

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10380-2009

## BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

OLUGBEMINIYI MORAKINYO OLUROTIMI IJAOLA

Respondent

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Before:

Mr. J. P. Davies (in the chair)

Mr. R. Hegarty

Mr. R. Slack

Date of Hearing: 20th July 2011

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## Appearances

Geoffrey Hudson, solicitor of Penningtons Solicitors LLP, Abacus House, 33 Gutter Lane, London, EC2V 8AR for the Applicant.

The Respondent did not appear and was not represented.

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## JUDGMENT

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## **Allegations**

1. On 24 July 2008 the Respondent appeared before the Havering Magistrates Court at the trial of a matter in which he acted for the defendant and held himself out as a solicitor when in fact he was not a solicitor.
2. Between about 10 July 2008 and 24 July 2008 the Respondent failed to follow the instructions of his supervising solicitor to instruct Counsel to represent a client at the trial of her matter before the Havering Magistrates' Court on 24 July 2008 and instead represented the defendant himself at the said trial. This was contrary to Section 1 of the Solicitors Act 1974 (as amended), which provides that "No person shall be qualified to act as a solicitor unless (a) he has been admitted as a solicitor". Furthermore, Section 20(1)(a) of the Solicitors Act 1974 (as amended) provides that "No unqualified person shall (a) act as a solicitor, or as such ... defend any action, suit or other proceeding ... in his own name or in the name of any other person, in any court of civil or criminal jurisdiction ..."

## **Documents**

3. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent, which included:

### Applicant:

- Application dated 13 November 2009 together with attached Rule 8 Statement and all exhibits;
- Schedule of costs dated 12 July 2011;
- Chronology dated 15 July 2011;
- Letter dated 18 July 2011 from Penningtons Solicitors to the Tribunal;
- Letter dated 10 June 2011 from Penningtons Solicitors to the Tribunal;
- Opening submissions on behalf of the SRA dated 17 December 2010.
- Email messages from Mr Hudson to the Tribunal dated 9 and 10 February 2011;

### Respondent:

- Email from the Respondent to the Tribunal dated 16 July 2011.
- Letter dated 15 July 2011 from the Respondent to the Tribunal together with all attached documents;
- Letter dated 25 May 2011 from the Respondent to the Tribunal;
- Two letters dated 11 February 2011 from the Respondent to the Tribunal;

- Letter dated 30 December 2010 from the Respondent to the Tribunal.

### **Preliminary Matters**

4. The Applicant applied for leave to amend the date of 28 July 2008, referred to in paragraph 1.1 and 1.2 of the Rule 8 Statement dated 13 November 2009, to substitute it for the date of 24 July 2008. This had been a typing error and the Applicant had written to the Respondent on two occasions advising the Respondent of his intention to amend the Rule 8 Statement, but had not received any response. The Tribunal granted the Applicant leave to amend the references to 28 July 2008 in paragraphs 1.1 and 1.2 of the Rule 8 Statement dated 13 November 2009 to 24 July 2008.
5. On 16 July 2011 the Tribunal had received an email from the Respondent requesting an adjournment of the substantive hearing. In his letter of 15 July 2011 to the Tribunal the Respondent requested an adjournment and referred the Tribunal to a medical report from Horizons Medical Centre, Abuja, dated 15 July 2011. He also provided the Tribunal with a copy of his passport, and a copy of a boarding pass confirming he had flown out of London on 5 July.
6. The Chairman had considered that application for an adjournment in advance of the hearing and refused the application. The Respondent had known since April 2011 that the substantive hearing had been listed for 20 July 2011 and notwithstanding that, the Respondent appeared to have chosen to absent himself from the UK on 5 July 2011. Furthermore, the medical report provided by Dr Kpamber T of the Horizons Medical Centre dated 15 July 2011 stated the Respondent had suffered from a right knee injury which would require review by an Orthopaedist as well as investigations and physiotherapy with possible knee support. There was no indication in that report that the Respondent was unable to travel and on that basis the Respondent's application had been refused.
7. The Applicant requested leave to proceed in the Respondent's absence. The Tribunal was satisfied the Respondent was aware of the substantive hearing, particularly as the Respondent had made an application for an adjournment of that hearing. Furthermore, the Tribunal was mindful that there had been some correspondence with the Respondent regarding his availability when listing the substantive hearing for 20 July 2011. The Respondent had stated in a letter dated 30 December 2010 that his dates to avoid for the substantive hearing were 31 December 2010 to 31 July 2011 inclusive. The Tribunal wrote to the Respondent on 5 January 2011 and requested an explanation as to why he was unavailable for such a lengthy period of time. He was asked to provide evidence of his non-availability. The Respondent replied on 11 February 2011 (from a London address) stating he was in the UK until the end of March 2011 when he would leave the UK and the earliest most realistic date of his return was the beginning to the middle of July 2011, hence his suggestion of August 2011.
8. The Respondent sent a further letter to the Tribunal also dated 11 February 2011 (received 25 March 2011), which stated he would like the date of the hearing to be moved forward to a period between 1 to 30 June 2011 or back to between 25 November 2011 and 8 January 2012. He stated the reasons for his trip were health-

