

JAMAICA

IN THE COURT OF APPEAL

CIVIL APPEAL NO: 32 OF 2005

BEFORE: THE HON. MR. JUSTICE PANTON, J.A..
THE HON. MR. JUSTICE SMITH, J.A.
THE HON. MR. JUSTICE MARSH, J.A. (Ag.)

BETWEEN ARLEAN BECKFORD APPELLANT
AND THE GENERAL LEGAL COUNCIL RESPONDENT

Audel Cunningham instructed by **Damian Barrett** for the appellant

Patrick Bailey and **Miss Audré Reynolds** instructed by **Patrick Bailey & Co.** for the respondent

June 6, 7 and December 20, 2006 and July 31, 2007

PANTON, P.:

I have read in draft the judgment of Marsh J.A. (Ag), I agree with his reasons and conclusions. There is nothing further that I wish to add.

SMITH, J.A.:

I too agree with the reasons and conclusions of Marsh J.A.(Ag.) and I have nothing more to add.

MARSH J.A. (Ag):

On the 29th January, 2005, the General Legal Council's Disciplinary Committee handed down its reserved decision in a hearing commenced on 1st October, 2003 and completed on the 13th day of July, 2004. The complaints in the matter against the appellant, Arlean Beckford, Attorney-at-Law were recorded in paragraph 2 of that decision as follows:

- "(a) She has not provided 'substantial information' although the complainant along with his Attorney-at-Law reasonably required her so to do.
- (b) She has acted with inexcusable negligence.
- (c) She was a witness to Mr. Foster's signature and 'I wish the authenticity of signature (sic) to come under scrutiny'."

In his affidavit to ground the complaint against the said Arlean Beckford, Attorney-at-Law, Wilbern Wallace, a retiree and resident of the parish of St. Catherine outlined the facts complained of. He deponed that he was the grand nephew of one Gladstone Foster by marriage. His grand aunt Clarabell Foster owned land at Royal Flat in Manchester. Gladstone Foster was not the owner of the land. Eustace Wallace, the applicant's father, was born and raised on the land aforementioned. He also was part-owner thereof by way of inheritance with Clarabelle Foster.

This land was inherited from his great grand-mother Annie Knight. Eustace Wallace is buried on the land and his sepulchre stands there.

On August 23, 2001, the appellant informed Wilbern Wallace that the land was sold to Mrs. Somers-Dehaney of Montego Bay. She was asked by Wilbern Wallace himself and by his attorney-at-law Miss Marcia Robertson to furnish documents relating to the said sale. A request was also made for proof that the land belonged to the vendor.

The appellant, Arlean Beckford promised to send the documents, but only an undated transfer was received. The land in question is unregistered land; the signature of the vendor Gladstone Foster also called Gladstone Curtis, was witnessed by the appellant. The purchaser, Mrs. Somers-Dehaney is an attorney at-law.

Gladstone Foster was 94 years old and at the time of his death was "incapacitated ". The transfer was allegedly signed by Gladstone Foster two weeks prior to his demise.

The details of the decision appealed are summarized hereunder:

- (i) The Appellant is in breach of Canon IV(s) of the Canons of Professional Conduct for failing to verify Gladstone Foster's signature before witnessing the document.
- (ii) That by withholding information from her colleague and in pretending to have documents supportive of title when indeed she had none, she acted in breach of Canon 1 (b).
- (iii) The fine of Two Hundred and Fifty Thousand Dollars (\$250,000.00) imposed on the Attorney and costs of Fifty Thousand Dollars (\$50,000.00) to the Complainant.

Challenges were also made to several findings of fact and of law. Orders were sought that the decision of the Disciplinary Committee be set aside and that the costs of the appeal and the hearing before the Disciplinary Committee be awarded to the appellant.

The appellant relied on six (6) grounds of appeal. Grounds 1 and 2 will be disposed of together as Ground 2 is a slightly extended version of Ground 1. The essence of both grounds is that the Disciplinary Committee erred in law when it found, both as part of the preliminary submission as to jurisdiction and at the conclusion of the hearing that the complainant was a person aggrieved for the purposes of section 12 (1) of the Legal Profession Act.

Section 12(1) of the Legal Profession Act provides as follows:

“12.—(1) Any person alleging himself aggrieved by an act of professional misconduct (including any default) committed by an attorney may apply to the Committee to require the attorney to answer allegations contained in an affidavit made by such person, and the Registrar or any member of the Council may make a like application to the Committee in respect of allegations concerning any of the following acts committed by an attorney, that is to say –

- (a) any misconduct in any professional respect (including conduct which, in pursuance of rules made by the Council under this Part, is to be treated as misconduct in a professional respect);

(b) any such criminal offence as may for the purposes of this provision be prescribed in rules made by the Council under this Part."

