



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding [and Sanction]

Case reference: PC 2022/1778/D3

Allan Zalimba Joel Ntata

The Director-General of the Bar Standards Board

The Chair of the Bar Standards Board

The Treasurer of the Honourable Society of Middle Temple

Disciplinary Tribunal

Allan Zalimba Joel Ntata

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 22nd January 2024, I sat as Chair of a Disciplinary Tribunal on 6th and 7th February 2024 to hear and determine three charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Allan Ntata ('the Respondent'), an Unregistered Barrister and a member of Middle Temple.

Tribunal Members

2. The other members of the Tribunal were:

Sirah Abraham - Barrister Member

John Vaughan - Lay Member

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Parties present and Representation

3. The Respondent attended the Hearing via Zoom. He was not represented. The Bar Standards Board ('BSB') were represented by Counsel Ms Emily Campbell

Charges & Pleas

4. Mr Ntata faced the following three charges:

Charge 1

Statement of Offence

Professional misconduct, contrary to Core Duty 5 and rC8 (integrity) of the Code of Conduct of the Bar of England and Wales as contained in the Bar Standards Board Handbook (version 4.6).

Particulars of Offence

On 2 March 2022, Mr Ntata, an unregistered barrister, behaved in a way which is likely to diminish the trust and confidence which the public places in him or in the profession and did something which could reasonably be seen by the public to undermine his integrity in that, he had in his possession 38.1 grams of Indian Hemp which he attempted to export from Malawi to the United Kingdom without a licence or lawful excuse.

On 17 March 2022, Mr Ntata entered a Guilty Plea before the First Grade Magistrate sitting at Chisenjere in Malawi, to the charge of being found in possession of 38.1 grams of Indian Hemp without licence or lawful excuse and to the charge of attempting to export it to the United Kingdom without a licence, contrary to section 19 (1) of the (Malawi) Dangerous Drugs Act. Mr Ntata was ordered to pay fines totalling MK100,000.00.

Charge 2

Statement of Offence

Professional misconduct, contrary to Core Duty 9 of the Code of Conduct and rC65.1 of the Conduct Rules of the Bar of England and Wales as contained in the Bar Standards Board Handbook (version 4.6).

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Particulars of Offence

Mr Ntata, an unregistered barrister, failed to be open and co-operative with his regulator, the BSB, and to report promptly or at all that on 2 March 2022 he was charged in another jurisdiction with a criminal offence of comparable seriousness to an indictable offence in England and Wales. The offence was contrary to section 19(1) of the (Malawi) Dangerous Drugs Act, in that he was in possession of and attempting to export 38.1grams of Indian Hemp to the United Kingdom without a licence or lawful excuse.

Charge 3

Statement of Offence

Professional misconduct, contrary to Core Duty 9 of the Code of Conduct and rC65.2 of the Conduct Rules of the Bar of England and Wales as contained in the Bar Standards Board Handbook (version 4.6).

Particulars of Offence

Mr Ntata, an unregistered barrister, was convicted of:

- (a) Being in possession of 38.1 grams of Indian Hemp without licence or lawful excuse; and
- (b) Attempting to export Indian Hemp without a licence.

Mr Ntata was not open and co-operative with his regulator, the BSB. He did not report the fact of his conviction of a criminal offence in Malawi to the BSB promptly or at all.

- 5. On 6th February 2024, the three charges were put to Mr Ntata and he admitted them.

Evidence

- 6. In advance of the Hearing, the Tribunal had been provided with and duly read a bundle of evidence including the following;
 - (i) various Court documents from Malawi (at pages B1-8 and B16), and;
 - (ii) a letter from Mr Ntata dated 19th June 2023 responding to the allegations (at pages B17-19).

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7. Prior to the Hearing, the Tribunal received and read;
 - (i) a skeleton argument on behalf of the BSB drafted by Ms Campbell dated, as amended, 5th February 2024;
 - (ii) a Mitigation and Financial Means Statement (with attachments) provided by Mr Ntata dated 6th February 2024.

