THE LAW SOCIETY OF ZIMBABWE
versus
PUWAYI CHIUTSI

LEGAL PRACTITIONERS DISCIPLINARY TRIBUNAL
HARARE, 19 & 26 July 2019, 30 April 2021 & 13 May 2021
Before: CHATUKUTA J (Chairperson),
MUSAKWA J (Deputy Chairperson)
MR D. KANOKANGA & MRS S. MOYO (members)

G Madzoka, for the applicant
Respondent in person

CHATUKUTA J: The respondent is a legal practitioner practising under the style of Puwayi Chiutsi Legal Practitioners. He was registered as such on 9 November 1992. The applicant contends that the respondent should be found guilty of unprofessional, dishonourable and unworthy conduct arising from complaints brought to its attention by Eliot Rogers, the Honourable Mr Justice MANGOTA and Albert Mazhindu. The complaint by Eliot Rogers was that the respondent had abused funds he was supposed to hold in trust on behalf of Rogers. The complaint by Albert Mazhindu was that the respondent had forcibly ejected him from a house he was renting from the respondent's mother. The complaint by Justice MANGOTA was that the respondent had filed a forged affidavit in an application before the judge in a bid to defeat the course of justice

The applicant also raised, *mero motu*, two further allegations of misconduct against the respondent. The first charge was that the respondent was imprisoned for failure to satisfy a judgment debt. The second charge was that the respondent had fraudulently sold a property which was the subject of judicial attachment.

Preliminary points

The respondent raised mainly three preliminary points. We understand the first point to be that the application was improperly before the Tribunal for want of compliance with the provisions of the Legal Practitioners Disciplinary Tribunal Regulations, 1982 (Statutory Instrument 580 of 1982) (the Regulations). The applicant had referred the matter to the Tribunal without a resolution by its Council as is required under the Regulations. It failed, despite demand by the respondent, to produce the resolution by Council referring the complaints to the

Tribunal. It sought to rely on an extract of minutes of a meeting held by Council. The extract was signed by the applicant's secretary instead of the President. In addition, the applicant's Disciplinary and Ethics committee did not meet to deliberate on the complaints and make recommendations to Council. Individual members responded to recommendations made to the Committee members by the secretary.

The second point was that the allegations against the respondent were of a criminal nature and required that the applicant leads oral evidence. The applicant was therefore required to prove its case beyond a reasonable doubt and could only do so by adducing oral evidence. The applicant had indicated in the application that it did not intend to lead oral evidence. The complaints giving rise to the charges are not on oath and therefore should not be relied on. They were "mere statements and letters". The Tribunal was therefore being invited to make a decision on mere statements without the benefit of oral evidence. Further, the applicant sought to rely on judgments of the High Court and the Supreme Courts. In ordinary applications, the application is determined on the affidavits filed of record. Failure to lead oral evidence rendered the applicant non-suited.

The third point was that the respondent was denied, contrary to sections 68 and 69 of the Constitution, his rights to administrative justice and to a fair hearing respectively. Regarding his rights to administrative justice, the respondent submitted that he was not given an opportunity to respond to the complaints made to the applicant by the complainants before the complaints were referred to the Tribunal. With regard to the allegations raised by the applicant *mero motu*, he was not given an opportunity to respond to the allegations before the application was referred to the Tribunal. Regarding the right to a fair hearing, his contention was that, the applicant's decision not to call witnesses denied him an opportunity to cross examine the applicant's witnesses. There are material disputes of fact that required adducing oral evidence and that the respondent be given an opportunity to cross examine the applicant's witnesses. He particularly wanted to cross examine Eliot Rogers. Failure to be afforded this opportunity means that he has been denied the right to be heard.

The applicant took issue with the preliminary points. Regarding the first point, it submitted that all the procedures set out in the By-Laws were complied with. The Disciplinary and Ethics committee deliberated on the complaints and made recommendations to Council. In turn, Council considered the recommendations and passed the appropriate decision. The recommendations are reflected in the extract of Council's minutes. The extract was signed by the applicant's secretary and furnished to the respondent. The extract of the minutes of Council

were sufficient proof that Council had met and deliberated on the complaints and passed the resolutions reflected in the extract.

It is trite that a preliminary issue is a technical legal point raised before delving into the merits of an application which, if upheld, may forestall the hearing of the merits of a matter. In most cases, preliminary points are raised as a red herring intended to merely delay the inevitable hearing and determination of the application. (see *Telecel Zimbabwe (Pvt) Ltd* v *Portraz & Ors* 2015 (1) ZLR 651 (HH 446/15). All the points raised by the respondent lack merit and were raised to forestall the determination of the merits of this application.

Is the application improperly before the Tribunal

We were constrained to appreciate in what way the application was improperly before the Tribunal in view of the documents produced by the applicant. The applicant produced various decisions of the Applicant's Council and the Disciplinary and Ethics committee. At page 84-89 of the application is an extract of the minutes of a Council meeting held on the 26th of November 2018. The Disciplinary and Ethics committee had met on 16 October 2018 in Bulawayo and recommended referral of the complaints to the Tribunal. The respondent seems to have been under the misapprehension that the applicant ought to have produced the minutes signed by the respective Chairpersons of Council and the Disciplinary and Ethics Committee. The applicant's secretary is the custodian of all the applicant's records including minutes of meetings held by both Council and the Disciplinary and Ethics committee. In that capacity he would be authorised to prepare an extract of the minutes of the meetings. There was therefore nothing untoward with the production of extracts of the minutes.

The complaints were properly considered by both the Disciplinary and Ethics committee and Council. The application is therefore properly before the Tribunal.

Whether or not the applicant is required to lead oral evidence

It is trite that the applicant is *dominus litis* and decides on how to proceed and what evidence to adduce and how to adduce that evidence. The question as to the adequacy of that evidence and whether the applicant discharged its onus is within the purview of the Tribunal when considering the merits of the application. In any event, it is trite that disciplinary proceedings are *sui generis*. Because the proceedings are neither criminal nor civil, there is no requirement that procedures in criminal or civil matters must be complied with fastidiously. The Tribunal has had the occasion to decide on what evidence can be adduced before it in *The Law Society of Zimbabwe* v *Siwanda Kennedy Mbuso Sibanda* HCH 7/90. In that case, Sibanda was found guilty of failure to keep accounts and abuse of trust funds. Following an audit of his

accounts, there was a shortfall in the Trust Account of $3 651.01. There was also a suggestion that one of Sibanda's colleagues had borrowed $6 410 from the trust account. These were large sums of money in 1986. Mr *de Bourbon* argued at the close of the hearing that the Act envisaged a prosecutorial type of inquiry because of the use of the words "present a charge on the evidence". The applicant was therefore required to adduce evidence in substantiation of the charge. The Tribunal ruled that the Tribunal could accept evidence by affidavit, or other forms of evidence considered appropriate by the Tribunal. Sibanda persisted with the procedural argument on appeal in *Siwanda Kennedy Mbuso Sibanda* v *The Law Society of Zimbabwe* SC 162/91. The Supreme Court upheld the reasoning of the Tribunal. MCNALLY JA remarked at p 4 that:

> "The documents constituted the evidence. There was no point in calling witnesses. The summary and its annextures were the charge and the evidence combined. The respondent was given the summary and the documents. He answered them in detail in the counter-statement. The procedure adopted did not prejudice him at all. I will hope to show this in more detail as I go through the individual charges. But the general criticism of the procedure fails."

In the present case the respondent improperly raises the procedural issue as a preliminary issue. It is an issue that ought to have been raised in the closing submissions. For the reasons stated in the *Sibanda* case, the respondent would even then not have succeeded. The preliminary point thus fails.

Whether the respondent was denied an opportunity to respond to the complaints made to the applicant/Right to be heard

The respondent was given adequate opportunity to respond to the complaints by Eliot Rogers, Albert Mazhindu and Justice MANGOTA before the matters were referred to the Tribunal. The applicant's secretary wrote to the respondent as is required under the By-Laws inviting him to reply to the complaints, which he did. The secretary considered that some of the responses did not address the issues raised by the complaints. He highlighted the inadequacies of the responses and invited the respondent to address the issues.

Regarding the matters referred to the Tribunal *mero motu*, it was submitted that the applicant is permitted in terms of s 67 (b) of Law Society of Zimbabwe By-laws, 1982 (SI 314/1982) (By Laws), to refer a complaint to the Tribunal without investigations where there is potential prejudice and damage to the reputation of the profession if the respondent is allowed to continue practising. Council considered the fact that the respondent was incarcerated for failure to honour a court order and also to have fraudulently sold a property under judicial attachment. The respondent's incarceration and conduct were prejudicial to and would damage

the reputation of the profession warranting referral of the complaints to the Tribunal without conducting any investigations.

The applicant further submitted that it was not enjoined to lead oral evidence where it considered the documentary evidence available was adequate to discharge its onus.

Lastly, the applicant submitted that the fact that the Tribunal decided to set down the application for hearing means that it was satisfied that the matter should be dealt with on the merits. It is therefore improper to raise any preliminary points on whether or not Council complied with the procedures set out in the By Laws.

After engagement with the Tribunal, the applicant conceded that the last submission was not merited and abandoned it. The point was previously raised and also abandoned in *The Law Society of Zimbabwe* v *Douglas Mwonzora* in HH 306/18. The Tribunal decided then not to remark on the issue in its judgment in that case. However, the issue is rearing its ugly head with the applicant raising it yet again in this application. Although the applicant abandoned the issue, we consider it necessary to make our views on the issue known for two reasons. Firstly, the issue has a bearing on the point raised by the respondent on the right to be heard. Secondly, it is necessary to dissuade the applicant from unnecessarily raising the same point in future applications.

