

THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL DISCIPLINARY ENQUIRY UNDER SECTION 18 OF THE LEGAL PROFESSION ACT, 1960 (ACT 32) INTO THE PROFESSIONAL CONDUCT OF LAWYER FRANCISCA SERWAA BOATENG.

COMPLAINANT'S CASE

1. In or about 16th January, 2015, David Morrel, the Complainant, lodged a complaint against Francisca Serwaa Boateng the Respondent who was called to the Bar on 2nd October 1998 before the Disciplinary Committee of the General Legal Council (hereafter called the Committee). According to the Complainant, VPS International BV (VPS) a company incorporated in the Netherlands assigned a debt owed them by African Automobile Limited (AAL) to his Company Rexico Ghana Ltd. (Rexico) and requested them to take whatever steps they could to collect the said debt on VPS's behalf. The Complainant tendered in "**Exhibit A**" the debt assignment letter by VPS to the Complainant dated 02/08/2010 which contains the terms of Engagement (T o E) and also "**Exhibit B**", an authority note from VPS dated 03/08/2010 in proof of his assertions.
2. The Complainant explained in his evidence-in-chief that the Respondent, was recommended by Addo Atuah Esq., (a lawyer) to pursue the debt

recovery in Court because he (Addo Atuah, Esq) could not take up the case against AAL due to his existing engagement with AAL.

3. The Complainant stated that he travelled on three occasions from Akim Oda, where he was stationed to Accra to give filing fee to the Respondent. On the first two occasions, he met the Respondent at Batsoona Filing Station and handed over an amount of **Four Thousand Ghana Cedis (GHS4,000.00) and then Three Thousand Cedis (GHS3,000.00)**. On the third occasion, he personally handed over an amount of seven hundred Ghana Cedis (**GHS700.00**) to one Bright Akwagyiram, a clerk at the law firm of the Respondent. No receipts were issued for all these payments.

4. The action was instituted by the Respondent at the Commercial Court before Justice Tanko in Suit **No.RPC 195/11 entitled VPS International BV Vrs. African Automobile Limited** for the recovery of the debt. Judgment was delivered in favour of VPS for the recovery of **One Million, Five Hundred and Fifty-Three Thousand, Eight Hundred and Thirty US dollars, Eighty Six Cents (USD 1,553,830.86)** and cost of **Thirteen Thousand Ghana Cedis (GHS 13, 000)** with interest at the Commercial rate of lending on both the US dollar and the Ghana Cedis respectively

from 10th July, 2012 to final date of payment. A copy of the Entry of Judgment dated 10/07/2012 for the recovery of the above mentioned sum was tendered in evidence as **Exhibit “C”**.

5. The Respondent went into execution and personally travelled to attach a property of AAL at Takoradi which was sold by auction. The proceeds from the auction sale was **Two Million Nine Hundred and Eighty Thousand Cedis (GH¢2,980,000.00)** (the Takoradi proceeds). A copy of the auctioneer’s account on the Takoradi proceeds dated 26/11/2013, was admitted in evidence as **Exhibit “D”**. According to the Complainant, only **One Million Four Hundred and Thirty Thousand (GHS1, 430,000)** was paid to VPS out of the proceeds.

6. The Complainant explained that a meeting was called by the Respondent on 16/12/2012 at her office at Spintex and was attended by himself and Mr. Daan Vermeer, the Managing Director of VPS where the Respondent produced an account of disbursement of the Takoradi auction proceeds. The Complainant indicated there were noticeable irregularities and discrepancies, particularly the following:

- a. *That the Respondent had unilaterally increased her commission from twenty percent (20%) to thirty-five percent (35%).*
 - b. *That the commission had been calculated on the sale price of the property and not the recovered price; which should be the sale price less the cost of recovery.*
 - c. *That in the statement, there was unaccounted shortfall of One Hundred and Thirty-seven Thousand Six Hundred Ghana Cedis (GHS137, 600.00).*
 - d. *That the Respondent had charged for two other Suit, OCC/30/2013 and RPC427/13 Ten Thousand Ghana Cedis (GHS10, 000.00) and Twenty Thousand Ghana Cedis (GHS20, 000.00) respectively related to the debt recovery without first informing them.*
7. The Complainant explained further that when he challenged the Respondent on charging 35% on the Takoradi proceeds instead of 20% she became incensed and waved the scale of fees of the Ghana Bar Association (GBA) at them, claiming that since she pursued the case to the Court of Appeal and to the Supreme Court, she was entitled to charge fifteen percent (15%) in accordance with GBA scale of fees, (that is 5% at the Court of Appeal and 10% for the Supreme Court).

