



CODE OF CONDUCT

LAIK

(Complainant)

and

LANESIALANESIA

(Respondent)

CODE OF CONDUCT DECISION 1 OF 2022 DECISION OF THE ASSISTANT REGISTRAR DELVIN SUMO

Summary of the Complaint

1. A formal letter of complaint was lodged with the DIFC Courts' Registry on 23 September 2021 (the "Complaint") by Mr Liton from Legal Consultants for and on behalf of Laik (the "Complainant") against LanesiaLanesia ("Mr Lanesia" or the "Respondent").
2. In short, the Complainant's Complaint is that the respondent has made statements to the DIFC Courts in relation to the matter CA-006-2021, which were untrue and in breach of various provisions of the DIFC Court's Order No. 4 of 2019 Mandatory Code of Conduct for Legal Practitioners in the DIFC Courts (the "Code of Conduct").
3. The Complainant has raised (similar) allegations against the Respondent in respect of the related DIFC-LCIA Arbitration matter (the "Tribunal") to which the Respondent has replied. For the purposes of this Code of Conduct decision, I will limit the discussion of the matter as far as it pertains to the DIFC Courts, in accordance with the Code of Conduct.

Complaint – Procedural History

4. The Complainant filed the Complaint with the DIFC Courts in the form of a letter dated and sent on 23 September 2021, along with documents supporting his Complaint.
5. On 7 December 2021, Mr Lanesia, representing himself, responded to the Complaint by way of a letter sent to the Registry (the “Response”). Documents in support of the Response were also filed with the letter.
6. On 2 March 2022, Ms Delvin Sumo (“Ms Sumo”), on behalf of the DIFC Courts’ Registry wrote to Mr Lanesia asking him whether he intended, pursuant to Article 36 of the Code of Conduct, for independent assessors (“Assessors”) to be appointed.
7. On 7 March 2022, Mr Lanesia wrote to Ms Sumo confirming that his preference was for the Complaint to proceed to the Registrar for determination, rather than invite the appointment of assessors.

Details of Complaint

The Complaint

8. The Complaint generally arose in connection with CA-006-2021 and the Complainant alleges that Mr Lanesia breached section 9A, 21, 22(A), 22(J) and 24 of the Code of Conduct.
9. On 31 January 2021, the Complainant received an Injunction Order (the “Injunction”), in support of a DIFC-LCIA arbitration, which prevented the Respondent from presenting a guarantee cheque, until the arbitration proceedings had established liability (the “Guarantee Cheque”).
10. The Injunction was later discharged by way of an Order dated 10 March 2021. Nevertheless, the Claimant was allowed to appeal the Order which was listed before the Court of Appeal on 8 September 2021 (the “Appeal”). One of the matters under discussion at the Appeal was the question whether the Guarantee Cheque should have been presentable before liability had been established in arbitration, owing to there being disagreement between the parties over whether the Guarantee Cheque was a guarantee or a demand bond.

11. The Complainant submits that notwithstanding that point, the Respondent in CA-006-2021 presented the Guarantee Cheque on 8 June 2021 to the bank, following which the Guarantee Cheque was dishonoured.

12. The Complainant, in its submissions, submits that it explained at the Appeal that:

“in the time between 8 September 2021 (appeal) and December 2021 or January 2022 (arbitration), there was a real risk that, having dishonoured the guarantee cheque, the Claimant's directors could be arrested in Dubai and tried under Article 401 of the UAE penal code (which deals with dishonoured cheques). That is despite the fact that it may turn out the guarantee cheque was never presentable in the first place. Accordingly, it was a matter of urgency that the question whether the guarantee cheque was presentable be resolved at the earliest opportunity, because if the cheque was not presentable that may provide a defence to criminal liability”.

13. The Complainant further submits that, in response, and in support of the Respondent's defence to the Appeal, Mr Lanesia, made the following statement in paragraph 12(vi) of his Sixth Witness Statement in the Court of Appeal filed on 29 August 2021 (the “Witness Statement”):

“It is implicitly clear that criminal proceedings have not been commenced. There is therefore no urgency and no reason why the question whether the cheque could legitimately be presented under the contract should not be determined by the Tribunal in accordance with the parties' agreement that all disputes under the contract should be so determined”.

