No. 9629-2006

IN THE MATTER OF CHUCKWUMA CHINWA OKIRIE and
OLUKAYODE OKENLA, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R B Bamford (in the chair)
Mr A H B Holmes
Mr G Fisher

Date of Hearing: 5th July 2007

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

Applications were duly made on behalf of the Law Society by Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill, 72-74 Fore Street, Hertford, SG14 1BY on 7th December 2006 that Chuckwuma Chinwa Okirie of Partridge Great Fields, London, NW9, solicitor, and Olukayode Okenla of Dylways, Denmark Hill Estate, London, SE5, solicitor, might be required to answer the allegations contained in the statement which accompanied the applications and that such order might be made as the Tribunal should think right.

The allegations against the Respondents were that they had been guilty of conduct unbefitting solicitors in each of the following particulars.

Against both Respondents

(i) That they failed to keep books of account properly written up;

(ii) That they transferred or permitted to be transferred monies from client account other than as permitted by the Solicitors Accounts Rules;

(iii) That they failed to ensure adequate supervision over their offices and staff.

Against the First Respondent only

(iv) That he failed to report material facts to lender clients in conveyancing transactions.

(v) That he used clients' monies for his own purposes.

By a supplementary statement of Stephen John Battersby dated 21st May 2007 it was further alleged that the Respondents had been guilty of conduct unbefitting solicitors in each of the following particulars.

Against both Respondents

(vi) That as partners in a firm they failed to ensure compliance with an undertaking given by that firm.

Against the First Respondent only

(vii) That he failed to respond to correspondence from the Solicitors Regulation Authority.

The applications were heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 5th July 2007 when Stephen John Battersby appeared as the Applicant, the First Respondent did not appear and was not represented and the Second Respondent was represented by Jack Friend, solicitor of 11 Sudbury Hill Close, Wembley, HA0 2QR.

Application for an adjournment by the First Respondent

Submissions of the First Respondent

1. By a fax to the Tribunal dated 5th July 2007 the First Respondent sought an adjournment of the substantive hearing. He said that his solicitors had received a letter from the Applicant on 28th June 2007 stating that the supplementary bundle had been served on the First Respondent's last known address. The First Respondent said he had not received this bundle and he corrected the postcode referred to by the Applicant.

2. The First Respondent subsequently received the supplementary bundle through his solicitors on 28th June 2007. In the light of its contents he requested an adjournment to enable to him to deal effectively with the issues raised.

3. Further, he had that morning received an email from his solicitor stating that they would not be able to assist him at the substantive hearing. He said that he was unable to attend in person due to ill-health. He indicated that a medical report would follow.

Submissions of the Applicant

4. The Applicant opposed the First Respondent's request for an adjournment. No medical report had been received. The First Respondent's request for an adjournment coincided with the breakdown of his retainer with his solicitors.

5. The Applicant could not dispute that the First Respondent was only aware of the supplementary statement on 28th June. The bundle had been returned marked 'address inaccessible'. The Tribunal had served the original bundle at that address and the First Respondent had acknowledged it. He did now have the supplementary bundle.

6. It was submitted that the Tribunal could:

   (a) Grant the adjournment.

   (b) Say that the supplementary bundle had not been served within the time limits provided by the Tribunal's Rules, but that the First Respondent had had plenty of notice of the Rule 4 statement and that the substantive hearing could proceed on those allegations with the supplementary allegations to be left on file in respect of the First Respondent. The Applicant submitted that the original allegations were sufficiently weighty for the Tribunal to take that view.

   (c) The Tribunal could say, and the Applicant invited the Tribunal to do so, that the supplementary bundle had been served at the last known address well within the time limit albeit it had not come to the attention of the First Respondent. The facts were straightforward and these were not allegations which would require much research on the part of the First Respondent. The Tribunal could abridge the normal time limits. If the Tribunal declined to proceed in that way the Tribunal was invited to proceed on the basis of (b) above.

   Submissions on behalf of the Second Respondent

7. Provided the Second Respondent's case could proceed today, Mr Friend had no observations on the First Respondent's application.

