

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI  
LANKA

In the matter of an Application in terms  
of Section 8(6) of the Sri Lanka Institute  
of Architects Law No. 1 of 1976 as  
amended by Act No. 14 of 1996.



CA /~~APN~~/MISC/01/2014

Nalaka Jayaweera,  
No. 29, "Sirila",  
Thihariya Road, Kalagedihena,

Appellant

Vs.

Sri Lanka Institute of Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 7.

Respondent

**Before:** Arjuna Obeyesekere, J

**Counsel:** Phillip Chandraratne for the Appellant

Dr. Asanga Gunawansa with Ms. Nicola De Zoysa and  
Nusry Hussain for the Respondent

**Written Submissions:** Tendered on behalf of the Appellant on 15<sup>th</sup> November  
2016, 16<sup>th</sup> January 2017 and 27<sup>th</sup> September 2019

Tendered on behalf of the Respondent on 15<sup>th</sup>  
December 2016, 5<sup>th</sup> September 2019 and 8<sup>th</sup> October  
2019

**Decided on:** 6<sup>th</sup> March 2020

## Arjuna Obeyesekere, J

This appeal has been filed in terms of Section 8(6) of the Sri Lanka Institute of Architects Law, No. 1 of 1976, as amended, seeking *inter alia* the following relief:

- a. To set aside the Disciplinary Order dated 17<sup>th</sup> February 2014, marked 'P16', imposed on the Appellant and declare that it is not valid, has no force in law and is erroneous in fact and law.
- b. To set aside the charge sheet dated 11<sup>th</sup> November 2011 and the Disciplinary Report placed before the Council of the Respondent on 29<sup>th</sup> January 2014 and declare that they are not valid and have no force in law.<sup>1</sup>
- c. To direct the Council of the Respondent to commence an investigation on the complaint of the Appellant.

The facts of this appeal very briefly are as follows:

The Respondent, the Sri Lanka Institute of Architects has been established by the Sri Lanka Institute of Architects Law, No. 1 of 1976, as amended (the Act). The Appellant is a Chartered Architect and has been a member of the Respondent since 1999. The laws and regulations in respect of the members of the Respondent are stipulated in the Act and the Regulations published in

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<sup>1</sup> In terms of Section 5(1) of the Act, 'The administration and management of the affairs of the Institute shall be vested in a Council which shall perform the functions and duties and may exercise the powers of the Institute under this Law.'

Extraordinary Gazette No. 1416/10 dated 25<sup>th</sup> October 2005 (the Regulations). A copy of the said Regulations has been annexed to the petition marked 'P1'.

The general objects of the Respondent have been set out in Section 3 of the Act, and include the following objects which are relevant to the issue that culminated in this appeal:

- (a) To promote and advance the study, practice and application of, and research in, architecture;
- (b) To organise, supervise and control the admission and the professional education and training of persons desiring to qualify as architects;
- (c) To prescribe or approve courses of study for the qualifying examinations for membership of the Institute, and to conduct or provide for the conduct of such courses and examinations.

Regulation 7.7 of 'P1' provides for the appointment of the Boards specified therein. In terms of Regulation 7.7.1, the Board of Architectural Education (BAE) has been established to assist, advise and control the education of students in Architecture, the conduct of examinations and all matters connected therewith. Similarly, in terms of Regulation 7.7.4, the Board of Management (BOM) has been established to assist, advice, control, guide and manage any event connected with the conducting of classes and lectures in relation to Architectural education or any other course or any institution formed under the Respondent for related activity.

Sections 8B – 8E of the Act provides for the qualifications that are required for a person to be registered as a Chartered Architect, Architect or as an Architectural Licentiate. The Appellant states that by an advertisement published in the Daily News of 21<sup>st</sup> November 2009, marked 'P2', the Secretary of the Board of Architectural Education had called for applications for registration of candidates to follow a part time lecture series leading to the qualifying examination for Architectural Licentiates. A pass in the said qualifying examination was a pre-requisite to apply for registration as an Architectural Licentiate. The Appellant states that Section 8E(c) of the Act too provides that the said Architectural Licentiate Examinations must be conducted by the Council and not a private institution.

