

JAMAICA

IN THE COURT OF APPEAL

CIVIL APPEAL NO: 160 of 2001

**BEFORE: THE HON. MR. JUSTICE SMITH, J.A.
THE HON. MR. JUSTICE K. HARRISON, J.A.
THE HON. MRS. JUSTICE HAZEL HARRIS, J.A. (Ag.)**

BETWEEN: BARRINGTON DAWKINS APPELLANT

**AND TREVOR L. SHAW ON BEHALF OF
HIMSELF AND ALL MEMBERS OF
THE LAND SURVEYORS BOARD RESPONDENT**

Mr. Wendell Wilkins instructed by Robertson Smith Ledgister & Co. for the Appellant.

Mrs. Simone Mayhew and Miss Ayesha Richards instructed by The Director of State Proceedings for the Respondent.

June 27, 28 & December 20, 2005

SMITH, J.A:

Having read in draft the judgment of K. Harrison, J.A. and Harris, J.A., (Ag.), I agree with the reasoning and conclusions therein and have nothing further to add.

K. HARRISON, J.A:

This appeal comes before us by virtue of section 25 of the Land Surveyors Act, which provides for a surveyor to file an appeal in the Court of Appeal, against any order of the Land Surveyors Board ("the Board") suspending his

commission. The appellant in the instant matter was suspended to practice as a land surveyor for a period of one year with effect from January 7, 2002.

The Facts

On November 19, 1998, the appellant entered into a contract with Alumina Partners of Jamaica ("Alpart") to prepare and provide a pre-checked plan ("the plan") for re-settlement of residents in the New Wales subdivision in the Parish of Manchester. The sum agreed on to do the work was fixed at Two Million Dollars (\$2,000,000.00) and completion date set for May 15, 1999.

The appellant received the sum of One Million Three Hundred and Ten Dollars (\$1,000,310.00) in four installments between the 7th December 1998 and 13th December 1999, in accordance with invoices submitted by him.

There was delay on the part of the appellant in completing the contract. Alpart therefore wrote to the appellant on the 7th December 2000 requesting delivery of the plan but he failed to comply.

Alpart then complained to the Land Surveyor's Disciplinary Committee ("the Committee") soliciting its intervention to have the appellant comply with the terms of the contract. The Committee wrote to the appellant on April 30, 2001, and summoned him to an enquiry into the complaint lodged by Alpart.

The Committee had its first meeting with the appellant on the 19th May 2001. He was represented by Counsel. That hearing was adjourned in order for the appellant to provide documentary evidence to the Committee to support the reasons advanced by him for not completing the contract.

The Committee resumed its enquiry on July 21, 2001. On this occasion, the appellant was represented by a different Counsel who raised certain objections to the procedure adopted for the hearing by the Committee. This sitting of the Committee was adjourned to August 25, 2001 but the appellant failed to attend on that date. The Committee nevertheless completed the enquiry in his absence and proceeded to make a decision on the matter.

On the 21st September 2001, the Committee prepared its report for the Board and recommended that the appellant's commission should be suspended for a period of two years.

The Committee found the appellant guilty of professional misconduct for the following reasons:

“(a) He failed to perform in accordance with his contract without any good reason or excuse.

(b) He failed to communicate with Alpart when asked about a completion date, when he knew fully well how the delays were affecting Alpart's mining and resettlement schedule.

(c) He misled the Committee about the amount of work completed on the contract, and that he was told to stop working on the contract in July 1999. The Committee noted that he should have completed the contract on 15th May 1999.

(d) He had submitted invoices for more work than he had done and collected these payments and did not make sufficient effort to complete the job after many requests from the client.

(e) He failed to understand his obligations to his client and the seriousness of charges brought against him. This was evident by his lack of preparation of his defence even after two (2) adjournments in the enquiry.”

On September 13, 2001, however, the appellant had written to the Chairman of the Board explaining why he failed to attend the enquiry on the 25th August 2001. At paragraphs 2 and 3 of the letter he states as follows:

“As a result of my not attending the meeting I was unable to show the Committee that Mrs. Judith Ogilvie of Alumina Partners of Jamaica was willing to withdraw the complaint before the Committee on the basis that she received the plans. The plans have been actually received by her, she advised the office of Mr. Keith Levy accordingly. The Committee on the other hand having not heard from me on August 25, 2002, prepared and submitted their Report to the Board.

