

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE**

GRENADA

On referral from the General Legal Council compliant NO: 005 OF 2019

IN THE MATTER OF THE LEGAL PROFESSION ACT

GEORGE W. PRIME

Attorney-at-Law

and

WELLINGTON JOSEPH

Complainant

Before:

The Hon. Mr. Justice Raulston L. A. Glasgow
The Hon. Mde. Agnes Actie

High Court Judge
High Court Judge

Appearances:

Dr. Francis Alexis K.C. for George W. Prime
Complainant in person

2024: February 21

[1] **GLASGOW, J. and ACTIE, J.:** This tribunal has been constituted further to a referral made by General Legal Council (GLC) pursuant to that body's powers under section 37(2) of the Legal Professions Act, Cap 167A (the LPA). The referral touches and concerns complaints made by the complainant, Mr. Wellington Joseph (Mr. Joseph) against the attorney at law, Mr. George W. Prime (Mr. Prime).

[2] **Section 37(2) of the LPA** reads—

“Powers of Council

37. (1) If the Council, after hearing an application under this Part, is not satisfied that the allegations made against the attorney-at-law to whom the

application relates constitutes professional misconduct, the Council shall dismiss the application.

(2) If the Council, after hearing an application under this Part, is satisfied that the allegations made against the attorney-at-law to whom the application relates have been established, and that the conduct alleged against him constitutes professional misconduct, as the case may be, the Council may—

(a) where it is of the opinion that a case has been made out which justifies punishment more severe than may be imposed by the Council, such as removal from the Roll, the Council shall forward to the Supreme Court, in accordance with section 82 of the West Indies Associated States Supreme Court (Grenada) Act, Chapter 336, a copy of the proceedings before it and its findings thereon;

(b) suspend the Practising Certificate of the attorney-at-law to whom the application relates;

(c) reprimand the attorney-at-law to whom the application relates; or

(d) make such order as to costs as it thinks fit, and in addition, except where the application is dismissed under subsection (1), the Council may order the attorney-at-law to pay the applicant or person aggrieved, such sum by way of compensation and reimbursement, and such further sums in respect of expenses incidental to the hearing of the application and consideration of the matter, as it thinks fit.

(3) Any two judges of the Supreme Court may, upon hearing an application made by the Council under this Part, order the suspension of an attorney-at-law or have the name of an attorney-at-law struck off the Roll.”

[3] **Section 82 of the of the West Indies Associated States Supreme Court (Grenada) Act, Chapter 336** in turn reads –

“Any two Judges of the High Court may, for reasonable cause, suspend any barrister or solicitor from practising in Grenada during any specified period, or may order his or her name to be struck-off the Court Roll.”

Background

[4] The evidence discloses that Mr. Joseph and Mr. Prime have known each other for quite some time. They both hail from the island of Carriacou. The two parties first entered into an attorney at law/client relationship during the year 2015 when Mr. Joseph retained Mr. Prime’s services as an attorney at law. The services entailed the administration of the estate of Mr. Joseph’s deceased mother, Mrs. Leonora Mathurine. By virtue of a written agreement, Mr. Prime was engaged to prepare

letters of administration for the deceased's estate and thereafter, the necessary vesting deed(s).

- [5] A few years later, in May 2017, Mr. Joseph further retained Mr. Prime's services in respect of the sale of property on the island of Carriacou. The sale was successfully completed in November 2017 and Mr. Prime, or his office held the sum of EC\$123,106.88 (USD45,522.12) on behalf of Mr. Joseph with instructions to forward the same to Mr. Joseph immediately. Mr. Joseph says that he personally provided Mr. Prime with the details of his banking information for the transfer of the funds to his bank account held at KeyBank National Association, New York. Mr. Joseph explained at the Tribunal hearing that he also provided Mr. Prime with the necessary swift code details to facilitate the transfer of his funds held by Mr. Prime.
- [6] The funds were not transferred as instructed. Several emails and enquiries then ensued between Mr. Joseph and Mr. Prime or his office. On 23rd January 2018, Mr. Prime's secretary, in an email to Mr. Joseph expressed her own dismay at the delay when she observed –
- "Dear Mr. Joseph,
I do apologize for what is happening, it is out of my control. I passed on the message to Mr. Prime and I do hope that this transaction is completed soon..."*
- [7] On 5th February 2018, Mr. Prime eventually sent Mr. Joseph the sum of USD 18,383.33 which was a part of the money due to him. The sum was credited to Mr. Joseph's new bank account details at Citibank since Mr. Prime in January 2018 stated that attempts made to send the funds through the KeyBank National Association account previously sent were unsuccessful. A balance of USD18,912.20 (ECD51,382.56) was then due and owing to Mr. Joseph.
- [8] Thereafter no funds were remitted to Mr. Joseph. Mr. Joseph outlines several visits, calls and WhatsApp messages to Mr. Prime regarding the balance due to him. There were no satisfactory responses to Mr. Joseph's entreaties for his money and as such he filed a complaint with the GLC on 25th day of June 2018.