14. The Complainant alleges that the statement of Mr Lanesia appeared to be untrue. In the contrary, in an email dated 20 September 2021 (the “Email”), Mr Lanesia informed the Tribunal that:

“A criminal complaint was filed by the 1st Respondent on 12 July 2021”.

15. The Complainant submits that this was some six weeks before 29 August 2021, when Mr Lanesia's witness statement was signed and filed in the Court of Appeal matter before the DIFC Courts.

16. Based on these two different responses to the Court of Appeal and the Tribunal, the Complainant submits that Mr Lanesia has either '*knowingly mislead the DIFC Court of*

Appeal or at its lowest, recklessly made an incorrect and misleading statement'. The Complainant further states that Mr Lanesia failed to correct his misleading statement at the earliest opportunity, which puts him in further breach of the Code of Conduct provisions.

17. The Complainant submits to have challenged Mr Lanesia on this point, however, Mr Lanesia failed to respond to the Complainant. The Complainant states that the consequences of Mr Lanesia appear to be severe as the Complainant's Managing Director, Mr Lanh ("Mr Lanh"), was arrested without notice, in the week of 20 September 2021, due to the Guarantee Cheque being dishonoured, and the trial date was set on Monday, 27 September 2021.
18. The Complainant then sought to convene an urgent hearing before the Tribunal to determine whether the Guarantee Cheque could be presented either at all, or before liability had been established. While the request for an urgent hearing was accepted, the Tribunal refused to hear the matter in time for an award to be published by Monday, 27 September 2022, on the grounds that one day is insufficient time to allow the Respondent to prepare for a hearing.
19. The Complainant further states that if Mr Lanesia had explained to the Court of Appeal and/or Tribunal that a criminal complaint had been filed against Mr Lanh, the Complainant would have been able to make its application for an urgent hearing in the Tribunal in good time, enough so as to allow an award to be published before Mr Lanh was arrested. That was however impossible in light of Mr Lanesia's actions, submits the Complainant.

The Response

20. Mr Lanesia submits that he had indeed not previously replied to the Complainant's allegations, however, Mr Lanesia strongly refutes all the allegations, contending that there had been no breaches of the Code of Conduct.
21. Mr Lanesia refers to the allegation put forward by the Complainant as a means to '*exasperate opposing counsel*' and points out that the matter seems to revolve around the filing of a criminal complaint, and the misunderstanding on part of the Complainant of:

(i) the procedures in Dubai following the return of an unpaid cheque, and (ii) the roles of private parties and public prosecution in administering the criminal justice.

22. Mr Lanesia reinstates the UAE procedure on return of an unpaid cheque and states the following:

“as per standard UAE procedures, when a cheque is returned by a bank as it could not be cashed due to insufficient funds, it is accompanied by a declaration from the bank stating that payment is refused because there are insufficient funds. Unless there is an agreement between the parties to re-present the cheque, it is then open to the payee to take the bank’s declaration to the police to give them notice that a cheque has been returned unpaid”.

23. Mr Lanesia did not consider, as per his understanding, the issuance of such notice as the commencement of criminal proceedings. The commencement of such proceedings is rather administered by the public prosecutor and not by a bank. Mr Lanesia further submits that:

“Following the notice given to the police, the police makes its own investigation and decide whether to pass the file on to the public prosecution for the case to be prosecuted or not, in which case criminal proceedings are never commenced”.

24. Mr Lanesia declines any knowledge of when and if the file was passed on to the public prosecution on 29 August 2021 and asserts that his firm is not involved in the criminal proceedings and only the Complainant would know when it was first contacted by the relevant authorities in respect of the notice given by Mr Lanesia’s client.

25. Therefore, Mr Lanesia submits that any statement that criminal proceedings had not been commenced on 29 August 2021 and 8 September 2021 was correct as at the time, the Complainant had not raised any complaints about having been contacted by the authorities.