8. The Complainant stated that when the Respondent was asked to hand over the brief, she produced an account of what she claimed was outstanding fees (Bill of Fees) with a letter dated 01/09/2014. This letter together with the Bills of Fees were tendered in evidence as **Exhibit “F”**. Again, it was discovered that the Respondent applied to the Court for the release of **One Hundred and Sixty-four Thousand, Nine Hundred Ghana Cedis (GHS164, 900.00)** and appropriated same without the knowledge of VPS or the Complainant. The order of the Court dated 12/02/2014 for the release of the **GHS164, 900.00** was tendered in evidence as **Exhibit G**. This amount was the outstanding balance from **Two Hundred and Thirty Thousand, Ghana Cedis (GHS 230,000.00)** which was kept in Court out of the Takoradi proceeds out of which the auctioneer was paid his expenses and Court commission had been deducted.
9. The Complainant informed the Committee that the Respondent is also claiming a commission of 20% on garnishee order that she knew had been set aside by the State, as well as costs awarded to the client. All these were presented in yet another statement of account dated 10th May, 2017, and same tendered in evidence as **Exhibit “H”**.

10. The Complainant further informed the Committee that when the Respondent was asked to hand over the brief, she replied with an email stating “**I HAVE LONG SUSPECTED YOU TO BE DEMENTED AND YOU HAVE CONFIRMED MY SUSPICION**”. The request letter and the response from the Respondent were tendered in evidence as “**Exhibit K and J**” respectively.

11. The Complaint therefore claimed the following reliefs against the Respondent:-

a) The production of accurate statement of clients’ account that shows receipts and disbursements for each action undertaken by the Respondent;

b) Further, to ensure the repayment of misappropriated amounts in the Takoradi auction disbursement – GH¢128,660;

c) Further to pay over to the client costs awarded to the client in all the hearings;

12. The Respondent, upon receipt of the Complaint, responded to the same by a letter dated 3rd March, 2015 challenging the Complainant’s capacity to lodge the said complaint as the Complainant was not the Respondent’s client and she had never represented the Complainant in any Court proceedings or at all.

According to the Respondent in or around October, 2010, her Law firm was contacted by Addo Atuah & Co., Accra through its Head of Chambers, Addo Atuah, Esq. The latter had been approached by Rexico Ghana Ltd. to institute legal action for a company called VPS International BV of the Netherlands against African Automobile Ltd. of Ghana for recovery of an amount of US\$336, 627.35 from AAL. Addo Atuah, Esq. explained that Addo Atuah & Co. was unable to handle the brief because it had already been retained by AAL as its lawyers and was already handling numerous cases in Court for and on behalf of AAL.

13. On 26th April, 2018, the Committee charged the Respondent with seven counts of misconduct substituted with an amended charges on 15th May, 2019. The Respondent pleaded not guilty to all the seven charges (*as amended*).

CONSIDERATION OF THE CHARGES

COUNT 1

STATEMENT OF MISCONDUCT

Misconduct in a professional respect contrary to Rule 9(7) of the Legal Profession (Professional Conduct and Etiquette) Rules, 1969, L.I.613

PARTICULARS OF MISCONDUCT

That you, while acting as Counsel for VPS charged 35% on all recoveries made contrary to an agreement by the parties before the commencement of the suit.

Per Rule 9(7) of L.I. 613 it is provided that;

A lawyer in his dealings with the client must behave with utmost honesty and frankness; and any breach of this rule constitutes professional misconduct.

From the “**Exhibit A**” tendered by the Complainant, the terms of engagement stated that 20% will be charged for monies recovered on contingency basis. The Respondent did not deny this. At page 15 (paragraph 15) of the Respondent’s Witness Statement she admitted thus;

“It was also agreed that the legal fees of 20% as stated per attachment “19” of Exhibit “N” will be my legal fees for the case. Based on this understanding, I subsequently issued a writ in the Commercial Division of the High Court as Suit No. RCP/195/2011 VPS INTERNATIONAL BV VRS. AFRICAN AUTOMOBILE”.

14. In the Written Submissions of the Respondent received by the Committee on 17th January, 2022 at paragraphs 7 and 8 thereof, the Respondent admitted Addo Atuah, Esq. forwarded the terms of the firms engagement contained in Rexico’s letter dated August, 2010 and was titled “Debt Assignment” and accepted by VPS International as follows:

“That 20% of the total sum recovered was to be paid as legal fees to the lawyers...”

15. The Complainant on this issue without any ambiguity stated that:

“The Respondent’s firm agreed to handle the said brief for VPS International. Consequently Addo Atuah, Esq. forwarded the brief with all the terms of engagement as stated above” [Emphasis added].

