would enable them to practice on their own. Granting such an order, he said, would contravene the law which governs all legal practitioners in Zimbabwe.

Ms Mtetwa submitted that, the regulator, fifteenth respondent, had authorized the applicants to practice through the issuance of practicing certificates endorsed “Advocate.” The only meaningful limitation endorsed on the Practicing Certificates was a prohibition to operate trust accounts. She argued that the idea of changing the regulatory framework for pupils midstream was unjustifiable. In terms of the new (proposed) regulations the applicants would lose their right of audience in the superior courts. That would be illegal.

The fifteenth respondent did not take a firm position on the issue apart from confirming that once applicants lost membership of the thirteenth respondent, the Practicing Certificates would be withdrawn. I want to believe that as far as the fifteenth respondent was concerned it regarded the applicants as employees of thirteenth respondent. That is why it viewed the whole dispute as a labour matter.

Furthermore the fifteenth respondent agreed that it would be illegal for applicants to practice on their own account. It emphasized on the need for compliance with the legal practitioner’s Act [*Cap 27:07*].

I am in agreement with the fourteenth respondent on the issue of illegality. Following fusion in 1981, all those practicing law in Zimbabwe became known as Legal Practitioners. That title includes Advocates. Legal practice in Zimbabwe is regulated by the Legal Practitioners’ Act [*Cap 27:07*] and the subsidiary, legislation there to. The training referred to under the regulations applies to all newly registered Legal Practitioners in Zimbabwe, including intending advocates, unless lawfully exempted. The applicants, in my view, are fully aware of that. I am, however, disappointed that, notwithstanding the fact that the applicants are Legal Practitioners and the fact that the opinion that was sought by the thirteenth respondent is largely an interpretation of the regulations, the applicants hardly make any direct reference to the regulations. They conveniently avoid direct reference to the law but at the same time indicate that their rights in this matter are protected by the Act. (i.e the Act that tells them how to practice law lawfully in Zimbabwe).

What the applicants refuse to do is to admit that they have, unfortunately, with the help of the thirteenth, and fourteenth respondents violated the law. The applicants are fully aware of the 36 months period for practical training. In their memorandum of 27 July 2012 the applicants made the following proposals:

“5. Our proposed position is that we should:

1. Not pay subscription in the first year. This arises from the fact that we are at this stage still crawling. We have not fully established ourselves in terms of drafting itself, living up to the courts’ expectations in terms of appearance, arguments and to some point even etiquette. Contacts have not been made and are still in the process of being made.
2. Pay a third of the subscriptions in the second year. The reason being that, a pupil by that time will have to some extent matured. One is, in the second year, expected to start receiving a sizeable number of briefs in their own name, their finances have improved; they have established themselves and are now coping up with the work of an advocate.
3. Pay two thirds of the subscriptions in the third year. A pupil, at this stage, is still a pupil, but will be in a better position to cope with increased financial and professional obligations. They will however still need some degree of supervision.
4. Pay full subscriptions after the third year and immediately upon completion of pupillage. It is trite that practise from the bar is self-inhibiting in that once one has failed to impress and engender the confidence of the profession, they cannot sustain their presence at the bar. This is evidenced by the frequency of resignations of new members to the bar.

6. Upon finishing the third year or at any time after the second year,

subject to the satisfaction of the pupil master, a pupil can now obtain the

status of a full member enjoyed by senior members of the Bar with the

attendant rights and obligations.”

The above proposals are spread over a period of 3 years. Clearly the applicants are aware of the 36 months but what they do not want to do is “to be employed as legal assistants for not less than thirty six months without practicing on their own account. They have no problem with the thirty six months as long as they can remain practicing on their own account. That in terms of the law would be illegal. I do not believe that the fifteenth respondent has authority to accord any exemptions to anyone outside the law. The only way for a legal practitioner to be able to practice on their own account is to first of all under go the required practical training as required by law. That training covers all facets of legal practice as can be seen from annexure 1 of the fifteenth respondent’s opposing papers. The training is not restricted to ‘Trust Accounts’ only.

