

**JUDGMENT OF THE DISCIPLINARY
COMMITTEE OF THE GENERAL LEGAL COUNCIL**

**IN THE MATTER OF THE
LEGAL PROFESSION ACT 1971**

COMPLAINT NO. 14/2015

COMPLAINANT: MR. EDMUND WILSON

RESPONDENT ATTORNEY: MR. SEAN CLARKE

**PANEL: MR. TREVOR HO LYN, MS. MARJORIE SHAW, and MISS
KATHERINE P.C. FRANCIS**

**HEARD: JUNE 16, 2018, OCTOBER 6 & NOVEMBER 10, 2018 JANUARY
26, 2019**

JUDGMENT: NOVEMBER 10 2018

SANCTION: JANUARY 26, 2019

PRESENT: EDMUND WILSON

ABSENT: SEAN CLARKE

A. The Complaint

1. The Complainant, Edmund Clarke filed a complaint on the 14th November 2014 with the General Legal Council against Mr. Sean Clarke (“the Respondent”). The Form of Application stated that the matters of fact stated in the accompanying affidavit constituted conduct unbecoming the profession on the part of the Respondent Attorney.

2. The Form of Affidavit by the Applicant sworn to on the 24th of November 2014 stated that the Respondent was engaged by the Complainant on or

about December 22, 2005, that the Respondent was paid certain sums of money to act on behalf of the Complainant to administer the Estate of his father, to survey, sub-divide and sell a parcel of land to a purchaser as identified by the Complainant.

3. Specifically, the grounds of the Complaint are as follows that the :
 - a. Respondent has withdrawn from his employment without taking reasonable steps to avoid foreseeable prejudice or injury to the Complainant's position and rights;
 - b. Respondent having withdrawn from the Complainant's employ has not promptly accounted for or refunded such part of the fees paid in advance, as may be fair and reasonable;
 - c. Respondent has not maintained the dignity and honour of the profession and has not abstained from behaviour which may tend to discredit the profession of which he is a member;
 - d. Respondent has provided the Complainant with information as to the progress of his business although reasonably required to do
 - e. Respondent has not dealt with the Complainant's business with due expedition; and
 - f. Respondent has acted with inexcusable or deplorable negligence in the performance of his duties.

B. The Evidence

4. In addition to his viva voce evidence, the documentary evidence of the Complainant is as follows:

- a. December 22 2005 for \$2330.00 received by K. Lindsay on behalf of Clarke & Associates for consultation fee;
 - b. December 22 2005 receipt from Clarke & Associates to Edmond Wilson for the following documents:
 - i. Certificate of Title
 - ii. Will & Testament of Clarence Wilson
 - iii. Death Registration Form for Clarence Wilson;
 - c. April 18 2006 for \$100,000.00 (paid by cheque #136587 Victoria Mutual Building Society received by D.E. King) being part payment for legal fees for Sale of Land [Exhibit 4]
 - d. April 26 2006 for \$24,500 received by D.E. King [Exhibit 5]
 - e. May 25 2006 for \$36,000.00 received by D. E. King for the firm of Clarke & Associates
 - f. Outline of fees [Exhibit 1]
 - g. Letter dated May 3 2006 from Sean Clarke on behalf of the firm of Clarke and Associates dated May 3 2006 to K.V. Masters, a Commissioned Land Surveyor
 - h. Email to the General Legal Council/Disciplinary Committee dated June 19 2014 [Exhibit 8]
 - i. Letters by the Complainant to the GLC [Exhibits 9a – 9e]
5. Regulation 8 of the Fourth Schedule to the Legal Profession Act provides that “If either or both of the parties fail to appear at the hearing the

Committee may, upon proof of service of the notice of hearing, proceed to hear and determine the application in his or their absence". The Panel having satisfied itself that the Attorney was properly served with Notice of Hearing in keeping with Regulation 5 of the Fourth Schedule of the Legal Profession Act the panel commenced the trial on June 16 2018 by taking the evidence of the Complainant. At the end of his evidence, the Panel directed that a copy of the notes of evidence, and the exhibits tendered, should be sent to the Attorney and fixed a further trial date of November 10, 2018 for continuation. The Respondent failed to attend on that date, the Complainant closed his case and the Panel adjourned the matter to consider the evidence and make a ruling.