Against this background I am requesting that prior to the Board making a decision on this matter due consideration be given to Mrs. Judith Ogilvie’s letter to the Committee.”

The appellant’s letter of the 13th September was received in the Survey and Mapping Division on the 27th September 2001.

A letter dated 12th September 2001, written by J. Ogilvie, Lands Manager of Alpart, was enclosed in the appellant’s letter to the Board. Mr. E. K. Levy, Chairman of the Committee was advised in this letter, that Alpart had received the outstanding documents from the appellant and wished to withdraw the complaint against him.

There is a document headed “Minutes of the Land Surveyors Board Meeting held on November 16, 2001” exhibited in the Record of Appeal. The Minutes reveal that the Board met on the 19th October 2001, and had decided on the course of action that was to be taken against the appellant. The contents of the Minutes are of extreme importance because of what I will say later when I come

to consider ground 3 of the appeal. The Minutes are signed and dated by the Chairman and Secretary respectively and state inter alia:

"The Chairman welcomed everyone present. He informed the Committee that the meeting was an emergency meeting to review the decision of the previous meeting on October 19, 2001, concerning the suspension of Mr. B. A Dawkins' commission as Land Surveyor for a period of two (2) years.

He further stated that the meeting was convened at the request of Mr. Newsome for a review of Mr. Dawkins' letter of September 13, 2001 with respect to the report from the Land Surveyors Disciplinary Committee.

Mr. Manderson read the report of an enquiry carried out by the Land Surveyors Disciplinary Committee into a charge of professional misconduct against Mr. Barrington Dawkins CLS by Alumina Partners of Jamaica.

Mr. Manderson also read a letter dated September 13, 2001 from Mr. Dawkins to the Chairman of the Board, concerning the enquiry. In the letter, Mr. Dawkins advised the Board that because of an urgent family matter he was unable to attend the sitting of the Land Surveyors Disciplinary Committee on August 25, 2001. As a result, he did not get the opportunity to bring to the attention of the committee, a letter from Mrs. Judith Ogilvie, of Alumina Partners of Jamaica, indicating that she was willing to withdraw the complaint before the Committee on his delivery of the required survey plans.

He therefore requested that prior to the Board's decision on the Committee's recommendations that due consideration be given to Mrs. Judith Ogilvie's letter to the committee.

An enclosed copy of a letter to the Committee from Mrs. Judith Ogilvie was also read by Mr. Manderson. It stated that the plan and field notes from Mr. Dawkins were delivered on 29th August 2001 and even though she was aware that a recommendation

was made at the hearing held on August 25, 2001 she wished to withdraw the complaint.

The Board, after looking at the sequence of events, their implication on the surveying profession, and the recommendation of the Committee, believed that Mr. Dawkins was guilty of professional misconduct but consideration was given for leniency based on the fact that Mr. Dawkins has delivered the required plans and Mrs. Ogilvie has requested that the complaint be withdrawn.

The Board therefore unanimously took the decision that Mr. B. Dawkins' Commission should be suspended for a period of one (1) year and the suspension should take effect from the 1st January 2002. ...

Sgd:

Chairman 8/2/02

Sgd:

Secretary 8/2/02."

The Board having considered the letters of the 12th and 13th September made its decision and advised the appellant by letter dated December 6, 2001, of his suspension.

The appellant's Attorneys were also advised by letter dated January 8, 2002 of the decision of the Board. The letter stated inter alia, that although the Committee made its recommendation which was accepted by the Board, the Board nevertheless decided to impose a lesser suspension having taken into consideration the letters of the appellant and Mrs. Ogilvie. The appellant was also advised.

The Grounds of Appeal

Four grounds of appeal were filed. I propose however, to deal with grounds 1 and 2 together. Mr. Wilkins realized from the outset that these grounds

were weak and informed the Court that he was placing greater emphasis on grounds 3 and 4.

Ground 1

“The Respondent acted on a report and or recommendation(s) from the Land Surveyors Disciplinary Committee which failed to properly analyze the information/evidence before it and or failed to come to a fair and reasonable or proper conclusion or recommendation(s) based upon the information/evidence presented to the Committee.”

Ground 2

“The Respondent acted on a report and or recommendation(s) from the Lands Surveyor’s Disciplinary Committee which failed to apply the correct principles or rules of evidence in considering the information/evidence presented to the Committee.”

