

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

Complaint No. 113/2008

IN THE MATTER of a complaint
by **HYACINTH DAVIS** against
ARTHUR KITCHIN, an Attorney-
at-Law

A N D

IN THE MATTER of the Legal
Profession Act

Panel: Allan S. Wood, Q.C.
 Ursula Khan
 David Batts

On the 17th July, 2010 this Panel heard evidence and delivered judgment orally. We promised to present this judgment in writing and now do so.

1. This is a Complaint by Hyacinth Davis (the Complainant) against Mr. Arthur Kitchin (the Attorney) that he has failed to provide her with all information as to the progress of her business although she has reasonably required him to do so, he has not dealt with her business with all due expedition, that he has acted with inexcusable or deplorable negligence in the performance of his duties and he has not accounted for all monies in his hands.

2. This Complaint was first called up on 3rd October, 2009 when Mr. Kitchin was absent and represented by Mr. Leighton Miller. It was stated that Mr. Kitchin was ill and a medical report would be sent. Costs of \$12,000.00 were ordered to be paid by Mr. Kitchin. The Complaint was next called up on the 30th January, 2010 when Mr. Maurice Frankson appeared for Mr. Kitchin and sought an adjournment. No medical report was provided. The hearing of the Complaint was adjourned to 17th July, 2010 and costs of \$14,000.00 were ordered to be paid by Mr. Kitchin to the Complainant on or before 1st March, 2010. This brought total costs ordered to \$26,000.00.
3. On each occasion the Complainant has travelled from Westmoreland. She is elderly and walks with great difficulty.
4. On the 30th January, 2010 Mr. Frankson, Counsel for Mr. Kitchin also disclosed that Mr. Kitchin's client file had been handed back to the Complainant and Mr. Kitchin had filed two (2) actions on behalf of the Complainant, one for slander – C.L.D-65 of 2000 and the other for nuisance – C.L. D-62 of 2000. He said the action for nuisance had been struck out by the court on 27th February, 2008.
5. On the Complaint again coming on for hearing on 17th July, 2010 there was no appearance for Mr. Kitchin or by his Counsel. Just prior to the hearing a bearer handed the Secretary of the Panel a letter dated 17th July, 2010 addressed to the Secretary of the Disciplinary Committee signed by Mr. Kitchin and advising:

“I regret to inform you that due to the recurring effects of my present medical condition I am unable to attend before the Committee today.”

Attached to that letter were two (2) letters, one dated 26th February, 2010 from Mr. Kitchin to the Medical Records Officer and the second also dated 26th February, 2010 from Mr. Kitchin to Dr. Wendel Abel. No medical report was attached and the Panel has been provided with no cogent reason why Mr. Kitchin or his Counsel could not attend the hearing today. Further, no reason has been furnished for the non-compliance with the costs orders made against Mr. Kitchin.

6. In all the circumstances this Panel decided to proceed with the hearing of the Complaint pursuant to the Legal Profession Act, 4th Schedule Rule 8. Viva voce sworn evidence was given by the Complainant Hyacinth Davis to the effect that in 1997 one Lloyd Brooks cut the road adjacent to her property to release water from his property to hers. This resulted in the road being blocked for three and one half days. She was forced to purchase 40 loads of marl and a load of top soil to refill the trench. The actions of Mr. Brooks resulted in a number of trees on her property being destroyed.
7. Initially, she brought an action in Sav-la-Mar Resident Magistrate’s Court which was adjourned sine die. In the year 2000 she took the matter to Mr. Arthur Kitchin who agreed to take the case for a fee of \$50,000 with a payment of \$30,000.

8. The sum of \$30,000 was paid by her as evidenced by two (2) receipts dated 29th January, 2000 and 26th February, 2000 for \$10,000 each and a cheque dated 8th September, 2000 in favour of Mr. Kitchin for \$10,000. Copies were admitted as Exhibits 1(a) and 1(b). It was agreed with Mr. Kitchin that the balance of \$20,000 would be paid at the end of the case.

