

IN THE MATTER OF NICHOLAS TAYENGWA CHITSIGA, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. G.B. Marsh (in the Chair)
Mr. D.E. Fordham
Lady Bonham Carter

Date Of Hearing: 2nd May 1996

FINDINGS

of the Solicitors' Disciplinary Tribunal
constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Complaints Bureau by Andrew Christopher Graham Hopper solicitor of PO Box 7 Pontyclun, Mid Glamorgan, CF7 9XN on the 27th November 1995 that Nicholas Tayengwa Chitsiga of 237 Dudley Road, Winson Green, Birmingham might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

In a supplementary statement dated the 16th February 1996 a further allegation was made against the respondent. The allegations set out below are those contained in the original and supplementary statements of the applicant.

The allegations were that the respondent had:-

- (i) failed to comply with the Solicitors accounts Rules 1991 in that he drew money from client account other than as permitted by Rule 7 and contrary to Rule 8 of the said Rules;

- (ii) failed to comply with the said Rules in that he failed to keep his book of account properly written up notwithstanding Rule 11(1) of the said Rules.
- (iii) the respondent had been guilty of conduct unbecoming a solicitor for his own purposes.

The application was heard at the Court room, No.60 Carey Street, London, WC2 on the 2nd May 1996 when Andrew Christopher Graham Hopper solicitor of PO Box 8, Pontyclun, Mid Glamorgan appeared for the applicant and the respondent was represented by John Lishman solicitor advocate of Tasley Cottage, Tasley, Bridgnorth.

The evidence before the Tribunal included the admissions of the respondent.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Nicholas Tayengwa Chitsiga of 237 Dudley Road, Winson Green, Birmingham solicitor be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry to be taxed if not agreed.

The facts are set out in paragraphs 1 to 15 hereunder.

1. The respondent, born in 1932, was admitted a solicitor in 1991. At the material time he practised initially in partnership and subsequently on his own account as Chitsiga & Co., at 237 Dudley Road, Winson Green, Birmingham.
2. Upon due notice to the respondent Solicitors Accounts Rules monitoring visits were carried out at his practice on the 17th August and 30th November 1993 and 12th April 1994. Again on notice to the respondent an inspection of his accounts was undertaken by an Investigation Accountant of the Solicitors Complaints Bureau in July 1994.
3. A number of anomalies and breaches of the Solicitors Accounts Rules were discovered and advice was tendered to the respondent as to how to put matters right. The Tribunal had before it copies of the letters written to the respondent by the Law Society's Monitoring Unit following their three inspections, together with a copy of the report dated the 4th January 1995.
4. A further inspection, upon due notice, of the respondent's books of account was made by the Investigation Accountant of the Solicitors Complaints Bureau (the Bureau) and a copy of the report dated the 4th December 1995 was before the Tribunal.
5. The Tribunal has not set out here details of the earlier criticisms of the respondent's accounting but has set out in some detail the facts revealed by the Investigation Accountant's report of 4th December 1995.
6. The report revealed that a list of liabilities to clients as at the 30th September 1995 was produced for inspection and totalled, after adjustment, £24,943.68. The items were in agreement with the balances shown on the client ledger but did not include further liabilities of £6,913.12 in respect of clients' funds improperly retained in office bank account. A comparison of total liabilities (including the further liabilities not shown by the books) with cash available in client bank account at the 30th September 1995 after allowance for uncleared items revealed the following position:-

Liabilities to clients shown by the books	£24,943.68
Liabilities not shown by the books	<u>6,913.12</u>
	£31,856.80
Cash available	<u>£3,176.55</u>
Cash shortage	<u>£28,680.25</u>

