

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

**IN THE MATTER OF BERCHELL MELBOURNE
VS. LEROY EQUIANO
COMPLAINT NO. 28/2016**

PANEL: MR. PETER CHAMPAGNIE
MISS KATHERINE FRANCIS
MISS ANNALIESA LINDSAY

This is the verdict of the Panel in respect of Complaint No. 28/2016.

The complaint against the Attorney, Mr. Leroy Equiano, was brought by Mr. Berchell Melbourne on July 6, 2015 in the Form of an Application against the said Attorney and a Form of Affidavit, sworn to on 11th October 2015.

The particulars of the complaint are that the Attorney, in respect of a matter in the Court of Appeal, number 54/03 in which Mr. Melbourne was the appellant in a civil matter, was withdrawn without the written or oral permission of him, Mr. Melbourne. The appeal in question was at the material time being handled by the Attorney at law Mr. Equiano.

The latter point as the trial progressed, was not in dispute. As a result of the assertion, Mr. Melbourne has complained that the Attorney did not deal with his business with due expedition, when he withdrew the appeal from the Court of Appeal without any verbal or written permission. Mr. Melbourne has also asserted in his complaint that the Attorney acted with inexcusable or deplorable negligence and is in breach of Canon 1b which states that "An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may lend to discredit the profession of which he is a member."

The Panel commenced the hearing on this matter on March 30, 2019 and on that date the Complainant, in his evidence, asserted that Mr. Equiano did not have his permission nor was it given to him in writing or otherwise, to withdraw the appeal. With no objection the Form of Application and Affidavit were tendered into evidence as Exhibits 1 and 2 respectively. Also tendered into evidence was the Notice of Withdrawal filed in the Court of Appeal, dated March 9, 2006, as Exhibit 3.

Mr. Equiano then commenced his cross-examination of Mr. Melbourne, the essence of which included tracing of the history of representation by him, Mr. Equiano, as the Attorney for Mr. Melbourne, and as such references were made to other matters concerning Mr. Melbourne, which were also the subject of litigation.

Mr. Equiano, in cross-examining Mr. Melbourne, suggested that his office did receive written permission from Mr. Melbourne to have the appeal withdrawn and that he had been in constant dialogue with Mr. Melbourne concerning the appeal. It was suggested that Mr. Melbourne was not speaking the truth and in particular to one instance, when the Complainant asserted that he got the file from Mr. Equiano's office in circumstances where Mr. Equiano had represented to him, that the file was not available, owing to the none attendance of an employee. It was again suggested that Mr. Melbourne was not a witness of truth. On that point the Complainant indicated that he was too old to be telling lies and that he was being truthful.

The Panel continued to hear evidence on this matter on April 13, 2019, in which the cross-examination of Mr. Melbourne continued. Again, references were made to other matters which were the subject of litigation in the Parish Court and Court of Appeal. A number of documents were tendered into evidence including Certificate of Results dated November 26, 2013, and a letter that was signed or written by Mr. Melbourne dated 20th March 2015 addressed to , with an attachment.

Mr. Equiano was strident in his cross-examination of the witness and suggested that he Mr. Melbourne had on one occasion attended the office and dealt with a lady. At this point Mr. Equiano requested that a person attend upon the Panel and this request was granted. Thereafter it was suggested that it was this lady, Miss Donat Moore, who came as a witness, that the Complainant, Mr. Melbourne had dealt with in terms of submitting his written permission for the appeal to be withdrawn. Mr. Melbourne denied any such occurrence.

That was the case for the Complainant and thereafter Mr. Equiano elected to give sworn evidence. Mr. Equiano tendered into evidence his Affidavit in response to the Complainant as Exhibit 6 and also Notes of Evidence from the Parish Court touching the appeal of 53/04 as Exhibit 7.

The cross-examination of Mr. Equiano was brief with the essence being that he was not speaking the truth asserting he received written permission. Mr. Equiano in giving evidence asserted that it was one Mr. Fabian Campbell who assisted in the preparation or signed the withdrawal of the appeal. In furtherance of his case, Mr. Equiano called Miss Donat Moore as a witness and who gave evidence. Miss Moore stated she was a paralegal employed to the Legal Aid Clinic at the material time and asserted that Mr. Melbourne did provide her with a written permission, in respect of withdrawing the appeal. That was the extent of Mr. Equiano's case in this matter.

