JAMAICA

IN THE COURT OF APPEAL

MISCELLANEOUS APPEAL NO COA2019MS00011

APPLICATION NO COA2023APP00072

BETWEEN	**DONALD GITTENS**	**APPELLANT**
AND	**GENERAL LEGAL COUNCIL**	**RESPONDENT**

Seymour Stewart for the applicant

Miss Samantha Grant and Miss Allyson Mitchell instructed by DunnCox for the respondent

20 October 2023

IN CHAMBERS (BY TELECONFERENCE)

V HARRIS JA

[1] This is an application by Mr Donald Gittens ('the applicant') for an extension of time to file skeleton arguments and chronology of events, which is supported by a declaration from the applicant ('the application'). The applicant, who is an attorney-at-law, is appealing the decision of the Disciplinary Committee of the General Legal Council ('the respondent') given on 30 October 2019. By that decision, he was found guilty of professional misconduct as per Canon VIII(d), in that he breached Canons I(b) and IV(r) of the Legal Profession (Canons of Professional Ethics) Rules. Accordingly, on 20 November 2019, the respondent imposed a sanction of a reprimand and costs of $50,000.00, payable to the respondent.

[2] The applicant filed his notice of appeal on 17 December 2019, which set out 12 grounds of appeal. On 23 December 2019, the registrar wrote to the respondent, advising that an appeal had been filed in the matter and requesting copies of certain documents

that were within its custody. The attorneys-at-law for the respondent wrote to the registrar on 22 January 2020 advising that the record of appeal was being prepared for delivery to the court.

[3] The record of appeal was subsequently filed on 31 March 2020, and it was served on the applicant on 4 April 2020. It is noted that the registrar did not issue any notice to the parties on receipt of the record of appeal, in keeping with rule 2.5(1)(c) of the Court of Appeal Rules ('CAR'). The notice was eventually issued to the parties on 30 November 2022 (approximately two years and eight months after the record of appeal was filed). In accordance with rules 2.6(1)(a) and 2.6(5) of the CAR, the notice advised the applicant, among other things, that he was required to file and serve his skeleton submissions and written chronology of events within 21 days of the receipt of the registrar's notice. The applicant, however, failed to comply.

[4] The matter was referred to a single judge of this court, who, on 4 January 2023, ordered that it be set for case management conference on 14 March 2023, although the applicant was non-compliant with the CAR. She also directed that the applicant file and serve skeleton arguments and chronology of events before that date. On 14 March 2023 (the date that the matter was set down for the first case management conference), the applicant filed electronically the application for extension of time to file skeleton arguments and chronology of events, along with his supporting declaration, skeleton arguments and chronology of events. At that case management conference, the matter was adjourned to 6 June 2023 for the respondent to be served with those filed documents.

[5] The applicant subsequently filed an amended notice of application for an extension of time to file skeleton arguments and chronology of events on 31 May 2023 ('the amended application'). On 6 June 2023, the case management conference was further adjourned to 4 July 2023, and orders were made for the declaration in support of the application to be served on the respondent on or before 12 June 2023 and for the amended application to be heard, among other things.

[6] On 4 July 2023, the case management conference was again adjourned to 10 October 2023 for the perfected amended application to be filed and served on or before 21 July 2023. Additionally, the submissions of the applicant and respondent (in respect of the amended application), which were filed on 29 June 2023 and 4 July 2023, respectively, were allowed to stand as they had been filed late, and directions were given for the applicant to file and serve certain documents on the respondent. The single judge on that occasion also made an unless order, which stipulated that if the applicant failed to comply with the timelines set out in the order, his appeal would be struck out without any further order of the court. That same day, the respondent filed an application for the appeal to be dismissed on grounds of non-compliance by the applicant, which is set for hearing on 24 March 2024.

[7] The amended application has been strenuously opposed by the respondent on the bases that the applicant has generally been non-compliant with the rules of court, the length of the delay in making the application is inordinate, there is no good reason given for the delay, the applicant does not have an arguable case on appeal, the delay has prejudiced the respondent, and the interests of justice favours the dismissal of the application.