I find no real substance in these two grounds. It should be borne in mind that the Committee is a quasi-judicial body and that the procedure adopted during a hearing before it, is not subject to the strict rules of evidence that would apply in a Court of law: *R v Commission for Racial Equality* [1980] 3 All E.R 265; *R v Deputy Industrial Injuries ex parte Moore* [1965] 1 All E.R 81.

Furthermore, the scope of the Committee’s enquiry is set out at section 21 of the Land Surveyors Act which states:

“21. (1) The Committee shall enquire into and hear all charges of professional misconduct or negligence against a surveyor, and all charges against a student surveyor for breach of any of his articles of indenture (if he is an apprentice) or of conduct which, if such student surveyor were a surveyor, would amount to professional misconduct or negligence, and may for the purposes of such inquiry summon the surveyor or student surveyor against whom the charges are made to appear before it

and may hear such witnesses, upon oath or otherwise, as it may consider necessary.

(2) The Committee, if it finds the surveyor or student surveyor guilty of the charge, shall report its findings of fact to the Board and may forward with such report such recommendations as it may see fit to make.”

It is further my view, that once the proceedings are in keeping with the statute, there can be no basis for attacking the procedure adopted by the Committee in conducting the enquiry.

Natural justice would also dictate that the appellant is entitled to a fair hearing before an impartial tribunal. In this case, the appellant was heard and in addition he had legal representation. The Land Surveyors Act also provides for the calling of witnesses and that the Committee “may hear such witnesses upon oath or otherwise, as it may consider necessary.” I do agree with Mrs. Mayhew that other than these requirements the Committee and the Board would have had some flexibility in their approach to the proceedings.

I am of the opinion that there was material before the Committee on which it could make the recommendations that it did. Its findings in my view, were supported by the evidence presented before it. There is no dispute that the work under the contract was not completed within the time agreed on between the parties. What the appellant joins issue with, is, the fact that the Committee did not accept the appellant’s explanation given for the delays in completion of the work.

There is therefore no merit in grounds 1 and 2 and they fail.

Ground 3

"The Respondent failed to accord the Appellant the opportunity to be heard on the report and or recommendation(s) of the Land Surveyors Disciplinary Committee before the Respondent came to its decision or order to suspend the commission of the Appellant to practice as a land surveyor for a period of one year with effect from January 7, 2002 contrary to law."

Mr. Wilkins submitted that the Board failed to accord the appellant the opportunity to be heard on the report and or recommendation(s) of the Committee before it came to its decision to suspend the commission of the appellant to practice as a land surveyor. He also submitted that implicit in section 24 of the Land Surveyors Act (The Act) the appellant has the right to be present before the Board. The Board he said, failed to give the appellant the opportunity to be heard in respect of the matter/s before it. He submitted further that this failure on its own is fatal to the decision of the Board. Section 24 reads as follows:

"24. In any proceedings against a surveyor or a student surveyor before the Board or the Committee, the surveyor or student surveyor, by leave of the Board or Committee, as the case may be, may be represented by counsel or a solicitor."

Mrs. Mayhew submitted however, that section 21 of the Act sets out the procedure to be adopted. It is the Committee that is to enquire into and hear all charges of professional misconduct or negligence against a surveyor. After this enquiry is held, the Committee is required to make its recommendations and submit a report to the Board that will decide the appropriate sentence.

Mrs. Mayhew further submitted that the only hearing the appellant would be entitled to have before the Board would be a hearing, on sentence, which he got. She argued that the letter which the appellant submitted to the Board could have some bearing on the sentence and this would constitute a hearing. She further argued that the Board had in fact acknowledged receipt of the appellant's letter. The appellant himself had requested the Board to consider his request before making a decision.

Mr. Wilkins submitted however, that the letter of the 13th September was not to be regarded as an opportunity to be heard because it merely disclosed that Alpart had withdrawn the charge and the appellant had given the reason for him not attending the hearing on August 25. He submitted that the Board merely looked at "the sequence of events, their implication on the surveying profession", considered same and made its decision. He submitted that the failure to accord the appellant the opportunity to be heard is contrary to the *audi alteram partem* rule and/or the rules of fairness.

