

**DECISION OF THE DISCIPLINARY COMMITTEE
OF THE GENERAL LEGAL COUNCIL
COMPLAINT NO: 26/2018**

IN THE MATTER OF **KEMISHA GREGORY** and **MR. DEBAYO A. ADEDIPE**, an
Attorney-at-Law

AND

IN THE MATTER OF THE LEGAL PROFESSION ACT, 1971

BETWEEN KEMISHA GREGORY COMPLAINANT

AND DEBAYO A. ADEDIPE RESPONDENT

Panel:

Mrs. Ursula Khan - Chairman

Mrs. Tana'ania Small Davis

Mr. Kevin E. Powell

Hearing dates:

29 June, 13 July, 22 July, 29 July, 30 July, 24 September 2019 and 23 October
2019

The Complainant was present of each date.

Mr. Debayo Adedipe attended on 22 July, 29 July, 30 July and 24 September 2019.
He was represented by Mr. Ravil Golding on 13 July, 29 July, 30 July (by phone)
and 24 September 2019.

Evidence was taken from the Complainant on 29 June 2019.

COMPLAINT:

1. Ms. Kemisha Gregory (hereinafter called "the Complainant") laid a complaint against Attorney-at-Law, Mr. Debayo A. Adedipe, (hereinafter called "the Attorney"). The Complaint is that the Attorney:
 - (a) has not accounted for all monies in his hands for his account or credit, although he has reasonably required him to do so;
 - (b) is in breach of Canon I (b) which states that "An Attorney shall at all times maintain the honour and dignity of the profession".

2. The Panel commenced the hearing of this matter on 29 June 2019. The Attorney was absent however the Panel proceeded upon being satisfied that the Attorney had been duly served with notice of the hearing pursuant to Rules 5 and 21 of the Legal Profession (Disciplinary Proceedings) Rules set out under the Fourth Schedule to the Legal Profession Act and in exercise of its discretion to proceed with the hearing in the absence of the Attorney, which is provided for under Rule 8 of the Legal Profession (Disciplinary Proceedings) Rules.
3. The evidence of the Complainant was taken and the matter adjourned to 13 July 2019 to allow the Attorney an opportunity to cross examine the Complainant. By letter dated 8 July 2019 the Secretary of the Disciplinary Committee informed the Attorney of the Panel's order and enclosed the notes of evidence.
4. On 13 July 2019 Mr. Ravil Golding appeared for the Attorney and reported that he had received information that the Attorney had suffered what was thought to be a minor heart attack and was confined to bed. Mr. Golding did not have a medical report, nor could he say who was the attending physician or the period of the Attorney's confinement. Mr. Golding was informed that the Complainant had given her evidence and was to be cross examined and when asked whether he intended to cross examine the Complainant, he replied that he was only holding for the Attorney and had limited instructions to seek an adjournment. The Panel brought to Mr Golding's attention that the Attorney had not complied with the requirement and order for him to file an affidavit in response to the Complaint and asked Mr. Golding whether the Attorney intended to do so. Mr. Golding repeated that he had no instructions. The Panel granted the adjournment to 22 July 2019.
5. On 22 July 2019 the Attorney was present. He indicated that he had retained Mr. Golding but that Mr. Golding was unable to be present. The Attorney applied for an adjournment. When asked whether he intended to cross-examine the Complainant the Attorney declined and said he would prefer for his attorney to handle the matter. When asked about his failure to file an affidavit in response to the Complaint, the Attorney simply acknowledged that he had not done so. .
6. The Panel used the opportunity to ask the Attorney to identify the area of dispute with the Complainant's evidence. In response, the Attorney admitted that he had received the payment of the judgment debt from the Attorney

General and that he has not paid over any part of it to the Complainant. The Attorney then said that this is the aspect that Mr. Golding will be dealing with and further said that he intended to send the money to the Complainant within the next few days and that he wished to have the Complainant's bank information so the arrangements could be made. The Complainant agreed to send her bank details to the Attorney. The matter was adjourned to 29 July 2019.

