THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO. 86A OF 2004

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 OTHNIEL R. SYLVESTER A BARRISTER AND SOLICITOR

AND

IN THE MATTER OF THE APPLICATION FOR A RULE TO ISSUE TO OTHNIEL R. SYLVESTER BARRISTER AND SOLICITOR TO SHOW CAUSE WHY HE SHOULD NOT BE SUSPENDED OR STRUCK OFF THE ROLL OF BARRISTERS AND SOLICITORS

AND

IN THE MATTER OF THE APPLICATION OF FAESELLEJE A PRIVATE COMMERCIAL FOUNDATIION OF DENMARK

BETWEEN

FAELLESEJE A PRIVATE DANISH FOUNDATION

APPLICANT

AND

OTHNIEL R. SYLVESTER

RESPONDENT

Appearances:
Mr. Karl Hudson-Phillips Q.C., Mr. Stanley Marcus S.C., Mr. Bertram Commissiong Q.C. and Ms. Mira Commissiong for the Applicant
Sir Henry Forde Q.C., Mr. Russell Martineau S.C., Mr. E. Robertson and Ms. Nicole Sylvester for the Respondent

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2006: October 23
2007: February 5, 6, 7; May 29, 2007

DECISION

[1] The Respondent is an Attorney-at-Law enrolled and practicing as a barrister and solicitor in the State of Saint Vincent and the Grenadines. The Applicant is a private Danish foundation whose registered office is located at Ulfborg, Denmark.

[2] By a Notice of Application filed on February 2004, the Applicant applied for a rule to issue to the Respondent to show cause why his name should not be struck off the roll of Barristers and Solicitors or why he should not be suspended from practicing as a Barrister and Solicitor in Saint Vincent and the Grenadines. By order of the Master dated March 17, 2006, it was ordered that the rule be issued and that the Respondent show cause why he should not be suspended or struck off the Court Rolls. The rule was stated to be on the basis of ten (10) charges of professional misconduct which were set out in the schedule to the order of the Master. These charges are reproduced verbatim in paragraph 46 below.

[3] The High Court of Saint Vincent and the Grenadines is empowered to supervise and control the conduct of barristers and solicitors. Such jurisdiction is conferred by Section 76 of the Eastern Caribbean Supreme Court Act (Saint Vincent and the Grenadines) Act Chapter 18, which provides:

> "Any two judges of the High Court may, for reasonable cause suspend any barrister or solicitor from practicing in Saint Vincent and the Grenadines during any specified period, or may order his name to be struck off the Court Roll."

The procedure to be followed is provided for in regulations made under the Act in Rule 4 of the Barrister and Solicitors Rules, Booklet 4. The said Rule reads:

> "(1) Proceedings to suspend or strike a barrister or solicitor off the roll shall be commenced by an application to a judge in Chambers for a rule to issue to the barrister or solicitor named to show cause why he should not be suspended or struck out the roll.
> (2) Such application may be made by the Attorney-General or by the person aggrieved by the action of the barrister and solicitor complained against.

(3) In the event of a rule being granted, further proceedings thereunder shall be in open court."

[4] The powers given to the Judges of the High Court are integral to the administration of justice and were put into historical context in the dictum of Byron, CJ, who iterated in ***Hansraj Matadial vs John Bayliss Frederick***, Civil Appeal No. 23 of 2001 (SVG) at paragraph 1:-

> "Historically the Judges in England had the right at common law to determine who should be admitted to practice as barristers and solicitors; and as incidental thereto, the Judges had the right to suspend or prohibited from practice. In England this practice has been delegated so far as barristers are concerned, to the Inns of Court and so far as solicitors are concerned to the Law Society. In the British Colonies, there were no Inns of Court and as an essential requirement of the administration of justice the Judges retained the same powers in their own hands. (***Re: Antigua Justices*** (1830) 1 Knapp 267 per Lord Wynford at page 268)."

Similar sentiments were expressed by Lord Esher MR in ***Re: Grey*** [1892] 2 Q.B. 440 at page 443. The Learned Master of the Rolls stated:

> "…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. That power of the Court is quite distinct from any legal rights or remedies of the parties …the Court has a right to see that its own officer does not act contrary to his duty."

The nature of the jurisdiction being exercised by the High Court was articulated by Lord Denning MR in R***. & T Thew Ltd vs. Reeves*** (No. 2) [1982] 3 All E.R. 1086 at p. 1088 d when he said:

> "The jurisdiction of the Court over solicitors was considered by the House of Lords in **Myers vs. Elman** [1939] 4 All E.R. 383. It originated in early days because a solicitor was an officer of the Court. His name was entered on the rolls of the Court. He was subject to the discipline of the Court. This disciplinary jurisdiction was exercisable in two ways: either by punishing him or by making him pay compensation."

BACKGROUND

[5] The evidence in support of the application is contained in the affidavit of Poul Jorgensen, a Danish national who is the Deputy Chairman of the Board of Directors of the Applicant and the exhibits to the said affidavit. At the hearing, Mr. Jorgensen was presented as a witness and identified himself as the deponent. Learned Queen's Counsel for the Respondent elected not to cross-examine Mr. Jorgensen and stated the Respondent's intention to address the Tribunal on the evidence and make submissions on the evidence and the law.

[6] The Applicant was established in 1977 by Danish teachers. Its purpose and objectives are stated to be as follows:

(i) To acquire real estate, vessels and equipment to be used for the purpose of letting out on reasonable terms and conditions to:

(a) Private, independent training and educational institutions the activities of which aim at promoting mutual understanding and co-existence among people on a local, national and/or global level.

(b) Private companies and/or institutions whose objects are to acquire real property and furniture, equipment and accessories for the purpose of letting out on reasonable terms to such institutions as the ones mentioned under (a) above.

(c) Persons and/or groups of persons who work with teaching, educational or research projects as the ones mentioned under clause (a) above.

(d) Persons and/or groups of persons, associations or institutions, in Denmark as well as abroad, who work for the unconditional equality of rights of all people such as it is defined in, e.g. the UN Human Rights Manifesto of December 10, 1948.

(e) Companies and institutions for industrial research, development and production within the fields of agriculture, forestry,

manufacturing, trade, transport, shipping, service and environment;

(ii) Moreover, the Applicant can in other ways support the objects mentioned in Clauses (i) (a) to (i) (e) above.