The Appellant states that in May 2010, it was brought to his attention that a third party entity was to commence the lecture course leading to the Licentiate Examination in Architecture, in contravention of Regulations 7.7.1 and 7.7.4 of the Regulations and Section 8E(c) of the Act. The Appellant states that this was a deviation from the above practice of the Respondent conducting the necessary lectures, as reflected by 'P2'.

Aggrieved by the alleged violation of the provisions of the Regulations and the Act by the Respondent, namely whether the Respondent has the authority to permit a lecture course leading to the Licentiate Examination in Architecture to be conducted by a third party, the Appellant, by letter dated 24<sup>th</sup> May 2010 marked 'P3', brought the matter to the attention of the Secretary of the Respondent. 'P3' had been copied to the members of the Council, as well as the general membership of the Respondent. While emphasising on the legal implications of delegating the above duty to a third party, the Appellant

requested that the lectures proposed to be conducted by the third-party Company be cancelled.

Having received no response to the abovementioned letter 'P3', the Appellant wrote another letter to the Respondent, dated 21<sup>st</sup> June 2010, marked 'P4'. In the said letter, the Appellant referred to by name, the Secretary of the Board of Architectural Education and the Chief Executive Officer of the third party entity, and alleged that the Board of Architectural Education has already started negotiations with the said private institution in order to conduct the said Licentiate Examinations. The letter 'P4' contains the following statement about the aforementioned two persons:

*"It is no doubt to state that as you have failed to acknowledge the letter and to rectify the irregular and unlawful operation with immediate effect by forwarding for a report and thereby holding the existing operations; I believe these two persons are taking the upper hand in this unlawful and irregular operation."*

By a further letter dated 26<sup>th</sup> July 2010, marked 'P5', the Appellant accused the Respondent of attempting to '*implement the irregular and unlawful operation of conducting Architectural Licentiate Courses by a complete outside entity without any accreditation or validation or without any license to conduct architectural exams or to conduct courses in Architecture in Sri Lanka as per the Act.*' The Appellant had once again referred to the fact that the Secretary of the Board of Architectural Education and the Chief Executive Officer of the third party entity are engaged in discussions to commence the said course and called for an investigation into their alleged misconduct, which had quite

correctly been turned down by the Respondent on the basis that there was no material to initiate an investigation against the said Architects.

On 4<sup>th</sup> August 2010, the Respondent had received a letter from the said Secretary, Board of Architectural Education, stating that the Appellant had copied the aforementioned two letters 'P4' and 'P5' to the general membership of the Respondent and thereby caused injury to his reputation, and inquiring whether the Respondent would initiate an inquiry against the Appellant.

The Respondent did not reply the concerns raised by the Appellant in his three letters marked 'P3', 'P4' and 'P5'. Instead the Chairman of the Investigation Committee of the Respondent, through letter dated 18<sup>th</sup> August 2010, marked 'P8', had informed the Appellant of the aforementioned request for an investigation and requested the Appellant to submit his response, which was duly complied with by the Appellant.

In his response to 'P8', the Appellant had stated that he called for an inquiry against the Secretary of the Board of Architectural Education '*not on a private matter, but to protect (the Respondent) from the commercial interests that are overshadowing the Institute and its professional conduction, which is an institutional matter anyway. Thereby, I believe the General Membership deserve the right to know all such operations as well*'. The Appellant had requested that the letter calling for an inquiry against him also be shared among the membership of the Respondent, so that the membership has an opportunity of deciding for themselves.

By a further letter dated 18<sup>th</sup> October 2010, marked 'P12', the Appellant had stated that he was not trying to discredit the profession but rather to keep members of the profession informed of the alleged irregularities that were taking place. The Appellant had reiterated that he has not maliciously or unfairly criticised or attempted to discredit any person except the submission of relevant facts.

