

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 05/08

**BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A. (Ag.)**

BETWEEN EARL LEVY APPELLANTS
TRIDENT VILLAS & HOTEL LTD

AND KEN SALES & MARKETING LTD RESPONDENT

**Maurice Manning, instructed by Nunes, Scholefield, DeLeon & Co.
for Appellants**

Miss Gillian Mullings, instructed by Carol Davis for Respondent

June 24, 27 & July 31, 2008

PANTON, P.

1. This appeal is from the decision of Marva McIntosh, J., Senior Puisne Judge, that the appellants had no locus standi in respect of their application for an order that a bill of fees rendered by Ms. Carol Davis, attorney-at-law, be referred to a taxing officer for taxation.
2. On December 4, 2003, Pusey, J. (Ag) in suit C.L. K-009 of 2001, the instant matter, made an order that the findings in the report completed by the Registrar of the Supreme Court pursuant to an earlier order on a summons for sale of certain properties, be served on Earl Levy the defendant in the suit. He

also ordered that the properties be put up for sale, and that the attorney-at-law for Ken Sales & Marketing would have carriage of sale. The remuneration of the attorney-at-law is to be deducted from the proceeds of sale.

3. It is in that context that Ms. Carol Davis by letter dated October 11, 2006, presented a revised vendor's statement of account to Mr. Levy. That account shows a sum of US\$ 78,750.00 as attorney's fees on transfer, inclusive of attorney fees on Court applications relating to the transfer.

4. The application before Marva McIntosh, J., in the very last line, stated that it was being made pursuant to section 22 of the Legal Profession Act. This has been seized on by Miss Gillian Mullings for the respondent as making it impossible for the Court to deal with the matter, seeing that a claim under this section had to be in the form of a fixed date claim form. Indeed, Miss Mullings agreed that her objection was really one of form. However, she contended that Ms. Davis had to be made a party to the proceedings if the claim was being pursued under the Legal Profession Act. Otherwise, she said, the proceedings would have to be under Part 55 of the Civil Procedure Rules.

5. Mr. Maurice Manning for the appellants has contended that the provision in the Legal Profession Act was designed to protect persons who felt that the fees charged by an attorney-at-law were too high. Part 55 of the CPR, he said, was also designed to guard against mischief of this nature.

6. In my view, the respondent is making a mountain out of a mole hill. The Order of Pusey, J. provided for the payment of the attorneys-at-law with carriage of sale, the auctioneer, and all other costs, charges and expenses related to or as a result of the sale, from the proceeds of sale. The order also provided for the balance of the proceeds of sale to be paid into Court pending further order of the Court. Finally, it provided that "there be liberty to apply".

7. In the circumstances, there being an application by a party to the proceedings, the Court cannot properly say that there is no locus standi. The fact that there has been a reference to the Legal Profession Act cannot be allowed to mask the substance of the matter, that is, that one party has what he perceives to be a problem and wishes resolution from the Court. The appeal therefore ought to succeed.

COOKE, J.A.

1. In July, 2002 the respondent obtained judgment against the 1st appellant in the sum of J\$115,835,616.44 plus interest. This debt, not having been satisfied, the respondent, on the 3rd December, 2007 successfully moved the court below that there should be the sale of certain lands, the property of the 1st appellant. By order dated the 10th December, 2004, Ms. Carol Davis was accorded carriage of sale of the properties to be sold. Perhaps it should be

noted that in the litigation between the respondent and the 1st appellant Ms. Davis was the attorney-at-law who represented the respondent. The sales agreement which was executed designates her as the "VENDOR'S ATTORNEY-AT-LAW". Thus in the sales transaction Ms. Davis represents her erstwhile adversary.

2. The properties, subject to the court order for sale, were bought for US\$3,150,000.00. In what is headed "Revised Vendor's Statement of Account" dated October 11, 2006 which Ms. Davis sent to the 1st appellant there appears this item:

"Attorney's Fees on Transfer US\$78,750*
(Inclusive of Attorney fees on
Court applications relating to the transfer)."

