

3.(1) A person who desires to be admitted shall apply in writing to the Attorney-General stating that he is a fit and proper person to be admitted.

- (2) After a personal interview with the applicant and on being satisfied that the applicant -
- (a) is qualified for admission; and
 - (b) is a fit and proper person to be admitted,

the Attorney-General in his discretion may issue a certificate of qualification as in Form 1 or Form 1A, as the case may be.

In 1984 or 1985 the applicant was convicted by a Single Magistrate on 20 counts of fraudulent falsification of accounts, obtaining money by false pretences and larceny by a servant. He was sentenced to imprisonment. He appealed against convictions and sentences. At the hearing of the appeal Jones CJ explained that as the appellant had pleaded guilty to all but two of the counts he could not appeal against conviction except on the two counts of which he had been convicted after a trial. The Chief Justice then heard argument on the two convictions after pleas of not guilty and dismissed the appeal. Likewise the Chief Justices dismissed the appeals against sentence:-

The appellant submits that the sentences were excessive. The sentences on counts 6 and 14 both of which carry a maximum of 14 years were each 9 months. The sentences on the other charges of fraudulent false accounting an offence punishable with 7 years imprisonment were each four months. The sentence for the one count of obtaining money by false pretences, an offence punishable with 5 years imprisonment, was 3 months imprisonment. I cannot see how by any stretch of the imagination these sentences can be considered excessive. Appellant has pointed out that these are first offences and that he was new at his job but this can hardly be an excuse for theft by a servant and for attempting to cover up that theft from his own master by making false accounting documents. There is no usual penalty for a first offence but it is not unusual for it to amount to as much as one-fifth or even one-quarter of the maximum. Nine months is far less than a fifth of a maximum of 14 years, and four months is considerably less than a fifth of the maximum of 7 years. This was a systematic series of crimes by a person in a position of trust. In these circumstances, I cannot find the sentences excessive. They were correctly consecutive. The total sentence, viewed in the light of the total amount involved (\$1734.90) may seem severe, but the circumstances justify severity when a person in a position of trust breaks that trust and does so repeatedly by stealing

from his fellowmen and attempting to cover his crimes by falsifying accounts which it was his duty to protect. I cannot find cause to reduce the sentence individually or in total. I confirm them.

The applicant served the sentences.

Ever since, the applicant has complained that he was misled into pleading guilty to any count and has complained that he was unjustly treated.

I shall not set out his letters to the Attorney General but only the Attorney's three letters in reply.

"11 September 2002

**Binataake Tawaia
P O Box 480
Betio**

Dear Binataake,

Certificate of Qualification for Legal Practice in Kiribati

I have received your letter of 4th September 2002. I have also studied the affidavits attached to your application purportedly to be character references for you. The affidavits in fact are very brief and could only state the obvious. That after 1984 you have not been convicted of any offences. What I require in my last letter to you are affidavits analyzing your character and how it had changed from 1984 after your conviction. This need to be put on record. To state that from 1984 the affiants have never heard you getting into trouble with the law is stating in fact what I have already known. This is in no way support the fact that there has been a turn about in your character from what is was in 1984.

I would be grateful if you could re-submit your application.

—————Yours sincerely—————

"25 February 2005

Mr Binataake Tawaia
Box 480
Betio, Tarawa

Dear Sir,

Certificate for Qualification for Admission to Practice

Your letter of 21st February 2005 is referred to.

There are no remaining letters of yours to reply to. You keep on submitting to me the same informations and the same explanations leading to your plea of guilty resulting in your conviction. Those are not what I require from you. By questioning my reasonings and by justifying that what you had earlier submitted was sufficient for my purpose will not in any way change my earlier stand on your application.

What I asked you to do is to ask well respected people in the community who know you well to attest to your brief background, and to emphasize the fact that you have changed from what you were in the 1980s, that is to say, to submit an updated character reference of you. What I was also concerned about was that the last affidavits seemed to have been prepared by you for the affiants to simply sign. You had deliberately omitted the reference to your conviction and your fining of \$10.00 for a drinking related offence. I consider that to be a serious omission. You are trying to justify it as being a misdemeanour and occurred long time back and ought not to be weighed too much in my consideration of your application.

I will ask you to simply submit what I have earlier required you to do.