(iii) In this connection the Applicant can use its own as well as borrowed funds for the purchase of real property and furniture and equipment and for lending for the objects mentioned under Clause (i) (a) to (i) (e) above.

[7] In 1982, the Applicant set up the Richmond Vale Academy ("the Academy") at Richmond in the parish of St. David in Saint Vincent and the Grenadines on approximately 25 acres of land as a tenant of the Government. The objective of the Academy is to teach young Vincentians and Europeans modern farming among other disciplines.

[8] In July 1984, the Applicant became aware that there was being offered for sale by Orange Hill Estates Limited, a group of estates comprising approximately 3,300 acres on the north western or windward part of the island of St. Vincent known as the Orange Hill Estates. The Applicant thereupon made a decision to expand its agricultural activities and opened negotiations with the owners for the purchase of the estates for its use.

[9] In early December 1984, negotiations had reached the stage where the Applicant began to contemplate the making of an application for an alien landholding licence pursuant to the Aliens (Landholding Regulation) Act Chapter 235 of the Laws of St. Vincent and the Grenadines.

[10] Mr. Jorgensen was at that time acquainted with the Respondent who had been retained in 1981 for the purpose of applying to the Government for the lease of the lands for the Academy. Having consulted the Respondent, it was confirmed that the Applicant, being an alien for the purposes of the Act, would be required to apply for and obtain a licence to hold land, for which a licence fee of 10% of the purchase price was chargeable.

[11] It was stated that the Applicant intended to apply to the Government for a waiver of the licence fee on the ground that its aim was to utilize a high standard of modern commercial agriculture in operating the estates. This was discussed by representatives of the Applicant with the vendors and the Respondent.

[12] At about December 15, 1984, the Respondent advised the Applicant that there was a way to "avoid" the licence fee. The advise was that the Applicant should cause a local company to be incorporated to purchase the estates and the details of these arrangements were communicated to Mr. Jorgensen by the Applicant's representatives at the Academy. In a telephone conversation with the Respondent on December 18, 1984, Mr. Jorgensen was assured by the Respondent that the suggested arrangement as advised would obviate the need for the licence and the payment of the licence fee. The Respondent gave the assurance that the arrangement to avoid the licence fee was legally valid under the laws of St. Vincent and the Grenadines.

[13] The advice as to the arrangement entailed the following:

(a) The incorporation of a local company with a nominal share capital of $1,000,000.00 to "acquire the whole or any part of the undertaking and assets of Orange Hill Estates Ltd and for that purpose to enter into and carry into effect with such (if any) modifications or alterations as may be agreed upon an agreement which was made in the year 1984."

(b) The incorporation of four other local companies to be shareholders of the company acquiring the estates;

(c) The memorandum of association of the company acquiring the estates would be subscribed to by three Danish nationals who were employed by the Applicant as teachers at the Academy and representatives of the four other companies.

(d) The memoranda of association of the four other companies would be subscribed to by three Danish nationals who were employed as teachers at the Academy and four law clerks in the Respondent's office.

[14] By a telex message on December 19, 1984, Mr. Jorgensen, acting on behalf of the Applicant asked six questions of the Respondent. In response by telex of December 29, 1984, the Respondent stated , inter alia, "all arrangements relative to your transaction will be consummated within the ambit of the laws of St. Vincent…." In subsequent telexes to Mr. Jorgensen, the Respondent stated that a fee of 2.5% of the purchase price was being charged for the "saving" to the Applicant by not having to pay the licence fee.

[15] By telex dated December 31, 1984, the Applicant gave instructions to the Respondent to put the arrangement in motion. To this end, Windward Properties Limited (WPL) was registered on February 21, 1985 to acquire the estates. This was preceded on February 19, 1985 by the incorporation of four other companies, viz. Rose Cottage Limited, ZBF Limited, Blue Ridge Limited and Denver Portland Limited. The memoranda of association were subscribed as advised by the Respondent, with the names of the Companies and of the Danish nationals being furnished by the Applicant. Thereafter, the original certificates of incorporation of all five companies were sent to the Applicant at its request, together with a certified copy of the memorandum and articles of WPL and duplicate copies of the memoranda and articles of association of the other four companies.

[16] Some time around February 16, 1985, the Respondent told Mr. Jorgensen that the Government was displeased with the Applicant's purchase of the estates but assured that the sale would nevertheless come to fruition as indeed it did on February 25, 1985.

[17] The sale was completed at a purchase price of US$2.1 m (EC$5,646,900.00) and was funded by a loan from Bikuben Savings Bank of Copenhagen, Denmark (now named the BG Bank). All legal fees and expenses were paid for the incorporation of the companies. In addition, the Claimant was paid US$84,000 being the aggregate of US$31,500 as professional fees for the conveyance (1.5% of the purchase price) and US$52,500 (2.5% of the purchase price) as demanded as a fee for the avoidance of the payment of the licence fee.

[18] Within days of the Applicant, assuming possession of the estates on February 26, 1985, Mr. Jorgensen met with the Respondent who advised that the directors of WPL and the other four companies ought not to be appointed at that time as the Government was still displeased with the purchase of the estates. He assured Mr. Jorgensen that this would not give rise to difficulty and the companies could act through him as their solicitor. The Applicant's Board of Directors accepted the advice to defer the appointment of directors until the Respondent deemed it opportune to do so. Queries about the appointment of directors in subsequent years were met with the response by the Respondent that it was of no moment.

[19] Unknown to the Applicant on the day following the incorporation of WPL and each of the other four companies the Respondent caused shares in WPL to be issued to himself, his wife, his son, his daughter and three clerks in his office.

[20] The Applicant said that at all times its instructions to the Respondent were that it would control and manage WPL and that the other companies would be under its control as beneficial owner. The Respondent acquiesced in the instructions without demur.

[21] The issuance of shares in WPL and the other four companies came to the knowledge of the Applicant, just prior to September 14, 1999 when it was so informed by its present solicitors. Mr. Jorgensen recalled that at a meeting of January 9, 1997, the Respondent told him that he had given one share to each of his family members to prevent the Government from taking the compensation money away from the Applicant. It is to be noted that not only was this representation inaccurate but the changes were effected even before the purchase was completed on February 25, 1985.