[9] The matter came before the GLC on 11th August 2021. It is noteworthy that at the date of the GLC's disciplinary proceedings, Mr. Josph was still not in receipt of the balance of his funds. After hearing from Mr. Prime and Mr. Joseph the GLC made the following ruling-

1. "There is no dispute between the Parties that from November 2017, when the sale of the Applicant's property was completed and closed that monies paid to the Attorney-at-law for the benefit of the Applicant were then immediately due. Yet, some 3 1/2 years later a substantial sum, US\$18,912.20/EC\$51,382.56 remains unpaid and due to the Applicant. As to why the sum remains unpaid, the Attorney-at-law's reasons can be summarized as: (i) he was dealing with Mr. Adams, the holder of a power of attorney from the Applicant and so he was waiting to settle the account as it related to other work with Mr. Adams before paying over any remaining money due to the Applicant; and (ii) he was the victim of two burglaries, one at his Carriacou chambers and a second at his St. George's chambers and where from his main computer was stolen together with other electronic items. He admits to there being hard copies of notes and communication on a hard file at Carriacou and in fact in conducting his investigation as to the amount of money due, he referred to the hard copies of the notes on file.
2. The Council on consideration of the matter is of the view that firstly, it was inappropriate that the payment of the Applicant's money was split into two payments without authority from the Applicant. Secondly, no excuse was tendered to the Applicant either orally or in writing for the delay in making payment and this was despite there being both types of communication between the Parties. In fact, the lack of excuse is supported by the email of Zinzai. Thirdly, even in regard to the reason tendered for the delay of the first partial payment i.e. problematic bank transfer information, the Applicant provided at 6th January 2018, another bank's transfer information and it was approximately 30 days later, i.e. 5th February 2018, that the first partial payment was made. No excuse was tendered as to why it took 30 days between receiving the second bank's (Chase) information and the transfer of US\$18,383.33. Fourthly, while the Council sympathizes with the Attorney-at-law on the matter of the burglaries, and indeed which can be an unsettling experience, the burglaries were at 2018, and yet three years later there was still no payment made. Fifthly, even if the Council were to accept that the Attorney-at-law believed that Mr. Adams was acting under the power of attorney in relation to all of the Applicant's matters, Mr. Adams' position as the Applicant's attorney simply could not "trump" that of the Applicant who gave him that power of attorney and who moreover started to communicate directly with the Attorney-at-law and staff orally by way of telephone calls, whatsapp messages and emails with his request for payment as early as 23rd January 2018.

3. The Council is of the view that the Attorney-at-law's delay which has now reached in excess of 31/2 years, in paying the Applicant his money, is an extreme and inordinate delay. This delay is inexcusable and unacceptable. The reasons given by the Attorney — at-law at 31/2 years hold no weight. The Council then notes that even on admission of the money being due, the Attorney-at-law in his affidavit deposes that he will pay the money due within 7 days of the outcome of the hearing. This is indeed a most curious position to hold when at all times, he admits there was money due to the Applicant. The Council's role is not to settle whether the Attorney-at-law owed the Applicant or not, that would be a matter for a court. The Council's examination is solely to find whether or not there has been professional misconduct in the manner in which the Attorney-at-law carried out the Applicant's instructions. From that may flow an order similar to that made by a court. The Code of Ethics rules cited are clear.
4. The Council, having heard the application, is satisfied that the allegations made against the Attorney-at-Law have been established, and that the conduct alleged against him constitutes professional misconduct.
5. The Council, upon considering the nature of the Attorney-at-Law's professional misconduct, was tasked to consider whether the sole sanction available to it at this time, being the issuance of a reprimand, was reasonably proportionate. An examination of section 37(2) of the Legal Profession Act 2011 (as amended) highlights the Council's limited disciplinary powers currently, in the absence of Practising Certificates issued to Attorneys-at-Law. The Council, being of the view that the Attorney-at-Law's professional misconduct, in this instance, warrants a more severe sanction than can be imposed by it at this time, has decided to forward its findings and a copy of these proceedings to the Supreme Court pursuant to section 37(2)(a) of the Legal Profession Act, 2011, to exercise any of its powers under section 82 of the **West Indies Supreme Court (Grenada) Act**, should it deem such exercise of its powers appropriate in the circumstances."
6. At our hearing today we note that Mr. Prime did transfer the balance of the funds to Mr. Joseph on 12th August 2021, a day after the GLC hearing."

