

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO. 025 of 2013

BETWEEN:

**CHIEF REGISTRAR
Applicant**

AND:

**JOLAME ULUDOLE
Respondent**

**Applicant : Mr. M Waibuta
Respondent : In person**

**Dates of Hearing: 29th October and 11th December 2013
Date of Judgment: 5th February 2014**

SENTENCE

1. The Chief Registrar made an application to this Commission making two allegations of professional misconduct against the practitioner. The allegations were as follows:

COUNT 1

PROFESSIONAL MISCONDUCT: Contrary to Section 82(1)(a) of the Legal Practitioners Decree 2009

JOLAME ULUDOLE a legal practitioner, from on or about the 11th of October 2012 to the 9th of May 2013, operating as Jolame Uludole Barrister & Solicitor, without having a trust account, knowing or ought to have known that he was not entitled to do so, this was contrary to section 3A of the Trust Accounts (Amendment) (No.2) Decree 2009, which was an act of professional misconduct pursuant to section 82(1) (b) of the Legal Practitioners Decree 2009.

COUNT 2

PROFESSIONAL MISCONDUCT: Contrary to Section 82(1)(a) of the Legal Practitioners Decree 2009

JOLAME ULUDOLE a legal practitioner, from on or about the 14th of June 2013 to the 25th of July 2013, operating as J.U. Esquire acted for Edmund March, without having a trust account, knowing or ought to have known that he was not entitled to do so, this was contrary to section 3A of the Trust Accounts (Amendment) (No.2) Decree 2009, which was an act of professional misconduct pursuant to section 82(1) (b) of the Legal Practitioners Decree 2009.

2. The practitioner admitted the allegations at the very first opportunity and he then proceeded

to file written submissions in mitigation.

3. Having admitted the charges and having agreed the facts which are no more than the facts contained in the charges laid, the allegations are found to have been **established**.

4. The practitioner was admitted in 2009 and is therefore comparatively junior in call. He complains that the endorsement of the words "NIL CONDITIONS" on his and others' practicing certificate issued by the Registrar led him to the mistaken belief that he was not required to operate a trust account. He further adds that the procedural requirements and documentation necessary to open a trust account are onerous and time consuming and he had tried in vain to have an audience with the Attorney General in an attempt to obtain an exemption from the trust account requirements. Lastly he expressed a wish to abandon practice at the time of elections and to enter political life and he was of the view that to obtain a trust account for such a short period would be onerous and unnecessary.

5. The counsel for the Chief Registrar in written submissions reminds me of the strict view that this Commission has previously taken of trust account transgressions and refers me in particular to Haroon Ali Shah [Matter No 007 of 2011] and Kini Marawai [Matter No 006 of 2012].

DISCUSSION

6. As the Commission indeed said in Kini Marawai (supra), trust account offending is venturing on to "sacred turf" in terms of professional misconduct and as a general rule such offending will attract very strict penalties.

7. There can be and must not be any confusion on the part of practitioners when it comes to the requirements to have a trust account. For those who are in practice and dealing with clients, they **must** have one even if it is showing nil balance. It is a compulsory legislative stipulation laid down by section 3A of the Trust Account Amendment (No 2) Decree 2009 which states:

"Every legal practitioner engaged in the practice of his or her profession or the carrying on of his or her business, either solely on his or her own account or in partnership with any other person or persons, or the firm of which he or she is a partner, must establish and keep a trust account."

Such a clearer statement of a practitioner's duty cannot be imagined and obviously it is not negotiable in any circumstance.

8. It is surprising therefore that the practitioner might have thought that (i) the words "nil conditions" was exempting him from this mandatory stipulation and (ii) that the Attorney General might offer him an exemption from the requirement.

PENALTIES

9. The practitioner would appear to be either naive in his view that he could practice without a trust account, and if not naive then reckless in his 7 months practising without one and deceitful before this Commission.

10. The practitioner must benefit from the strong mitigating factors of co-operation with the Commission from the very beginning and also by the fact that he is reasonably junior in call and inexperienced. Whilst the Commission would have and has had no hesitation in striking off a senior

practitioner for trust account defalcation, some leniency can be afforded to a practitioner who is embarking on his legal career, where the defalcation is not proven to have harmed the public. What is important however is the potential for financial danger to the consumer public. However, as an example to the profession, a meaningful sanction must nevertheless be imposed.

ORDERS

1. The practitioner is found guilty of two charges of professional misconduct.
2. He is to be publicly reprimanded.
3. The practitioner's practising certificate is suspended for a term of two years and he is not eligible to apply to the Registrar for a certificate until March 2016.
4. He is to pay a fine of \$3,000 to this Commission, such fine to be paid by the 31st of March 2014.

**JUSTICE PAUL MADIGAN 5th FEBRUARY 2014
COMMISSIONER**