

IN THE MATTER OF BAMIDELE ALICE ABIOLA Registered Foreign Lawyer
and JOSEPH UCHENNA ODUKWE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J. N. Barnecutt (in the chair)
Mr J. R. C. Clitheroe
Mr J. Jackson

Date of Hearing: 16th July 2009 and 5th October 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority (“the SRA”) by Jonathan Richard Goodwin of Jonathan Goodwin, Solicitor Advocate of 17E Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT on 17th July 2008 that Bamidele Alice Abiola of 61 R---- A----, Hendon, London NW9 --- and Joseph Uchenna Odukwe of 36 S---- R----, London E8 --- might be required to answer the allegations set out in the statement that accompanied the application and that such order might be made as the Tribunal should think right.

The allegations against the Respondents were that:-

1. Contrary to Rule 6 of the Solicitors Accounts Rules 1998 (“the 1998 Rules”) they failed to ensure compliance with the Rules.
2. They permitted, facilitated or acquiesced in their client account being utilised as a banking facility contrary to Rule 1 of the Solicitors Practice Rules 1990 (“SPR”), and/or Rule 15 of the 1998 Rules.
3. They withdrew money from client account other than as permitted by Rule 22 of the 1998 Rules.
4. They failed to keep accounting records properly written up contrary to Rule 32 of the 1998 Rules.

5. They failed to produce all records and other documentation of the firm to the representative appointed by the SRA, contrary to Rule 34 of the Rules and/or Rule 20.06 of the Solicitors Code of Conduct 2007 (“SCC”).
6. They failed to ensure that the firm was properly supervised and/or managed contrary to Rule 13 of the SPR and/or Rule 5 and 12 of the SCC.
7. They failed to comply with the Rules and requirements relating to the regulation of Registered Foreign Lawyers, contrary to Rule 1 (d) of SPR and/or Rules 1.06 and 12 of SCC.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 16th July and 5th October 2009 when Jonathan Richard Goodwin appeared as the Applicant and the Respondents appeared in person.

The evidence before the Tribunal included admissions by the First Respondent to allegations 1, 4 and 5 and the admissions of the Second Respondent to all the allegations, together with a number of documents produced by both Respondents on 5th October 2009. The Tribunal also had before it a memorandum dated 16th July 2009 which gave details of the evidence given by the parties on 16th July 2009 and a number of directions made by the Tribunal on that date. The hearing on 5th October 2009 was listed for 9.30am but did not start until 11am due to both Respondents arriving late at the Tribunal.

At the conclusion of the hearing the Tribunal made the following Orders:-

The Tribunal Orders that the Respondent, Bamidele Alice Abiola of 2 B---- G----, H---- W---, London, NW2 ---, Registered Foreign Lawyer, be Struck Off the Register of Foreign Lawyers and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £13,200.00, such costs to be joint and several between the Respondents.

The Tribunal Orders that the Respondent, Joseph Uchenna Odukwe of 185 L---- R----, Tottenham, London, N17 ---, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 5th day of October 2009 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £13,200.00, such costs to be joint and several between the Respondents.

The facts are set out in paragraphs 1–13 hereunder:-

1. The First Respondent, Bamidele Alice Abiola, born in 1953, was a Registered Foreign Lawyer.
2. The Second Respondent, Joseph Uchenna Odukwe, born in 1968, was admitted as a solicitor on 1st August 2003 and his name remained on the Roll of Solicitors.
3. The Respondents carried on practice in partnership under the style of Alice Emmanuel & Co Solicitors from offices at Trafalgar House, Grenville Place, London NW7 3SA.

Allegations 1, 2, 3 and 4

4. An inspection of the books of account and other documents of the firm was carried out by an Investigation Officer (“IO”) of the Forensic Investigation Department of the SRA. A copy of his report dated 7th December 2007 was before the Tribunal.
5. The books of account were not in compliance with the Solicitors Accounts Rules. The IO did not consider it was practicable to form an opinion as to whether sufficient funds were held in the firm’s client bank account to cover the liabilities to clients as at 31st July 2007 due to:-
 - Incompleteness and inadequacy of the records provided for inspection by the Respondents in that completion statements, bills of costs and reconciliations were not provided.
 - Individual client ledgers did not have office transactions written up.
 - A number of individual client ledger accounts recorded significant receipts and payments with inadequate description of the transactions noted.
 - The client matter of Mr O had a number of client to office transfers the nature of which were unclear.
6. The records and documents produced by the First Respondent were incomplete and inadequate. Despite several attempts on the part of the IO to meet with and/or speak to the Second Respondent he was unable to do so.
7. In relation to the client Mr O, the First Respondent failed to provide a copy of the client file. When the IO reviewed the client ledger account he found the following matters of concern:-
 - Between 14th June 2007 and 13th July 2007 12 client to office bank account transfers were made totalling £7,850.00.
 - Between 14th June 2007 and 26th July 2007 the client ledger account had been charged with 9 payments totalling £17,746.00 and which had been recorded as ‘PAYMENT ON AC’.
 - The First Respondent indicated that some of these transfers and payments were in relation to repayment of a loan she had made to the client but she was unable to produce any evidence to support such contention.
 - The First Respondent provided an authority dated 6th June 2007 addressed to the Respondents purportedly from Mr O, authorising the payment of £22,000.00 to the First Respondent. However, the total transfers and payments amounted to £25,596.00 (£7,850.00 plus £17,746.00), whilst the purported authority authorised a sum of only £22,000.00.
8. Further payments were made from the client ledger account of Mr O as follows:-