The Report of the Investigation Committee dated 8<sup>th</sup> December 2010<sup>2</sup> states as follows:

*"The Committee was of the view that the letters under reference by Architect Nalaka Jayaweera are replete with instances and references where he has made unfounded criticism against Members and the Council. The right to criticism does not entitle a Member to make defamatory statements against another which could tantamount to disrepute. Further, in several instances Architect Nalaka Jayaweera has made allegations by identifying Members of SLIA by name, **when they were only carrying out duties on voluntary and honorary capacity as either Chairman, Secretary, or as a Member of a Board or a Committee**. By making such allegations public by email distribution there is a valid case of bringing disrepute and damage to the reputation of such members.*

*Having considered all aspects of the Investigation, the Committee unanimously agreed that,*

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<sup>2</sup> This report had been produced before the Disciplinary Committee.

- i. *There is prima facie evidence of violation of Clause 5.3.3 Principle Three, sub clause (2)(c) and (d) of the Regulations by Architect Nalaka Jayaweera; and*
- ii. *That such violation is of grave nature."*

The Respondent had thereafter referred the matter to the Disciplinary Committee which had issued the Appellant with the charge sheet annexed to the letter marked 'P17'.

Following a lengthy inquiry, the Respondent, by letter dated 17<sup>th</sup> February 2014, informed the Appellant that the final report and recommendations of the Disciplinary Committee had been placed before the Council of the Respondent and that the Appellant has been found guilty of Charge Nos. 3 and 4. Acting in terms of Section 8(3) of the Act, the Council had reprimanded the Appellant as a punishment for the said professional misconduct.<sup>3</sup>

Dissatisfied with the said decision, the Appellant invoked the jurisdiction of this Court, seeking the abovementioned relief.

In his written submissions, the learned Counsel for the Appellant has raised issue with three matters, which this Court shall now consider.

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<sup>3</sup> Section 8(3) of the Act reads as follows: "The Council shall disenrol any member who in its opinion has been guilty of professional misconduct: Provided, however, that the Council may, in lieu of disenrollment, reprimand such member or suspend him from membership for such period not exceeding one year as the Council may consider just and equitable in all the circumstances; and provided, further that the Council may in its discretion re-admit such person if in its opinion he has redeemed his character and is fit to practice the profession of an architect."

The first submission is with regard to the procedure that was followed and the nature of the inquiry that was held against the Appellant. The procedure for conducting disciplinary inquiries is set out in Section 8(4) and (4A) of the Act, and Regulation 9 of 'P1'. Accordingly, when a complaint is received, the Procedures Committee or the Council shall examine the complaint and if it is found that the material warrants further investigation, refer the matter to the Investigation Committee<sup>4</sup>. The Investigation Committee must conduct an investigation as provided in Regulation 9.1 and submit a Confidential Report containing *inter alia* its findings and other relevant information to the Council<sup>5</sup>. This Court, having considered the material placed before it, is of the view that the provisions in Regulation 9.1 have been adhered to by the Investigations Committee.

On receipt of the Confidential Report, the Council is required to study the proceedings and arrive at a decision. Regulation 9.2 (3) states that where the Council is of the view that further action is warranted, it shall forward the matter to the Disciplinary Committee.

Regulation 9.3 contains the procedure to be adopted by the Disciplinary Committee. The first step is for the Disciplinary Committee to issue a Charge Sheet, which has been duly complied with. This Court must observe that the principles of a fair hearing have been adhered to by the Disciplinary Committee and that the Appellant has been afforded every opportunity of presenting his defence, including the right of representation by an Attorney-at-Law. In these circumstances, this Court does not see any merit in the first submission of the learned Counsel for the Appellant.

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<sup>4</sup>Regulation 9 (4).

<sup>5</sup>Regulation 9.1 (5).