[22] On April 30, 1985, pursuant to the Land Acquisition Act Chapter 241 of the Laws of St. Vincent and the Grenadines, the Government compulsorily acquired the estates. On March 2, 1987 a Board of Assessment was appointed and convened to determine compensation due for the estates. It was subsequently dissolved without an award being made.

[23] On the advice of the Respondent, the Applicant agreed that WPL would bring proceedings to seek compensation, under the Constitution of Saint Vincent and the Grednadines. The Defendant was retained to represent WPL.

[24] A second Board of Assessment was appointed to determine how much compensation was to be paid for the estates and the Respondent was retained to represent the Applicant. Acting on the Respondent's advice, one Mr. Cremona Simmons was contracted to provide an assessment of the value of the estates and his report assigned a value of E.C.$29 million. The Respondent opined to the Applicant that the valuation was reasonable in law and ought to be accepted by the Board.

[25] In November 1991, the Board made an award of EC$4,700,000 with interest at 5% per annum plus costs. Acting on the Respondent's advice, the Claimant agreed that the award was low and ought to be appealed. The Court of Appeal ruled in December 1993 and increased the award by EC$516,000 for disturbance. Costs were awarded to WPL. Again acting on the advice of the Respondent, WPL launched an appeal to the Privy Council. The appeal was dismissed and the cross appeal by the Government challenging the award for disturbance was allowed. WPL was mulcted in costs for both appeals. All legal fees for the mounting of the litigation were borne by the Applicant.

[26] On February 23, 1996, Mr. Jorgensen read an article in a local Vincentian newspaper in which it was reported that the Government had paid the entire amount of the compensation awarded by the Board with interest since December 1993. Mr. Jorgensen recalled that on December 13, 1993 in advising that the judgment of the Court of Appeal be appealed to the Privy Council, the Respondent informed him that he did not need any further funds as he was negotiating a loan from a local bank. This was repeated on December 29, 1993 when he reported that the appeal to the Privy Council had been lodged. At that time, unknown to the Applicant, the compensation moneys with interest had been paid over to the Respondent. Indeed, before February 1996, inquiring as to whether the Government had paid the compensation money were responded to in the

negative with the Respondent telling the Applicant that compensation would not be paid until the legal actions were completed.

[27] Mr. Jorgensen met with the Respondent in London on February 25, 1996 and he admitted that compensation in the sum of EC$6,697,500.00 was received on behalf of WPL and deposited to the credit of his clients' account at NCB Limited, Kingstown. After requests by facsimile in November and December 1996, the Applicant received a letter from NCB Limited dated December 6, 1996 confirming that payment was made to the said account on December 15, 1993.

[28] As alluded to above, the money to purchase the estates was advanced as a loan from the BG Bank to the Applicant who passed same to WPL without interest although it was required to repay the Bank with interest at an average rate of 10 to 11 per cent per annum. As a requirement of the Bank as security and as an assurance that the compensation money would be applied to repay the loan, WPL issued a promissory note back dated to the date of the purchase (February 25, 1985). The note was made in favour of the Claimant in the sum of US$3,000,000 and was signed by the Respondent as Director of WPL. The Applicant in turn assigned the note to the Bank on May 30, 1985. The Respondent issued an acknowledgement of the assignment by letter to the Applicant dated June 6, 1985 signed in his capacity as counsel for WPL. The said letter undertook to pay the sum of US$3,000,000 out of the compensation payable by the Government to the Bank before any payment to the Applicant.

[29] The loan was repaid by the Applicant from its own resources and the Bank informed WPL by letter dated October 11, 1999 that the money to be paid by the Government as compensation was to be repaid directly to the Applicant.

[30] Notwithstanding demands by the Applicant made to the Respondent for payment of the compensation money, the Respondent did not do so but instead told the Applicant that he had to keep the money intact as he was expecting a bill of costs for over a million dollars for the costs of the Board and millions of dollars would be due as costs in the appeal

proceedings payable to the Government. Mr. Jorgensen recalled that at their meeting in London in February 25, 1996 when the Respondent admitted receiving the compensation money, the Respondent told him he had sent a part of the money out of Saint Vincent and the Grenadines to be out of the reach of the Government.

[31] In November 1996, the Respondent forwarded to Mr. Jorgensen by facsimile documents purported to be a summary statement as to the expenditure in respect of WPL in the proceedings before the Board and in the litigation. The expenditure was stated to be a total of EC$5.049 m. The statement has never been supported by any receipts or supporting vouchers in spite of repeated demands for same by the Applicant. To date, the Government has not sought to recover any costs.

[32] Mr. Jorgensen and another employee of the Applicant, Ann Hansen, met with the Respondent on January 9, 1997. The exhibited notes of that meeting recorded that the Respondent agreed to complete all matters and issues before April 1, 1997 without further litigation and that he would present detailed documentation for all costs before that date.

[33] In May 1997, the Respondent paid to the Claimant the sum of EC$1.485 m. The difference of EC$5,212,500 left over from the compensation money has not been paid over. At a meeting with Mr. Jorgensen and Ms. Hansen on October 31 and November 1, 1996, the Respondent expressed reluctance to pay any further sums until issues of costs were settled. In addition, the possibility of winding up WPL was discussed.

[34] By letter dated April 14, 1999, Mr. Jorgensen wrote to the Respondent requesting detailed information as to payments made and outstanding liabilities of WPL. It was therein stated that the Applicant's interim account of costs showed a balance due to it of EC$2,472,394. This was calculated on the basis of payments due and payable to the Government, which have not been made up to the present.

[35] On May 7, 1999, the Respondent told Mr. Jorgensen that the Government had taken proceedings against WPL, which was untrue. He also told him that WPL had been put into liquidation, which was also untrue as WPL was not wound up until September 25, 1999.

[36] By letter dated August 25, 1999, the Applicant demanded payment of the sum of EC$9,078,818 which Mr. Jorgensen stated to be inclusive of interest at 5% per annum. A subsequent letter of September 16, 1999, made a demand for payment of EC$6,688,636, which was stated to be for the purchase price plus fees paid to the Defendant, fees paid to English Queen's Counsel and Solicitors, incorporation and other expenses and expenses for the startup of operations of the estates.

[37] Mr. Jorgensen met with the Respondent at his office on September 14, 1999 and read to him a prepared statement detailing the Applicant's relationship with the Respondent and the accompanying events to date. In his witness statement the deponent recalled the following response:

> "When I finished reading the Defendant told me that I could not have the best of both worlds that having not paid the license fee the Claimant could not have beneficial ownership of WPL."

