IN THE MATTER OF THE LEGAL PROFESSION ACT (CAP. 132)

and

IN THE MATTER OF ZAMRI MOHAMMAD TAHA, Advocate and Solicitor

(Court of Appeal of Brunei Darussalam)
(Civil Appeal No. 12 of 2005)

Misconduct of advocate and solicitor – effect of Legal Profession (Law Society) Order 2003 – held: Court has disciplinary jurisdiction when the Law Society is unable to fulfill its statutory obligations – in the instant case suspension reduced from 9 months to 6 months.

Coram: Cons P.; Power and Mortimer JJA
Date of Hearing : 22 and 28 November 2005
Date of Judgment : 3 December 2005

Cons P.:

In August this year the Chief Justice, by an Order dated the 13th of that month, suspended Mr. Zamri Mohammad Taha, an advocate and solicitor of the Supreme Court from practicing as such for a period of nine months for what the Chief Justice described as "a calculated and carefully planned stratagem" to deceive the court, then in the person of Mr. David Leonard, a Judicial Commissioner. These proceedings are by way of appeal against that Order. It is submitted that the Chief Justice had no jurisdiction to make it, or if he did, he exercised the jurisdiction in such a way as to breach the rules of natural justice, and that in any event, the sentence was unduly harsh. Mr. Zamri has been represented by Mr. Sawan. We are grateful too for the assistance of Mr. Ahmad Jeffry Abdul Rahman, who kindly and very ably came in at short notice as amicus curiae.

Jurisdiction

The power of the court to control and discipline those who have the right to appear before the court and plead the cause of others – in this context usually referred to as "the inherent jurisdiction" – is too well established to need the quoting of authority. It has existed since time immemorial, although in modern times it has become in many jurisdictions subject to statutory intervention. In England and Wales for example there is the Solicitors Act 1974 and in Singapore the Legal Profession Act (Cap 161, 1994 ed). In Brunei, we now have the Legal Profession (Law Society of Brunei Darussalam) Order, 2003. The object of Part III of the Order, headed "Disciplinary Proceedings" is to make

the legal profession for the major part self-regulating. It provides, inter alia, that any allegation of misconduct on the part of an advocate and solicitor shall be first investigated by the Law Society, through a specified chain of committees and reports, and only if in the end a Disciplinary Committee of the Society determines that "a cause of sufficient gravity for disciplinary action exists" is the jurisdiction of the court to be involved. Then it is to be exercised by 3 Judges and there is no appeal.

The Law Society is a recent innovation in Brunei. It has been established by Para.3 in Part 1 of the same order. Para 4 sets out its purposes and powers. By Para 6 every advocate and solicitor with a current practicing certificate is made a member of the Society and remains so as long as the certificate is in force. There is also provision for non practicing and honorary members, who have restricted rights and responsibilities. The management of the affairs of the Society is to be in the hands of a Council, Para 13, ten of whom are to be elected by the members of the Society. There are 3 further statutory members, one being the Immediate Past President of the Society, the other two to be advocates and solicitors nominated respectively by the Attorney General and the Council itself. The Council will then elect its officers, i.e. a President, Vice President, secretary and treasurer. As far as disciplinary proceedings are concerned the Chief Justice is to appoint an Inquiry Panel under Para 48, and one of the panel as chairman. An Inquiry Committee, drawn from members of the Inquiry Panel, is an essential ingredient of the disciplinary machinery.

We have heard interesting argument upon the standing of the inherent jurisdiction vis a vis the provisions of Part III, that is upon the assumption that the provisions had been implemented as necessary and that machinery was available under a Law Society that was, as it were, "up and running". We are, as at present advised, inclined to the view that in that circumstance the court would not generally be entitled to intervene of its own motion in disciplinary matters. We do not include here the power of a judge to commit immediately for flagrant contempt in the face of the court or to order that an advocate or solicitor pay personally some or all of the costs incurred. But it is not necessary to decide the question in these proceedings and, despite the urgings of Mr. Sawan, we can express no decided opinion.

