

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF BARRY NENADON KUMBE, solicitor (First Respondent)  
WINSTON EDWARDS, solicitor's clerk (Second Respondent)

Upon the application of Stephen Battersby  
on behalf of the Solicitors Regulation Authority ("SRA")

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Mr D J Leverton (in the chair)  
Mr E Nally  
Mr R Slack

Date of Hearing: 2nd December 2010

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**FINDINGS & DECISION**

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**Appearances**

Mr Stephen John Battersby, Solicitor and Partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Herts SG14 1BY for the Applicant.

The Respondents did not appear and were not represented.

The application against the First Respondent, Barry Nenadon Kumbe, was dated 10 November 2009 and there was a Supplementary Statement dated 19 May 2010.

The application against the Second Respondent, Winston Edwards, was dated 28 May 2010.

**The allegations against the First Respondent, Barry Nenadon Kumbe were:-**

1. Contrary to Rule 1.06 of the Solicitors Code of Conduct 2007 the First Respondent failed to comply with the decision of an Adjudicator, thus diminishing the trust which the public placed in the profession.
2. Contrary to Rule 20.03 of the Solicitors Code of Conduct 2007 the First Respondent failed to deal with the Legal Complaints Service and SRA in an open, prompt and co-operative way.
3. Contrary to Rule 5.01 Solicitors Code of Conduct 2007 the First Respondent failed to

exercise adequate supervision over an unadmitted case worker and the office in which he worked.

4. Contrary to Rule 1.06 Solicitors Code of Conduct 2007 the First Respondent abandoned his practice thus diminishing the trust which the public placed in the profession.
5. The First Respondent failed to ensure that the books of accounts of his firm were available for inspection upon request by an Officer of the SRA contrary to Rule 34 Solicitors Accounts Rules 1998.
6. The First Respondent failed to ensure that there was qualifying insurance in place for his firm for the 2008/2009 indemnity year contrary to the Solicitors Indemnity Insurance Rules 2008 (as amended).
7. The First Respondent failed to deliver to the SRA the Accountant's Report for his firm for the year ending 30 September 2008.
8. The First Respondent permitted use of notepaper which was inaccurate and misleading, contrary to Rule 7.01 Solicitors Code of Conduct 2007.
9. The First Respondent failed to ensure compliance with an undertaking given by his firm to H & Co on 29 May 2008 contrary to Rule 10.05 Solicitors Code of Conduct 2007.

**The allegation against the Second Respondent, Winston Edwards was that:-**

10. The Second Respondent being a person who is or was involved in a legal practice but was not a solicitor had, in the opinion of the Law Society (Solicitors Regulation Authority), occasioned or been a party to, with or without the connivance of a solicitor by whom he was employed, acts or default in relation to a legal practice, which involved conduct on his part of such a nature that, in the opinion of the Society (SRA), it would be undesirable for him to be involved in a legal practice in one or more of the ways mentioned in sub section 1(a) of Section 43 Solicitors Act 1974 (as amended). It was alleged the Second Respondent's behaviour had been dishonest.

**Service of Proceedings**

The Applicant confirmed the Tribunal had made an Order on 13 September 2010 for substituted service of documents by way of an advertisement in the Law Society's Gazette. The Applicant confirmed that an advertisement had been placed in the Law Society's Gazette on 7 October 2010 requiring both Respondents to attend before the Court today. There had been no response. The Tribunal was satisfied that both Respondents had been served, and granted leave to proceed in their absence.

**Factual Background**

1. The First Respondent, Barry Nenadon Kumbe, born in 1967, was admitted as a solicitor on 2 April 2001. His name remained on the Roll of Solicitors. At the material time he was the principal in the firm of Michael Mofus and Co ("the firm") whose main office was at Unit 2 The Quadrangle, Vicarage Lane, London E15 4ES.

It was believed that the firm had now ceased trading and that the First Respondent had left the country. His current whereabouts were not known.

2. The Second Respondent, Winston Edwards, worked at the firm as an employee from November 2007 until his dismissal on 27 June 2008.
3. A firm of immigration advisers, ELAS were registered with the Office of Immigration Services Commissioner (OISC) to provide immigration advice and traded from 310-312 New Cross Road, New Cross, London SE14 6AF. The Second Respondent worked as an adviser at ELAS until 23 August 2007 when ELAS had their OISC registration withdrawn and from that date were unable legitimately to provide immigration services and advice. However, on 26 November 2007 the Second Respondent became an employee of the First Respondent's firm, who took on 310-312 New Cross Road as a branch office. From that date, if properly supervised by a solicitor, the Second Respondent was able to provide immigration advice and services through the firm of the First Respondent, who became responsible for his supervision.