8. During the Hearing the Tribunal heard oral submissions from the BSB and from Mr Ntata.

The Facts

9. By way of brief chronology, the Tribunal found the agreed background to be as follows:
 - (i) Mr Ntata had been admitted to Middle Temple on 29th October 2001 as a student member;
 - (ii) he had been called to the Bar on 11th March 2004 and was – as at 25th July 2023 – still on the Roll of Barristers of England and Wales;
 - (iii) on 2nd March 2022 an x-ray machine operator working at Chileka International Airport in Malawi had cause to suspect that a DHL package destined for export contained drugs. The parcel was opened and found to contain, inter alia, two sachets that had been put “deeper inside the parcel”. The sachets contained 38.1gms of Indian Hemp;
 - (iv) enquiries established that the parcel belonged to Mr Ntata and was being sent to a Mr Chimwemwe Banda in the United Kingdom. Mr Ntata did not have a licence to either possess or export Indian Hemp;
 - (v) Mr Ntata was charged with two offences;
 - (a) First Count - Being found in possession of Indian Hemp, contrary to Regulation 4(a) of the Dangerous Drugs Regulations as read with Section 19(1) of the Dangerous Drugs Act, and;
 - (b) Second Count - Attempting to export Dangerous Drugs without a permit, contrary to Section 4 as read with Section 19(1) of the Dangerous Drugs Act.
 - (vi) he came before the Court of the First Grade Magistrate sitting at Chisenjere, Malawi. On 17th March 2022, Mr Ntata entered guilty pleas to both offences. It would appear

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that, on the same day, the facts were opened, Mr Ntata mitigated and he was duly sentenced as follows;

- (a) First Count – a fine of 80,000 Malawi Kwacha with 12 months imprisonment with hard labour in default;
- (b) Second Count – a fine of 20,000 Malawi Kwacha with 3 months imprisonment with hard labour in default.

The sentences were duly confirmed by the High Court of Malawi on 4th May 2022.

- (vii) Mr Ntata failed to report to the BSB either that he had been charged or that he had been convicted of the above offences.

10. As to the Court case in Malawi, the Tribunal noted the following extracts from the Court ruling;

- (i) that the Court (page B6) observed that these convictions may have adverse effects on Mr Ntata’s career;
- (ii) that – in mitigation - Mr Ntata accepted that *“My image as [a] Legal Practitioner has been dented because I am not supposed to be involved in criminal cases.”* (page B5).

11. Then and now, Mr Ntata was and is an Unregistered Barrister. Current guidance from BSB Handbook includes the following extracts;

The BSB Handbook defines a practising barrister as a barrister who is supplying legal services and holds a practising certificate. There are many barristers who do not have a practising certificate either by choice or because they do not qualify for a practising certificate. Such barristers are now called “unregistered barristers” because they are not on the public register of barristers who have practising certificates.

Even though the rules which apply only to practising barristers do not apply to them, all unregistered barristers remain members of the profession and are expected to conduct themselves in an appropriate manner. In this context, they remain subject to certain Core Duties and Conduct Rules at all times.

12. Paragraph 7 of the Guidance (page C8) makes it plain that:

Even when you are not providing legal services, Core Duties 5 and 9 apply to you.

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Additionally:

The Conduct Rules (and associated guidance) which apply to unregistered barristers at all times are as follows:

- *Rule C8 – Your duty not to do anything which could be seen to undermine your honesty, integrity and independence*
- *Rules C64-70 – Duties in relation to provision of information to the BSB and cooperation with the BSB. These duties include the duty to report serious misconduct by other barristers (see separate guidance).*

Preliminary Issue

13. The Tribunal were concerned that Mr Ntata, albeit not directly, was inviting the Tribunal to go behind the fact of his convictions in Malawi. It seemed to the Tribunal that, despite his guilty pleas, he was maintaining that he had not, in fact, committed the Malawian offences. When asked about this;

- (i) Mr Ntata accepted that he had been correctly charged in Malawi. He had admitted those charges. He accepted that, by the letter of the law, he was therefore guilty of them. He, further, accepted that the matter sounded, at first glance, serious. He said that, in truth, the case had arisen from his work as an anti-corruption activist in Malawi;
- (ii) he told the Tribunal that he had been set up in order to silence him. He told the Tribunal something of the politics of Malawi and, in particular, of how those who exposed corruption (such as journalists) might be forced into hiding or otherwise persecuted. He told the Tribunal that, because of his anti-corruption work for a former President he had, after the death of that President, found himself sued for treason and then defamation. Those trumped up charges had, in due course, not been proceeded with;
- (iii) with regard to the present matter, Mr Ntata had been asked – in 2022 – to advise the President on anti-corruption matters. Word had got out of this meeting and, in Mr