What are the powers of the Board on receipt of the report from the Committee? Section 22 of the Act states:

"22. (1) The Board may, on receiving the report referred to in subsection (2) of section 21, together with such recommendations, if any, as may be forwarded therewith, take such action, including the cancellation or suspension of the surveyor's commission or the refusal to issue a commission to a student surveyor, as it may consider fit and just."

Although section 22 does not specifically infer a right to be heard on the appellant there can be no doubt in my view, that he has a right to be heard in

mitigation. Indeed Mrs. Mayhew accepts this. However she contends that although the appellant was not present before the Board he was nevertheless given an opportunity to make his representation before it made its decision. He had requested in his letter of the 13th September 2001 that the Board considers its contents and enclosure when it comes to decide on the recommendation of the Committee. The Board did accede to the appellant's request and thereafter decided on an appropriate sentence. In the circumstances, I do agree with Mrs. Mayhew that the appellant was given a hearing before the Board.

It was also submitted by Mr. Wilkins that the Committee had exceeded its powers as its finding of professional misconduct and the recommendations to the Board went outside of the scope of the complaint from Alpart. I find no merit in these submissions. What really was the complaint by Alpart? The evidence reveals that the appellant had failed to complete the contract entered into by him within the stipulated time. Several requests were made by Alpart for him to complete his assignment. He failed to do so. In these circumstances, it is clear that the appellant was in breach of his contractual obligations and this would amount to professional misconduct on his part.

I find no merit in ground 3 and this ground also fails.

Ground 4

"The Respondent applied the wrong principles or failed to apply the correct principles in considering the report and or recommendation(s) of the Land Surveyors Disciplinary Committee and therefore came to an unreasonable, unfair or incorrect decision or order to suspend the commission of the Appellant to practice as

a land surveyor for a period of one year with effect from January 7, 2002.”

Mr. Wilkins submitted in respect of this ground that “since the Board wholly accepted and adopted the report, findings and recommendation of the Committee which is flawed in many ways, the Board would be tainted with the same flaws as to the improper or incorrect application of the law, rules of evidence and or procedure and findings that afflicted the Committee’. He also submitted that the Board had failed to properly review the report and its contents.

Mrs. Mayhew submitted however that it is incorrect to say that the Board accepted wholly the findings of the Committee for the following reasons: First, the Board did not accept the Committee’s recommendation in respect of the period of suspension. Second, the Board has the right under the Act to regulate its own procedure and, like the Committee, would not be subject to the strict rules of evidence. Third, the appellant having been given a hearing by the Committee, there was no requirement either in the legislation or by the rules of natural justice for him to be heard before the Board before it made its decision.

The Board, in my view, was entitled to accept the findings of the Committee that the appellant was guilty of professional misconduct. The Board was mandated by law, to accept these findings: See subsection 2 of section 21 of the Act which reads:

“(2) The Committee, if it finds the surveyor or student surveyor guilty of the charge, shall report its findings of fact to the Board and may forward with such report such recommendations as it may see fit to make.”

It would seem from the legislative scheme that there is separation of powers between the Board and Committee. The Committee is mandated to make a finding of negligence or professional misconduct and then to report its findings to the Board. The Board will thereafter decide on the course of action it will take in accordance with section 21(1).

In my view, the finding of professional misconduct is correct and this ground of appeal also fails.

Conclusion

I would dismiss the appeal with costs to the respondent Board to be taxed if not agreed.

HARRIS, J.A. (Ag.)

This is an appeal against a decision of the Land Surveyor's Board suspending the appellant from practising as a land surveyor for a period of one year.

On November 19, 1998 the appellant, a commissioned land surveyor, entered into a contract with Alumina Partners of Jamaica (hereinafter called "Alpart") for him to supply a pre-checked plan for a sub-division at New South Wales in the parish of Manchester. May 15, 1999 was the completion date of the contract. The appellant failed to honour his obligation under the contract up to then.

The completion date having passed, on February 19, 2001 Alpart wrote to the Land Surveyors Disciplinary Committee (hereinafter called the 'Committee'), complaining of the appellant's delay in completing the job.

The appellant was summoned to appear before the Committee on May 19, 2001 in relation to the complaint. At the hearing, at his counsel's request, the matter was adjourned to July 21, 2001 to enable him to provide documentary evidence in support of reasons advanced by him for his failure to complete the contract.