16. The Respondent, when questioned under cross-examination to produce evidence of further instructions and or agreement between her and VPS. Rexico to charge the extra 5% for Court of Appeal and 10% for the Supreme Court, failed to do so. The committee finds as a fact that the legal fees was limited to 20% of the amount claimed and not the 35% as alleged by the Respondent.

However, the Complainant on his part tendered in evidence various accounts [**Exhibit E, F and H**] submitted by the Respondent in which the Respondent paid herself 35% commission from the Takoradi execution proceeds. These exhibits also corroborate the fact that the extra 15% charged by the Respondent was brought to the attention of the Complainant only after the recovery and at a meeting called by the Respondent on 16th December, 2012 ostensibly to render account.

For ease of reference we reproduce the content of **Exhibit E.**

VPS INTERNATIONAL BV.
STATEMENT OF ACCOUNT

1. Money realized from sale of Takoradi property	- GH¢2,980,000
Less auctioneer's fees (7%) and expenses	- GH¢230,000
And Court stamp duty (taxes)	
(Pls. refer to Account Sales)	

2. Money paid to FSB for VPS	- GH¢2,612,400
Less 35% legal fees as follows	- GH¢1,043,000
Substantive High Court (Comm. Div.) Case-20%	GH¢914,340-128,660
Court of Appeal Case-5% (15% by Scale of Fees)	
Supreme Court Case -10% (15% by Scale of Fees)
3. Balance left with FSB	- GH¢1,569,400
Less money paid to David upon Daan's instructions	GH¢58,000
BALANCE	GH¢1,511,400
4. Other outstanding payment	
a. David's fees	
b. Legal fees for AAL v VPS Suit No.OCC30/13 -Bal.	GH¢5,000
David paid	
c. Legal fees for AAL v. VPS Suit No. RPC427/13	GH¢20,000
d. Contingency fees	GH¢50,000
TOTAL BALANCE LEFT WITH FSB FOR VPS	GH¢1,436,400
AND DAVID	

17. On 10th May, 2017, the Respondent upon a request by the Committee filed “**Exhibit H**” with an attachment indicating the Income and Expenditure for the Years Ended 2010 to 2014 in respect of Suit No. RPC 195/2011 and other cases, VPS International BV versus African Automobile Ltd. In this account were other expenses that the Respondent deducted from the amount she realised from the proceeds of the execution including legal fees which the Committee observed had changed to a higher figure of 1,130, 715.00.

1. Income	-	GH¢2,788,500
2. Fuel & Lubricants	-	GH¢15,850
3. Filing fees	-	GH¢4,680
4. Travelling & Transport Expenses	-	GH¢710
5. Commissioner for Oath	-	GH¢560
6. Bailiffs’ Service Honorarium	-	GH¢940
7. Expense iro T’de Property	-	GH¢18,000
8. Auctioneer’s fees & Expenses and Court Revenue	-	GH¢66,100
9. Legal fees	-	GH¢1, 130, 715
10. Contingency expenses	-	GH¢59,000
11. Costs awarded	-	GH¢34,375

18. However the Auctioneers Fees, Court Revenue and Auctioneers Expenses in the Exhibit ‘E’ was indicated as **GH¢230,000.00**. From the GHC 230

000, GHC 66, 100 was deducted as actual auctioneer expenses and court fees per Exhibit 'H'. There thus remained GHC 164, 900 as an unused excess remaining from the amount reserved. Also noted was that the left over amount after reserving GHC 230 000 from the sale proceeds of GHC 2,980 000, should have been GHC 2, 750, 000. Per Exhibits D, E and H however, the amount disbursed after the deduction of GHC 230, 000 was GHC 2,612, 400. There therefore remained an additional GHS 137, 600 excess with the Judicial Service to be claimed.

19. Despite already charging and retaining 35% of the GHS 2,980,000 gross proceeds of the auction as FSB's legal fee, the Respondent indicated in Exhibit H that FSB is entitled to receive an additional **GHC48,160** from the amount **GHC137,600.00** due VPS from the auction proceeds which stood as credit with Judicial Service and requested the Committee to order VPS to pay same to FSB.

In Exhibit 'H', the Respondent had stated that she paid GHS 1,386,400 to VPS after having previously paid the Complainant GHC 58,000 and also having previously paid Daan Vermeer GHS 50, 000. This made a total payment of GHC 1, 494, 400 to the Complainant and VPS per Exhibit 'H'.

Of the GHS 1,485, 600 amount remaining from the gross GHC 2,980,000, GHS 66, 100 were stated as auctioneer and court fees and GHS 137,600 acknowledged as an unclaimed excess kept in court. GHS 1,281,900 left over after these are taken into account, was therefore what was obtained and kept by the Respondent in legal fees and unreceipted expenses, at a total of 43% of the gross proceeds from the Takoradi sale.

