

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

COMPLAINT NO: 146 of 2021

IN THE MATTER OF **ANDREW WAYNE WILLIS**, an Attorney-at-Law
AND
IN THE MATTER OF THE LEGAL PROFESSION ACT, 1971

**BETWEEN NOVELETTE DEBORAH TOMLINSON COMPLAINANT
AND ANDREW WAYNE WILLIS RESPONDENT**

Panel:-

Mr. Jerome Lee – Chairman
Ms. Carlene Larmond KC
Ms. Delrose Campbell

Hearing dates:

January 13, March 10, June 9, July 25, and November 9, 2023; March 8 and July 7 2024

Appearances:

The Complainant appeared by Zoom on all dates except November 9, 2023, when she appeared In Person
The Respondent appeared In Person
Neither party was represented by Counsel

COMPLAINT

1. The Complaint laid against Andrew Wayne Willis (hereinafter “the Attorney”) is that he is in breach of Canon I(b) which states that “an Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behavior which may tend to discredit the profession of which he is a member”,

HEARING

2. The Panel heard evidence from the Complainant, the Complainant’s Witness and the Attorney on January 13, 2023. March 10, 2023. June 9, 2023; November 9, 2023; March 8, 2024 and July 7, 2024.
3. The Complainant called one witness Mr. Vivian Jeffery . The Attorney called no witness on his behalf.

4. The Complainant in her evidence identified the Form of Application Against an Attorney-at-Law dated August 21, 2021, and the Form of Affidavit by Applicant sworn October 11, 2021 which were admitted into evidence as Exhibits 1 and 2 respectively. Also admitted into evidence were the following documents: -
 - a Exhibit 2a - Form of Affidavit of Novelette Tomlinson sworn to on October 1, 2021, together with List of Documents.
 - b Exhibit 2b Letters dated June 22, 2021, from the Victoria Mutual Building Society to Customer Service at National Water Commission and Jamaica Public Service and letter of possession
 - c Exhibit 3a- National Water Commission bill payment receipt dated November 4, 2022.
 - d Exhibit 3b Power of Attorney dated 25th June 2021.
 - e Exhibit 3c Copy of the Certificate of Title registered at Volume 1462 Folio 71
 - f Exhibit 3d Letter dated January 28, 2022 from the Parish Court for the Parishes of Kingston and St. Andrew to Mr. Willis,
 - g Exhibit 3e Letter dated February 25, 2022 from Nea Lex, Attorneys-at-Law to Ms. Novelette Tomlinson and Mr. Ricardo Howell.
 - h Exhibit 3f Recording contained on DVD supplied by Complainant as well as in link contained in email from the Complainant,
 - i Exhibit 3g Bill Express receipt dated May 26, 2022 regarding payment on JPS bill
 - j Exhibit 3h Letter dated February 2, 2022 from Victoria W. Brown and Associates to Ms. Tomlinson.
 - k Exhibit 3i Statement dated September 20, 2021 given by Novelette Tomlinson and recorded at the Constant Spring Police Station.
5. Complainant's Witness Mr. Vivian Jeffery identified the Affidavit sworn to on the 26 May 2022 which was tendered and admitted into evidence as Exhibit 4.
6. The Attorney in his evidence identified his Affidavit sworn to on June 16, 2022, and his Affidavit sworn to on July 14, 2022 which were admitted as Exhibit 5 and 6 respectively. Also admitted into evidence were the following documents: -
 - a Exhibit 7 - Hawkeye Incident Report Dated September 15, 2021,
 - b Exhibit 8 Undated Printed WhatsApp Messages, 2 Pages with time stamps of 6:44PM & 9:29PM

EVIDENCE

The Complainant

7. The evidence of the Complainant is that she purchased the property and dwelling house at Lot 5 Mount Atlas, Saint Andrew from the Victoria Mutual Building Society (VMBS). She signed an Agreement for Sale relative to the purchase on March 10, 2021, having

made a deposit on the purchase price on March 1, 2021. She said the property “was in foreclosure from the Victoria Mutual Building Society”

8. The Complainant said VMBS allowed her early possession of the premises prior to her name being registered on the Certificate of Title evidenced by letters of possession dated June 22, 2021 (Exhibit 2b). She went to the property on June 23, 2021, and it appeared vacant. She described it as being in a deplorable condition without running water or electricity, affected by mold and termite with broken fixtures and an unfinished pool with stagnant water. She said she obtained locks to secure the premises as best she could but on her return to the premises on the following day, the locks were changed and the premises was then occupied by the Attorney and other persons unknown to her.
9. The Complainant’s evidence is that on June 29, 2021, she served the Attorney with a notice to quit the premises but he refused to vacate the premises. She was registered on the Certificate of Title as the proprietor of the premises on July 19, 2021, after which she again attempted on September 15, 2021, to enter the premises. She said her efforts to install remote controlled gates, to install a security system and commence repairs were met by the Attorney’s resistance, intimidation, verbal and physical confrontation. She said she was poked by the Attorney with a metal object causing her injury for which she sought medical attention. She said that the Attorney on September 22, 2021, used a tool to break the wall in the driveway of the premises and hired armed men to deny her and anyone associated with her access to the property. She said the Attorney persuaded the police at the Red Hills Police station that she had no legal rights to be on the property.
10. The Complainant said she filed a plaint against the Attorney for Recovery of Possession in the Kingston and Saint Andrew Parish Court on September 27, 2021 but did not appear in court to pursue the claim as the Attorney subsequently vacated the premises.

