

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

COMPLAINT NO. 133/97

<b>BETWEEN</b>	<b>HERBERT TOMLINSON</b>	
	<b>And</b>	<b>COMPLAINTS</b>
	<b>SHIRLYN TOMLINSON</b>	
<b>A N D</b>	<b>CARLTON CAMPBELL</b>	<b>RESPONDENT</b>

PANEL

**MISS DOROTHY LIGHTBOURNE  
MRS. MERLIN BASSIE  
MRS. MARGARETTE MACAULAY**

Hearing dates 19<sup>th</sup> February, 2000 and 20<sup>th</sup> October, 2001.

**Present:- Mr. & Mrs. Tomlinson**  
**Absent :- Carlton Campbell**

This Complaint was laid by Mr. Herbert Tomlinson and his wife Mrs. Shirlyn Tomlinson by Affidavit sworn to on the 2<sup>nd</sup> March, 1998.

The hearing commenced on the 19<sup>th</sup> February, 2000 in the absence of Mr. Carlton Campbell.

The record of the General Legal Council and the Affidavit of Mervalyn Walker verified that a notice of the hearing date was posted to Mr. Campbell by registered post on the 4<sup>th</sup> day of January, 2000.

On the 18<sup>th</sup> February, 2000 the Council received a medical report dated 17<sup>th</sup> February, 2000 stating that Mr. Campbell was suffering from influenza and had been advised to rest and take medication for seven (7) days.

The matter was previously set for hearing on the 29<sup>th</sup> May, 1999 when Mr. Campbell failed to attend due to a medical condition and the matter was adjourned sine die.

The panel took note that the Complainants had travelled from Saint Elizabeth for the second time, and the panel decided to commence and part hear the matter and to send the Notes of Evidence to Mr. Campbell for him to attend and cross examine if he so desired at the next hearing date.

Mr. Herbert Tomlinson gave sworn evidence:-

1. That on the 7<sup>th</sup> December, 1995 he engaged the services of Mr. Campbell to handle the purchase of ¼ acre of land at Longwood in the parish of Saint Elizabeth from Miss Joyce Palmer for the price of Three Hundred and Eighty Thousand Dollars (\$380,000.00) Mr. Campbell prepared the Agreement for Sale (Exhibit.1) and had the carriage of sale. The full purchase price was paid to Mr. Campbell who handed it over to the Vendor in the presence of the complainants.
2. That he paid legal fees of Nineteen Thousand Dollars (\$19,000.00) and he produced receipt dated 8<sup>th</sup> December, 1995 from Carlton H. Campbell in the sum of Nineteen Thousand Dollars (\$19,000.00) for "Retained Attorney's legal fees for title" (Exhibit 2).
3. That by letter dated 11<sup>th</sup> December, 1995 (Exhibit 3) Mr. Campbell requested immediate funds for Stamp Duties and Transfer Tax to avoid penalties being incurred, and in response to this letter Mr. Tomlinson sent from Canada the sum of Fifty Thousand Dollars (\$50,000.00) for

Stamp Duty, Transfer Tax and Registration fees. Mr. Tomlinson returned to Jamaica from Canada in June 1997, but he had difficulty in contacting Mr. Campbell, and when he finally saw him Mr. Campbell stated that the papers were not ready. Mr. Tomlinson insisted on a receipt for the stamp duties that he paid and on the 28<sup>th</sup> August, 1997 his wife received a hand written letter (Exhibit 4) from Mr. Campbell stating inter alia that stamp duties etc. have been paid (Exhibit 4).

4. That by letter dated 15<sup>th</sup> February, 2000 (Exhibit 5) Mr. Campbell paid to the Complainants the sum of Fifty-four Thousand Five Hundred Dollars (\$54,500.00), and enclosed copies of the Agreement for Sale and list of fees and duties. This was a refund of the Fifty Thousand Five Hundred Dollars (\$50,500.00) for the Transfer Tax, Stamp Duties and Registration fee, and Four Thousand Dollars (\$4,000.00) being payment of cost ordered by the Disciplinary Committee on the 29<sup>th</sup> May, 1999. That the list of fees and duties sent by Mr. Campbell in exhibit 5 stated the amount of Sixty-nine Thousand Five Hundred and Forty Dollars (\$69,540.00) as the total.
5. That the Nineteen Thousand Dollars (\$19,000.00) paid for Attorneys fees was not refunded.

In the said letter dated 15<sup>th</sup> February, 2000 Mr. Campbell undertook to contribute any additional fees or duties that may arise on the Application for Title.

The Complaint was that Mr. Campbell did not hand over the papers as promised and that he failed to pay the duties to the Stamp Commissioner under the Agreement, and if he had not brought Mr. Campbell to the Disciplinary Committee, he would not have been told that he duties were not paid. The panel admitted as Exhibit 7, letter dated 12<sup>th</sup> August, 1998 from Mr. Campbell to the General Legal Council which was copied to the complainants setting out the history of the matter. The matter was adjourned part heard.