[8] The court has the power to extend time for compliance with its rules by virtue of rule 1.7(2)(b) of CAR. It is also settled that the legal principles governing an application of this nature are set out in **Leymon Strachan v The Gleaner Company Limited and Dudley Stokes** (unreported), Court of Appeal, Jamaica, Motion No 12/1999, judgment delivered 6 December 1999 ('**Leymon Strachan**'). These are the length of the delay, the reason for the delay, whether there is an arguable case for an appeal, the degree of prejudice to the other parties if time is extended, and the overriding principle that justice has to be done. The applicant also relied on **Marcan Shipping (London) Ltd v Kefalas and another** [2007] EWCA Civ 463 to support his argument that a litigant should not be lightly driven from the judgment seat.

[9] The relevant principles in **Leymon Strachan** will now be considered.

The length of the delay

[10] The applicant received the registrar's notice on 30 November 2022 and subsequently electronically filed the application as well as the outstanding skeleton arguments and chronology of events on 14 March 2023, the date of the first case management conference, although the court directed that he was to do so before that date. The filing of those documents in the registry was further delayed to 31 May 2023. Worthy of note is that a single judge of this court had to resort to the use of an unless order to ensure that the applicant complied with the orders made at the various case management conferences, including service of certain documents on the respondent. I find that, in these circumstances, the length of the delay is inordinate.

The reason for the delay

[11] The applicant explained that he failed to file the skeleton arguments and chronology of events in time because of a change in his office location; but he did not indicate the dates when his office was relocated. He also advanced that the delay was due to national lockdowns and curfews during the COVID-19 pandemic. However, this must have been in relation to the period of March 2020 to September 2021 since, as the unchallenged evidence from the respondent demonstrates, no lockdowns or curfews were imposed after the registrar's notice was sent to him on 30 November 2022. Additionally, the applicant indicated that the delay in filing his skeleton arguments and chronology of events was due to inadvertence on his part.

[12] In my judgment, no good reason was given for the delay. This is so, especially regarding the time that elapsed after the applicant received the notice from the registrar. Nonetheless, I acknowledge that, in terms of the delay in the matter progressing towards a hearing of the appeal, part of that delay was administrative because, although the record of appeal was filed on 31 March 2020, the registrar did not issue her notice until 30 November 2022. I do accept that prior to September 2021, the pandemic and ensuing curfews and lockdowns would have contributed to the delay on the applicant's part as well as the court's. However, I feel constrained to observe that the respondent served

the applicant with a copy of the record of appeal as early as 4 April 2020. Yet, when he was served, the applicant did not take any steps or show any interest in advancing the appeal, such as filing and serving his submissions or making enquiries with the registry about the registrar's notice. I take this opportunity to remind the applicant as counsel that, notwithstanding the absence of the notice from the registrar, he also had a duty to take active steps to encourage the advancement of his matter. The burden to ensure that his case before the court progresses cannot be placed entirely on the registry, as stated at para. [131] of the decision of **Fritz Pinnock and Ruel Reid v Financial Investigations Division** [2021] JMCA App 29:

> "…I will simply take this opportunity to remind parties that they cannot place the burden entirely on the registry to ensure that their matters progress. They, too, have a duty to show a keen interest in advancing their cases."

[13] I will now examine whether the applicant has an arguable case on appeal.

Arguable case on appeal

[14] The applicant filed 12 grounds of appeal. I will gratefully adopt the summary of the grounds that have been set out by the respondent at para. 2 of its submissions. The main complaints in those grounds are that the respondent failed to take certain matters into account, made incorrect conclusions of fact, exceeded its jurisdiction, and erroneously considered and based its findings on issues they did not invite submissions. The applicant's position is that the grounds of appeal "disclose serious and meritorious issues concerning [the] legal practice and professional responsibility and professional negligence which it is in the public interest to be determined by this court".

[15] The respondent's position is that the applicant has failed to particularise or demonstrate bases in law on which it erred in exercising its discretion. I agree. He did not specify the respondent's misunderstanding of the law or evidence, which he alleged. I also note that most of the grounds are based on findings of fact that the respondent made. Applying the principles enunciated in **Beacon Insurance Company Limited v**

Maharaj Bookstore Limited [2014] UKPC 21, that an appellate court will not disturb the findings of fact of a tribunal unless they are shown to be plainly wrong, it seems clear to me that the applicant would be hard pressed to show that the respondent was plainly wrong, especially in the circumstances of this case where there was evidence to support those findings.