related. He also accepted in that letter that he had received the Tribunal's letter informing him of the hearing date fixed for 20 July 2011. He was informed by a letter dated 14 March 2011 from the Tribunal that the substantive hearing would take place on Wednesday 20 July 2011. The Respondent was also requested by an email from the Tribunal dated 15 April 2011 to provide the Tribunal with evidence of his medical condition if he required the date to be moved to a period between 1 and 30 June 2011 due to reasons that were health-related.

9. In all the circumstances the Tribunal was satisfied the Respondent was aware of the date of today's hearing and granted leave to proceed in the Respondent's absence.

### **Factual Background**

10. The Respondent was born on 11 October 1963. He graduated in 1986 from Buckingham University and in 1997 completed the Legal Practice Course at London Guildhall University.
11. On 29 June 2007 the Respondent entered into an agreement with Gans & Co Solicitors (now Gans & Co Solicitors LLP) of 10A Evelyn Court, Grinstead Road, Deptford, London, SE8 5AD ("the Agreement") as a self-employed contractor. At all material times, the Respondent was working for Gans & Co as an unadmitted person on that basis.
12. Under the terms of the agreement, the Respondent agreed to perform the following duties:
 

"In a good, efficient and proper manner consistent with the standards expected of a professional person ...

  1. To provide paralegal and outdoor clerk support work to the Partnership in connection with any matters relating to the business of the Partnership which the Partnership may refer to him.
  2. To conduct the affairs of those clients of the Partnership as shall be referred to him by the Partnership provided always that such matters shall be within the reasonable sphere of competence and experience of the [Respondent]."
13. The Respondent's supervising partner at Gans & Co was Mr Edward Goodman.
14. In or about the end of June 2008, a Ms N instructed Gans & Co to represent her in proceedings brought by the London Borough of Havering before the Havering Magistrates Court. Ms N had on 22 May 2008 been bailed to return to Court on 24 July 2008 to answer a charge that, while in receipt of Council Tax benefit, she had failed promptly to notify a change of circumstance affecting her entitlement to benefit. Ms N was denying the offence.
15. On 2 July 2008, Ms N was granted Legal Aid for criminal proceedings for an offence of false representation under section 112 of the Social Security Act 1992. The Representation Order was expressed to cover work undertaken by a litigator in the

Magistrates' Court. The litigator assigned to Ms N under the Order was Gans & Co.