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Ntata's view, certain members of the establishment feared that their corrupt activities would be revealed and stopped. They had, Mr Ntata said, thereafter decided to "go after him". This fact, Mr Ntata said, had been later confirmed to him by Police Officers;

- (iv) Mr Ntata was asked by someone who, at the time, he regarded as a friend to send a parcel to the UK for them. This was something that Mr Ntata regularly did and he trusted the other person, believing that the package contained coffee. The person put drugs into the package, gave it to Mr Ntata and then alerted the authorities. Mr Ntata is of the view that the actions of his 'friend' had been politically motivated;
- (v) Mr Ntata said that he was culpable because he had sent the package. When asked directly by the Tribunal whether he had known that it contained cannabis he said that he had not. He had had nothing to do with the putting together of the parcel. The Tribunal asked why, in those circumstances, he had pleaded guilty to such outwardly serious offences. Mr Ntata replied that he had been advised by those close to him that this was the expedient thing to do. Had he contested the matter then he would have, most likely, languished in jail waiting for his trial; the scandal would have been even worse. So, instead, he pleaded guilty and gained his freedom, albeit at the price of his reputation. The stigma of his Malawian convictions has, subsequently, significantly blighted his prospects for employment and self-employment.

- 14.** For the BSB, Ms Campbell submitted that Mr Ntata's contentions and his most recent document did not change matters. This was a conviction case; the Tribunal had before it the appropriate documents from the Malawian Court; he had admitted the offences and had failed to report the fact that he had been charged and convicted. As a matter of general principle, the Tribunal ought not to go behind the fact of the convictions. Ms Campbell helpfully directed the Tribunal's attention to rE169 of the [BSB Handbook](#) which provides;

In proceedings before a Disciplinary Tribunal which involve the decision of a court or tribunal in previous proceedings to which the respondent was a party, or where a wasted costs order was made against the respondent , the following Regulations shall apply:

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- .1 a copy of the certificate or memorandum of conviction relating to the offence shall be conclusive proof that the respondent committed the offence;*
- .2 any court record of the findings of fact upon which the conviction was based (which may include any document prepared by the sentencing judge or a transcript of the relevant proceedings) shall be proof of those facts, unless proved to be inaccurate;*

- 15.** The Tribunal, having retired to consider the issue, took the view that the terms of rE169.1 were clear. The Tribunal could not, even if they wanted to, go behind the convictions – they were, on their face, conclusive proof that Mr Ntata had committed the offences. The matter, for Charge 1, ended there.
- 16.** The Tribunal adjourned the Hearing part-heard overnight in order to afford Mr Ntata time to obtain character references in support of his mitigation and to allow the BSB to determine the sum they sought in costs. The Tribunal, additionally, asked Mr Ntata to provide better evidence of his income and assets.

Sanction & Reasons

- 17.** Prior to the re-commencement of the Hearing on 7th February 2024, the Tribunal received and read;
- (i) documents dealing with his recent and ongoing employment as a law lecturer in the UK;
 - (ii) a Certificate of Good Standing dated 6th February 2024 from the Malawi Law Society. It is of note that Mr Ntata last renewed his practice certificate in April 2012;
 - (iii) (amended) personal references from a Mr Golaby and a Mr Sawerengera supporting Mr Ntata;
 - (iv) a Details of Income and Means document prepared by Mr Ntata.
- 18.** The Tribunal heard further submissions on sanction from the BSB and then, in mitigation, from Mr Ntata. The Tribunal's attention was drawn to and we duly considered BTAS Sanctions Guidance Version 6, dated 1st January 2022. In particular, the Tribunal carefully

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considered both the purpose of sanctions (paras.2.2 and 2.3) and the principles of sanctioning (paras.2.4 to 2.7).

19. The Tribunal determined that the appropriate misconduct groups here were;

- (i) Charge 1 - Category E (Criminal Convictions – page 49-50) and;
- (ii) Charges 2 and 3 - Category L (obligations to Regulator – page 66-68).

Sanction – Charge 1

20. The paramount consideration here is what sanction is necessary for the maintenance of public confidence and trust in the profession in light of the offending behaviour and the convictions. The sanction should not be a second punishment.