Following his exchange, Mr. Jorgensen wrote to the Respondent by letter dated September 17, 1999 informing him that the Applicant had terminated the relationship of solicitor and client and requested the return of all documents relating to its affairs including WPL and the other four companies to Commissiong & Commissiong.

[38] On September 25, 1999, the shareholders of WPL purported to pass a resolution at an extraordinary general meeting for the voluntary liquidation of WPL.

[39] Subsequently, the Respondent wrote to the Applicant by letter of October 11, 1999. The text of that letter bears reproduction in extenso:-

> "Your letter dated 17th September 1999 addressed to me and Windward Properties Limited has been received.
> Firstly, I am not your solicitor or your Foundation's solicitor and you know this; several years ago certain specific matters were done by me for your Foundation and any relationship of solicitor ended with each engagement.

> I was never retained by you or your Foundation on an ongoing basis and you are fully aware of this.
>
> Secondly, with regard to Windward Properties Limited, this is a limited liability company which was formed for the specific purpose of circumventing the provisions of the Aliens Landholding Act to which the Foundation lent money, the Company does not belong to the Foundation.
>
> Thirdly, with regard to the several companies or businesses referred to in your said letter, whatever documents or papers relating to those companies and businesses which may have come to my hands or which may have been created through me and belonged to your Foundation were passed over to me years ago. I am therefore not aware to what document you are referring, perhaps, you may wish to be more specific.
>
> Fourthly, I note you stated that you enclosed a copy of my letter of 9th April 1985 to E. Griffith of Agriculture and Trade but no such letter was enclosed; however, may I remind you that at your request all moneys which came to my hand in respect of the lease arrangement with the Government of St. Vincent were transferred to Windward Properties Ltd for use in the exercise of the circumvention of the Alien Landholding Act which moneys were treated as a loan to Windward Properties Ltd by you and which you included in the pro-notes you extracted from Windward Properties Ltd for the Foundation in furtherance of circumvention of the Alien Landholding Act."

[40] The Applicant said that up to the date of the letter of termination (September 7, 1999) it considered the Respondent to be its solicitor, a relationship never hitherto denied by him. Further, the Respondent had never doubted the Applicant's beneficial ownership of WPL and the other companies. The fourth contention in the letter with regard to the money concerning the lease was roundly rejected as not consonant with its instructions to the Respondent.

[41] As to the letters of demand of August 25, 1999, and September 16, 1999, the Applicant's present solicitors received copies of letters dated August 28, 1999 and September 18, 1999 purporting to be replies by the Respondent denying indebtedness to the Applicant. The letters effectively refused payment to the Applicant of any further money. Indeed the letter of August 28, 1999 to Mr. Jorgensen stated as follows:

> "We are instructed that you, Mr. Jorgensen as well as Faelleseje lent Windward Properties Ltd US$3,000,000 on 25th February 1985 or at all. We are further

> instructed that the formation of Windward Properties Limited and the pro note dated 28th February 1985 were all part of a plan or scheme in which Mr. Jorgensen participated to circumvent the Alien Landholding Act and to prevent the Government of St. Vincent and the Grenadines from forfeiting Orange Hill Estates."

The Applicant denied having received the originals of these letters and stated that it first had sight of them when copies were passed to them by their present solicitors.

The Court has no reason to doubt the veracity of Mr. Jorgensen. We have take note that the Respondent himself signed the letter undertaking to pay the loan of US$3,000,000 to the BG Bank "prior to any other payment to the Foundation" out of the compensation payable by the Government of Saint Vincent and the Grenadines.

[42] Purportedly, in support of the summary statement of expenditure of November 11, 1996, the Respondent submitted to the Applicant documents styled as Balance Sheets of WPL for the years 1985 to 1996 inclusive. The sole asset of the company was stated to be the estates which were valued at E.C. $29,000,000, the amount stated in the Simmons' valuation but rejected by the Board of Assessment. The Applicant alleged that the balance sheets are fictitious and calculated to show that WPL's liabilities exceeded its assets. Indeed, it was said that WPL was a mere shell company not having had any staff or transacting any business save for the borrowing of money from the Applicant for the purchase of the estates. Having perused the balance sheets we find them to be fictitious and without basis in reality as they are based on an erroneous valuation of the estates and no mention was made of the compensation money.

THE CHARGES

[42] The Applicant submitted that the alleged acts of the Respondent as complained of were in the nature of solicitor's work. The Court must determine whether the facts establish a complaint of professional conduct, each case to be determined on its own facts.

[43] There can be no doubt that the charges as laid against the Respondent are grave and weighty and raise serious allegations of conduct unbefitting of a solicitor. The standard of proof to be applied is to the criminal standard beyond reasonable doubt (see: ***Wilston***

Campbell v David Hamlet (as executor of Simon Alexander) [2005] U.K. PC 19). The onus of proof rests squarely on the party making the complaint against the legal practitioner.

[44] The authorities suggest that a distinction ought to be drawn between conduct amounting to negligence on the one hand and dishonourable conduct on the other hand. Lord Esher MR in ***Re: Cooke*** (1889) 5 TLR 407 put it this way (at pp. 407-408):-

> "… but in order that the court should exercise its penal jurisdiction over a solicitor it was not sufficient to show that his conduct had been such as would support an action for negligence or want of skill. It must be shown that the Solicitor had done something, which was dishonourable to him as a man and dishonourable to his profession. A professional man, whether he were a solicitor or a barrister was bound to act with the utmost honour and fairness with regard to his client. He was bound to use his utmost skill for his client… If an attorney were to know the steps which were the right steps to take and were to take a multitude of wrong, futile, and unnecessary steps in order to multiply the costs, then if there were both that knowledge and that intention and enormous bills of costs resulted the attorney would be acting dishonourably. A solicitor must do for his client what was best to his knowledge and in the way which was best to his own knowledge, and if he failed in either of those particulars he was dishonourable."

The Court of Appeal of Jamaica in **Leslie L. Diggs-White v George R. Dawkins** (1976) 23 WIR 102 ruled that the attorney could not be found guilty of gross neglect or negligence there having been no such charge laid against him. The Court went on to assert that even if there had been a finding of gross neglect or negligence, such finding would not have amounted to professional misconduct. Accordingly, the Court must be wary to be satisfied so as to feel sure that the charge has been proved and that the evidence disclosed unprofessional conduct.

