

A **ATTORNEY-GENERAL**

v.

ADI MULLUM RAMAN

B [SUPREME COURT, 1964 (Hammett Ag. C.J.), 10th October, 18th November, 1963, 22nd, 23rd January 1964].

Civil Jurisdiction

C *Law Practitioners—solicitor—professional misconduct—breaches of Supreme Court (Solicitors' Accounts) Rules 1961—no loss suffered by any client—appropriate order—Supreme Court Ordinance (Cap. 4) s.29.*

The respondent admitted a number of breaches of the Supreme Court (Solicitors' Accounts) Rules, 1961, in relation to the bank account which he operated as a client account, the delivery and recording of bills of costs and the keeping of properly written up books and accounts. An audit for a period subsequent to the period in question, however, showed that there were more funds in the respondent's trust bank account than the total of the credit balances shown in his trust ledger, and there was no evidence that any client suffered loss.

D

Held: The neglect of the respondent to comply with the rules was serious professional misconduct, but that in the circumstances, in lieu of an order suspending him from practice altogether, an undertaking by the respondent not to practice on his own account for a period of two years would be accepted.

E

Proceedings on Order Nisi to show cause why respondent should not be struck off the Roll of the Court or suspended from practice.

F *Justin Lewis*, Attorney-General, the applicant, in person.

J. N. Falvey for the respondent.

[Editorial note: Since the date of this application, the provisions of the Supreme Court Ordinance under which the proceedings were brought, have been replaced by new provisions and procedure contained in the Legal Practitioners Ordinance (Cap. 228—Laws of Fiji, 1967.)]

G

HAMMETT Ag. C.J.: [22nd January, 1964].

On 28th June, 1963, the late Chief Justice, on the application of the Attorney-General dated 11th June, 1963, made an order that the books of account of *Adi Mullum Raman*, Barrister and Solicitor, be audited under the provisions of Rule 11 of the Solicitors' Accounts Rules 1961.

H

The report of the auditor appointed was received on 26th August, 1963.

On 26th September, 1963, the Attorney-General applied for an Order Nisi to issue calling on the Respondent to show cause why he should not be struck off the Roll of this Honourable Court or suspended from practising within the Colony of Fiji for professional misconduct in that during the period 1st July, 1962, to 30th June, 1963, he, in the course of his practice as a solicitor, neglected in breach of the provisions of the Solicitors' Accounts Rules 1961 :—

- “(a) to keep account at any bank with the word “client” or “trust” appearing in its title;
- (b) repeatedly to pay without delay clients' moneys held or received by him into his account at the Bank of New South Wales Ba entitled “Adi Mullam Raman No. 2 Account”, hereinafter referred to as the said account, which he operated as a client bank account;
- (c) to deliver bills of costs or other written intimation of costs to clients in respects of money drawn from the said account in payment of his costs;
- (d) to keep a record of the said bills of costs or other written intimation of costs to clients;
- (e) while drawing from the said account to ensure that the money in the said account to which he was entitled solely was not less than the amount of all debit balances in the accounts of all clients included in the said account in breach of the said provisions of Supreme Court (Solicitors' Accounts) Rules 1961 and in particular of the proviso to rule 5;
- (f) to keep reconciliation statements showing that at the end of every month the balance of the said account agreed with the balance of his cash book relating thereto and
- (g) to keep properly written up books and accounts to show all his dealings with client's money held received or paid by him and to distinguish such money held received or paid by him on account of each separate client.”

The matter came before me on 10th October, 1964, when the Respondent appeared, and was represented by Counsel. All the breaches of the Solicitors' Accounts Rules alleged were admitted. In mitigation the Respondent said he had entrusted his duties of complying with these Rules to his clerk who had failed to carry them out. I need hardly say that whilst such an explanation may explain, it does not in any way excuse the Respondent for his neglect to comply with these Rules.

It was ordered that the Order Nisi should issue and on the application of Counsel for the Respondent the hearing was fixed sufficiently far ahead to enable a further check to be made of the Respondent's books of account to ascertain whether any client had in fact been prejudiced by the Respondent's failure to comply with these Rules.

A His books of account have now been further audited with this point in view. The report of the accountant dated 13th November, 1963, covering the period 1st July, 1963, to 31st October, 1963, has now been filed and the Attorney-General has accepted it. Whilst this report does not cover the period in respect of which the complaints were made, it does show that on 31st October, 1963, there were more funds in the Trust Bank Account, now being maintained by the Respondent, than the total of the credit balances shown in his Trust Ledger on that date and that there is no evidence that any client has in fact suffered any loss. It is clear that the Respondent is now making an attempt to comply with the Solicitors' Accounts Rules.

C I have heard and considered all that has been urged both by the Attorney-General and Counsel for the Respondent on the question of what disciplinary order should be made in these circumstances, where there has been a flagrant breach of the Solicitors' Accounts Rules but no loss has apparently been suffered by any client.

D I first wish to say with some emphasis that I adjudge the admitted neglect of the Respondent to comply with these Rules to be serious professional misconduct. If any client had in fact been shown to have suffered any loss the only appropriate order would have been immediate disqualification of the Respondent.

E The failure of a Respondent to open and maintain a "Trust" or "Client's" Bank Account and to make the required regular reconciliation between the total of the credit balances of all the accounts in his Trust or Client's Ledger with the total in the Trust and Client's Bank Account alone however are serious matters calling for disciplinary action. I trust this will be full appreciated.

F The Respondent was admitted as a solicitor of the Supreme Court in New Zealand on 4th February, 1959, and admitted to practice in the Supreme Court in Fiji on 18th May, 1959. He has since then been in practice on his own account in Ba.

F He will of course be ordered to pay the costs of the audit and the costs of these disciplinary proceedings, which I understand amount to between £200 and £250, but in addition, in my opinion, this is a case in which an order suspending the Respondent from practice for a period of 12 months would not be inappropriate.

G I do observe however, that in disciplinary proceedings in 1963, before the late Chief Justice, in which the professional misconduct of the legal practitioner concerned was possibly even more serious than in this case, he accepted an undertaking by the Respondent not to practise on his own account for a period of 2 years in lieu of suspending him from practice altogether.* The view then adopted appears to have been that if the Respondent could in this period work with or under a more experienced legal practitioner, it was possible that he would become more conscious of his duties as a member of the legal profession than if he were to be suspended from practice altogether.

* The reference is to Attorney-General v Pillay, Action No. 150 of 1962 (unreported).

Whilst this is a view that cannot be taken in every, or even many, cases, I am very conscious of the fact that these proceedings are the first that have been taken in respect of a breach of the Solicitors' Accounts Rules 1961. These have only been in force since July 1962 and I am therefore, in the particular circumstances of this case, prepared to adopt the same view that was taken by the late Chief Justice.

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I shall now stand this case down to later in the day to enable the Respondent to give such an undertaking if he wishes to do so, before making my order in the matter.

B

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The following Order, dated the 23rd January, 1964, was made :—

“ The Respondent having undertaken not to practise on his own account but only with or under a more senior legal practitioner for 2 years, he is, in lieu of being suspended from practice, severely reprimanded”.

C