

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Samson Mpundu
Heard on:	Thursday, 02 May 2019
Location:	The Adelphi, 1 – 11 John Adam Street, London WC2N 6AU
Committee:	HH Suzan Matthews QC (Chairman) Ms Joanne Royden Turner (Accountant) Ms Lynn Jones (Lay)
Legal Adviser:	Mrs Fiona Barnett
Persons present and capacity:	Ben Jowett – ACCA Case Presenter Anna Packowska – ACCA Hearings Officer
OUTCOME:	Allegations 1(a) and 1(b) proved Allegations 2(a) and 2(b) not proved Excluded from Membership with Immediate Effect. Costs to ACCA £5,000.

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SERVICE OF PAPERS

1. Mr Mpundu was neither present nor represented.
2. The Committee had before it a service bundle numbering pages 1 to 13. This showed that the Notice of Hearing, dated 27 March 2019, and accompanying documentation was sent to Mr Mpundu by email on that date, to the email address shown on ACCA's register.
3. There was however, an error within the Notice of Hearing. The service letter made reference to the date of the hearing as "Tuesday 2 May", when in fact, the hearing is taking place on Thursday, 2 May 2019. Mr Mpundu was notified of this error by ACCA in email correspondence sent on 29 April 2019. In the Committee's view, this was not a material error as the notice of hearing did inform Mr Mpundu of the correct date of the hearing i.e. 2 May 2019. The reference to "Tuesday 2 May", could, at its worst, have led him to believe that the hearing might have taken place slightly earlier than its scheduled date. ACCA had also taken steps to correct this error, but in the Committee's view, it had complied with Regulation 10(1)(b) of ACCA's Complaints and Disciplinary Regulations 2019 ("CDR"), which required ACCA to notify Mr Mpundu of the time, date and place of the hearing.
4. The Committee was therefore satisfied that proper notice had been given, and that service had been effected in accordance with Regulations 10 and 22 "CDR".

PROCEEDING IN ABSENCE

5. Mr Jowett invited the Committee to proceed in Mr Mpundu's absence. He submitted that Mr Mpundu has been served with the papers, and has waived his right to attend. He said Mr Mpundu has not sought an adjournment, and there was no reason to suppose that an adjournment would result in his attendance. Further, he said that there is a strong public interest in this case, which involves a conviction for dishonesty

6. The Committee accepted the advice of the Legal Adviser. It bore in mind that, whilst it has discretion to commence and conduct proceedings in the absence of the member, it should exercise that discretion with the utmost care and caution. The Committee had regard to the factors set out by Lord Bingham in the case of *R v Jones 2002 UKHL 5* and the case of *General Medical Council v Adeogba and Visvardis 2016 EWCA Civ 162*.
7. ACCA had attempted to communicate with Mr Mpundu during the investigation at the postal and email addresses held for him on ACCA's register. There had been no response from him at any time during the investigation or in answer to the notice of this hearing. ACCA had sent a further email to Mr Mpundu on 29 April 2019, asking him if he would be attending the hearing, and informing him that he could join by telephone or video link but there had been no response from him.
8. ACCA had served the hearing papers in accordance with the CDR to Mr Mpundu's registered email address, so he should be aware of this hearing. In the absence of any response from him, and given his history of non-engagement during the investigation, the Committee concluded that he did not wish to participate in this process and had waived his right to attend. Consequently, adjourning the hearing to give him another opportunity to attend would serve no useful purpose, because he was unlikely to attend on a later date. The Committee was also mindful that this was a serious allegation which dated back some considerable time, and there was a pressing public interest in proceeding expeditiously to bring this matter to a conclusion.
9. The Committee acknowledged that if it proceeded today in the absence of Mr Mpundu, there may be some prejudice to him. However, having borne in mind the above factors and the public interest in concluding regulatory matters expeditiously, the Committee was satisfied that the factors in favour of proceeding today outweighed any consequential prejudice to Mr Mpundu.
10. The Committee decided that in the circumstances, it was fair and reasonable to proceed in the absence of Mr Mpundu. The Committee will

ensure that it takes appropriate steps to ensure the hearing is fair and will draw no adverse inference from Mr Mpundu's absence.