20. It is expressly emphasized in the GBA scale of fees on which the Respondent claims she relied on to charge the extra 15% that there should be a **“negotiation and agreement”** in respect of the fees between the Lawyer and the client before commencement of the provision of legal services.

21. The Supreme Court per Amegatcher JSC in the case of **TAMAKLOE AND PARTNERS UNLIMITED VRS GIHOC DISTILLERIES CO. LTD. [2018-2019] 1GLR 887** held at the Head note that:

(5) Law firm and lawyers practicing in Ghana were required in the services they rendered to their client to strictly adhere to approved scale of fees or established tariffs of the Ghana Bar Association (GBA). The scale of fees, which derived its legal authority from section 28 of

the Legal Profession Act, 1960 (Act 32) and Rule 9(9) of the legal profession (Professional Conduct and Etiquette) Rules, 1969 (L.I.613), required lawyers to negotiate and agree with the client the fees to be charged before the commencement of the provision of legal services. That is, when instructed by the client, a lawyer or law firm was required to discuss, negotiate and agree with the client the fees payable within the range provided in the scale of fees and then execute a written retainer agreement, engagement letter of fee paying agreement detailing the scope of legal services to be performed, the fees and the expenses to be charged and the possibility of a refresher fee if the assignment goes beyond the anticipated timeframe for such cases. The Agreement with the client was also to provide the terms of payment of the fees, the percentage payable as deposit, the type of fee structure, ie fixed fee, fixed fee plus success fee, hourly fees, hourly fee plus success fee and fixed fee for part of the work and hourly fees for the other part. If the service was to be rendered pro bono, the agreement must specifically state so. The Appellant law firm in the instant case failed to negotiate, discuss and agree on its legal fees with the Respondent before the commencement of the service. The Appellant also failed to enter into

written retainer fee paying or engagement agreement with the Respondent detailing the scope of work among others. Such conduct was in breach of the Scale of Fees of the GBA and accordingly in breach of section 28 of Act 32 and rule 9(9) of L.I.613. The invoices for fees which the Appellant later submitted to the Respondent were arbitrary and not negotiated with the Respondent. The foundation, therefore, for the reliefs endorsed on the Appellants writ as outstanding fees for legal services rendered was not there at the inception of the suit and therefore not recoverable. Accordingly, the trial Court and the Court of Appeal were justified in dismissing the Appellant's case. In any case such an agreement for a fixed fee for all the cases in the future up to the appellate Courts sinned against the provisions of the rule 5(2) of the legal profession (Professional Conduct and Etiquette) Rules, 1969 (L.I.613). *Klein Calderoni and Santucci, LLP v Bazerjian* 6 Misc 3d 1032, 2005 NY Slip Op 50274 (U) (NY Sup Ct 2005) and *Feder, Goldstein, Tanenbaum and D'Errico v Ronan*, 195 Misc 2d 704; 761 NYS 2d 463 (Nassau Gy Dist Ct 2003). Per curiam. Public policy dictates that the court show interest in the fee arrangement between law firm or lawyers and their clients. The policy rationale is that arrangement for fees entered into with clients

ought to be fair reasonable and within the confines of the fee range prescribed in the Scale of Fees of the Ghana Bar Association. This is necessary so that members of the public who are served by lawyers are not short-changed by a few sharp practitioners. Thus, an agreement to provide legal services like any other agreement must meet the requirements of a simple contract such as offer, acceptance, intention to create legal relations and consideration. A law firm or lawyer who fails to negotiate and agree on the legal fees with the client before commencement of the service or within a reasonable time after the commencement (if the instruction is an emergency one in which legal fees could not have been agreed before the commencement) of the service is not entitled to recover any fees if the client dispute the fees invoiced it subsequently. This directive is needed today more than ever to sanitize the profession and ensure transparent and fair dealings with clients. It is also needed to avert situations where the clients find themselves at a disadvantage because of the power imbalances in the relationship between lawyers and their clients and the privileged positions lawyers occupy in the society.”

22. From the Respondent's own Written Submission, it was sometime in December, 2013 that she presented the Statement of Account she had prepared to Mr. Daan Vermeer of VPS International BV when the latter came to Ghana for the Respondent to hand over the judgment-debt proceeds to him. The Respondent however agrees that her legal fees came to 35% by reason of the subsequent instruction from VPS for her representation in the Court of Appeal and Supreme Court. The Respondent relied on a letter from VPS dated 30th June, 2014 to support her assertion. However contrary to this assertion the Respondent had earlier in December, 2013 indicated in her account that she had charged the 15% already and therefore her assertion cannot be correct. This count therefore succeeds as proven based on the evidence.