- A payment of £10,000 on 16th July 2007 with the narrative ‘PAYMENTS – BV’
 - A transfer on 20th July 2007 in the sum of £45,000 to a client ledger account entitled ‘SP Ltd’.
9. No documentary evidence or explanation was provided by the Respondents in relation to the payment on 16th July 2007. The First Respondent provided an authority letter dated 12th July 2007, purportedly from Mr O in relation to the transfer on 20th July 2007 in the sum of £45,000.00.
10. The First Respondent was unable to provide an up to date contact address for Mr O to facilitate the IO writing to him to seek verification of the authority letters that the First Respondent had provided. The First Respondent did provide a mobile telephone number that she said related to Mr O but despite attempts by the IO to contact him, he was unsuccessful.

Allegations 5, 6 and 7

11. The First Respondent indicated to the IO that the Second Respondent had been absent since 20th July 2007. On 18th October 2007 the IO was informed that the Second Respondent was in Nigeria and the First Respondent did not know when he was expected to return. Despite three visits and leaving a telephone message on the Second Respondent’s mobile telephone the IO failed to speak or meet with him.
12. The First Respondent failed to provide the IO with all of the files and records requested. Of those files that were produced, information to include completion statements, bills of costs and reconciliations of individual client ledgers were missing. The First Respondent indicated that the Second Respondent was in possession of some files.
13. The First Respondent became a Registered Foreign Lawyer in 1997 and became a partner in Alice Emmanuel & Co Solicitors in 2002. Registered Foreign Lawyers are not qualified to supervise a practice. The SRA’s records confirmed there was no solicitor in place qualified to supervise the firm during the following periods:-
- October 2004 – 15th January 2006. The First Respondent was in partnership with Mr Udah who was admitted on 15th January 2003 and not qualified to supervise until 15th January 2006.
 - 17th March 2006 – 18th June 2006. The First Respondent practised on her own.
 - 19th June 2006 – 31st July 2006. The Second Respondent became a partner in the practice on 19th June 2006 but was not qualified to supervise until 1st August 2006.
 - Further, the Second Respondent had not been available since July 2007.

The Submissions of the Applicant

14. The Applicant confirmed allegations 1, 4 and 5 were admitted by both Respondents. Dishonesty was not asserted. The Applicant submitted, in relation to allegations 6 and 7, that in failing to comply with the rules relating to the regulation of Registered Foreign Lawyers, the Respondents had failed to ensure the proper supervision and management of the firm.

The Oral Evidence of Mr Mohnish Dhanda

15. Mr Dhanda affirmed and confirmed he was employed by the SRA as an Investigation Officer, a position he had held for 17 years. He confirmed that the report dated 7th December 2007 before the Tribunal had been prepared by him and was true.
16. Mr Dhanda confirmed that during the investigation he had only met the First Respondent and did not meet the Second Respondent. He also confirmed that he had not received a number of files and documents from the First Respondent and if he had had the opportunity to discuss matters with the Second Respondent, the content of his report may have been different.
17. On cross examination by the First Respondent Mr Dhanda confirmed he had been given a mobile telephone number for Mr O but had not been able to get hold of Mr O on this. As he was not sure whether this was indeed Mr O's telephone number, he had been unable to leave any message. The only address given to Mr Dhanda for Mr O was the address of a property owned by Mr O which had been sold and therefore it was unlikely Mr Dhanda would have been able to contact Mr O at that property.
18. On cross examination by the Second Respondent Mr Dhanda was asked which telephone number had been given to him by the First Respondent to contact the Second Respondent. It appeared that the number given to Mr Dhanda may have been incorrect.
19. On re-examination Mr Dhanda confirmed that the form of authority dated 12th July 2007 purportedly from Mr O authorising the transfer of £45,000 gave the address of the property that had been sold thirteen days earlier. Mr Dhanda also confirmed that he had only been able to establish that the property had been sold by looking at the client ledger card which confirmed completion monies were received. It was not clear from the ledger who had dealt with Mr O's conveyancing.

