

[2014] JMCA Civ 41

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 35/2011

BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE DUKHARAN JA
THE HON MRS JUSTICE MCINTOSH JA

BETWEEN AUDLEY MELHADO APPELLANT
AND GENERAL LEGAL COUNCIL RESPONDENT

Christopher Dunkley instructed by Phillipson Partners for the appellant
John Vassell QC instructed by Dunn Cox for the respondent

22 September 2014

ORAL JUDGMENT

PANTON P

[1] This is an appeal by Mr Audley Earl Melhado, an attorney-at-law, against the decision of the Disciplinary Committee of the General Legal Council handed down on 12 February 2011.

[2] According to the reasons for judgment of the committee, the appellant was summoned before the committee on the basis of an allegation that he had failed to deliver an accountant's report in respect of the financial years 2002, 2003, 2004 and 2005, which, as a practicing attorney, he was obliged to furnish to the Council in

accordance with the Legal Profession Canons of Professional Ethics Rules and the Legal Profession Accountants and Records Regulations 1999.

[3] The Disciplinary Committee did not have the benefit of Mr Melhado's presence he having been summoned to appear before them. Several adjournments were granted over a period of months in 2010 to allow for Mr Melhado to explain the situation as regards the accountant's report but he failed to attend. In the end, the Disciplinary Committee felt that they had no choice but to bring this matter to an end having been satisfied that he was fully aware of the various adjournments that had been granted and the dates on which he had been required to attend. There being no explanation the committee thought it fit that he should be precluded from continuing in practice as a means of protecting members of the public.

[4] In the end, the committee considered that the appropriate sanction provided under section 12(4) of the Legal Profession Act was that he should be struck from the Roll of Attorneys-at-law entitled to practice in the several courts of the island and he was ordered to pay the sum of \$50,000.00 to the General Legal Council as a contribution towards its cost and that order was made with immediate effect. Subsequent to the making of that order and the filing of an appeal, the attorney was given permission to continue to practice in that the order was suspended pending the hearing of the appeal. The facts indicate that he would have been out of practice for approximately three months prior to the suspending of the order.

[5] When this matter came before us on 26 October 2012, we granted a further adjournment at the request of Mr Christopher Dunkley who appears for the appellant to allow Mr Melhado to submit certain relevant documents to the court by 14 December 2012. He took the opportunity given to him to file an affidavit on 14 December 2012, in which he explained that although the reports had not been filed, the fact was that he was not in active practice as he had transferred his focus to politics. He explained that he was called to the Bar at Lincoln's Inn London in December 1983 and was issued with a Certificate of enrolment in Jamaica pursuant to the Legal Profession Act 1971 in 2002.

[6] Prior to that, he had served as Crown Counsel in the office of Director of Public Prosecutions and later as Executive Director of the Securities Commission. This latter position he demitted in December 2001. After demitting the position in 2001, he decided to acquire the Certificate of Enrolment which he did in 2002. He said,

"Notwithstanding being entitled to practice law in 2002, I did not, in fact, establish a practice until late 2003. To the extent that I did any legal work at all in that year it did not entail holding funds on behalf of clients. In fact, my main focus was in politics."

In 2005 he joined with another individual to form a partnership and in 2006 the partnership was brought to an end because of his involvement in politics. The affidavit states that on 22 October 2012, he filed the reports with the General Legal Council covering the period 2005 – 2009 and on 22 November 2012 he filed the report for year ending 2010, which was inadvertently omitted from the October filings. He said that the appropriate declaration in respect of the years ending 2002, 2003, 2004 have been

filed with the General Legal Council and the Council in a letter has confirmed receiving the accountant's report for the periods quoted earlier.

[7] This matter has been brought back for completion today and we have admitted Mr Melhado's affidavit in support of his appeal on the basis that there is fresh evidence which we think is of relevance to the appeal. Having heard from Mr Dunkley as well as learned Queen's Counsel, Mr Vassell and having looked again at the decision and the reasons of the Disciplinary Committee, we are satisfied that there can be no legitimate complaint against the decision taken by the disciplinary body in February 2011. Here we have an attorney who disobeyed the law which mandates that an attorney needs to file certain reports annually. He disobeyed the law, he is brought before the Disciplinary Committee and he treats the committee with scant regard ignoring all the allowances that they were giving to him. In the circumstances the committee was clearly right in ordering that he be struck from the role of attorneys.

[8] We have had the benefit of an explanation from the appellant for his conduct and submissions from Mr Dunkley as well as learned Queen's Counsel, Mr Vassell and are satisfied that at this stage, the sanction of being struck off would not be the appropriate sanction. However, we view the appellant's conduct in a very serious light so that we are of the view that a period of suspension has to be imposed. We take into consideration the fact that he was on suspension for a period of approximately three months. In the light of that we are ordering as a substitute for the sanction which was imposed that he be suspended for a period of nine months. We remind attorneys-at-

law that the Legal Profession Act and the various regulations promulgated under the Act must be taken seriously. Failure to file appropriate declarations and accounts is an indication of disrespect and attorneys who display such disrespect can expect that the committee may well order a 'striking off the roll' and the court is not sympathetic in situations such as those.

[9] So far as costs are concerned the appellant has to be condemned in costs because we are here because of his disrespect of the law and the disciplinary committee. He is ordered to pay the costs of the appeal, such costs to be agreed or taxed.

Order

Appeal allowed in part. The decision of the Disciplinary Committee is varied; the appellant is instead suspended for a period of nine months. The appellant is ordered to pay the costs of the appeal to the respondent, such costs to be agreed or taxed.