IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil
Case No. 22/934 SC/CIVL

BETWEEN: Christina Thyna Gesa
Appellant

AND: Disciplinary Committee of the Vanuatu Law Council
Respondent

Before: **Hon. Justice EP Goldsbrough**

In Attendance: **Blake, G for the Applicant**
Hurley, M for the Respondent

Date of Hearing: ***1 October 2025***
Date of Judgment: ***31 October 2025***

JUDGMENT

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1. This appeal is brought against two decisions of the Disciplinary Committee of the Law Council. Whilst determined separately, and the subject of separate decisions, it appears that they were served on the Appellant at the same time. Both decisions went against the Appellant and included an order striking her off the Register of Legal Practitioners.

2. The grounds of appeal are set out in the notice of appeal. One ground refers to mistaken findings of fact concerning the exact amounts of cash received and whether they were applied to offset fees of another. A second suggests errors of law in finding that the Appellant acted dishonestly and that dishonesty was at the forefront of her conduct. There is a further ground that the conduct should not have been classified as professional misconduct as opposed to unsatisfactory professional conduct and the imposition of a manifestly excessive penalty, i.e. removal from the Roll. There is a complaint that the proceedings were conducted in the Appellant's

absence for part of the disciplinary hearing, regarding the finding of a bribe and the finding of dishonesty in relation to the client, Mr James, and that the conduct was found to be professional misconduct rather than unsatisfactory professional conduct.

3. The matter came before the Supreme Court on 4 July 2022, and on 12 July 2022, a decision was made not to grant interim relief. After that, an expedited hearing was ordered, but the offer was not taken up. The Appellant repeatedly sought adjournments until the Court finally said no more. It was only after that order that the parties prepared the appeal material and filed submissions.

4. For this hearing, there is an appeal book, the Appellant's submissions, a response from the respondent Committee, and a reply to that response. At the appeal hearing on 1 October 2025, further submissions were made. Questions were raised about the submitted material, and the Court's answers to those questions are included in this decision.

5. There were two distinct complaints brought to the Disciplinary Committee of the Law Council from two different clients of the Appellant. The details of the complaints and the discussions surrounding those complaints are published.

6. One complaint, it is agreed, is more serious than the other.

7. The first in time to be dealt with concerns the receipt of money from a client, which was not handled correctly. It was not held in any trust account but went straight into a business account, and part of it was then removed and applied to the payment of legal fees not authorised by the client, before any account had been rendered by the Appellant, which may have authorised her to appropriate the money as belonging to her. It is referred to in the material as the Clark decision.

8. The second complaint, regarded by both parties to this appeal as more serious, involves failing to inform the client of all the details of a settlement reached with the other side in civil litigation. The civil litigation was settled with the other party to the Appellant paying Vt 1.4 million. The client was not told of the VT 1.4 million.

settlement, but was told of a payment of VT 1 million as his settlement, with the remaining VT 400,000 not referred to by the Appellant in her report to her client, Mr James. The Appellant, having not disclosed receipt of VT 400,000 for her fees, invited her client to agree on how much of VT 1 million should be retained by her as legal costs payable by way of fees. This complaint and decision is referred to as the James decision.

9. Both complaints against the Appellant had been brought under the Legal Practitioners Act [Cap119] and the Legal Practitioners Disciplinary Procedure Rules. The Clark decision, dated 18 March 2022, followed a hearing on 2 December 2021. The James decision was made on the same day as the Disciplinary hearing, 30 March 2022. The dates that appear on both decisions are in error, as references are made to the decision being of March 2021. The error is patent, given that the decisions could not have predated the actual disciplinary hearings, and no point is taken of the errors.

The Clark Decision

10. The Clark decision concerned not accounting for funds received and the misapplication of some of those funds. The Appellant admits that the money received from the client was not deposited into a trust account set up for that purpose. That money was appropriated from the client's funds before a statement of account had been rendered to the client.