The next submission of the learned Counsel for the Appellant was that a formal complaint is required to trigger the disciplinary procedure set out in 'P1'. He submitted that the Secretary, Board of Architectural Education, during his evidence before the Disciplinary Committee had admitted that he did not make a specific complaint against the Appellant but only inquired what steps the Council could take against the Appellant.<sup>6</sup> In these circumstances, it was the submission of the learned Counsel for the Appellant that disciplinary proceedings could not have been instituted against the Appellant.

Regulation 9 of 'P1' deals with the submission of a complaint to the Respondent, and the relevant paragraphs of Regulation 9 are re-produced below:

- "(1) In the event of a breach of the Regulations by a Member, Chartered Architect, Architect, Architectural Licentiate or a Practice, the Institute may be informed by the following persons or institutions:*
- (a) By the Council itself or its Standing Committees.*
  - (b) Any Board or its Standing Committees.*
  - (c) A Council Member.*
  - (d) Member of the Institute, Chartered Architect, Architect, Architectural Licentiate.*
  - (e) Member of the Public.*
  - (f) Any private or public body corporate or non-incorporate.*

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<sup>6</sup> Vide proceedings of 18<sup>th</sup> September 2012.

(2) *On receipt of such information or complaint, Institute shall adhere to the procedure hereinafter set out, whether the informer or complainant is identifiable or non-identifiable."*

The learned Counsel for the Respondent very correctly submitted that the above provisions as well as Regulation 9 (3) – (8) of 'P1' makes it abundantly clear that the Respondent may act on information received, or on a complaint. This Court is in agreement with the said submission of the learned Counsel for the Respondent. This Court is therefore of the view that a formal complaint is not required for the Respondent to initiate disciplinary proceedings against a Chartered Architect, Architect or an Architectural Licentiate. In any event, it is clear from the letter sent by the Secretary, Board of Architectural Education that he was aggrieved by the fact that the Appellant had circulated the letters 'P4' and 'P5' among the general membership. His inquiry as to what action the Respondent intends to take, is a clear indication that he wanted the Respondent to act on his letter. In the said circumstances, this Court does not see any merit in the second submission of the learned Counsel for the Appellant.

The third submission of the learned Counsel for the Appellant was that the members of the Disciplinary Committee had failed to evaluate the evidence that was led before them in the context of the charges framed against the Appellant, and that the members of the Disciplinary Committee failed to consider the material that was placed before them in arriving at their conclusion.

Regulation 5 of 'P1' contains the Code of Professional Conduct for the members of the Respondent. Regulation 5.1(1) sets out that, '*The objective of this Code of Professional Conduct shall be to maintain and promote the standards of professional conduct or discipline, required of members of the Institute, Chartered Architects, Architects, Architectural Licentiates and Practices in the interest of the Members of the Institute and the Public.*'

The Code contains three Principles which the members of the Respondent shall follow and comply with at all times. The Appellant has been charged with contravening Principle Three, which is contained in Regulation 5.3.3, reproduced below:

- "(1) A member of the Institute, a Chartered Architect, Architect, an Architectural Licentiate or a Practice shall undertake in every circumstance to conduct in a manner, which respects the legitimate rights and interests of others.*
- (2) To uphold the Principle set out in 5.3.3 (1), a Member of the Institute, a Chartered Architect, an Architect, an Architectural Licentiate and Practice shall-*

  - (a) Not offer any discount, commission, gratification or other inducement for the introduction of clients and for procurement of any assignment;*
  - (b) When appointed as a competition assessor, not subsequently act in any other capacity for the work;*

- (c) Not maliciously or unfairly criticise or attempt to discredit another Member of the Institute, a Chartered Architect, Architect, an Architectural Licentiate or a Practice or the works carried out by the Practices.
- (d) Respect and maintain confidentiality in any matter involving breaches, either alleged or proven of these Regulations or of the standard of professional performance of a Chartered Architect, an Architect, an Architectural Licentiate or a Practice."