7. On 29 July 2019 the Attorney and Mr. Golding were present. Mr. Golding indicated that the funds had not yet been remitted to the Complainant but would be done that day. When asked how much was due to the Complainant, Mr. Golding stated that the judgment debt of \$2,555,875 was received from the Attorney General and that interest calculated up to 29 September 2019 amounted to \$1, 226,820 for a total sum of \$3,782,695.00. After deducting legal fees of 25% amounting to \$945,673.75 the balance due to the Complainant was \$2,837,021.25.
8. The Complainant disagreed with the figure and indicated that she would have her attorney prepare an account. The Panel asked the Attorney to prepare a Statement of Account which should set out the date(s) of receipt of the judgment sum and the interest rate for each relevant period. The matter was adjourned to 30 July 2019.
9. On 30 July 2019 the Attorney was present. Mr. Golding was not present. The Attorney submitted a Statement of Account in which the total due to the Complainant was represented as \$3,030,327.99. The Attorney informed the Panel that he had wired the sum of US\$22,104.66 to the Complainant's bank account that day. The Complainant presented an accounting which showed that the amount due to her is \$3,869,042.47. The main difference between the two accounts was the interest rate and the period.
10. On 30 July 2019 the Attorney was present. Mr. Golding was not present. The Attorney submitted a Statement of Account in which the total due to the Complainant was represented as \$3,030,327.99. The Attorney informed the Panel that he had wired the sum of US\$22,104.66 to the Complainant's bank account that day representing the USD equivalent of the amount due under the Statement of Account. The Complainant submitted an accounting prepared by her local attorneys which showed that the amount due to her is \$3,869,042.47. The main difference between the two accounts was the interest rate and the period for which interest was applied.

11. The Panel noting that these were matters really going to mitigation, indicated to the Attorney and the Complainant that it would formally deliver its judgment and all other matters can be stated with in mitigation. The Attorney said he wished for his attorney to address us. The Attorney contacted Mr. Golding by telephone and the Panel informed him of its intention and that he would be given an opportunity to file submissions in mitigation. Mr Golding did not object to the Panel's expressed direction.
12. The Panel then delivered an oral judgment finding the Attorney guilty of professional misconduct having considered the Complainant's unchallenged evidence and the Attorney's admissions.

EVIDENCE

13. The Form of Application and Affidavit sworn by the Complainant dated 27 October 2017 and 25 January 2018 respectively and filed 7 February 2018 were admitted as **Exhibits 1 and 2**. The exhibits to the Complainant's affidavit were numbered KG1-KG6.
14. The Complainant's evidence is that the Attorney was retained by her mother to represent her in a personal injury claim to recover damages for injuries that she had sustained when she was shot multiple times by police officers on 21 August 2004. The Complainant was a minor at the time.
15. The claim was filed in 2005 and was tried in November and December 2009. Judgment was delivered in her favor on 28 September 2011. Damages were assessed in the sum of \$1,950,000 for general damages, \$250,000 for exemplary damages, plus costs to be agreed or taxed. Interest was awarded at the rate of 6% per annum on the general damages from 28 January to 21 June 2006 and thereafter at the rate of 3% per annum up to 28 September 2011.
16. The Complainant's evidence is that the Attorney was retained by her mother to represent her in a personal injury claim to recover damages for injuries that she had sustained when she was shot multiple times by police officers on 21 August 2004. The Complainant was a minor at the time. The claim was filed in 2005 and was tried in November and December 2009. Judgment was delivered in her favor on 28 September 2011. Damages were assessed in the sum of \$1,950,000 for general damages, \$250,000 for exemplary damages, plus costs to be agreed or taxed. Interest was awarded at the rate of 6% per annum on the general damages from 28

January to 21 June 2006 and thereafter at the rate of 3% per annum up to 28 September 2011.

17. The Complainant said that from December 2014 she has been calling the Attorney about the payment of the judgment sums but up to the date of her evidence on 29 June 2019 she had not "received a cent".
18. Several pieces of correspondence were exhibited to the Complainant's affidavit, including:
 - (a) **Exhibit KG3** – Letter dated 17 July 2017 from the Attorney to the Complainant in which he said he would pay all sums due to her by 31 July 2017;
 - (b) **Exhibit KG6** – Email dated 15 August 2017 from the Attorney to Mr. Alimi Banjoko, the Complainant's attorney-at-law, stating that he should expect a letter in a few days, in response to Mr. Banjoko's correspondence demanding payment by 10 August 2017.

