JAMAICA

IN THE COURT OF APPEAL

MISCELLANEOUS APPEAL NO COA2019MS00008

APPLICATION NO COA2019APP00237

BEFORE: THE HON MISS JUSTICE PHILLIPS JA
THE HON MRS JUSTICE SINCLAIR-HAYNES JA
THE HON MISS JUSTICE SIMMONS JA (AG)

BETWEEN	**DEBAYO AYODELE ADEDIPE**	**APPLICANT**
AND	**KEMISHA GREGORY** **Ex parte GENERAL LEGAL COUNCIL**	**RESPONDENT**

Ravil Golding instructed by Lyn Cook Golding & Co for the applicant

Mrs Denise Kitson QC and David Ellis instructed by Grant, Stewart, Phillips & Co for the respondent

3 December 2019 and 27 April 2020

PHILLIPS JA

[1] This is an application by Debayo Ayodele Adedipe (the applicant) to vary or discharge the order of P Williams JA, made on 19 November 2019, wherein she refused the application for a stay of execution of an order made by the Disciplinary Committee (the Committee) of the General Legal Council (GLC). The Committee had ordered that the applicant be struck from the Roll of Attorneys-at-Law (the execution of which was stayed for 28 days); and he was ordered to pay restitution in the sum of $630,000.00

to Kemisha Gregory (the complainant) with interest at 12% per annum from 30 July 2019 until payment, and costs in the sum of $300,000.00 ($200,000.00 to the complainant and $100,000.00 to the GLC.

Background facts

[2] The background facts can be gleaned from the notes of proceedings and the affidavits filed by the applicant which have referred to them, and from the decision of the Committee.

[3] The complainant filed a complaint against the applicant before the GLC alleging that the applicant had not accounted to her for monies he had received on her behalf in breach of Canon I(b) of the Legal Profession (Canons of Professional Ethics) Rules. The complaint was set down for hearing before the Committee on various dates.

[4] At the first date fixed for hearing of the complaint before the Committee on 29 June 2019, neither the applicant nor his attorney was present. The applicant sent a medical certificate to the GLC indicating that he was ill, but it did not appear that this certificate was brought to the Committee's attention. The complainant appeared via Skype, and gave sworn evidence indicating, *inter alia*, that the monies owed had still not been paid to her, and she had not heard from the applicant since filing her affidavit before the GLC. Various documents were also tendered by the complainant and admitted into evidence. The matter was adjourned to 13 July 2019, for the applicant to attend. The panel had indicated to the complainant that if the applicant did attend "he

will ask questions", and if not the Committee would "go on with the case and go to decision making". The notes of that hearing were sent to the applicant.

[5] On 13 July 2019, the applicant did not attend as he said he was still ill. His attorney, Ravil Golding, appeared but had not been instructed to proceed. He indicated to the panel that he had only been instructed to apply for an adjournment. The matter was set for 22 July 2019, a day when Mr Golding had indicated to the panel that he would be engaged in a murder trial.

[6] The complainant was present on 22 July 2019. The applicant appeared alone, as his counsel, Mr Golding, was engaged as indicated above. Mr Golding confirmed by WhatsApp that he had been retained to represent the applicant fully. The applicant acknowledged that he had not filed an affidavit in response to the complainant's allegations as required. He also indicated that he was not in a position to cross-examine the complainant, as that was a matter for Mr Golding. The applicant stated that he had received money in this matter on behalf of the complainant, but he had not paid any funds over to her. The panel was informed by the applicant that moneys would be paid to the complainant on Wednesday, 31 July 2019. However, he was directed by the panel to make the payment to the complainant on Monday, 29 July 2019 instead.

[7] On 29 July 2019, the complainant appeared via Skype. Both the applicant and his attorney were present, but Mr Golding had suffered a dislocated shoulder, his arm was in a sling, and the applicant contended that Mr Golding was in obvious discomfort and so was unable to give much assistance. Mr Golding told the panel that he also had a

doctor's appointment scheduled for mid morning. Discussions took place between the panel, the applicant and the complainant with regard to monies to be paid to the complainant by the applicant. The matter was adjourned to the following day, 30 July 2019, to facilitate the transfer of funds.

