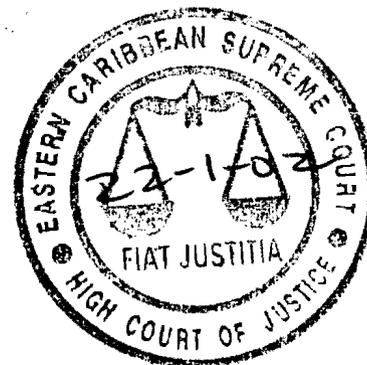


SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 84 OF 2000



IN THE MATTER OF THE EASTERN CARIBBEAN SUPREME COURT (SAINT VINCENT AND THE GRENADINES) ACT CHAPTER 18 OF THE LAWS OF SAINT VINCENT AND THE GRENADINES, REVISED EDITION 1990 SECTION 76 AND PARAGRAPHS 3 AND 4 OF BARRISTERS AND SOLICITORS RULES BOOKLET 4.

AND

IN THE MATTER OF UNPROFESSIONAL CONDUCT BY SAMUEL E. COMMISSIONG A BARRISTER AND SOLICITOR

AND

IN THE MATTER OF AN APPLICATION FOR A RULE TO ISSUE TO SAMUEL E. COMMISSIONG BARRISTER AND SOLICITOR TO SHOW CAUSE WHY HE SHOULD NOT BE SUSPENDED OR STRUCK OFF THE ROLL OF BARRISTERS/SOLICITORS.

AND

IN THE MATTER OF THE APPLICATION OF CARL L. JOSEPH ATTORNEY GENERAL OF SAINT VINCENT AND THE GRENADINES.

Appearances:

Mrs. Paula David, Solicitor General instructed by Mr. Jaunty Martin of the Attorney-General's Chambers, for the Attorney-General.

Sir Henry Forde, Q.C., Mr. Parnel Campbel with him, for the Barrister Samuel E. Commissiong.

2002:January 21, 22

JUDGMENT

D'AUVERGNE J.

ALLEYNE J.

[1] These proceedings arise from a summons issued by the Attorney-General of Saint Vincent and the Grenadines on February 18, 2000, arising from which a Rule was

issued by a judge in Chambers to the Barrister/Solicitor to show cause why he should not be suspended or struck off the roll.

- [2] The evidence in support of the application of the Attorney-General is contained in an affidavit of Carl Lawrence Joseph, at the material time Attorney-General of Saint Vincent and the Grenadines, and an affidavit of Judith Stephanie Jones-Morgan, at the material time acting Registrar of the High Court, now Attorney-General, and the exhibits to the said affidavits.
- [3] At the outset of the hearing learned Queens Counsel for the Barrister informed the court that he did not wish to cross examine the deponents or in any manner to challenge their testimony, but intended only to rely on the affidavit of Lorenz A. Douglas Williams, and the viva voce evidence of Carlyle Dougan, Q.C., character witnesses, in mitigation. The Barrister adopted the commendable stance of not seeking to justify his conduct, to express, through his Counsel, his awareness of the impropriety of his action, and his deep contrition therefor, and to seek leniency by the court in the exercise of its jurisdiction as a disciplinary tribunal.
- [4] The facts as disclosed in the affidavits are that Commissiong, acting as the Solicitor of a foreign client, sent a colleague in Europe who represented the same client, a document which, on the face of it, appeared to be a judgment in default of appearance for a specific sum of money, issued by the High Court in Saint Vincent, in a civil suit in this State, in which Commissiong's and the intended recipient's common client was represented to be the plaintiff. This document appeared to be stamped and sealed with this court's stamp and seal, and to be signed by the Registrar. There was nothing on the document to raise any doubt that the document was in fact a valid and effectual default judgment of the court.
- [5] This document was sent to the lawyer in Europe under cover of a letter from Commissiong in which he said

"The case against Friendship Bay is proceeding normally. We have enclosed a copy of the default judgment for your records. The lawyer who works for Friendship Bay Hotel (the apparent defendant in the action) said that LAB has instructed him to apply to the court for stay of execution pending his efforts to make a claim against Gourmet Foods Ltd. You did inform me of this possibility. This has not happened yet but we heard that it is coming. If it does we shall have to get fresh instructions from you.