The decision of the Tribunal in relation to the application for adjournment

8. The Tribunal noted the error in the postcode which the First Respondent had drawn to its attention in the context of the service of the supplementary statement. Technically therefore the supplementary bundle had not been served at the correct address. In relation to the Rule 4 statement however the First Respondent had had ample notice of the hearing. He had sought an adjournment at the last minute but had not supplied any medical evidence to support his applications. The Tribunal was satisfied that the substantive hearing should proceed in the absence of the First Respondent but in relation to the allegations contained in the Rule 4 statement only. The supplementary allegations would be left on file in respect of the First Respondent. All allegations against the Second Respondent would be dealt with that day.

The Substantive hearing

The evidence before the Tribunal included the admissions of the Second Respondent. A bundle of references in support of the Second Respondent was handed to the Tribunal during the hearing.

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

The Tribunal Orders that the Respondent Chuckwuma Chinwa Okirie of Partridge Great Fields, London, NW9, solicitor, be struck off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £9,133.46.

The Tribunal Orders that the respondent Olukayode Okenla of Dylways, Denmark Hill Estate, London, SE5, solicitor, be reprimanded and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £500.

The facts are set out in paragraphs 9 to 22 hereunder:

9. The First Respondent, born in 1960, was admitted as a solicitor in 1999. The Second Respondent, born in 1969, was admitted as a solicitor in 2004.

10. At the material times the Respondents were in partnership under the style of Okirie & Co at Design Works, Unit 4, Park Parade, London, NW10 4HT until the firm was intervened into on 12th April 2006. As a result of the intervention the Practising Certificates of both Respondents were suspended but the Second Respondent had subsequently been granted a conditional Practising Certificate and was now an assistant solicitor with another firm. The First Respondent's Certificate remained suspended.

11. On 25th November 2005 an inspection of the books of account and other documents of the firm of Okirie & Co was commenced by two Law Society Investigation Officers. The resulting Report dated 31st January 2006 was before the Tribunal.

12. The Report noted that the First Respondent established the firm in August 2004 and was a sole principal until April 2005 when the Second Respondent joined him in the partnership. There were offices at the Design Works address and also Suite 2, Arkleigh Mansions, 200 Brent Street, Hendon, London, NW4 1BJ.

Allegation (i)

13. The Report noted that the way in which the firm's accounts had been kept was defective in the following particulars:

(a) No entries had been made to the books of account since 5th April 2005.

(b) No lists of balances or reconciliations had been carried out from the commencement of the practice in August 2004 until the date of the inspection except for those of 5th April 2005.

(c) Even after the cash book had been updated by the bookkeeper a number of receipts and payments had not been allocated to any individual account in the client ledger and no client ledger reconciliations were available.

Allegation (ii)

14. It was found that between 8th July 2005 and 24th November 2005, 14 round sum transfers ranging in value from £1,000 to £14,150 and amounting in total to £53,645 had been made from the firm's client bank account to the office account. A schedule of these was set out in the Report. The First Respondent explained them by saying that they related to costs transfers but he was unable to produce the relevant evidence to support that and such evidence had still not been produced.

Allegation (iii)

15. Law Society records showed that based at the Design Works office were:

The Second Respondent, admitted 1st March 2004
Mr AE (an assistant solicitor), admitted 16th January 2006
Mr B (an assistant solicitor), admitted 1st July 2005
Mrs AVA (a trainee solicitor)
Mr M (a trainee solicitor)

The same records indicated that based at the Arkleigh Mansions office were the First Respondent and Mr TK (an assistant solicitor admitted in 2000) who was also a partner in his own firm of K and Co. A solicitor is not qualified to supervise an office until he or she has been admitted for three years. Consequently, the Second Respondent could not act as a supervisor and the only persons who could do so were the First Respondent and Mr TK. Mr TK had responsibility for supervising his own practice. The First Respondent in a letter to the Law Society dated 5th March 2006 said that he supervised both offices with suitable cover arrangements with TK. He said the offices were 10 to 15 minutes' drive from each other.

Allegation (v)

16. The Investigation Officers discovered that on 22nd November 2005 a cheque had been issued from client account in the sum of £6,000. The payee was Mr DB and the description on the cheque stub said 'cars, drawings'. It was the First Respondent who had made this withdrawal, which related to a car being acquired for his own use. The First Respondent accepted full responsibility for this breach but stated in his response dated 5th March 2006 that the payment had been made in error from the client account rather than from the office account. A cheque which was meant to clear the deficit was presented to client account on 8th December 2005 but not honoured and it was not until 15th December that the shortfall was partially cancelled by a payment into client account of £5,700. The balance of £300 still remained outstanding at the date of the final meeting with the Investigation Officers on 26th January 2006.