[45] The ten charges laid were helpfully grouped into three broad categories of misconduct by the Claimant referable to the listing of allegations of misconduct unbefitting a solicitor appearing in Halsbury's Laws of England 4th Edition, Volume 44 (1) at paragraph 440. The broad categories are:

(a) committing a fraudulent breach of trust;

(b) making false and misleading statements to his client in a professional capacity; and

(c) taking advantage of the client's lack of knowledge of the laws of Saint Vincent and the Grenadines for the Respondent's own advantage.

[46] The charges as set out in the Schedule to the Order of Master Cottle dated March 17, 2006 are as follows:

1. **Making a False or Misleading Statement in his Professional Capacity to the Applicant**

1.1 Othneil R. Sylvester, Q.C., in his capacity as a Barrister and Solicitor, knowing the same to be false and misleading professionally advised the Applicant that it would have been lawful and not in violation of the Aliens (LLandholding Regulation) Act, Chapter 235 of the Laws of St. Vincent and the Grenadines (Revised Edition) 1990 for the Appellant to acquire approximately 3,300 acres of land in St. Vincent and the Grenadines known as Orange Hill Estates by:

a) incorporating a company named Windward Properties Limited in St. Vincent and the Grenadines to acquire Orange Hill Estates and for which the Applicant paid all expenses including all professional fees and incorporation expenses.

b) incorporating four (4) other local companies to be the shareholders of Windward Properties Limited to acquire Orange Hill Estates and for which the Applicant paid all expenses including all professional fees and incorporation expenses;

c) having a number of Danish nationals in the employ of the Applicant subscribe the Memoranda of Association of Windward Properties Limited and the said four (4) companies acquiring Orange Hill Estates;

d) having a number of Danish nationals in the employ of the Applicant subscribe the Memoranda of Association of the four (4)

other local companies that would hold the shares in Windward Properties Limited as the principal company; and

e) subsequently stating to the Applicant by letter dated 28th August 1999 that the formation of Windward Properties Limited for the acquisition of Orange Hill Estates was all part of a plan or scheme to circumvent the said Aliens (Landholding Regulation) Act and to prevent the Government of St. Vincent and the Grenadines from forfeiting the lands acquired.

2. **Taking advantage of the Applicant's lack of knowledge of the laws of St. Vincent and the Grenadines for his own advantage**.

Between the 15th December 1984 and the 29th December 1984 Othneil R. Sylvester Q.C. in his capacity as a Barrister and Solicitor of the Supreme Court of St. Vincent and the Grenadines, took advantage of the Applicant's lack of knowledge of the laws of St. Vincent and the Grenadines and his position as legal advisor to the Applicant in advising the Applicant that by employing the device of incorporating 5 local companies with a number of Danish nationals as subscribers to the Memoranda of Association the Applicant would save an Aliens' Landholding licence fee and for this advice charged the Applicant the sum of US$52,500.00 for having saved the Applicant the said licence fee and the further sum of EC$13,445.00 in professional fees and expenses for incorporating the said companies.

3. **Making a False or Misleading Statement in his professional capacity to the Applicant**

After advising the Applicant on and incorporating on behalf of the Applicant five (5) companies, namely Windward Properties Limited, ZBF Ltd., Rose Cottage Limited, Blue Ridge Limited and Denver Portland Limited, with Danish nationals as subscribers to the Memoranda of Association, Othneil R. Sylvester, Q.C., while continuing to act as Barrister and Solicitor of the Applicant and for the said five (5)

companies, advised the Applicant that at that time it was inappropriate and inadvisable to appoint Danish nationals as directors of the said companies while intending to and appointing himself and members of his immediate family as such directors without advising the Applicant of same.

4. **Committing a Fraudulent Breach of Trust**

Having advised the Applicant against appointing Danish nationals to represent the Applicant as directors of the companies Windward Properties Limited, ZBG Ltd., Rose Cottage Limited, Blue Ridge Limited and Denver Portland Limited, Othneil R. Sylvester, Q.C. while continuing to act as Barrister and Solicitor of the Applicant and the said five (5) companies, caused himself and members of his family to be issued with the controlling interests in the said companies and appointed himself and such members of his family as directors thereof.

5. **Committing a Fraudulent Breach of Trust**

On or about the 9th day of December, 1993, Othneil R. Sylvester, Q.C., in his capacity as Barrister and Solicitor for the Applicant, received on behalf of Windward Properties Limited in trust for the Applicant from the Government of Saint Vincent and the Grenadines the sum of EC$6,697,500.00 plus costs as compensation for the compulsory acquisition of Orange Hill Estates and failed for over two (2) years to advise or otherwise inform the Applicant of such receipt.

6. **Committing a Fraudulent Breach of Trust**

With the knowledge that the Applicant had obtained a loan from the Savings Bank Bikuben of Copenhagen, Denmark, to pay for the purchase of Orange Hill Estates, and having himself signed as Counsel for the Applicant as undertaking dated 6th June, 1985 to the said lending bank to repay as a priority the loan in the sum of US$3,000,000.00 from the compensation payable by the Government of St. Vincent and the Grenadines for the compulsory acquisition of Orange Hill Estates, Othneil R. Sylvester, Q.C. on or about the 9th December, 1993 received the said

compensation amounting to EC$6,697,500.00 plus costs and failed to pay the loan amount to the said bank or to pay over the compensation to the Applicant resulting in considerable damage to the Applicant.

7. **Making a False or Misleading Statement in his professional capacity to the Applicant**

Othneil R. Sylvester, Q.C. between 9th December, 1993 and 25th February, 1996 having received the sum of EC$6,697,500.00 on the Applicant's behalf as compensation for the compulsory acquisition of Orange Hill Estates, falsely and untruthfully denied to the Applicant that the Government of St. Vincent and the Grenadines had paid compensation and proffered to the Applicant the explanation, which was known by him to be false, that all pending litigation between the Applicant and the Government had to be concluded before the Applicant could be paid the compensation.