The acceptance of an application by the Disciplinary Tribunal pursuant to s 4(a) of the Regulations is not a determination of whether or not the application is merited. It is a view expressed by the Tribunal that the application discloses a *prima facie* case warranting the service of the application on the respondent calling on him to respond to the application. Once the application is served on a respondent, the respondent is entitled to file a counter-statement responding to the application. It is at this stage that the respondent can raise preliminary points and respond to the merits of the application. The Tribunal will thereafter decide whether to set down the application for hearing or not. The setting down of the matter is not an indication that the Tribunal has determined and discarded the preliminary points raised by the respondent. It is an indication of the intention of the Tribunal to accord both the applicant and the respondent an opportunity to argue their cases before it which include the preliminary points and consequently accord the parties a fair hearing as it is enjoined to do in terms of the Constitution.

Rules of natural justice require that any person who is being condemned be given an opportunity to be heard in his own defence. This is aptly captured in *Metsola* v *Chairman, Public Service Commission & Anor* 1989 (3) ZLR 147 (SC) where GUBBAY JA (as he then was) remarked at 154 B- 155 E that:

"The maxim *audi alteram partem* is one founded upon natural justice or fundamental fairness - "those fundamental principles of fairness which underlie or ought to underlie every civilised system of law" (per TINDALL ACJ in *Minister of Interior & Ors* v *Bechler & Ors* 1948 (3) SA 409 (A) at 451). Of it, the late Professor de Smith wrote graphically in his book Judicial Review of Administrative Action 4 ed at pp 157-158:

> "That no man is to be judged unheard was a precept known to the Greeks, inscribed in ancient times upon images in places where justice was administered, proclaimed in Seneca's Medea, enshrined in the scriptures, mentioned by St Augustine, embodied in Germanic as well as African proverbs, ascribed in the Year Books to the law of nature, asserted by Coke to be a principle of divine justice, and traced by an eighteenth-century judge to the events in the Garden of Eden."

The *audi* maxim is not a rule of fixed content, but varies with the circumstances. In its fullest extent, it may include the right to be apprised of the information and reasons underlying the impending decision; to disclosure of material documents; to a public hearing and, at that hearing, to appear with legal representation and to examine and cross-examine witnesses. See, generally, **Baxter Administrative Law** at pp 545-547. The criterion, as I have noted, is one of fundamental fairness and for that reason the principles of natural justice are always flexible. Thus the "right to be heard" in appropriate circumstances may be confined to the submission of written representations. It is not the equivalent of a "hearing" as that term is ordinarily understood. This was stressed by COLMAN J in *Heatherdale Farms (Pty) Ltd & Ors v Deputy Minister of Agriculture & Anor* 1980 (3) SA 476 (T),where at 486D-G he remarked:

> "It is clear on the authorities that a person who is entitled to the benefit of the *audi alteram partem* rule need not be afforded all the facilities which are allowed to a litigant in a judicial trial. He need not be given an oral hearing, or allowed representation by an attorney or counsel; he need not be given an opportunity to cross-examine; and he is not entitled to discovery of documents. But on the other hand (and for this no authority is needed) a mere pretence of giving the person concerned a hearing would clearly not be a compliance with the Rule. For in my view will it suffice if he is given such a right to make representations as in the circumstances does not constitute a fair and adequate opportunity of meeting the case against him. What would follow from the last mentioned proposition is, firstly, that the person concerned must be given a reasonable time in which to assemble the relevant information and to prepare and put forward his representations; secondly he must be put in possession of such information as will render his right to make representations a real, and not an illusory one."

> See also Baxter op cit at p 552.

> Recently the South African Appellate Division has once again expressed preference for the "substantive right" approach, which holds that when a statute empowers a public official to give a decision which prejudicially affects the property or liberty of an individual, that individual has a right to be heard before any action is taken against him, unless the statute expressly or by necessary implication indicates the contrary. See *Attorney-General, Eastern Cape* v *Blom & Ors* 1988 (4) SA 645 (A) at 662H; *Moodley & Ors v Minister of Education and Culture, House and Delegates & Anor* 1989 (3) SA 221 (A) at 235I. I respectfully agree with this formulation of the *audi* principle as logically preferable to that which inquires whether the enactment concerned impliedly incorporates the maxim. See, for instance, *South African Defence and Aid Fund & Anor* v *Minister of Justice* 1967 (1) SA 263 (A) at 270C and F-G; *Winter & Ors* v *Administrator-in-Executive Committee & Anor* 1973 (1) SA 873 (A) at 888H-889A. But the difference may be more a matter of form than substance." (See also *Dube* v *Chairman, Public Service Commission & Anor* 1990 (2) ZLR 181 at 188 C- D)

In *The Law Society of Zimbabwe* v *Siwanda Kennedy Mbuso Sibanda* (*supra*), the Tribunal had the opportunity to consider the principle as it relates to proceedings before the Tribunal. The Honourable Mr Justice Ebrahim remarked at p16-17 as follows:

> "Buckley L. J. who sat with Lord Denning in the matter had this to say, at page 732,- "Thirdly, I will say a word about the natural justice point. Again I emphasise that these are not proceedings in an action. It is an inquisitorial proceeding, and I fully agree with what Lord Denning M. R. has said, that in such proceedings it is the duty of the board or the tribunal to act with fairness." Here the term 'inquisitorial' was obviously used in the sense or inquiring into a matter not in its criminal law and procedural sense.
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> In the Miller case Lord Denning M.R. at page 634, had this to say, - "The Inspector relied on Mr Fogwill's letter. So did the Minister in his decision. Counsel for the appellants said that they ought not to have been admitted because it was hearsay. It was not on oath, no opportunity was given to test it by cross examination, and it was not objected to. Counsel said that in these circumstances it was contrary to natural justice for it to be admitted. In my opinion this point is not well founded. A tribunal of this kind is maker of its own procedure, provided that the rules of natural justice are applied. Most of the evidence here was on oath, but that is no reason why hearsay should not be admitted where it can fairly be regarded as reliable. Tribunals are entitled to act on any material which is logically probative, even though it is not evidence in a court of law. R.v Deputy Industrial Injuries Comr., Ex parte Moore (1965) 1 All E.R.81."
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> This particular ruling was obviously based on the wording of an English statute, but in view of the wording of the legislation under consideration it is most apposite."

At p 18 he further remarked that:

> "To complete this exhaustive and exhausting enquiry into Mr de Bourbon's general submission it is necessary again to refer to the case of Ford v Law Society of Rhodesia (supra)(1977 (4) SA (R.A.D) 178).

The headnote of the case sums up MACDONALD C.J.'s findings as follows:

> "Natural justice requires that when a complaint of misconduct is levelled against a practitioner it should be set out in terms which leave him no doubt at all as to its precise nature. Where a practitioner's integrity and future are at stake the need for clarity, certainty and reasonable particularity in complaints brought against him can hardly be overstressed. It is quite impossible for a practitioner to defend himself against a complaint if he is not fully apprised of its precise nature. It is irregular that a practitioner should be informed of the precise nature of a complaint for the first time in a notice of motion served upon him in disciplinary proceedings before the court. Irreparable harm can be done to a practitioner by bringing him before the court on a complaint of unprofessional conduct even if, in the result, the proceedings fail, and it is obviously of the utmost importance that a practitioner should be apprised of the complaint, and afforded an opportunity of answering it, before such a drastic step is taken. The bye-laws of the Law Society of Rhodesia provide that the practitioner shall be afforded this opportunity when a complaint is to be dealt with by the Law Society itself, and it is even more important that such an opportunity should be afforded when proceedings in the High Court are possible. There may possibly be exceptions in which this need not be done."

The decision of the Tribunal was upheld by the Supreme Court in *Siwanda Kennedy Mbuso Sibanda* v *The Law Society of Zimbabwe* SC 162/91.

It follows from the above authorities that the respondent is therefore required to be given an opportunity to be heard from the time a complaint is lodged with the applicant to the time when the matter is determined by the Tribunal. The rule is however dependent on the circumstances of each case. In particular, the right to be heard can be expressly or impliedly excluded in a statute. In some circumstances the procedure to be adopted does not necessarily have to be strict.

The procedure leading to the referral of a matter to the Tribunal as set out in the Act and the By- Laws provides for a legal practitioner's right to be heard where he/she is facing allegations of unprofessionalism. The relevant procedure is as follows:

(a) A complaint alleging unprofessional conduct against a legal practitioner is communicated to the applicant through the secretary of the law society (By-Law 61 (1));

(b) If the secretary considers that the complaint has merit, he informs the legal practitioner in writing of the nature of the complaint requiring him to reply to the complaint within 14 days (By-Law 61 (1)(c));

(c) If the secretary is of the view that the complaint has substance, he/she submits the complaint, any evidence in his possession and the legal practitioner's reply to the Disciplinary and Ethics committee for consideration (By-Law 61 (3));

(d) If there is no formal complaint, and it appears to the secretary that a legal practitioner is guilty of unprofessional conduct, the secretary may inform the legal practitioner of the complaint and require the legal practitioner to respond within 14 days (see By-Law 61 (4));

(e) The Disciplinary and Ethics Committee causes any such investigations it deems necessary and may require the legal practitioner to respond further to the complaint, by affidavit and provide any documentary evidence in support of his/her response (By-Law 62 (1)).

(f) If, after the investigations, the Disciplinary and Ethics committee considers that the legal practitioner's conduct discloses unprofessional conduct, it shall refer the matter to Council with its findings and recommendations (By-Law 62 (2));

(g) If Council considers that a *prima facie* case of unprofessional conduct warranting referral to the Tribunal is disclosed, it refers the matter to the Tribunal (By-Law 63 (4)(a)).