It appears sometime in July 2012, the thirteenth respondent suddenly came face to face with the regulations and then immediately tried to find ways of running the pupilage system within the law. A new “Regulatory Framework Governing Pupillage at the Advocates Chambers” was introduced. The applicants rejected it. I do not think I need to discuss the import of the proposed new regulatory framework. All I am required to do at this stage is to determine whether or not it is permissible in law to allow the applicants to practise on their own account without complying with the regulations. My answer, as already seen, is no.

This is certainly a matter in which this court has a great interest. The training of those who appear in the various courts of our country is crucial and hence the deliberate provision for practical training provided for in the law. Highly qualified legal practitioners will always be an asset so the judiciary and indeed to the entire nation. To that end, in *Mavheya* v *Mutangiri and Ors* 1997 (Z) 462 (H) GILLESPIE J, complaining about the quality of a legal practitioner’s work, made the following observation(s):-

“The extremely low standard of work encountered in this case, which

regrettably is by no means unusual, cause one to ponder on the whole policy pertaining to the right of audience in this court. Graduates of the local university have the privilege of being entitled to obtain admission to the profession purely on the basis of their degrees. Foreign graduates, even those with impeccable academic qualifications from universities in jurisdictions applying the Roman-Dutch law of this country, must undergo further professional examinations before admission. Not only may local graduates obtain automatic admission, but immediately upon being registered as legal practitioners, they may (and unfortunately do) purport to appear in any court, even the Supreme Court, on the most complicated and important of matters. Such newly admitted persons as this case shows, lack the knowledge, experience and professionalism to be effective advocates. They are frequently a downfall t their clients and a hindrance to the administration of justice. Yet with time and experience they could become paragons of the profession. That experience cannot conscientiously be obtained by immediate entry to practice at the highest level of the profession. It seems to me that earnest consideration must be given to the institution of a graded series of practicing certificates for the differing levels of court. Issue of certificates to practice in the higher court should be permitted only upon completion of a satisfactory period of practice at lower levels and should be subject to periodical review or renewal. Only thus can one encourage the attainment of the highest standards within the profession. Only thus can public confidence in the profession and the administration of justice be earned.”

It would therefore be retrogressive and unpardonable if this court were to join the queue of those who might want to down grade the practical training of legal practitioners in this country. It would also be a sad day if this court were, because of the call for sympathy, to allow the violation of the country’s laws, especially by those who have the mandate to interpret those laws. There is therefore need to immediately put an end to an illegality.

The public relies on entities such as the thirteenth, fourteenth and fifteenth respondents to ensure that the country produces the best trained Legal Practitioners. The practical training of newly registered legal practitioners is a programme of national importance. That being the case, it is imperative that the parties, with the involvement of the fifteenth respondent, should strive to find a way of accommodating each other under a regulatory framework that does not violate or offend the law. The answer is not to abandon the programme but to move forward legally.

Given the foregoing, I am unable to grant the relief sought. Such a move would indeed be an endorsement of an illegality.

My thoughts on costs remain the same as already indicated herein when I dealt with the first preliminary issue. Although applicants are legal practitioners, they were, in my view, hopelessly misled by their mentors. I therefore think that this is a proper case where each party should bear its own costs.

I Therefore order as follows:

1. Both preliminary issues are upheld with no order as to costs; and
2. The relief sought is refused with no order as to costs.

*Messrs Mtetwa & Nyambirai*, applicants’ legal practitioners

*Bar Association of Zimbabwe*, for the 14th respondent

*Law Society of Zimbabwe*, for the 8th and 15th respondents

*Advocates’ Chambers Association*, for the 13th respondent

*Messrs Coghlan Welsh & Guest*, for the 1st and 4th respondents

*Messrs Chimuriwo and Partners*, for 3rd respondent

*Messrs Honey and Blackenburg*, for the 2nd , 5th , 6th , 7th ,10th , 11th , 12th and 13th respondents