16. On 8 July 2008, a client care letter was sent to Ms N by Gans & Co. The letter confirmed, amongst other matters, that:
  - (i) Mr Goodman would have conduct of Ms N's case.
  - (ii) Mr Goodman would be assisted by experienced personnel.
  - (iii) Gans & Co would ensure that suitably experienced advocates (who would be fully briefed) would deal with Court hearings.
  - (iv) Following the granting of Legal Aid, Ms N's case would be publicly funded.
17. Mr Goodman was absent from his office on holiday between 11 and 14 July and between 21 July 2008 and 4 August 2008. Prior to his departure and in the knowledge that he would be absent from his office both on 14 July 2008 (the date fixed for the pre-trial review) and on 24 July 2008 (the date fixed for the trial) he gave the Respondent instructions to find Counsel to represent Ms N at both hearings.
18. The Respondent failed to arrange for Counsel to represent Ms N at the pre-trial review on 14 July 2008 but instead appeared himself before the Havering Magistrates on that date as Ms N's advocate.
19. The Respondent further failed to take steps to instruct Counsel to attend to represent Ms N at the trial of her case on 24 July 2008 but instead appeared himself before the Havering Magistrates as Ms N's advocate.
20. When the Respondent appeared before the Havering Magistrates on 24 July 2008 he did not seek the leave of the Magistrates to act as Ms N's advocate nor did the Magistrates exercise their discretion to allow the Respondent to act as Ms N's advocate.
21. During the course of the proceedings on 24 July 2008, the solicitor for the prosecution, Mr Christopher Casey, applied for and was granted an adjournment to enable the prosecution to answer the Respondent's contention that the prosecution had been brought out of time.
22. Assuming that the Respondent was either a barrister or a solicitor, the Legal Advisor to the Bench, Mr Brian Gilbert, sought at the close of proceedings on 24 July 2008 to clarify whether the Respondent was a solicitor or a barrister. Mr Gilbert made this enquiry in order to assist in the task of listing the case after the adjournment.
23. By his response, the Respondent led Mr Gilbert to believe that he was from the solicitors who had the legal representation order and that he was a solicitor rather than a barrister.
24. By Mr Gilbert's questions and the Respondent's replies, Mr Casey was led to believe that the Respondent had informed Mr Gilbert that he was a solicitor.

25. Mr Casey was sufficiently concerned to establish whether the Respondent was in fact a solicitor that he caused a search to be made of the Law Society's website. This revealed that the Respondent was not a solicitor.
26. Mr Casey subsequently lodged a complaint with Havering Magistrates' Court in respect of the Respondent's appearance as advocate for Ms N on 24 July 2008.
27. In addition to lodging a complaint with Havering Magistrates' Court, Mr Casey lodged a complaint with the SRA. On 18 February 2009, the SRA wrote to the Respondent requesting an explanation in respect of the following two allegations, namely that:
  - (i) he had held himself out as a solicitor when in fact he was not a solicitor, and
  - (ii) he had carried out a reserved activity, namely that of criminal litigation, when he was not a solicitor, such activity being restricted to solicitors.
28. In his response to the SRA dated 24 April 2009, the Respondent:
  - (i) accepted that he should have declined to proceed on 24 July 2008 when he knew he would be unable to secure the services of Counsel to represent Ms N;
  - (ii) accepted that he should not have undertaken reserved work and expressed his "absolute and unconditional apology" for his actions;
  - (iii) denied that he gave any answer to questions from Mr Gilbert about his status as a Solicitor in the affirmative.
  - (iv) asserted that in answer to Mr Gilbert's specific question to him on 24 July 2008: "Are you a solicitor" he had replied: "No".

### **Witnesses**

29. The following witnesses gave evidence:
  - Mr Emmanuel Okpako Ganiga
  - Edward Anthony Charles Goodman
  - Christopher Casey
  - Brian John Gilbert

### **Findings of Fact and Law**

30. **Allegation 1. On 24 July 2008 the Respondent appeared before the Havering Magistrates Court at the trial of a matter in which he acted for the defendant and held himself out as a solicitor when in fact he was not a solicitor.**

**Allegation 2.** Between about 10 July 2008 and 24 July 2008 the Respondent failed to follow the instructions of his supervising solicitor to instruct Counsel to represent a client at the trial of her matter before the Havering Magistrates' Court on 24 July 2008 and instead represented the defendant himself at the said trial. This was contrary to Section 1 of the Solicitors Act 1974 (as amended), which provides that "No person shall be qualified to act as a solicitor unless (a) he has been admitted as a solicitor". Furthermore, Section 20(1)(a) of the Solicitors Act 1974 (as amended) provides that "No unqualified person shall (a) act as a solicitor, or as such ... defend any action, suit or other proceeding ... in his own name or in the name of any other person, in any court of civil or criminal jurisdiction ...".