The Charge Sheet contained the following four charges:

1. By sending letter dated 21<sup>st</sup> June 2010 ('P4'), addressed to the Hon Secretary, containing malicious material and/or unfair criticism of Architect XX (i.e. the Secretary, Board of Architectural Education), and copying the same to some Members simultaneously, you have acted maliciously and/or unfairly criticised and/or attempted to discredit the said Architect XX, also a member of the Institute and thereby you have violated Clause 5.3.3 (2) (c) read with Clause 5.1 of the Regulations made under Sri Lanka Institute of Architects Law, No. 1 of 1976 (as amended) and are therefore liable to be subject to disciplinary action in terms of Section 8 of the Sri Lanka Institute of Architects Law, No. 1 of 1976 (as amended);
2. By sending a letter addressed to the Hon Secretary dated 26<sup>th</sup> July 2010 ('P5') and copying the same letter to some Members simultaneously, you have acted maliciously and/or unfairly criticised and/or attempted to discredit the said Architect XX (i.e. the Secretary, Board of Architectural

Education), also a member of the Institute and thereby you have violated Clause 5.3.3 (2) (c) read with Clause 5.1 of the Regulations made under Sri Lanka Institute of Architects Law, No. 1 of 1976 (as amended) are therefore liable to be subject to disciplinary action in terms of Section 8 of the Sri Lanka Institute of Architects Law, No. 1 of 1976 (as amended);

3. By sending letter dated 21<sup>st</sup> June 2010 ('P4'), complaining *inter alia* of the conduct of Architect XX addressed to the Hon' Secretary and copying the same to some members simultaneously, you have failed to maintain confidentiality as required by the Regulations in any matters referred to in the above letters involving breaches either alleged or proven of the Regulations and/or of the Standards of Professional Performance of Architect XX and thereby violated Clause 5.3.3 (2) (d) read with Clause 5.1 of the Regulations made under Sri Lanka Institute of Architects Law, No. 1 of 1976 (as amended) are therefore liable to be subject to disciplinary action in terms of Section 8 of the Sri Lanka Institute of Architects Law, No. 1 of 1976 (as amended);
4. By sending letter dated 26<sup>th</sup> June 2010 ('P5'), complaining *inter alia* of the conduct of Architect XX addressed to the Hon' Secretary and copying the same to some members simultaneously, you have failed to maintain confidentiality as required by the Regulations in any matters referred to in the above letters involving breaches either alleged or proven of the Regulations and/or of the Standards of Professional Performance of Architect XX and thereby violated Clause 5.3.3 (2) (c) read with Clause 5.1 of the Regulations made under Sri Lanka Institute of Architects Law, No. 1 of 1976 (as amended) are therefore liable to be subject to disciplinary

action in terms of Section 8 of the Sri Lanka Institute of Architects Law, No. 1 of 1976 (as amended);

This Court must observe that the reference to 'Clause 5.3.3 (2)(c)' in Charge No. 4 is incorrect and that the correct reference should have been to 'Clause 5.3.3 (2)(d)'. Although this matter had been raised at the inquiry, steps had not been taken to amend the charge.<sup>7</sup>

In their report dated 8<sup>th</sup> January 2014, the members of the Disciplinary Committee had stated that to find the Appellant guilty under Regulation 5.3.3(2)(c), it is a requirement that the prosecution prove that the alleged act by the Appellant was carried out maliciously or unfairly. The Disciplinary Committee had gone on to hold that the prosecution has failed to meet this threshold, and therefore the Appellant had been found *not guilty* of Charge Nos. 1 and 2. This finding of the Disciplinary Committee that the Appellant did not act maliciously is significant in view of the position taken up by the Appellant, which would be discussed later. The Disciplinary Committee had however found the Appellant guilty of Charge Nos. 3 and 4, in spite of the aforementioned error in Charge No. 4.

This Court therefore has to only consider whether the findings of the Disciplinary Committee with regard to Charge Nos. 3 and 4 are correct.

A close examination of Regulation 5.3.3(2)(d) would reveal that the obligation to maintain confidentiality must be read together with Regulation 5.3.3 (1) and must arise with regard to either of the following:

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<sup>7</sup> Vide proceedings of 5<sup>th</sup> December 2012.

