SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10895-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ADEYINKA ABIMBOLA ADENIRAN Respondent

Before:

Mrs J. Martineau (in the chair)
Mrs K. Thompson
Mr S. Howe

Date of Hearing: 26th September 2012

Appearances

Andrew Bullock, barrister of Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent appeared in person.

JUDGMENT

Allegations

1. The Allegations against the Respondent were:

1.1 The Respondent acted without integrity in breach of Rule 1.02 of the Solicitors' Code of Conduct 2007;

1.2 The Respondent behaved in a way that was likely to diminish the trust the public placed in him or in the legal profession in breach of Rule 1.06 of the Solicitors' Code of Conduct 2007.

Documents

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

Applicant:

- Application dated 5 December 2011 together with attached Rule 5 Statement and all exhibits;
- Costs Schedule dated 17 September 2012.

Respondent:

- 2 large lever arch files containing bundles of documents;
- Witness statement of Moronke Christiana Lufadeju dated 25 September 2012 together with all exhibits;
- Unsigned witness statement of Richard Hele;
- Witness statement of Seyi Agnes Kwushue dated 13 January 2012;
- Witness statement of Tanzila Sattar dated 15 August 2008;
- Productions in Civil Proceedings Document;
- Documents relating to bail application dated 23 January 2012;
- Notice of application for witness order dated 25 January 2012;
- Restricted document relating to Charge(s) dated 15 August 2008;
- Opening Note dated 1 September 2010;
- Transcript of evidence given at Croydon Crown Court in the case of R v Bello, Bello, Adeniran and Sabharwal on 15 September 2010;
- Application for Leave to Appeal against Conviction and Sentence and Grounds of Appeal dated 16 January 2011;
- Application for Leave to Appeal against Conviction and Sentence and Grounds of Appeal dated 9 September 2011;
- Application for Leave to Appeal against Conviction and Sentence and Grounds of Appeal dated 30 November 2011;

- Advice and Application for Leave to Appeal against Conviction and Sentence and Grounds of Appeal dated 7 December 2011;
- Certified copy of Memorandum of Conviction dated 4 November 2008 from Barking Magistrates Court;
- Bundle of correspondence between the Respondent and the Tribunal dated from 21 December 2011 to 9 August 2012;
- Miscellaneous unsigned document headed "Adeyinka Adeniran".

The Respondent's Application for an Adjournment

3. At the beginning of hearing, the Respondent requested confirmation as to whether any of the members of the Tribunal panel were familiar with HHJ Heather Baucher, who had dealt with his case at the Croydon Crown Court in December 2010. HHJ Baucher had previously been a member of the Solicitors Disciplinary Tribunal and the Respondent was concerned that, as he had made a complaint about HHJ Baucher, there may be bias against him by this division of the Tribunal.

4. The Respondent referred the Tribunal to paragraph 6 of the Tribunal's Memorandum of Adjournment dated 26 July 2012 which made reference to his defence of a wrongful conviction in his case, and to his right to a fair hearing under Article 6 of the Human Rights Act 1998. The Respondent submitted the Tribunal could regulate its own procedure and as the SRA had failed in their duty to investigate his conviction, it would be wrong for the Tribunal to proceed with this matter in circumstances where people had been allowed to stay in the country regardless of the use of fraudulent documents. A complaint had been made against HHJ Baucher concerning her performance as a member of the judiciary, and the Respondent submitted the Tribunal had a duty, in the public interest, and for the integrity of the profession to deal with this issue. It was relevant that the members of the division of the Tribunal sitting today knew HHJ Baucher and would rely on her sentencing remarks, which the Respondent submitted were wrong.

5. The Respondent was referred by the Tribunal to the case of R (on the application of Kaur) v Institute of Legal Executives Appeal Tribunal and Another [2011] EWCA Civ 1168. He submitted there was a real possibility that the Tribunal could be biased. The Respondent had an appeal pending against his conviction and whilst that was pending, he submitted the conviction could not be relied upon. He submitted he was entitled to a fair hearing and that it was not appropriate for any member of the Tribunal who had known HHJ Baucher or was familiar with her to hear his case as bias remained.

6. Mr Bullock for the Applicant, confirmed that the Respondent had indeed complained about HHJ Baucher and a number of others. However he submitted that the fact a complaint had been made and was outstanding did not mean there would be any bias. Mr Bullock reminded the Tribunal that on 26 July 2012 the matter had been adjourned, not due to the Respondent's pending appeal against his conviction, but in order to enable the Respondent to attend the substantive hearing or arrange for representation and to preserve his rights to a fair trial. The Tribunal on that occasion had discussed the option available to the Respondent to apply to the Tribunal for a rehearing if necessary, should his appeal be successful. Mr Bullock accepted the

appropriate test to be used when considering the issue of bias was the test set out in the case of R (on the application of Kaur) v Institute of Legal Executives Appeal Tribunal and another. That test had also been referred to in the case of Holmes v Royal College of Veterinary Surgeons [2011] UKPC 48, in which the case of Porter v Magill [2001] UKHL 67 had been reiterated. It was stated:

> "The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Tribunal was biased".