[8] On 30 July 2019, the complainant was contacted by Skype; the applicant was present, his attorney was absent; he was with the doctor and at the hospital doing tests, and receiving treatment for his dislocated shoulder. There were some difficulties concerning the receipt of the funds due to bank transfers. The applicant later attempted to get assistance in the matter from Mr Golding by telephone. That did not occur satisfactorily, but the transfer of certain monies was confirmed, although the complainant had not received all the funds that she had been expecting to receive, particularly with regard to the calculation of interest. The panel indicated that submissions should be filed in mitigation in respect of the sanction hearing set for 24 September 2019. The panel also indicated that they were proceeding to a sanction hearing, the applicant having been found guilty of professional misconduct in terms of paragraphs 13 and 14 of the affidavit filed by the complainant.

[9] On 24 September 2019, the complainant was contacted by Skype; the applicant and his attorney were present. Mr Golding complained that the panel was proceeding improperly as the applicant had not had an opportunity to cross-examine the complainant, and to give evidence on his own behalf, and yet the panel had already found him guilty. The panel, to the contrary, was incensed with the allegation that they had proceeded without due process, and stated that the applicant had failed to file an

affidavit as required, and as he had been directed on more than one occasion. Additionally, the panel said he had been given the opportunity to cross-examine the complainant and had declined to do so, and in any event, had admitted the complaint against him in substance.

[10] The applicant and his attorney refrained from any further participation in the proceedings. The panel delivered its decision with its findings on 23 October 2019, and made the orders set out in paragraph [1] herein.

[11] The notice and grounds of appeal were filed on 11 November 2019 contemporaneously with the application for stay of proceedings and stay of execution of the decision of the Committee. The grounds of the application for stay of execution were similar to the grounds of appeal. They were essentially, that the applicant had not had a fair hearing before the Committee in breach of the rules of natural justice, in that, the panel of the Committee had proceeded to judgment without affording the applicant the opportunity to cross-examine the complainant, and also, he had not been given the opportunity to give evidence on his own behalf, and he had not waived either of those rights. Additionally, when it had been pointed out to the panel on 24 September 2019 that having proceeded in breach of the principles of natural justice the proceedings would be a nullity, the chair of the panel had "pronounced firmly" that cross-examination would not have made a difference. This, the applicant indicated, would mean that the matter had been pre-determined. On these bases, the applicant stated in the grounds of the application for the stay that he had "an excellent and realistic prospect of the appeal being determined in his favour".

[12] The applicant filed an affidavit in support of the application for stay of proceedings and stay of execution, both of which came before me. I extended the stay granted by the Committee for six days until the matter could be heard inter partes the following week.

[13] The application for a stay was heard and determined by P Williams JA on 19 November 2019. At that hearing, the affidavit sworn to by Dahlia Davis was filed by the GLC in opposition thereto. However, as the applicant in his affidavit filed 21 November 2019 stated that he had not been able to discuss the contents of Dahlia Davis's affidavit, with his attorney, Mr Golding, P Williams JA indicated that she would not take the contents thereof into consideration in her deliberations on the application. In the circumstances, I will also not place any reliance on that affidavit.

[14] P Williams JA ultimately refused the application. The reasons for her decision were taken down by counsel for the GLC, and set out before us in paragraph 8 of the affidavit of David Ellis, attorney-at-law also representing the GLC. There was no dispute as to the accuracy of the notes duly taken. It read as follows:

> "I am not satisfied that there is a realistic prospect of success shown to me, especially from what appears in the notes of proceedings where the Applicant admitted he received money and failed to pay same to the complainant. Therefore, there is nothing that cross-examination would have achieved."