The Disciplinary Committee, Mr. Cunningham submitted, is directed by the statutory provision to make the initial assessment that there is prima facie an appellant who as a matter of law is an "aggrieved person" and that prima facie there is an allegation of professional misconduct.

Neither of these required jurisdictional elements was present in the case. Because the appellant lacked sufficient legal interest in the subject matter of the complaint he was clearly not a person aggrieved, as a matter of law, as he was not a person deprived of something nor did he incur some detriment as a result of the appellant's alleged actions.

Mr. Cunningham for the appellant sought sanctuary in the words of James, L.J. in *Ex parte Sidebotham* [1880]14 Ch.D458 at 465:

"It is said that any person aggrieved by any order of the Court is entitled to appeal. But the words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something."

In *Attorney General for Gambia v. Pierre Sarr N'Jie* [1961]AC 617

the locus standi of the petitioner for special leave to appeal was

questioned because he "is not a person aggrieved". To support this preliminary objection, counsel, Mr. Gratiaen, referred to the same passage relied on by Mr. Cunningham in **Ex parte Sidebotham** (supra). However, Lord Denning, in delivering the judgment of their Lordships, made the following observation at p. 634:

"If this definition were to be regarded as exhaustive, it would mean that the only person who could be aggrieved would be a person who was a party to a lis, a controversy inter partes, and had had a decision given against him. The Attorney General does not come within this definition, because, as their Lordships have already pointed out, in these disciplinary proceedings there is no suit between parties, but only action taken by the judge, **ex mero motu** or at the instance of the Attorney General or someone else, against a delinquent practitioner.

But the definition of James L.J. is not to be regarded as exhaustive. Lord Esher M.R. pointed that out in **Ex parte Official Receiver, In re Reed, Bowen & Co.**[1887] 19 Q.B.D 174. The words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things which do not concern him: but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests. Has the Attorney-General a sufficient interest for this purpose? Their Lordships think that he has."

Is the complainant Wilbern Wallace a mere busybody who is interfering in things which do not concern him? Or, is he a person who has a genuine grievance because an order has been made which

prejudicially affects his interest? Mr. Cunningham, in further submissions, declared that there is no evidence on the records before the Committee which declared that there is any complaint which could amount to "substantial misconduct." Failure to provide information cannot be described as an example of professional misconduct. There is no evidence of any loss to the complainant. The complainant sought to establish that he had an interest in the land in question, but he did not qualify either as a dependent or one who could petition the Crown as someone for whom provision should be made. If it is assumed even that the complainant was a relative, at the time he filed his complaint he had no legal status and no beneficial interest. "Interest" was limited to interest of a proprietary nature.

It was held in ***Eastbourne Mutual Building Society v. Hastings Corporation*** [1965] 1 W.L.R 861:

"...(1)...that, 'interest' was limited to an interest of a proprietary nature and that in the events which had happened R. as the person entitled under Mrs. R's intestacy had had no beneficial interest in any of the items comprised in the un-administered estate and had no such proprietary interest."

The complainant, Mr. Cunningham continued, was not therefore deprived of anything as he had no entitlement to the subject matter of the complaint. He had no professional relationship with the Attorney, hence

no standing to present a complaint. The appellant owed him no duty of care as he was not a client. See **White .v Jones** [1995] 2 A.C. 207.

Mr. Patrick Bailey replied to the submissions of Counsel for the appellant. He repeated and relied on the definition by James, L.J. in **Ex parte Sidebotham** (supra) of the words "person aggrieved". Reliance was also placed on **In Re A Solicitor** [1890] 25 Q.B. 17, where it was held that: the right to apply to the Committee of the Council of the Incorporated Law Society in respect of a solicitor's misconduct is not confined to clients or a person injured by such misconduct but by any person who alleges that it has taken place.

Attorney General of Gambia v N'Jie (supra) is authority for holding that the words " a person aggrieved" were words of wide import and included a person who has a genuine grievance in that an order had been made which prejudicially affected his interest. Mr. Bailey further relied upon Section 4 Item 4(2) of the Intestates Estates and Property Charges Act:

"Any persons who are eligible, pursuant to this Item or under the statutory trusts, to qualify for any interest in the residuary estate are hereinafter referred to as 'other eligible relatives'."

I am in total agreement with the submissions of Counsel for the Respondent that the words "aggrieved person" have a wide scope within the Legal Profession Act. It is not restricted to attorney-at-law/client relationships. It is of much wider scope. A mortgage company

may complain if there is a breach of an undertaking given it by an attorney representing any party to a sale of land.