The further submissions of the Applicant

20. The Applicant confirmed that since the hearing on 16th July 2009 he had written to both Respondents twice to remind them of their obligation to comply with the Tribunal's directions but until the morning of 5th October 2009 the Applicant had not seen the Second Respondent's statement although the Second Respondent had said he had sent it to the Applicant. The Applicant had not received it. Furthermore, the statement from Mr O dated 29th September 2009 had only been produced to the Applicant on the morning of 5th October 2009. The Applicant reminded the Tribunal that the hearing on 16th July 2009 was adjourned on the basis that Mr O would be available at the hearing on 5th October 2009 to be cross examined. As Mr O was not appearing before the Tribunal and could not be cross-examined, the Applicant requested the Tribunal to attach appropriate weight to his statement.

21. The Applicant also confirmed that a proposed meeting at the firm's premises had been due to take place on 16th November 2007 and the First Respondent had been informed of this. When she had been informed she did not mention that the Second Respondent would not be available on that day and the Applicant submitted she would have known the Second Respondent was flying out of the country on 16th November 2007. In any event that meeting did not take place. The Applicant confirmed that regarding the waiver which had been mentioned by the First Respondent at the hearing on 16th July 2009, Mr Dhanda's report confirmed that no waiver was granted although a letter had been sent from the Ethics Department to Mr Udah sending him an application form to apply for a waiver which had not been submitted. Furthermore the SRA records confirmed that Mr Eruwa had left the practice on 29th October 2004 and worked in another law firm from 1st March 2004.
22. The Applicant requested an order for his costs which had been agreed with the Respondents in the total sum of £13,200 payable on a joint and several liability basis.

The Submissions of the First Respondent, Bamidele Alice Abiola

23. The First Respondent produced a copy of a statement from Mr O dated 29th September 2009, a copy of the Accountant's Report Form for Alice Emmanuel & Company Solicitors for the period 1st August 2004 to 31st July 2005, two references and an office copy relating to the property owned by Mr O, dated 1st October 2009. She was unable to explain why these documents had not been served on the Applicant prior to the hearing on 5th October 2009.
24. The First Respondent was unable to produce the original signed statement of Mr O dated 29th September 2009 and the Tribunal was particularly concerned as the copy before the Tribunal had a horizontal black line across the page directly above the signature and therefore it was not at all clear whether the signature attached to the statement above it.
25. The First Respondent submitted that the Accountant's Report Form confirmed Mr Eruwa was a partner with the practice from 1st August 2004 until 31st July 2005. The First Respondent confirmed that the documents before the Tribunal were the only documents she had. She apologised to the Tribunal for her failings. She confirmed that admitted allegations 1, 4 and 5 and in relation to the other allegations she asked the Tribunal to consider the documents she had submitted.
26. Regarding allegation 2 the First Respondent submitted that the Second Respondent dealt with procedure and completions, and she dealt with the finances of the firm. Her area of work was mainly immigration. The file of Mr O had been copied and provided to the IO, although the First Respondent could not remember whether a covering letter had been sent with the copy of the file. The original file had been taken by the intervention solicitors.
27. The First Respondent submitted that she did not normally lend money to clients but she had known Mr O for many years and she had lent him money some years ago. He had said the First Respondent should take it back. She said she was not influenced by Mr O and was not required by him to do things. She did not do anything he did not want her to do.

28. The First Respondent confirmed that she did not have an in-house accountant and the firm had always dealt with its own accounts. She said they had an accountant who was given the papers. She had made it clear where money had been paid into. She was unable to explain why transfers of £25,596 had been made from Mr O's client account when his authority form authorised only £22,000. She said there must have been a miscalculation somewhere. The payment to BV had been authorised by Mr O as it was one of his companies. The First Respondent was unable to produce a letter from Mr O to confirm this authorisation.
29. The First Respondent indicated that she had never practised alone and the Law Society had been aware of other lawyers who had been practising in partnership with her. The Law Society were told that Mr Eruwa was leaving and Mr Udah applied for a waiver as he had only 2 months left before he was eligible to supervise the practice. While his application was dealt with, Mr Udah completed his 3 years and was eligible to supervise the practice and did not need a waiver. The First Respondent was unable to provide the Tribunal with any proof other than reference to the Accountant's Report which mentioned Mr Eruwa. The Law Society had told her there was certain work she could not do unless there was a solicitor qualified in England supervising the firm. This had been done.
30. The First Respondent apologised for any breaches and confirmed that she had no intention of operating the firm on her own. She asked the Tribunal for mercy and help. She also confirmed that the Applicant's costs had been agreed as indicated.