The reason that the question does not arise in these proceedings is that in June this year the disciplinary machinery, indeed the Society itself, was by no means "up and running". In January 2004 the profession had set up a Pro-tem Election Committee with a view to implementing the provisions of the Order. But nothing further had been done. By June then no Council had been elected. There were no officers of the Society, in particular no secretary to whom the Chief Justice or Leonard JC could have referred the matter. There was no Inquiry Panel from whom an Inquiry Committee could have been drawn to start an investigation. In that circumstance we have no hesitation in accepting that the Chief Justice was right to assume jurisdiction. Such jurisdiction is not something that the court arrogates to itself for its own aggrandisement. It is a responsibility that it assumes to protect the public interest, the interest that those who hold themselves out in the profession of law conduct themselves and their business in accordance with the standards expected of the profession. If the body to which the responsibility is statutorily entrusted is unable, or even perhaps unwilling to carry out its obligation, the Judges have

no alternative but to assume it themselves. Otherwise the public is unprotected. It is also clear that in any event, once the legislation came into operation, the Law Society would have needed some time to put itself and the disciplinary machinery into operation. The absence of transitional proceedings in the Order might well indicate that it was confidently expected that in the interim the court would, if necessary, do as the Chief Justice in fact did. Mr. Sawan has suggested that the Chief Justice should have waited in the first instance, or if not, should at least have adjourned the question when, on the day before the day fixed to deliver his decision, he was informed, in connection with another matter, that elections for the Council were scheduled for October and the elected members would assume office in January 2006.

We cannot agree with either suggestion. In June the Chief Justice was faced with an advocate apparently playing fast and loose with the ethics of his profession. That needed to be looked at quickly, and there was at that time no indication of when the Law Society machinery would be ready, let alone that it would be ready in the immediate future. Then on August 12th the Chief Justice already had clear evidence, and indeed the advocate's own admission, that he had so behaved. All that remained was how that behaviour should be dealt with.

Before leaving this aspect of the appeal we should mention two further arguments that were put in its support. The first is that if the inherent Jurisdiction did exist, the only Judge who could have exercised it was Leonard JC; the second is that the inherent jurisdiction, having allegedly been repealed in 1983 by the Legal Profession Act was not revived by the subsequent repeal of the same Act.

The short answer to the first point is that the jurisdiction is the jurisdiction of the court and not that of any particular judge; and that in any event it is preferable that the enquiry should be held by a judge who was not the judge who initiated it. The second point misunderstands the nature of the jurisdiction.

We should also mention an alternative source of jurisdiction suggested by Mr. Ahmad, Rule (2) of the Advocates (Practice and Etiquette) Rules. This provides:

> *"The Chief Justice may, if an alleged breach is reported to him, take such steps as he may consider proper in relation thereto including such measures as are authorized by the principal act."*

With respect this suggestion begs the question. The Rule would be ultra vires if the court in fact had no overall jurisdiction.

We turn then to question of natural justice.

Breach of the Rules and Natural Justice

To appreciate the complaints in this respect it is necessary to look at the course of events in more detail.

On 20 June Leonard JC was seized of a Summons for directions in the litigation between on the one hand the State of Brunei Darussalam and the Brunei Investment Agency as Plaintiffs and on the other His Royal Highness Prince Jefri Bolkiah and others as Defendants. One of counsel for the Plaintiff was the Solicitor General. Mr. Zamri represented the Prince, and with him was a Mr. Derbyshire, an overseas counsel. Mr. Zamri introduced Mr. Derbyshire to the court at the commencement of the hearing and then Mr. Derbyshire addressed the court. It was well known to Mr. Zamri that Mr. Derbyshire had not been admitted ad hoc to the Brunei Bar. It could not have been otherwise. In January he had himself applied for Mr. Derbyshire to be so admitted and had himself withdrawn the application in February.

Mr. Derbyshire however, was apparently not aware of the position, but being made so aware during an adjournment, he immediately advised the Judge

> *"I understand that an ad hoc application for my admission in Brunei was withdrawn so I have no right of audience."*

Mr. Zamri promptly rose to his feet and said

> *"I have right of audience and I adopt the remarks made by Mr. Derbyshire."*

There is no record of what, if any comment, the Judge made at that time, other than that he was content to accept the submission as from Mr. Zamri and the Judge made his order accordingly. However, later the same day he reported the matter to the Chief Justice.

Five days later, on 25 June, having in the meantime, through the Attorney General, asked for and received from the Solicitor General her comments on the incident, the Chief Justice wrote to Mr. Zamri in these terms

> *"*
>
> **HCCS No. 31 of 2000**
> **The State of Brunei Darussalam & Brunei Investment Agency**
> **And**
> **His Royal Highness Prince Jefri Bolkiah & Others**
>
> *My attention has been drawn to the proceedings before Leonard, JC in this matter on 20th instant when you and a foreign counsel, Mr. Thomas Darbyshire, appeared for the Defendant, while the Solicitor General with Mr. Richard Chalk represented the Plaintiffs.*
>
> *I understand that after you had introduced Mr. Darbyshire as representing the Defence, he then proceeded to make his submission to the Court. Just before the Judge was to give his decision the foreign counsel said, and I quote from the Judge's note:*
>
> > *"I understand that an ad hoc application for my admission in Brunei was withdrawn so I have no right of audience."*

You then stood up and addressed the Court, "I have right of audience and I adopt the remarks of Mr. Darbyshire."