30.1 The Tribunal had considered carefully the evidence given by the witnesses, the submissions of the Applicant and all the documents provided. The Tribunal noted the Respondent, in a letter dated 24 April 2009 to the Solicitors Regulation Authority had stated:

"9. While, I would re-iterate that at no time did I state that I was a solicitor neither did I answer any question about my professional status as a solicitor in the affirmative, I would like to say that on hindsight, I should have insisted from the outset on a vacation of the hearing on the basis that I could not arrange for an advocate neither was I qualified to conduct the defence.

10. ... I am aware that the Rules of Conduct bind Solicitors, Trainees and Paralegals. It is for this reason that I answered "no" to the question "are you a solicitor?".

11. Although the court has powers to order the hearing to proceed and may grant audience to an unqualified person, at least it would have been noted as part of the proceedings that I had informed the court of the unwillingness to conduct the defence of Ms [N] and the reasons for the unwillingness being that I lack a right of audience. In fact, I would have requested that a note in the court records be entered of my objections to proceed with the case."

30.2 The Respondent went on to say in his letter to the SRA dated 24 April 2009:

"I accept responsibility for undertaking reserved work, which I should not have done, without express permission of the court and I express my absolute and unconditional apology for my actions.

... I made a very strong request for adjournment because I was unable to obtain the services of Counsel and or in house Solicitor despite my best endeavour. With hindsight, I should have declined to proceed when the court refused the adjournment. I regret this error of judgement. I would not have done this had the court not insisted that this case must proceed."

The Respondent also said:

“I did not expressly state at court that I was a solicitor.”

- 30.3 The Tribunal had also heard evidence from a number of witnesses. Mr Ganiga gave evidence to confirm he was the managing partner of Gans & Co Solicitors LLP and that the Respondent had attended the Magistrates Courts on many occasions previously and would have been fully familiar with the process. Mr Ganiga was confident the Respondent would have known the daily routine in the court and that he would have known he needed to sign a slip of paper explaining his status for the Magistrates. Mr Ganiga confirmed he had been told by Mr Goodman that a hearing was coming up on Ms N’s case in July 2008 and that the Respondent had been instructed to instruct Counsel to act for her.
- 30.4 The Tribunal also heard evidence from Mr Goodman who was the Respondent’s supervisor. He confirmed the Respondent’s main function was to attend court with clients and that he knew the procedures well. Mr Goodman stated the Respondent would definitely have known he needed to complete a form giving details of his status and he would also have known about rights of audience. Mr Goodman had also confirmed in his witness statement dated 28 October 2009 that he had specifically instructed the Respondent to find Counsel for both Ms N’s hearings on 14 and 24 July 2008 respectively. He had not told the Respondent which Counsel he should instruct. He had expected the Respondent to follow his instructions and had no reason to believe that he would not. He had informed Mr Ganiga that he had told the Respondent to instruct Counsel for the hearings.
- 30.5 The Tribunal also heard evidence from Mr Casey who was the prosecuting solicitor on the case of Ms N at the trial on 24 July 2008. He could not recollect completing a slip of paper with details of his status on this occasion but clearly recollect a conversation that took place between the Magistrates’ Clerk, Mr Gilbert, and the Respondent at the conclusion of the proceedings when a decision had been made to adjourn the trial. Mr Casey gave evidence that Mr Gilbert asked the Respondent “Are you counsel or solicitor?”. The Respondent had said “I work for Gan Solicitors”. Mr Gilbert had asked the question again and the Respondent had repeated his response again. Mr Gilbert then asked the Respondent the same question again for a third time and the Respondent replied again “I work for Gans Solicitor”. However, Mr Casey recalled that on his third response, the Respondent whispered all the words except the last word “Solicitor” and that whereas on the previous two responses the Respondent had said “Gan Solicitors”, on the third response he simply said “Gan Solicitor”. Mr Casey had been struck by the way the Respondent had said this and stated it was “etched clearly in my memory”.
- 30.6 Finally, the Tribunal had heard evidence from the Magistrates’ Clerk, Mr Gilbert, who advised the Tribunal that where representatives who were not well known to that particular court attended, they would be required to complete a slip of paper giving details of the name of the case, whether they were Counsel/Solicitor or their status and who they appeared for. The slip of paper would also request the name and address of the instructing solicitors and require an indication of the plea. Mr Gilbert confirmed the Respondent was not known to him and that the first time he had seen the Respondent was on 24 July 2008. When the matter had come before the Magistrates on two previous occasions, Mr Gilbert had not been working on those