The Submissions of the Second Respondent, Joseph Uchenna Odukwe

31. The Second Respondent admitted all the allegations before the Tribunal and this was on the basis that he was a partner of the firm. The Second Respondent referred the Tribunal to his statements dated 9th September 2009 and 24th September 2009. He produced a copy of a booking confirmation email from Virgin Nigeria Airways indicating he had been booked on a flight from London to Lagos departing on 16th November 2007. In addition he produced an electronic ticket indicating that he had flown from London to Abuja on 4th February 2007 returning on 11th March 2007. He also produced a number of copy emails from various parties for the Tribunal to consider.
32. He denied that he had been absent from the office for a long time and referred the Tribunal to the evidence he had produced showing he was out of the country from 4th February 2007 until 11th March 2007 and had subsequently flown out again on 16th November 2007. He indicated that it would be clear to the Tribunal from the files that he had signed documents during the time he had been allegedly away from the office but he was unable to produce those files as the intervention solicitors had taken them. At the hearing on 16th July 2009, the Second Respondent stated that he had been to Nigeria in December 2006 for about one month, and had also been there briefly in June and July 2007. However, at the hearing on 5th October 2009, that he submitted he had been in the UK from March 2007 until November 2007. He did not understand why the First Respondent had told the IO that he was in Nigeria during this time. He had been in attendance at the office every day although he accepted that he had not been there when Mr Dhanda attended due to his severe gout. He was unable to produce his diaries as he had been unable to remove anything from the office after the intervention. He did mainly immigration and conveyancing, and did about 3 or 4 completions per month. The Second Respondent had produced a number

of emails which were before the Tribunal to show that he had been dealing with transactions for the clients who had sent those emails. The Second Respondent confirmed that he did not withdraw any money from client account and did not handle client account at all.

33. The Second Respondent admitted allegation 6 on the basis that he accepted he should have enquired with the Law Society at the material time whether he was able to supervise the firm as at June 2006. He indicated that if he had been informed he was unable to supervise the Practice, he would have applied for a waiver from the Law Society. He would also have ensured that any solicitor supervising the firm in his absence was suitably qualified to be able to do so.
34. The Second Respondent confirmed all the allegations were admitted, as indicated in his witness statement of 9th September 2009, and he apologised sincerely to the Tribunal for his failings. This was the first time he had been a partner in a practice in a different jurisdiction and he had learned his lesson. He admitted all the allegations and confirmed that the costs had been agreed as indicated by the Applicant.

The Findings of the Tribunal

35. The Tribunal had listened very carefully to the submissions of all parties and had considered all the documentation before it including the references provided.
36. The Tribunal found all the allegations to have been substantiated against both Respondents indeed the First Respondent had admitted allegations 1, 4 and 5 and the Second Respondent had admitted all the allegations.
37. Dealing with the First Respondent and the breaches of the Solicitors Accounts Rules 1998, she had sought to rely upon a copy of a statement from Mr O dated 29th September 2009 but she had not been able to provide the Tribunal with the original statement and nor had Mr O been called to give any evidence. The copy statement provided was unsatisfactory and on its face it appeared that it may not be an accurate copy of the original document particularly as there was a horizontal black line across the page just above the signature of Mr O. The Tribunal did not accept this evidence and was not satisfied regarding its authenticity. On 16th July 2009 the hearing had been adjourned part heard specifically as the Respondents had confirmed that Mr O would be available to attend before the Tribunal on 5th October 2009. This had not been the case. Furthermore, the First Respondent had not produced any documentation in support of her contention that she had loaned Mr O money, or any documentation to confirm that the IO had been provided with copies of client files he had requested. It was noted that none of the Tribunal's directions dated 16th July 2009 had been complied with.
38. In relation to allegations 6 and 7, the First Respondent sought to rely upon the copy of her Accountant's Report Form dated 1st August 2004 to 31st July 2005 as evidence of Mr Eruwa being a partner in the Practice from 1st August 2004 to 31st July 2005. The Tribunal was not satisfied that the Accountant's Report Form was sufficient evidence that the firm was properly supervised and/or managed at the relevant time. The SRA records indicated that Mr Eruwa had left the practice on 29th October 2004 which was contradictory to the information on the Accountant's Report Form. The Accountant's Report Form was simply a return of information to the Law Society and

was not evidence of the actual period of time Mr Eruwa had been a partner at the practice. It was clear to the Tribunal that the practice was not properly supervised during the period 30th October 2004 to 14th January 2006 or 17th March 2006 to 30th July 2006 as there was no properly qualified solicitor eligible to supervise the practice during these periods.

