

# **JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CIVIL APPEAL NO. 91/2005**

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

**BETWEEN: ELSIE TAYLOR APPELLANT**

**AND: GENERAL LEGAL COUNCIL RESPONDENT**

**A. S. Huntley, instructed by Dr. Diana T. Harrison, for the appellant.**

**W. John Vassell, Q.C., and Miss Sheena Stubbs, instructed by DunnCox,  
for the respondent.**

**June 16, December 20, 2006, and July 13, 2007**

**PANTON, P.**

1. On December 20, 2006, we dismissed the appeal herein and awarded costs to the respondent, to be agreed or taxed. We also ordered that the hearing of the complaint should proceed with despatch. At that time, we promised to put our reasons in writing. We now fulfil that promise.

2. The appeal arose from a decision of the Disciplinary Committee appointed under the Legal Profession Act to adjudicate on a complaint made by Mr. Patrick Brooks, attorney-at-law, against the appellant. The decision of the Committee

dated June 20, 2005, in ruling on a preliminary objection, was that Mr. Brooks was a proper complainant although he:

- (a) had suffered no personal loss; and
- (b) had been elevated to the position of Puisne Judge.

3. The complaint against the appellant was laid as long ago as July 30, 1998. Mr. Brooks, who is now a judge of the Supreme Court, but was then a partner in a law firm, filed an affidavit in support of his complaint. In his affidavit, he stated that in 1992 he acted on behalf of the purchasers, Patrick and Diana Harrison, in a land transaction whereas the appellant acted on behalf of the vendor. The complainant alleged that the appellant sent him the draft agreement for sale for execution by the purchasers. The agreement was amended and duly executed and returned to the appellant. The specified deposit was also sent to the appellant. By letter dated 5<sup>th</sup> May, 1992, the appellant informed the complainant that she was in possession of an instrument of transfer that had been signed by the vendor. By the said letter, the appellant sent to the complainant a photo-copy of the agreement for sale signed on behalf of the vendor by Mel Brown and Co. (who are attorneys-at-law) as agents for the vendor.

4. There has been a failure to complete the sale. Consequently, the complainant "caused a suit to be filed against the Vendor for specific

performance of the Agreement for Sale” (para. 10 of the affidavit; page 3 of the record). The vendor has refuted the agreement for sale on the basis that his signature was unauthorized. Having had discussions with the appellant and another attorney-at-law, Mr. A. Freddie Brown (now deceased), the complainant formed the view that he had been misled by the appellant. It is that which led to the complaint being made to the Disciplinary Committee.

5. The grounds of appeal that were filed and argued, read:

- “(a) That the Tribunal had no jurisdiction to entertain the matter as Patrick Brooks, the applicant was not a person aggrieved or a person who could possibly describe himself as aggrieved. He did not describe himself as aggrieved and he never identified the source of his alleged grievance. Further, his complaint is governed by the Supreme Court Civil Appeal 52/99 Barrington Earl Frankson v General Legal Council ex parte Basil Whitter (at the instance of Monica Whitter) in that while having suffered personally no loss he is instituting the proceedings because someone he was dealing with suffered loss.
- (b) That there is no nexus between Patrick Brooks and the Andersons because the legal firm of Nunes Scholefield and Deleon & Co. represented the Andersons and Mr. Brooks was merely an assignee to deal with the matter. Therefore, the legal personality representing the Andersons is Nunes Scholefield and Deleon & Co. and not

Mr. Brooks and there is no indication by Mr. Brooks that he was instituting the proceedings on behalf of the firm”.

6. In his submissions to us, Mr. Huntley said that the complaint could not be entertained by the Disciplinary Committee without there being an allegation of someone being aggrieved. Such a person, he said, must have either suffered damage or been entitled to restitution. In view of Mr. Brooks’ failure to aver in his affidavit that he was aggrieved, the complaint could not “get off the ground”. He submitted further that if any proceedings were to be brought by persons other than the Registrar, such persons had to be the Andersons. The claim by Mr. Brooks that he was misled would have resulted in loss or damage to the Andersons, not Mr. Brooks. Hence, argued Mr. Huntley, Mr. Brooks had no locus standi in the instant case. He continued that the attorney was providing services on behalf of his client; if he was misled and the client suffers as a result, that grievance overcomes the alleged grievance of the attorney. The client’s grievance, he said, is the priority.

7. Mr. John Vassell, Q.C., responded that the Disciplinary Committee was correct in assuming jurisdiction as the words “person aggrieved” should be given a liberal interpretation which enabled rather than restricted access to the hearing before a statutory tribunal. No financial loss need be shown, he submitted, as the question was whether there had been misconduct on the part of the

appellant in the context of what had happened in her dealings with the complainant.