The Attorney

11. The Attorney’s evidence is that he purchased the premises, constructed the house, was in possession of the house for 15 years and was living in the house at the time the Complainant sought to take over the premises. The Complainant brought the action in the Parish Court and he also had an action against VMBS in the Supreme Court. He said he had a right to remain in the premises until the Courts made a determination but the Complainant refused to await the outcome of the Courts’ decision. He said the Complainant and men he described as “thugs” used threats, bullyism and intimidation, removed locks from his door, ransacked the house, stole his belongings and damaged

the property in his absence. He said it left him no choice but to hire 2 separate security firms to respond to the break-ins of the Complainant or her agents.

12. The Attorney said he did not hit or poke the Complainant, as he could not have done so in the presence of the 16 persons who were at the premises in support of the Complainant. He gave evidence of a Police Inspector going to the property to take statements, requiring the Complainant to attend on the police station to be arrested and advising the Complainant and persons with her not to return to the premises until they have the order of the Court to do so.
13. The Attorney gave evidence that the property was the subject of a foreclosure proceedings by VMBS. He had lodged a caveat against the title to the property and had brought proceedings an action against VMBS. He said that by way of the same proceedings a court mediation agreement was reached whereby VMBS agreed to sell him the property for \$20 million however VMBS sold the property to the Complainant. He said the action filed in the Supreme Court was to determine whether there was a breach of the mediation agreement on the part of VMBS.
14. When cross-examined by the Complainant about the action brought in the Supreme Court against the VMBS, the Attorney admitted that the Complainant was not named in or a party to those proceedings. It was disclosed in cross-examination that not only had the Supreme Court ruled against him in those proceedings but that the Court of Appeal had also ruled in favour of VMBS.
15. The Attorney said the plaint filed by the Complainant against him for an Injunction and Recovery of Possession in the Kingston and Saint Andrew Parish Court was struck out by that Court "the Court having read both parties documents filed".

STANDARD OF PROOF

16. The Panel reminds itself that the standard of proof in disciplinary proceedings is the criminal standard which is beyond all reasonable doubt (**Campbell v Hamlet [2005] UKPC 19**).

COMPLAINANT 'S SUBMISSIONS.

17. The Complainant made submissions in writing which in summary is that she was the legitimate registered owner of the property; that the Attorney was not living at the property at the time she sought to take possession and that he was unable to present any documents in proof of this; and that he was a squatter. The Complainant submits that the documents the Attorney filed in the Supreme Court in the case against VMBS were used by him to mislead the police as the Attorney stated to the police that the

property was in dispute and the Complainant had no right to be there. That the Attorney failed to mention that the case in the Supreme Court was of no relevance to her Complaint as the case was already determined by the Court. That the Attorney should be sanctioned for his reckless behavior.

ATTORNEY'S SUBMISSIONS

18. The Attorney made written submissions. The main thrust of his submissions is that the Complainant having filed an action for recovery of possession in the Court, and he having filed a Defence, she should have awaited the outcome of that Claim as well as the Claim he brought against VMBS in the Supreme Court. He submitted that until the Courts decided these matters, he had a right to not be disturbed or trespassed on whether he was present at the property at the time or not and that on the contrary the Complainant and persons connected with her "invaded the property". He submits that as an attorney he is expected to take all necessary legal steps to protect the rights of himself, his family and the rights to his property which is what he sought to do.

FINDINGS OF FACT

19. Having listened to the evidence of the Complainant, the Complainant's Witness and the Attorney, read the affidavits, and studied all the exhibits we make the following findings:-

- a The Certificate of Title for Lot 5 Mount Atlas in the parish of Saint Andrew registered at Volume 1462 Folio 71 of the Register Book of Titles was issued on the 29th October 2012 to the Victoria Mutual Building Society (VMBS).
- b The property was previously owned by the Attorney but VMBS was the registered owner of the property since October 29, 2012 by Foreclosure.
- c The Attorney lodged a Caveat against the Title to the property on September 9, 2013, which lapsed on August 26, 2021.
- d VMBS sold the property to the Complainant on March 10, 2021
- e VMBS gave letters of possession of the property to the Complainant on June 22, 2021
- f The Complainant was registered on the Certificate of Title as the proprietor of the premises on July 19, 2021

- g When the Complainant went to the property on June 23, 2021, it was not occupied by the Attorney and was in a deplorable state.
- h The Complainant took steps to secure and occupy the premises and this was met with resistance from the Attorney.
- i The Attorney persuaded police and security personnel that the Complainant had no right to access the property.
- j The standoff at the premises involved the police and was witnessed by many persons either supporting the Complainant or the Attorney.
- k The Complainant's action against the Attorney for an injunction and recovery of possession was not dismissed by the Parish Court on its merits. The Complainant abandoned the action in the Parish Court when the Attorney vacated the property.
- l The Attorney filed an action against VMBS in the Supreme Court claiming damages and specific performance for breach of an agreement between the Attorney and VMBS; the Complainant was not a party to this Claim
- m The Attorneys Claim against VMBS failed in the Supreme Court and in the Court of Appeal.