#### Allegations 1–3, 8 and 10

4. On 13 October 2007 (prior to the Second Respondent's employment with the First Respondent) Miss IA consulted ELAS seeking immigration advice and assistance. The Second Respondent dealt with her case and continued to do so after 26 November 2007 when the First Respondent became responsible for his supervision. Some of the correspondence which the Second Respondent sent to Miss IA following his employment with the First Respondent was on the old notepaper of ELAS.
5. Miss IA became dissatisfied with the services provided by the Second Respondent and registered a complaint on 7 March 2008 at the same time that she instructed other solicitors. During the investigation of that complaint, the firm provided the LSC with a list of the cases that the Second Respondent was dealing with but Miss IA's case was not included.
6. The First Respondent stated Miss IA's case was nothing to do with him. However, the Second Respondent had carried out work on the case between 26 November 2007 and 27 June 2008 when his employment with the firm was terminated. This work was carried out from 310-312 New Cross Road, an office of the First Respondent's firm.
7. On 9 February 2009 an Adjudicator decided that the First Respondent had provided inadequate professional services to Miss IA and ordered him to pay her compensation, refund money she had paid on account of costs, waive his own costs, release her file of papers to her new representatives and pay the investigation costs. The First Respondent failed to comply and complained about the unfairness of the decision saying that he was not to blame for this situation.
8. The Second Respondent also dealt with another client, Mr PC who also complained to the LCS. Mr PC first consulted the Second Respondent on 30 July 2008 – over a month after his employment with the firm ceased. The Second Respondent sent an initial letter to Mr PC on 20 August 2008 on the firm's notepaper. He misled the client into believing that he was employed by the firm. Another client Mr BT complained to the firm on 6 December 2008 stating he had first instructed the Second Respondent at the end of August 2008. Mr BT had also been led to believe that the

Second Respondent was acting for him through the firm and had received a letter on the firm's notepaper. In a letter to Mr BT the firm denied any link with the Second Respondent.

9. The SRA were concerned as to the supervision arrangements for the Second Respondent and raised the issue with the First Respondent. The First Respondent claimed that the Second Respondent was supervised by a solicitor Mr EA. Further enquiries with Mr EA himself revealed that he had been approached by the First Respondent to act as a criminal supervisor, as opposed to an immigration supervisor, but had never actually carried out any supervisory duties in any event. Furthermore Mr EA left the firm in May 2008 a month before the Second Respondent left, so he could not have offered any supervision at all after this period.

#### Allegations 4 and 8

10. On 18 February 2009 an Investigation Officer ("IO") of the SRA, commenced an investigation of the books of accounts and other documents of the First Respondent's firm. During this inspection the IO did not meet the First Respondent who was said to be out of the country but he did speak to the Practice Manager (Ms LRM) and others described on the firm's notepaper as partners.
11. The IO was informed that the First Respondent had been a partner in the firm from 22 January 2008 but had ceased to be so involved on 23 October 2008 after failing to obtain Professional Indemnity Insurance.
12. The notepaper which the firm used to write to the SRA on 16 February 2009 showed the name of the First Respondent under the style 'Assistant Solicitor'. The two principals were shown as Mr CTE and Ms MDM. The Practice Manager told the IO that Mr CTE had agreed to take over the firm from October 2008 and that Ms MDM had become a partner in the firm in either December 2008 or January 2009. However when the IO spoke to Mr CTE and Ms MDM, they told him that they were not partners in the firm. Mr CTE said that he had no involvement with the firm at all and was not aware that his name had been shown as principal partner on the notepaper. Ms MDM said that she had not attended the firm since 18 December 2008 and had not agreed to being a partner. The Practice Manager subsequently conceded that Mr CTE and Ms MDM had not been partners in the firm. The IO could not find any evidence of there being any person properly responsible for the running and management of the practice after October 2008 when the First Respondent left the firm. On 20 April 2009, the First Respondent's personal assistant wrote to the SRA stating the First Respondent had left the country.

#### Allegation 5

13. The books of accounts of the firm were not made available to the IO and he never gained access to them. He was not, therefore, able to confirm whether there had been compliance with the Solicitors Accounts Rules, or the position with regard to liabilities to clients and whether sufficient funds were being held to meet these.