The goods taken in execution are kept in storage as a matter of law for two weeks before sale. The rationale is that the debtor must have the opportunity to recover his goods by paying the monies. If he cannot, the goods will be sold by public auction.

(sgd.) S.E. Commissiong.

[6] In time, on August 23, 1999, this document came to the attention of the then acting Registrar of the court, the deponent Judith Stephanie Jones-Morgan, who, after scrutinising the document closely, came to the conclusion that the signature on the document purporting to be hers was not in fact hers. On further inquiry and investigation, she discovered that in fact there was filed in the court an action, suit No. 401 of 1999, between the same parties appearing in the title of the suspect document, but that that suit had been filed on a date later than the date of the purported judgment in default, and that in fact no judgment had been or could have been obtained in that suit.

[7] The acting Registrar came to the conclusion that this order was fictitious, and so informed the Attorney-General by memorandum dated August 26, 1999. In that memorandum the acting Registrar informed the Attorney-General that Mr. Commissiong had explained that

"this was all a mistake and that he had forwarded to a colleague in Sweden this document as a precedent of what such an order would look like when prepared."

This explanation is repeated in a letter sent to the Registrar by Commissiong dated September 1, 1999, in which he asserts that the acting Registrar appeared to have treated the matter

"with a degree of seriousness it could not and did not deserve. That and another which accompanied it were merely sent to a colleague in Sweden for different reasons with the clear understanding that they were sample documents that lacked legal validity. Prima facie the documents themselves said so and were absolutely incapable of any use other than as sample documents, otherwise totally useless."

[8] In that very letter, however, Commissiong asserts, in connection with other sample documents,

"I intend to send them to him (his colleague in Sweden) suitably endorsed "Not Valid". I see nothing wrong in doing so once the documents are suitably endorsed."

It is worth noting that the offending document is not so endorsed, or in any way indicates on its face that it is not valid. The only hint of the fact of its invalidity on the document is that no suit number appears, and it is apparently signed on a Sunday, a *dies non*, a fact, however, that is not apparent on the face of the document and that can be ascertained only upon checking the date.

[9] In her affidavit Mrs. Jones-Morgan deposes that, on being asked about the document, Mr. Commissiong immediately and apparently unhesitatingly acknowledged responsibility for the document and offered the innocent explanation on which he has been consistent to the present time.

[10] Mr. Commissiong also had two separate interviews with the then Attorney-General, concerning the same matter, both of which he initiated, and at which he offered essentially the same explanation.

[11] No person has suffered any harm from this event, nor, perhaps, could any serious harm have resulted, and there appears no reason to suppose that Commissiong intended to deceive anyone, except his own client. Certainly, there is no evidence or suggestion of a fraudulent intent, or desire to gain a financial benefit for himself, his client or anyone else, or to prejudice the interests of any person. At worst, he appears to have been attempting to forestall or deny a possible or actual accusation of undue delay on his part by his client.

- [12] It is contended by learned Queens Counsel on behalf of Commissiong that, in the absence of a fraudulent motive, to use Queens Counsel's words, "the matter before the court is not grave." Learned Counsel asserts, and we agree, that no attempt was made to mislead the court. Indeed, from the time he was confronted with the document for the first time, by the Registrar, Commissiong admitted its authorship and took responsibility for it. He has not compounded his error, as a less scrupulous person might, by attempting to avoid responsibility or by blaming someone else for his error.
- [13] The court has received evidence of Mr. Commissiong's good character, his commitment to the high ethics of the legal profession, the high regard in which he is held by colleagues in the profession and by judges before whom he has practised, and generally by his clients. He practises in a firm headed by his brother, one of Her Majesty's Counsel for St. Vincent and the Grenadines, in which his niece and his daughter are also practising as Barristers and Solicitors. His counsel has suggested that his lapse may be explained, if not excused, on the principle that "even Homer nods." Mr. Dougan, Q.C. sees this offence as an aberration in an otherwise impeccable record. Sir Henry Forde, Q.C., Commissiong's senior counsel, urges upon the court that Mr. Commissiong made an error of judgment under the stress of a busy legal practice, in neglecting to indicate on the document that it was a sample, not a valid document.
- [14] Counsel did not seek to excuse Commissiong's act. Indeed his whole conduct of the case was on the basis that his client had committed an improper act, but Counsel sought to portray the act as a lapse, an indiscretion, more than gross misconduct.
- [15] On the other hand the learned Solicitor General directed the court's attention to the case of **Re Iles, A Solicitor**, the judgment of Lord Sumner, quoted with approval by Bernard C.J. in **Ford v the Law Society** [1987] 40 WIR 361 at 374, in the following terms:

"It was said that if the act was dishonest it was a very small one, but in a solicitor's practice there should be no small dishonesties."