Yours faithfully"

"13 October 2005

Binataake Tawaia
Post Office Box 480
BETIO

Dear Binataake

Certificate for Qualification for Admission

I refer to my letter to you dated 25 February concerning the above matter, to which I have not received a response.

As I have previously explained to you, I may only issue a Certificate for Qualification for Admission if I am satisfied that you are: (a) qualified for admission; and (b) a fit and proper person to be admitted. While you meet the first of these criteria, your continuing failure to provide me with supporting evidence regarding the second criterion means that I am not satisfied at this time that you are a fit and proper person to be admitted.

You have previously been convicted of serious offences of dishonesty, for which you were sentenced to a lengthy period of imprisonment. Your repeated attempts to deny your culpability as regards these convictions, as opposed to demonstrating how you have changed since then, seriously undermines your contention that you are fit to be admitted. As a person with legal training, you must be aware that the decisions of the Court are to be respected. Your unwillingness to accept the fact of your conviction, and your attempts to place the blame for your situation on anyone other than yourself, clearly demonstrate your immaturity and your lack of respect for the legal system.

Furthermore, while I accept that a previous conviction does not automatically prevent a person from seeking admission, the fact that your previous convictions are for offences of dishonesty gives me considerable cause for concern. The practice of law relies heavily on lawyers acting ethically and honestly. If you were in private practice you would frequently be in a position of holding clients' money on trust. The weakness of character demonstrated by your convictions, even though they were more than 20 years ago, is the reason I have asked you to provide evidence to demonstrate that you have changed. Without that evidence I cannot ignore your convictions, as you would have me do.

I have not made this decision lightly. As you know, Kiribati badly needs lawyers. However the door remains open to you. I will be happy to consider any future application from you, but you must be able to provide me with detailed character references from persons of high repute. These referees must go much further than simply stating that you have not been convicted of any serious offences since 1984. They must state clearly, and in detail, that they consider you to be a person

with the high moral and ethical standards demanded of a lawyer. They must also set out how they consider you have remedied the defect in your character demonstrated by your 1984 convictions.

I trust this is clear.

Yours faithfully”

It is plain that the Attorney has invited the applicant to acknowledge his wrongdoing in the early 1980's and to provide affidavits to the effect that he is a changed man. The Attorney has made it clear that he then would consider the application again.

Section 3 of the *Admission Rules* gives the Attorney the power of decision. The Court of Appeal most helpfully set out in CA 5/2003 *Etera Teangana v Anote Tong* (delivered 24 November 2004) the principles which should guide a court in reviewing the exercise of a discretion, of a statutory power of decision.

The Courts will ensure that there was no procedural unfairness, that the decision was not unlawful and that it was reasonable. We do not understand there to have been any challenge to the procedural fairness of the Speaker's decision in this case. Nor can we see any basis for arguing that his decision was unlawful, given our conclusion that the *eiusdem generis* rule has no application. As to the reasonableness of the decision, the leading case is *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223, although there have since been numerous refinements and elaborations of the principle established by that decision. It is enough to mention *R (Mahmood) v Secretary of State for the Home Department* [2001] 1 WLR 840, in which Laws LJ, with whose judgment May LJ concurred, said (at p. 847):

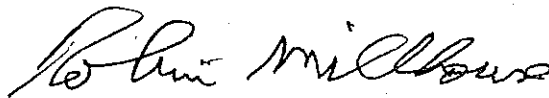
“On this model the court makes no judgment of its own as to the relative weight to be attached to this or that factor taken into account in the decision-making process; it is concerned only to see that everything relevant and nothing irrelevant has been considered, and that a rational mind has been brought to bear by the [decision maker] in reaching the decision” (at page 14).

I am satisfied that the Attorney General has acted in conformity with the requirements I have extracted from the judgment of the Court of Appeal. There is no reason at all for this Court to interfere.

During the applicant's submissions I suggested to him that he should comply with the Attorney's request that he cease trying to justify himself regarding the 1984 convictions and acknowledge his wrongdoing and that he should, to use the Attorney's words, "provide (him) with detailed character references from persons of high repute". I can only repeat the suggestion which I make most strongly.

The application for certiorari is refused.

Dated the 20th day of January 2006

A handwritten signature in black ink, reading "Robin Millhouse". The signature is written in a cursive style with a horizontal line underneath the name.

THE HON ROBIN MILLHOUSE QC
Chief Justice