8. **Making a False or Misleading Statement in his professional capacity to the Applicant**

Othneil R. Sylvester, Q.C., having received in his professional capacity as a Barrister and Solicitor the sum of EC$6,697,500.00 plus costs on the Applicant's behalf as compensation for the compulsory acquisition of Orange Hill Estates, on or before the 8th November, 1996 submitted to the Applicant a summary statement containing false or fictitious disbursements allegedly made by Othneil R. Sylvester, Q.C. on the Applicant's behalf and has continuously failed to provide proper supporting vouchers or receipts for such alleged payments, to credit the Applicant with sums paid to him on demand for legal fees and without sending any proper requisition for fees prior to claiming the same.

9. **Committing a Fraudulent breach of trust**

On or about the 9th day of December, 1993, Othneil R. Sylvester, Q.C., in his capacity as Barrister and Solicitor for the Applicant received the sum of EC$6,697,599.00 plus costs on behalf of the Applicant and failed to pay the said sum to the Applicant forthwith or within a reasonable time.

10. **Committing a fraudulent breach of trust**

On or about the 9th day of December, 1993 Othneil R. Sylvester, Q.C., in his capacity as Barrister and Solicitor of the Applicant, having received from the Government of St. Vincent and the Grenadines the sum of EC$6,697,500.00 plus costs as compensation for the compulsory acquisition of Orange Hill Estates paid to the Applicant the sum of EC$1,485,000.00 during the month of May 1997 and despite numerous demands made of him by the Applicant and on the Applicant's behalf, has failed, neglected and/or refused, without good or lawful reason, to pay the Applicant the balance of EC$5,212,500.00 with interest thereon or at all.

[47] The Respondent took issue with the reference to the Respondent being described as acting 'in his capacity as Barrister and Solicitor for the Applicant.' We accept the submission by learned Senior Counsel for the Applicant that the reference to Barrister and Solicitor does not preclude the Court from perusing the evidence and arriving at a finding as to into which branch of profession the activity in issue falls, having regard to the bifurcation of the profession.

CHARGE NO. 1

The first charge concerned the advice given to the Applicant by the Respondent as a Barrister and Solicitor that the arrangement to avoid the alien landholding licence and the licence fee was lawful and not in violation of the Act. There is no demur that the Applicant acceded to the arrangement based on the assurances of the Respondent and WPL and four other companies were formed to facilitate the acquisition of the estates. No licence fee was paid by the Applicant and for this "saving" (as it was described by the Respondent himself in his telexes to Poul Jorgensen) the Respondent was paid a fee of 2.5% of the

purchase price. Also, it is beyond dispute that the Respondent wrote to the Applicant on October 11, 1999 stating that WPL was formed "for the specific purpose of circumventing the provisions of the Aliens Landholding Act". This was on the heels of his assurance by telex of December 29, 1984 that "all arrangements relative to your transaction will be consumated (sic) within the ambit of the Laws of St. Vincent."

[48] Central to this charge is proof of knowledge by the Respondent that he knew that he was advising the Applicant to circumvent the law. Learned Senior Counsel also referred to the letter of August 28, 1999, which the Applicant said it did not receive in its original form but rather as a copy through its solicitors. That letter stated in its fourth paragraph:

> "We are further instructed that the formation of Windward Properties Ltd and the pro note dated 25th February 1985, were all part of a plan or scheme in which Mr. Jorgensen participated to circumvent the Alien Landholding Act and to prevent the Government of St. Vincent and the Grenadines from forfeiting Orange Hill Estates."

[49] As we see it, having offered the arrangement as an option to the original plan of applying for the licence and paying the fee, coupled with the assurances rendered, it cannot be said that the Applicant and/or Poul Jorgensen were in any way complicit in plan or scheme to circumvent the Alien Land Holding Act. The Applicant was contemplating making an application for a waiver of the licence fee and plainly made a decision informed by the advice and assurance of the Respondent that were given.

[50] It was argued on behalf of the Respondent that the plan or scheme was no more than a device or scheme akin to the avoidance of tax provisions, which was no vice. It was said that the aim (which was achieved) was the circumvention of the licensing requirement under the Act. The point was made the Government of St. Vincent and the Grenadines never sought to forfeit the estates or require ten applications for a licence. As attractive this argument was, we have been persuaded by the very language of the letters of October 11, 1999 and August 28, 1999 that there was beyond doubt, operating in the Respondent's mind, when he advised as to the arrangement, that the devise employed was at least potentially unlawful. The Applicant was aware of the requirement of a licence and the fee payable therefor and relied upon the advice of the Respondent.

[51] It was also urged on behalf of the Respondent that the Privy Council approved of the arrangement in its judgment in ***Windward Properties Limited v Saint Vincent and the Grenadines*** (1996) 47 WIR 189. The passage reads:

> "Windward is owned by Danish interests. It was incorporated in order to be the purchaser, in a manner that avoided the restrictions on land holding by foreigners in St. Vincent."

There having been no argument on the point, we can at best treat this statement as obiter. Thus, the dictum cannot be taken as conferring a cloak of legality over the arrangement. Be that as it may, we are of the view that what matters is the Respondent's state of knowledge and belief and the evidence bore out the fact that he knew the arrangement to be not lawful. Accordingly, the first charge has been sufficiently proved.

CHARGE NO. 2

[52] This charge alleged that the Respondent took advantage of the Applicant's lack of knowledge of the laws of St. Vincent and the Grenadines for his own advantage by using his position as legal adviser to the Applicant to advise the employment of the arrangement. For the said advice he received the sum of US$52,500 for having "saved" the Applicant the licence fee and a further sum of EC$13,445.00 in professional fees and expenses for incorporating WPL and the other companies.

[53] As was said before, the Applicant's knowledge was restricted to the requirement that a licence be applied for under the Act and if granted a licence fee was payable. The Respondent treated this state of knowledge as fatal to the charge coupled with the absence of any complaint that the fees were exorbitant. This cannot be accepted, as the Applicant, by the very request for assurances was uninformed as to the intricacies of the Act. The Respondent was relied upon to render advice. In doing so, he commended an arrangement for which a fee was demanded and additional incorporation fees and disbursements were incurred by the Applicant. Payment of the fees having been admittedly received, the charge has been proved to the requisite standard.