By letter dated 10<sup>th</sup> April, 2000 the Council advised Mr. Campbell that the matter was part heard, and a copy of the notes of evidence was enclosed in the said letter which invited him to attend to cross examine the witness.

The hearing was fixed for continuation on the 20<sup>th</sup> October, 2001.

Mr. Campbell failed to attend. The records of the Council and Affidavit of Eulalee Steele verified that Mr. Campbell was advised of the hearing date by Notice dated 14<sup>th</sup> August, 2000 which was posted by registered post on the 15<sup>th</sup> August, 2001.

Mr. & Mrs. Tomlinson were present. Mrs. Tomlinson gave sworn evidence that in total she paid Mr. Campbell Sixty-nine Thousand Five Hundred and Forty Dollars(\$69,540.00), that he refunded Fifty Thousand Five Hundred Dollars (\$50,500.00), and he still had Nineteen Thousand and Forty Dollars (\$19,040.00) which was paid to him for fees.

She stated that the only work done by Mr. Campbell was to prepare the Agreement for Sale, although he wrote to them in Canada a letter to say that he had paid all the stamp duties (Exhibit 4), and this was not true.

That the Survey was not done until the 25<sup>th</sup> January, 1996. That on the advice of the panel given on the 19<sup>th</sup> February, 2000 they decided to deal with the transaction themselves and she went to the Stamp Office on the 30<sup>th</sup> March, 2000 with a copy of the Sales Agreement, and paid the Stamp Commissioner on the said date total duties of Ninety-eight Thousand Eight Hundred Dollars (\$98,800.00) (stamped Agreement exhibit 8).

The agreement shows the duties to be computed as follows:-

Transfer Tax	=	\$28,500.00
Stamp Duty	=	\$20,890.00
Penalty	=	<u>\$49,410.00</u>
		\$98,800.00

The agreement was that the purchasers and Vendors would share equally the costs of getting the registered Title.

That she had the survey carried out and paid the Surveyors fees.

That due to Mr. Campbell's delay they incurred the above-mentioned penalty and additional expenses. That the parties operate a business and had to employ someone to carry on the business on their attendance at the hearings at a cost of Seven Hundred Dollars (\$700.00) per day. That they drove their own vehicle into Kingston from Saint Elizabeth:

**Finding**

The panel found that Mr. Carlton Campbell is in breach of Canon IV(r) of the Legal Profession (Canons of Professional ethics) Rules 1978 in that he failed to deal with his client's business with due expedition, and that he failed to give them truthful information.

That as a result of Mr. Campbell's conduct the clients incurred additional expense and inconvenience of going to the Stamp Office to stamp document and to obtain a plan from the Surveyor.

**Order**

Pursuant to S. 12 of the Legal Profession Act (4) we unanimously hereby order as follows:-

1. The Attorney Mr. Carlton Campbell pay to the Complainants the sum of Sixty-one Thousand Eight Hundred and Ten Dollars (\$61,810.00) in the following manner.

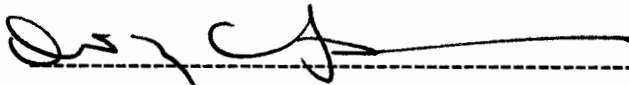
(a) A restitution of penalty paid of	=	\$49,410.00
(b) A part refund of fees paid of	=	\$ 7,000.00
(c) Costs of	=	<u>\$ 5,400.00</u>
		\$61,810.00

2. The Attorney Carlton Campbell pay a fine of Fifty Thousand Dollars (\$50,000.00), and pursuant to S.12 (5) of the Legal Profession Act it is directed that the sum of Twenty-five Thousand Dollars (\$25,000.00) be

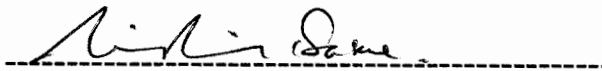
paid over to the complainants and Twenty-five Thousand Dollars (\$25,000.00) to be paid to the General Legal Council when the fine is collected.

3. These sums to be paid by the Attorney Carlton Campbell on or before the 30<sup>th</sup> November, 2001, failing which he shall be suspended from practising as an Attorney at Law for a period of three (3) months from the said 30<sup>th</sup> November, 2001.

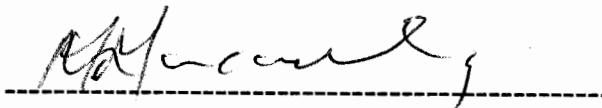
Dated the 26<sup>th</sup> October, 2001



MISS DOROTHY LIGHTBOURNE



MRS. MERLIN BASSIE



MRS. MARGARET MACAULAY