23. **COUNT 2**

STATEMENT OF MISCONDUCT

Misconduct in a professional respect, contrary to Rule 9(7) of the Legal Profession (Professional Conduct and Etiquette) Rules, 1969 L.I.613.

24. **PARTICULARS OF MISCONDUCT**

That you, acting as Counsel for VPS made a successful application to the Court for the release of an amount of GH¢164,900.00 representing the

excess amount on the agreed auction fees to yourself without the knowledge, consent and approval of your client.

25. The charge is again contrary to Rule 9(7) of L.I.613 which provides that a Lawyer in his dealings with the client must behave with utmost honesty and frankness. The Respondent applied to the Court for the release of an amount of GH¢164,900.00 which is an outstanding balance from the Takoradi auction sales (GH¢2,980,000.00) due to the client VPS International without the client's authorisation. The order for the release of the GH¢164,900.00 was granted on 12th February, 2014. The Respondent kept and is still keeping this money till date.
26. The Respondent explained in her Witness Statement that she was under strict instructions from Daan Vermeer to keep the money till he came personally to Ghana. On the contrary, the Respondent under cross-examination responded that she used the full amount of GH¢164,900.00 to defray part of her outstanding legal fees which stood at US\$126,887.65 when VPS International BV requested her to hand over the brief.
27. Respondent contends that this offence was not stated anywhere in the Complaint submitted to the committee. Suffice to state that this committee is a fact finding committee. Therefore, where it emerges during

the preliminary enquiry that a lawyer has behaved dishonestly or breached any of the rules which constitute professional misconduct, he/she can be charged with that offence even though the Complainant might not have made a claim in that respect. Opportunity was given to Respondent to plead to the charges of which a copy was given to her.

28. The purpose of L.I.613 is to ensure that practicing lawyers at all material times uphold the dignity of the legal profession and eschew high moral turpitude and refrain from bringing the legal profession into disrepute by actions not only towards their clients but to the general public.

29. In the instance case and as per the “**Exhibit E**” tendered by the Complainant, the Respondent indicated clearly as follows:

**MONEY PAID TO FSB FOR VPS...GH¢2,612,400 LESS 35% LEGAL FEES
AS FOLLOWS:...GH¢1,043,000**

30. Having applied the 35% to arrive at a fee of GHC 1,043, 000, the Respondent further retained towards her legal fees the excess GHC 164, 900 from the same gross proceeds. According to the itemization in Exhibit ‘H’, she also additionally withheld from the proceeds GHC 34,375 towards her fees, being the amount of total court costs awarded to VPS. As can be seen the legal fees alone was therefore almost 47.5% percent of

the net amount realized from the execution of the judgment from the sale proceeds of the Takoradi property because the Respondent charged 35% contrary to the agreed 20%. The Respondent was obligated to have negotiated and agreed on the extra 15% fees she charged before applying it if she saw there was the need for a revision of the fees. However, in the instant case she unilaterally decided to alter and apply the difference in the percentage of fees without recourse to the Complainant first.

31. In the law as amplified in the case of **STATE VRS. OTCHERE (1963) 2GLR 463 AT 469**, it was held that a witness whose evidence on oath is contradictory of previous statement made by him whether sworn or unsworn is not worthy of credit and his evidence in the light of his previous contradictory statement, unless he is able to give reasonable explanation for the contradiction. This explanation was not forthcoming from the Respondent

32. Another glaring contradiction reflecting in the various “**Statement of Account**” presented by the Respondent to the client and the committee is where the Respondent claimed GH¢57,715.00, that is, 35% of GH¢164,900.00 for herself, which is in the attachment to “**Exhibit F**” (i.e. 35% legal fees from GH¢164,900.00.....GH¢57,715).

33. In her evidence, the Respondent in her own words stated that she is claiming the said sum of **GH¢57,715.00** which she had already appropriated, as a counter-claim in a suit currently pending before the High Court (Commercial Division). In “**Exhibit H**” tendered by the Complainant, the Respondent in the Statement of Account she submitted to the committee dated 10th May, 2017 under Appendix 1 at page 4 of the said exhibit, reiterated that statement as follows:

34. **APPENDIX 1**

Outstanding Legal Fees owed FSB by VPS as at the date of handing over the brief as per FSB’s Bill of Legal Fees dated 1st September, 2014, was 20% of US\$656,002.53 obtained per Garnishee Order Absolute dated 27/6/2014 against Ministry of Finance that is US\$131,200.50. FBS is currently seeking the recovery from the Commercial Division of the High Court, Accra.