7. Mr Bullock submitted that if the Respondent's argument was accepted and the Tribunal were to recuse themselves in this case, then this could cause a major problem for the administration of justice in the future.

The Tribunal's Decision on the Respondent's Application to Adjourn

8. The Tribunal had considered carefully the submissions of both the Respondent and Mr Bullock and had also considered the cases referred to. LJ Rix in the case of R (on the application of Kaur) v Institute of Legal Executives Appeal Tribunal and another had set out the test to be used when considering issues of bias. The test was as follows:

> "that judges should not sit or should face recusal or disqualification where there is a real possibility on the objective appearances of things, assessed by the fair-minded and informed observer (a role which ultimately, when these matters are challenged, is performed by the court), that the tribunal could be biased."

There was reference to an "automatic disqualification" test which dealt with "cases where the personal interest of the judge concerned, if judged sufficient on the basis of appearances to raise the real possibility of preventing the judge bringing an objective judgment to bear, is deemed to raise a case of apparent bias."

9. In this case the members of this division of the Tribunal had a negligible knowledge of HHJ Baucher who had in fact resigned from the Tribunal over three years ago. The Tribunal was also mindful that the purpose of this hearing was not to deal with any complaint that had been made but simply to look at the allegation which was based on a Certificate of Conviction. The Tribunal had explained to the Respondent that one member of this division of the Tribunal had no knowledge of HHJ Baucher, having been appointed after HHJ Baucher left the Tribunal, and the other two members had not had any contact with HHJ Baucher since she left the Tribunal, and only had a passing acquaintance of her in a professional capacity as a former fellow member of the Tribunal. The Tribunal confirmed that it would take no account of HHJ Baucher's sentencing remarks in this case in any event.

10. The Tribunal considered the test set out in R (on the application of Kaur) v Institute of Legal Executives Appeal Tribunal and another and was satisfied that due to this division of the Tribunal's negligible knowledge of HHJ Baucher, and taking into account the nature of the allegation against the Respondent which was based on a Certificate of Conviction, a fair-minded and informed observer would not consider

there was a real possibility on the objective appearance of things, that this division of the Tribunal could be biased. The Tribunal was satisfied that to hear this case would not give rise to any bias or any apparent appearance of bias by this division of the Tribunal. Accordingly, the Respondent's application was refused.

Factual Background

11. The Respondent, born on 8 August 1971, was admitted to the Roll on 3 February 2003.

12. In the Croydon Crown Court on 25 November 2010, the Respondent was convicted upon indictment of one count of conspiracy to facilitate the commission of a breach of immigration law and on 13 December 2010 at that same Crown Court he was sentenced to eight years and six months imprisonment. A Certificate of Conviction dated 20 December 2010 confirmed the conviction and sentence.

Witnesses

13. No witnesses gave evidence.

Findings of Fact and Law

14. The Tribunal had carefully considered all the documents provided and the submissions of both parties. The Tribunal confirmed that all allegations had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering each allegation.

15 Allegation 1.1: The Respondent acted without integrity in breach of Rule 1.02 of the Solicitors' Code of Conduct 2007.

Allegation 1.2: The Respondent behaved in a way that was likely to diminish the trust the public placed in him or in the legal profession in breach of Rule 1.06 of the Solicitors' Code of Conduct 2007.

15.1 The Tribunal had been referred to a Certificate of Conviction dated 20 December 2010 which was relied upon by the Solicitors Regulation Authority ("SRA") as conclusive proof of the facts upon which the conviction was based. That certificate confirmed the Respondent had been convicted of one count of conspiracy to facilitate the commission of a breach of immigration law and had been sentenced to eight years and six months in prison.

15.2 The Respondent had repeatedly submitted that the conviction was wrong, that it was the subject of an appeal, and therefore could not be relied upon. The reality was that it was not an appeal against conviction as such, but an application for a review by the Criminal Cases Review Commission. His appeal against conviction as such had been dismissed. He had also made reference to lodging a number of complaints against various parties who had been involved in the criminal proceedings. The Respondent stated he had not assisted anyone unlawfully and that people who had been accused of related offences had been allowed to remain in the UK. He referred the Tribunal to a number of documents where successful appeals had been made by third parties

referred to in the criminal proceedings and indefinite leave to remain had been granted to them. The Respondent submitted he had acted with integrity at all times, he had not been properly represented at the criminal trial and that he had been unlawfully convicted as a result of this.