#### Allegation 6

14. The firm's Professional Indemnity Insurance had expired on 30 September 2008, but

the firm had continued to operate after that time. The First Respondent was responsible for ensuring that there was proper cover in place and had failed to do so.

#### Allegation 7

15. The accounting year of the firm ended on 30 September 2008 and accountant's reports should have been delivered to the SRA by 31 March 2009. Despite several reminder letters to the First Respondent, the report had still not been delivered.

#### Allegation 9

16. An undertaking was given on the firm's notepaper on 29 May 2008 to another firm of solicitors, H & Co. This undertaking was not complied with.
17. The Tribunal reviewed all the documents submitted by the Applicant which included:-
- (i) Rule 5 Statement together with all enclosures.
  - (ii) Supplementary Statement dated 19 May 2010 together with all enclosures.
  - (iii) Rule 8 Statement together with all enclosures.
  - (iv) Applicant's Schedules of Costs

#### **Witnesses**

18. The following person gave oral evidence:-
- David Lloyd Shaw (Senior Investigation Officer with the SRA)

#### **Findings as to Fact and Law**

19. The Tribunal had considered carefully all the documents provided and the submissions of the Applicant. The Respondents had not attended and had not made any representations for the Tribunal to consider.
20. It was clear to the Tribunal that the First Respondent, Mr Kumbe, had failed to comply with the decision of the Adjudicator dated 9 February 2009. The Tribunal noted the First Respondent's insurers had now paid Miss IA's award, however that did not exonerate the First Respondent from failing to comply with the Adjudicator's decision. The Tribunal found allegation 1 was proved.
21. The Tribunal had been provided with details of a number of letters that had been sent to the First Respondent by the SRA on various dates between 6 May 2009 and 22 July 2009, and by the Legal Complaints Service dated 15 January 2009 and 13 February 2009. The First Respondent had failed to reply to any of these letters. Furthermore, when the Authority had written to the First Respondent on 8 August 2008 raising issues regarding the supervision of the Second Respondent, the First Respondent had claimed the Second Respondent was supervised by a solicitor, Mr EA. However, Mr EA confirmed he had been asked by the First Respondent to act as a criminal supervisor and that he had not carried out any supervisory duties in any event. It was

clear the Second Respondent was only providing immigration advice and services whilst employed by the First Respondent and therefore the First Respondent had not been open in his dealings with the Authority regarding this issue. He had failed to provide books of accounts to the IO and he failed to deliver his accountant's report for the year ending 30 September 2008. The Tribunal was satisfied that allegations 2, 5 and 7 were proved.

22. In relation to allegation 3, it was quite clear to the Tribunal that the First Respondent had failed to exercise adequate supervision over the Second Respondent. If the First Respondent had properly supervised the Second Respondent, the Second Respondent would not have been able to use the firm's notepaper after his employment was terminated and nor would he have been able to use old notepaper from his previous employment of ELAS after his employment had started with the First Respondent. There were also issues regarding the service provided by the Second Respondent whilst employed by the First Respondent, one of which led to the Adjudicator's decision of 9<sup>th</sup> February 2009. The Tribunal was most concerned to note that the firm's notepaper made reference to Mr CTE and Ms MDM as partners of the practice on 16 February 2009 when this was clearly incorrect. Although the Respondent claimed to have ceased involvement with the firm in October 2008, his name was still shown as "Assistant Solicitor" after this date. Mr CTE and Ms MDM had confirmed to the IO that they were not partners in the firm and had never agreed to be partners in the firm. It was quite clear that the First Respondent had allowed the use of notepaper which was inaccurate and misleading as he still had responsibility for that firm having failed to arrange for such responsibility to pass to another authorised person. The Tribunal was satisfied that allegations 3 and 8 were proved.
23. It was clear to the Tribunal that the First Respondent had abandoned his practice. The Authority was informed on 20 April 2009 by the First Respondent's personal assistant that he had left the country. However, when the IO had commenced his investigation in February 2009, he had been informed the First Respondent was out of the country yet the firm's notepaper showed the First Respondent's name under the style of "Assistant Solicitor". The Respondent had failed to renew his Professional Indemnity Insurance, he had failed to meet the IO, he had failed to provide books of accounts to the IO and had failed to provide accountant's reports. The Tribunal was satisfied that allegation 4 was proved and that the First Respondent's behaviour had diminished the trust the public placed in the profession.
24. Concerning allegation 6, the Tribunal was satisfied that the Respondent had failed to renew the firm's Professional Indemnity Insurance from 1 October 2008. The Tribunal found allegation 6 was proved.
25. The Tribunal was satisfied the First Respondent had failed to comply with an undertaking given by his firm to another firm of solicitors on 29 May 2010. The Tribunal was satisfied allegation 9 was proved.
26. In relation to the Second Respondent, he had written to clients using the firm's notepaper after his employment with the firm had been terminated and the Tribunal was satisfied that by doing so he had misled those clients into believing he was employed by the firm. In relation to the question of dishonesty, the Tribunal considered the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12 and also considered the more recent case of Starglade Properties Ltd v Nash [2010] All