35. The conflicting evidence, proffered by the Respondent in her attempt to justify the fees she took instead gave credence to the case of the Complainant that the Respondent misconducted herself in the way she handled the proceeds that came into her hands which was meant for her client. We also find this count as proven.

36. **COUNT 3**

STATEMENT OF MISCONDUCT

Misconduct in a professional respect contrary to Rules 2(2) of the Legal profession (Professional Conduct and Etiquette) Rules, 1969 L.I.613.

37. **PARTICULARS OF MISCONDUCT**

“That you, acting as Counsel used intemperate words on your clients thereby degrading the dignity and high standing of your profession and your own dignity and high standing as a member of the profession.”

38. According to the Complainant, the Respondent in an email to him stated that **“I have long suspected you to be Demented and You have confirmed my suspicion.”** The Complainant in evidence informed the committee that the Respondent sent him the email supra after he asked the Respondent to hand over the brief assigned to her. The Request letter and the response from the Respondent were tendered in evidence as **Exhibit K and J** respectively. The **Exhibit J** (Attachment G) dated August 21, 2014 from the Respondent to the Complainant state inter alia as follows:

DAVID,

I have always suspected you to be demented and you have now confirmed my suspicion. Therefore I'll treat this email coming

from a demented geriatric like you, with the utmost contempt it deserve.

39. From the above excerpt of the e-mail from the Respondent to the Complainant, it is unambiguously clear that the Respondent used intemperate words that are not befitting of a lawyer of 23 years of practice, a director and Managing Attorney of a Legal Firm (Messrs FSB Consult Ltd.). The Respondent under cross-examination did not deny her use of the said offensive language in her communication to the Complainant. Indeed it was acknowledged *sub silentio*.

40. The Respondent instead, in an attempt to defend her use of this intemperate language rather challenged the capacity of the Complainant to bring the matter before the Committee. The Respondent attempted to justify her action by (i) refusing to acknowledge the Complainant as a client, since she was not instructed by him, (ii) that the Complainant chose to reply an email sent to Daan Vermeer, (iii) calling into question his knowledge of the law (iv) attacking her person, (v) and basically imputing criminality to her.

41. As stated earlier in this decision, the function of the enquiry is fact-finding and the capacity of the person who presents the petition to the

Committee must have something to do with a lawyer and the lawyer acts in such capacity, especially if those facts are supported by authentic documents. Although the Committee has the powers of the High Court to summon witness and call for production of documents and examine witnesses and parties on oath in such an inquiry as in the instant case, the Committee does not act *stricto sensu* as a Court, therefore the principle of capacity argued by the Respondent does not apply. We find as a fact that the complaint dealt with the Respondent in her capacity as a lawyer to issue a writ and took filing fees from the complainant.

42. Section 18 of the Legal Profession Act, 1960 (Act 32) which was in force at the time the Complaint was lodged with the Committee provides as follows:

Reference to disciplinary Committee

A Complaint by a person relating to the conduct of a lawyer shall be referred to the disciplinary Committee and, if it appears to the disciplinary Committee that an inquiry ought to be held into the complaint, it shall proceed to hold the inquiry.

43. That use of “a person” as appears from the wording of the said provision supra in Section 18 of Act 32, suggests that any person could bring a complaint before the General Legal Council, about the conduct of a

lawyer. It does not limit the right to bring a complaint to only clients of a lawyer. A fortiori, any person could bring a complaint before the General Legal Counsel in relation to the conduct of a lawyer, when the person dealt with the lawyer in his capacity as a lawyer.

44. However, despite the Respondent's claim that she did not know the Complainant until she obtained judgment and went into execution, we observed that in the response of the Respondent to the Committee dated March, 2015 ("**Exhibit N**" at **paragraph 3 of page 2**) and under cross-examination, the Respondent admitted that the instruction she received from Addo Atuah, Esq. were contained in a letter from Rexico Ghana Limited, dated 2nd August, 2010 [**"Exhibit A"**] which is the Debt Assignment letter containing the Terms of Engagement (T o E). This Debt Assignment Letter had David Morrell, the Complainant as one of the directors of Rexico Ghana Ltd.

45. The Committee observed further from the evidence placed before it that it was the same Complainant who met the Respondent on two occasions to hand over various sums of money to her and then to her law clerk as filing fees when he travelled from Akim Oda to meet her.

Again, the Complainant's name featured copiously in **Exhibit E** that is, the disbursement account of Takoradi auction proceeds presented to the Complainant and VPS by the Respondent herself and this was before the present complaint was lodged with the Committee.

Then again, the Respondent addressed a "**Notice of Taking over the Brief of VPS International**" letter to Messrs David Morrel Rexico Ghana Ltd. ("**Exhibit M**" attachment 3, dated 1st September, 2014).