The following is the procedure provided for in the Regulations for referral of the matter to the Tribunal and consideration of the matter by the Tribunal:

(a) the applicant lodges with the Registrar a written application setting out the allegations, summary of evidence sufficient to inform the respondent of all the material facts (s 3(1), s 3(2) & s 3(3));

(b) the Tribunal shall consider the application and may accept or reject the application (s 4 (a));

(c) If the Tribunal accepts the application, it shall direct the Registrar to arrange for the service of a copy of the application on the respondent and call for the respondent to file a counter-statement (s 4 (b));

(d) The respondent shall lodge his/her counter-statement with the Registrar within 21 days of the date of the service of the application on the respondent (s 5 (1));

(e) On receipt of counter-statement, the Registrar shall forthwith refer the counter-statement to the chairperson (s 5 (3));

(f) the applicant may respond to the counter-statement and lodge its response with the Registrar within 14 days (or any additional period approved by the chairperson) of the date of service of the counter-statement on it (s 6);

(g) the Tribunal shall thereafter consider whether or not to hold an inquiry (s 7 (1)). If the Tribunal decides to hold an inquiry, the Chairperson shall set down the application and the Registrar shall give the parties at least 14 days' notice of the date of hearing (s 8).

The above procedures enshrine a respondent's rights to be heard at every stage of the disciplinary proceedings. The question is therefore whether or not the respondent was given an opportunity to respond to the complaints against him in compliance with the procedures. As alluded to earlier, there were three written complaints from Eliot Rogers, Albert Mazhindu and Justice MANGOTA.

On 10 and 15 October 2013, Eliot Rogers lodged his complaint with the applicant's secretary by e-mail. On 16 October 2013, the applicant, in a letter written on behalf of the applicant by a W P Mandinde, brought Eliot Rogers' complaint to the attention of the respondent and invited the respondent to reply to the complaint. The letter of complaint was attached to the communication. The communication was received by the respondent on 22

October 2013 as per the stamp of P. Chiutsi Legal Practitioners. The respondent promptly responded to the complaint by letter dated 29 October 2019, which was received by the applicant on 30 October 2013. He did not dispute receipt of monies due to Mr Rogers. He explained that part of the money had gone towards fees for work he had undertaken on behalf of Rogers and had sent the fee note for the work to Rogers. He had sought to invest the balance and given Rogers various investment options. Rogers had rejected the options. On 14 February 2014, Mr Mandinde wrote to the respondent again requesting proof of the payment of the monies owed to Rogers, proof of investment of the money and proof of the instructions from Rogers to invest the money. At the time the matter was referred by the secretary to the Disciplinary & Ethics Committee on 29 September 2014, Disciplinary & Ethics Committee, the respondent had not furnished the secretary with the requested documents.

On 29 September 2014, the secretary referred the matter to the Disciplinary & Ethics Committee expressing his views that the respondent was guilty of unprofessional conduct and recommending his deregistration for failure to account for trust funds.

Regarding the complaint by Mazhindu lodged on 29 December 2011, the respondent was requested by letter dated 26 January 2012 by the applicant to respond to the complaint. The letter was received by the respondent on 30 January 2012. The respondent replied on 31 January 2012. On 15 February 2012, the respondent replied using abrasive language clearly unbefitting of a legal practitioner as follows:

> "We refer to your letter dated 10th February 2012 and respond as follows:
> 1. If you have already made a finding that my conduct was dishonourable is there a point in me responding to these allegations?
> 2. I have already advised you that there are pending criminal and civil proceedings in respect of these allegations and I have nothing further to respond to."

The applicant persisted in a letter dated 5 March 2012 received by the respondent on 9 March 2012 to engage the respondent. It raised concerns that the response by the respondent had avoided addressing the substantive allegations in the complaint and invited the respondent to do so. The following was yet another abrasive response by the respondent dated 9 March 2012:

> "We refer to you to your letter dated 5 March 2012 and respond as follows:
> 1. I responded to the allegations on the 31st of January 2012 and on 15th of February 2012.
> 2. If you consider my response to be unsatisfactory to you, you are at liberty to proceed as you threatened.
> 3. It is undesirable for your office to attempt to use bully tactics in dealing with issues of this nature. Your position as arbitrator is compromised by the clear bias in your letters of 10th February 2012 and 5th March 2012.
> 4. Your responsibility is to establish facts before reaching a finding not the other way round."

The complaint by Justice MANGOTA was brought to the attention of the respondent by letter dated 23 March 2017 which was received at respondent's offices on 24 March 2017. The complaint was also attached to the communication. The respondent responded to the complaint. The applicant's Secretary was not content with the response. On 7 August 2017 he wrote to the respondent stating that the respondent's response was inadequate as it did not address the allegations of forgery in the complaint. The respondent received the letter on 9 August 2017. On 24 August 2017 the respondent replied as follows:

> "1. We refer to your letter of the 7th of August 2017 and are surprised by your insistence that we have not responded to your previous communications."

This confirms that the applicant did communicate with the respondent in compliance with the By-laws. The respondent replied to the communication and considered his response adequate. By letter dated 19 September 2017 and received by the respondent on 11 October 2017, the Secretary persisted that the procedural issues raised by the applicant in his response did not preclude him from responding to the allegations in the complaint. He further stated that the matter was to be referred to the Disciplinary and Ethics Committee. The respondent replied on 12 October 2017 and received another letter from the applicant on 17 October 2017 to which the respondent replied on 3 November 2017. On 23 November 2017 the respondent finally responded to the allegations, persisting with the procedural issues raised in the earlier responses and denying forging any affidavit.

The remaining two counts were raised by the applicant *mero motu*, the counts were brought to the attention of the respondent through this application. Under ordinary circumstances, a complaint can only be referred to the Tribunal after full investigations and deliberations by the applicant's Disciplinary and Ethics Committee and Council in compliance with procedures set out in Part VIII of the By-laws and in particular By-laws 62 and 63 summarised earlier. However, Council can in terms of By-Law 67 (a) bypass the procedures set out in Part VIII. By-Law 67 (a) reads as follows:

> "The Council shall have the right to apply to the disciplinary tribunal for an order against a legal practitioner or a legal assistant in terms of subsection (1) or (2) of the Act without following the procedure provided for in this Part, and without any notice to the legal practitioner or legal assistant, other than such notice as may be required in terms of the Legal Practitioners Disciplinary Tribunal Regulations, 1981 if:
> (a) the member has been convicted of an offence of the kind referred to in subsection (3) of section 28 of the Act; or

(b) the Council is of the opinion that delay in the making of the application might be prejudicial to the public or any member thereof, or to the administration of justice, or to the reputation of profession."

In essence, the complaint must be such that Council considers it warranting immediate attention for Council to proceed under By-Law 67. Council can therefore short circuit proceedings in cases of emergency and only if it is in the public interest to do so. This is the procedure envisaged in *Heatherdale Farms (Pty) Ltd & Ors* v *Deputy Minister of Agriculture & Anor* (*supra*) where a statute expressly or by necessary implication excludes the right to be heard. (See also *Chadoka & Ors* v *Minister of Local Government & Ors* 2000 (1) ZLR 588 (HC)) The right to be heard by the applicant's Council is thus excluded by By-law 67 (a) where potential prejudice and damage to the reputation of the profession is envisaged if the respondent is allowed to continue practicing. However, the respondent's right is preserved before the Tribunal. As alluded to earlier, the application is served on the respondent in terms of s 4 (b) of the Regulations. The respondent is then given twenty one days within which to lodge a counter-statement. He/she has an option to make the counter-statement in writing setting out his/her reply to the allegations and listing any witnesses he/she wishes to call. If the Tribunal chooses to hold an inquiry, the respondent is given fourteen days' notice of the date of hearing.

The respondent did not dispute receiving the outlined communication from the applicant's secretary neither did he dispute responding to the communication. He was given an opportunity to file a counter-statement to this application. He therefore has been at all times aware of the complaints against him and was given an opportunity to respond which he did. As stated in *Sibanda* (*supra*) a detailed counter-statement to the application is indicative of the respondent's awareness of the complaints against him. The preliminary point that he was denied his right to be heard therefore lacks merit.

A Complaint by Albert Mazhindu

The complaint by Albert Mazhindu was as follows: He was a tenant at Mrs Teclar Chiutsi's property being Stand 2215 Sengwa Avenue, New Marlborough, Harare. Mrs Chiutsi is the respondent's mother. The property was managed by Chrisben Properties, a registered estate agent. The respondent had, without any court order, sought to forcibly eject Albert Mazhindu from the property over a rental dispute. The respondent broke into the property and removed Albert Mazhindu's property from the house and in the process damaged some of the property. The respondent was arrested after the matter was reported to the police. The applicant alleged that by seeking to forcibly evict the complainant and without a court order, the

respondent took the law into his own hands. This constitutes unprofessional conduct which brings the name of the profession into disrepute.

When the respondent was initially requested by the applicant to respond to the allegations, he indicated that the allegations did not raise any improper conduct in his professional capacity. The applicant was seeking to settle criminal and civil matters between the complainant and himself. The police were investigating the criminal matter and he had instituted civil proceedings against the complainant. The complainant was abusing his position as a public prosecutor in the employment of the State by refusing to pay rentals to a widow and causing his arrest.