dates.

- 30.7 Unfortunately Mr Gilbert had been unable to produce the slip of paper in relation to Ms N's case on 24 July 2008. Mr Gilbert confirmed he had wanted to establish whether the Respondent had been Counsel or Solicitor when the hearing was adjourned as this would be relevant to the process of relisting. Accordingly he asked the Respondent if he was Counsel or Solicitor. Mr Gilbert said he did not receive any response to his question and therefore asked the question again. The Respondent had said something but Mr Gilbert did not hear him and therefore asked the question a third time. On the third occasion the Respondent had replied "solicitor". Mr Gilbert was clear that the Respondent had stated "solicitor" and it was on that basis that Mr Gilbert had proceeded. Mr Gilbert also confirmed that he had given the Respondent quite a bit of latitude as the Respondent appeared to be learning on his feet and Mr Gilbert had thought the Respondent had probably only been qualified for a couple of weeks.
- 30.8 Mr Gilbert confirmed that the only unadmitted persons who were allowed to conduct advocacy were restricted to certain authorities who could prosecute with their own non-admitted in-house officers. If that was the case the officer would complete the form stating they were "an authorised officer" and they would cross out the words "counsel/solicitor". However, unadmitted officers would very rarely deal with any contested matters and tended only to deal with guilty pleas. Mr Gilbert also confirmed that non qualified persons were not generally permitted to deal with pleas. Mr Gilbert was clear in his mind the Respondent had given him an indication that the Respondent was a solicitor from a firm of solicitors. Mr Gilbert confirmed the Respondent had taken a very active part in the defence of Ms N's case and that if Mr Gilbert had known the Respondent was not a solicitor or counsel, Mr Gilbert would not have allowed the trial to proceed, particularly as Ms N had the benefit of a Legal Representation Order. Mr Gilbert would have telephoned Gan & Co Solicitors and told them to send someone to the court immediately to apply for an adjournment. Furthermore, Mr Gilbert confirmed that if the Respondent had completed the slip of paper stating he was a paralegal, then Mr Gilbert would have stopped the proceedings immediately and the Chairman of the Magistrates that day would also have raised this as an issue.
- 30.9 The Tribunal having considered all the evidence was satisfied the Respondent had used the word "solicitor" when he was asked whether he was counsel or solicitor. The Tribunal was satisfied that the Respondent had held himself out as a solicitor and that he had failed to follow the instructions of his supervising solicitor to instruct Counsel to represent the client at the trial of her matter before the Havering Magistrates Court on 24 July 2008. He had indeed represented the defendant himself at the said trial contrary to the Solicitors Act 1974.
- 30.10 The Tribunal was also mindful that the Respondent had not made any application to adjourn the trial, that this was not the Respondent's first time appearing in a magistrates court and that the Respondent would have known the procedure. The Respondent had not simply carried out an administrative task, it was clear on the evidence that he had conducted a trial, he had carried out two/three hours of cross-examination and indeed, the Respondent himself had accepted in his letter to the Solicitors Regulation Authority dated 24 April 2009 that he had undertaken reserved

work which he should not have done. In the circumstances, the Tribunal found both allegations proved beyond reasonable doubt.