46. Reference may be made to "**Exhibit M**" attachment which shows email exchanges between the Complainant and the Respondent between Thursday November 28, 2013 and Friday November, 29, 2013. These emails and other documents tendered during the enquiry by the parties are clear indications from which a conclusion can be drawn as proof of the fact that the Complainant and the Respondent are connected and knew whom they were dealing with, in the course of the legal proceedings against AAL.

That is not all, but by the production of the **Exhibit A and B** to the Committee, the Complainant was able to prove his involvement in the matters handled by the Respondent in her professional capacity as a

lawyer more so when the Respondent admitted that the Complainant and Daan Vermeer came to the Respondent's office when Daan Vermeer came to Ghana.

47. The Respondent was not only rude to the complainant but to Daan Vermeer as well, on Friday May, 30, 2014.

Daan Vermeer sent an email to the Respondent as follows:

Dear Francisca,

As we are not receiving any reaction from you we feel very unsecured about our.....”

48. The same day, the Respondent sent a rude email to Daan Vermeer inter alia as follows:

“I cannot spend the time writing emails everyday about the same thing over and over again. I have other cases to attend to. I am sorry”.

49. It is trite, that a lawyer must always maintain a noble disposition and act in a manner that will not denigrate the legal profession when dealing with everybody whether a client or not. In this case there was a dealing with a client.

The instruction of the framers of the Rules of Conduct and Etiquette of the Legal Profession (L.I. 613) is not that lawyers should be civil to only

people they consider as clients. It is for this reason that the framers of the rule made it a duty of every lawyer at all times to uphold the dignity and high standing of the legal profession and that of the lawyers own dignity and high standing as a member of the profession.

The Committee finds the conduct of the Respondent not only rude but reprehensible to say the least which no doubt brought the noble Legal Profession into disrepute. We accordingly find Count 3 as proven to our satisfaction.

We will proceed to consider the Count 4, 5 and 6 together since they are related.

50. **COUNT 4**

STATEMENT OF MISCONDUCT

Misconduct in a professional respect, contrary to Rule 6(1) of the Legal Profession (Professional Conduct and Etiquette) Rules, 1969 L.I. 613.

PARTICULARS OF MISCONDUCT

“That you, having acted as Counsel for VPS failed to issue receipts for monies received on their behalf and also on purported expenditures incurred in your dealings with them.”

51. **COUNT 5**

STATEMENT OF MISCONDUCT

Misconduct in a professional respect, contrary to Rule 6(2) of the Legal Profession (Professional Conduct and Etiquette) Rules, 1969 L. I. 613.

52. **PARTICULARS OF MISCONDUCT**

That you, having acted as Counsel for VPS failed to at all times to keep proper written account of monies received for and on behalf of your clients.

53. **COUNT 6**

STATEMENT OF MISCONDUCT

Misconduct in a professional respect, contrary to Rule 9(9) of the Legal Profession (Professional Conduct and Etiquette) Rules, 1969 L. I. 613.

54. **PARTICULARS OF MISCONDUCT**

“That you, having acted as Counsel for VPS, your clients, charged them a total sum of about GH¢3,625.483.00 as legal fees and expenses incurred on their behalf, which was excessive and an over-estimation of the services you rendered to her.”

55. Rule 6(1) of L.I.613 states that:

“Every lawyer shall give a receipt for each and every payment made to him and shall specify therein the purpose for which such payment was made”.

56. Throughout the handling of the case the Respondent did not issue a single receipt or invoice for monies received and expenditure incurred incidental to the case. This fact was bemoaned in “**Exhibit J**” which is a letter dated 14th August, 2014 in response to an email sent by the Respondent to Paintsil and Paintsil and Mr. Daan Vermeer.

The Respondent explained her failure to issue receipts for monies received from the Complainant that the Complainant brought the money on a Saturday and that the monies were handed over outside of her office.

From the Respondent's Statement of Accounts presented to the Committee [**Exhibit H**], the Respondent Expended a total of GH¢134,115.00 without showing a single receipt or invoice for any of the transactions. This amount is in respect of

- Fuel and Lubricants	...	GH¢15,850.00
- Filing fees	...	GH¢4,680.00
- Travelling and Transport Expenses	...	GH¢710.00
- Commissioner for Oath	...	GH¢560.00
- Bailiffs	...	GH¢940.00
- Expenses in respect of Takoradi property	...	GH¢18,000.00
- Contingency expenses	...	GH¢59,000.00
- Cost awarded	...	GH¢34,375.00

The Respondent in her Witness Statement claimed that all these expenses were incurred without receipt hence she did not bill the client, but rather used part of her legal fees to defray same. This claim cannot be true as from the **Exhibit H**, the Complainant presented the GH¢134,115.00 as expenses billed on the Client's account.