21. As to the seriousness of the misconduct (Step 2): Trying to export illegal drugs from one country to another is, in theory and subject to context, a serious matter in the regulatory context, albeit tempered by the class of the drug in question and the very small quantities involved. As to seriousness generally, the Tribunal noted that;

- (i) BSB Charge 1, in fact, related to two separate Malawian criminal offences - one (Attempted Exportation), outwardly, significantly more serious than the other (Possession);
- (ii) despite this, the Malawian Court had imposed a harsher penalty (a fine of 80,000 Kwacha) for the Possession offence (Count One) compared to a fine of only 20,000 Kwacha for the Attempted Exportation offence (Count Two);
- (iii) Mr Ntata had had to pay a total fine of 100,000 Kwacha, equating – approximately – to £50GBP. Such a fine seemed, to the Tribunal, extremely modest in the circumstances. Mindful of the fact that monetary values are different in other jurisdictions, the Tribunal – nevertheless – noted that the maximum penalty (page B5-6) for the Malawian offences was Life Imprisonment and fines of up to 20,000,000 Kwacha (about £9,500). Accordingly, and regardless of the value of money in Malawi,

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in this case the Magistrate had imposed a penalty that, in total, was just 0.5% of the maximum power at their disposal.

22. As to Culpability:

- (i) in the Tribunal's view few, if any of the factors – for Misconduct Group E and at Annex 2 - were present;
- (ii) it is an aggravating feature if the offender had conspired with others. Here, there was no evidence before the Tribunal that Mr Ntata's "friend" had ever been arrested, charged or prosecuted. Of note, the wording of the Malawian charges did not allege that he had acted with another or others. In the Tribunal's view, this factor did not apply here;

As to Harm:

- (iii) the drugs here were intercepted;
- (iv) in any event, the Tribunal – without condoning the abuse of cannabis – doubted whether the consumption of 38 grams of cannabis would have caused any or any significant harm to anyone. There was, in this case, no direct victim.

23. The Tribunal took the view, at Step 3, that Charge 1 fell into the middle range (moderate culpability and moderate harm). The Tribunal, at Step 4, considered aggravating and mitigating factors;

- (i) Mr Ntata was born on 7th June 1972. He had been 49 years old at the time. His mitigation was supported by helpful references;
- (ii) the Tribunal took the view that this matter was, plainly, a one-off, out-of-character incident. There had been no repeat;
- (iii) Mr Ntata was a person of hitherto good character with no other regulatory breaches recorded against him;
- (iv) the offences had, plainly, not attracted custodial sentences and the Malawian fines, the Tribunal were told, had been paid;

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- (v) the offences had been admitted, as had the BSB charges. Mr Ntata had, in these proceedings, co-operated with the BSB. He – in the Tribunal’s view – regretted that his actions had caused him to be disciplined;
- (vi) it is a listed aggravating factor where a Respondent fails to report the conviction promptly to their Regulator. The Tribunal were acutely conscious, given Charges 2 and 3, to avoid double-counting here.

24. The indicative sanction for a middle range Group E misconduct was suspension of 12 months or less. Aggravating and mitigating factors can, at the Tribunal’s discretion, move a sanction within or outside the indicative range (para.3.24). The act of possessing and, in particular, attempting to illegally export controlled drugs - whatever the class and however relatively modest the quantity – was conduct which could potentially diminish the trust and confidence which members of the public would place in Mr Ntata and in the profession. As he conceded before the Court in Malawi, his image as a Legal Practitioner would be dented because he was not supposed to be involved in criminal cases (page B5). His conduct harmed his reputation and that of the profession. He had, to his cost professionally, suffered adverse consequences as a result of the convictions. The Tribunal noted that, at the time, Mr Ntata had not been practicing as a Barrister. That said, his status as a Barrister was made plain in news reports of the incident (page B11).

25. The actual adverse impact upon the profession occasioned by Mr Ntata’s involvement in these offences had, however, to be carefully set in their context. Mr Ntata was a well-known anti-corruption activist working in Malawi, a country - the Tribunal were told - beset by significant problems with fraud and financial mismanagement. The Tribunal questioned, in those circumstances, the degree to which the conduct of this particular Unregistered Barrister working in Malawi had, in fact, damaged the profession and diminished the public’s trust and confidence. This case did not concern a Barrister practising in England and Wales trying to commercially export heroin from a UK airport, with the consequent devastating coverage in the UK press and media.

26. Sanctions should not be imposed to punish, albeit that the impact of a sanction may have a punitive effect. Tribunals must ensure that any sanctions are proportionate and only

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imposed to meet the purposes cited in the Guidance. In the Tribunal's view, the appropriate course here – given all the circumstances – was to suspend Mr Ntata for 3 months. As an Unregistered Barrister this sanction, more accurately, amounted to an order that the BSB does not issue a practising certificate to Mr Ntata during that period.