9. The case came up in the Supreme Court on a number of occasions when it was adjourned on the basis that the Defendant was not present. At a meeting with Mr. Kitchin in his office about the matter when the Complainant was complaining about the delay she stated that Mr. Kitchin verbally abused her, telling her that, "every woman is a whore". The recollection of the abuse moved the Complainant to tears.

10. Her file was returned to her in January 2010 when she discovered that her action had been struck out two years before in February 2008. So much was admitted by Mr. Kitchin's Counsel on the 30th January, 2010.

11. The Panel finds that the Complainant is a truthful witness. We note in particular that when asked about the cost of marl that she purchased to fill the trench she declined to state a figure in the absence of having her receipts, simply stating that she did not remember.

12. The Panel is also mindful of the burden of proof that the Complaint must be established by credible evidence beyond reasonable doubt. We find that that burden has been satisfied in this case. The Panel therefore finds:-

- (i) In the year 2000 the Attorney was retained to pursue an action for nuisance against one Lloyd Brooks arising from the cutting of a trench in the road adjacent to Complainant's property to release water into her premises.
- (ii) That Mr. Kitchin did file an action or actions for nuisance and slander in the Supreme Court.
- (iii) That Mr. Kitchin failed to deal with the Complainant's business with all due expedition and that he has acted in his representation of the Complainant with inexcusable and deplorable negligence in the performance of his duties.
- (iv) As a consequence of Mr. Kitchin's aforesaid misconduct the Complainant's action was struck out.
- (v) Notwithstanding that he failed to discharge his duties as aforesaid, Mr. Kitchin has not refunded any part of the fees of \$30,000 paid to him.
- (vi) In the course of Complainant's enquiries Mr. Kitchin verbally abused the Complainant in the most unbecoming manner causing her distress.
- (vii) Mr. Kitchin's conduct is unbecoming of the profession and has brought same into disrepute.

The Panel finds that Mr. Kitchin has breached Canons IV (r) and (s) of the Legal Profession Canons of Professional Ethics Rules. Further in breach of Canon I(b)

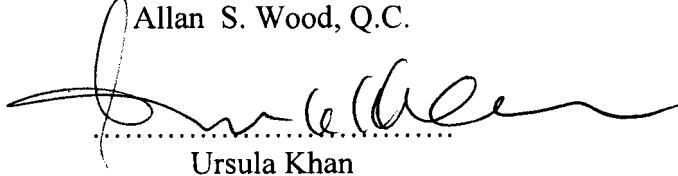
the attorney's conduct has tended to discredit the Profession of which he is a member.

13. The Panel is mindful of the guidelines laid down in *Bolton v Law Society [1994] 2 All. ER 486*. In considering the sanction and mindful of those guidelines the Panel is of the view that it is the paramount duty of the Panel to act in protection of the public. This may dictate a sanction of suspension or striking off where it is clear that such a sanction is necessary to protect the public when an attorney by his conduct demonstrates that he is unfit to carry on practice by behaving in a manner that has brought the profession into disrepute.
- (i) We are satisfied this is such a case and that a period of suspension for one (1) year is warranted. In order to afford the Attorney the opportunity to so arrange his practice prior to the commencement of the suspension it is determined that this suspension is to take effect from the 1st August, 2010.
 - (ii) In addition it is ordered that Mr. Kitchin is to pay to the Complainant by way of Restitution the sum of \$30,000 with interest thereon at the rate of 6% per annum from 17th July, 2010 until payment.
 - (iii) Mr. Kitchin is also to pay by way of fine to the General Legal Council the sum of \$20,000. It is further directed that this fine be paid over to the Complainant when collected.
 - (iv) Mr. Kitchin is also to pay costs to the Complainant in the sum of \$20,000 for the hearing today bringing the total costs payable to \$46,000.00.

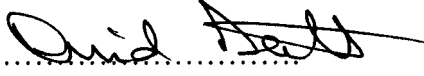
Dated the 17th day of July, 2010



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Allan S. Wood, Q.C.



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Ursula Khan



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David Batts