

JAMAICA

IN THE COURT OF APPEAL

APPLICATION NO 75/2013

**BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE DUKHARAN JA
THE HON MS JUSTICE LAWRENCE-BESWICK JA (AG)**

**BETWEEN JENNIFER MESSADO APPLICANT
AND THE GENERAL LEGAL COUNCIL RESPONDENT**

Nigel Jones and Miss Kashina Moore instructed by Nigel Jones & Co for the applicant

Mrs Sandra Minott-Phillips QC instructed by Myers Fletcher & Gordon for the respondent

11, 14 November 2013 and 11 July 2014

PANTON P

[1] We heard this application on 11 November 2013 and refused it on 14 November 2013, with an order for the applicant to pay the respondent's costs which should be taxed, if not agreed. These are the reasons for our decision.

[2] The applicant herein is the respondent in proceedings that are being conducted by the disciplinary committee of the General Legal Council. These proceedings came

about as a result of a request made by Mr Hugh Scott that the applicant be required to answer allegations contained in an affidavit filed by him. In that affidavit, Mr Scott states that he is the executive chairman of KES Development Company Limited ('KES'), which is aggrieved by the manner in which the applicant has done the work for which she was retained.

[3] Since the filing of the complaint, KES has been put into liquidation. Two successive liquidators consented to the continuation of the proceedings in the name of the company against the applicant. However, the first liquidator resigned and the second has died. There is no liquidator at the moment. In addition to this, on 16 September 2010, Mr Scott was adjudged bankrupt and the Trustee in Bankruptcy appointed to administer his estate.

[4] The applicant wished that the complaint by KES be stayed until another liquidator has been appointed and has consented to the continuation of the proceedings. The applicant's attorney-at-law at the disciplinary hearing applied for a stay of the disciplinary hearing but, on 6 April 2013, the disciplinary committee refused the application. The applicant wished to challenge this decision by the disciplinary committee, but she said that her attorney-at-law found herself unable to assist her with the process. Several other attorneys-at-law were approached to assist but they too declined, "for one reason or another particularly because of their connection", said the applicant. It is not clear what "connection" is being referred to. Eventually, on 8 July 2013, Mr Nigel Jones agreed to represent the applicant.

[5] The intervention of Mr Jones resulted in the filing of a notice of application on 12 July 2013 seeking:

- 1) the extension of time to 11 July 2013 for the filing of a notice of appeal;
- 2) permission, if required, to appeal the decision of the disciplinary committee; and
- 3) a stay of the hearing of the complaint.

[6] The stated grounds for the application were that the disciplinary committee had erred in its ruling to proceed with the hearing while there was no liquidator in place, and the applicant, though desirous of challenging the committee's decision, was unable to do so due to her inability to secure legal representation. The applicant claimed that the delay has not been inordinate so as to cause the respondent any prejudice, and also that if there was no stay she may suffer irreparable harm.

[7] In his submissions, Mr Jones stressed the main reason given by the applicant for the delay in filing the notice of appeal – that is, the failure to secure legal representation. He said it was a reasonable excuse as the delay was not intentional. This court, he submitted, focuses on ensuring that justice is done. In support of this admitted posture, he relied on decisions such as **Strachan v The Gleaner Co Ltd and Anor** (Motion No 12/1999 – delivered 6 December 1999), **CVM Television Ltd v Fabian Tewarie** (SCCA No 46/2003 – delivered 11 May 2005), and **Christopher v Nicholson** [2011] JMCA App 23.

[8] As regards the merits of the proposed appeal, Mr Jones reminded the court that the wrongs were allegedly done in relation to a company that is now in liquidation, and there was no liquidator in place. For the complaint to remain active, he submitted, there had to be someone duly authorized by the company to sanction the proceedings. There being no liquidator, and the directors not having the right to act in relation to the company, it was arguable whether the proceedings could be properly continued. The company in its present status is incompetent to pursue the complaint. The prospect of success in the appeal was good, he said. Mr Jones added that Mr Scott himself having been declared a bankrupt, he was not competent to maintain the complaint, neither on his own behalf nor on behalf of the company.

[9] Mrs Minott-Phillips expressed concern at the fact that no formal order of the disciplinary committee had been filed, and that care ought to be taken to ensure that the court is not saddled with an appeal on every point that may arise during the hearing of a matter before the disciplinary committee. She submitted that there was no merit in any prospective appeal. The liquidators have ratified the proceedings, and death has not put an end to the consent that had been given, she said. Even if KES wished to withdraw from the proceedings, that would be irrelevant as it is the General Legal Council that would decide whether the matter should proceed. Queen's Counsel urged the court not to exercise its discretion as that would be a judicial waste of time.

[10] We were in no doubt that the submissions in support of this application were without merit, notwithstanding the usual robust persuasiveness of Mr Jones in appellate proceedings. Mrs Minott-Phillips was correct in submitting that the matter is now out of

the hands of KES as well as Mr Scott. Their declining fortunes since the commencement of the complaint have no bearing on what had transpired before, and which gave rise to the making of the complaint. The allegations are already on the books so to speak. They are serious enough to warrant a hearing, and it is the statutory duty of the General Legal Council to facilitate the process and to bring the matter to a resolution. That process ought not to be interrupted with the frequency that has been demonstrated in recent times. It is very important that complaints against attorneys-at-law be dealt with as speedily as possible. Efforts to frustrate the process should be discouraged. We were satisfied that this was one such effort.

[11] The General Legal Council gets its authority from the Legal Profession Act. Section 12(1) thereof states:

“Any person alleging himself aggrieved by an act of professional misconduct (including any default) committed by an attorney may apply to the Committee to require the attorney to answer allegations contained in an affidavit made by such person ...”

The “Committee” is the Disciplinary Committee appointed under section 11 of the Act. The proceedings are conducted in accordance with section 14 of the Act which refers to the rules contained in the Fourth Schedule. These proceedings are not necessarily affected by the liquidation of a company, or the bankruptcy of an individual. There is no basis for the proceedings to be delayed; hence our refusal to grant the requests in the notice of application for court orders.