According to Court record, you appeared before me in Chambers on 17th February 2005 at 8.40 a.m. and applied to withdraw the application for the admission of the said foreign counsel that you had filed on 25th January 2005, and I granted the application.

I am asking you to let me have your explanation on affidavit by 1st July 2005, of the legal and professional basis and the reasons for introducing the said foreign counsel to the trial Court as representing the Defence, knowing full well that the foreign counsel had not been admitted ad hoc under the Laws of Brunei Darussalam, and quietly letting him address the Court."

On the 30th June, Mr. Zamri sent his affidavit to the Chief Justice, in which he deposed

"1. I am the counsel having conduct of the defence of the 1st Defendant in the Suit No. 31 of 2000. The facts and matters deposed herein are within my knowledge and belief and are true.

2. I deposed this affidavit in response to the Letter dated 25th June 2005 issued to me by the Honourable Chief Justice.

3. I inform that on the 20th June 2005 I did appear before the Honourable Mr. Justice Leonard relating to a direction application hearing applied by the Plaintiffs in the Suit No. 31 of 2000. I confirm that I did attend the hearing with a foreign counsel in the name of Mr. Thomas Derbyshire.

4. At the start of the hearing I recalled that I did introduce my-self as representing the 1st Defendant to Mr. Justice Leonard and further informed that with me in court was Mr. Thomas Derbyshire. In using those introductions I certainly did not intend to mislead the Court and apologize that this has let and caused the Court to understand Mr. Thomas Derbyshire was also acting for the Defendant.

5. With that said [at paragraph 4 above] I admit that it was wrong on my part to let Mr. Thomas Derbyshire address and make a submission to the Court knowing that he has not been admitted in the Brunei Bar. It was an error of judgment on my part and therefore accept full responsibility on this matter. I would therefore ensure that this matter will not be happened again.

6. Further I confirm that I did appear before the Honourable Chief Justice on the 17th February 2005 wherein I applied to withdraw the Ad Hoc Admission of Mr. Thomas Derbyshire."

On the 20th of the following month, i.e. July, the Chief Justice caused the Chief Registrar to send a Notice of Hearing to Mr. Zamri in these terms

"

Notice of Hearing

A report has been made of your conduct in the proceedings in the High Court before Leonard, J.C. on 20th June 2005 in the above-mentioned civil suit that you may be required to answer to the allegations contained in the papers listed below concerning your conduct, to enable the Chief Justice dealing with the report under the inherent jurisdiction of the Supreme Court over its officers, the Solicitors and Advocates, in matters of discipline in the maintenance of their character and integrity, to make such order as may in his opinion be appropriate and just in the circumstances of this matter.

The 6th day of August 2005 is the day fixed for this hearing before the Chief Justice in the High Court at 9 a.m. You may, should you so wish, file any further evidence within the next 10 days from the date hereof, and you may call any witness on the relevant matter as you wish. If you fail to appear the Chief Justice may decide to proceed in your absence.

Attached herewith is a bundle of the papers relevant to this matter."

The bundle of papers included every document and letter which had been written in connection with the incident, and in particular an affidavit from the Solicitor General giving her version of what took place. The crucial paragraphs of that affidavit are these

"4. After the preliminary introductions, Leonard J.C. invited counsel for Prince Jefri to submit. When Mr. Derbyshire stood up to address the court I indicated to Mr. Zamri that Mr. Derbyshire had not been admitted to practice. Mr. Zamri shrugged his shoulders. Mr. Derbyshire then proceeded to make his submissions. I decided not say or do anything further until I have had a chance to check the Court's Registry's record.

5. During the adjournment of the Directions Summons, I asked Hjh Hasnah Hj Ibrahim, (Hjh Hasnah) Deputy Senior Counsel, at the Attorney's Chambers to check the Court's Registry's records. I also confronted Mr. Zamri and informed him that I did not think that Mr. Derbyshire had been admitted to practice in Brunei Darussalam. Mr. Zamri answered that he was aware that Mr. Derbyshire had not been admitted.

6. When I asked Mr. Zamri why he had allowed Mr. Derbyshire to make the submissions, Mr. Zamri did not reply. A short while after that I received confirmation from Hjh Hasnah that Mr. Derbyshire had in fact not been admitted. Again I went to Mr. Zamri and told him about it and also that he should inform Mr. Derbyshire accordingly. When Mr. Zamri did not do so, I went to Mr. Derbyshire and informed him myself."

