Law Society of Singapore v Ezekiel Caleb Charles James
[2004] SGHC 35

Case Number : OS 1575/2003

Decision Date : 23 February 2004

Tribunal/Court : High Court

Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ

Counsel Name(s) : M P Rai (Cooma and Rai) for applicant; Chelva Rajah SC (Tan Rajah and Cheah) for respondent

Parties : Law Society of Singapore — Ezekiel Caleb Charles James

Legal Profession – Show cause action – Advocate and solicitor convicted of criminal breach of trust – Weight to be given to mitigating factors – Appropriate order to be made – Section 83(1) Legal Profession Act (Cap 161, 2001 Rev Ed), s 406 Penal Code (Cap 224, 1985 Rev Ed)

23 February 2004

Yong Pung How CJ (delivering the judgment of the court):

1 This was an application by the Law Society of Singapore ("the Law Society") pursuant to s 98(5) Legal Profession Act (Cap 161, 2001 Rev Ed) ("the LPA") to make absolute an order to show cause. We granted the application and ordered the respondent, Caleb Charles James Ezekiel, to be struck off the roll of advocates and solicitors. We now give our reasons.

Facts

2 The facts of this case were undisputed. The respondent was a senior lawyer of 20 years' standing, having been called to the Bar in 1984. At all material times, he was an equity partner at M/s Khattar Wong & Partners ("the firm"). In his capacity as equity partner, the respondent was entrusted with funds held in both the firm's office account as well as the omnibus clients' account.

3 In or about May 1996, the firm was engaged by Jerneh Insurance Berhad ("Jerneh") to act on their behalf in relation to an insurance claim arising from a fatal road traffic accident. The defendant in the suit was insured with Jerneh. The case came under the charge of the respondent, who had authorisation from Jerneh to settle the suit up to a sum of $50,000. On 29 September 1998, the respondent settled the civil suit in excess of the mandate from Jerneh. Final judgment was entered against Jerneh and damages of $130,000 and costs of $15,000 plus disbursements were assessed to be paid to the claimants *via* the Public Trustee.

4 Between May 1999 and April 2000, the respondent made several withdrawals amounting to a total of $128,000 from the firm's omnibus clients' account without permission, and paid the moneys over to the Public Trustee, in settlement of the claim. He subsequently made several repayments between 7 May 1999 and 7 April 2000 into the clients' account. By 23 September 2002, the respondent had made full restitution of the moneys taken.

5 The managing partner of the firm made a police report when these unauthorised withdrawals came to his attention. Notwithstanding the fact that the respondent had restored the moneys, it was clear that the initial taking was unauthorised. Accordingly, the respondent was charged with four counts of criminal breach of trust under s 406 of the Penal Code (Cap 224, 1985 Rev Ed). On 18 September 2003, the respondent pleaded guilty to one charge, and three others were taken into

consideration for the purposes of sentencing. On 26 September 2003, he was sentenced to two weeks' imprisonment.

The show cause proceedings

6 The Law Society relied on the conviction and contended that due cause had been shown under s 83(2)(a) LPA which states:

> Such due cause may be show by proof that an advocate and solicitor has been convicted of a criminal offence, implying a defect of character which makes him unfit for his profession

Before the court, counsel for the respondent acknowledged that the court could not look behind the conviction and conceded that due cause had been shown. As such, the only issue was the appropriate order to be made under s 83(1) LPA.

Appropriate order under s 83 LPA

7 Counsel for the respondent acknowledged that it was the practice of the courts to order a striking off where a solicitor had been convicted of an offence involving an element of dishonesty. Whilst he conceded that the offence here was clearly one involving dishonesty, he submitted that there were mitigating factors which merited consideration and argued that a mere censure or suspension would have been adequate in the present case.

8 First, counsel argued that the respondent never stood to gain from taking the moneys since it was paid out directly to the Public Trustee. Not only that, the respondent had already made full restitution from his own funds and was now out of pocket for $95,000. In addition, counsel highlighted the fact that the respondent had been under a lot of stress at the time of the offence, as he was handling a large number of cases, and his wife had just gone through a difficult pregnancy.

9 It was apparent that these factors bore heavily on the mind of the district judge who meted out the relatively light sentence of two weeks' imprisonment. However, we found that these factors were not relevant for our purposes. In *Law Society of Singapore v Tham Yu Xian Rick* [1999] 4 SLR 168 at [22], the court drew a distinction between the considerations of a court sitting in show cause proceedings from that in a criminal trial as follows:

> Because orders made by disciplinary tribunal are not primarily punitive, considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of the disciplinary jurisdiction than on sentences imposed in criminal cases: *Bolton v Law Society* [1994] 2 All ER 486 at p 492. To state the matter another way, whatever might have been the appropriate sentence in the criminal proceedings, the objective there was rather different from that in show cause proceedings, which are civil and not punitive in nature.

10 In cases involving solicitors that have been convicted of a criminal offence, a court considering the appropriate order to be made must, first and foremost, keep in mind the need to preserve the good name of the profession and the protection of the public. As the court in *Law Society of Singapore v Wee Wei Fen* [2000] 1 SLR 234 observed at [39] and [40]:

> [T]he court will give its consideration to the mitigating circumstances in each individual

> case but it can do so only so far as is consistent with the above two related objectives ...
>
> … That no benefit whatsoever accrued to the lawyer through his or her acts is also of no relevance to the question of what is the appropriate order to be imposed when all the offences clearly involved an element of dishonesty …

11 Given the above, we were unable to accept counsel's submissions that a mere censure or suspension would have been appropriate. We appreciated the fact that the respondent did not set out to defraud his clients and that his folly derived mainly from his negligence in settling a suit without mandate. While his act of negligence alone would not have warranted a striking off, his subsequent actions in attempting to conceal his mistake smacked of dishonesty. Though he did not stand to benefit financially from his actions, this did not alter the fact that he gravely jeopardised the interests of his clients in his attempt to save his own skin.

12 Counsel made much of the fact that the respondent had made full restitution of the moneys taken. However, we were not persuaded by this argument as it did not detract from the fact that the taking was, in itself, dishonest. The fact that he eventually suffered a loss by repaying the moneys from his own funds was irrelevant since it was his own negligence in settling a suit without mandate that caused him to make the unauthorised withdrawals in the first place.

13 That the respondent was an equity partner in a reputable firm exacerbated the situation, since the more senior the lawyer, the more damage is done to the integrity of the profession as a consequence of his misconduct: *Law Society of Singapore v Amdad Hussein Lawrence* [2000] 4 SLR 88. Given his years of experience, and the seniority of his position, we were unable to excuse his behaviour, as he most definitely should have known better.

14 Lastly, little weight could be attached to the fact that the respondent had been under a lot of stress at the time of the offence. We cannot but find that stress is part and parcel of most occupations, and this is most true of the legal profession. The demands of life cannot be an excuse for dishonesty.

15 In the event, we ordered the respondent to be struck off the roll and further directed him to bear the costs of these proceedings.

Order accordingly.