15.3 The Respondent submitted the Tribunal could direct the SRA to investigate these matters further as irregularities in his trial should be considered. He submitted he had not dealt with the application that had been the subject of the criminal proceedings and that it had been dealt with by a member of his staff. The Respondent submitted he had not breached any rules.

15.4 The Tribunal had referred the Respondent to Rule 15(2) of The Solicitors (Disciplinary Proceedings) Rules 2007 which stated:

> "A conviction for a criminal offence may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction shall constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based shall be admissible as conclusive proof of those facts save in exceptional circumstances."

15.5 The Tribunal had made it clear to the Respondent that it was unable to look behind a Certificate of Conviction. The Tribunal had also referred the Respondent to Rule 21(5) of The Solicitors (Disciplinary Proceedings) Rules 2007 which stated:

> "Where the Tribunal has made a finding based solely upon the certificate of conviction for a criminal offence which is subsequently quashed the Tribunal may, on the application of the Law Society or the respondent to the application in respect of which the finding arose, revoke its finding and make such order as to costs as shall appear to be just in the circumstances."

15.6 Accordingly, based upon the Certificate of Conviction dated 20 December 2010, the Tribunal was satisfied that as a result of being convicted of a criminal offence, namely one count of conspiracy to facilitate the commission of a breach of immigration law, and having been sentenced to eight years and six months imprisonment, the Respondent had acted without integrity and had behaved in a way that was likely to diminish the trust the public placed in him or in the legal profession. Accordingly, the Tribunal found both allegations proved.

Previous Disciplinary Matters

16. None.

Mitigation

17. The Respondent confirmed that for two years prior to the conviction, conditions had been placed on his practising certificate which meant that he had not been able to work during those two years. He had not been able to work since his conviction either. The condition placed on his practising certificate was that he could not continue to act as a duty criminal solicitor or give advice.

18. The Respondent confirmed he did not have any assets although he did own a property subject to a mortgage. He had now been in prison for two years and had not been able to work for four years, and therefore did not have any income.

Sanction

19. The Tribunal had considered carefully the Respondent's submissions. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

20. This was a case where the Respondent had been sentenced to eight years and six months of imprisonment which reflected the seriousness of the offence for which he had been convicted. Whilst the Tribunal had not taken into account any of the sentencing remarks made in the criminal proceedings, it did take into account the case of Bolton v The Law Society [1994] CA and the comments of Sir Thomas Bingham MR who had stated:

> "It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness..... Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal... If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends on trust. A striking off order will not necessarily follow in such a case but it may well."

21. The Respondent's conduct had caused a great deal of damage to the reputation of the profession and had diminished the trust the public placed in him. It was not acceptable for a solicitor to be convicted of such a serious criminal offence and to continue to remain on the Roll of Solicitors, as such a conviction went to the very core of the trust placed in the profession, and the duty of a solicitor to uphold the rule of law and the proper administration of justice. The Tribunal Ordered the Respondent be struck off the Roll of Solicitors.

Costs

22. Mr Bullock for the Applicant requested an Order for his costs in the total sum of £3,406.69. He provided the Tribunal with a Statement of Costs which contained a breakdown of those costs. He submitted that whilst the Respondent had indicated he was unable to meet any costs order, he had not produced the evidence required pursuant to the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin), which he had drawn to the Respondent's attention prior to today's hearing. Mr Bullock wanted to challenge the Respondent in relation to his means as he did not accept that the Respondent did not have any savings available to him. Furthermore, the Respondent had confirmed he had an interest in a property but it was not known

what the value of that property was, or whether there was any equity in it. Mr Bullock requested the Respondent should be required to confirm the position on oath and be subject to cross examination so that the matter could be explored further.

23. The Respondent stated he had not received any information from the SRA regarding costs and confirmed again that he had not been able to work since 2008. He indicated the SRA were fully aware of his circumstances.

24. The Tribunal had considered carefully the matter of costs and was satisfied that the amount of costs claimed was reasonable. Accordingly, the Tribunal made an Order that the Respondent should pay the Applicant's costs in the sum of £3,406.69.

25. In relation to enforcement of those costs, the Tribunal noted the Respondent had stated he had not worked since 2008 and that he had not received any letter from the SRA regarding costs. The Tribunal was mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay those costs. The Respondent's livelihood had been removed as a result of the Tribunal's Order and he was currently serving a lengthy prison sentence which meant that he would not be able to earn any income for some time to come. Accordingly, the Tribunal further Ordered that the Order for costs was not to be enforced without leave of the Tribunal.

Statement of Full Order

26. The Tribunal Ordered that the Respondent, Adeyinka Abimbola Adeniran, 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 fixed in the sum of £3,406.69, such costs not to be enforced without leave of the Tribunal.

Dated this 14th day of November 2012
On behalf of the Tribunal

Mrs K Thompson
For and on behalf of Mrs J Martineau, Chairman