

JAMAICA

IN THE COURT OF APPEAL

MISCELLANEOUS APPEAL NO 4/2013

APPLICATION NO 150/2013

BETWEEN	AKIN ADARAMAJA	APPLICANT
AND	THE GENERAL LEGAL COUNCIL	RESPONDENT

Rudolph Francis instructed by Forsythe and Forsythe for the applicant

Mrs Sandra Minott-Phillips QC and Mrs Alexis Robinson instructed by Myers Fletcher and Gordon for the respondent

10 and 20 December 2013

IN CHAMBERS

LAWRENCE-BESWICK JA (Ag)

[1] On 2 November 2013, the Disciplinary Committee of the General Legal Council ordered that the name of Mr Akin Adaramaja, an attorney-at-law, be struck off the roll of attorneys-at-law entitled to practise in Jamaica and also that he make restitution of US\$47,066.32 and US\$1,732.93 with interest to Ms Elaine Francis, the complainant in this matter.

[2] On 14 November 2013, Mr Adaramaja filed a notice of appeal challenging that decision and by this application, also filed on that day, seeks a stay of execution of the orders of the committee.

Background

[3] Mr Adaramaja represented Ms Elaine Francis where she was the defendant in an action brought against her by her niece and nephew to enforce a contract to sell her house to them. Ms Francis was unsuccessful in her defence and also in her appeal of the judgment in that suit.

[4] The sale of the property was therefore concluded and the proceeds of the sale were sent to Mr Adaramaja. However, he did not give any of the proceeds to Ms Francis. He testified before the committee that Ms Francis had instructed him to deal only with her or with a named nephew, who had subsequently died, and he was therefore waiting for her to come herself to settle her account. Ms Francis is 82 years old and lives abroad.

[5] Ms Francis' niece, Ms Jacqueline Jervis, acting under a power of attorney from Ms Francis, contacted Mr Adaramaja to settle the account. However, he did not release any funds to her or to Ms Francis. The evidence from Mr Adaramaja was that he did not wish to make the payment to Ms Jervis in view of his initial instructions from Ms Francis to deal with her alone or the nephew, who had since died.

[6] Ms Jervis testified before the committee that after some conversations, Mr Adaramaja admitted to her that he had taken the money because his secretary had stolen \$6,000,000.00 from him and he was having financial problems. He agreed to repay the sum of J\$3,906,505.00 owed to Ms Francis, along with lost interest, in three installments, into an account in a New York bank. However, he made no payment and on 15 February 2013 Ms Jervis, by virtue of the power of attorney, filed a complaint at the General Legal Council on behalf of Ms Francis.

[7] The hearing of the complaint before the Disciplinary Committee was on 12 October 2013. Both Ms Francis and Ms Jervis attended, as well as the applicant. The order made was:

"Having regard to the foregoing, it is hereby ordered that:

- (1) Pursuant to s.12(4)(a) of the Legal Profession Act, the name of the Respondent, Akin Adaramaja is struck off the Roll of Attorneys-at-law entitled to practice [sic] in the Island of Jamaica.
- (2) Pursuant to s.12(4)(g) [sic] of the Legal Profession Act, by way of restitution the Respondent, Akin Adaramaja is [to] pay to the Complainant the sums of US\$47,066.32 and US\$1,732.93 together with interest accruing on the sum of US\$47,066.32 at the rate of 3 per centum per annum from the 9th December 2009 to the date of payment and interest accruing on the sum of US\$1,732.93 at the rate of 3 per centum per annum from the 12th October 2013 to the date of payment. The aforesaid sums inclusive of interest may be paid in Jamaican Dollars computed at the Bank of Jamaica's weighted average rate for selling United States Dollars in exchange for Jamaican Dollars prevailing on the date of payment.

- (3) The Respondent, Akin Adaramaja is also to pay costs to the Complainant in the sum of J\$40,000.00."

Submissions

[8] Counsel submitted on behalf of Mr Adaramaja that the stay of execution of the decision should be granted because the General Legal Council failed to properly consider all the material. It therefore came to an erroneous conclusion and had also erred in law. The submission continued that the committee had failed to consider a fundamental exhibit which would exonerate the applicant and that he has a "very good arguable case" because there is "strong evidence" to show that he could not have misled Ms Francis. Further, the orders were "manifestly harsh and excessive".

[9] Counsel also argued that unless the execution of the orders is stayed, Mr Adaramaja would face "absolute professional and financial ruin, loss of reputation, distress, loss and damages and would face other real and genuine hardship". The damage to the applicant would be too great to quantify if the stay were not granted.

[10] Further, counsel submitted that there are special circumstances, as contemplated in **Barker v Lavery** (1885) 14 QBD 769, which should cause the applicant to get a stay of execution. These circumstances are that he has ongoing matters in the various courts of Jamaica and his clients would be seriously prejudiced if he could not continue to represent them. He would also incur serious financial losses if he had to terminate their representation. His practice would be destroyed and he would be at risk of being unable to recover from the ruin in which he could find himself.

[11] Counsel urged that the General Legal Council would not be deprived of enjoying the fruits of its judgment as it is a body set up under statute to regulate the legal profession and its interest ought to be purely professional. As for Mr Adaramaja himself, he did not pose any danger to the public and therefore the stay should be granted.

