THE LAW SOCIETY OF ZIMBABWE
versus
RAY TSVAKWI

**LEGAL PRACTITIONERS DISCIPLINARY TRIBUNAL**
HARARE, 28 SEPTEMBER 2018, 3 OCTOBER 2018, 30 October 2019 & 12 May 2021
Before: CHATUKUTA J (Chairperson),
MUSAKWA J (Deputy Chairperson)
MR D KANOKANGA & MRS S. MOYO (members)

*B. Pesanai*, for the Applicant
*G. Madzoka*, for the respondent

CHATUKUTA J: This is a case where the respondent does not have any defence to offer to the allegations against him. The evidence against the respondent is overwhelming and largely corroborated by the respondent in his counter-statement and supplementary heads of argument.

The applicant seeks an order for the deletion of the respondent's name from the Register of Legal Practitioners, Notaries Public and Conveyancers and payment of expenses incurred by the applicant in connection with these proceedings. The respondent is alleged to have practised law without a practising certificate in contravention of s 12 as read with s 8 of the Legal Practitioners Act [*Chapter 27:07*]. He is further alleged to have failed to account to "client" and extorted money in the form of assets from a member of the public contrary to By Law 70 of the Law Society of Zimbabwe By-laws, 1982 (SI 314/1982) (By Laws).

The application is opposed.

The charges arise from a complaint regarding one Mr Craig Mclean Bonnar (Mr Bonnar). The following are the facts as alleged by the applicant. The respondent approached Mr Bonnar at Remand Prison and stated that he could apply for bail for him. Mr Bonnar had not solicited the meeting. Mr Bonnar agreed that the respondent apply for bail on his behalf. He further agreed to pledge his motor vehicle as security for legal fees in the amount of US$13 000.The respondent instructed Mr Kadzere who interviewed the client and successfully applied for his bail. Mr Kadzere was at the time practising under Messrs Gill Godlonton & Gerans. The respondent had advised Mr Kadzere that he did not have his practising certificate on him hence he could not take instructions from Mr Bonnar.

The respondent denies Mr Bonnar being his client and rendering professional services to him. He explained that he could not have access to Mr Bonnar in Remand Prison because he was not a registered legal practitioner. He visited a relative of his, one Themba Mliswa who was in prison at the relevant time. Mr Mliswa was a business associate of Mr Bonnar. It is during this visit that he was asked to assist Mr Bonnar. He approached Mr Kadzere and requested him to assist Mr Bonnar. Mr Kadzere accepted the request and successfully applied for bail for Mr Bonnar. He did not instruct Mr Kadzere to represent Mr Bonnar. He only met Mr Bonnar after his discharge from prison on bail. He admitted receiving the motor vehicle from Mr Bonnar. He however denied that the vehicle was pledged as security for fees for professional services. He explained that he advanced Mr Bonnar a sum of US$10 000 after Mr Bonnar had sent one Mr Godwin Munyama asking for the advance. The vehicle was pledged as security for that advance. He also stated in paragraph 10 of his counter statement that the vehicle was ceded to Mr Kadzere. Mr Bonnar was not his client. It was not necessary to account to Mr Bonnar since he did not render professional services to him. Had he intended to practice without a practising certificate he would have personally applied for bail for Mr Bonnar. It would not have been necessary to seek Mr Kadzere's assistance.

It is common cause that sometime in July 2010, Mr Bonnar was arrested by CID Serious Fraud, Harare on allegations of fraud. He was taken to court and was remanded in custody. He was released from prison on bail following an application by Mr Kadzere, a legal practitioner. Bail was paid on 19 August 2010. The respondent met Mr Bonnar at the Harare Remand Prison. He facilitated communication between Mr Kadzere and Mr Bonnar. The vehicle had been pledged as security for legal fees. Mr Bonnar did not know Mr Kadzere before. He only came to know him when he was instructed by the respondent to represent him. Following his release from prison, Mr Bonnar surrendered his vehicle, a Mercedes Benz S280, to the respondent. The respondent sold the vehicle to one Irvine Mereki, a director at Alex Hasson Car. He gave Irvine Mereki the registration book for the vehicle. Irvine Mereki sold the vehicle to Charles Chimbwanda from whom it was recovered by the police. The respondent was during this period attached to Mugugu Law Chambers as a professional assistant. He had not yet been registered as a legal practitioner and therefore did not have a practising certificate.