CHARGE NO. 3

[54] The third charge alleged that the Respondent made a false and misleading statement in his professional capacity, while acting as barrister and solicitor for the Applicant, WPL and the four other companies and after advising that there be five companies incorporated with Danish nationals as subscribers to the Memoranda of Association, advised the Applicant that it was inappropriate and inadvisable for Danish nationals to be appointed as directors of the said companies. It was further alleged that the Respondent intended to and did appoint himself and members of his family as directors without advising the Applicant that he had done so. The documentary evidence in support of the statements in the witness statement of Poul Jorgensen established that Danish directors were not appointed. However, the testimony of Poul Jorgensen was that the Respondent on February 22, 1985 purported to issue shares in WPL to himself, members of his family and three clerks in his office. No intent to appoint himself and members of his family as directors (as against shareholders) has been proved. The third charge has therefore not been proved.

CHARGE NO. 4

[55] This charge alleged the commission of a fraudulent breach of trust while the Respondent continued to act as Barrister and Solicitor of the Applicant and the five companies. The Applicant complained that after advising against the appointment of Danish nationals as directors of WFL and the four other companies, he caused himself and members of his family to be issued with controlling interests in the companies and appointed himself and the said members of his family as directors.

[56] There is no evidence that the members of the Respondent's immediate family were ever appointed as directors of WPL and the other four companies, although there is evidence that together with the Respondent they were made shareholders of WPL. Be that as it may, the issuing of shares in WPL and the other companies without the knowledge and consent of the Applicant the very next day after their incorporation provided evidence that there existed an intention to assume control of WPL.

[57] The Respondent argued that there was no complaint by the Applicant after it belatedly discovered that shares in WPL and the other companies had been issued. This must be

taken in its chronological context as the Applicant was told on January 9, 1999 of the issuance of one share to each member of his family to safeguard the compensation money from being taken away by the Government. The reason given was untrue and the extent of the shares issued was equally inaccurate. The true position only became known to the Applicant subsequent to September 17, 1999 with the retainer of Commissiong & Commissiong by the Applicant.

[58] There was never any assertion by Poul Jorgensen or any evidence adduced of the Respondent appointing members of his family as directors of WPL and the other companies. The only director of WPL identified in the evidence was the Respondent himself when he was directed by the Applicant to sign the promissory note as director. The charge has not been satisfactorily proved.

CHARGE NO. 5

[59] The fifth charge alleged a fraudulent breach of trust by the Respondent in that in his capacity as Barrister and Solicitor for the Applicant, on December 9, 1993 he received on behalf of WPL in trust for the Applicant from the Government of St. Vincent and the Grenadines the sum of EC$6,697,500 plus costs as compensation for the compulsory acquisition of Orange Hill Estates and failed to advise or inform the Applicant of such receipt for over two years.

[60] It stands uncontroverted that the Respondent received the moneys on or about the date stated. Proof of deposit in his firm's client's account was exhibited. Poul Jorgensen said that it was not until he met the Respondent in London on February 25, 1996 that receipt was acknowledged.

[61] The Applicant said that notwithstanding numerous inquiries over a period of time when the compensation money had been received, the Respondent repeatedly denied such receipt until confronted on February 25, 1996. It needs no profound thought to accept that it was plainly unreasonable for the Respondent to have held such a sizeable sum of money for in

excess of two years without informing the client, or a fortiori, while denying receipt of same and that same can amount to professional misconduct.

[62] The thrust of the Respondent's rejection of this complaint was that the Respondent was not in a client-lawyer relationship with the Applicant as barrister and solicitor. The existence of a trust was challenged. It was said that if WPL is acknowledged to be the client then there would have been a trust in favour of WPL and not the Applicant. That being so, the Applicant would not have been entitled to any information.

[63] Learned Senior Counsel for the Respondent devoted a significant portion of his arguments to the issue of how the receipt of the compensation money was to be treated. The question was asked as to what rights accrued to the Applicant as the identified payer of the fees and disbursements. It was argued that by the Applicant's own admission, the moneys advanced for the purchase of the estates by WPL and for the incorporation of the companies were the subject of a loan represented by the promissory note. The argument went on to invoke the principle that the person advancing the money by way of loan can have no beneficial interest in the property acquired, because if that were so, the lender would benefit twice that is, by way of a right to repayment and a beneficial interest in the property acquired. Reference was made to the case of **Re: Sharpe** [1980] 1 WLR 219 where Browne-Wilkinson, J (as he then was) said at p 223B:-

> "…if, as in this case, moneys are advanced by way of loan there can be no question of the lender being entitled to an interest in the property under a resulting trust. If he were to take such an interest, he would get his money twice: once on repayment of the loan and once on taking his share of the proceeds of sale of the property."

[64] It was further submitted that the assets of WPL belonged to the Company and not to its shareholders (see ***Johnson v Gorewood & Co*** [2001] 1 All E.R. 481 – per Lord Millett). It was admitted that although Danish interests did take possession of the estates, this did not entitle the Applicant to the compensation money.

[65] The response on behalf of the Applicant was that the inference could be drawn from the dealings between the Applicant and the Respondent that it was plainly understood that the

Foundation would be the equitable owner of WPL. This would be borne out by the fact of the Respondent making payment of US$1,485,000.00 m to the Applicant. If the Applicant was not the client of the Respondent why then would such payment have been made? It was further astutely pointed out that the Respondent as the owner and controller of the WPL would be his own client if the Respondent's position was taken to its logical conclusion, a wholly ridiculous state of affairs.

[66] Further, the events must be put in chronology. The Applicant had paid off the loan which was due from WPL for the purchase of the lands. Hence, after October 11, 1999 the Foundation stood in the shoes of the Bank which prior thereto was to have been paid before any payment was made to the Foundation. We accept the response of the Applicant.

[67] In the premises, the fifth charge has been proved and the Respondent is adjudged guilty of professional misconduct thereunder.

CHARGE NO. 6

[68] The sixth charge was founded upon the letter of undertaking dated June 6, 1985 signed by the Respondent. It was charged that being aware that the Applicant had obtained a loan from the S B Bank of Copenhagen, Denmark, to pay the purchase price for the estates, and having undertaken on behalf of WPL to repay to the Bank the loan of US$3m as a priority from the compensation payable by the Government of St. Vincent and the Grenadines, the Respondent had received the compensation money and failed to inform the Applicant of its receipt or to pay over the compensation money to the Applicant resulting in considerable damage to the Applicant.