39. The office copy entries of Mr O's property was dated 1st October 2009, and simply showed the property was registered on 22nd January 2008 in the name of the new proprietor and that a sum of money was paid on 29th June 2007. There was no evidence of anything further than the date the property was registered in the name of the new proprietor.
40. The First Respondent's evidence and submissions had been confusing, contradictory and incoherent and not at all what would be expected of a competent solicitor. The First Respondent was in a more senior position within the practice, particularly as she dealt with the finances of the firm and she had failed to adequately document the accounts records. The purpose of the Solicitors Accounts Rules was to ensure the proper protection of client funds and to enable the Authority to exercise its regulatory function. Failing to produce accounting records, reconciliations, bills of costs and indeed client files was a very grave matter. The allegations against the First Respondent were serious and the Tribunal was satisfied that her conduct had brought the profession into disrepute. The Tribunal did not consider her conduct was that of a competent solicitor and felt that the public needed to be protected from her. The Tribunal was of the view that she should not remain on the Register of Foreign Lawyers and accordingly Ordered that she be struck off that Register.
41. In relation to the Second Respondent, he had admitted all the allegations and although he was less culpable, his conduct was still alarming. The Tribunal was of the view that the public needed to be protected from him for a number of reasons. He had failed to carry out his duties to properly supervise the First Respondent and he had failed to make proper enquiries of the Law Society regarding supervision requirements. As a partner in the practice he had a duty to monitor the accounts of the practice and should have supervised the First Respondent who was a Registered Foreign Lawyer much more closely. His failings had enabled her to run a practice in a manner which was contrary to the regulations. This was a case where there was money going out of a client account, for which he was jointly liable, and it was insufficient for him to claim, as he had done in his statement dated 9th September 2009, that he was young and inexperienced. The Solicitors Accounts Rules were in place to protect clients and the Second Respondent had allowed breaches of those Rules by allowing a Registered Foreign Lawyer to have complete control over the accounts. The Second Respondent should have been primarily responsible for the accounts and should not have allowed a Registered Foreign Lawyer to have complete control of the finances. The Tribunal was mindful that there had been a large number of transfers from client to office account and no evidence had been provided to explain why these transfers had been made.
42. The Second Respondent had failed to provide evidence of the actual dates that he was in the office, although he had given the Tribunal evidence of the dates he had been away from the office. It was quite bizarre that the First Respondent claimed the Second Respondent was in Nigeria and yet the Second Respondent asserted he was not. It was clear from the documentation that on the three occasions when the IO had attended the firm, the Second Respondent had not been in the office and indeed, he

flew out of the country on 16th November 2007 not returning until 20th January 2008. The emails he had provided did not prove he had been in the office on the dates they had been written. Those emails could have been written from anywhere in the world. Furthermore, the Tribunal noted that in one particular email dated 5th November 2007, attaching a client care letter, it was stated “Mr Joseph Odukwe will be working under the supervision of Mrs Alice Bamidele Abiola”.

43. The Tribunal considered that the Second Respondent’s conduct had brought the profession into disrepute and by allowing a Registered Foreign Lawyer to control client monies, the Second Respondent had failed to act responsibly to such an extent that the public needed to be protected from him. In all the circumstances, the Tribunal considered the appropriate sanction was to suspend the Second Respondent indefinitely from 5th October 2009. The Tribunal advised the Second Respondent that he could apply for the suspension to be lifted in due course but he must be able to show that he had worked within the law with the consent of the SRA, that he had carried out adequate and appropriate training and that he had kept up to date with legal developments. Essentially the Second Respondent must be able to show that he had proved himself as a good, potential member of the profession by being able to provide a good record of a period of employment with a firm of solicitors.
44. The Tribunal also Ordered the Respondents to pay the Applicant’s costs as agreed.
45. The Tribunal Ordered that the Respondent, Bamidele Alice Abiola of 2 B---- G----, H---- W----, London, NW2 ---, Registered Foreign Lawyer, be Struck Off the Register of Foreign Lawyers and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £13,200.00, such costs to be joint and several between the Respondents.
46. The Tribunal Ordered that the Respondent, Joseph Uchenna Odukwe of 185 L---- R---, Tottenham, London, N17 ---, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 5th day of October 2009 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £13,200.00, such costs to be joint and several between the Respondents.

Dated this 8th day of March 2010
On behalf of the Tribunal

J. N. Barnecutt
Chairman