[16] On examining the grounds of appeal, I have not found them to be particularly helpful. In fact, they merely set out in summary the arguments that the applicant intends to advance at the appeal. Therefore, considering the guidelines in the case of **Williams and others v The Commissioner of the Independent Commission of Investigations and others** [2014] JMCA App 7, none of the grounds, as framed, reveal an arguable case on appeal. For instance, the ground regarding retainer fees. The applicant's stance that the respondent ought not to have considered this complaint is, at best, incomprehensible given the well-known principle that a client has always been entitled to know and agree on what the system of billing will be, and this is a requirement of the contract of retainer, which the attorney-at-law cannot unilaterally alter (see **Watt and Associates v Knowles**, (unreported), High Court, Antigua and Barbuda, ANUHCV0037 of 1995, judgment delivered 16 September 2002). Also, in respect of the grounds that state that the respondent decided issues without hearing from the applicant or his attorney-at-law, I am of the view that firstly, those issues have not been particularised so that the respondent can be aware of the case it has to meet on the appeal; and secondly, the applicant was present and represented at the disciplinary hearing, he gave evidence and his attorney made submissions on his behalf, so it is difficult to see how his constitutional right to a fair hearing was breached. Furthermore, the respondent addressed many of the applicant's complaints in their decision. Accordingly, in the light of the decision in **Bolton v The Law Society** [1994] 2 All ER 486 that appellate courts should be reluctant to interfere with the decisions of disciplinary tribunals, except in "very strong" cases, having assessed the grounds of appeal, I have concluded that the applicant has failed to establish that he has an arguable case for an appeal.

[17] Regarding the sanction imposed, this court will only interfere with a sanction of the respondent where there are any errors of law or the sanction imposed is clearly inappropriate. In the case of **The Law Society v Brendan John Salsbury** [2008] EWCA Civ 1285, the following observation was made:

> "[30] From this review of authority I conclude that the statements of principle set out by the Master of the Rolls in *Bolton* remain good law, subject to this qualification. … It is now an overstatement to say that 'a very strong case' is required before the court will interfere with the sentence imposed by the Solicitors Disciplinary Tribunal. The correct analysis is that the Solicitors Disciplinary Tribunal comprises an expert and informed tribunal, which is particularly well placed in any case to assess what measures are required to deal with defaulting solicitors and to protect the public interest. Absent any error of law, the High Court must pay considerable respect to the sentencing decisions of the tribunal. Nevertheless if the High Court, despite paying such respect, is satisfied that the sentencing decision was clearly inappropriate, then the court will interfere. …"

This principle was recently applied in **Michael Lorne v The General Legal Council Ex parte Olive C Blake** [2021] JMCA Civ 17.

[18] As already established, the sanction imposed was a reprimand, and the applicant was ordered to pay costs of $50,000.00. In my view, it will be difficult for the applicant to convince the court that in imposing that sanction, the respondent made an error in law or that it was inappropriate or manifestly excessive.

Prejudice

[19] There can be no argument that the delay in this matter is not prejudicial to the respondent, especially when the delay is coupled with the somewhat vague assertions made by the applicant in his grounds. This appeal has been filed since 2019 and remains at the stage where the applicant's skeleton submissions are not yet in. Neither has it reached the stage where case management orders can be given for the hearing of the appeal. This is against the background of the applicant's non-compliance with rules of court and orders made by the court to effect service of properly filed documents on the

respondent. I, therefore, find that prejudice has been proven. Finally, in my view, considering all the relevant factors, such as the delay, the lack of good reason for it, and, in particular, the absence of any arguable grounds, the interests of justice weighs against granting the amended application.

[20] For the preceding reasons, I make the following orders:

1. The applicant's amended application for an extension of time to file skeleton submissions and chronology of events filed on 31 May 2023 is refused.

2. Costs to the respondent to be agreed or taxed.