DISCUSSION & ANALYSIS

20. It is well known that the registered owner of land has the right to use, enjoy, and dispose of the land as he sees fit. A registered titleholder can sell, lease, or transfer their interest in the land. These rights are guaranteed under the Registration of Titles Act and Section 70 of the Act is the underpinning of the concept of indefeasibility of title of the registered proprietor from deprivation of property on which his name appears as the proprietor on the Certificate of Title describing his land. It gives to registered property owner the absolute authority to exercise the associated powers of ownership over land subject only to any interest/encumbrances noted on the title. These rights were accorded to VMBS since October 29, 2012 and subsequently to the Complainant.

21. The Attorney in his own evidence stated that VMBS became the registered title holder by way of foreclosure proceedings but gave evidence that he was not made aware of these proceedings. The Attorney led no evidence to satisfy this Panel that the entry on the title evidencing VMBS registration as proprietor on foreclosure was done without his knowledge and, in any event, that would be a matter for proceedings in another forum. The evidence, in any event, is that the Attorney's claim against VMBS

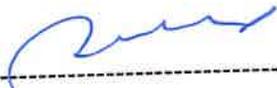
failed at the first instance and appellate levels. The Attorney lodged a caveat against the title to the property on September 9, 2013. The transfer by VMBS to the Complainant was lodged at the Titles Office on July 19, 2021 and when the caveat lapsed on August 26, 2021 the Complainant became the registered proprietor of the property.

22. On Foreclosure the Title issued to VMBS as the registered proprietor gave VMBS the right to sell the property to the Complainant and to put her in possession of the property even before the transfer of title to her was completed.
23. The Attorney ought to have been cognisant of the law and the rights of VMBS to sell and the rights of the Complainant in the circumstances to occupy the premises. The Attorney's posture of delaying and frustrating the Complainant's clear rights by maintaining that she should await the outcome of Court proceedings and for such a lengthy period was wrong. The Panel believes the evidence of the Complainant that the Attorney was not living in the premises but moved onto the property to thwart her efforts to occupy the premises.
24. The Attorney presenting his Claim in the Supreme Court against VMBS to the police and security personnel was a flagrant abuse of his dominant position as an Attorney-at-Law knowing that these persons would assume he was truthful and correct when he said the Complainant had no right to be in the property and that the outcome of the case would impact whether the Complainant had a right to be there or not. The Attorney persisted in this disposition of subterfuge when he failed to disclose in his affidavit exhibiting the Supreme Court documents and failed to disclose in his evidence-in-chief to the Panel that the very case in the Supreme Court was not decided in his favour and that he also lost at the Court of Appeal. This belated disclosure was only made while the Attorney's evidence being given during cross-examination and in response to the Panel's inquiries as to the status of those proceedings. Given the Attorney's reliance on those proceedings as justification to remain in the premises, and the centrality of those proceedings to his defence to these disciplinary proceedings, the Panel finds his non-disclosure to be material and served the purpose of misleading the Panel, by omission, as to the true state of affairs.
25. There was much allegation and counter allegation of who was the aggressor, who issued threats, who was the intimidator, who used profane and vulgar language, who caused injury etc, the Panel does not put much weight on this evidence coming from either the Complainant or the Attorney in this regard, except to say that had the Attorney adopted a rational and reasonable posture the confrontations and resultant allegations may not have come into play.

CONCLUSION

26. The Panel having considered the evidence before it, makes a finding that the Attorney's actions are likely to bring the profession into disrepute. The Attorney failed to conduct himself with highest level of professional integrity, in the face of the Complainant, her agents, police and security officers and other members of the public. The Attorney's actions purporting to protect his rights to his property were egregious when the Attorney knew or ought to have known that those rights did not exist.
27. The Panel therefore finds the Attorney to be guilty of professional misconduct as per Canon I (b) of the Legal Profession (Canons of Professional Ethics) Rules).
28. In accordance with the procedure recommended by the Court of Appeal in Owen Clunie v General Legal Council SCCA No. 03 of 2013, the Panel directs that a date be fixed to give the Attorney an opportunity to be heard in mitigation before a sanction is imposed.

Dated the 20th day of May 2025



Jerome Lee – Chairman



Carlene Larmond, KC



Delrose Campbell