

**THE SOLICITORS (SCOTLAND) ACT 1980  
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL  
(PROCEDURE RULES 2008)**

INTERLOCUTOR

in Appeal under Section 42ZA

by

ESTHER DANGATA, 53/1 Stenhouse  
Garden, Edinburgh (hereinafter referred to  
as "the Appellant")

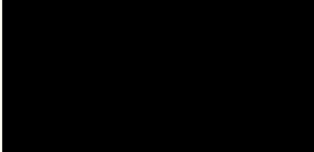
against

THE LAW SOCIETY OF SCOTLAND,  
Atria One, 144 Morrison Street, Edinburgh  
(hereinafter referred to as "the First  
Respondent")

and

JACQUELINE JOHNSTON, Unit 18,  
Grampian Court, 18 Beveridge Square,  
Livingston (hereinafter referred to as "the  
Second Respondent")

Edinburgh, 12 December 2018. The Tribunal having considered the First Respondent's preliminary plea that the Appeal should be dismissed on the basis that said appeal discloses no *prima facie* basis for any Appeal, and is irrelevant *et separatim* lacking in specification; having considered the First Respondent's motion to dismiss the Appeal as it is manifestly unfounded and/or without merit; and having considered the First Respondent's motion that the Tribunal ordain the Appellant to find Caution in the sum of FIVE THOUSAND POUNDS (£5,000); Uphold the First Respondent's preliminary plea; Dismiss the appeal; Find the Appellant liable in the expenses of the First Respondents and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; Direct that publicity will be given to this decision and that this publicity should include the name of the Appellant, the First Respondent and the Second Respondent.

  
**Kenneth Paterson**  
Vice Chair

**NOTE**

This matter called for a procedural and preliminary hearing on 12 December 2018 to consider the preliminary plea and motions of the First Respondent. Consideration of said plea and motions had been continued from the last procedural and preliminary hearing on 28 September 2018. On that occasion, the Appellant was allowed 21 days to amend her note of appeal to deal with the issues raised by the First Respondent. The First Respondent's preliminary plea was that the Appeal should be dismissed on the basis that said appeal disclosed no *prima facie* basis and was irrelevant *et separatim* lacking in specification. The First Respondent had also lodged a motion to dismiss the Appeal on the basis it was manifestly unfounded and/or without merit in terms of Rules 23 and 25 of the Scottish Solicitors' Discipline Tribunal Rules 2008, or to ordain the Appellant to find Caution in the sum of £5,000.

On 12 December 2018, the Appellant was not present or represented. The First Respondent was represented by its Fiscal, Grant Knight, Solicitor, Edinburgh. The Second Respondent was not present or represented. The Fiscal moved the Tribunal to hear and determine the Appeal in the Appellant's absence. The Tribunal heard evidence on oath from the Clerk regarding service of the Notice of Hearing which was sent to the Appellant on 15 October 2018. Service of the Notice of Hearing was effected on 16 October 2018 at 9.49am by Royal Mail "Signed For" delivery at the address in the Note of Appeal. It had been signed for by a person by the name of "Dangata". The Clerk gave evidence that the Appellant had sent an email to the Tribunal Office on 11 December 2018 informing the Tribunal that she had been unable to get legal aid or a representative. The Appellant said that the procedure had been "traumatic" and that the last hearing had been "quite overwhelming". Mentally, she "felt incapable to attend the hearing". The Tribunal was satisfied that notice of the hearing had been intimated to the Appellant. The Tribunal considered whether it was fair to proceed in her absence. The Tribunal had regard to R-v-Jones [2002] UKHL 5 and the need to exercise its discretion in this matter "*with great caution and close regard to the overall fairness of the proceedings.*" The Tribunal considered that there was a disadvantage to the Appellant in proceeding in her absence. However, she had been given notice of the date of the hearing, she was clearly aware of it given the terms of her email of 11 December 2018, she had failed to amend her appeal and had not asked the Tribunal for an adjournment. It is in the public interest that regulatory proceedings take place within a reasonable time. The fair, economical, expeditious and efficient disposal of allegations against solicitors was an important consideration. It was in the public interest that the matter was adjudicated upon without delay. In these circumstances the



balance lay in favour of proceeding in the Appellant's absence. Therefore, the Tribunal granted the Fiscal's motion to proceed.

The Fiscal invited the Tribunal to dismiss the Appeal. He noted that the Appellant had been present on the last occasion when the Tribunal allowed her 21 days to amend her appeal. She had not done so and had provided no reasonable explanation for her failure to appear. The Fiscal invited the Tribunal to dismiss the Complaint under Rule 23 or Rule 25. The Tribunal's interlocutor and note of 28 September 2018 made it clear what the Appellant should have done and the basis upon which the appeal could proceed. The Note of Appeal had not been amended. It was manifestly unfounded and without merit and therefore fell to be dismissed. He said that the Tribunal Rules were applicable to this situation were slightly unclear. However, the Tribunal's interlocutor and note were clear. By failing to amend or attend, the Appellant had lost her chance to pursue the matter further.

The Tribunal considered that the Note of Appeal as drafted was lacking in specification. It did not give fair notice to the Respondents of the issues the Appellant wished the Tribunal to consider. This was why on the last occasion the Appellant had been given the opportunity to amend her appeal under Rule 45. The Tribunal could not allow the Appeal to proceed based on the Note of Appeal as drafted. It would not be fair to the Respondents. The Tribunal considered whether it should adjourn the procedural and preliminary hearing *ex proprio motu* under Rule 44 and allow the Appellant a further chance to amend her Note of Appeal. However, it noted that the Appellant had not availed herself of the last opportunity to amend and there was no reason to think that she would do so in the future. It was regrettable that the Appellant had been unable to secure legal representation but party litigants must comply with the procedures of the Tribunal to ensure fairness to all. The Appellant had not requested an adjournment and had not suggested that she was medically unfit to attend. Adjourning the case would add to the expenses of the parties with little prospect of resolution. Therefore, due to the lack of specification in the Note of Appeal and the Appellant's failure to amend it or to attend the procedural and preliminary hearing, the Tribunal upheld the First Respondent's preliminary plea and dismissed the Appeal. Having done so, it was not necessary to consider the First Respondent's motion to dismiss based on Rules 23 and 25 or the motion for caution.

The Fiscal moved for expenses. In accordance with the usual rule that expenses follow success, the Tribunal found the Appellant liable in the expenses of the First Respondent and of the Tribunal. Whether the First Respondent pursues the Appellant for expenses is a matter for them. The Tribunal

directed that publicity will be given to the decision and that publicity should include the names of the parties.



**Kenneth Paterson**  
**Vice Chair**