11. There is an issue as to whether it was proper for the Disciplinary Committee (DC) to state, in its decision, that there was incontrovertible evidence of the amount of money received by the Appellant from the client. The evidence was disputed. The Disciplinary Committee found that the higher amount of VT 705,000 had actually been received, rather than the admitted VT 605,000. The figures referred to in the decision are, frankly, confusing. Rather than VT 705,000, the Disciplinary Committee seems to find payments of VT 735,000 when one considers the receipt produced by the Appellant for VT 30,000 and the NAB payment voucher for VT 100,000.

12. Fortunately, nothing turns on this issue. However much was received from the client, it was not properly accounted for. It was not set aside in a trust account or any other place where it could remain safe from misappropriation pending the preparation and submission of bills of account to the client. Indeed, the confusion itself does not amount to more than pointing to the need for proper accounting to take place.

13. There was no written agreement between the Appellant and her client as to the charges to be levied or how, and no bill of costs was prepared and presented to the client before the Appellant appropriated the funds for her own use. Indeed, as admitted in this appeal, the money was deposited straight into the Appellant's business account and not kept in any separate ledger, which suggests it was appropriated on receipt.

14. Nothing turns on the amount of money, as none of it was properly treated as client money pending bills of account.

15. An admission is recorded from the Appellant that some of the money received was used to settle the legal fees of another, one George Soalo, without the client's permission. At this point, the Disciplinary Committee described the unauthorised use of such funds as dishonest and equivalent to the theft of client funds. On this appeal, that admission is challenged. The evidence of this is the handwritten note of the Chairman of DC, who recorded that the Appellant said, "I had no authority to deduct George's legal fees from Sam's a/c."

16. The Committee applied the test as set out in *Law Society v Bultitude* [2004] EWCA Civ 1853 to determine whether there had been dishonesty. It is not an issue on this appeal that the wrong or an inappropriate test was applied. The Committee went on to consider other authorities which dealt with cases where dishonesty had been found. There is no issue about those cases and their application to this jurisdiction. The issue on this appeal is that it was wrong to find dishonesty when applying the relevant test.

17. In submissions, the behaviour of the Appellant is described as lacking in management rather than dishonest. It is submitted that many lawyer in private practice do not keep client funds in any special way, but mix that money with their own, often using just one business account, which in turn may well also serve as the lawyers personal account. That submission, in my view, misses the point. At the disciplinary hearing, was it open to the Committee to decide on the evidence presented to it, that the actions of the Appellant amounted to dishonesty. The Committee was not tasked with commenting upon the standards, or lack of standards, of the legal profession as a whole. In this instance, The Dc determined that the conduct of the Appellant was dishonest as well as unprofessional. With that determination made, the DC proceeded to make an order removing the Appellant from the Register of legal practitioners.

18. In my view, such a finding was open to the DC. On this appeal, it is not for this Court to say that it may not have reached such a finding, only whether the finding was a finding open to the original decision makers. It was.

The James decision

19. Of the two complaints dealt with by the DC, this complaint is described as the more serious complaint. In a civil claim against the Republic of Vanuatu, a settlement was reached which saw the Republic pay VT 1.4 million to the Appellant. Of that amount, it is said that VT 1 million was in settlement of the claim brought by Mr James, and the balance of VT 400,000 was in respect of lawyer's fees. Mr James was not told by his counsel of the VT 400,000 prior to being asked by his counsel to agree a figure for costs out of the VT 1 million received on his behalf.

20. None of this is disputed on this appeal. The Appellant received VT 1.4 million and told her client only of the VT 1 million and asked him to agree a figure out of that to go towards her fees. In effect, he was asked to agree a figure for fees without knowing that his lawyer had already received VT 400,000 in that respect.

21. This situation led the DC to conclude that the Appellant had been dishonest in dealing with her client.

22. There is first raised the question of denial of natural justice, given that part of the disciplinary process went ahead in the absence of the Appellant. There was a hearing when the Appellant did not turn up. She had notice of that hearing but made a decision, owing to a family situation, not to attend the hearing. She did not notify the DC of the family situation. When the DC went ahead and heard evidence from Mr James, it did so not knowing why the Appellant was not present. The Appellant attended a further hearing and was given the opportunity to comment on what had been heard in her absence.