The application to vary or discharge the order of P Williams JA

[15] On 21 November 2019, the application to vary or discharge the order made by P Williams JA order was filed. The variation requested was that the order of the

Committee be stayed until the hearing of the appeal which was scheduled for hearing on 27 April 2020. The ground of this application was that P Williams JA had erred in finding that the applicant's appeal had no real prospect of success, especially in light of the admissions made by the applicant during the course of the proceedings in 22 July 2019, and her finding that there was nothing that the cross-examination of the complainant would have achieved.

[16] In his affidavit of urgency filed in support of the application to vary and or discharge the decision of P Williams JA, the applicant deposed that his appeal had a real chance of success as he was deprived of his right to a fair hearing. He also deponed that in the absence of a stay, he would not be able to practise or even to wrap up his files and his practice, and as a consequence, he would suffer great prejudice and irreparable harm.

[17] David Ellis filed an affidavit on the GLC's behalf, wherein he deponed that the applicant's appeal had no real chance of success, as the applicant failed to avail himself of the several opportunities afforded to him to dispute the complaint filed against him, and based on his unequivocal admission of the allegations made against him.

Discussion and analysis

[18] It is of significance to note that although we acknowledge with gratitude the detailed and comprehensive submissions of both counsel who appeared before us, we are not at this stage making a determination as to the issues on the appeal, but only whether the order made by P Williams JA ought to be varied or discharged. The Court

of Appeal will have to examine the issues raised in detail when the matter comes before it in the week of 27 April 2020.

[19] Having perused the documentation before us, including the decision of the GLC, the notice and grounds of appeal, the application to vary, the affidavits in support, the notes of proceedings and the submissions of counsel, I have concluded that on this application, the issues are:

1. Did the learned judge of appeal err in the exercise of her discretion in refusing the application for a stay of execution of the decision of the Committee?
2. Did P Williams JA, in the exercise of her discretion, address the issue of procedural irregularity, namely, the alleged breaches of natural justice due to the Committee's alleged failure to afford the applicant an opportunity to cross-examine the complainant and/or to give evidence on his own behalf?
3. Was there any or any sufficient evidence of procedural irregularity to support a submission of realistic prospect of success on appeal grounding the grant of a stay of execution of the decision of the Committee, and thus warranting an order to vary the decision of the single judge of appeal?

4. Was the decision of the single judge of appeal so aberrant or plainly wrong, so that this court ought to interfere to discharge the order made or to vary the same until 27 April 2020?

5. Where does the balance of risk/irremediable harm and/or prejudice lie?

[20] The Court of Appeal Rules (CAR) permit any order made by a single judge of appeal to be varied or discharged by the court on an application made within 14 days of that order (rule 2.11(3)). In this case, as stated, P Williams JA exercised her discretion to refuse the application for a stay of proceedings and she also refused to grant a stay of execution of the decision of the Committee. The principles relating to the grant and/ or refusal of a stay of execution of a judgment have been set out comprehensively by Phillips LJ in **Combi (Singapore) Pte Limited v Ramnath Sriram and Another** [1997] EWCA Civ 2164 and have been consistently applied in this court. Lord Phillips articulated the principle in this way:

> "In my judgment the proper approach must be to make that order which best accords with the interest of justice. If there is a risk that irremediable harm may be caused to the plaintiff if a stay is ordered but no similar detriment to the defendant if it is not, then a stay should not normally be ordered. Equally, if there is a risk that irremediable harm may be caused to the defendant if a stay is not ordered but no similar detriment to the plaintiff if a stay is ordered, then a stay should normally be ordered. This assumes of course that the court concludes that there may be some merit in the appeal. If it does not then no stay of execution should be ordered. But where there is a risk of harm to one party or another, whichever order is made, the court has to balance

> the alternatives in order to decide which of them is less likely to produce injustice."

[21] In determining whether to grant a stay, the real questions are, what are the chances of success on appeal? Is there a risk of injustice to one side or the other? Where does the greatest irremediable harm lie?