### **Previous Disciplinary Matters**

31. None.

### **Mitigation**

32. There was no mitigation from the Respondent to the Tribunal. However, in his letter of 24 April 2009 to the Solicitors Regulation Authority, the Respondent had stated he regretted his error of judgement. He was focusing at that time on obtaining a training contract and that any requirement for a potential employer to contact the SRA before considering employing him may be an impediment to a training contract opportunity. He also made reference to his long term disability and ill health.

### **Sanction**

33. An Order under s.43 of the Solicitors Act 1974 (as amended) was a regulatory provision designed to afford safeguards and exercise control over those employed by solicitors where appropriate. The fundamental principle involved was the maintenance of the good reputation of the solicitors' profession, both in the interests of the profession and of the public. A s.43 Order was not a punitive order and it did not prohibit a person from working for a solicitor, but simply allowed the Law Society to grant permission and scrutinise the circumstances in which such a person was employed.
34. The Tribunal had found the Respondent had acted in breach of Section 1 and Section 20(1)(a) of the Solicitors Act 1974 and as such, the Tribunal was satisfied that it was necessary to regulate the future employment of the Respondent in any legal practice. Accordingly, the Tribunal considered it was appropriate and proportionate for a regulatory order under s.43 to be made in this case.

### **Costs**

35. The Applicant requested an Order for his costs and provided the Tribunal with a Schedule indicating the costs came to a total of £14,758.35. The Applicant confirmed a copy of the Schedule had been sent to the Respondent by post, fax and email on 12 July 2011 and the Respondent had been informed that if he wished to rely on lack of means to pay costs, he should provide the Tribunal with evidence of this. However, the Respondent had not responded.
36. The Applicant explained that there had previously been two aborted hearings, which had been aborted very close to the hearing date and as a result, additional correspondence had been required in relation to re-arranging those hearings and to take into account the availability of four witnesses and contacting the Respondent who had been elusive throughout. Attendances had taken place on each of the witnesses, some of whom were not located within London and lengthy witness statements had been drafted for them.

37. The Tribunal having considered the Schedule of Costs and the documentation in this case noted there had been no submissions or representations from the Respondent and indeed, the Respondent had not engaged with the process. Nevertheless, the Tribunal was of the view that the costs were excessive. The hearing had taken less time than estimated in the Costs Schedule and the Tribunal was of the view that the telephone and correspondence claimed at 18 hours together with a further 28 hours of preparation and drafting were excessive. In the circumstances, the Tribunal assessed the Applicant's costs in the total sum of £8,500 (inclusive of VAT) and ordered the Respondent pay this amount.

### **Statement of Full Order**

38. The Tribunal Ordered that as from 20th day of July 2011 except in accordance with Law Society permission:-
- (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Olugbeminiyi Morakinyo Olurotimi Ijaola of 15 Brunel Road, London, E17 8SA;
  - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Olugbeminiyi Morakinyo Olurotimi Ijaola;
  - (iii) no recognised body shall employ or remunerate the said Olugbeminiyi Morakinyo Olurotimi Ijaola;
  - (iv) no manager or employee of a recognised body shall employ or remunerate the said Olugbeminiyi Morakinyo Olurotimi Ijaola in connection with the business of that body;
  - (v) no recognised body or manager or employee of such a body shall permit the said Olugbeminiyi Morakinyo Olurotimi Ijaola to be a manager of the body;
  - (vi) no recognised body or manager or employee of such a body shall permit the said Olugbeminiyi Morakinyo Olurotimi Ijaola to have an interest in the body;

And the Tribunal further Ordered that the said Olugbeminiyi Morakinyo Olurotimi Ijaola do pay the costs of and incidental to this application and enquiry fixed in the sum of £8,500.00.

Dated this 14<sup>th</sup> day of September 2011  
On behalf of the Tribunal

J. P. Davies  
Chairman