[10] The Tribunal at a case management hearing held on 6th December 2023, directed the parties to file and exchange affidavits, submissions, and authorities. Mr. Prime filed an affidavit dated 10th January 2024 along with submissions and authorities on even date. Without rehashing Mr. Prime's evidence and submissions, the long and short of his case is that the referral is not properly before this Tribunal because –

- (1) The GLC, in its conduct of the disciplinary proceedings, engendered in him a legitimate expectation that his paying Mr. Joseph the balance before the requested 7 days would have satisfactorily disposed of Mr. Joseph's complaint against him.
- (2) The GLC, in coming to its decision, ignored a relevant consideration in that it failed to take account of the fact that, by the date of its decision, Mr. Prime had already paid the sums due. The failure to consider this relevant matter, Mr. Prime posits, renders the GLC's decision, ultra vires, null and void.

[11] Notwithstanding the fact that he had not filed further evidence, submissions and authorities as directed on 6th December 2023, Mr. Joseph, who was unrepresented by counsel was given an opportunity to address the tribunal at today's hearing. Mr. Joseph in his oral submissions to the Tribunal, rehashed many of his complaints made at the GLC hearing and recited above in these proceedings. Significantly though he makes the point that the balance of his funds received from Mr. Prime on 12th August 2021 was sent to the same KeyBank National Association account that he had given to Mr. Prime in November 2018. This is the very account to which Mr. Prime had previously indicated that he could not send the funds because of possible errors or other challenges. Yet three and a half (3 ½) years later, there was no difficulty sending the funds to that same account.

The tribunal findings

[12] The Tribunal has some difficulties with the posture taken by Dr. Francis Alexis K.C for Mr. Prime at the hearing today. As recited above, Mr. Prime objects to these proceedings on the grounds that the GLC's decisions to refer the matter to the tribunal breached a legitimate expectation engendered in him that the disciplinary proceedings would be at an end if he paid Mr. Joseph's money before the expiration of seven (7) days. Learned King's Counsel is of the view that the referral was bad in law since the GLC referral decision failed to take relevant considerations into account and as such was ultra vires, null and void.

[13] The Tribunal disagrees for these reasons –

(1) **Section 38 of the LPA** is unequivocal in its requirements. It reads –

Appeal from Council

38. (1) Except in the case of an appeal against punishment only, an appeal against an order of the Council, shall lie to the Court of Appeal by way of re-hearing, at the instance of the attorney-at-law or person aggrieved to whom the order relates, and every such appeal shall be made within such time and in such form, and shall be heard in such manner, as may be prescribed by rules of court.

(2) Upon appeal, any order or decision of the Council against which the appeal has been made, shall be suspended, and no action taken thereupon, unless and until the Court of Appeal confirms the order or a decision or, upon order by the Court of Appeal for re-hearing, unless and until the Council finds against the attorney-at-law to whom the application relates, and confirms the decision.

(3) Nothing contained in subsection (2) shall prejudice the execution of any order or a decision varied by the Court of Appeal, or any new order or decision made upon re-hearing by the Council, pursuant to any direction of the Court of Appeal. (Bold emphasis ours).

[14] Mr. Prime, being dissatisfied with the ruling or order made by the GLC, ought to have utilized Section 38(1) by way of an appeal to the Court of Appeal. His dissatisfaction being a matter that does not touch and concern punishment only but being one in respect of the GLC's order to refer the matter to the Tribunal pursuant to section 37(2)(a) of the LPA, falls within the purview of section 38(1) of the LPA.

