

Present: Mr G.A. Andrée Wiltens, Chair

Mr F. Gilu, Member

Mr D. Russet, Member

Ms V.M. Trief, Secretary

Mr E. Molbaleh

Decision: 31 May 2019

Complaint by Mr W. Oga against Mr E. Molbaleh

A. Introduction

1. On 3 December 2018, Mr Oga complained that Mr Molbaleh had not acted with the professionalism expected of a legal practitioner. Mr Molbaleh disputed that.

B. Background

2. In June 2018, Mr Oga instructed Mr Molbaleh to act for him in relation to a land matter. He was asked, in advance of any work being undertaken, to pay 50% of the anticipated legal fees plus the cost of filing an application in the Supreme Court. Accordingly, Mr Oga paid Mr Molbaleh VT 46,000 plus the filing fees of VT 20,000. Mr Oga said he did not receive any receipt.
3. Mr Molbaleh advised Mr Oga that he would prepare a sworn statement and forward it to him for him to sign in support of the proposed claim. This was never done, despite repeated promises to the effect that Mr Molbaleh would attend to this. Mr Molbaleh also did not keep his client advised of progress – indeed he led his client to believe that progress had been made when that was not so.
4. Mr Oga grew tired of the excuses offered, and eventually in November 2018 he told Mr Molbaleh he wanted his money returned. It was all returned, but in tranches over time of VT 20,000, VT 10,000, VT 10,000 and finally on 5 December 2018 (after the complaint had been made) VT 26,000.

C. Complaint

5. Mr Oga complained about the lack of a receipt, the several breaches of promises, and the slow repayment of his money. He stated he had to go to Mr Molbaleh's offices on several occasions to collect his promised funds, but he was let down time and again and returned home empty-handed.

As a shift worker, Mr Oga found this extremely inconvenient, and there was a cost to him in having to travel/take time off work – he estimated that could be as much as VT 10,000.

6. Mr Oga was concerned that others like him should not be so treated by Mr Molbaleh in future.

D. Discussion

7. Mr Molbaleh considered that he was entitled to charge the fees he did, and told the Committee that once he had completed some preliminary research, he discovered it was not possible to do what Mr Oga had instructed him to do. Mr Molbaleh stated that Mr Oga became angry with him when he told him this, and Mr Oga reacted badly by swearing at Mr Molbaleh and kicking a chair in his office. Mr Oga did not accept that. This was not a factual dispute the Committee needed to resolve.
8. Mr Molbaleh told the Committee that he had a trust account, and that he had created a trust account client ledger for Mr Oga – this was raised in an attempt to ascertain when payments had been made, both inwards and outwards. Mr Molbaleh advised the Committee that he had forgotten to bring this material with him, despite having been asked to do so. When asked to produce the material the next day, he became evasive and declined to answer questions. Eventually it was suggested to Mr Molbaleh that perhaps there was no client ledger for Mr Oga at all, Mr Molbaleh accepted that was the case.
9. Mr Molbaleh agreed further that he had not issued his client a receipt for the funds deposited; and that he had used the funds for his own purposes in the meantime, hence the slow rate of repayments. He accepted that he had told Mr Oga that he would prepare a statement in support of the claim for Mr Oga to swear, but that despite telling Mr Oga that several times, Mr Molbaleh never actually did so. Mr Molbaleh also accepted that Mr Oga expended unnecessary costs in attempting to recover his deposit.
10. Mr Molbaleh accepted he had not acted professionally in the ways referred to.
11. The Committee's role is to examine professional misconduct and unprofessional conduct.
12. We are guided in that by the numerous requirements set out in the Legal Practitioner's Act [Cap 119] Rules of Etiquette and Conduct of Legal Practitioners.

E. Decision

13. In light of Mr Molbaleh's concessions, the Committee agreed unanimously that the complaint had been made out.
14. We considered that Mr Molbaleh's acts and omissions in this instance are properly characterised as unprofessional conduct, rather than the more serious professional misconduct.

F. Sanctions

15. The Committee unanimously determined to fine Mr Molbaleh VT 25,000. We noted that there have been no previous complaints, and we consider this matter is at a low level of culpability.
16. We also order Mr Molbaleh to pay VT 15,000 for the costs of the hearing, which will go to his former client – that will compensate him for his additional costs incurred in attempting to collect his deposit.
17. The total sum of VT 40,000 is to be paid to the Committee's Secretary – she will then ensure on-payment. Payment is to be made within 14 days, failing which Mr Molbaleh will be suspended from practise for such period as until the full amount is paid.
18. Mr Molbaleh has 15 days in which to appeal, if he so wishes, from the date of receipt of this decision.



G. A. Andrée Wiltens

Chair, Disciplinary Committee