Analysis and discussion

[12] The Court of Appeal Rules empower a single judge of the court to stay the execution of any judgment or order against which an appeal has been made, pending the determination of the appeal (rule 2.11(1)(b)). The principles guiding the exercise of the judge's discretion in that regard have been examined by the courts in several authorities: **Flowers Foliage and Plants of Jamaica Ltd et al v Jamaica Citizens Bank Limited** (SCCA No 42/1997, delivered 29 September 1997), **Beverley Levy v Ken Sales Ltd** (SCCA No 81/2005, delivered 22 February 2007) and **Hammond Suddard Solicitors v Agrichem International Holdings Ltd** [2001] EWCA Civ 2065.

[13] The principles governing the grant of a stay of execution can be distilled from the several authorities as being (i) that the court should consider where the interests of justice lie and (ii) that the respondent should not be unduly deprived of the fruits of his successful litigation. In determining where the interests of justice lie, consideration must be given to:

- (a) the applicant's prospect of success in the pending appeal;

- (b) the real risk of injustice to one or both parties in recovering or enforcing the judgment at the determination of the appeal; and
- (c) the financial hardship to be suffered by the applicant if the judgment is enforced.

Prospect of success

[14] The substance of the appeal of the applicant is that the committee drew the wrong conclusions from the evidence and that there was no evidence of Mr Adaramaja's intention to deprive Ms Francis of the proceeds of the sale.

[15] However, Mr Adaramaja has not denied being in possession of Ms Francis' funds from 2009 until today, nor has he denied his failure to properly account for the proceeds. Indeed the evidence is that he admitted to holding her funds in an escrow account and that she can "expect the funds". His explanation for the manner in which he conducted the accounting process was that he wished to deal directly with her in accounting and paying the funds. This explanation is not likely to contribute to his prospect of a successful appeal in view of the fact that Ms Francis had travelled from New York to give evidence in the presence of Mr Adaramaja and there is no evidence of him taking advantage of her presence to deal directly with her, as had been his stated intention. Further, Mr Adaramaja has intimated that Ms Francis has failed to pay him for the work which he has done on her behalf in several courts in Jamaica. The evidence of Ms Francis is that she expected him to deduct the amounts owed to him and to return to her the balance.

[16] It seems to me therefore that without any challenge to the truth of the allegations that he collected funds which belonged to Ms Francis and that he has not paid them to her to date, some four years later, then the prospect of success of an appeal of the decision is small.

Risk of injustice

[17] If the execution is not stayed and the appeal is subsequently determined in favour of Mr Adamaraja, the injustice to him would be great. He would have stopped practising his profession and the reasonable expectation would be that even if he could re-open his practice on his exoneration it would only be with extreme difficulty. The execution of the order could result in his ruin and also much distress to his several clients and staff.

[18] On the other hand, if the execution were stayed, the 82 year old complainant would be deprived of the proceeds of the sale which have been in the control of the applicant for four years. Her house was sold. She had maintained, unsuccessfully, that the sale had been against her will and had been as a result of undue influence.

[19] The situation therefore, is that Ms Francis had unsuccessfully resisted the sale of her house and is now being deprived of the proceeds of its sale. She is therefore without the house and without the proceeds. At age 82, that hardship which Ms Francis

is suffering may well be considered to be an injustice equal to the potential injustice which the applicant may suffer in the damage to his practice.

Financial hardship of the applicant

[20] There is no challenge to Mr Adamaraja's assertion that the financial hardship to him would be great and that his clients and staff would be affected. His law practice would be severely affected.

[21] In the oft cited case of **Linotype-Hell Finance Ltd v Baker** [1992] 4 All ER 887, the Court of Appeal held that:

“[I]f a defendant can say that without a stay of execution he will be ruined and that he has an appeal which has some prospect of success, that is a legitimate ground for granting a stay of execution.”
(Staughton LJ at page 888)

However, his potential ruin is not the only factor to be considered in an application for a stay of execution of the judgment. Indeed in **Jamalco (Clarendon Alumina Works) v Lunette Dennie** [2010] JMCA App 25, this court recognized financial ruin as being but one of the factors for consideration.

There the learned judge of appeal concluded:

“[f]inancial ruin or inability to repay the judgment sum on a successful appeal, after enforcement, are but factors for consideration in seeking to determine where the justice of the particular case lies.” (para [42])

Fruits of litigation

[22] In its decision, the Disciplinary Committee indicated that there was evidence that on 9 December 2009, the applicant had received a cheque in the amount of \$3,906,505.00 from the sale of Ms Francis' property. This means that Ms Francis, the complainant, who is 82 years old, has been deprived of the fruits of the sale of her property from December 2009, some four years ago. Mr Adaramaja did not dispute that evidence.

Conclusion

[23] This 82 year old litigant is being deprived of the fruits of her successful litigation before the Disciplinary Committee. The financial hardship to be suffered by the applicant if he cannot practise his profession until the determination of the appeal is great. The real risk of injustice to one or both parties in recovering or enforcing the judgment at the determination of the appeal is fairly evenly balanced. However, the prospect of the applicant's success on appeal is dim.

[24] Ms Francis has waited for four years for her money. Mr Adaramaja has acknowledged that he has her funds and that he has not accounted for them. He has not proffered any credible reason for neither paying her nor accounting to her for the funds. In my view therefore, the interests of justice lie in not staying the execution of the orders.

[25] In the circumstances of this case the application for a stay of execution of the judgment is refused. Costs are awarded to the respondent to be agreed or taxed.