Allegation (iv)

17. During the investigation, two conveyancing transactions were examined by the Investigation Officer. Each of these involved a purchase of residential property by Mr CC, who was the son of the First Respondent. The purchase price in respect of the first property, Flat 9, was £485,000 and in respect of the second, Flat 13, £500,000. In each case the Birmingham Midshires Building Society provided an advance to Mr CC, which for Flat 9 was £418,433 and for Flat 13 £431,375. The respective completion dates were 15th November 2005 (Flat 9) and 18th November 2005 (Flat 13). A common feature of both transactions was that the vendor in each provided the purchaser with a cashback incentive immediately after completion. The relevant amounts were £63,050 (Flat 9) and £65,000 (Flat 13). The transactions were carried out by Mr OA, an unqualified fee earner who was supervised by the First Respondent, and the First Respondent himself signed the certificates of title. He confirmed in so doing that his firm had complied with the instructions of the lenders. However, instructions provided by the Birmingham Midshires stated that incentives such as those received in Mr CC's case should be reported to them. The First Respondent admitted that no report had been made but in his response said that he had not believed that it needed to be but now realised that he was wrong.

18. The response of the Second Respondent was made on 3rd March 2006. He said he was unaware that the firm had not been keeping its Accounts Rules records or of the improper withdrawals made from client account. His comments on the supervision echoed those of the First Respondent.

Allegation (vi)

19. Okirie & Co in March 2006 were acting for Mr AS in connection with his sale of a property. W&J Solicitors acted for the purchasers. In their replies to Requisitions on Title dated 23rd March 2006 Okirie & Co undertook to redeem the mortgage on the property and to send DS1/END1 notification to W&J Solicitors to enable them to register their client's title.

20. Completion in the transaction took place on 28th March 2006 and W&J Solicitors sent the necessary funds to Okirie & Co on that day. W&J Solicitors did not however receive notification of discharge of the mortgage and were accordingly unable to register their client's title.

21. W&J Solicitors wrote to the Solicitors Regulation Authority on 12th January 2007 complaining about the failure to honour the undertaking and the Solicitors Regulation Authority wrote to the First Respondent and the Second Respondent on 27th February 2007 seeking their explanation for what had happened.

22. The Second Respondent replied to the letter by telephone and subsequently by correspondence from his solicitor Mr Friend. Mr Friend's representations on the Second Respondent's behalf were that he was out of the country between 18th February 2006 and 3rd April 2006 and therefore had no direct involvement with the matter. He produced passport entries confirming this. It was suggested on his behalf that the transaction was one which had been dealt with by the First Respondent.

The submissions of the Applicant

23. The Applicant, Mr Friend and the First Respondent would all say that the Second Respondent's practical involvement had been small. The view of the Law Society however was that having been held out as a partner the Second Respondent must bear some responsibility.

24. The relevant Notices had been served on the First Respondent without response and the Applicant would rely on the Report of the Investigation Officer, who was present at the hearing.

25. The Second Respondent had been involved on the notepaper from April 2005 but had been in Nigeria for some months obtaining immigration clearance. He had returned to the United Kingdom in late 2005 and his name had remained on the notepaper until the intervention. He had had very little involvement in the running of the firm and had not personally been involved in any of the transactions which were the subject of the allegations.

26. In a letter to the Law Society dated 17th July 2006 the First Respondent had conceded that he alone managed the accounts and records and that the Second Respondent had had no knowledge of the matters leading to the intervention. This was accepted by the Applicant.

27. The Applicant alleged dishonesty against the First Respondent in relation to allegations (ii) and (iv) and in relation to the car purchase and round sum transfer withdrawals (allegation (v)). Allegation (v) was included within allegation (ii).

28. In relation to the cheque for the car, the Applicant did not know whether the two cheque books, office and client, looked the same but the Law Society found it difficult to accept the First Respondent's explanation. Cheques for cars were not written out every day and it might be expected to exercise the mind of a solicitor signing cheques involving more than routine matters. There was no overdraft facility on the office account which at the material time could not have borne the payment.

29. In relation to allegation (iii), given the traffic in north London it would not have been easy for the First Respondent to get from one office to the other.

30. In relation to the conveyancing transactions there was nothing intrinsically wrong with incentives but they should have been reported to the lender client. The amounts involved were substantial. Disclosing these matters to the lender client would have resulted in a reduction in lending as the incentives and the amount lent were greater than the purchase price.