On resumption of the hearing on July 21, the appellant was represented by a different counsel who objected to the Committee's procedure in the conduct of its hearing. At the end of the sitting, the appellant sought and was granted a further adjournment to pursue a settlement with Alpart. The hearing was next fixed for continuation on August 25, 2001.

On August 25, the appellant failed to appear at the hearing. The Committee, on September 21, 2001 prepared and submitted to the respondent, a Report outlining the charge against the appellant as well as the facts. The Committee found that the appellant was guilty of professional misconduct and stated its findings as follows:

- "(a) He failed to perform in accordance with his contract without any good reason or excuse.
- (b) He failed to communicate with Alpart when asked about a completion date, when he knew fully well how the delays were affecting Alpart's mining and resettlement schedule.
- (c) He misled the Committee about the amount of work completed on the contract, and that he was told to stop working on the contract in July 1999. The Committee noted that he should have completed the contract in May 1999.

- (d) He had submitted invoices for more work than he had done and collected these payments and did not make sufficient effort to complete the job after many requests from the client.
- (e) He failed to understand his obligations to his client and the seriousness of charges brought against him. This was evident by his lack of preparation of his defense even after two (2) adjournments in the enquiry"

The Committee recommended that the appellant be suspended for a period of two years.

On September 13, 2001 the appellant wrote the following letter to the respondent:

"September 13, 2001

Mr. Trevor Shaw (Chairman)
Land Surveyors Board,
23½ Charles Street,
Kingston.

Dear Mr. Shaw:

Re: Complaint by Alumina Partners of
Jamaica against Barrington A. Dawkins
to the Disciplinary Committee

On August 25, 2001 I was to attend a meeting of the Committee to deal further with the complaints raised in the caption, but I unintentionally did not turn up to the meeting. Of the three meetings, which was (sic) held to deal with this matter, I have attended all except for that on August 25, 2001. I must point out that my not attending was not bourn out of any disrespect for the Committee. My not attending was due primarily to the fact that my mother returned home terminally ill and my entire being and that of our immediate family was focused on trying to make

her last days as comfortable and fulfilling as was humanly possible. In light of our efforts and her general utterances I would want to believe that we achieved that end. On September 1, at 8:00 a.m. she died and was buried on Monday, September 10, 2001.

As a result of my attending the meeting I was unable to show the committee that Mrs. Judith Ogilvie of Alumina Partners of Jamaica was willing to withdraw the complaint before the committee on the basis that she received the plans. The plans having been actually received by her, she advised the office of Mr. Keith Levy accordingly. The committee on the other hand having not heard from me on August 25, 2001, prepared and submitted their Report to the Board.

Against this background I am requesting that prior to the Board making a decision on this matter due consideration be given to Mrs. Judith Ogilvie's letter to the committee.

I have enclosed copies of the letters written by her for your perusal.

Thanking you in advance.

Yours faithfully,

B.A. Dawkins & Associates,

Commissioned Land Surveyors".

In this letter was enclosed a letter dated September 12, 2001 signed by the manager of Alpart, stating that they were in receipt of the plans due from the appellant and that they desired to withdraw the complaint.

The respondent met on October 19, 2001. They considered the Committee's Report and the letter from the appellant together with its enclosure, following which they made an order for the suspension of his commission for a period of one year.

Four grounds of appeal were filed by the appellant, the first of which states:-

- “(1) The Respondent acted on a report and or recommendation(s) from the Land Surveyors Disciplinary Committee which failed to properly analyse the information/evidence before it and or failed to come to a fair and reasonable or proper conclusion or recommendation(s) based upon the information/evidence presented to the Committee.”

Mr. Wilkins submitted that the Committee failed to appreciate that if some of the work had been done, whether 45% or 60% to 70%, towards the preparation of the plan, then a plan in accordance with the contract could not have been prepared and delivered to Alpart by the appellant, as Alpart had requested that additional work be done by the appellant, which would have resulted in a further delay of delivery of the plan. He also submitted that the appellant provided plausible reasons for his failure to perform the contract. It was further argued by him that the Committee erred when it concluded that the appellant misled them. He contended that it concluded that the appellant had “over-billed” for work when there was no evidence to support this and that it prejudged the matters arising from the complaint without first hearing from the appellant.

The contract was one under which the appellant was required to carry out surveying services. He was obliged to have completed the work by May 15, 1999. This he failed to do. Advances of \$1,310,000.00 on account of \$2,000,000.00 due under the contract were paid to him. There was evidence

that he misled the Committee with respect to interim payments received by him and he also misled the Committee by stating that Alpart had directed him to cease work on the contract.