[22] The next issue that this court must address is the role of the court when reviewing the exercise of the discretion of the single judge of appeal. We have been guided over the years by the powerful speech of Lord Diplock in **Hadmor Productions Ltd and Others v Hamilton and Others** [1982] 1 All ER 1042, dealing with the review by the appellate court of the exercise of discretion of a judge in the lower court relating to interlocutory matters, which has also been endorsed by several cases in this court. Lord Diplock stated at page 1046 that:

> "It [the Court of Appeal] may set aside the judge's exercise of his discretion on the ground that it was based on a misunderstanding of the law or of the evidence before him or on an inference that particular facts existed or did not exist, which, although it was one that might legitimately have been drawn on the evidence that was before the judge, can be demonstrated to be wrong by further evidence that has become available by the time of the appeal, or on the ground that there has been a change of circumstances after the judge made his order that would have justified his acceding to an application to vary it. Since reasons given by judges for granting or refusing interlocutory injunctions may sometimes be sketchy, there may also be occasional cases where even though no erroneous assumption of law or fact can be identified the judge's decision to grant or refuse the injunction is so aberrant that it must be set aside on the ground that no reasonable judge regardful of his duty to act judicially could have reached it. It is only if and after the

> appellate court has reached the conclusion that the judge's exercise of his discretion must be set aside for one or other of these reasons that it becomes entitled to exercise an original discretion of its own."

[23] Morrison JA (as he then was) has stated in **The Attorney General of Jamaica v John Mackay** [2012] JMCA App 1, at paragraph [20], that:

> "This court will therefore only set aside the exercise of a discretion by a judge on an interlocutory application on the ground that it was based on a misunderstanding by the judge of the law or of the evidence before him, or on an inference - that particular facts existed or did not exist - which can be shown to be demonstrably wrong, or where the judge's decision 'is so aberrant that it must be set aside on the ground that no judge regardful of his duty to act judicially could have reached it'."

[24] In my view, the approach by the court with regard to the exercise of the discretion of the single judge of appeal is similar. The issue is whether the order was so aberrant and or plainly wrong so that the court ought to vary or discharge it. As a consequence, as we are only reviewing the exercise of the discretion of the single judge, there is a very limited jurisdiction to do so. It is therefore important to remember that we are not deciding the appeal itself, and so we must be careful not to give any indication that we are attempting to do so. We must, however, look at the law underpinning the application which is relevant to issues 1-4, as stated in paragraph [19] herein. We must therefore consider whether it was demonstrated by the learned judge, in the exercise of her discretion to refuse the stay, that she had examined the issues of whether there was procedural irregularity, and was there evidence, if any, sufficient to

support the submission of counsel for the applicant that there was a realistic chance of success on appeal. On issue 5 it is important to ascertain where the balance of convenience lies.

Issues 1-4: The nature of principles of natural justice - are they applicable to this case and were they breached

[25] Counsel for the applicant, Mr Golding, submitted that the applicant was denied "natural justice" when the Committee prematurely made a finding of guilt against him, without him exercising his right to cross-examine the complainant. That right had not been waived by the applicant. Counsel referred to extracts from the leading text Administrative Law by Sir William Wade and Christopher Forsyth, 11th Edition; **General Council of Medical Education and Registration of the United Kingdom v Spackman** [1943] 2 All ER 337; and **Anisminic Ltd v The Foreign Compensation Commission and Another** [1969] 1 All ER 208 to support his proposition that a refusal to afford an objector a right to cross-examine was a breach of natural justice, and a decision made consequent upon a denial of natural justice was a nullity. Counsel argued that the appellant had a real chance of success as P Williams JA had not considered whether there was a breach of the principles of natural justice in arriving at her decision.