23. This cannot be categorised and a denial of natural justice and certainly cannot form a proper basis for a submission that the decision is fatally undermined because of it. The Appellant made her choice. She did not notify the CD of her intention. If she was deprived of anything, it was through her own choice. The submission that she was denied natural justice by the DC is simply untenable and should not have been made as it is not supported by any factual basis. If the Appellant was not aware of the hearing or if the Appellant had told the DC in advance of her difficulty, the position may have been different. As that is not the case, the submission should not have been made.

24. During the hearing there arose a suggestion that the Appellant made an offer to the former client to make the complaint go away. The DC formed a view about this situation and termed the offer a bribe. The submission from the Appellant is that she told the DC that she could not have made such an offer because she did not own land to the value of VT 2 million with which she could have made the offer. The submission on this appeal is that the evidence against the Appellant on this question was inconclusive. The Dc heard evidence of both accounts and was entitled to form a view on that evidence. There is nothing untoward in that process and I find nothing which indicates that, on appeal, this Court should interfere with that finding.

25. It is clear from the matters put forward at the hearing that the meeting between Mr James and the Appellant did indeed take place on the date and time he said. There was, it is admitted, a discussion between them about land. The dispute is whether the Appellant offered Mr James land, or whether the land discussed belonged to a

church and the offer was that he could work on it. The Appellant agrees that the land has the value of VT 2 million. It is quite unremarkable, given the evidence, that the DC found as it did.

26. It was a matter for the DC to decide on the credibility of the evidence before it, that of the client, Mr James, and that of the Appellant. The determination made was in favour of Mr James. That was a finding that the DC was entitled to make, given the material before them. There is nothing untoward about the finding, as it was open to the DC on the evidence.

27. Again, it is submitted that this conduct does not amount to dishonest conduct, but unprofessional conduct. I disagree.

28. The client, when faced with an agreement prepared in advance at the Rossi Hotel, did sign it and agreed that the Appellant could take 50% of the VT 1 million received in settlement of his claim. At that time, he was unaware that the Appellant had already appropriated VT 400,000 in fees that were not disclosed to him. That is neither carelessness nor is it negligence. It is dishonesty.

29. Regardless of the alleged bride, such conduct merits severe sanction. Coupled, as it was in this case, with a clear attempt to persuade the client to accept an inducement to drop the complaint against her, which the DC found and was entitled to find, the sanction must be significant. There is also the suggestion, arising from the Appellant's visit to her client and the offer made to him, that the complaint had been settled between them, made by the Secretary to the DC. The Appellant denies any conversation between them took place. The DC had both versions before it and chose to accept the version coming from its own Secretary. That is, again, something that they were entitled to decide.

30. Moving from the particulars of the complaint and what the DC found to be the case, the remaining submissions on the appeal address what counsel describes as the poor state of affairs generally within lawyers' offices in Vanuatu, the lack of training and the lack of enforcement of rules.

31. Fortunately, the submission does not suggest that the rules do not exist. The rules do exist. For example, when a lawyer seeks to enter into a conditional fee agreement, there is a rule to follow. The Appellant described a conditional fee agreement, even though she called it 'working *pro bono'*. The two are different. *Pro bono* is working for nothing, and given that the Appellant took VT 900,000 out of a VT 1,4 million settlement, she certainly was not working for nothing. Apart from breaching the rule requiring agreements to be in writing, the Appellant also charged fees far in excess of the value of the work.

32. There are rules about keeping the client informed and providing guidance on likely fees. There are also rules requiring compulsory continuing education, although counsel for the Appellant himself appeared not to be aware of their existence. The fact that the law provides for continuing compulsory education to be run by lawyers themselves, yet the same lawyers suggest they know nothing about that law, speaks volumes.

33. It is wrong to submit that conduct such as this may be excused because of a lack of training. If there is a lack of training, it is because the legal profession itself fails to provide it. If they cannot provide it themselves, it should be provided for them. If they remain reluctant to undertake it, perhaps it should be made a compulsory requirement to continue in practice. An annual practising certificate, rather than an annual subscription to a Law Society that appears to do nothing to promote standards within the legal profession, seems to be indicated.