ALLEGATIONS

Allegation 1

- a) On 29 November 2017 Mr Samson Mpundu was convicted of theft by servant contrary to section 272 and 278 of the Penal Code CAP 87 of the Laws of Zambia and money laundering contrary to section 7 of the Prohibition and Prevention of Money Laundering Act no.14 of 2001, which is discreditable to the Association or the accountancy profession;
- b) By reason of his conduct at 1(a) above, Mr Samson Mpundu is liable to disciplinary action pursuant to bye-law 8(a)(ix).

Allegation 2

- a) Mr Samson Mpundu failed to bring promptly to the attention of ACCA that he may have become liable to disciplinary action by reason of having been convicted on 29 November 2017, pursuant to bye-law 10(b).
- b) By reason of his conduct at 2(a) above, Mr Samson Mpundu is:
 - (i) Guilty of misconduct pursuant to bye-law 8(a)(i); or
 - (ii) Liable to disciplinary action pursuant to bye-law 8 (a)(iii).

BRIEF BACKGROUND

11. This matter initially came to the attention of ACCA in September 2012, when ACCA in Zambia was informed that Mr Mpundu, who had been employed as

a Finance Manager by Company A, had had his contract terminated by Company A due to dishonest conduct. ACCA was informed that Mr Mpundu had been transferring money from Company A's account into his own account without authority, and procuring assets for his personal benefit. Mr Mpundu was allegedly using other approvers' passwords to log into the online banking system.

12. In November 2017, ACCA was informed by the Chief Investigations Officer of the Zambia Drug Enforcement Commission that Mr Mpundu had been convicted of 24 counts of "theft by servant", and money laundering, and sentenced to two years imprisonment with hard labour. ACCA subsequently received a certificate of conviction from the Lusaka Subordinate Court of Zambia.
13. In its consideration of this matter, the Committee had before it papers numbering pages A to K, and 1 – 27.

DECISION ON ALLEGATIONS AND REASONS

14. The Committee accepted the advice of the Legal Adviser. In reaching its decisions, it reminded itself that the burden of proof rests with ACCA, and that the standard of proof is the civil standard, which is the balance of probabilities. The Committee was mindful that it must draw no adverse inference from Mr Mpundu's absence.

Allegation 1(a) – found proved

15. The Committee was satisfied, having considered the certificate of conviction from the Lusaka Subordinate Court in Zambia and the statement from the state prosecutor, that Mr Mpundu was convicted of theft and money laundering as alleged in Allegation 1(a).
16. The Committee was also satisfied that Mr Mpundu's conviction for theft and money laundering was discreditable to the Association and the profession of accountancy. These were serious offences for matters of dishonesty which

had attracted a substantial custodial sentence. The Committee therefore found this matter proved.

Allegation 1(b) - found proved

17. The Committee's findings in Allegation 1(a) rendered Mr Mpundu liable to disciplinary action in accordance with Byelaw 8(a)(ix).

Allegation 2(a) – not proved

18. Byelaw 10(b) places an obligation on a member to bring promptly to the attention of ACCA, any matter indicating that he may have become liable to disciplinary action.

19. However, the Committee was not satisfied that ACCA had properly notified Mr Mpundu of this allegation. Allegation 2(a) refers to a charge which was not properly set out in the documents provided to Mr Mpundu. The report provided to him made no reference to this allegation, but referred to a separate matter of failing to co-operate with ACCA, which had not been pursued.

20. Second, ACCA had adduced no positive evidence to persuade the Committee that Mr Mpundu had not promptly notified ACCA that he may be liable to disciplinary action. Mr Jowett invited the Committee to draw an inference that Mr Mpundu could not have done so, because if he had done so, the notification from him would have been provided to the Committee. However, the Committee reminded itself that ACCA bore the burden of proving the allegation on the balance of probabilities, and its view was that it had not done so.