7. The cash shortage was partially rectified on the 3rd October 1995 by the reallocation of funds totalling £17,000 received on the 28th April 1995 in respect of private loans and previously credited to accounts on the client ledger in the names of the two lenders concerned. The shortage was further reduced by transfers of £1,500 and £2,588.16 from office to client bank account on the 3rd October 1995 and the 18th October 1995 respectively and by the payment of professional disbursements of £70 and £1,000 on the 17th October 1995 and the 24th October 1995 respectively.
8. The respondent said he was unable to rectify the outstanding shortage of £6,522.09. He said he would inform the Bureau if and when that had been done.
9. The cash shortage arose in the following way:-
- | | |
|------------------------------------------------------------------------------------------------------------------------------|-------------------|
| (i) Improper transfers from client to office bank account | £13,710.00 |
| (ii) Overpayments | 7,592.23 |
| (iii) Legal Aid Board funds received in respect of professional disbursements and improperly retained in office bank account | 4,770.65 |
| (iv) Clients' funds improperly retained in office bank account | 2,142.47 |
| (v) Improper payment | <u>185.43</u> |
| | £28,400.78 |
| (vi) Book difference (shortage) | <u>279.47</u> |
| | <u>£28,680.25</u> |
10. During the period between the 29th July 1994 and 7th June 1995 client bank account was charged, inter alia, with twenty three round-sum transfers to the office bank account varying in amount between £150 and £6,000 and totalling £18,310. The transfers were not allocated to any individual accounts in the client ledger but posted to an account entitled "Suspense Account".
11. The resultant shortage of £18,310 on client bank account was reduced during the period between 6th September 1994 and 28th August 1995 by three transfers totalling £4,600 from office to client bank account which were credited to the suspense account giving rise to a net shortage of £13,710 at the inspection date. The net shortage was rectified on the 3rd October 1995 by the part-utilisation of the loan funds referred to above of £17,000.
12. The respondent agreed that the round-sum transfers could not be allocated to individual accounts in the clients' ledger and that they were improper.

13. During the period between the 10th July 1994 and the 12th September 1995 overpayments varying in amount between £7.00 and £3,074.14 and totalling £7,592.23 occurred on the individual ledger accounts of twenty nine clients.
14. The matter of Legal Aid Board funds received in respect of professional disbursements and improperly retained in office bank account was partially rectified during the inspection by the payment of professional disbursements of £1,070. The respondent said that the professional disbursements had remained unpaid owing to financial difficulties.
15. On the 15th December 1994 client bank account was charged with a transfer to the office bank account of £6,000. The transfer was not allocated to any account in the client ledger but posted to the suspense account. The respondent agreed that the transfer could not be allocated to any individual account in the client ledger. He told the Investigation Accountant that the transfer had been made so that he could pay the staff wages bill and partly to fund his own drawing of £1,780.28 for the month of December 1994. He was reported to have said to the Investigation Accountant "look, I can't deny it, I took that money."

The Submissions of the Applicant

16. There had been a clear and conscious taking of money by the respondent which did not belong to him for the purpose of keeping his practice afloat. That had been going on over a period of time and when the respondent was in active correspondence with the Monitoring Unit of the Law Society in which he gave assurance that his accounts were ever improving.
17. The respondent's practice suffered cash flow difficulties, the applicant accepted that the respondent would have put the money back.
18. The Law Society intervened in the respondent's practice following the Investigation Accountant's report of December 1995.

The Submissions of the Respondent

19. The respondent had taken a degree at Pretoria University in 1962 and had thereafter been employed by a major international company in Rhodesia. He had been the first black person to take up an executive position within that company. The respondent came to the United Kingdom in the late 1960's where he served three and a half years articles under the training system which was then in place and thereafter went to the College of Law. The path of his career then changed and he worked as an employee of the Inland Revenue for some years. He was then employed by a body which gave advice to ethnic minority businesses in the Midlands. He studied for his MBA at Aston University and in due course took his solicitors finals in 1990 leading to his admission as a solicitor in December 1991.
20. He ran his own practice from Birmingham city centre and then in one of the inner suburbs. He had successfully built up a very large practice, however that practice suffered from two difficulties. The first was that it was almost entirely a legal aid

practice and dependant on the fortnightly cheque received from the Legal Aid Board to maintain its cash flow. The second problem was that the respondent had no capital and no overdraft facility.