27. As the Magistrate rightly observed when sentencing Mr Ntata (page B6) *“He was supposed to verify his friend was exporting a legal parcel.”...“The convict has shown remorse by conceding his stupidity as seasoned Counsel to be involved in such criminal practices”*. In the Tribunal's view Mr Ntata had – in a country where corruption was rife and where he was a target for political opponents - been foolish in the extreme to take a pre-wrapped parcel from another and then arrange for that parcel – unchecked by him – to be despatched in his name on a plane to another country. The public would, rightly, expect a *“seasoned legal Counsel”* - as he indeed is - not to have conducted themselves in this way.

Sanction - Charges 2 and 3

28. Self-reporting is an important component of the mechanism for the regulation of the conduct of Barristers.
29. As to the seriousness of the misconduct (Step 2): Mr Ntata was sentenced on 17th March 2022. By 20th March 2022 (page B12) a member of the public had reported the matter, at first instance, to Middle Temple. The BSB were told by the person on 21st March 2022 (page B9).
30. As to Culpability:
- (i) the Tribunal took the view that Mr Ntata's failure to report was not deliberate, rather it was inadvertent. The Tribunal accepted that, while he undoubtedly should have known of his obligations, he was either unaware of them or had forgotten them. This, of course, is no defence. The Tribunal noted, however, that;
- (a) Mr Ntata has been called to the Bar nearly 20 years ago;

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- (b) during the intervening years, he had not practised in England and Wales; he was an Unregistered Barrister who had worked overseas. He had had, unsurprisingly, no interaction with the BSB;
- (ii) the period during which the Regulator was unaware of the criminal charges and convictions was comparatively short. There was no evidence of the public being put at risk during that period;
- (iii) there was no element of gain behind the failure to report, likewise there was no evidence of other failures of administration or management.

31. As to Harm:

- (i) in reality, the breach here caused no harm, nor put anyone at any risk of harm;
- (ii) to the degree that the Regulator has had to expend resources, this can be reflected in an award of costs.

32. The Tribunal took the view, at Step 3, that Charges 2 and 3 fell in the lower range (low culpability and limited harm). The Tribunal, at Step 4, took the view that none of the aggravating factors applied. As to mitigating factors, the Tribunal took note of the factors listed above with regard to Charge 1.

33. The indicative sanction for a lower range Group L misconduct was 'Advice as to future conduct/reprimand – low level fine'. Here and in all the circumstances, the Tribunal have decided to impose, first, a forward-looking sanction and to advise Mr Ntata as to his future conduct (concurrent on Charges 2 and 3 and consecutive to the sanction on Charge 1) in the following terms;

- (i) that he should, if he wants to remain on the roll of Barristers, swiftly acquaint or re-acquaint himself with the professional obligations placed on Unregistered Barristers and co-operate with his Regulator as required;
- (ii) that in the unlikely event that he should, in the future, misconduct himself then he should – compliant with the relevant regulations – promptly report the matter to his Regulator.

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34. In addition to advising Mr Ntata, the Tribunal (again, concurrent on Charges 2 and 3 and consecutive to the sanction on Charge 1) reprimand him for his conduct. Mr Ntata – regardless of whether, in his mind, he was actually guilty of the offences – should have known of and complied with the regulations for self-reporting. He did not. Mr Ntata is now well aware that failing to be open and co-operative with his Regulator is unacceptable and that this should not occur again. He is duly reprimanded.
35. To the degree that the above sanctions may be considered to be a departure from the Guidance, the Tribunal had in mind all the very particular and exceptional circumstances of this case.

Costs

36. The costs claimed by the BSB are limited to Counsel's fees in the sum of £2,160. The Tribunal see no reason why Mr Ntata should not pay towards the BSB's costs. These proceedings have been necessitated solely because of his conduct and there is no good reason why the BSB should be left out of pocket. The Tribunal had well in mind that, given his straightened financial circumstances, an order for the full amount would have a disproportionate effect on Mr Ntata. Mr Ntata was ordered to pay £250 towards the BSB's costs. It was agreed that he was to pay five monthly instalments of £50 on the last day of the next five months, first payment to be made on 29th February 2024.

John Lloyd-Jones KC

Chair of the Tribunal

8th February 2024

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