[26] Mrs Denise Kitson QC, for the respondent, submitted that it is very clear on the facts set out that the applicant had been given a fair hearing. She indicated that the applicant had been given ample opportunity to present a challenge to the complaint, by responding to the letters of demand for payment of funds, or even filing an affidavit in

response to the complaint, and he had failed to do so. She reminded the court that the applicant had admitted to receiving proceeds from the Attorney General on the complainant's behalf for injuries sustained during a shooting by the police when she was a child, and not paying them over to her. Despite repeated demands for the same, that money was not paid to the complainant until six years later on 22 July 2019, when the complainant was now an adult, and when the hearing before the Committee had commenced. Queen's Counsel relied on **Constantinides v Law Society** [2006] EWHC 725 (Admin) to show that where an admission is made, a failure to challenge the charges as laid would not absolve him of his dishonesty.

[27] Queen's Counsel combed the notes of proceedings to demonstrate the numerous instances in which the applicant was in attendance and had been afforded opportunities to present his case or challenge the complainant if he so desired. Instead, he sought to make arrangements to pay the sums owed. She also argued that to date the applicant has not filed an affidavit outlining his defence to the allegations. She relied on **The University of Ceylon v E F W Fernando** [1960] UKPC 6; [1960] 1 WLR 223 to support her contention that, in the light of the applicant's admission and the multiple opportunities given to him to present his case, it could not be said that he did not receive a fair hearing.

[28] I doubt that there is any issue with the statements made by the authors in the leading text Administrative Law by Wade and Forsyth, where they dealt with the issue of the general aspects of fair hearings, the scope and limits of the principles, objections which may have no merit, and the ratio decidendi from the seminal case of **Ridge v**

Baldwin and Others [1964] AC 40. Of interest, the learned authors stated at page 424 that:

> "Procedural objections are often raised by unmeritorious parties with weak cases. Judges may then be tempted to refuse relief on the ground that a fair hearing could have made no difference to the result. But in principle it is vital that the procedure and the merits should be kept strictly apart, since otherwise the merits may be prejudged unfairly. Lord Wright [in **General Medical Council v Spackman**] once said: 'If the principles of natural justice are violated in respect of any decision it is, indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision'. On another occasion, Sedley LJ [in **Secretary of State for the Home Department v AF and Others (No 3)** [2008] EWCA Civ 1148; [2009] 2 WLR 423, at paragraph 113] said that even judges found it 'seductively easy to conclude that there can be no answer to a case of which you have only heard one side'."

So, the caution was that even if the case was weak, that does not absolve the court from adhering strictly to the principles of natural justice, and the procedures and the merits of the case should be dealt with and kept separate and apart.

[29] The authorities have also made it clear that once a statute has conveyed the power to make decisions on any particular body, the courts will require the procedures set out therein to be followed, and will not imply anything more to be introduced by any additional procedural safeguards to ensure the attainment of fairness (see **Lloyd and Others v McMahon** [1987] AC 625, at page 702, per Lord Bridge).

[30] In a further extract from Administrative Law, at page 425, the authors also further cautioned against not proceeding with a proper hearing just because it may seem an exercise in futility. They stated that:

> "... Even though it was 'certainly probable' that the decision would have been the same, since all the arguments had been fully rehearsed at an earlier stage, the court declined to hold that a hearing would have been a useless formality."

[31] Later, at page 426, the authors commented that the court ought to be careful to differentiate between parties adopting fair procedures, as against their pursuit of expediency. The authors wrote:

> "Judges are naturally inclined to use their discretion when a plea of breach of natural justice is used as the last refuge of a claimant with a bad case. But that should not be allowed to weaken the basic principle that fair procedure comes first and that it is only after hearing both sides that the merits can be properly considered. A distinction might perhaps be made according to the nature of the decision. In the case of a tribunal which must decide according to law, it may be justifiable to disregard a breach of natural justice where the demerits of the claim are such that it would in any case be hopeless. But in the case of a discretionary administrative decision, such as the dismissal of a teacher or the expulsion of a student, hearing his case will often soften the heart of the authority and alter their decision even though it is clear from the outset that punitive action would be justified. This is the essence of good and considerate administration, and the law should take care to preserve it."

