[2013] JMCA App 32

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CVIL APPEAL NO 52/1999

MOTION NO 20/2012

BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE DUKHARAN JA
THE HON MR JUSTICE BROOKS JA

BETWEEN	**THE GENERAL LEGAL COUNCIL**	**APPLICANT**
AND	**BARRINGTON FRANKSON**	**RESPONDENT**

Charles Piper and Wayne Piper instructed by Charles E Piper & Associates for the applicant

Paul Beswick, Kayode Smith and Miss Carissa Bryan instructed by Ballantyne, Beswick & Co for the respondent

10 and 11 June 2013

ORAL JUDGMENT

PANTON P

[1] Yesterday, 10 June 2013 we had before us a notice of motion for conditional leave to appeal to Her Majesty in Council in respect of a judgment of this court which was delivered on 23 November 2012. The General Legal Council is seeking leave to go to the Privy Council with a view to having the decision of this court appealed, in that,

this court allowed in part the appeal against sentence, by setting aside the decision of the Disciplinary Committee of the General Legal Council to strike the respondent off the roll of attorneys-at-law, and substituting therefor an order of suspension for six years commencing on 1 May 1999.

[2] Before the court was a challenge to the decision of the Disciplinary Committee on the basis that the then appellant Frankson had been wrongly found to have been guilty of professional misconduct and the Disciplinary Committee was wrong in ordering that he be struck off.

[3] The order made by this court reads as follows:

> "Appeal against the order that the appellant is guilty of professional misconduct is dismissed. Appeal against sentence is allowed in part. The sentence of striking off is set aside and a period of six years suspension commencing 1 May 1999 is substituted therefor. All other orders in respect of the sentence remain."

[4] Yesterday when the matter was called, a preliminary objection was made on behalf of the respondent Frankson on the basis that the applicant the General Legal Council was out of time so far as filing of the notice of motion is concerned. Judgment having been delivered on 23 November 2012, it was argued that the last date for the filing of the notice of motion would have been 14 December 2012. However, the notice of motion was not filed until 19 December 2012. This is not the first time that a preliminary objection of this nature has been taken. There have been quite a few occasions when this has happened. One notable occasion was as long ago as 1982 and

the respondent Frankson in this matter through Mr Paul Beswick, appearing for him has advanced the judgment in ***Chas E Ramson Limited and Loram Limited v Harbour Cold Stores Ltd*** SCCA No 57/1978 delivered on 27 April 1982 as proper ground on which he may rely. Mr Justice Carberry in an usually brief judgment made reference to rule 3 of the Jamaica (Procedure in Appeals to Privy Council) Order in Council 1962 which provides as follows:

> "Applications to the Court for leave to appeal shall be made by motion or petition within twenty-one days of the date of the judgment appealed from, and the applicant shall give all other parties concerned notice of his intended application."

[5] Mr Justice Carberry, in his judgment, indicated that the Court of Appeal is strictly bound by this provision and does not have the flexibility to even extend the time.

[6] There is however a peculiar feature of this particular matter which gave Mr Charles Piper appearing for the applicant, the General Legal Council, some basis for attempting to challenge the submission that 21 days had not expired since the decision. In its judgment, as handed down on 23 November 2012, the court had given a date in 2006 from which the suspension ought to have run. However, when the court received a letter from Mr Piper, making certain enquiries, it was noted that the correct date ought to have been 1 May 1999. Mr Piper is contending that, that information having been communicated to him, apparently on 5 December, it meant that the judgment was not delivered until 5 December 2012. In his letter, he had sought further audience with

the court to discuss or to make submissions in respect of the point. However, the court did not entertain that request and indeed the date on the judgment remained 23 November 2012.

[7] Mr Beswick, in his own inimitable style, submitted that the applicant has been hoisted with his own petard because in its application it consistently referred to the judgment as having been delivered on 23 November 2012 and so the applicant had no doubt that the judgment was indeed delivered on 23 November 2012.

[8] We are unanimously of the view that the submissions of Mr Beswick are well founded and that the court is empowered at all times to make corrections of the nature that was made in this case. There was no question of the judgment of the court having been altered; it was a question of clarifying the date on which the suspension should commence. It would have been noted that the main point was that the striking off had been reversed and that a suspension had been substituted and so the question of when the suspension was to take effect was really not of great moment. The matter of moment is the fact that the judgment had altered the decision of the Disciplinary Committee by changing the striking off and substituting suspension.

[9] It is noted that the applicant is seeking to challenge before the Privy Council just that aspect of the decision, that is, whether the decision of the court should have been to uphold the striking off or to substitute a suspension; that is what is being sought and we note that the applicant has put this forward as being a matter of great general or public importance to require leave to go to the Privy Council. Although we have found

that the application is out of time we would still wish to add that there comes a time when litigation must end. This case has been in the courts from in the 1990's and it is time for it to end. The circumstances were such that there was a dispute between the respondent and a client in respect of what the respondent was entitled to and his conduct clearly was misguided, at least.

[10] Given the passage of time and the circumstances of the case, even if the applicant were in time, the applicant may well have been hard put to convince the court that this was a matter of great general or public importance.

[11] In the circumstances, the objection having been upheld the application is refused with costs to the respondent to be agreed or taxed.