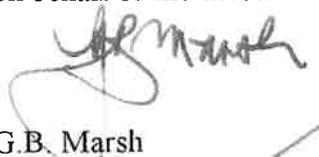
21. The firm's clients were drawn mainly from ethnic minorities. The work was extremely demanding.
22. The respondent's book keeping failures had been largely due to a dishonest member of staff although the respondent accepted the responsibility was entirely his and that he had not exercised adequate supervision. There had, however, been no loss to any client.
23. Perhaps the greatest difficulty faced by the respondent was the very long time that he had to wait for payment from the Legal Aid Board.
24. The respondent had been forced to draw £6,000 during the week before Christmas in 1994. He had no money to pay his staff wages. The respondent was well aware that a large number of bills had been submitted to the Legal Aid Board and they were awaiting payment. He had asked the Board when the next payment would arrive and he had been given to understand that he would have to wait for about one week. The payment due was in excess of £6,000. The respondent was perfectly well aware that that sum would be out of client account for the period of only one week.
25. The respondent was well thought of and highly regarded in the community in which he practised. He had however suffered further difficulty when his accountants refused to undertake further work until their fees had been settled.
26. Following the intervention into his practice by the Law Society, the respondent had been granted a practising certificate subject to the condition that he worked only in approved employment. He had not however obtained employment and was waiting for the outcome of the disciplinary proceedings.
27. The respondent accepted that he ought not to practise on his own account but hoped the Tribunal would allow him to continue to practise as a solicitor in employment to enable him to continue to give the service to that part of the community that he sought to serve and who badly needed him. The respondent would not and could not in those circumstances repeat those misdemeanours which had been alleged against him and which he had admitted.

The Tribunal FOUND the allegations to have been substantiated, indeed they were not contested. Subsequent to the conclusion of the hearing on 2nd May 1996, but prior to formulation of these Findings, the Clerk to the Tribunal received a letter from the respondent dated 2nd May which had attached to it a typed and signed statement comprising six pages. The letter from the respondent states that he is "applying for a re-hearing of the matter". In the view of the Tribunal a re-hearing of this case would not be appropriate; the respondent appeared before the Tribunal on 2nd May 1996 and was represented by a solicitor. The members of the Tribunal have, however, taken into account the statements and submissions made by the respondent in the typed statement sent with his letter prior to drawing up the Findings. Had the Tribunal been in

possession of that statement prior to making the formal Order on 2nd May 1996 the Order would still have been made in the same form. The Tribunal have found this to be a very sad case. It was clear that the respondent had worked hard throughout his life and had qualified as a solicitor rather later in life than was customary and had applied that qualification to assist those parts of the community who were badly in need of such assistance. It was clear that the respondent had been successful and well thought of in the pursuit of that end. The Tribunal, of course, has considerable sympathy for a solicitor who is left in a position of financial embarrassment when fees due to him are not paid promptly. That, however, is not an excuse for disregarding the Accounts Rules over a substantial period of time. The Tribunal have noted that the respondent was well aware that substantial monies were due to him from the Legal Aid Board and following enquiry he was assured that they would be dispatched to him in a short period of time. However the most serious matter was that the respondent deliberately utilised clients' monies to pay not only staff wages but to fund his own drawing from his firm. The Tribunal could not avoid a finding that such an action was dishonest. A solicitor who is dishonest should not be permitted to remain on the Roll. The Tribunal ordered that the respondent be struck off the Roll of Solicitors and further ordered that he should pay the costs of and incidental to the application and enquiry to be taxed if not agreed.

DATED this 10th day of June 1996

on behalf of the Tribunal


G.B. Marsh
Chairman

Final Order made by the
Tribunal on the 12th
day of June 1996