The respondent initially raised in his counter-statement the defence that the Tribunal has no jurisdiction to determine allegations which he committed before he became a member of the applicant. The respondent abandoned the point and rightly so. Section 9 of the Legal

Practitioners Act [Chapter 27:07] gives the Law Society of Zimbabwe authority to regulate respondent's conduct. It reads

> "**9 Offences by unqualified persons**
> (1) No person other than a registered legal practitioner, registered notary public or registered conveyancer shall practise as such or in any manner hold himself as or pretend to be or make use of any words or any name, title, designation or description implying or tending to the belief that he is a legal practitioner, notary public or conveyancer as the case maybe, or is recognised by law as such.
>
> (2) Subject to any other law, no person other than a registered legal practitioner who is in possession of a valid practising certificate issued to him shall—
> (*a*) sue out any summons or process or commence, carry on or defend any action, suit or other proceeding in any court of civil or criminal jurisdiction in the name of any other person; or
> (*b*) for or in expectation of any fee, commission, gain or reward in any way instruct or assist any other person to sue out or threaten to sue out any summons or process or to commence, carry on or defend any action, suit or other proceeding in any court of civil or criminal jurisdiction; or
> (*c*) appear, plead or act in the capacity of a legal practitioner for or on behalf of any other person in any action, suit or other proceeding in any court of civil or criminal jurisdiction:"

Moreover, S 28 (1) (a) of the same Act empowers the Tribunal to determine acts of unprofessional conduct committed before or after registration. The Tribunal therefore has jurisdiction to hear this matter and accordingly make a determination.

There are two issues for determination by the Tribunal. The first issue is whether the respondent rendered legal services to Mr Bonnar. An answer in the affirmative would lead to the second issue, whether or not he accounted to client.

**Whether or not the respondent practised law without a practising certificate**

In addition to being admitted as a legal practitioner, notary public and or conveyancer, a registered legal practitioner must, in terms of s 12 of the Act, be a holder of a practising certificate. Practising as a legal practitioner includes holding out as a holder of such certificate. The applicant relied on the following documents as proof that the respondent practised contrary to s 12 of the Act.

**(a) Statement recorded by the police from Mr Kadzere.**

A statement was recorded from Mr Kadzere by the police during investigations into allegations by Mr Bonnar that the respondent had defrauded him of the motor vehicle. Mr Kadzere stated in paragraph 4 of the statement that sometime in August 2010 he was tasked to commission affidavits for Themba Mliswa at Harare Remand Prison by Mr Chinyama, his lawyer. He was accompanied to the Prison by the respondent. The respondent asked him to

take instructions from Mr Bonnar. He explained that he could not personally take the instructions because he had lost his practising certificate. Mr Bonnar instructed Mr Kadzere to apply for bail for him. He advised the latter that he did not have money to cover legal fees. He however was prepared to pledge his motor vehicle (a silver Benz) as security. Mr Kadzere prepared an affidavit to that effect pledging the vehicle to "Mr Ray Tsvakwi of Mugugu & Associates".