26. Furthermore, Mr Lanesia clarified his position in relation to his Witness Statement and the Email, which statements he considers to be consistent. Mr Lanesia submits that the Witness Statement set out the situation on 29 August 2021 by noting that the Dubai Public Prosecution has not commenced criminal proceedings against Mr Lanh, whereas the Email to the Tribunal highlights the filing of the criminal complaint at the

police due to the Guarantee Cheque being dishonoured. Mr Lanesia asserts that the two statements are not conflicting or inconsistent with each other, and neither of them is materially incorrect nor misleading. Mr Lanesia states that *'the filing of a complaint does not mean that criminal proceedings will follow, or that criminal proceedings have been initiated'*.

27. Mr Lanesia goes on to say the following:

"..the Complaint also takes paragraph 12(vi) of my witness statement dated 29 August 2021 out of context. That evidence was a commentary on paragraph 20 of Mr Lapid's evidence and was observing that it was clear from Mr Lapid's evidence that criminal proceedings had not been commenced yet against his client".

28. In any event, Mr Lanesia submits that the statement that criminal proceedings had not been commenced, was (to his knowledge) true at the time of the Witness Statement and the Appeal.

29. Mr Lanesia further argues that the Witness Statement did not mislead the Court of Appeal as any communication in relation to the filing of the criminal complaint on 12 July 2021 was *'immaterial to the hearing and the judgment'*. The Court of Appeal dismissed the Appeal *'on the basis that no order that it could make would be of any use because it had no jurisdiction to determine the meaning of the Contract in a final and binding was and, on an appeal from the discharge of an injunction, it would not be determining the meaning of the Contract in a final and binding was but rather would only be applying the serious issue to be tried test'*.

Findings and Decision

30. In its Complaint, the Complainant claims that the Respondent has breached the following provisions of the Code of Conduct:

Code of Conduct

Part B – Duties Owed to the Court

- 9A: Practitioners shall never knowingly or recklessly make any incorrect or misleading statement of fact or law to the Court and shall correct any material incorrect or misleading statement of fact or law at the earliest opportunity.

Part D – Duties Owed to Other Practitioners

- 21: Practitioners shall deal with each other honestly, co-operatively and with civility.

Part E – General Duties

- 22(A): Practitioners shall not engage in conduct that undermines the Overriding Objective or which may otherwise result in procedural unfairness.
- 22(J): A Practitioner shall not engage in conduct involving dishonesty, fraud, deceit, or deliberate misrepresentation.
- 24: Practitioners shall abstain from any behaviour which may tend to discredit the Court and the reputation of its Practitioners.

31. On behalf of the Court, I am tasked with determining whether Mr Lanesia, on the balance of probabilities, has breached the relevant provisions of the Code of Conduct. This is pursuant to paragraph 38 (A) of the Code of Conduct which states that:

The Court, acting through the Registrar, the Chief Justice...or any nominee of the Chief Justice, may impose the following sanctions upon any Practitioner found on a balance of probabilities to have committed a breach of the Code [of Conduct]:

- private admonition;
- public admonition;
- ...
- suspension from the Register of Practitioners for a period of time not exceeding 3 years; and
- removal from the Register of Practitioners.

32. The question for determination before me is whether Mr Lanesia *knowingly mislead the DIFC Court of Appeal or recklessly made an incorrect and misleading statement, and therefore* breached the relevant provisions of the Code of Conduct and.

33. To be found in breach of the Code of Conduct is a serious matter. The Code imposes significant sanctions on practitioners found in breach – sanctions which could permanently damage a practitioner's career. If a practitioner is found to be in breach, these sanctions are necessary in order to ensure that a high standard of professional practice is maintained at all times.

Alleged breach of Part B-9A of the Code of Conduct

34. There are two key elements to establishing that a breach of Part B-9A of the Code has occurred: First, an incorrect or misleading statement must have been made to the Court by a Practitioner; and second, that statement must have been made knowingly or recklessly by the Practitioner.