The Panel is of the view that the sole issue in this case is a question of fact as to whether or not Mr. Equiano received permission in writing or otherwise from Mr. Melbourne to withdraw the appeal. In arriving at this decision, the Panel is mindful of the standard that is required, that is to say, the Panel must bear in mind that it is a Complainant who must prove his/her case against a Respondent in these hearings and the proof must be beyond a reasonable doubt, the criminal standard in law.

Nothing else will suffice to ground a finding of professional misconduct on the part of Attorney at law. Being mindful of this standard, the Panel, having regard to the issue to be determined, notes that:

1. The Affidavit relied upon by Mr. Equiano, Exhibit 6, makes absolutely no mention of Miss Donat Moore or that any female employee received any written permission from Mr. Melbourne to withdraw the appeal.
2. Indeed, the Panel also notes that the evidence of Miss Moore commenced in the manner where when asked about the Notice of Withdrawal and appeal, her initial response was "It may have been a request. I do not remember exactly at this time".

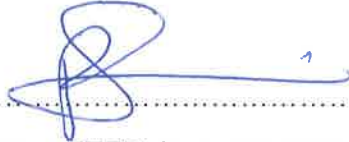
3. The Panel also bears in mind the evidence of Mr. Equiano himself when he was asked about why it is that the issue of costs in a Court of Appeal was not dealt with. Mr. Equiano did not respond in the terms set out in his Affidavit at paragraph 23, regarding the saving of cost. It was not even put to Mr. Melbourne that the context within which permission to withdraw was given, was also related to the saving of costs.
4. The Panel also notes that in evidence Mr. Equiano said that he had decided to withdraw the appeal pending the written authorization of the Complainant which he had anticipated to receive.

The Panel therefore finds as a fact the following:

1. That the Affidavit of Mr. Equiano is inconsistent with his Viva Voche evidence.
2. That his supporting witness, Miss Moore, is not a witness upon whom great reliance can be placed in terms of accuracy, in that throughout her evidence the phrase "it may have been", was used frequently. The Panel had to seek clarification with respect to answers whether her assertions were in fact positive throughout her evidence.
3. The Panel also finds as a fact that although it is said written permission for withdrawal was placed on a file, no oral testimony came forth to give an explanation for the absence of the presentation of this written permission. In any event the Panel bears in mind that it is not for the Attorney to prove his case and therefore although mention is made of this no real weight is placed on it in the final analysis.
4. The Panel finds that Mr. Melbourne is a witness of truth in respect of the assertion indicating he did not provide written permission for withdrawal of his appeal. The Panel noted his demeanour, sharp responses and admissions when other questions were put, and answers given that were not favourable to his case.
5. In all circumstances Panel finds that Attorney is guilty of the complaint made herein, in that he is in breach of Canon 1b which states that "An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may lend to discredit the profession of which he is a member."
6. The Panel also finds therefore that he is guilty in the sense that he did not deal with the Complainant's business with due expedition, in that he withdrew the appeal without the verbal or written consent of the Complainant, and therefore was negligent in the performance of his duties.

This is the unanimous position of the Panel. In keeping with the decision of the case of Owen Clunie v General Legal Council [2014] JMCA Civ 31. The Panel is obliged to afford the Respondent to have an opportunity to be heard in respect of mitigation and is minded convene on another date for this to be done.

DATED THE 16TH DAY OF MAY 2019

A handwritten signature in blue ink, consisting of a large, stylized initial 'P' followed by a horizontal line and a small flourish.

MR. PETER CHAMPAGNIE

A handwritten signature in blue ink, appearing to be 'K. Francis' with a horizontal line and a small flourish.

MISS KATHERINE FRANCIS

A handwritten signature in blue ink, appearing to be 'A. Lindsay' with a horizontal line and a large flourish.

MISS ANNALIESA LINDSAY