The respondent, in his counter-statement corroborated the averments by Mr Kadzere. He attested in paragraph 11 of the statement as follows:

> "I admit that I **instructed** Mr Kadzere to do bail application. I also admit that I organized the required title deeds for the complainant." (own emphasis)

Mr Madzoka strenuously attempted to explain that the use of the word "instructed" was intended to convey that the respondent requested Mr Kadzere to assist Mr Bonnar. The respondent was at the time a self-actor and his choice of words was not proper. The level of attachment to the matter may have contributed to the use of the wrong word. However, the same word was used yet again in the respondent's supplementary heads of arguments. The supplementary heads were prepared by counsel and were filed on the 3rd of December 2018. The respondent was no longer a self-actor. Counsel had the proper frame of mind to use what he considered to be the appropriate word. He however continued to use the same allegedly inappropriate word.

**Pledge by Mr Bonnar of motor vehicle as security for legal fees**

On 11 August 2011, Mr Bonnar deposed to an affidavit in which he pledged his motor vehicle as security for legal costs. The affidavit was commissioned by Mr Kadzere. It reads:

> "I pledge my Mercedes Benze S280 (Silver) to Ray Tsvakwi of Mugugu & Associates Legal Practitioners Harare as security for legal fees in the amount of US$13 000. (Thirteen thousand united states dollars)"

The affidavit was deposed to eight days before Mr Bonnar's release on bail. Three issues stand out from the affidavit. The first is that Mr Bonnar was pledging his vehicle to the respondent. This means that the beneficiary of the pledge was the respondent. The second issue is that the pledge was security for legal fees. The respondent would not have been entitled to legal fees if he had not held himself to be entitled to the fees. It is inconceivable that Mr Kadzere, having assisted Mr Bonnar and not having been paid legal fees for his services, would commission an affidavit in which security for legal fees due to him would be pledged to the respondent. The only inescapable conclusion is that the legal fees were due to the respondent

for the legal work Mr Kadzere had done on his behalf. The last issue is that the amount due to the respondent was US$13 000 and not the US$10 000 the respondent alleged he had advanced Mr Bonnar. The respondent did not advance any reason why the amount had been inflated to US$ 13 000 when he had advanced Mr Bonnar US$10 000.

If the vehicle had indeed been security for legal fees due to Mr Kadzere, the vehicle would have been delivered to Mr Kadzere and not the respondent. The vehicle could not have been security for legal fees for Mr Kadzere and at the same time security for the loan the respondent had advanced Mr Bonnar.

The respondent's averments as to how the affidavit came to be deposed to by Mr Bonnar are contradictory. The respondent stated in paragraph 4 of his first (undated) response to the allegations that Mr Bonnar gave Mr Kadzere instructions to prepare the affidavit. He however admits in paragraph 15 of the counter-statement dated 17 August 2017, that he in fact instructed Mr Kadzere to prepare the affidavit. He states:

> "It is admitted that Mr Kadzere for his own reasons prepared the cession of the motor vehicle in the manner he did to protect his own interests. I am the one who instructed him. There is nothing unprofessional about me instructing a registered legal practitioner who then follows his fees from the person who instructed him."

The interests that Mr Kadzere intended to protect were not stated by the respondent. The respondent, contrary to the first response, now admitted "instructing" Mr Kadzere to prepare the affidavit. The respondent did not explain how Mr Kadzere was to follow his fees when the motor vehicle had not been pledged to him as security for the fees. He however proffered yet another explanation in paragraph 4.1.12 of his supplementary heads of argument filed on 3 December 2018. The paragraph reads:

> "The respondent's defence is that the complainant having incurred legal fees arising (*sic*) from his legal troubles then asked the respondent to loan him some money which was to be advanced on the basis of a pledge for the car and the car became a pledge for legal fees in that sense and not in the sense of fees to the Respondent."

It is noted at the onset that the supplementary heads of argument were prepared for the respondent by counsel. The respondent submits that he lent Mr Bonnar some money which was to be advanced on the basis of a pledge for the car and that the car became a pledge for legal fees. The question of the vehicle having been pledged as security for "legal fees" is raised in Mr Bonnar's affidavit. The import of the respondent's submission is that he admits that the vehicle was pledged to him for legal fees contrary to earlier assertions that the pledge was meant for Mr Kadzere. The explanation that a pledge for a loan was transformed into a pledge

for legal fees is devoid of any rationality. Further, the explanation contradicts the respondent's defence in the preceding paragraph 4.1. 11. The respondent stated that:

> "The offending affidavit was thus a creation of Kadzere and the Respondent may not be disciplined for something he did not generate".