The respondent explained in the counter-statement that his sister-in law, who had been in occupation of the property, went to stay in South Africa and leased the property to Mazhindu. When she returned she gave notice to Mazhindu to vacate the property. Mazhindu refused to vacate the property. The sister-in law approached him for assistance. He tried to contact the complainant but the complainant avoided him. He went to the property where he met the complainant. The complainant requested for time to look for alternative accommodation. They agreed on a date when the complainant would vacate the property. The complainant failed to vacate the property on the agreed date. He then went to the property and found the complainant's property outside. The property was old and dilapidated. The complainant caused his unlawful arrest and that of his sister-in-law. They were however released without any charges having been preferred against them. He contended that the applicant did not investigate the matter and simply relied on the letter of complaint by Mazhindu. Had it carried out proper investigations, it would have discovered that the complaint had no substance.

As rightly submitted by the respondent, the applicant did not properly investigate the matter. It remains unclear as with whom the complainant entered into the lease agreement with. Was it the respondent's mother or his sister-in-law? It is not in issue that the respondent was arrested by the police and was detained in police cells. The basis and outcome of the arrest would have been easily ascertained by proper investigations by applicant.

However, the evidence placed by both the applicant and the respondent is sufficient for us to make a determination on the matter. The complainant stated that the property was being managed by Chrisben Properties (Pvt) Ltd. Attached to the complaint is a letter addressed to "The Tenants" dated 28 October 2011. It is therefore not in dispute that the property in issue was under the management of the estate agent. It is further not in issue that the complainant, as per the letter from the estate agent, had not been paying rentals and utility bills for some time.

According to his counter-statement, the respondent went to the property on two occasions purportedly at the behest of his sister-in-law. Despite the property being managed by the estate agent, the respondent interfered with the agent's mandate when he went to the property on the two occasions. He did not explain why the sister-in-law did not refer the rental dispute to the estate agent but instead called him. He did not explain why he did not take up the issue with the estate agent either. The respondent, being a legal practitioner, ought to have known better. His conduct gives credence to the statement by the complainant that the respondent was flexing his muscle as a legal practitioner and wanted to intimidate the complainant. Had it not been so, he would have referred the issue to the estate agent who must have been managing the property for a fee.

In his letter to the applicant dated 31 January 2012, the respondent stated in paragraph 6 thereof, that he had since obtained an order for the ejectment of the complainant and for the recovery of outstanding rentals and costs on an attorney and client scale. In paragraph 9 and 10 he states:

> "10. The complainant has abused his position as Public Prosecutor to take advantage of a widow and four (4) orphans whilst destroying their home and rendering them destitute by not paying rentals and other charges for a period in excess of three (3) years and wanting to continue in occupation, this unacceptable situation notwithstanding.
>
> 11. Mazhindu will not take advantage of my family in that manner and I shall definitely pursue him to the conclusion of all matters against him."

The language used by the respondent and the tone of the above paragraphs clearly illustrate that the respondent was agitated by the complainant's default in paying rent and utility bills. His visit to the property on two separate occasions could therefore not have been with the intention to resolve the rental dispute amicably. Even after having obtained an order of court as he alleges he is still using belligerent language which is unbecoming, and inappropriate loaded with threats of further unspecified harm which harm could be unlawful. It gives credence to the complaint that the respondent was aggressive and physically ejected the complainant and removed his property without an order of court.

The respondent's conduct amounts to spoliation. Legal practitioners swear to uphold the law. The respondent's conduct is contrary to that oath. The applicant therefore proved that the respondent's conduct was unprofessional and unworthy of a legal practitioner

B COMPLAINTS BY ELIOT ROGERSS

The applicant raised the following charges following complaints by Eliot Rogers:

(a) withholding payment of trust money due to a client without lawful excuse in contravention of s 23 (1) (d) of the Legal Practitioners Act [*Chapter 27:07*] (the Act);
(b) failure to pay client upon demand within a reasonable time in contravention of s 23 (1) (c) of the Act resulting in the complainant resorting to litigation in order to recover what was due to him;
(c) holding money in an account that is not a bank, building society or an institution approved by the applicant without authority of client in contravention of s 23 (1) (c) as read with s 13 (2) of the Act;
(d) holding trust funds in an account that does not allow the withdrawal of the funds on not more than seven days' notice in contravention of s 23 (1) (c) of the Act as read with s 5 (1) of the Legal Practitioners (General) Regulation, 1999 (SI 137 of 1999);
(e) failure to notify the applicant's Council of the name and address of the institution at which additional trust funds were kept in contravention of s 23 (1) (c) of the Act as read with s 70 D of the By-laws; and
(f) charging a fee to client that is not fair and reasonable in contravention of s 23 (1) (c) of the Act as read with s 68 (1) of the By-laws.

The background to the above charges, which is largely common cause, is as follows: Eliot Rogers sold, on behalf of the estate of his parents, the Late Eliot and Betty Kern Rogers and through Seeff Real Estate Agent a property situate at 30 Arundel School Road, Mt Pleasant for an amount of US$266 000. The respondent was engaged by Eliot Rogers to attend to the transfer and conveyancing of the property. The purchaser of the property paid the purchase price into the trust account of the respondent in August 2012. The respondent was required to hold the funds in trust pending the transfer of the property.

Before the transfer was completed, the respondent transferred to Eliot Rogers a sum of US$150 000.00 leaving a balance of US$116 00.00. Eliot Rogers persistently demanded the balance. In response to the demands, the respondent raised a fee note in the sum of US$47 023.83 and acknowledged that he was holding for the complainant a sum of US$70 000. Rogers disputed the fee note and at the same time demanded payment of the balance of $70 000 that was not in issue. The respondent indicated to the complainant that he had invested the money in an interest bearing account with Metropolitan Bank and the bank could not pay out because of liquidity challenges. The failure by the respondent to pay led Eliot Rogers to issue out summons under case number HC 3331/14 for the recovery of the balance of US$116 000.

In his plea to the action, the respondent pleaded that the sum of US$70 000 had in fact not been invested with Metropolitan Bank but with one Newman Chiadzwa, a diamond dealer. During a pre-trial conference held in the matter before MAFUSIRE J, the respondent acknowledged owing the complainant the sum of US$70 000 and undertook to pay the amount by 30 September 2014. He failed to pay on that date and proposed subsequent dates. On 4 November 2014, the High Court granted an order in favour of Rogers for the payment of the uncontested sum of US$70 000 with costs on an attorney client scale after the respondent failed to pay on the subsequent dates. (See *Eliot Rogers* v *Puwayi Chiutsi* HH 222/15).

The respondent's fee note had been taxed on 12 September 2014 and was dismissed on the basis that conveyancing transactions are regulated by statute and are not taxable and therefore the respondent would recover his fees in terms of the Law Society of Zimbabwe (Conveyancing Fees) By-Laws 2013 (Statutory Instrument 24 of 2013). The court in case number HC 3331/14 could not order payment of the sum of US$47 023.83 as the respondent intended to challenge the taxing master's decision on review.

The respondent appealed under case number SC 578/14 against the decision by MAFUSIRE J. The appeal was dismissed with costs on a legal practitioner and client scale on 4 November 2014. On 29 September 2017, the respondent filed an application under HC 647/17 for the review of the taxing master's decision. He however failed to file heads of argument in the matter and was therefore barred. He filed an application for condonation under HC 3077/17 on 6 April 2017. Both the main application for review and the application for condonation were dismissed by MANGOTA J with an order again for costs on a legal practitioner and client scale. The respondent appealed against MANGOTA J'S judgment. The appeal was dismissed again with punitive costs.

Following the dismissal of the appeals against MAFUSIRE J and MANGOTA J's judgments, Eliot Rogers proceeded to execute the judgments. The execution led to the complaint by MANGOTA J.

Withholding payment of trust money without lawful cause

It is common cause that a sum of US$70 000 was due to the complainant. The respondent did not pay the complainant in spite of the demand by the complainant. The issue for determination is whether the respondent had lawful cause to withhold payment.

"Lawful cause" or lawful excuse is a reason based on law for failing to do that which is prescribed at law. The phrase was defined in *S* v *Blanchard & Ors* 2001 (2) ZLR 373 (S) 380 G -381 A where CHIDYAUSIKU CJ remarked as follows:

> "Thus, the Federal Chief Justice, after a review of the authorities, concluded that "lawful excuse" means a reason or excuse that is in accordance with the law. He defined lawful authority as meaning the right by law to do what seems to be an offence. It follows from the above, therefore, that a suspect seeking to escape conviction on the basis of the existence of either a lawful excuse or lawful authority must establish a reason predicated on some legal provision for doing that which is on the face of it unlawful."

The respondent alleged in the counter-statement that, acting on the complainant's instructions, he invested the amount in Newman Chiadzwa Investment Companies, which was a mining company that was taking investments repayable at a month's notice with interest at the rate of 30%. (See paragraph 79-82.) He attached a copy of the alleged investment "agreement". The "agreement" is headed:

> "RE: **CONFIRMATION OF INVESTMENT P CHIUTSI LEGAL PRACTITIONERS-$91 500.00**"

For lack of a better term, the "agreement" is dubious. Firstly, the "agreement" is said to be a "confirmation" of an investment. Secondly, it is between N. Chiadzwa Property Investments and not the alleged Newman Chiadzwa Investment Companies. Any lawyer would know that the two are different legal entities. It is dated 28 February 2013. It is written "Without Prejudice". Why an investment agreement should be without prejudice is perplexing. The phrase is generally used by a party during an attempt to reach a settlement in a dispute. The contents of the document written "without prejudice" would therefore not be relied on as evidence during the determination of the dispute in a court. The use of the phrase in the agreement therefore means that there was no investment agreement. No rational legal practitioner would rely on an agreement "without prejudice" as proof of a valid agreement. The interest rate in clause 2 of the "agreement" is 15% per annum and not the 30% referred to in the counter-statement.