In the instant case the complainant is not "a mere busybody" of the kind Lord Esher identified in ***Ex Parte Official Receiver In re Reed Bowen & Co.*** [1887] 19Q.B.D 174 and referred to, with approval by Lord Denning in ***Attorney General of Gambia v N'Jie*** (supra):

The evidence before the Disciplinary Committee was that the complainant's father Eustace Wallace and his grand-aunt Clarabelle Foster owned the land in question and that Gladstone Foster never was owner of it. If the Disciplinary Committee accepted this, and it appears from the findings that it had, then the complainant could be considered to have had a genuine grievance when the said land was "sold". The Disciplinary Committee's finding that it had jurisdiction since the complainant was an "aggrieved person" pursuant to section 12(1) of the Legal Profession Act remains undisturbed.

Ground 3 is couched in the following terms:

"The Disciplinary Committee erred in finding that the appellant was guilty of inexcusable or deplorable negligence or neglect and therefore in breach of Canon IV(s) of the Canons of Professional Conduct, given that as a matter of law, no duty of care was owed to the applicant".

Canon IV(s) reads as follows:

"In the performance of his duties, an Attorney shall not act with inexcusable or deplorable negligence or neglect."

It is submitted by the appellant's attorney that the only duty of care owed by the appellant was to her client purchaser Mrs. Somers-Dehaney, and not to the complainant or to Gladstone Foster, the vendor. If, as the Committee found, the person signing as the vendor was not Gladstone Foster, then only the appellant's client, the purchaser, would have suffered this loss, a loss arising from the contractual document being defective.

Mr. Bailey for the Respondent relied on the case ***Rita Zwebner v The Mortgage Corporation PLC, Trustee of the Property of Michael John Zwebner*** [1998] EWCA Civ.1035 (18 June,1998). Here Robert Walker, L.J. stated inter alia, that:

"Traditionally the practice of conveyancers of unregistered land shows (especially in relation to mortgages protected by a deposit of title deeds) a lively awareness of the possibility of fraud."

He also referred to the **Law Society's Conveyancing Handbook** which provides that:

"Where there are joint mortgagors one or more of whom is not known personally to the solicitor, precautions should be taken to verify the signature of (the) unknown mortgagor in order to guard against forgery, e.g. by requiring the document to be signed in the presence of the solicitor."

Further Mr. Bailey for the respondent submitted the following passage from **Cordery's Law relating to Solicitors, 8th edition** by **Fredric T. Horne** at page 273 which states:

"B. Between Solicitors generally

... a solicitor must act towards other solicitors with complete frankness and good faith consistent with his overriding duty to his client. [Solicitors Practice Rules, 1987 v. 1]"

Rule 1 of the **Solicitors Practice Rules**, 1987 imposes upon a solicitor a duty not to act towards any person fraudulently, deceitfully or in any way contrary to his position as a solicitor. The negligence in this canon is negligence which is inexcusable or deplorable and if it is established it constitutes professional misconduct.

There was evidence before the Disciplinary Committee that the land in question was unregistered land. The transfer prepared by the appellant alleged that this was "registered land". The appellant having negligently prepared an inappropriate document had it executed by someone purporting to be Gladstone Foster. No enquiries were made to ascertain the identity of the person signing the document. The appellant witnessed the said signature. This conduct would tend to put the profession into disrepute.

There was also evidence before the Committee that the appellant had deliberately misled the attorney for the complainant when she stated that she had in her possession certain documents relating to the

land in question. The Committee made a list of its findings at paragraph 34 of the decision. It was open for it to find that the appellant was at least inept; but taken together, it would not be unreasonable to conclude, as it did, that the appellant was negligent and deplorably and inexorably so, in attempting to have such a transfer executed in respect of unregistered land. The appellant had acted in breach of Canon IV(S). There was ample evidence before the Committee for it to arrive at that conclusion and the finding that the appellant was in breach of Canon IV (s) stands,

Ground 4 is that the Disciplinary Committee erred in law when it found that the appellant acted in breach of Canon (1)(b) of the Canons of Professional Conduct as the complainant raised no matter in this complaint on which this finding could be grounded. Canon (1)(b) of Canons of Professional Conduct provides:

“(b) An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member.”

It was submitted on the appellant's behalf that since there was no allegation in the complaint that the appellant was guilty of conduct which would tend to bring the profession into disrepute, the appellant was deprived of an opportunity of presenting a substantive defence to any such allegation and that the Disciplinary Committee acted in breach

of the principles of natural justice by making an adverse finding on this basis.