The learned Chief Justice cited further Lord Sumner's comment that

"A small community (speaking of Port of Spain, Trinidad) was one in which a solicitor was relatively a conspicuous person, in which the professional body was limited in number, and therefore was less able to overbear by the sheer weight of its probity the misdoings of a single member. The public benefits by the steady pressure of authority in keeping its legal advisers to the line of their duty, and the court which exercises that authority must largely depend on the high standard observed by its officers"

[16] In **re H. A. Grey** [1892] 2 Q.B. 440, Lord Esher, M.R. pointed out that

"the Court has a punitive and disciplinary jurisdiction over solicitors, as being officers of the Court, which is exercised, not for the purpose of enforcing legal rights, but for the purpose of enforcing honourable conduct on the part of the Court's own officers."

And further:

"the Court has a right to see that its own officer does not act contrary to his duty."

The court must seek to ensure that the conduct of its officers does not lower the respect and esteem which the public reposes in them.

[17] By no stretch of the imagination can it be said that the admitted impropriety in this case was of the magnitude of the several important and instructive cases cited by the learned Solicitor General, most of which concerned serious impropriety involving financial transactions resulting in benefit to the solicitor and loss to others. The intention to deceive or defraud was an element in each case. The exception is **Rajasooria v Disciplinary Committee** [1955] 1 WLR 405. In that case it was held that for an advocate and solicitor knowingly and deliberately to submit a false document intending it to be acted upon was grossly improper

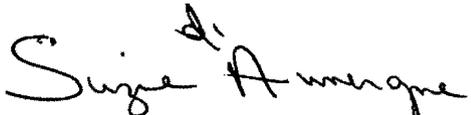
conduct as being dishonourable both to himself and to his profession. The submission of such a document with such intention in itself involved an element of deceit. It could not be said that an intention to deceive was always an essential element in grossly improper conduct. (Page 415). Even in that case, however, the Privy Council affirmed the decision of the Supreme Court of the Federation of Malaya to suspend the appellant from practice for six months.

[18] In the case before us, however, we find no intention on the part of the solicitor that the document should be acted upon, and conduct of the solicitor in this case, while clearly improper conduct, is not, in our view such gross misconduct as would justify us in ordering that he be suspended or struck off the roll. It is said on behalf of Commissioning that under the stressful conditions of legal practice, lawyers under pressure from their clients sometimes do stupid things. However, the principle adumbrated in **Forde** that the court must "by steady pressure of authority keep its legal advisers to the line of their duty" must override.

[19] Counsel for the Attorney General and for the Barrister both contend that the court's powers are not limited to the power to suspend or to strike off as provided in section 76 of the Supreme Court Act. They refer to section 78 of the Act, section 4 of the Application of English Law Act Cap. 8, and to the inherent jurisdiction of the court, including the power to apply common law remedies. It is urged that the court has the plenitude of powers in regulating the conduct of its officers practising as Barristers or Solicitors. We agree.

[20] It was held in **re Iles** that had the appellant in that case "atoned" for a single fault by years of unblemished professional conduct, a different complexion would have been put on the matter. The character evidence tendered in mitigation, of both the subject's professional conduct and reputation, and of his other social and charitable activities, satisfies this test.

- [21] In the circumstances of this case, we are of opinion that the appropriate penalty is a fine of \$5000.00, to be paid within 30 days, and that the Barrister Samuel E. Commissioning pay the costs of these proceedings, to be agreed or assessed.
- [22] The court would like for the record to commend the legal teams representing both sides in this matter for the exemplary manner in which they conducted the proceedings and the great help they have given the court in its consideration of this unfortunate matter.


Suzie d' Auvergne
High Court Judge


Brian G.K. Alleyne
High Court Judge