31. In relation to the matters contained in the supplementary statement which related to the Second Respondent, it was accepted that he was not in the country at the time but he had been held out as a partner and was therefore strictly liable.

The submissions on behalf of the Second Respondent

32. The Second Respondent had not in fact been a partner at the relevant time as discussions had still been ongoing. A great deal of material had been exchanged between the Second Respondent and the Law Society and there were confusing references in documents relating to the status of the Second Respondent. Nevertheless there was documentation to suggest that there was a partnership. If there was then the Second Respondent had been a salaried partner. The reality was however that the Second Respondent's name was on the notepaper and the Second Respondent had decided not to challenge the existence of a partnership. This was the basis of his plea.

33. The Tribunal was given details of the Second Respondent's background and family responsibilities in Nigeria, and his professional history as a member of the Nigerian Bar and most recently as deputy legal adviser and company secretary to the First Interstate Bank in Nigeria.

34. The Second Respondent had been admitted as a solicitor in 2004 and in that year had been introduced by his brother to the First Respondent. The First Respondent had Nigerian roots and the Second Respondent felt that he could trust him.

35. The Second Respondent had left the bank in Nigeria in March 2006. The firm had been intervened in April 2006. The Second Respondent's period of association with the firm was April 2005 to February 2006 and a short period in April 2006. The Tribunal was referred to the First Respondent's letter to the Law Society dated 17th July 2006 in which he wrote:

> "Further to the events leading to the intervention of Okirie & Co Solicitors where I was the Principal Partner/Supervisor, it is necessary to state for record the role of Mr Okenla in the whole matter notwithstanding and without prejudice to the disciplinary proceedings at the Solicitors Disciplinary Tribunal.
>
> Mr Okenla was admitted in the Practice of Okirie & Co Solicitors due to his experience in Nigeria but only resumed in November 2005 as a Partner under my employment and supervision. He had barely settled down in the firm in November before we had the visit from the forensic unit in the same month.
>
> …
>
> Mr Okenla has not properly settled down in the firm before travelling back to Nigeria in early February 2006 to fully disengage from his previous employers and also attend to urgent domestic matters before returning back to England in April 2006, few days before the intervention."

36. Solicitors sometimes appeared before the Tribunal because they were the authors of their own misfortune and sometimes because they were the victim of others' greed or stupidity. This was a tragic case in which a professional man's virtual downfall had been caused by being unprepared for the greed, dishonesty and breach of trust of an older, more experienced man. The First Respondent had taken advantage of the Second Respondent's naivety and absence abroad. The First Respondent had virtually

succeeded in crippling the Second Respondent professionally, financially, personally and emotionally.

37. The Applicant had been able properly to assess where culpability lay and the Tribunal was asked to adopt that approach.

38. Blame should be laid at the First Respondent's door despite his admissions at paragraph 35 above and his reference in a letter to the Law Society dated 5th March 2006 to the Second Respondent's "inimitable résumé and his professionalism at work". The Second Respondent relied neither on the First Respondent's admissions nor his compliments.

39. The Second Respondent had only become aware of the problems when the Investigation Officers visited. He had been led to believe by the First Respondent that this was all just routine.

40. The Second Respondent's position was as set out in his letter to the Law Society of 27th March 2006 in which he wrote:

> "I took immediate steps to follow up with Mr Okirie and the Book keeper on the issues raised at the meeting with Mr D and I constantly receive assurances from them (Mr Okirie and the Book Keeper) that the breaches would be remedied accordingly and an up to date reconciliations and balances would be provided and made available to the Law Society."

41. It was the mark of a professional man that the Second Respondent was here to face matters. This contrasted with the First Respondent's attitude. If the Tribunal had had any concerns about the Second Respondent's naivety, his professional approach in appearing at the hearing would dispel them.

42. The Second Respondent's active involvement with the firm had been almost non-existent. He had no involvement in or knowledge of the matters in the Rule 4 statement and had been out of the country at the time of the matters alleged in the supplementary statement.

43. It was the non-culpable party who had been left to pick up the pieces. The First Respondent was bankrupt and appeared to have washed his hands of responsibility although dire professional consequences might face him.

44. The Second Respondent had suffered enormously. The respectable professional life he had been building here for himself and his wife had evaporated.