34. That should require certification of training to ensure that it is undertaken by each legal practitioner who seeks to continue in practice. Such is apparent when lawyers ignore statutory provisions after being granted the privilege of self regulation.

35. To reach a situation where either unprofessional conduct, or as in this case, dishonest conduct, towards a client results in a submission that any sanction should reflect the poor state of the present legal profession is untenable. If there are such poor standards in practice, the solution is to improve those standards rather than lower them to fit this particular standard displayed by the Appellant.

36. The sanction imposed in each complaint is that of removal from the Register of legal practitioners. Among available sanctions, that is the most severe. The DC determined that such a sanction was appropriate in each case. On appeal, it is not for this Court to decide what the appropriate penalty should be at first instance, but rather whether the DC applied the correct test and correct principles to arrive at its decision.

37. I find no error of principle or misapplication of any relevant tests in either decision of the DC under appeal.

38. The Appellant referred to other disciplinary cases in this jurisdiction, suggesting that others had not been dealt with so severely. I do not consider that to be the case. Save where a legal practitioner left the jurisdiction after allegations of dishonesty and thus was not pursued, in each case where dishonesty has been found, similar sanctions have been applied. Nor do I consider that authorities from outside of this jurisdiction where it is said there is a more sophisticated system of regulation and training of legal practitioners lack relevance.

39. Authorities from overseas where legal practitioners have not been struck off may be distinguished from this case. In *Fraser v The Council of the Law Society of New South Wales* [1992] NSWCA 72, which the Appellant relies upon, the legal practitioner, initially struck off, was successful on appeal in having that sanction removed. There are reasons for that removal, set out, including the fact that there had been no previous suggestion of misconduct, no personal gain from the conduct, but a momentary lapse, albeit a serious lapse, of judgment. This case was much more than that.

40. This Court, no doubt, on appeal, has the power to decide differently from the DC. Even though that power exists, I decline to exercise it. The DC and this Court both have the obligation to protect the public from harm and to seek to uphold the standards of the legal profession. It is not for this Court to determine that a lower standard may be applied in this jurisdiction for any reason and certainly not because of the reluctance of legal practitioners to follow the laws as passed by Parliament for reasons only known to themselves. Practitioners must, if they choose to seek to

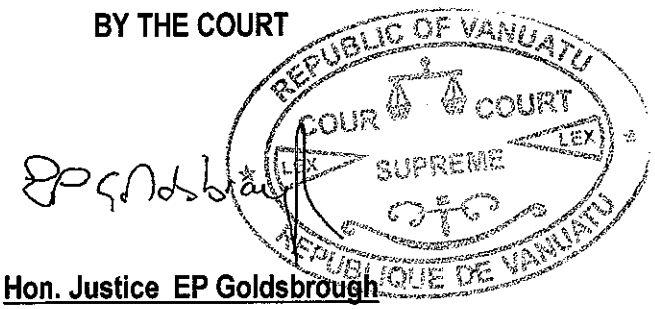
continue to practice, familiarise themselves with the prescribed Rules of Etiquette and Conduct, the provisions of the Vanuatu Law Society Act and the Legal Practitioners (Qualifications) Regulations made under the Legal Practitioners Act [Cap 119].

41. Were there only one case brought against the Appellant, would removal from the Register have been the correct order? Standing alone, can the Clark decision be justified? Those questions, in my view, do not fall to be answered in the circumstances. Removal from the Register is clearly the correct approach in the James decision. Once removed, no other sanction is required. Being removed twice is no more serious than once. This appeal was brought against both decisions, and the appropriate order is removal for dishonest conduct.

42. The appeal is dismissed. Costs of VT 500,000 of and incidental to this appeal are to be paid by the Appellant to the Respondent. An enforcement conference is set for twenty-eight days after the publication of this decision, or as soon thereafter as the Chief Registrar can set down, unless the costs are paid sooner.

Dated at Port Vila this 31st day of October 2025

BY THE COURT



Hon. Justice EP Goldsbrough