The appellant was afforded two opportunities to be heard by the Committee and to provide documentary evidence to support his allegations, which evidence he did not supply.

The report of the Committee shows that a charge of professional misconduct had been laid against the appellant for failure to perform the contract. There was adequate material before the Committee on which it could have properly based its findings.

It is clear that the Committee, after a proper assessment and analysis of the evidence before it, correctly arrived at the findings made. It thereafter made its recommendation. This ground is clearly unsustainable.

I now turn to ground 2.

- (2) "The Respondent acted on a report and or recommendation(s) from the Land Surveyors Disciplinary Committee which failed to apply the correct principles or rules of evidence in considering the information/evidence presented to the Committee."

Mr. Wilkins submitted that the contents of the letter from Alpart in relation to the allegation of misconduct on the part of the appellant were accepted as true by the Committee and Alpart was never called upon to prove the complaint. He further argued that the Committee demanded documentary proof of the oral explanations presented by the appellant.

Miss Mayhew argued that once the proceedings are in conformity with the provisions of the Land Surveyors Act and the rules of natural justice then the approach adopted by the Committee remains unassailable.

In its conduct or proceedings with respect to a complaint against a surveyor, the Committee acts within the framework of section 21 of the Land Surveyors Act, which provides:-

- “(1) The Committee shall enquire into and hear all charges of professional misconduct or negligence against a surveyor, and all charges against a student surveyor for breach of any of his articles of indenture (if he is an apprentice) or of conduct which, if such student surveyor were a surveyor, would amount to professional misconduct or negligence, and may for the purposes of such inquiry summon the surveyor or student surveyor against whom all charges are made to appear before it and may hear such witnesses, upon oath or otherwise, as it may consider necessary
- (2) The Committee, if it finds the surveyor or student surveyor guilty of the charge, shall report its findings of fact to the Board and may forward with such report such recommendations as it may see fit to make.”

It is clear that the Act, in endowing the Committee with the right to carry out inquiry and hear charges against a surveyor, empowers it to proceed as it deems necessary. It is not bound to hear witnesses or to hear evidence on oath. As a quasi-judicial tribunal it would not be subject to the strict rules of evidence as applicable in a court of law; see **R. v. Commission for Racial Equality**

[1980] 3 ALL ER 265. The Committee may be informal in its procedure, applying flexible standards and discretionary powers.

A Court would only interfere with a tribunal's exercise of its discretion, if it is shown that it acted with malice, bad faith or in breach of the rules of natural justice.

A Tribunal, in the exercise of quasi-judicial functions must pay due regard to the dictates of natural justice. It must ensure that a party who comes before it receives a fair hearing. That party must be given notice of any charge or complaint laid against him and an opportunity of meeting such charge or complaint.

The evidence before the Committee was capable of being treated by the Committee as bringing the appellant's conduct within the definition of professional misconduct. At the time of the inquiry, the appellant had failed to fulfil his obligation under the contract and there was ample evidence of this. The appellant was given two opportunities to be heard before the Committee. His explanations were rejected by the Committee as they were found to be disingenuous. The Committee, in my opinion, dealt with the complaint against the appellant fairly and impartially. The evidence before it clearly supported its findings. This ground too is without merit.

Ground 3 was stated as under:-

"The Respondent failed to accord the Appellant the opportunity to be heard on the report and or recommendation(s) of the Land Surveyors Disciplinary Committee before the Respondent came to its

decision or order to suspend the commission of the Appellant to practice as a land surveyor for a period of one year with effect from January 7, 2002 contrary to law.”

Mr. Wilkins contended that the respondent did not afford the appellant an opportunity to be heard in respect of the Committee’s report or matters before it, prior to the respondent’s order suspending him from practising as a surveyor, and that its failure so to do is contrary to the audi alteram partem rules.

It was further submitted by him that the letter dated September 13, 2001 should not be regarded as having afforded the appellant a hearing and that by virtue of Section 24 of the Act he had a right to be heard.

It was Mrs. Mayhew’s submission that the appellant was given an opportunity to appear before the respondent but on a hearing before the respondent he would have only been entitled to be heard on the matter of sentence. She further submitted that Section 21 of the Act makes provision for the Committee to make enquiry and hear charges of professional misconduct or negligence against a surveyor. Following the enquiry, the Committee made its findings and it would not have been contemplated by the Act that there be a re-hearing before the respondent.