8. In support of the argument that the complainant had no locus standi, the appellant relied on the majority decision in the case **Frankson v The General Legal Council** (SCCA No.52/99) delivered on March 2, 2004. In that case, this Court by majority held that the son of a client of the attorney had no standing in filing the complaint on behalf of his mother, although he had been intimately involved in the transactions between his mother and the attorney. However, since we gave our decision in the instant case, we have noted that the Privy Council has agreed with the minority judgment in the **Frankson** case. The Privy Council has confirmed by its judgment that a complainant in proceedings under section 12 of the Legal Profession Act "need not be one who has personally suffered". This decision has clearly put to rest the appellant's contention that an attorney-at-law who has conduct of a matter cannot, if misled by the other party's attorney-at-law, make a complaint to the Disciplinary Committee. The Privy Council decision has confirmed our view that Mr. Brooks, although he has not personally suffered loss, had a clear right to make the complaint on the basis of what he has sworn transpired between him and the appellant in respect of the transaction involving the Andersons. It will be for the Disciplinary Committee to determine whether the complaint is proven.

9. The second ground of appeal also challenged Mr. Brooks' standing as a complainant. According to that ground, Mr. Brooks was not the attorney for the Andersons, rather, Nunes, Scholefield, DeLeon & Co. were the attorneys retained. This ground is clearly without merit as Mr. Brooks was not a mere busybody. He described himself in his affidavit as "a partner of the firm of Messrs Nunes, Scholefield, DeLeon & Co.", and as acting on behalf of the purchasers through his firm. There has been no rebuttal of that fact, and so there is no room for argument on the point. There has also been the suggestion that Mr. Brooks, having been elevated to the position of a Judge of the Supreme Court was no longer in a position to be a proper complainant. By some miracle, it seems, his elevation would have erased his status as a complainant in a matter before the Disciplinary Committee. Happily, this idea was not pursued with any vigour before us. The appellant and her legal advisers would not have been unaware of the fact that section 12(2) of the Legal Profession Act provides thus:

"In any matter or hearing before a court a Judge, where he considers that any act referred to in... subsection (1) has been committed by an attorney, may make or cause the Registrar to make an application to the Committee in respect of the attorney under that subsection".

Subsection (1), it will be recalled, provides for the making of an application to the Committee for an attorney to answer allegations of misconduct in a professional respect made by any person alleging himself aggrieved by such misconduct. It follows that a Judge has the authority to make a complaint, so

the elevation of an attorney to Judgeship is by no means a bar to the pursuit of a complaint against another attorney.

10. In view of the reasons that I have stated above, I agreed with my learned brothers that this appeal was wholly without merit, and therefore had to be dismissed.

**COOKE, J.A.**

I have read in draft the judgment of Panton, J.A. I agree with the reasons and conclusions therein and have nothing further to add.

**MARSH, J.A. (Ag)**

This is an appeal from a ruling of The Disciplinary Committee of the General Legal Council delivered on June 20, 2005.

The Notice of Appeal filed on August 4, 2005, indicates that the details of the Order appealed against are:

- (i) that Patrick Brooks is a proper person to lay a complaint against the defendant although he suffered no loss.
- (ii) That it is not against Public Policy for Patrick Brooks to maintain the complaint notwithstanding his elevation as Judge of the Supreme Court.
- (iii) The affidavit of Patrick Brooks alleges a possible loss by the Andersons and no loss by Patrick Brooks.
- (iv) That the matter is maintainable although Patrick Brooks has not stated that he is aggrieved nor identified the source of his grievance."

The Grounds of Appeal are as follows:

"(a) that the Tribunal had no jurisdiction to entertain the matter as Patrick Brooks, the appellant, was not a person aggrieved or a person who could possibly describe himself as aggrieved having suffered personally no loss, he is instituting the proceedings because someone he was dealing with suffered loss.



(b) that there is no nexus between Patrick Brooks and the Andersons because the legal firm of Nunes, Scholefield and Deleon and Co. represented the Andersons and Mr. Brooks was merely an assignee to deal with the matter and there was no indication by Mr. Brooks that he was instituting the proceedings on behalf of the firm."

Consequently, the Court is being asked to find:

- "(a) That the panel had no jurisdiction to entertain the matter.
- (b) That the order entered against the defendant be set aside.
- (c) That the Appellant be allowed costs of the appeal and of the costs below to be taxed or agreed."

Mr. Huntley for the Appellant submitted that the complainant Patrick Brooks was not a "person aggrieved" and therefore was unable to institute proceedings against the Appellant "under the first portion" of Section 12(1) of the Legal Profession Act. The persons aggrieved were Patrick and Diana Anderson. Patrick Brooks could not be "a person aggrieved" as he had suffered no loss. The word "aggrieve" according to the dictionary definition is meant "to cause pain, to have a grievance, to bear heavily upon, to oppress." Mr. Huntley argued that no person can

institute proceedings under Section. 12(1) of the Legal Profession Act without alleging himself "aggrieved". He said that section 12(4)(a)(b)(c) and Section 5 of the said Act stated unmistakably who qualified to be truly regarded as "aggrieved" within the meaning of the Act - the person entitled to restitution and/or the person who has suffered damage. Reliance was placed on the judgment of Downer, J.A. in S.C.C.A. 52/99,

***Barrington Earl Frankson v General Legal Council*** where he said:

"The wording of section 12(1)(a) (of the Act) suggests that professional misconduct (including any default) must relate to such person who has retained the attorney. Section 12(1) was drafted to incorporate the use of the reflexive pronoun "himself" and the phrase "such person" further emphasizes that it is the person aggrieved who must swear to the originating affidavit.