In a later affidavit in reply Mr. Zamri said

> *"I recall only after Mr. Thomas Derbyshire finished and only during a short recess, did the issue of Mr. Thomas Derbyshire not being admitted was raised with me."*

The hearing before the Chief Justice took place on 6 August, Mr. Zamri presented a written 'Outline Submission' and highlighted that

> *"Mr. Thomas Derbyshire did not intend to disrespect the court when he spoke. It was a sudden lack of judgment which I regret."*

He agreed to the Chief Justice's suggestion that his action was unbecoming, apologised and asked for mercy. The Chief Justice gave his reasons and made the order for suspension on the 13th August.

The Chief Justice's approach to the incident is attacked in three ways. First it is said that no sufficient indication was given to Mr. Zamri that the proceedings against him were disciplinary in nature, that the Notice of Hearing did no more than call for an explanation, and that it was to be expected that disciplinary proceedings would be taken only if at the hearing Mr. Zamri's explanation was found to be wanting; secondly that there were no formal charges, which ought to have included a reference to Rule 18 of the Practice and Etiquette Rules; and finally that Mr. Zamri was not warned of the possible consequences.

We are not persuaded that the rules of natural justice necessarily require formal charges in domestic proceedings. Nor do we think such a charge would have made any difference in the present circumstances. Rule 18 provides that an advocate "shall not practice a deception on the court". It is, with respect, ludicrous to suggest that in the circumstances Mr. Zamri may not have realized that "deception" was alleged against him. Nor can it be accepted, having regard to his Outline Submission and to what he said to the Chief Justice at the actual hearing, that he took the hearing to be some sort of preliminary examination. He may perhaps have not expected it to lead to his suspension, but had he turned his mind to it, he must have realized that that was a possible consequence of the conduct which he freely admitted.

Secondly, it is said that the Chief Justice failed satisfactorily to resolve the conflict between the affidavits of the Solicitor General and of Mr. Zamri. We think the real criticism is that the Chief Justice preferred the version of the Solicitor General to that of Mr. Zamri without having the benefit of cross examination. However, Mr. Zamri made no request to that end, nor did he pursue the point with any force. The matter was left for the decision of the Chief Justice on the basis of the affidavits alone. But apart from that, it seems to us that it is a matter of no relevance, except perhaps as to the level of appropriate punishment, for the factual aspect of the enquiry was concerned with Mr. Zamri's conduct vis a vis the court, not vis a vis the Solicitor General. Even without her "extra" evidence, there could be no doubt that Mr. Zamri's deception of the court was deliberate.

A final criticism is that Mr. Zamri was not given the opportunity to mitigate. It is true that at no stage was he expressly asked what he had to say in this respect, although his plea for mercy at the hearing tends to indicate that he was aware the opportunity was there. However, in his written submission and in the appeal Mr. Sawan has dealt with matters that could have been then raised.

Sentence

Mr. Zamri was called to the English bar in July 1997 and admitted as an advocate and solicitor in Brunei in October the same year. He practiced for some time as an associate, then in August 2004 he branched out on his own. He took with him some of his then clients and soon thereafter accepted instructions on behalf of H.R.H.Prince Jefri. That would involve, as both Mr. Zamri and Mr. Sawan pointed out, heavy and contentious litigation, and in this, as well as to his other clients, the suspension of Mr. Zamri must have caused at least some inconvenience. But risks to both solicitor and client are inevitable in a one man practice.

Mr. Zamri had, until now, an impeccable professional record and his misconduct had no prejudicial effect upon the proceedings in which it occurred. It is apparent from the comments of the Chief Justice that he was very much influenced by the character given to the misconduct by the affidavit of the Solicitor General, that is, not only was it a deliberate disregard for the accepted standards, but it was an almost insolent disregard. We do not know, of course, whether Mr. Zamri would in fact have availed himself of any opportunity to cross-examine had the Chief Justice expressly offered it, but if the Chief Justice was later to rely so heavily on that evidence to the prejudice of Mr. Zamri, in our view it would have been better had he done so.

With that in mind we propose to reduce the suspension to six months. Two months and seventeen days of that period having elapsed before the suspension was stayed by a High Court Judge, the balance of three months and thirteen days is to take effect immediately. To that extent the appeal is allowed. Otherwise it is dismissed.

CONS. P.

MORTIMER, J.A. **POWER, J.A.**

Mr. Christopher Sawan of Messrs Ho & Siong for the Appellant.
Mr. Ahmad Jeffry Abdul Rahman of the Attorney General's Chambers as amicus curiae.