ER (D) 221 (Nov) in relation to the tests to be applied when establishing dishonesty. The case of Twinsectra Ltd v Yardley and Others required the Tribunal to consider whether the Second Respondent's conduct would be regarded as dishonest by the ordinary and reasonable standards of honest people, and further whether the Second Respondent knew that by those standards his conduct would be regarded as dishonest. It was said that the case of Starglade Properties Limited v Nash refined that test but it is quite clear from the decision in Re Bryant and Bench 2007 that the Tribunal is bound by the decision in Bultitude v The Law Society [2004] EWCA Civ 1853 that the test to be applied is the Twinsectra Ltd v Yardley test.

27. The Tribunal was satisfied that the Second Respondent's conduct was dishonest by the ordinary standards of honest behaviour in that he used the firm's letterhead after his employment had been terminated and therefore he must have known it would be dishonest to use that letterhead thereby holding himself out to be an employee of the firm. The Tribunal was satisfied that by the tests laid down in Twinsectra Ltd v Yardley, the Second Respondent had acted dishonestly. The Tribunal found allegation 10 was proved.

### **Costs application**

28. The Applicant requested an Order for his costs. He had prepared a costs schedule however he confirmed the costs schedule had not been served on either Respondent. The total costs against the First Respondent were £14,336.20. The total costs for the Second Respondent were £9,745.32, however these needed to be apportioned between the Second Respondent and another Co-Respondent whose case had been severed and was due to be dealt with in January 2011.

### **Previous Disciplinary Sanctions Before the Tribunal**

29. None.

### **Sanction and Reasons**

30. It was clear to the Tribunal that the First Respondent had adopted a wholly cavalier attitude towards his professional body and the Tribunal had found a number of allegations proved which collectively showed a complete disregard by the First Respondent for the rules and regulations imposed upon solicitors, the sole purpose of which was to ensure the protection of clients and their funds. The First Respondent's conduct had led to the reputation of the profession being seriously damaged and the Tribunal was satisfied he was not fit to be a solicitor, having abandoned his practice and failed to ensure it was properly managed thereafter. Failure to obtain indemnity insurance had placed the public at risk. As books of accounts had not been provided to the IO, it was not known whether sufficient funds were held to meet client liabilities. In all the circumstances the Tribunal ordered the First Respondent be struck off the Roll of Solicitors.
31. Regarding the Second Respondent, the Tribunal had found he had acted dishonestly and was satisfied that it would be undesirable for him to be involved in a legal practice pursuant to Section 43 of the Solicitors Act 1974 (as amended). Accordingly, the Tribunal granted the Order sought by the Applicant.

**Decision as to Costs**

32. The Tribunal had been provided with details of the costs, however, these had not been served on either Respondent. Nor had the Tribunal been provided with any information from either Respondent concerning their financial positions. In all the circumstances, the Tribunal ordered the Respondents should pay the Applicant's costs to be subject to detailed assessment unless agreed between the parties.

**Orders**

33. The Tribunal Ordered that the Respondent, BARRY NENADON KUMBE, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of Investigation Accountant of the Law Society.
34. The Tribunal Ordered that as from 2nd day of December 2010 except in accordance with Law Society permission:-
- (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Winston Edwards
  - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Winston Edwards
  - (iii) no recognised body shall employ or remunerate the said Winston Edwards
  - (iv) no manager or employee of a recognised body shall employ or remunerate the said Winston Edwards in connection with the business of that body;
  - (v) no recognised body or manager or employee of such a body shall permit the said Winston Edwards to be a manager of the body;
  - (vi) no recognised body or manager or employee of such a body shall permit the said Winston Edwards to have an interest in the body;

And the Tribunal further Ordered that the said Winston Edwards do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of Investigation Accountant of the Law Society.

Dated this 21<sup>st</sup> day of February 2011

On behalf of the Tribunal

D J Leverton  
Chairman