By way of responding to the submission made by the appellant's counsel on this ground, Mr. Bailey referred to **Re a solicitor** [1992] 2 All E.R. 335. In that case, it was held at (2) on page 336 that :

" The task of the Tribunal was to have regard to all the evidence which was adduced before it,... and to ask whether it was satisfied to the requisite standard of proof that the charges were made out. "

In the instant case, he submitted, the Committee considered the complaint in full – the complaint comprised not only the formal complaint filed but also the more fulsome affidavits filed in support. The appellant had to ensure that the person signing the said Transfer was in fact Gladstone Foster. There was a failure to ensure that the person signing the transfer in question had independent advice. Despite several requests from the complainant's attorney Marcia Robertson, the appellant failed to send copies of the executed transfer of the land and other documents relative to the said property, which she had led the complainant's attorney to believe were in her possession. The sole document received was an undated transfer.

The complainant's affidavit contained allegations which if true could severely impugn the appellant's conduct:

- (a) Gladstone Foster who also used the name Gladstone Curtis was 94 years old when he died.

- (b) His signature on the document was allegedly placed there two weeks before his death (the complainant said he was told this by the appellant).
- (c) He was incapacitated before his death.
- (d) The complainant stated he knew the handwriting of Gladstone Foster and that he could not have signed the transfer.
- (e) The copy recognizance form exhibited bears a signature purported to be Gladstone Curtis's and this appears different from that on the exhibited transfer.

The Disciplinary Committee, at paragraph 40 of its decision made the following finding:

"The respondents (sic) conduct also tends to bring the legal profession into disrepute and lower the opinion of lawyers in the minds of right minded people. The complaint is not elegantly drafted or summarized, however, when read with the Affidavit in support, we find that it was sufficiently clear to alert the attorney to the charges. Mr. Cunningham at no time in the course of proceedings expressed any doubt or concern about the allegations his client was being asked to answer."

I find that based on the contents of the complaint and the affidavit in support coupled with the exhibited documents, the Committee could properly have come to the conclusion it did, that the appellant was in breach of Canon 1(b) of the Canons of Professional Conduct.

Ground 5 complained that the punishment imposed upon the appellant was manifestly excessive. Mr. Cunningham submitted that the fine imposed was excessive and punitive in nature. The appellant's

conduct could not be said to impact adversely on the integrity of the profession. The Disciplinary Committee failed to take relevant matters into account, matters such as the appellant's inexperience. Reliance was placed by the appellant on the case of **Bolton v. Law Society** [1994] 1WLR 512.

The respondent's attorney countered by also relying on the **Bolton v. Law Society** case (supra). He submitted that both the fine of Two Hundred and Fifty Thousand Dollars and the costs of Fifty Thousand Dollars were reasonable. They fell within the guidelines in **The Bolton v. Law Society** case, where Sir Thomas Bingham M.R. at page 518 stated, among other things :

"...Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal... If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but remains very serious indeed in a member of a profession whose reputation depends upon trust.... Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension. "

Submissions on sentence were invited by the Committee but this invitation appeared to have been declined. The final paragraph 43 contains this invitation.

I have examined the approach outlined by Sir Thomas Bingham M.R. part of which was recited earlier above, and I am constrained to hold that the Committee's exercise of judgment in imposing a fine on the appellant and attaching costs thereto was properly exercised and the fine and costs imposed are not manifestly excessive.

Ground 6 impugns the Disciplinary Committee's decision as being irrational, unwarranted and unsupported by the evidence. It was here submitted that the Committee seems to have been highly influenced by findings of facts the integrity of which is questionable.

The findings of the Committee are explicitly stated and are well supported by the evidence. The letters between the appellant and the complainant's attorney and the other documentary exhibits taken together with the evidence of the complainant, Eileen Ellis and the appellant herself, proved more than ample evidence on which the findings of the Committee were made.

The members of the Committee were best positioned to assess the evidence adduced and to come to the conclusions they did, relevant to the appellant's conduct in her capacity as an attorney-at-law. The conclusions are that her conduct was such as to breach the Canons outlined in the Committee's decision.

I can see no reason to substitute any other conclusions than those arrived at by the Disciplinary Committee. They are not irrational and are supported by the evidence before the Committee.

The conclusion of the Committee remains intact and I see no valid reason for it to be otherwise. The penalty and costs imposed should also remain unchanged.

I would therefore dismiss the appeal with costs to the Respondent to be taxed if not agreed.

PANTON P.

ORDER:

The appeal is dismissed. Costs to the Respondent to be agreed or taxed.