

THE LAW SOCIETY OF ZIMBABWE
versus
TAPIWA EDSON MUDAMBANUKI

HIGH COURT OF ZIMBABWE
BHUNU, CHATUKUTA JJ
HARARE, 29 November 2013 & 5 February 2014

MEMBERS: 1. Mr Kanokanga
2. Mrs S. Moyo.

Legal practitioner's disciplinary tribunal

W. Mandinde, for the applicant
No appearance for respondent

CHATUKUTA J: This is an application in terms of s26A (1) of the Legal Practitioners Act [*Cap 27:07*] for the suspension of the respondent from practising as a legal practitioner, Notary Public and Conveyancer and placement of Messrs Mudambanuki and Associates under curatorship. Given the time taken in determining this matter, the Tribunal has considered it not necessary to determine the question of urgency.

The applicant received a number of complainants against the respondent. The first complaint was from Southgate Real Estate representing a Mr Nhika. The respondent's clients, Denford and Doreen Mugauri disposed of their property to Mr Nhika in the sum of US\$210 000-00. Zimbabwe Platinum Mines (ZIMPLATS) is a holder of a caveat over the property. The proceeds from the sale of the property were intended for ZIMPLATS to uplift the caveat. The respondent received the sum of US\$210 000-00. He forwarded only US\$180 000-00 and converted the balance to his own use. As a result ZIMPLATS has not uplifted the caveat and Mr Nhika cannot get transfer of the property.

The second complaint was from Construction Industry Pension Fund, Messrs Mudambanuki & Associates' landlord, for arrear rentals which stood at US\$87 068-81 as at November 2013 when this application was filed.

The last complainant was received from KambaramiTaurainei who alleged that the respondent failed to represent him in a matter at Goromonzi Magistrates Court despite having been placed in funds.

The applicant's prayer is for the suspension of the respondent to allow for unhindered investigations into the respondent's professional conduct and affairs.

The respondent contested the application. He submitted that the applicant is in possession of all the necessary information to enable it to make a decision. He concedes that he did not remit the full amount he received in relation to the first complaint. He submitted that he retained the balance of the amount deposited into his trust account for fees owed to him by the sellers who are his clients. He believes there is nothing amiss with his conduct as he was entitled to the fees and he retained the money with the knowledge of the purchaser.

Regarding the second complainant, he submitted that he is in the process of settling the arrear rentals. He is currently representing Cecil Madondo who is handling the judicial management and liquidation of three companies. He expected as at 21 May 2013 to receive US\$87 000-00 in fees for handling the three judicial management and liquidation portfolios. He is of the view that the complaint has no bearing on his professional conduct.

The respondent submitted that he attended court on behalf of Kambarami and therefore there is no truth in the 3rd complaint.

The question for determination is whether or not the applicant is entitled to an order for the suspension of the respondent from practising pending an investigation of the complaints. Section 26A (1) permits the applicant to apply for the suspension of a legal practitioner where it has *prima facie* evidence that a registered legal practitioner:

- “(a) is failing to attend reasonably to the affairs of his practice or has abandoned his practice; or
- (b) is contravening any provision of this Act or any rules or by-laws made there under; or
- (c) may be guilty of unprofessional, dishonourable or unworthy conduct;

and the legal practitioner concerned has failed to provide a satisfactory explanation in the prescribed manner to the Council of the Society of the conduct complained of upon written request being made to him

The respondent concedes that he did not remit to ZIMPLATS the full purchase price in the first complaint to the Mine. The respondent's contention that Mr Nhika consented to

the respondent retaining the balance of the purchase price must surely be investigated more particularly in light of the fact that it is Mr Nhika who lodged a complaint through Southgate Real Estate. The sale agreement between Mr Nhika and the respondent's clients is silent on whether or not the respondent was permitted to deduct his fees from the purchase price. The respondent in one instance states that he had Mr Nhika's authority. In another instance he states that it is an implied term of the agreement and then again states that he used his discretion. The respondent could not proceed against his clients for his fees but accessed money destined to the other party. He is adamant that he does not see anything wrong with accessing the funds from a trust account. This is a cause for concern, and the Tribunal is of the view that unhindered investigations into the complaint are necessary.

The inability of the respondent to pay rent is equally a matter of concern for the Tribunal. It is not a personal issue as contended by the respondent. It is, coupled with the first complaint, symptomatic of deep rooted financial challenges within the respondent's practice. The respondent gave the impression that his only saviour in acquitting his indebtedness to his landlord is the portfolio of three companies under judicial management and liquidation yet he is running an entire legal practice and must surely have other clients. This raises questions as to the viability of his practice. He concedes that liquidation and judicial management take long to realise revenue yet he is relying on these processes to pay arrear rentals which are ballooning. He suggests that Tudor House Consultants (Pvt) Ltd have entered into a payment plan with his landlord. No such plan was presented to the Tribunal. The only document placed before the Tribunal is a letter from Tudor House Consultants (Pvt) Ltd dated 13 May 2013 addressed to the landlord confirming what fees were due to the respondent.

The responses by the respondent to the first two complainants, and in particular the concession, clearly establish *prima facie* evidence that the respondent is failing to attend reasonably to the affairs of his practice and may be guilty of unprofessional, dishonourable or unworthy conduct. The two complaints alone warrant the suspension of the respondent to enable the applicant unhindered investigations and placement of his practice under curatorship. In the result, the application is granted.

IT IS ORDERED THAT:

1. The respondent be and is hereby suspended from practising as a legal practitioner, conveyancer and notary public for a period of six weeks with effect from 10 February 2014.
2. The respondent's firm, MessrsMudambanuki and Associates be placed under curatorship for the period of the suspension.

BHUNUJ agrees _____