The respondent is distancing himself from the affidavit which was for his benefit. As a matter of law, the respondent could not approbate and reprobate at the same time.

The fact that the respondent instructed Mr Kadzere to act on his behalf is evidenced by the pledge of the vehicle to him as security for fees. The respondent cannot disassociate himself from offering legal representation to Mr Bonnar solely because it is Mr Kadzere who applied for bail for Mr Bonnar. Mr Kadzere did so on his instructions. It is to him the vehicle was pledged as legal fees for work done by Mr Kadzere on his behalf. It is common cause that Mr Bonnar did not know Mr Kadzere prior to Mr Kadzere going to Prison to visit Mr Mliswa. Mr Kadzere came to represent Mr Bonnar on instructions from the respondent. Despite his protestations that he did not have a professional relationship with Mr Bonnar, he went on to pay bail for Mr Bonnar as evidenced by the bail receipt.

Mr Madzoka submitted that when the respondent used the word "instruct" he intended to use the word "request". The oversight was because the respondent was attached to the case as it affected his livelihood. The two words have different meanings. The word "instruct" connotes giving an order or directing someone to do something. In the Encarta Dictionary it means to "obtain legal representation: to ask or authorise a lawyer to act on your behalf and supply him or her with relevant information." The word "request" is defined to mean "ask politely for something: to ask formally or courteously for something to be given or done." The word "instruct" instead of "request" is used by the respondent throughout his responses and submissions. The respondent is a legal practitioner and not a layman. He ought to know that there is a difference between the two words. The fact that he has a personal interest in the matter cannot be an excuse for using the "wrong" word throughout.

The origins of the amount paid by the respondent for bail is explained in an affidavit deposed to by one Irfaan Valera on 30 April 2012. The affidavit reads:

> "I, Irfaan Valera I. D. Number 63 -1122934 N00 residing at 37 Mull Road Belvedere, Harare
> Do hereby solemnly and sincerely swear/declare the following:
> It has never been my intention to purchase Mr Bonnar's Mercedes Benz S280, but merely to assist him in retrieving and recovering his vehicle.
> I have emailed Mr Ray Tsvakwi in connection with ascertaining the cost of Mr Bonnar's legal fees so as to pay the fees so Mr Bonnar could recover his vehicle.
> At no time did I ever have any intention of buying the vehicle and certainly was not aware of any car sales company called Alex Hasson Car Sales in connection with this case.

> My communication with Mr. Ray Tsvakwi was in April 2011.
> Mr. Ray Tsvakwi is aware of my involvement in this case as I paid for Mr. Bonnar's bail being $750.00 of which I have not received a receipt.
> I also advanced Mr. Bonnar money in order to pay for some legal costs for Mr. Ray Tsvakwi."

The respondent did not comment on this affidavit in any of his responses, heads of argument or oral submissions. He did not further comment on an affidavit by Godwin Munyama deposed to on 24 September 2014. The respondent had alleged in his first statement that it is Godwin Munyama who approached him with Mr Bonnar's request for a loan of US$10 000. Godwin Munyama denied in the affidavit ever receiving instructions from Mr Bonnar to approach respondent for a loan. He stated:

> "I, GODWIN K. MUNYAMA I.D. Number 63-895505 K 70 residing at 49 GARUNGA RIDE, MOUNT PLEASANT, HARARE,
>
> Do hereby solemnly and sincerely swear/declare the following:
>
> THAT AT NO TIME DID I RECEIVE AN INSTRUCTION FROM MR CRAIG BONNAR TO APPROACH MR RAY TSVAKWI FOR AN ADVANCE OF US$10 000,00 (TEN THOUSAND DOLLAR), NOR DID I RECEIVE ANY FUNDS AT ALL FROM MR RAY TSVAKWI. FURTHERMORE, THIS DOCUMENT ALOS SERVES TO CLARIFY THAT I ONLY AND FIRST MET MR RAY TSVAKWI AT REMAND WHERE HE INDICATED HIS INTEREST TO REPRESENT MR GRAIG BONNAR AS HIS LAWYER."