Definition of "Recklessness" in the context of Practitioners' duties

35. In considering the correct definition of, and test for, recklessness which should be applied, I refer to Decision No. 1 of 2017 issued on 9 March 2017, which reviewed decisions made by courts and tribunals in disciplinary proceedings in fellow common law jurisdictions, including England & Wales and Australia.
36. Having reviewed these authorities, the Investigatory Committee was of the view that, in order to determine whether a Practitioner has acted recklessly, it must be concluded on the balance of probabilities, having carried out a subjective assessment of the relevant Practitioner's state of mind (based on the evidence available), that:
- a. the Practitioner was subjectively aware that there was a real risk that the statement made to the Court was incorrect or misleading; and
 - b. they disregarded or closed their mind to that risk in the sense that they were indifferent as to, or did not care, whether the statement was correct or not.
37. The Investigatory Committee further stated that it is clear from the relevant cases cited, namely *Brett v SRA* and *Giudice v Legal Profession Complaints Committee*, that the standard for establishing "recklessness" in such instances is a high one.
38. In review of the submissions made by the parties, I find that this threshold has not been met. In particular, I do not consider that Mr Lanesia was subjectively aware of the risk that he had made (if any), or was continuing to make or rely upon, an incorrect or misleading statement. The dispute in question was concerning the Guarantee Cheque and all parties were aware of the risks in case the Guarantee Cheque would be deposited and dishonoured.

Was an "incorrect or misleading statement" made to the Court by the Respondent?

39. Mr Lanesia, in his Witness Statement, stated that '*criminal proceedings have not been commenced*', and on 20 September 2021, he writes to the Tribunal that '*a criminal complaint was filed by the 1st Respondent on 12 July 2021*'. I tend to agree with Mr Lanesia and find that the filing of a complaint does not mean that criminal proceedings will follow, or that criminal proceedings have been initiated.

40. As Mr Lanesia states in his submissions 'that evidence was a commentary on paragraph 20 of Mr Lapid's evidence and was observing that it was clear from Mr Lapid's evidence that criminal proceedings had not been commenced yet against his client'. Mr Lanesia might have been aware, on 29 August 2021, of the fact that a criminal complaint was filed on 12 July 2021, however, I do not see why he would have knowingly misled the Court of Appeal by not mentioning this.

41. It is worth noting that the Injunction was discharged on 10 March 2021, and the Appeal was listed on 8 September 2021. The Complainant should have been aware of the risk that the Guarantee Cheque could have been presented between 10 March 2021 and 8 September 2021.

42. Therefore, I find that there has been no misrepresentation made to the Court of Appeal and conclude that no incorrect or misleading statement was made.

Were the statements made by the Respondents (or any of them) knowingly or recklessly?

43. I find that there was no evidence before me that the Respondent knowingly made any incorrect or misleading statement to the Court of Appeal; indeed, there was ample evidence to the contrary. Therefore, I determine that there was no knowing or intentional breach of Part B-9A of the Code of Conduct by the Respondent in this case.

44. In respect of the remainder of the allegations made in relation to the Respondent's duties under the Code of Conduct, having regard to all of the materials before me and given the above, I do does not consider, on the balance of probabilities, that the Respondent has breached any of these duties. The Respondent did not breach his duty:

- a. to "deal with each other honestly, co-operatively and with civility", within the meaning of Part D-21 of the Code. I do not consider that the Respondent's conduct amounted to a breach of this Part of the Code of Conduct;
- b. not to "engage in conduct that undermines the Overriding Objective or which may otherwise result in procedural unfairness", within the meaning of Part E-22(A) of the Code of Conduct. I do not consider that the Respondent's conduct amounted to a breach of this Part of the Code of Conduct;

- c. not to "engage in conduct involving dishonesty, fraud, deceit or deliberate misrepresentation", within the meaning of Part E-22(J). Again, I do not consider that the Respondent's conduct amounted to a breach of this Part of the Code of Conduct; and
- d. to "abstain from any behaviour which may tend to discredit the Court and the reputation of its Practitioners", within the meaning of Part E-24 of the Code. I do not consider that the Respondent's conduct amounted to a breach of this Part of the Code of Conduct.

45. Although I have not considered it appropriate to impose any sanction on the Respondent as a result of this Complaint, I seize this opportunity to emphasise the deleterious effect of Practitioners failing to deal with each other honestly, co-operatively and with civility, and the potential impact which such failures may have on (i) the proper functioning of the Court and the administration of justice, as well as (ii) the individual reputation of the legal Practitioner concerned and the legal fraternity of which he forms part.

Issued by:
Delvin Sumo
Assistant Registrar
Date of Issue: 22 April 2022
Time: 10am