It cannot be disputed that the appellant may be afforded an opportunity to appear before the respondent.

Section 24 of the Act provides:

“24 – In any proceedings against a surveyor or a student surveyor before the Board or the Committee, the surveyor or student surveyor,

by leave of the Board or Committee, as the case may be, may be represented by counsel or a solicitor.”

In my view, the right accorded by the Act, to a surveyor to appear before the Land Surveyors Board, is discretionary. The Board may, in the circumstances of a particular case allow the surveyor to make representations before it.

However, before proceeding on the question as to whether the appellant had an opportunity to appear before the respondent it is necessary for me to consider whether the appellant was entitled to a re-hearing of the complaint before the respondent.

What is the scope and function of the respondent? Is it empowered to hear complaints against surveyors?

Section 21(1) of the Act expressly mandates the Committee and not the respondent to hear complaints. It does not assign to the respondent any right to hear charges. Section 21 (2) directs that if the Committee finds the surveyor guilty of a charge it shall report its findings and recommendations to the respondent.

Section 24 provides for certain steps to be taken by the respondent on receipt of the Committee’s Report. On being furnished with the findings of the Committee, the respondent may take such “action as it may consider fit and just.” This clearly demonstrates that the respondent’s powers extend to sentencing only and are not contemplative of a rehearing before the respondent of any charge which may be brought against a surveyor.

I will now consider whether the appellant had an opportunity to be heard before the respondent. The letter of September 13, 2001 written by the appellant was before the respondent. There is no doubt, that, at the request of the appellant the contents of the letter were taken into account as evidenced by paragraphs 3 & 4 of the Minutes of the 'Meeting of the Land Surveyors Board', which are as follows:

"Mr. Manderson read the report of an enquiry carried out by the Land Surveyors Disciplinary Committee into a charge of professional misconduct brought against Mr. Barrington Dawkins C.L.S. by Alumina Partners of Jamaica.

Mr. Manderson also read a letter dated September 13, 2001 from Mr. Dawkins to the Chairman of the Board, concerning the enquiry. In the letter, Mr. Dawkins advised the Board that because of an urgent family matter he was unable to attend the sitting of the Land Surveyors Disciplinary Committee Meeting on August 25, 2001. As a result, he did not get the opportunity to bring to the attention of the committee, a letter from Mrs. Judith Ogilvie, of Alumina Partners of Jamaica, indicating that she was willing to withdraw the complaint before the Committee on his delivery of the required survey plans."

It is clear that the respondent, having reduced the period of suspension of the appellant from the recommended 2 years to 1 year, had given consideration to the letter. Therefore, it cannot be said that he was not given a hearing before the respondent. This ground also fails.

Ground 4 states as follows:-

"The Respondent applied the wrong principles or failed to apply the correct principles in considering the

report and or recommendation(s) of the Land Surveyors Disciplinary Committee and therefore came to an unreasonable, unfair or incorrect decision or order to suspend the commission of the Appellant to practice as a land surveyor for a period of one year with effect from January 7, 2002."

Mr. Wilkins submitted that the respondent accepted the Committee's findings, which were flawed, and the respondent incorrectly applied the law and rules of evidence. He further submitted that the findings of the Committee and of the respondent are flawed.

Miss Mayhew argued that the respondent did not wholly accept the Committee's findings, as, the period of suspension recommended by the Committee was not accepted. She further submitted that under the Act, the respondent had the right to regulate its procedure and would not be subject to strict rules and the appellant received a hearing because the respondent considered the contents of his letter before arriving at a decision.

The Committee had cogent evidence before it of professional misconduct on the part of the appellant. The Committee was obliged to hear the complaint against the appellant, make its findings and recommendations. These it transmitted to the respondent.

Opportunities were accorded to the appellant to be heard before the Committee and before the respondent. There is no evidence that the Committee acted unfairly or in bad faith. As a matter of law, the respondent was under a duty to accept the findings of the Committee. This ground, being unmeritorious, fails.

The appeal is dismissed with costs to the respondent to be agreed or taxed.

SMITH, J.A.

ORDER

Appeal dismissed with costs to the respondent Board to be taxed if not agreed.