Both affidavits were attached to Mr Bonnar's reply to the respondent's response to the complaint. Both affidavits speak to the respondent acting on behalf of Mr Bonnar and to the non-existence of a loan advanced by the respondent to Mr Bonnar. What is not disputed is proved. Further, the respondent did not explain how he came to be lending a hefty sum of US$10 000 to a person who was not known to him whom he had not met and who had been recently introduced to him by Mr Mliswa.

**Emails between the Mr Bonnar and the respondent**

There was an exchange of emails between Mr Bonnar and the respondent. The emails were not disputed by the respondent. The subject matter of the emails was fees payable to the respondent. The language used by the respondent presupposes that the respondent provided Mr Bonnar with legal services. The first email from respondent was sent to the email address, sherib@zol.co.zw on 17 April 2011. It reads:

> "Subject monies owed by craig bonnar
>
> hie.i am still awaiting your response as to when your client will settle the money he owes me. the debt is now long overdue and it is prudent he settles to bring finality to this matter."(*sic*)

The following was Mr Bonnar's reply on 21 April 2011:

"We do not have a bill.

We cannot pay if we do not know what is outstanding.

How can this debt be long outstanding when you have not raised an invoice?

Kind Regards

Craig."

The respondent responded on the same day as follows in shorthand:

"Subject: monies owed by craig bonnar
**im surprised n nw say u dnt knw how much is outstanding yet u neva paid a single cent towards ur fees.** U knw i paid almost 14k b4 i left mugugu cz i advised u thn that i 2 settle b4 i left. I paid 15k towards ur deeds n i advanced u various amounts towards ur furniture b4 i decided against buyin it. **moreover i put my tym in2 solving ur cases n thats priceless. dnt play games with me**. (*sic*) (own emphasis)

It is evident from the above emails that the two were talking about fees due to the respondent for legal services provided to Mr Bonnar. The latter was querying the amount due as he had not received a bill from the respondent. The respondent was stating that he put time into solving Mr Bonnar's cases. If the amount claimed by the respondent in the emails was a loan advanced to Mr Bonnar, there was no need to make reference to "a bill". Mr Bonnar would only demand a bill where legal services had been offered to him. Not once did the respondent refer to a loan in the emails. The respondent refers to solving cases for Mr Bonnar. He then refers to the question of fees. It is therefore clear from the emails that the respondent solved cases for Mr Bonnar and wanted to be paid fees. The fees referred to for solving cases by a legal practitioner can only be legal fees. These are the fees for which Mr Bonnar had pledged his motor vehicle as security for the fees. This shows that the nature of the relationship was a legal practitioner/client one.

Mr Madzoka conceded that reference to "fees" creates in any reasonable person the impression that the fees were for professional services rendered by the respondent to Mr Bonnar. Despite Mr Madzoka's persistence with his submissions, the concession puts the matter to rest.

**Failure to Account to client**

Mr Pesanai submitted that the issue of accounting is regulated in terms of section 70E of the By-laws. The respondent failed to account to the complainant contrary to the By-Law.

The respondent's defence to the charge is two-fold. Mr Madzoka submitted that the respondent was not obliged to account to Mr Bonnar, firstly because he was not practising at

the material time and secondly that the obligation to account rested on a firm and not on an individual practitioner in terms of By-Law 70E. The two defences are contradictory. In one breath he is denying practising and in the other he seems to admit practising but denying owing a duty to account. The respondent cannot have his cake and eat it.