45. He had with the consent of the Law Society sought employment to make a living wage.

46. He had not been able to resume his normal married life as his wife had had to remain in Nigeria working.

47. The Second Respondent faced a barrage of civil claims including intervention costs, insurance excesses, equipment supplies and the Applicant's costs. He had lost his pension rights when he left the bank and had had to beg for money for representation before the Tribunal.

48. The Second Respondent was a decent, God-fearing, respectable and intelligent man from a professional background who knew what it meant to behave professionally. English law and lawyers were held in high regard in Nigeria and the Second Respondent had felt himself fully protected in his involvement with the First Respondent.

49. The Tribunal was referred to correspondence from the Second Respondent setting out his extensive family responsibilities and his poor financial situation.

50. It was submitted that there was no need to interfere with the Second Respondent's right to practise.

51. The Second Respondent had no funds for a significant fine. The Tribunal might feel that the lessons from this matter had been burned into his flesh. The Tribunal could conclude that no penalty or a low-level penalty would be sufficient.

52. The Tribunal had always been sympathetic to recent entrants to the profession who made a mistake. The Second Respondent had caused no loss to clients nor personally breached any rules and it was not necessary to impose further burdens on him.

53. The Tribunal was asked to give the Second Respondent in the fullest sense the ability to practise as a solicitor without additional burdens. This would show the best traditions of how things were done in this country and that the law and the profession were something to cherish.

54. The Tribunal was referred to the testimonials in support of the Second Respondent.

Submissions as to costs

55. The Applicant sought his costs in accordance with the schedule he had served. The Tribunal might think it just to make separate orders apportioning costs in this case.

56. On behalf of the Second Respondent it was submitted that there was no need to make an order for costs against the Second Respondent, alternatively separate orders could be made for costs with that in respect of the Second Respondent being as nominal as possible. The Tribunal could also direct that the order for costs should not be enforced without leave.

The Findings of the Tribunal

57. The allegations against the Second Respondent had not been contested and the Tribunal found them substantiated.

58. In relation to the First Respondent only the allegations contained in the Rule 4 statement were before the Tribunal for consideration. The Tribunal considered carefully the documentation including correspondence from the First Respondent and was satisfied that the allegations against the First Respondent were substantiated including, applying the tests set out in Twinsectra -v- Yardley and others [2002] UKHL 12, dishonesty where alleged. Allegations (ii) and (v), which were linked, involved the First Respondent writing a cheque from client account for the purchase of a car. Although he had said that this was done in error, the office account could not

have funded that purchase at that time. Further, there had been a series of unexplained round sum transfers from client to office account. In relation to allegation (iv) the Tribunal noted that in the transactions where the First Respondent had failed to notify the lender client of incentives, the purchaser was his son. The First Respondent had signed the Certificates on Title and had been responsible for supervising the unqualified fee earner handling the matters. Solicitors had a duty to lender clients and the Tribunal did not accept the First Respondent's assertion that he had not realised at the time that his failure to inform his lender client had been wrong.

59. Allegation (i) was clearly substantiated from the Investigation Report, in respect of which Notices had been served on the First Respondent without response. The Tribunal was also satisfied that in the particular circumstances of the firm there had not been adequate supervision of the two offices and staff.

60. The allegations substantiated against the First Respondent were of the most serious kind and included dishonesty in the course of the First Respondent's practice in relation to clients' money. In order to protect the public and maintain the reputation of the profession it was right that the First Respondent's name be struck off the Roll of Solicitors.

61. In relation to the Second Respondent, it was important that solicitors who joined partnerships understood the care they needed to exercise. The Second Respondent had learnt this lesson the hard way. The Tribunal had however some sympathy for the position in which the Second Respondent had found himself, indeed he had been held out as a partner before he had even managed to obtain permission to come to the United Kingdom. In all the circumstances, and having considered the testimonials and mitigation put forward on behalf of the Second Respondent, the Tribunal was satisfied that the appropriate penalty was a reprimand.

62. In relation to costs the Tribunal would make separate orders against the two Respondents which would reflect their different levels of culpability.

63. The Tribunal ordered that that the Respondent Chuckwuma Chinwa Okirie of Partridge Great Fields, London, NW9, 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 £9,133.46. The Tribunal also ordered that the Respondent Olukayode Okenla of Dylways, Denmark Hill Estate, London, SE5, be reprimanded and it further ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £500.

DATED this 7th day of September 2007
on behalf of the Tribunal

R B Bamford
Chairman