[32] Mr Golding also relied on a case out of this court **R v Williams** (1964) 6 WIR 320, which dealt with the failure of the court to give the litigant an opportunity to cross-examine. The headnote states that:

> "When a person is arrested under s. 5 of the Unlawful Possession of Property Law and is brought before a Resident Magistrate, the Resident Magistrate's duty is to make a judicial inquiry to determine whether there is a reasonable ground for suspecting that the person so brought before him was in unlawful possession of the article found in his possession. This presupposes not only that evidence in chief will be given on oath but that the defendant should be given an opportunity to probe that evidence by cross-examination with a view, if so desires, of establishing that he was not in fact in possession of the article, or that there was no reasonable ground for suspicion. An essential part of that inquiry, therefore, is that an opportunity for cross-examination should be given if the defendant desires to do so. To determine the issue without giving that opportunity (as was done in this case) is contrary to natural justice and an improper exercise of the Resident Magistrate's function.

[33] The above statements made by the authors Wade and Forsyth and those made in **R v Williams** make it clear that the principles of natural justice are fundamental to the litigant being afforded a fair trial, and the absence of the same makes the hearing a nullity. That is so even if it may appear that in the absence of adherence to the principles the result would have been the same. So, the decision may be voided once any breach of the principles of natural justice has occurred.

[34] That, however, is not the end of the discussion as there have been other cases which have equally set out, with clarity, what the principles of natural justice are and how they ought to be applied. The Judicial Committee of the Privy Council in

University of Ceylon v Fernando, relied on by Queen's Counsel for the GLC, concerned the dishonest behaviour of a student with regard to him having obtained prior knowledge of a German passage in his science examinations. By so doing, he had breached the applicable regulations and was suspended by the Board of Residence and Discipline of the University from any university examinations for an indefinite period. He filed an action against the university that was dismissed by the District Court. However, the Court of Appeal found that the decision to suspend the plaintiff from all university examinations for an indefinite period was null and void and so it set it aside. The university's appeal to the Privy Council was allowed, the Court of Appeal's decision was set aside, and the decision of the District Court dismissing the action was restored.

[35] The issue of the principles of natural justice that arose before the Board was whether the applicant should have been invited to cross-examine the witness who provided the allegations against him, and whether the Vice Chancellor should have heard some witnesses on his own, in the absence of the other members of the tribunal that ultimately made the decision. The court commented that whether the requirements of natural justice had been met by the procedure adopted in any case depended "to a great extent on the facts and circumstances of the case in point". Lord Jenkins on behalf of the Board cited with approval the statement made by Tucker LJ (as he then was) in **Russell v Duke of Norfolk and Others** [1949] 1 All ER 109 at page 118, where he said:

> "There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must

> depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth."

[36] With regard to the issue of fairness, and whether the rules of natural justice were breached when the student was not given the opportunity to cross-examine the one essential witness against him, and in circumstances where the court said that the charge ultimately resolved itself into a matter of "her word against his", Lord Jenkins said this at page 10:

> "In their Lordships' view this might have been a more formidable objection if the plaintiff had asked to be allowed to question Miss Balasingham and his request had been refused. But he never made any such request, although he had ample time to consider his position in the period of ten days or so between the two interviews. There is no ground for supposing that if the plaintiff had made such a request it would not have been granted. It therefore appears to their Lordships that the only complaint which could be made against the Commission on this score was that they failed to volunteer the suggestion that the plaintiff might wish to question Miss Balasingham or in other words to tender her unasked for cross-examination by the plaintiff. Their Lordships cannot regard this omission, or *a fortiori* the like omission with respect to the other witnesses, as sufficient to invalidate the proceedings of the Commission as failing to comply with the requirements of natural justice in the circumstances of the present case."