In further support of the purported agreement, the respondent relied on emails between Newman Chiadzwa and himself. The connection between the emails and the complaint are incomprehensible. A sample of the emails is as follows: The first email of 13 July 2014 reads:

> "Hi Chiutsi,
> Herewith results for the tender attached. There is little we can do to redress this it's purely robbery, I strongly believe the Gem content of my parcel was swapped by facilitators. Over and above my own funds spent since conviction, it appears I can't even replace my brother in law's property he sold to fight my case. I don't know what to do I'm depressed Chiutsi I think we have to seriously look at the reality together and talk.
> Regards
> N. Chiadzwa"

The second email reads of 3 September 2014:

> Chiutsi
> With so many issues to be resolved between us, I think it becomes more complicated if I pay you without reference to a specific account. I'm advised to await finalisation of these matters before the courts. Remember I have no official receipts for some payments already made.
> Regards
> N. Chiadzwa

The email dated 15 August 2014 reads:

> Good day'
> You stressed at our meeting that you have to get the best out of it. It's equally the same with me, I have to get the best, which must include deducting all monies I paid in helping you fight this case, advocates included. I'm busy compiling the figures and hope we see reason from the same angle in this regards.
> Regards
> N. Chiadzwa

The other emails refer to fee notes for services rendered by the respondent to N. Chiadzwa.

The email of 17 August 2014 reads:

> Hi Chiutsi
> I've gone through your response to my email which appears to contain new terms of our arrangement regards fees. I'm trying to recall these terms and what transpired before and after this arrangement was made, I had to revisit our latest communications regards fees in this matter. There is nothing like disbursements or legal work mentioned at any stage during our communication.
> What has now come to light is the following, when this percentage arrangement was being negotiated and before finalisation we had serious disagreement over the phone on 27 April 2012.
> This argument was related to deposits for various other cases, and in protest you went on to cancel this arrangement and subsequently reduced it into writing on 30 April 2012. This effectively superseded our previous arrangement which was underway. In this view, it is only fair and just that I first verify the authenticity of your fee note contained in your letter of 30 April 2012 and then look at what further professional services rendered on the matter before further payment to you.
> Regards
> N. Chiadzwa."

The above was a response to an email by the respondent dated 15 August which reads:

> For the avoidance of doubt our agreement was that you would pay all disbursements whilst we did all the legal work in return for 20% of the value of diamonds.
> In fact our fees must be a percentage of the gross value of the diamonds.
> Over the course of this matter we ended up paying the disbursements as you consistently said you had no cash. The only expenses you paid consistently were advocate fees.
> On this basis therefore we are unable to negotiate any other payment method.
> Kindly deposited our fees in the account previously provided."

The last two emails relate to the payment of fees. They relate to events of 2012 which have nothing to do with the purported investment of 28 February 2013. Whilst there is some reference to diamonds there are no other documents filed by the respondent which related to an agreement about diamonds.

Except to harass the Tribunal and cause unnecessary confusion, the numerous emails were of no relevance to the complaint before us. The respondent therefore failed to advance any lawful cause why he failed to pay the complainant.

The respondent further failed to produce any proof that he had been authorised by the complainant to invest the money with N. Chiadzwa Property Investments. Once monies are entrusted to the attorney, such moneys belong to the trust creditor. The money can only be dealt with on mandate/authority of the creditor. He stated in paragraph 71 of his counter-statement that he was given authority by the complainant in a Special Power of Attorney dated 6 August 2012. The power of attorney reads:

> "**Special Power of Attorney**
> Know all men whom it may concern
> That I Eliot Grenville Kern Rogers
> ……
> ……..
> do hereby nominate, constitute and appoint Puwayi Chiutsi
> ……
> ……..…….
> To be my special agent with power of substitution;
> To execute and sign an Agreement of Sale of my property being
> 30 Arundel School Rd Mt Pleasant
> …….
> And to sign all documents necessary to pass transfer from my name, company's name to the Purchaser or his/her/its nominee;
> And, I hereby ratify or confirm and promise at all times to ratify and allow and confirm all and whatever my said Attorney, his substitute or substitutes, shall lawfully do or cause to be done by virtue of these presents.
> Executed by me at London in the presence of the undersigned witnesses on the day 6th of August 2012."

The specific terms of the powers granted the respondent by the complainant were to sign and execute an agreement of sale and to sign all papers to pass transfer of the property to the purchaser. It cannot, by any iota of the imagination, be said to have authorised the respondent to invest the proceeds from that sale.

The complainant denied giving such authority. The respondent sought to further rely on emails from the complainant as proof of the authority. The only emails produced by the respondent relate to the respondent advising the complainant on 8 January 2013 that he had found an investment company that pays 30% per annum. The complainant responded on the same day:

> "Dear Mr Chiutsi.
> Thanks for the email.

> The interest rate is very high. Surely it is speculative and not safe?
> I need to pay off a debt of £ 60,000 to HM revenue and customs.
> How do I pay this?
> The best possible way is maybe to draw up some paperwork showing that the money is a loan. Please can you look into this. I need the £60,000 by April and perhaps the rest of the money could be banked for a year.
>
> Regards
>
> Eliot"

On the following day, 9 January 2013, the complainant again queried the interest rates as being speculative and not safe. The complainant was clearly apprehensive about the proposed investment. The emails do not state the nature of the investment. In fact the complainant's suggestion was that after the payment of £60 000 to "HM" the balance would be deposited into a bank. Apart from these emails the respondent did not produce any other email where the complainant unequivocally authorised him to invest with N. Chiadzwa Property Investments. The respondent does not explain why he was seeking authority then and proposing investment options if he had been authorised to do so invest by the special power of attorney granted in 2012. The investment options were now being suggested almost a year after the granting of the special power of attorney.

After protracted engagement with the Tribunal, the respondent conceded that both the special power of attorney and the set of emails did not prove that the complainant gave him the authority to make any investments.

Holding money in an account that is not a bank, building society or an institution approved by the applicant without authority of client

A legal practitioner is required in terms of s 5 (1) of the Legal Practitioners General Regulations, 1999 (SI 137 of 1999) to keep a trust creditor's money in an account "such as to allow the withdrawal of funds therefrom on not more than seven days' notice". The respondent stated in the counter-statement that the investment was repayable on a month's notice as provided in terms of clause 3 of the "agreement". This fell afoul of the Act.

The respondent in fact conceded that Newman Chiadzwa was in fact his client. He further conceded that what he called an investment was money that had been given to Newman Chiadzwa in connection with some diamond deal. The investment envisaged in the Act is restricted to normal banking channels and not in diamond deals by one of the respondent's other clients. Section 13(3) as read with subsection (2) permits a legal practitioner, who is authorised by a trust creditor, to invest any trust money at a bank or building society or with an

institution approved by the Council of the Society. The investment shall be regarded as a trust account for the purposes of s 13 and "shall indicate the name of the person for or on account of whom the money is held." The alleged agreement produced by the respondent does not reflect that the investment was in the name of the complainant. It reflects that it was in the name of the respondent. The complainant's name does not appear in the "agreement". The investment was therefore not in terms of the Act.

Failure to Pay Client upon Demand within a Reasonable Time

In terms of By-law 70, trust money must be paid out within a reasonable time. The initial demand for payment by the complainant was made by email of 10 October 2013. The respondent undertook to pay the money. Payment was not made leading to the action under case number HC3331/14 for the recovery of the money. The respondent was ordered in *Eliot Rogers* v *Puwayi Chiutsi* HH 222/15 as per MAFUSIRE J on 5 March 2015, to pay the complainant the sum of US$70 000, that is two years after the demand. The respondent unsuccessfully appealed against the order under case number SC 578/14 despite admitting owing the sum of US$70 000 and making assurances to pay the complainant. As at 15 July 2019 when the hearing commenced, that is almost five and a half years after demand, the respondent had not discharged the judgment debt as per the letter dated 15 February 2019. After paying the sum of US$70 000 and part of the costs, the respondent was to pay an outstanding balance of US$61 000 in costs.

Complaint by the Honourable Justice Mangota

The complaint by Justice MANGOTA emanates from the execution of the judgment under case number HC 3331/14 (HH 222/15). The respondent failed to settle the judgment debt under HC 3331/14 resulting in the attachment of movable property by the Sheriff at 41 Ridgeway North, Highlands, Harare (being the respondent's last known residential address) and 92 Glenara South Hillside, Harare (being the location of the respondent's law firm) respectively. Following the attachment of the property, the respondent's law firm lodged two interpleader claims with the Sheriff purportedly on behalf of one Clara Chiutsi and House of David (Pvt) Ltd respectively. Clara Chiutsi is the respondent's former wife and was purportedly residing at 41 Ridgeway North, Highlands, Harare. House of David (Pvt) Ltd was the owner of 92 Glenara Avenue, Highlands and therefore the landlord of the respondent's legal firm. It was purportedly represented in lodging the claim by its director, Learnmore Chatima. Clara Chiutsi and Learnmore Chatima were alleged to have respectively deposed to affidavits claiming ownership of the attached movable property at the two respective properties. The

affidavits were purportedly deposed to on the same date, 1 February 2016 and before the same commissioner of oaths, one Nyevero Desire Munhariri. Payments for security for costs in respect of each claimant were made by the respondent. The Sheriff duly filed an interpleader application under case number HC 2333/16 with Clara Chiutsi and House of David (Pvt) Ltd being the claimants. The application was opposed by the judgment creditor. The two claimants purportedly filed opposing affidavits to the application (headed "answering affidavit").

The application was set down for hearing before Justice MANGOTA. On the day of hearing of the application, the respondent, being represented by one Ms Mtetwa, sought to prevent the hearing on the basis that the respondent had entered into a settlement with Eliot Rogers' lawyers. It appears Ms Mtetwa was also representing the claimants.