57. A scrutiny of **Exhibit E** which is the same as **Exhibit 22** is more like a record of disbursement of funds from the Takoradi auction proceeds with no expenditure recorded. **Exhibit F** is a Bill of Fees attached to a letter from the Respondent dated 1st September, 2014 to Messrs David Morrell Rexico Ghana Ltd. upon a request for the Respondent to hand over the brief and the **Exhibit H** is a supposed Statement of Account dated 10th March, 2017 requested by the Committee. The Exhibits supra cannot by any stretch of imagination be described as a Statements of Account properly so called.

58. The Respondent in applying the extra 15% fees in excess of the agreed 20% for services rendered to her client culminated in multiple charges on the same judgment proceeds of GH¢2,980,000.00 (See **Exhibit “FSB 1”**) which enabled her to receive more than even the 35% she had already taken.

In respect of Count 6, and as stated earlier in this decision, the Respondent charged in excess of the agreed fees for the service she rendered to the client. Firstly, charging 35%, instead of the 20% agreed at the commencement of the handling of the case in itself

amounts to excessive charging. Further, the Respondent having charged 35% on the gross proceeds ought not to have charged on the net proceeds of **GH¢2,980,000.00**. The 35% claimed by the Respondent on all the monies received is reflected in all the so-called Statement of Account the Respondent prepared. In addition the Respondent counter-claimed in Exhibit “O” in suit No.CM/0066/15 against VPS for the sum of US\$126,887.65 or its cedi.

From the dicta of Fletcher Moulton L. J in **CLARE VRS. JOSEPH [1907] 2K.B 369 AT 376**, and dicta of Lord Hardwicke L.C. in **SOUNDERSON VRS. GLASS (1972) 2 ATK. 29 AT 298**, the protection of clients from paying exorbitant fees has its roots firmly planted in the common law. This solicitude is shared by the Court of this land as enunciated by Apaloo JA (as he then was) in **AYARNA AND ANOTHER VRS. AGYEMANG AND OTHERS [1976] 1GLR 306, C.A.** when the eminent jurist stated thus:

“A Court of justice always sets itself as an arbiter between lawyers who are its own officers and lay clients to ensure that the fees demanded of the latter by the former are fair and reasonable.”

59. **COUNT 7**

STATEMENT OF MISCONDUCT

Misconduct in a professional respect contrary to Section 19(5) of the Legal Profession Act, 1960 (Act 32)

60. **PARTICULARS OF MISCONDUCT**

That you having been duly notified failed to appear before the Disciplinary Committee of the General Legal Council on 6th July, 2016.

There is no evidence on the record that the Respondent failed to appear before the Committee on 6th July, 2016. In fact the Respondent challenged this assertion that no evidence has been produced to show that the Committee sat on that day. However, the only evidence on record is the “**Exhibit 11**” (Extract of minutes of meeting of the Disciplinary Committee held on 6th July, 2017) which is attached to the Respondent’s Witness Statement. Since the Respondent has been charged with an offence which demands strict proof and a sanction is attached to it if found guilty, the onus is on the prosecution to prove beyond reasonable doubt that the Respondent was notified and failed to appear before the Committee on the said date.

Under the circumstances the Respondent cannot be found guilty on this count in the absence of proof that the Respondent committed that offence on 6th July, 2016.

However, the Respondent's absence from attending the Committee's meeting on 27th July, 2017 as per the **Exhibit II** which is admitted by the Respondent is indicative of her disrespect to such an august Committee which should not be encouraged by this Committee. The Respondent cannot hide behind the fact that because she was not sanctioned for her failure to appear before the Committee on 6th July, 2017 that made her conduct acceptable.

In conclusion, and for the reasons stated supra, the Committee hereby finds the Respondent guilty of Counts 1, 2, 3, 4, 5 and 6. The Committee however finds the Respondent not guilty on Count 7 and acquits the Respondent.

Finally, it is pertinent to state that on 2nd June, 2022 the Respondent indicated to the Committee at its sitting that she would like to reply to the addresses of Legal Counsel for the Committee.

The Committee acceded to the request of the Respondent and adjourned the matter to June 23rd, 2022. The Respondent was ordered to file her written Reply to the addresses within one week from the 2nd June, 2022. However, the Respondent failed to comply with this order without any reason.

SGD.
MR. JUSTICE ANIN YEBOAH, JSC

SGD.
MRS. JUSTICE IRENE CHARITY LARBI, JA

SGD.
HON. SAM OKUDZETO