

Present: Mr GA Andrée Wiltens, Chair
Ms S Shah, Member
Mr F. Gilu, Member
Mr D Russet, Member
Ms VM Trief, Secretary
Mr TJ Botleng – on his own behalf

Decision: 15 October 2018

Complaints by Tiome Edmond and Jimmy Benneth against Mr TJ Botleng

A. Introduction

1. The complaints were made on 17 November 2017. They involve the same matter, and occurred at slightly different times of the same day in respect of each complainant.
2. Mr Botleng does not dispute the majority of the facts alleged.

B. Background

3. There was civil litigation in the Magistrate's Court at Luganville involving the Latamav Cooperative and Messrs Tiome and Jimmy – it was alleged that Messrs Tiome and Jimmy were responsible for certain damage to the Cooperative's property. Mr Botleng was counsel acting for the Cooperative.
4. On 30 October 2015 the Court ordered Messrs Tiome and Jimmy to pay wasted costs in the amount of VT 111,700 - by instalments, at the agreed rate of VT 3,000 per month. This was due to a number of delays attributed to Messrs Tiome and Jimmy.
5. On 17 February 2017 the civil case was struck out for want of prosecution.
6. There was a "flare up" of animosity again in late July 2017, allegedly involving the brother of Mr Jimmy, where further damage was caused to the Cooperative's property. Mr Botleng was instructed by his clients to take certain steps.

7. On 19 October 2017 Mr Botleng, together with a number of his clients, went to Port Olry and accosted Mr Jimmy at his place of work, the Chuan Store. Mr Jimmy stated that Mr Botleng had told him: "You must give me money. If you don't give me the money, you must go to prison." Mr Jimmy was afraid; and he asked his employer to assist, which he did. Half the requested amount was paid over, and a receipt for VT 55,850 was obtained. Mr Jimmy was concerned that this occurred at his place of work, and in the sight and hearing of members of the public. He was embarrassed and concerned for his employment.
8. Mr Jimmy complained that he'd been approached and forced to pay against his will.
9. Later that same evening, Mr Tiome had learnt of Mr Botleng's presence at Port Olry after he returned home from his day's work – the village Chief had told him to go and see Mr Botleng at the Cooperative Store. Mr Tiome was asked by Mr Botleng if he was married, if he had children, and who would look after his family if he went to jail for 2 years. Mr Botleng had the Court order and referred to it to substantiate what he was saying. This was in the presence of Mr Tiome's elderly mother, his wife and children. Mr Tiome was asked for the rest of the money; now or tomorrow. Mr Tiome agreed to pay "probably on Monday" before Mr Botleng and his clients left.
10. Mr Botleng agreed he had travelled from Luganville to Port Olry in the evening to speak to the complainants who were not his clients. He stated he did so at the instructions of his clients, following the further damage to property. He had the Court order with him and explained that Messrs Tiome and Jimmy were still required to pay the wasted costs even though the case had been struck out. He did not actually threaten or intend to threaten.

C. Discussion

11. Mr Botleng accepted he should not have acted as he did in confronting the complainants – he could and should have followed usual Court processes.
12. During the meeting Mr Botleng apologised to Messrs Tiome and Jimmy, but maintained that he did not intend to threaten them and that he was merely following his instructions.
13. Mr Botleng acknowledged also that he should not have accepted those instructions – he should have advised his clients that he was unable to act as a sheriff or police officer in enforcing Court Orders. He had no answer to the proposition (contrary to what he first suggested) that the Court order made no mention of imprisonment or other consequences for non-compliance; nor indeed could he justify that the sum he demanded was not actually owing – the only amounts owing were VT 3,000 per month.

D. Decisions

14. The Committee is of the view that the arrival in one of Vanuatu's two smaller towns – Luganville – and then subsequently in a village in rural Santo – Port Olry, of a Port Vila lawyer is a big thing – the community were very much aware of Mr Botleng's presence. We are greatly concerned that a

senior practitioner considers it quite acceptable to act as an enforcer of the law, a debt collector – effectively he was being a legal bully.

15. The Committee has no hesitation in characterising the combination of the questions asked, the demand for money, and the mention of 2 year's imprisonment all in the same short conversation equates to a direct threat. For a senior practicing lawyer to so act in public, in the presence of close family members, and supported by a group of enthusiastic clients, is quite reprehensible. The use of the "prop" of the Court Order was deliberately elevating the seriousness of what was being discussed; and that it was explained to lay members of the community in a deliberately grossly misleading manner is exacerbating.

16. The Committee concluded that Mr Botleng had no place going to Luganville and then later on that day to Port Olry on this escapade. He should not have put himself in the position of speaking to either complainant at all, let alone in the threatening manner he did. We find both complaints established.

E. Sanctions

17. There was much debate about the appropriate sanction to be imposed.

18. Mr Botleng's standing in the community as a senior practitioner without previous blemishes on his reputation was a significant factor in keeping the level of sanction below suspension. However, the appropriate level of the lesser alternative, a fine, needed to be set at a significant standard to achieve the goal of deterrence and also be a punitive sanction.

19. In respect of each of the two complaints, the Committee unanimously determined to fine Mr Botleng VT 125,000 – a total of VT 250,000. We also considered that he should pay compensation to each complainant of VT 75,000 – a total of VT 150,000. We also order him to pay VT 50,000 for the costs of the hearing. The total sum of VT 450,000 is to be paid to the Committee's Secretary – she will then ensure on-payment to the complainants. Payment is to be made within 28 days.

F. Other

20. The Committee takes into account that Messrs Tiome and Jimmy (and their spokeswoman Marie Tiome who travelled and appeared with them) took 2 days off work and had to travel to Port Vila to take part in the hearing. It is appropriate to award all 3 of them the sums of VT 45,000 each by way of witness expenses.



G. A. Andrée Wiltens

Chair, Disciplinary Committee