21. The Committee therefore found this allegation not proved.

Allegation 2(b) – not proved

22. This allegation was not proved by virtue of the Committee's findings in relation to allegation 2(a).

SANCTIONS AND REASONS

23. The Committee accepted the advice of the Legal Adviser, who referred the Committee to ACCA's current Guidance on Disciplinary Sanctions ("the Guidance"). It bore in mind that it must act proportionately at this stage, balancing the member's interests against the public interest, and that it must consider the sanctions in ascending order.

24. The Committee identified a number of aggravating factors: Mr Mpundu had stolen from his employer and had thereby abused his position of trust. There were 24 offences of theft which showed that the offences were repeated, and further, the offences were for matters which involved dishonesty. Mr Mpundu had used the passwords of others to access the accounts, and had benefitted personally from his offending. In the Committee's view, the matters proved were very serious.

25. The Committee also considered whether there were any mitigating factors. It was told by Mr Jowett that there were no previous disciplinary findings against Mr Mpundu. It accepted that this was a mitigating factor.

26. The Committee first considered whether to conclude this case without taking further action but decided that, to do so, would not uphold the public interest.

27. The Committee next considered, in ascending order, whether an Admonishment or Reprimand would be an appropriate and proportionate sanction in this case. It decided that neither of these sanctions would be sufficient to uphold the public interest, given the serious nature of the offences for which Mr Mpundu had been convicted.

28. The Committee next considered whether a Severe Reprimand would be an appropriate and proportionate sanction. In so doing, it had regard to the factors set out at paragraph C4 of the Guidance. In the absence of any response, from Mr Mpundu, the Committee decided that a Severe Reprimand would not be appropriate. There was no evidence of any insight remorse or remediation which would persuade the Committee that Mr Mpundu did not present an on-going risk to the public.
29. The Committee then considered Exclusion. The Committee was satisfied that Mr Mpundu's conviction, which was for matters of dishonesty, amounted to a serious departure from the standards expected of an ACCA member. Mr Mpundu had abused his position of trust by repeatedly stealing from his employer. Furthermore, in the absence of any response from him, the Committee could not be satisfied that he had any remorse for his actions, or insight into them, and could not therefore conclude that he would not behave in a similar way in the future. For these reasons, the Committee concluded that Mr Mpundu's conviction was fundamentally incompatible with continued ACCA membership.
30. Taking into account the seriousness of the case and balancing the interests of Mr Mpundu, the interests of ACCA and the public interest, the Committee concluded that Exclusion was the only appropriate sanction in the circumstances of this case. This was the only sanction which would send a proper message to Mr Mpundu, the profession and the public about the standards expected of an accountant. No other sanction would be sufficient to maintain confidence in the profession, uphold proper standards of conduct and protect the public.
31. The Committee therefore ordered that Mr Mpundu be excluded from ACCA membership.

COSTS AND REASONS

32. Mr Jowett, on behalf of ACCA, applied for costs in the sum of £7,501.29.

33. In reaching the decision on costs, the Committee bore in mind that Allegation 2 had not been found proved and consequently, its view was that this should be reflected by a deduction in any costs order made. It also decided that it would be appropriate to reduce the time claimed for the Case Presenter and Hearings Officer to reflect the fact that the case was half a day, and not a full day.

34. The Committee decided that £5,000 was an appropriate amount of costs in all the circumstances, and it ordered that Mr Mpundu pay this amount to ACCA in costs.

EFFECTIVE DATE OF ORDER

35. The Committee decided that it was in the interests of the public for this order to come into effect immediately in accordance with Regulation 20(1)(b) CDR. Its view was that this was appropriate, given the seriousness of the case and the public protection concerns raised.

36. The Committee therefore directed that the Exclusion order shall have immediate effect.

HH Suzan Matthews QC
Chairman
02 May 2019