6. **THE BURDEN OF PROOF:** the Panel recognizes that in law the burden of proof is on the Complainant to prove his complaint to the standard of proof required in law. It is immaterial that the Attorney never attended any of the hearings at which evidence was taken, as the legal responsibility remains on the Panel to evaluate the evidence it has before it to the standard of proof required before it makes any findings that may be adverse to the Attorney.

7. **THE STANDARD OF PROOF:** The Panel reminds itself that in law, the standard of proof in cases of professional misconduct is that of beyond

reasonable doubt. This is the standard that must be applied by the panel in evaluating the evidence adduced before it.

8. The unchallenged oral evidence coupled with the documentary evidence in support thereof do not disclose any material dispute of facts and accordingly the panel accepts the evidence of the Complainant in its entirety.
9. The following facts appear from the oral and documentary evidence in this matter:
 - a. That the Complainant is a chauffeur who resides in St. Pauls Manchester and that he engaged the Respondent on or about December 22, 2005.
 - b. That the Complainant delivered three relevant and critical documents to the Respondent to undertake the matter, the Will of his deceased father, the death certificate and the relevant title of the land. [See Exhibit 6]
 - c. That the Respondent provided an outline of the cost of the transaction to the Complainant.
 - d. That the Complainant made a total of four (4) payments amounting to \$162,830.00 to the Respondent as evidenced by the receipts.
 - e. That since receiving payments and documents from the Complainant the Respondent has failed to take any action in the matter and the

Complainant has not been able to make any contact with the Respondent regarding the matter despite several attempts to do so until eventually he found the Respondent's office closed down.

- f. That the Respondent has failed to return the documents to the Complainant or refund him any money.
- g. That the Respondent did not provide the Complainant with any accounting of the funds paid to him.
- h. That the Complainant subsequently filed a complaint against the Respondent in 2014 as evidenced by Exhibits 7, 7a & 7b.

Judgement

10. From the foregoing findings of fact it is clear that the Respondent Attorney is guilty of professional misconduct. Specifically, the Panel finds that :
- a. Respondent withdrew from the Complainant's employ without taking reasonable steps to avoid foreseeable prejudice or injury to the Complainant's position and rights as his client.;
 - b. Respondent has not accounted to the Complainant for all the monies in his hands for his account or credit, although, he was reasonably required to do so; and,
 - c. Respondent has failed to maintain the dignity and honour of the profession and has abstained from behaviour which may tend to discredit the profession of which he is a member

- d. Respondent has provided the Complainant with information as to the progress of his business although reasonably required to do
- e. Respondent has not dealt with the Complainant's business with due expedition; and
- f. Respondent has acted with inexcusable or deplorable negligence in the performance of his duties.

SANCTION

HEARING JANUARY 26TH 2019

- 11. Having found the Respondent guilty of professional misconduct the following sanctions are hereby made against the Respondent pursuant to the section 12 (5) (a) of the Legal Profession Act that:
 - a. The Respondent shall make restitution to the Complainant in the sum of \$162,830.00 together with interest on the said sum at the rate of 3% on or before March 29, 2019.
 - b. The Respondent shall pay costs of \$60,000.00 to the General Legal Council.
 - c. The Respondent shall return all documents and title given to him by the Complainant on or before March 29 2019.

- d. All cost orders are to be complied with on or before March 29, 2019.
- e. Unless all orders are complied with, the Attorney shall be suspended from the practice of law until he complies with the aforesaid orders.



TREVOR HO LYN



MARJORIE SHAW



KATHERINE P.C. FRANCIS