

IN THE SEYCHELLES COURT OF APPEAL

[Coram: A. Fernando (J.A) , B. Renaud (J.A), G. Dodin (J.A)]

Civil Appeal SCA 26/2016

(Appeal from Supreme Court Decision CS 108/2016)

William Herminie

Appellant

Versus

The Registrar, Supreme Court

Respondent

Heard: 03 May 2018

Counsel: Mr. Anthony Derjacques for the Appellant

Ms Lansinglu Rongmei for the Respondent

Delivered: 11 May 2018

JUDGMENT

B. Renaud (J.A)

1. The Appellant who was a practicing attorney-at-law and a notary, has appealed from the judgment of the learned Chief Justice dated 5th September, 2016, removing him from the roll on the ground that he is unfit to practice as an attorney-at-law or a notary. The learned Chief Justice found that:

“in view of the Committee of Inquiry’s Report, which findings are clearly supported by the evidence adduced, that the Respondent (the Appellant now) has breached several provisions of the LPA, (Legal Practitioner’s Act) notably sections 4, 5, 8, 9, 11, 12, 13 and 20. He has also breached section 35(3) and section 36 of the

Notaries Act and section 41(d) of the Stamp Duty Act. His explanations are not sufficient to dispel the substance of the complaints which I find proved.”

2. A “Committee of Inquiry” (the Committee) was set up, in November, 2015, under section 18 (1) and 18 (10) of the Legal Practitioner’s Act, to inquire into whether the then Respondent (now Appellant) was a fit and proper person to practice law and whether all professional conduct complaints against the Appellant had been resolved to the satisfaction of the individual clients involved and the Legal Practitioner’s Act. In that regard, the Committee was called upon to inquire into sixteen professional complaints and eight civil proceedings filed between the years 2011 and 2015, against the Appellant. The Committee was also asked to enquire into non-payments of goods and services and professional misconduct.
3. The Committee submitted its Report, dated 7th June, 2016, to the learned Chief Justice, containing its findings and recommendations. On 28th July, 2016, the learned Chief Justice, after hearing the Appellant, issued orders, dated 5th September, 2016, based on the Report as well as the responses of the Appellant.
4. The Appellant has, in his Notice of Appeal, raised 2 grounds of appeal challenging the findings of the learned Chief Justice as follows:
 - 1) The Honourable Chief Justice erred in principle in ordering the Appellant to serve a further term of two years pupillage with an approved Chambers as part of the stated rehabilitation programme. Appellant humbly submits that the supervision in an approved Chambers for a shortened period would be lawful as Appellant has undergone pupillage as granted, lawfully by the former Chief Justice V. Alleear.
 - 2) The Honourable Chief Justice has erred in law in ordering payment in the sum of SR330,000/- to Emmanuel Delcy, and the sums of SR25,000/- to Evans Delcy, Lina Delcy and Nancy Monnaie, in that the parties had been paid and matters settled.

5. We have considered the record of proceedings of the Committee, the judgment appealed against, the proceedings before this court prior to the hearing of the present appeal, and the submissions of Counsel.
6. In the first instance we will address **ground 2** of the grounds of appeal. In relation to this ground of appeal, we are satisfied that the professional conduct complaints against the Appellant have been resolved to the satisfaction of the individual clients involved and according to the provisions of the Legal Practitioner’s Act. The Appellant has satisfied this court that he has paid all money due to the complainants through the Office of the Registrar of the Supreme Court, except for money owed to Emmanuel Delcy, which is the subject of another ground of appeal.
7. It transpired on appeal that a statement of the substance of the allegations made against the Appellant in relation to the complaint of Emmanuel Delcy was not served on the Appellant. According to the records of proceedings of the Committee, Mr. Emmanuel Delcy addressed a letter, dated 4th October, 2010, to the then Chief Justice but the matter did not arise as part of the complaints before the Committee. According to the records of proceedings of the Committee, Mr Emmanuel Delcy testified before the Committee not as a complainant himself but on behalf of 3 of the complainants namely, Evans Delcy, Lina Delcy and Nancy Monnaie. In the light of the foregoing reasons, we find that there is merit in ground 2 of the grounds of appeal which we accordingly allowed.
8. We now consider **ground 1** of the grounds of appeal. The issue for our determination is whether the Appellant should be ordered to serve as a pupil in an approved chambers for an aggregate period of at least two years. Paragraph 27 of the judgment states *inter alia* that “... pursuant to section 11 of the LPA , the Respondent may apply for reinstatement to the roll once he has undergone a period of rehabilitation which is to include the repayment of all outstanding debts, **a pupillage of two years with an approved Chambers** and a demonstration of his ability to operate a Chambers that meets the requirements of the LPA.”