By-Law 70E provides that every firm shall, within a reasonable time after the performance or earlier termination of its mandate, account to client in a written statement setting out the details of the money received by the firm and its disbursement. The word "firm" is defined in By-Law 70A as follows

> "firm" means-
> (a) a legal practitioner in private practice on his own account; or
> (b) a partnership of legal practitioners in private practice;
> but does not include a legal practitioner who is not obliged to open a trust account in terms of section 13 of the Act;"

The question is therefore whether or not the respondent was exempted from opening a trust account in terms of s 13 of the Act. Section 13 provides that:

> **"13 Opening of trust accounts**
> (1) Every registered legal practitioner, notary public or conveyancer who holds or receives any moneys for or on behalf of another—
> (*a*) in his capacity as a legal practitioner; or
> (*b*) in his capacity as an executor, administrator or trustee;
> shall open and keep a current account at a bank as a separate trust account in which he shall deposit all such moneys:

It is not in issue that although the respondent did not have a practising certificate he remained a legal practitioner. The fees due from Mr Bonnar would have constituted money to be held in trust, and to be disbursed according to instructions from Mr Bonnar. The respondent would have been required, in terms of s 13, to open a trust account with respect to the money. The accused sold the vehicle pledged by Mr Bonnar as security for legal fees. He therefore was supposed to account to Mr Bonnar for the proceeds. It is also trite that a legal firm practices through individuals, be it through the partners or professional assistants. Where the individuals have performed legal work, they must account on their own behalf and on behalf of the firm.

The respondent does not dispute that he did not account to Mr Bonnar. By his own admission, he failed to account to client. He therefore acted contrary to By-Law 70E.

**Disposition**

The cumulative effect of the evidence before the Tribunal is that the respondent practised without a certificate and failed to account to client. His conduct is therefore unprofessional, dishonourable and unworthy of a legal practitioner.

**SENTENCE**

The parties addressed the Tribunal on sentence at the hearing on 10 April 2019. It is therefore not necessary to invite any submissions on sentence.

The respondent submitted that his de-registration would be excessive and induces a sense of shock. He was a young legal practitioner when he committed the misconduct. As at 26 October 2018 he had been a registered legal practitioner for seven years. No other allegations of impropriety other than the present were raised against him during that period. The transgressions were so minor, that the applicant ought to have dealt with the matter instead of referring it to the Tribunal. The appropriate sentence under the circumstances would be a fine, a reprimand or a suspension.

The applicant persisted with its submission that the respondent's conduct warranted an order for the de-registration of the respondent.

It is disturbing that the respondent considers his transgressions to be trivial. The legislature saw it fit to give lawyers a monopoly over the practice of law and that the practice of the legal profession is the preserve of those who hold practising certificates. The rationale for that is to protect the unwitting public. A practising certificate gives privileges set out in s 8 of the Act to a holder of a practising certificate which a non-holder does not have. The privileges include having audience in court, preparing any document for registration in a Deeds Registry in the case of a registered conveyancer and execute, attest and authenticate anything which is required to be executed, attested or authenticated by a notary public in the case of notary public. Practising without a certificate cannot therefore be said to be a trivial transgression.

The respondent failed to account to client. The duty to account is central to the functions of a legal practitioner. It entails being accountable to a client with respect to the mandate given by the client. The legal practitioner will be accounting that the fee charged falls within the tariff prescribed by the applicant and they are not excessive or exorbitant. It further entails accounting for money that a client will have entrusted the legal practitioner with. Again, the rationale for the requirement is the protection of the public. Failure to account to a client cannot therefore be a minor transgression.

The complaints against the respondent warrant the ultimate censure.

It is accordingly ordered that:

1. The respondent's name be deleted from the Register of Legal Practitioners, Notaries Public and Conveyancers.
2. The respondent is ordered to pay the expenses incurred by the applicant in connection with these proceedings.

*Madotsa & Partners,* respondent's legal practitioners