[69] It was urged on behalf of the Applicant that having paid neither the Bank nor the Applicant, the Respondent was guilty of unprofessional conduct which was compounded by him not informing the Applicant of the receipt of the compensation money. It was countered by the Respondent that there was no fraud as up to October 11, 1999, when the Respondent was

informed by letter from the B G Bank that the Foundation had repaid the loan to the Bank, and that payment should be made directly to the Foundation.

[70] The crux of this charge is the failure to pay the Bank and to pay over the compensation to the Applicant. Having admitted receiving the compensation award with interest since December 1993, the Respondent neither paid the Bank pursuant to the undertaking prior to October 11, 1999 nor paid the Applicant after that date while failing to inform the Applicant of the receipt by him of the compensation money until February 25, 1996. Such conduct we find to be undoubtedly reprehensible and amounts to professional misconduct.

CHARGE NO. 7

[71] This charge is akin to the fifth charge as it also complains of the Respondent untruthfully denying that the Government of St. Vincent and the Grenadines had paid the compensation while proffering to the Applicant the false explanation that the compensation would not be paid until all pending litigation between the Applicant and the said Government had been concluded. No explanation was forthcoming from the Respondent. We do not accept that it was highly unlikely that the Respondent would have made such a statement as the same does not exceed the bounds of credibility. The Respondent did receive the money and denied receipt for over two years. Again, this conduct was reprehensible and plainly amounted to professional misconduct.

CHARGE NO. 8

[72] This charge accused the Respondent of submitting to the Applicant on or about November 8, 1996 a summary statement containing false or fictitious disbursements allegedly made by the Respondent on the Applicant's behalf, without providing supporting vouchers and receipts for the alleged disbursements, without giving credit for money paid by the Applicant on demand for legal fees and without sending any proper requisitions for fees prior to claiming the same.

[73] To date, no supporting vouchers or receipts nor fee notes have been provided. It stands uncontroverted through the ipsa plixit of Poul Jorgensen that the Applicant paid all fees

demanded of it by the Respondent. The Respondent contended that there was no evidence that the summary statement is false or fictitious and relied on an undated and unsigned document which was sent to the Applicant and purported to put the litigation in perspective up to the end of litigation before the Privy Council.

[74] We are unable to discern any assistance to the Respondent from that document. It did nothing to explain or provide supporting documentation for the summary statement. The said statement therefore must be treated as a matter of evidence as false or fictitious, conduct that is obviously unprofessional.

CHARGE NO. 9

[75] The Applicant alleged that on or about December 9, 1993, the Respondent received the sum of EC$6,697,599.00 plus costs on behalf of the Applicant and failed to pay over same forthwith or within a reasonable time. The Respondent took issue and with the inclusion of a reference to costs. Let it be at once said that the inclusion of costs which was not supported by the evidence and the incorrect figures of the sum received are not fatal to the charge.

[76] Contrary to what was contended on behalf of the Respondent, this is not a case of mere non-payment. The failure to pay over the compensation money must be put into factual context in that the money was received in December 1993, a part was paid in May 1997 and the balance is yet to be paid over. This charge has thus been established to the requisite standard.

CHARGE NO. 10

[77] In the final charge, the complaints laid against the Respondent was that having received the sum of EC$6,697,500 plus costs in his capacity as Barrister and Solicitor on or about December 9, 1993 and having paid the sum of $1.485 m during the month of May 1997, the Respondent failed, neglected and/or refused, without good or lawful reason, to pay the Applicant the balance of EC$5,212,500 with interest thereon or at all.

[78] As has been previously iterated, the Applicant made several demands for payment including by letters dated August 25, 1999 and September 16, 1999. In paragraphs 40 and 41 of his witness statement, Mr. Jorgensen explained the basis for the sums demanded.

[79] The Respondent maintained that he was obliged to retain sums of money as the accounts were not yet finalized, there being expenses outstanding. It was further argued that liquidation proceedings in relation to WPL were being contemplated as early as October 31, 1997 and were indeed commenced in September 1999.

[80] The Court has noted that to date no balance has been paid nearly ten years after the sum of EC$1.485 m had been paid by the Respondent to the Applicant. More than adequate time has elapsed for the outstanding liabilities to have been ascertained and settled. Indeed, it would be reasonable to conclude that no such liabilities exist. The Respondent has not paid the balance and no acceptable lawful reason for this omission has been forthcoming. The unavoidable inference to be drawn is that the Respondent has whittled away the balance of the compensation money, or if he retains it, he has refused to pay it over to the Applicant. Such failure to pay over given the time that has elapsed amounted to professional misconduct on the part of the Respondent. Thus, the tenth charge has been proved beyond reasonable doubt.

PUNITIVE SANCTIONS

[81] The Court enquired of both sides as to what was the extent of its jurisdiction to punish. More specifically, it was asked whether the Court is restricted to the power to suspend or to strike off as provided for in Section 76 of the Act referred to in paragraph 3 of this judgment. Learned Queen's Counsel for the Respondent accepted that the Court has the plenitude of powers to address the conduct of Barristers or Solicitors in their capacity as officers of the Court. Indeed, the Court in ***Re: Application of Carl L. Joseph*** – Claim No. 84 of 2000 (SVG) accepted that it was clothed with such powers and imposed a fine on a legal practitioner for professional misconduct.

[82] In the present case, we consider the professional misconduct to be grossly reprehensible and falls at the highest level of the scale. The conduct of the Respondent has been so grossly improper that severe penalties are in order. The Respondent is a very senior practitioner from whom much was expected. The amount of money involved is considerable and the Applicant has been deprived of its use for an extended period. Misconduct involving the use of clients' money is not to be tolerated. No contrition has been forthcoming from the Respondent but rather the allegations have been stoutly defended.

[83] Having regard to all the circumstances of the case, the Tribunal orders as follows:

(1) That the Respondent be struck off the Court roll forthwith.

(2) That the Respondent pay to the Applicant within six months by way of compensation the sum of $5,212,500 with interest thereon at the rate of five per cent per annum from December 15, 1993 to the date of payment.

[84] We have considered the question of costs. This case was one fit for two Queen's Counsel and this must be reflected in the level of costs. In our discretion, we award costs to the Applicant fixed in the sum of $40,000.00.

……..
Justice Kenneth Benjamin
HIGH COURT JUDGE

……
Justice Frederick Bruce-Lyle
HIGH COURT JUDGE