[37] In **Pett v Greyhound Racing Association Ltd (No 2)** [1970] 1 QB 46, the court endorsed the principles emanating from **University of Ceylon v Fernando**. This case turned on whether a trainer was entitled to legal representation of counsel and a solicitor at the hearing of a domestic tribunal inquiring into whether his dog had been

ingested with a prohibited substance. The court ultimately found that the rules of natural justice do not extend to an entitlement to legal representation. The rules of natural justice were restated, namely, firstly, that the accused should know the nature of the accusation made; and secondly, that he should have an opportunity to state his case and thirdly that the tribunal should act in good faith. The court said that there did not seem to be any other principles.

[38] In applying the learning distilled from Wade and Forsyth in Administrative Law, the dictum from Lord Jenkins in **University of Ceylon v Fernando** and Tucker LJ in **Russell v Duke of Norfolk**, it is clear that when assessing whether there has been a breach of the principles of natural justice, it is important to examine the nature of the case, the kind of inquiry, and the purpose of the rules under which the domestic tribunal is operating. Each case is different, as the principles do not, as Tucker LJ said, have universal application.

[39] In the instant case, section 12 of the Legal Profession Act, authorises the Committee to hear complaints against attorneys alleging professional misconduct and thereafter to make such orders as it deems fit pursuant to section 12(4) of the Act. The Legal Profession (Disciplinary Proceedings) Rules regulate the presentation, hearing and determination of the applications to the Committee and are contained in the fourth schedule to the Act. Rule 4 of these rules, *inter alia*, require the applicant to file, in affidavit form, a response to the form of application containing the complaint being made against him, within 42 days of being served with the said complaint and all other relevant documents. Pursuant to rule 5, the matter is thereafter set down for hearing

once a prima facie case has been made out. As indicated, the applicant did not file an affidavit. The complaint was set down for hearing. This procedure must be relevant when one is claiming that one has not been given a fair trial, and was not given an opportunity to be heard. However, despite the applicant's claim that unfair procedures and a denial of an opportunity to be heard led to breaches of the principles of natural justice, he has yet to put forward any challenge to the complainant's contentions nor has he filed an affidavit in response as required by the regulations.

[40] In keeping with the dictum of Lord Jenkins in **University of Ceylon v Fernando**, the questions that could arise are whether there was any request for cross-examination on behalf of the applicant which was refused; and also was there any evidence that had there been such a request, it would have been refused? Upon a perusal of the notes of proceedings, but for the sanction hearing on 24 September 2019, I can see no real attempt being made to seek cross-examination of the complainant. The main thrust of the statements made by the applicant and his counsel were with a view to securing payment to the complainant. Nevertheless, it is undisputed that the applicant did not cross-examine the complainant, nor did he give evidence on his behalf, which may have its own legal consequences, including voiding the decision of the Committee.

[41] However, in respect of the application before us, that is not the end of it. The remaining questions are, whether the applicant's claim that he was denied a right to be heard, a part of the determination of the single judge of appeal? Did she consider whether the applicant had been afforded the opportunity to cross-examine the

complainant, the only witness in the matter, or for the applicant to give evidence on his behalf? Does her finding that even if cross-examination had occurred it would not have achieved anything, and that the admissions made by the applicant fall within the parameters of the principles enunciated by Tucker LJ or Jenkins LJ resulting in the conclusion that no breach has occurred? Or would that failure to address that situation, if it had in fact occurred, indicate that the hearing was conducted in a manner that fell afoul of the general principles of natural justice set out by the authors of Wade and Forsythe, denying the applicant his right to be heard and a fair trial, which could result in the decision of the Committee being set aside?

[42] These issues, however, will ultimately be a matter for the Court of Appeal, when the appeal is heard. But it does seem to me that the applicant may have crossed the threshold in establishing that he has a realistic prospect of success on appeal which must positively impact that grant of a stay. In those circumstances, therefore, the single judge of appeal, in exercising her discretion to refuse the application, would have erred, and this court therefore ought to interfere.