- (a) Any matter involving a breach, either alleged or proven, of the Regulations 'P1';
- (b) Any matter involving the standard of professional performance of a Chartered Architect, an Architect, an Architectural Licentiate or a Practice.

There are three matters that this Court must observe at this stage, which demonstrates that Charge Nos. 3 and 4 were not specific. The first is that the said charges do not specify whether the failure to maintain confidentiality was with regard to (a) or (b) above, but leaves it open by using the words, '*and/or*'. The second is that the charges do not contain any specific reference to a particular Regulation of 'P1', which is said to have been breached by the Secretary, Board of Architectural Education. This position was in fact suggested to the Secretary, Board of Architectural Education during cross examination, but he failed to refer to any particular regulation in 'P1' that the Appellant is complaining that he has breached, except to state that the Appellant had no right to circulate the letters among the general membership of the Respondent. The third is with regard to Regulation 6.5 of 'P1' which contain the Standard of Professional Performance that must be maintained by a Chartered Architect, an Architect, an Architectural Licentiate or a Practice. This Court has examined the provisions of Regulation 6.5 and observes that it applies to the professional services that are offered by a Chartered Architect, an Architect, an Architectural Licentiate or a Practice, whereas the allegation that the Appellant had made was not with regard to professional services that

had been carried out or performed by the Secretary, Board of Architectural Education.

This Court has examined the evidence of the Secretary, Board of Architectural Education and the evidence of the Appellant. The Appellant does not deny that he sent the letters marked 'P4' and 'P5' to the Respondent. The names of the persons who have been copied the said letters have been set out at the bottom thereof and includes the members of the Council, and the general membership of the Respondent. During his evidence, the Appellant did try to say that the letters were not circulated among the membership, but this position of the Appellant does not appear to be tenable, and in fact runs contrary to his argument that he was raising this issue for the benefit of the entire membership.

The position of the Appellant before the Disciplinary Committee was that the letters 'P4' and 'P5', the contents of which were the subject matter of the charges against him, did not contain anything about the architectural practice of the said Secretary, Board of Architectural Education and that the complaint of the Appellant did not relate to the personal capacity of the said member but related to the failure on the part of the members of the Board of Architectural Education to look into the alleged irregularities, in their official capacity.

The Appellant submitted further that 'P4' and 'P5' only relates to a matter affecting the Architectural Profession in general and the actions/inactions of the Board of Architectural Education and/or the Respondent in relation to one particular incident in their official capacity as office bearers of the Board of Architectural Education. It was therefore the position of the Appellant that he

was under a duty to keep the members of the Institute informed as it was in relation to the Architectural Profession and Education and not in relation to the architectural practice of the members of the Board of Architectural Education.

The position taken up by the Appellant before the Disciplinary Committee can be summarised as follows:<sup>8</sup>

- (a) He did not make any personal allegations against the said Secretary, Board of Architectural Education;
- (b) The references to the said Architect in 'P4' and 'P5' were with regard to acts carried out in his capacity as the Secretary, Board of Architectural Education;
- (c) The allegations that he made were purely with regard to the steps that the said Architect had taken in his capacity as Secretary, Board of Architectural Education, and with regard to the conducting of the lecture courses, and not with regard to any breach of professional duties or obligations as an Architect.

As observed earlier, the grievance of the Appellant - namely that the duty to conduct courses leading to the Architectural Licentiate is with the Respondent, and that it cannot be given to a third party - was with the Respondent and its Boards. The grievance was not directed at the persons holding office at the Board of Architectural Education. This is clearly borne out by the letter dated 24<sup>th</sup> May 2010 marked 'P3', which is the first letter that was sent by the

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<sup>8</sup> Vide proceedings of 30<sup>th</sup> July 2013 and 3<sup>rd</sup> September 2013.

Appellant on this issue. Unfortunately, the Respondent, for whatever reason, had chosen to ignore the said letter, and the Appellant therefore did not have the benefit of a reply to an issue which the Appellant was raising in the general interest of the membership, and not with regard to the professional conduct of any individual.