Learnmore Chatima (representing House of David (Pvt) Ltd) appeared at the hearing and tendered an affidavit disowning the affidavits he was purported to have deposed to in support of the claim and in opposition of the interpleader application. The application was dismissed by MANGOTA J with costs against the respondent on a legal practitioner and client scale.

Dissatisfied with the respondent's conduct in the interpleader proceedings, and particularly the fact that Learnmore Chatima disowned the affidavits before the court, Justice MANGOTA raised a complaint against the respondent giving rise to the charge that the respondent intended to defeat the course of justice by filing fraudulent affidavits. Justice MANGOTA recommended that the applicant investigate the matter.

The applicant contended that the respondent sought to mislead the court by submitting affidavits that were forged. Such conduct is unprofessional and unworthy of a legal practitioner.

The respondent disputed being the author of the offending affidavits or being involved in the preparation and presentation of the affidavits. He submitted that Chatima disowned his affidavit in a bid to place him in trouble following an attempt to evict him from the premises, Further, the allegation that he was involved in the preparation of the forged affidavits were not investigated by the applicant and were therefore improperly before the Tribunal.

The first question is, who filed the affidavits with the court and the second question is, in what capacity did he or she file the affidavits. It is common cause that the respondent, who was the judgment debtor, filed the affidavits with the court. The respondent conceded in oral submissions that he in fact prepared the affidavits for the claimants. His explanation for doing so was that, with regard to his former wife, he had placed her in a situation where family property had been attached thereby inconveniencing his family. As regards Chatima, he

submitted that he was renting out a furnished property. He had caused the attachment of the property thus prejudicing his tenant. The fact that he did indeed prepare the affidavit for Chatima is further supported by the contents of the affidavit. The affidavit contained information that Chatima, as a tenant would not have been privy to. Paragraph 7 thereof alludes to an agreement between the judgment creditor and the judgment debtor. The agreement was attached to the affidavit. Chatima would not have been privy to and have in his possession that agreement. Therefore, in these untenable circumstances, a judgment debtor drafted claimants' affidavits for his former wife and his tenant. There was an unholy relationship between claimants and judgment debtor.

The allegation by the respondent that Chatima would disown his affidavits so as to fix the respondent does not make sense. Doing so would mean that Chatima would have been allowing the property belonging to the company, of which he is a director, to remain under attachment and ultimately to be sold. The company would be the loser.

Not only did the respondent prepare the affidavits, he also paid security for costs for the two claimants and filed the affidavits with the court. This is evidenced by the fact that he instructed a lawyer, Ms Mtetwa, to represent the claimants. Ms Mtetwa went on to submit before Justice Mangota that the dispute between the judgment debtor and the judgment creditor had been resolved. The submission was intended to influence the court to grant the applications.

In **Legal Ethics: A handbook for Zimbabwean Lawyers by B Crozier** it was stated at p 15 that:

> "And the Canadian Bar Association's Code of Conduct states, as an example of prohibited conduct, that a lawyer must not:
>
> "(e) knowingly attempt to deceive or participate in the deception of a tribunal or influence the course of justice by offering false evidence, misstating facts or law, presenting or relying upon false or deceptive affidavit, suppressing what ought to be disclosed or otherwise in any fraud, crime or illegal conduct;"

MANGOTA J remarks in his letter of complaint aptly describes the respondent's conduct when he states:

> "Mr Chiutsi's conduct in the above mentioned regard was unconscionable. I found it hard, if not impossible, to condone let alone accept, such dishonesty especially by a legal practitioner who, as is known, is at all material times expected to be candid with the court.
>
> It is for the mentioned reasons, if for no other, that I decided to write as I did. I leave the matter which relates to Mr Chiutsi's conduct in your capable hands. I am convinced that the legal

profession will be placed into very serious disrepute if such conduct as Mr Chiutsi exhibited remains unchecked."

The remarks are apposite. We are in agreement that the respondent's conduct places the legal profession "into very serious disrepute".

CHARGES REFERRED TO THE TRIBUNAL *MERO MOTU*

The applicant referred the following matters to the Tribunal *mero motu*.

CIVIL IMPRISONMENT

The following order was granted on 6 March 2013 against the respondent in *City Centre Properties (Private) Limited* v *Puwayi Chiutsi & Ors* HH 62/13 (HC 5708/10 & HC 7593/11):

"1. All the defendants' defences in HC 5708/10 and HC 7593/11 are hereby struck out.
2. The first defendant's counter claim in HC 5708/10 is hereby dismissed with costs.
3. Judgment be and is hereby granted in favour of the plaintiff as against the first, second and third defendants as follows:
   (a) Payment of the sum of $27 788-20 being operating costs together with interest thereon at the rate of 14% per annum from January 2009 to date of payment in full.
   (b) Interest on the rentals of $39 576-93 at the rate of 14% per annum from January 2009 to date of payment in full
   (c) Costs of suit on the scale of legal practitioner and client."

The respondent failed to discharge the judgment debt. On 6 December 2016, summons were issued under case number HC 12368/16 for the civil imprisonment of the respondent. An order for his imprisonment was granted on 22 February 2017. The order was suspended on condition the respondent made monthly instalments to acquit the judgment date.

The respondent defaulted on the payments and a writ for his imprisonment was issued on 13 April 2017. The Sheriff executed upon the Writ and took custody of the respondent on 28 February 2018. The respondent was released sometime in March 2019 from Harare Central Prison at the instance of the plaintiff.

The applicant became aware of the civil imprisonment and considered it unprofessional conduct warranting disciplinary action.

The respondent stated in the counter-statement that the legal practitioner representing the plaintiff snatched a judgment well aware that he was engaged in another court. She acted unprofessionally, overstating the amount due.

The respondent did not address the issue that judgment was granted against him and others under case number HH 62/2013. He did not pay the judgment debt. Summons for civil imprisonment were issued on 6 December 2016. The order for civil imprisonment was granted on 22 February 2017. He still did not pay the debt leading to his imprisonment. He did not

submit whether he applied for the rescission of the judgment under HH 62/2013 and if so the outcome thereof. The explanation given by the respondent therefore does not address why he failed to pay the judgment debt.

A reading of the judgment in HH 62/2013 shows that the respondent tried at all cost to avoid the hearing of the matter. MATHONSI J explained that the matter was initially set down for trial on 26 February 2013 at 9 am. The respondent was served with the notice of set down 10 December 2012. On 25 February 2013, a day before the commencement of trial, the respondent wrote to the plaintiff's legal practitioners that he was unable to attend the hearing as he had not been served with the discovered documents. The matter was postponed with the respondent's consent to 28 February 2012 at 9 am for commencement of trial. On 28 February 2012, the respondent requested that the matter be stood down to 9.20 am as he was in bail court. The court indulged him. The matter commenced at 10 am without the respondent. The plaintiff's legal practitioner then applied for default judgment. The court bent backwards to accommodate the respondent so did the plaintiff's legal practitioner. The respondent cannot therefore protest that the plaintiff's legal practitioner snatched a judgment.

Fraudulent disposal of an immovable property that was under judicial attachment.

The applicant alleged that the respondent sold an immovable property which was under judicial attachment well aware of the attachment. The respondent's conduct in doing so is unprofessional warranting censure.

The charge is a sequel to the complaints by Eliot Rogers and Justice MANGOTA. After the respondent had failed to pay the judgment debt in HH 222/15, the Sheriff proceeded to attach some movable property belonging to the respondent. The property was not sufficient to satisfy the judgment debt. The Sheriff issued a *nulla bona* return and proceeded to attach an immovable property registered in the respondent's name, being the remainder of subdivision C of Lot 190, 191, 193, 194 and 195 Highlands Estate of Welmoed measuring 4 377 square metres, also known as 41 Ridgeway North, Harare and held under Deed of Transfer Number 8421/00. On 16 July 2016, the Sheriff registered a caveat (Caveat No 364/2016) against the immovable property.

On 21 January 2017, the respondent filed a chamber application in terms of r 348 A (5b) of the High Court Rules 1971 under case number HC 6665/17, seeking the postponement or suspension of the sale. After argument, the court ruled that the application was not properly before the court because it was brought outside the time limits prescribed by rule 348A (5a), and no condonation for late filing and extension of time within which to file had been sought,

or obtained. The respondent had been served with the notice of attachment on 26 June 2016. He was therefore required under r 348 A (5b) to have filed his application within 10 days of the date of service of the notice of attachment. The application for stay of the sale was filed a year later. The respondent was therefore barred and ought to have filed an application for the upliftment of the bar first. (See judgment under case number HH 547-17).

The respondent challenged the *nulla bona* return and the attachment of the property in case number HC 649/17 filed on 25 January 2017. Notwithstanding being the applicant in that matter, the respondent failed to file heads timeous and was barred. The application was set down for hearing for 19/06/17. On 19 June 2017, it was removed from the roll pending determination of an application filed by the respondent on 6 April 2017 wherein he sought condonation for the late filing of heads of argument under case number HC 649/17. The application was opposed. The respondent filed his answering affidavit on 18 May 2017. It appears neither the respondent nor Eliot Rogers has pursued the application to its conclusion. Therefore both applications under case numbers HC 649/17 and HC 3077/17 have not been prosecuted to finality.

The immovable property was ultimately sold in execution to Barriade Investments (Pvt) Ltd. The sale was confirmed by the Sheriff. The respondent filed yet another application under case number HC 11349/17, this time seeking an order setting aside the Sheriff's decision to confirm the sale. The application was dismissed with costs on a higher scale. (See judgment in HH 604/18). The respondent appealed against the judgment to the Supreme Court under case number SC 843/18. The appeal was dismissed with costs on a legal practitioner-client scale. (See judgment in case number SC 2/19).