9. The Appellant was admitted as an attorney-at-law by the then Chief Justice V. Alleear, on 7th January, 2004, and was appointed by the President of the Republic of Seychelles as a notary on 25th March, 2004, and took the Official Oath to serve in the office of attorney-at-law on 7 January, 2004. He had practiced as such up to 10th February, 2016, when he was removed from the roll.

10. Section 11 of the LPA states:

“(1) The Supreme Court may, on an application of a person who has been suspended from practice as an attorney-at-law or removed from the roll, remove the suspension or reinstate the person as an attorney-at-law on the roll.

Where the Supreme Court has removed the suspension or made an order of reinstatement under subsection (1), the person shall, if the security given by him under section 5(1)(c) is still valid, and subject to any written law requiring him to have a licence to provide legal services, be entitled to practice as an attorney-at-law.”

11. The broad question for the Committee and the learned Chief Justice was whether the Appellant was a fit and proper person to practice law and whether all professional conduct complaints against the Appellant have been resolved to the satisfaction of the individual clients involved and pursuant to the Legal Practitioner’s Act. The learned Chief Justice found that he was unfit to practice as an attorney-at-law or a notary. Under section 10 of the LPA, the Supreme Court may suspend or remove from the roll an attorney-at-law in such circumstances. Therefore, in our considered judgment, the issue of serving a new 2 year period of pupillage in terms of section 10 of the LPA strictly does not arise. However, semantics aside, we are of the considered view that the seriousness of the actions and/or omissions of the Appellant are such that this court will not condone. The term “pupillage” used by the learned Chief Justice connotes a requirement that the Appellant must go through a “process of rehabilitation” to ensure that he appreciates the necessity of properly conducting himself as an attorney. The Appellant himself recognized that necessity when he stated in ground 1 of his appeal *inter alia* that –

“Appellant humbly submits that the supervision in an approved Chambers for a shortened period would be lawful” We hold similar views albeit not necessarily serving pupillage as such.

12. For the reasons stated above, we partially allow this ground of appeal. The Appellant is not required to serve as a pupil in an approved chambers for an aggregate period of at least two years. We hereby reinstate the Appellant as an attorney-at-law on the roll and order the Registrar to accordingly reinstate the name of the Appellant on the roll. Having been re-instated we hereby order that the Appellant shall operate as an attorney-at-law in an approved Chambers of an attorney-at-law and notary. We further order that during that 12 months period, the Appellant shall:
- (a) Recruit qualified staff to maintain his accounts;
 - (b) Maintain proper client’s records, and other relevant Chamber’s account;
 - (c) Periodically submit all the above-stated account books to be verified by the Registrar of Companies;
 - (d) Properly manage his practice as an Attorney including client/lawyer agreements; diligent performance of clients’ work, including adhering to court schedules on behalf of his clients;
 - (e) Adopt a more professional approach to the legal services he provides, including:
 - 1. keeping appointments with clients;
 - 2. maintaining proper account records;
 - 3. setting up a legal library;
 - 4. employing sufficient staff;
 - 5. keeping a more effective client/lawyer relationships;
 - 6. keeping a more effective court/lawyer relationships;
 - 7. delivering service to the standard expected of an Attorney.

13. The above stated conditions shall be complied with to the satisfaction of the learned Chief Justice.

We make no order as to costs.

B. Renaud (J.A)

I concur:. A.Fernando (J.A)

I concur:. G. Dodin (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 11 May 2018