

THE HIGH COURT

2011 39 SA

IN THE MATTER OF SECTION 7(12A) (a) OF THE SOLICITORS DISCIPLINARY TRIBUNAL ACT 1960

BETWEEN

KIERAN McDONAGH

APPELLANT

AND

DAMIEN TANSEY

SOLICITOR/RESPONDENT

JUDGMENT of Kearns P. delivered on the 25th day of July, 2011

This is an appeal by Kieran McDonagh ("the appellant") against a decision of the Solicitors Disciplinary Tribunal ("the Tribunal") dated the 3rd of March 2011, that there is no *prima facie* case of misconduct on the part of Damien Tansey, Callan Tansey Solicitors, Law Chambers, 3 Wine Street, Sligo ("the respondent solicitor").

The appellant appeals the decision of the Tribunal on the basis that his replying affidavit of April 2010 was excluded and was not considered by the Tribunal in coming to its decision, claiming that this is not in accordance with rule 9 (a) of the Solicitors Disciplinary Tribunal Rules, 2003.

Each of the allegations made by the appellant against the respondent solicitor was rejected by the Tribunal as being adequately rebutted by the respondent solicitor in his affidavit sworn on 2nd February, 2011.

The appellant's appeal against the Tribunal decision is rejected for the following reasons:

(i) Rule 9 (a) of the Solicitors Disciplinary Tribunal Rules, 2003 provides *inter alia* that the decision by the Tribunal as to whether or not there is a *prima facie* case of misconduct on the part of the respondent solicitor for inquiry by the Tribunal shall be made on the basis of the affidavit or affidavits **furnished** to the Tribunal.

The Tribunal made its decision on 3rd March, 2011 on the basis of affidavits which had been furnished to it at that time. The appellant filed an affidavit on 27th April, 2011 in response to the affidavit of the respondent solicitor. The appellant appeals against the failure of the Tribunal to consider this affidavit of 27th April, 2011, filed almost 2 months after the Tribunal decision was made. It was impossible for the Tribunal to consider this affidavit in coming to its decision, as it was not available to it at the time the Tribunal was making its decision and. There is therefore no contravention by the Tribunal of the Solicitors Disciplinary Tribunal Rules.

(ii) I have considered the content of the appellant's affidavit sworn on 27th April, 2011. I am satisfied that even if this affidavit had been considered by the Tribunal, the appellant has produced no evidence to substantiate any allegations of misconduct on the part of the respondent solicitor.

The Court agrees with the findings of the Tribunal, that there is no misconduct on the part of the respondent solicitor.

I therefore dismiss the appeal.