The failure on the part of the Respondent to reply 'P3' resulted in 'P4' being sent, almost a month later. In 'P4', the Appellant had referred to the Secretary, Board of Architectural Education by name, although such reference was limited to steps that were taken in his capacity as Secretary, Board of Architectural Education. 'P4' too went unanswered by the Respondent, prompting the Appellant to send 'P5' one month later. 'P5' too contains a reference to the Secretary, Board of Architectural Education, but once again with regard to steps that were taken in his capacity as Secretary, Board of Architectural Education. The Respondent, did not respond to 'P5', but initiated disciplinary proceedings against the Petitioner by its letter dated 18<sup>th</sup> August 2010 marked 'P8'.

It appears to this Court that the provisions of the Act draws a distinction between the conducting of programmes relating to architecture, and the conducting of examinations for those desirous of becoming a Chartered Architect, Architect or an Architectural Licentiate. Thus, an issue which could have been resolved by a simple response by the Respondent, snowballed into a disciplinary inquiry, disciplinary sanctions and an appeal to this Court. This is unfortunate, especially since the decision to hand over the conducting of lectures to a third party was a decision taken by the Respondent and the said Architect was merely executing or implementing the said decision, in his

capacity as the Secretary, Board of Architectural Education. The Secretary was therefore acting as a '*Liyana Mahattaya*' as referred to by the said Architect himself in his evidence.

This Court, having carefully considered the provisions of Regulation 5.3.3 is of the view that the provisions of Regulation 5.3.3(2)(d) applies to a duty to maintain confidentiality with regard to a breach, either alleged or proven, of any professional obligation set out in 'P1', or with regard to a breach of the standard of professional performance stipulated in Regulation 6.5 of 'P1'. In other words, confidentiality must be maintained where the breach relates to a professional matter. That does not however mean that a member can engage in malicious and/or personal criticism of another member, and thereafter take cover under the pretext that he was only criticising an official act performed by such member.<sup>9</sup>

This Court has examined the report of the Disciplinary Committee dated 8<sup>th</sup> January 2014, and finds that apart from holding that 'P4' and 'P5' have been written by the Appellant and have been circulated, the Disciplinary Committee has failed to consider the other requirements that need to be established in order to prove Charge Nos. 3 and 4. Furthermore, this Court observes that the Committee has not considered the position of the Appellant referred to earlier.

In the light of (a) the explanation offered by the Appellant that he did not make any personal allegation against the Secretary, Board of Architectural Education, who this Court must note is a long standing and respected member of the Respondent; (b) the Appellants explanation that his letters were written

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<sup>9</sup> The provisions of Regulation 5.3.3(2)(c) may be invoked in such a situation.

purely with regard to the action taken by the Respondent and the steps that the said Architect had taken in his capacity as Secretary, Board of Architectural Education; and (c) the findings of the Disciplinary Committee that the Appellant had not acted maliciously, this Court is of the view that the decision of the Disciplinary Committee that the Appellant is guilty of Charge Nos. 3 and 4 cannot be sustained.

This Court must state that the Office bearers of the Respondent, its Council members and members of its Boards are carrying out their official functions at great sacrifice to their personal and professional commitments and that they are only implementing the collective decisions taken by the Respondent, as was evident by the evidence of the Secretary, Board of Architectural Education before the Disciplinary Committee Therefore, persons such as the Appellant who wish to raise issues with regard to the activities of the Respondent must act responsibly and desist from referring to Office bearers by name. It is perhaps for this reason that Regulation 5.1(2)(a) of 'P1' specifies that members of the Respondent, Chartered Architects, Architects, Architectural Licentiates and Practices shall at all times be guided by the spirit of the Code of Professional Conduct set out therein.

In the above circumstances, this Court sets aside the Disciplinary Order set out in the letter dated 17<sup>th</sup> February 2014 marked 'P16'. This Court makes no order with regard to costs.

Judge of the Court of Appeal