On 6 November 2018, the respondent filed an urgent chamber application in the Supreme Court under case number SC 843/18, seeking to interdict Eliot Rogers and the Sheriff from transferring the immovable property to Barriade Investments (Pvt) Ltd. The application was dismissed on 17 January 2019 with costs on a legal practitioner and client scale (See SC 2/19).

On 4 February 2019, Eliot Rogers through his lawyers, Tendai Biti Law wrote to the Registrar of Deeds seeking a copy of the title deed. He approached the Sheriff to commence the process to transfer the immovable property into Barriade Investments (Pvt) Ltd. He found that the immovable property had been sold to one Tendai Mashamahanda on 25 January 2019 and was transferred into Mashamahanda's name under Deed of Transfer No. 708/2019 issued on 8 February 2019, two weeks after the sale.

The respondent had deposed to an affidavit on 8 February 2019, which he submitted to the Registrar of Deeds to facilitate the transfer of the immovable property into Tendai Mashamahanda's name. The affidavit reads:

> "I Puwayi Chiutsi I.D. No 75-195901Z 75, born 29 November 1968, do hereby make oath and state that:
> 1. I am a duly registered owner to the following property:
>
> CERTAIN piece of land situate in the district of Salisbury
> CALLED the remainder of subdivision C of Lot 190, 191, 193, 194 and 195 Highlands Estate of Welmoed
> MEASURING 4 377 square metre
> HELD Under Deed of Transfer Number 8421/00 dated 15 September 2000
>
> **2. I confirm that there are no disputes in respect of Deed of transfer No. 8421/2000 dated 6 September 2000 made in favour of myself.**
>
> **3. I further confirm that there are no caveats or mortgages or any other encumbrances in respect of Deed of Transfer No 8421/2000 made in favour of myself.**
>
> 4. Please effect transfer in favour of Tendai Mashamahanda (born 15 July 1989) ID Number 63-2238220 F 12." (own emphasis).

The transfer was effected on the very day the affidavit was deposed to.

The allegations by the applicant arising from the above background and the power of attorney are that the property in issue was the subject of an order of court. The attestation by the respondent in paragraph 3 of the Power of Attorney that the property was not in any way encumbered, was therefore false and intended to and did defeat a judicial attachment. The respondent's conduct was thus unprofessional, dishonourable and unworthy. It was further submitted that the respondent's conduct was in fact a criminal offence in terms of s 22 (ii) (b) of the High Court Act [*Chapter 7:06*] and the Deeds Registries Act [*Chapter 20.05*].

The respondent did not address in his counter-statement the allegations that he disposed a property, the subject of judicial attachment and a caveat. During the hearing, he however submitted that there was nothing that precluded him from selling the immovable property as he was the registered owner of the property. The respondent's defence to the charge was that he was not precluded from selling the immovable property as it was registered in his name and he therefore was the owner of the property. He could deal with the property as he wished. The property was attached to satisfy a judgment debt which he had settled. He therefore should have been the aggrieved person.

It is trite that the placement of a caveat or the attachment of property means that the property is now controlled by the court and it cannot be sold or transferred. It is stated in

Herbstein and Van Winsen Civil Practice of The Superior Courts in South Africa 3 ed at p 597 that:

> "A judgment creditor is entitled to attach and have sold in execution the property of his debtor notwithstanding that a third party has a personal right against such a debtor to the ownership or possession of such property which right arose prior to the attachment or even the judgment creditor's cause of action and of which the judgment creditor had notice when the attachment was made. An attachment in execution creates a judicial mortgage or *pignus judiciale*." (see *Maphosa & Anor* v *Cook & Ors* 1997 (2) ZLR 314 at 316 G-H).

The respondent was aware at all times that the immovable property was under judicial attachment. He was aware that the property had been sold in execution. He had filed numerous applications into the High Court and the Supreme Court to have the sale set aside and was unsuccessful in all instances. The respondent is a principal in his firm and has been practicing for 19 years. His defence that the property was his because it had not yet been transferred into the name of the purchaser smacked of disdain of the law.

In paragraph 69 of the counter-statement, the respondent explained that there were several caveats placed on Rogers' property which had to be removed to enable the sale of the complainant's property. This contention clearly illustrates that the respondent was aware of the procedure relating to sale of property encumbered by a caveat. He did not explain why he was of the opinion that whilst it was not proper to sell Rogers' property without removing caveats he was entitled to sell his own property without removal of the caveat placed by Rogers. His defence to the charge was therefore *mala fide*.

The respondent's transgression is compounded by the fact that he lied that the property was not encumbered and there was no dispute over the property when he was well aware of the caveat and the judicial attachment. Section 22 (b) of the High Court Act [*Chapter 7:06*]:

> "(2) Any person who-
> (a) ……
> (b) being aware that goods are under arrest, interdict or attached by the High Court, makes away with or disposes of those goods in a manner not authorised by law or knowingly permits those goods, if in his possession or under his control, to be made away with or disposed of in such a manner."
> (c) ……..
> (d) ……
>
> shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment."

Section 81 of the Deeds Registries Act provides that:

> **"81 Penalty for false citement in affidavit**
> Every affidavit required to be produced to the registrar under the provisions of paragraph (*a*) of subsection (1) of section *six* shall set forth that it is made for the purposes of that paragraph;

> and any person who makes any such affidavit knowing it to be untrue in any material particular shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment."

In any event, he lied to the Tribunal that he had discharged the judgment debt when he sold the property. The property was sold to Tendai Mashamahanda on 25 January 2019. He failed to prove that as at that date he had paid Eliot Rogers the full amount due including costs which were part of the order against him. By letter dated 15 February 2019 from Eliot Rogers legal practitioners Eliot Rogers complained in an urgent chamber application in case number HC 1444/19 that respondent owed costs in the sum of US$61 000.

The respondent has been a party in a number of matters between Eliot Rogers and himself. In all the cases the subject matter has been the property that he sold to Tendai Mashamahanda. It was therefore obvious that the property was the subject of a dispute and that it was encumbered. The respondent's conduct in selling a property, the subject of a caveat and under judicial attachment brings the name of the legal profession into disrepute.

DISPOSITION

The applicant adequately proved that the respondent's conduct was unprofessional, dishonourable, unworthy and unbefitting of a legal practitioner.

SENTENCE

On 30 April 2021 we directed that parties file submissions in mitigation and aggravation. The respondent was not in attendance. The applicant filed its submissions on 5 May 2021. The respondent wrote on 6 May 2021 stating that he could not file his submissions in mitigation because he had not been served with the applicant's submissions. To date, the respondent has not filed any submissions. It is trite that a convicted person addresses, be it a court or a tribunal, in mitigation first. The Tribunal erroneously directed that the applicant file its submissions in aggravation first. That however, did not mean that the respondent had to wait to be served with the submissions before filing his submissions in mitigation. The Tribunal therefore does not have the benefit of the respondent's mitigation in arriving at an appropriate sentence.

The Tribunal is indebted to Mr *Madzoka* for the detailed submissions in aggravation. The submissions which aptly outline the aggravating factors are summarized as follows: Mr *Madzoka* submitted that the totality of the conduct for which the respondent has been found guilty of is so serious as to warrant the deletion of his name from the register of legal practitioners. He exhibited lack of integrity when he misappropriated trust funds. This conviction on its own is sufficient to merit his de-registration in line with the decision in *Chizikani* v *Law Society of Zimbabwe* 1994 (1) ZLR 382 (SC). The respondent's blameworthiness was reinforced by the unjustified and exorbitant legal fees he charged Elliot Rogers in a bid to cover up for mishandling client's funds. The moral blameworthiness was further aggravated by frivolously defending proceedings brought against him by a client he had wronged.

It was submitted that the lack of integrity is further demonstrated in the complaint by Justice Mangota. The respondent produced fraudulent depositions in an attempt to ensure that a client who had obtained a judgment against him could not execute the judgment. He therefore sought to mislead the court. He misled his client, the High Court, the applicant and the Tribunal about what had transpired to the US$70 000 due to Eliot Rogers. He gave different explanations as to what happened to the amount. Initially he stated that he had invested the money in a bank. He then changed and stated that he had invested the money with Newman Chiadzwa Investment Companies. Before the Tribunal, he relied on a special power of attorney and emails that patently did not support his various explanations that he had authority to invest client's money in a bogus diamond deal. He further lied to the Tribunal that he had discharged the judgment debt.

Mr *Madzoka* submitted that the respondent is belligerent and confrontational. His use of impolite and intemperate language towards wronged clients and applicant's officials reflects his unwillingness to accept correction and to reform.

In arriving at an appropriate sentence, the Tribunal is guided by the remarks by GUBBAY CJ in *Chizikani* v *Law Society of Zimbabwe* (*supra*). He observed at 390 C-391 H that:

> "In the first place, lawyers as a professional class live by their own high code of ethics and their own moral standards. Every legal practitioner owes a duty to his colleagues to uphold those standards of the profession to which he belongs. Secondly, if legal practitioners, as a professional group, are to earn a respected position as guardians, not only of the public, but also of private, interest, then every legal practitioner must live up to the principles of decency in the relationship of a trustee to the goods and monies entrusted to him by the person who has sought his protection. A legal practitioner who breaches this trust casts a shadow on the good name of the rest, and also remains a

danger to the unsuspecting public, unless his name is expunged from the register of legal practitioners. See generally in this regard Law Society, Transvaal v Matthews 1989 (4) SA 389 (T) at 394B-396H."