Issue 5: The balance of risk, irremediable harm/prejudice

[43] It is an important aspect of the application and therefore necessary at this stage until the hearing of the appeal by the full court, that I also examine the balance of risk, irremediable harm or prejudice, between the parties and assess whether I am able to conclude that in all the circumstances of this case, the onerous mandate placed on the GLC would override any prejudice that may be suffered by the applicant.

[44] It is clear that the applicant will undoubtedly suffer irreparable harm if the order of the Committee is published to the world at large, and if he is prevented from engaging in any aspects of his law practice and unable to pursue his profession.

[45] However, the GLC bears an onerous responsibility in endeavouring to ensure that the profession retains its good name so that the public can continue to have confidence in it. In **Bolton v Law Society** [1994] 2 All ER 486, Sir Thomas Bingham MR, at page 492, stated that:

> "It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element:... In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission."

The GLC's burden to protect the public is even more potent in this case given the nature of the allegations, as stated, that money was paid to the complainant for injuries she received during a police shooting, whilst she was a minor, that were not paid over to her until she became an adult many years later, and during participation in a hearing before the Committee.

[46] In all these circumstances, I find it very difficult to say who will suffer the greater risk of irremediable or irreparable harm, or who would suffer the greater risk of injustice. So, it is necessary to focus on the issue of merit in the appeal.

Conclusion

[47] In balancing both aspects of this discussion and the rights of both sides, I would say that the learned judge of appeal has not demonstrated any clear thinking on the application of fundamental principles of natural justice to this case. As the date fixed for the hearing of the appeal was only three months away from the hearing of this application, the order she made should be varied to stay the Committee's order, in part, until the determination of the appeal. This would mean that the order for striking off the name of the applicant from the Roll of Attorneys-at-Law and the advertisement in relation thereto, would await the outcome of the appeal, and so too the payment of the sums stipulated in the said order. However, the applicant would not continue to conduct his practice, but would secure his client files and any other relevant documentation until April 2020, when the appeal will be heard.

[48] The restriction on the applicant conducting his practice is important as the allegations made by the complainant against the applicant are very serious. Holding funds on behalf of the client and not handing them over, despite requests and promises to do so over a period of years, may readily without explanation or justification, warrant a finding of professional misconduct, being conduct not in keeping with the honour and dignity of the profession, and tending to discredit the profession of which the applicant was a member.

[49] In the light of the above, I find with some hesitation that it was more than arguable that the appellant had some real prospect of success on appeal. The learned judge of appeal had not demonstrated that she had considered the issue of procedural irregularity, and bearing in mind the importance of that, I would order that the order of the single judge of appeal, be varied as set out above. I would also order that the applicant be restrained as set out in paragraph [47] above. I would make no order as to costs.

[50] The court acknowledges that one of the objectives of this application to stay the order made by the Disciplinary Committee of the GLC on 23 October 2019 pending the hearing of the appeal has been overtaken by the passage of time, bearing in mind that the appeal is fixed for hearing this week. We apologise unreservedly for the delay. However, as the matter was fully argued, we consider that the parties are entitled to a judgment, which is now being made available.

SINCLAIR-HAYNES JA

[51] I agree.

SIMMONS JA (AG)

[52] I have read in draft the judgment of my sister Phillips JA and agree with her reasoning and conclusion.

PHILLIPS JA

ORDER

1. The order made by P Williams JA on 19 November 2019 is varied.

2. The order made by the Disciplinary Committee of the General Legal Council on 23 October 2019 is stayed, in part, until the hearing of the appeal, in that:

   (i) the applicant's name would not be struck off from the Roll of Attorneys-at-Law;

   (ii) there shall be no advertisement in relation to the Committee's decision;

   (iii) there shall be no payment of the sums ordered; and

   (iv) the applicant shall not conduct his practice, but should secure his client files and any other relevant documentation.

3. There shall be no order as to costs.