Subsequent to this by letter dated October 26, 2006 Ms. Davis wrote to the purchaser's attorney-at-law Messrs Hart Muirhead and Fatta. The following extract from that letter is excerpted hereunder:

"You will see from the revised account that following concerns raised by you, I have reduced the amount claimed as Attorneys fees on the transfer, to US\$78,750 + GCT. Essentially the new figure amount to 2 1/2 % of purchase price, and as stated includes the several applications to the Court that were required in order to facilitate the conveyance. Please be advised that this reduction in fees is a concession made on a without prejudice basis. I do not consider that a 3% charge is excessive in the context of this particular conveyance which was very difficult and which required working out not only with Title's Office, but with numerous court applications as aforesaid. If (sic) the event that any of your clients

or anyone else chooses to take issue with the level of my fees, I will withdraw my concession and revert to the fees originally claimed. The concession is made entirely in a spirit of compromise and to reduce contention is [sic] this already fractious matter."

3. The first appellant felt aggrieved that Ms. Davis' fees were "unfair and unreasonable". By "Notice of Application for Court Orders" filed July 18, 2007, he sought the following orders that:

- "(i) the bill of fees contained in the Revised Vendor's Statement of Account of 11th October 2006 ("the Bill") rendered by Ms Carol Davis, Attorney-at-Law, be referred to a taxing officer for taxation;
- (ii) such further and other order(s) and/or direction(s) as to this Honourable Court seem(s) just."

This application was "made pursuant to Section 22 of the Legal Profession Act." On 21st January, 2008 the court below in respect of the 1st appellant's application ordered as follows:

- "(1) Notice of Application for Court Orders is refused.
- (2) Leave to appeal granted."

It is from the refusal that this appeal now lies.

4. There is no written judgment from the court below. However, it would seem to be agreed that the learned trial judge who heard the application was of the view that the then applicant (appellant herein) had no locus standi. I assume that the submissions advanced by Miss Mullings in this court are similar

to those advocated in the court below. I will only concern myself with the corrections of the submission that Section 22 of the Legal Profession Act cannot avail the appellant. A resolution of this issue will be decisive of this appeal.

5. I now turn to the relevant sections of the Legal Profession Act. Section 22 (2) is reproduced to make the crucial Section 22 (3) more readily intelligible.

Section 22 (2) states:

“(2) Subject to the provisions of this Part, any party chargeable with an attorney’s bill of fees may refer it to the taxing officer for taxation within one month after the date on which the bill was served on him.”

Section 22 (3) is as follows:

“(3) If application is not made within the period of one month aforesaid a reference for taxation may be ordered by the Court either on the application of the attorney or on the application of the party chargeable with the fees, and may be ordered with such directions and subject to such conditions as the Court thinks fit.”

The crux of this matter is whether or not the sum of US\$78,750.00 are fees in respect of which the 1st appellant is “chargeable”. As a working definition (certainly not intended to be exhaustive) a party becomes chargeable when such party has an obligation to pay fees in connection with legal work done on its behalf. My first observation is that the agreement for sale in respect of the properties named Ms. Davis as the 1st appellant’s attorney-at-law. It would therefore follow that in all respects pertaining to the sale of the properties the 1st appellant was the client of Ms. Davis. Accordingly, “court applications relating to

the transfer" would have been done by Ms. Davis on behalf of her client/vendor (the 1st appellant) to effectuate the sale. I do not think that the fact that Ms. Davis deducted her fees from the purchase money makes any difference. She deducted her fees from monies which belonged to the 1st appellant. This money would belong to the 1st appellant pending further order of the court. If interest accrued to the purchase monies pending further order of that court that interest would be to the benefit of the 1st appellant. . It is therefore my view that the 1st appellant is a party chargeable with the fees within Section 22 (3) of the Legal Profession Act. He had an obligation to pay fees in connection with the legal work performed by Ms. Davis on his behalf in connection with the sale of his properties.

6. It is my view that the appellant did have locus standi in respect of the application filed on July 18, 2007. I would allow the appeal and remit the application to the court below for a hearing on its merits. The appellant should have his costs which should be paid out of the purchase price.

DUKHARAN, J.A. (Ag.)

I agree.

PANTON, P.

ORDER

Appeal allowed. Matter remitted to the Supreme Court for hearing on its merits.

Costs to the appellants to be paid from the proceeds of sale.