In this matter, Patrick Brooks grieves not for himself but for the Andersons and should have allowed them to have initiated proceedings."

Mr. Huntley further submitted that since filing this complaint, Patrick Brooks had become Mr. Justice Brooks, and the public interest requires that he ceases to be legally permitted to continue this matter.

Mr. W. John Vassell, Q.C., in his submissions, countered that the decision was correct for the reasons given by the Committee. The Committee was entitled to approach the determination of the preliminary point by an assumption that the Appellant misled the complainant in the many ways identified by the complainant in his affidavit. The question before the Committee was essentially "assuming there was the

professional misconduct alleged," was the complainant a person "aggrieved" within the meaning of the Act?

He relied on a number of cases in which he contended that the words "person aggrieved" or similar words appearing in statutes have been liberally construed, enabling rather than restricting access to a hearing before a statutory tribunal - **Arsenal Football Club v Ende** (1979) A.C. 1 **Reg. v I.R.C. Exp. Federation of Self Employed** (1982) L.R. **Cook v Sutherland B.C.** (1990) 1WLR **All General of the Gambia v Pierre Sarr N Jie** (1961) A.C. 617. Mr. Vassell quoted a passage from Denning L.J. in the last mentioned case which said:

"The words "persons aggrieved" are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course a mere busy body who is interfering in things which do not concern him, but they do include a person who has genuine grievance..."

Is Patrick Brooks properly to be considered "a person aggrieved?" A look at the complaint filed by him relates to "conduct unbecoming [of] her profession" on the part of Elsie A. Taylor in her capacity of Attorney-at-Law. He has outlined in his affidavit of July 30, 1998, allegations of several acts and utterances, accompanied by documentary evidence which "misled me and my clients as to the execution of an Agreement for Sale on behalf of the Vendor."

The appellant relied on the majority decision in the case of **Frankson v the General Legal Council** (S.C.C.A) no 52/99 to support his

argument that Patrick Brooks, having himself suffered no loss, was not a person aggrieved as required under Section 12(1) of the Legal Profession Act and was not a proper complainant. It should be noted that since the majority decision was given in that case, the Privy Council has indicated in its judgment in **General Legal Council ex parte Basil Whitter (at the instance of Monica Whitter v Barrington Earl Frankson)** Privy Council Appeal No. 8/2005 that a complainant under section 12 of the Legal Profession Act may be an agent. Their Lordships considered that the view that only Monica Whitter could swear to the affidavit, and not Basil Whitter on her behalf, was "too narrow a view of the statute and that the application was properly made."

The Privy Council has therefore confirmed by its decision that under Section 12 of the Legal Profession Act a complainant may be one who has not suffered personally. The appellant's contention that Patrick Brooks could not complain to the Disciplinary Committee in the instant matter has been dealt a mortal blow by the decision of the Privy Council.

Mr. Brooks though not personally suffering loss, was entitled to initiate the complaint on the allegations deposed to in his affidavit, relative to the appellant's conduct in their dealings as an attorney in the transaction involving the sale of land to his clients -the Andersons.

The second salvo fired by the appellant challenged Mr. Brooks' standing as a complainant. Mr. Brooks it was contended by the

appellant, was not the Andersons' attorney, he being "a partner of the firm of "Nunes Schofield, Deleon and Co. as he described himself in the affidavit. The Andersons were represented by the firm, not by Mr. Brooks. It is clear that Mr. Brooks was not " a mere busy body"... but a person who had a genuine grievance. He stood in the shoes of the firm.

This ground is eminently without merit.

It was also urged that the complaint against the appellant should be dismissed at this time because Mr. Brooks has now assumed the position of a judge of the Supreme Court. This ground was urged with a marked lack of conviction. Section 12(2) of the Legal Profession Act provides that a judge may make or cause the Registrar to make "an application to the Committee in respect of the attorney..." A judge therefore has a statutory authority to make a complaint. Mr. Brooks' elevation is therefore no bar to the complaint being continued against the appellant.

The appeal was wholly lacking in merit and so was dismissed. The hearing of the complaint should proceed with dispatch as much time has elapsed since the complaint was first made.

Costs of the appeal are to be respondent's to be agreed or taxed.

**PANTON, P.**

**ORDER:**

The appeal is dismissed. Costs to the respondent to be agreed or taxed.

The hearing of the complaint is to proceed with dispatch.