In *Barry Lee Gorlick, Q.C.* v *The Legal Profession Act* Case 11/06 Discipline Case Digest, it was remarked at para 51 that:

> "51. Integrity is fundamental to the practice of law. The preface of the Code of Professional Conduct, (page 5 of the Law Society of Manitoba):
>
> > 'The legal profession has developed over the centuries to meet a public need for legal services on a professional basis. Traditionally, this has involved the provision of advice and representation to protect or advance the rights, liberties and property by a trusted adviser with whom the client has a personal relationship and whose integrity, competence and loyalty are assured.
>
> In order to satisfy this need for legal services adequately, lawyers and the quality of service they provide must command the confidence and respect of the public. This can only be achieved if lawyers establish and maintain a reputation for both integrity and high standards of legal skill and care. The lawyers of many countries in the world, despite differences in their legal systems, practices, procedures and customs, have all imposed upon themselves substantially the same basic standards. Those standards invariably place their main emphasis on integrity and competence."
>
> It was further remarked at para 52 that:
>
> > "52. Since integrity is such a fundamental attribute of a lawyer, it follows that breaches of integrity must be treated very seriously. Thus disbarment is the presumptive penalty in cases of misappropriation."

The Tribunal is in agreement with the submissions by Mr Madzoka that the respondent lacked integrity in all the complaints considered by the Tribunal. A legal practitioner must be beyond reproach so as to remain on the register of legal practitioners. As rightly submitted by the applicant, the respondent's conduct, whether taken individually or cumulatively is so serious as to warrant his de-registration. This is a matter that cries out for the protection of the unsuspecting public. This can only be achieved in the present with the deletion of the respondent's name from the register of legal practitioners. The unsuitability of the respondent to remain on the register has been expressed by judges of both the High Court and the Supreme Court. We can do no better than cite the remarks by the judges in the cases before them. MAFUSIRE J remarked in *Eliot Rodgers* v *Puwayi Chiutsi* HH 222-15 that:

> "In the end I entered judgment for the plaintiff in the amount of $70 000 which was never in dispute right from the onset. As to costs, even if I were to disregard the defendant's conduct as depicted by the pleadings, including the synopsis of evidence, what he exhibited in front of me was practically the same thing that the plaintiff complained about in the pleadings. The defendant was just stringing everyone along. He seemed completely oblivious of his position as a legal practitioner and an officer of the court. Therefore I saw no reason why the plaintiff had to remain out of pocket as far as costs were concerned."

MATHONSI J (as he then was) did not limit his wrath to the respondent only but lashed out at the applicant as well when he observed in *Puwayi Chiutsi* v *The Sheriff of the High Court & Ors* HH 604-2018 that:

> "It is a searing indictment to the legal profession of this country as a whole and the Law Society of Zimbabwe in particular, which is the administrative body reposed with the responsibility of regulating the conduct of legal practitioners in this country in light, in light of the undisputed allegations levelled against Chiutsi, that he is still practising law. Not only that, he is in fact a senior legal practitioner entrusted, not only with the running of his own law firm, but also with the employment and mentorship of budding young lawyers. How does an accusation of theft of large sums of trust money given to a certified legal practitioner in his capacity as a conveyancer sit well with such a legal practitioner and the entire profession? How does such a legal practitioner, exhibiting not a jolt of shame or contrition, contest anything and everything brought to court in an effort to right the wrong he has committed (with pun intended) without even attempting to construct a meritable case? How such a person is allowed to bring endless and indeed frivolous applications going into the double digits, designed to achieve nothing else but to protect his booty is the mystery of our lifetime. More importantly, how indeed and why is such a legal practitioner still enjoying pride of space among the rank and file in the noble profession? He continues freely traversing the country masquerading as a legal practitioner. It is disgraceful."

BERE JA remarked in *Puwayi Chiutsi* v *The Sheriff of the High Court & Ors* SC 2/19 at p 5 as follows:

> "Chiutsi has torn into smithereens every rule of ethics and professionalism on which those that occupy the privileged position of practising law prides themselves with. Not only has he conducted himself in a dishonourable and unworthy manner by misappropriating trust funds, he has not shown any contrition at all as he has stood neck to neck and eyeball with a client from whom he snatched a large sum of money for a lengthy period of time as he employed every trick in the book to avoid paying what he unlawfully took from a client. He has been an unwelcome but very regular visitor to the precincts of this court with the countless but frivolous applications which he has disdainly pursued with no other intention but to perpetuate an injustice.
>
> There is merit in the application made by Mr Biti. This Court has to protect not only the integrity but also the good name of the profession that has endured a battering of gigantic proportions at the hands on one of its own who appears to have completely lost self-respect and the respect of the profession and indeed the court."

He continued at p 6 as follows:

> "I am extremely concerned that the applicant has chosen to remain impervious to the decisions made by both the Lower Court and the Supreme Court in this case. I am equally baffled by the applicant's apparent stout effort to continue to soil the integrity of the legal profession by his evidently unprofessional conduct. The profession thou art ashamed!"

The respondent was not deterred by the lashing he got from the two superior courts. He was not even deterred by punitive costs awarded against him in most of the cases that he lost. Costs on a punitive scale are a show of the court's indignation and abhorrence of a party's conduct as being reprehensible and indefensible. What is of concern is the fact that almost all the cases emanate from his abuse of trust funds. He has at every turn frustrated a client's attempt to recover trust funds that he admitted were due to Elliot Rogers. He withdrew some of the appeals in the Supreme Court and others were dismissed for failure to comply with the Supreme Court Rules. The complainant was not going to realise the benefit of his legal battles. When all challenges against the sale of property were dismissed, the respondent sold the property which was under judicial attachment in satisfaction of the amount due to the complainant.

The following is a table of some of the cases in connection with the trust funds in the sum of US$70 000 due to Elliot Rogers:

	CASE N.O.	**PARTIES**
	HIGH COURT CASES	
1.	HC 3331/14	Eliot Rogers vs. Puwayi Chiutsi
2.	HC 2333/16	The Sheriff of Zimbabwe vs. House of David P/L, Clara Chiutsi and Eliot Rogers(Judgement Creditor)
3.	HC 8957/16	The Sheriff of Zimbabwe vs. Clara Chiutsi and Eliot Rogers
4.	HC 649/17	Puwayi Chiutsi vs. Sheriff of the High Court and Eliot Rogers
5.	HC 3077/17	Puwayi Chiutsi vs. The Sheriff of The High Court and Eliot Rogers
6.	HC 6665/17	Puwayi Chiutsi vs. Eliot Rogers and The Sheriff of the High Court
7.	HC 8122/17	Puwayi Chiutsi vs. Elliot Rogers and The Sheriff of the High Court
8.	HC 8675/17	Puwayi Chiutsi vs. Eliot Rogers and The Sheriff of the High Court
9.	HC 11349/17	Puwayi Chiutsi vs. The Sheriff of the High Court, Eliot Rogers, Registrar of Deeds, and Barriadie Investments P/L
10.	HC 2650/18	Elliot Rogers vs. McDuff Madega N.O. and Puwayi Chiutsi
11.	HC 1444/19	Eliot Rogers vs. Puwayi Chiutsi, Tendai Mashamahanda; Registrar of Deeds, Sheriff of Zimbabwe, Bariadie Investments P/L and Law Society of Zimbabwe.
	SC CASE	
12.	SC 578/14	Puwayi Chiutsi vs. Elliot Rogers
13.	SC 423/15	Puwayi Chiutsi vs. Elliot Rogers and The Taxing Officer

14.	SC 524/16	Puwayi Chiutsi Legal Practitioners vs. The Registrar of the High Court and The Taxing Officer
15.	SC 734/18	Puwayi Chiutsi vs. Elliot Rodgers, The Sheriff of High Court, Registrar of Deeds, Bariadie Investments P/L
16.	SC 843/18	Puwayi Chiutsi vs. The Sheriff of The High Court, Elliot Rogers, Bariadie Investments P/L, Registrar of Deeds
17	SC 15/19	Puwayi Chiutsi vs. Sheriff of the High Court, Elliot Rodgers, Bariadie Investments P/L, Registrar of Deeds
18.	SC 198/19	Elliot Rodgers vs. Puwayi Chiutsi, Tendai Mashamahanda, Registrar of Deeds, Sheriff of Zimbabwe, Bariadie Investments P/L, The Law Society of Zimbabwe
19.	SC 222/19	Puwayi Chiutsi vs. Elliot Rodgers, Sheriff of Zimbabwe, Bariadie Investments P/L, Registrar of Deeds
20.	SC 140/19	Elliot Rodgers vs. Puwayi Chiutsi + 5

The respondent's moral blameworthiness is further compounded by his attempt to deceive the Tribunal. Any deception of the court attracts the ultimate penalty. In *Society of Advocates of Natal and Anor* v *Merret* 1997 (4) SA 374, a legal practitioner deliberately misled the court in a divorce matter. He lied to court that the defendant's legal practitioner was aware of the set down of the unopposed matter. Acting on the lies, the court granted the divorce. The court found the legal practitioner unfit to practice and struck his name off the roll because of his lack of honesty and truthfulness. (See also *Jasat* v *Natal Law Society* [2000] 2 All SA, *Kekana* v *Society of Advocates of South Africa* 1998 (4) SA 649 (SCA), *Goodriche & Son* v *Auto Protection Insurance Company Limited (in Liquidation* 1967 (2) SA 501 (W)).

The respondent's conduct is inconsistent with membership of the legal profession. The complaints against the respondent are so serious as to warrant striking his name from the roll of legal practitioners, notaries public and conveyancer.

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 be and is hereby ordered to pay all the expenses incurred by the applicant in connection with these proceedings.