[15] The substance of Mr. Prime complaints in legitimate expectation and procedural irregularities which he claims impugns the GLC's decision are grounded in public law concepts and redresses. In essence, Mr. Prime wishes us to conduct a judicial review of GLC's referral. As correctly argued by Learned K.C., this court in its unlimited jurisdiction is certainly reposed with such powers. However, Dr. Alexis K.C overlooks the fact that the court's judicial review jurisdiction is engaged by clearly circumscribed processes in CPR 2023 at Part 56.

[16] These proceedings before the Tribunal are not designed for judicial review enquiries as it would have required GLC to be made a party to the proceedings. Dr. Alexis's K.C in his attempt to invoke the judicial review jurisdiction of this court overlooks the fact that these proceedings are disciplinary in nature. In this context, the court's disciplinary jurisdiction is closely circumscribed by section 82 of the Supreme Court Act and section 37 of the LPA. Specifically, in this aspect of the court's disciplinary jurisdiction, those two statutes delimit the extent of the court's remit to that of considering the GLC's referral and determining whether, in all the circumstances, the attorney at law ought to be suspended or removed from the roll of attorneys.

[17] When further pressed on the questions before the Tribunal, King's Counsel submitted that, since Mr. Prime paid the balance due to Mr. Joseph within 24 hours of the GLC hearing, a reprimand would serve as an appropriate sanction. King's Counsel made the point as well that Mr. Joseph did not file any further evidence or submissions and as such one could assume that he was satisfied and wished no further steps to be taken against Mr. Prime. With due respect to learned King's counsel, the issue is not whether Mr. Joseph is interested in pursuing the matter before the Tribunal. The matter has been referred by the GLC to the Tribunal as a result of findings of a breach of the Code of Ethics. We are tasked with considering the referral in accordance with section 37(2) of the LPA.

[18] The Tribunal, having regard to all the evidence, is of the considered view that Mr. Prime's conduct in this matter amounts to serious professional misconduct. The law as to the conduct of counsel in matters regarding their client's funds is clear. In this regard we extract the following from the GLC's decision, which in our view, is an accurate replication of the present statutory requirements-

6. "The **West Indies Associated States Supreme Court** (Grenada) Act Cap. 336 provides:

"81.(1) Every person practicing as a solicitor, and whose name is enrolled as a barrister or solicitor, shall be deemed to be an officer of the Court.

82. Any two judges of the High Court may, for reasonable cause, suspend any barrister or solicitor from practising in Grenada during any period, or may order his or her name to be struck-off the Court Roll.

7. The Legal Profession Act 2011 as amended, section 33 provides:
33. (1) The rules contained in the Code of Ethics set out in Schedule III shall regulate the professional practice, etiquette, conduct and discipline of attorney-at-law.
- (2) A breach of the rules in —
- (a) Part A of the Code of Ethics may constitute professional misconduct;
- (b) Part B of the Code of Ethics shall constitute professional misconduct.
- (5) An attorney-at-law whose name is entered on the Roll shall be deemed to have notice of the provisions of the Code of Ethics.
54. (1) All monies received for, or on behalf of a client, by an attorney-at-law, shall be held in trust for that client, to be paid to the client, or as the client may direct.

SCHEDULE III
LEGAL PROFESSION CODE OF ETHICS

1. (1) An attorney-at-law shall in the pursuit of the practice of his profession comply with, and be subject to, this Code of Ethics.
- (2) These Rules shall not be construed as a denial of the existence of other duties and rules of professional conduct, which are in keeping with the traditions of the legal profession, though not specifically mentioned herein.
- (3) Where in any particular matter, explicit guidance does not exist, an attorney-at-law shall determine his conduct, by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system, and the legal profession.
2. (1) An attorney-at-law shall uphold, at all times, the standards set out in the Code of Ethics.
- (2) An attorney-at-law shall maintain his integrity and the honour and dignity of the legal profession and of his own standing as a member of it, and shall encourage other attorneys-at-law to act similarly, both in the practice of the profession and in their private lives, and shall refrain from conduct which is detrimental to the profession, or which may tend to discredit it:
11. Every attorney-at-law should bear in mind that the oath of office taken on his admission to practice is not a mere formality, but is a solemn undertaking to be strictly observed on his part.
64. An attorney-at-law shall not retain money he received for his client, longer than is absolutely necessary. (Council's emphasis)
68. In the performance of his duties, an attorney-at-law shall not act with inexcusable or undue delay, negligence or neglect. (Council's emphasis)

81. (1) In pecuniary matters an attorney at law shall be most punctual and diligent, and shall never mingle funds of others with his own, and he shall at all times be able to refund money he holds for others. (Council's emphasis)
82. (1) An attorney-at-law shall keep such accounts as clearly and accurately distinguish, the financial position between himself and his client, as and when required.
- (2) An attorney-at-law shall comply with such rules as may be made by the Council under section 56 of this Act; but nothing contained in Rules 81, and this rule shall deprive an attorney-at-law of any recourse or right, whether by way of lien, set-off, counter claim, charge or otherwise, against monies standing to the credit of a client's account, maintained by that attorney-at-law.
84. A breach by an attorney-at-law of any of the provisions contained in this Part, shall constitute professional misconduct, and an attorney-at-law who commits such a breach, is liable to any of the penalties which the Council, the Court or both are empowered to impose."

[19] The Tribunal's view, as found by the GLC, is that the delay in transferring the funds held by Mr. Prime was inordinate and inexcusable. The trust between client and counsel, while sacred and of paramount importance to the client, is also of immeasurable significance to the trust held by the public in the judicial process. Withholding or delay in paying client's funds not only breaches the client's faith in the court system but also breaches the trust placed by the public at large in the judiciary.

[20] Mr. Joseph's case explains the many difficulties, excuses and challenges that confronted him when he sought to obtain his funds in excess of 3 ½ years. In our opinion, none of the reasons presented by Mr. Prime in his case before the GLC and on his evidence before us offers a justifiable or acceptable explanation for the delay in paying his client's funds. He has breached the obligation to hold his client's funds for no longer than reasonably necessary. Mr. Prime, through counsel, made much of the fact that the funds have been paid in full to Mr. Joseph. Such a submission overlooks the fact that the disciplinary process is not primarily engaged

to compel compliance by counsel. Rather the process is designed to investigate whether counsel's conduct in all the circumstances comports with the ethical and other obligations of counsel as an officer of the court. Remedial actions like paying back the sums due will be taken into consideration but are not dispositive of whether counsel acted properly and whether counsel ought to be sanctioned.

[21] In the foregoing context, in addition to all the other circumstances, two matters strike us as particularly telling. Firstly, Mr. Prime knew of the pendency of the disciplinary proceedings before the GLC but yet waited until he appeared before the GLC to seek to take any steps to honor his obligations to his client. Indeed, what took him 31/2 years to do was able to be done in twenty-four (24) hours of the GLC's hearing. Secondly, Mr. Joseph was informed at some point that Mr. Prime or his office was having difficulties transferring the monies to his KeyBank National association account. Mr. Joseph then sent details to send the monies to his Citibank account. Even after doing so, delay ensued. Interestingly, Mr. Joseph indicates that when Mr. Prime eventually sent the balance of his funds to him on 12th August 2021, he sent the same to the KeyBank National Association account with no difficulty. This was the very account to which he was told that Mr. Prime could not or had difficulties sending the money in the first instance when it became due more than 3 years ago.

[22] The Tribunal finds that the charge of serious professional misconduct was made out before the GLC. While counsel's conduct was sufficiently repugnant and offensive to his oath and obligations of his office, we do not believe that the conduct is of such severity that it warrants his removal from the Roll of Attorneys. The Tribunal believes however that a sufficiently strong sanction should be imposed to reflect the severity of the ethical breach in this case. The sanction ought to send out a strong message to lawyers and to the public that the courts will not condone professional misconduct by its officers. The trust and faith reposed in the judiciary has been breached in this case. Hopefully the sanction imposed for this breach will go a long way in repairing the damage that has been done. The Tribunal is of the view that Mr. Prime's conduct is sufficiently egregious to warrant a suspension for a period of Six (6) months.

ORDER

[23] For the foregoing reasons, it is ordered and declared as follows:

- (1) The attorney-at-law's conduct amounts to serious professional misconduct.
- (2) The attorney-at-law, George W. Prime, is hereby suspended from the Roll of attorneys-at-law for a period of Six (6) months from today's date.
- (3) The Registrar of the court shall make the appropriate alteration to the Roll of attorneys-at-law and publish the appropriate notice in the Gazette in accordance with section 30 (1) of the LPA.

Raulston L. A. Glasgow
High Court Judge

Agnes Actie
High Court Judge

By the Court

Registrar