FINDINGS OF FACT

19. The Panel carefully considered the evidence, bearing in mind that the burden of proof is on the Complainant and that the standard of proof is beyond reasonable doubt.
20. The Panel noted that the Attorney failed to file an affidavit in response to the Complaint, in disregard of Rule 4(a) of the Legal Profession (Disciplinary Proceedings) Rules as amended August 2014, letter dated March 2018 from the Secretary of the Disciplinary Committee informing him of the requirement to file an affidavit in response within 42 days, and the order made on 16 March 2019.
21. Mr. Golding declined to cross examine the Complainant on 13 July 2019, on the basis that he had only limited instructions to seek an adjournment and no instructions at all about the Complaint.
22. The Attorney declined to cross examine the Complainant on 22 July 2019.
23. The Panel took into account the Attorney's inability to identify an area of dispute with the Complainant's evidence when invited to do so in the absence of any affidavit and his admission that he had received the judgment debt and that he had not paid any part of it over to the Complainant.

24. Having reviewed the Complainant's evidence we find that the following has been established beyond reasonable doubt:
- a. The Attorney received payment of the judgment debt from the Attorney General;
 - b. The Attorney failed to pay the money received on trust for the Complainant to her, although she has reasonably required him to do so and despite his representation to her that he would pay her in full by 31 July 2017.

DECISION

25. We find that the Attorney is guilty of professional misconduct as per Canon VIII (d) in that:
- (a) he has failed to account to the Complainant for money due to her credit; and
 - (b) he has breached Canon I (b) of the Legal Profession (Canons of Professional Ethics) Rules which provides:
"An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member."
26. The Attorney received the sum of \$2,555,875 from the Attorney General in satisfaction of the judgment debt due to the Complainant. The Attorney failed to promptly or with a reasonable time pay over the money to the Complainant. The Attorney's delinquency has spanned an inordinately long period of time of at least five years, which belies any faithful intention to carry out his professional responsibilities.
27. The Attorney received the sum of \$2,555,875 from the Attorney General in satisfaction of the judgment debt due to the Complainant. The Attorney failed to pay over the money to the Complainant. The Attorney's delinquency has spanned an inordinately long period of time of at least five years, which belies any faithful intention to carry out his professional responsibilities.

SANCTION

28. On 30 July 2019 the Attorney was invited to file submissions in mitigation of sanction on or before 30 August 2019. No submissions were received.

29. On 24 September 2019, Mr. Golding objected to the Panel proceeding with the sanction hearing. Mr. Golding said that the Panel was wrong in delivering a judgment on 30 July 2019, because cross examination of the Complainant was still outstanding. Mr. Golding sought an adjournment to give him an opportunity to obtain copies of the records which he believed would support his position that his client has been denied the opportunity of cross examining the Complainant and to give evidence in the proceedings. As a consequence, Mr. Golding said the Panel's decision is a nullity.
30. The Panel rehearsed the chronology of the entire proceedings and read out the orders made on each hearing date. When asked for an explanation for the failure to file an affidavit in response to the Complainant, Mr. Golding had none. When reminded that the Attorney had admitted to the Panel the two essential facts of the Complaint: that he had received payment of the judgment sum and that he had not paid any of it over to the Complainant, Mr. Golding argued that "even though there is no dispute on the essential facts, there is still no evidence from the Respondent Attorney."
31. The Panel declined the request for an adjournment and invited Mr. Godling to make submissions in mitigation of sanction. Mr. Golding declined.
32. The Panel heard from the Complainant: she received the sum of US\$22,104.66 on 30 July 2019 but the difference of about \$830,000 remains outstanding, which includes \$200,000 paid to her attorney Mr Banjoko to try to collect the judgment sum. from the Attorney. Mr. Golding said the difference is the result of the interest rate applied by each party. The Attorney used an interest rate of 6% per annum and the Complainant was using 12% per annum. The Attorney's account calculated interest at the same rate from 28 September 2011 through to 27 September 2019. The Complainant's account charged interest at 12% from 1 January 2012 the "Assumed date of Payment by Defendant". Mr. Golding took no issue with that date; the Attorney's issue was the interest rate.
33. The Complainant's account was supported by The Bank of Jamaica's Commercial Banks weighted loan interest rates and the decision of the Supreme Court in National Commercial Bank Staff Association v National Commercial Bank Limited [2017] JMSC Comm 30 in which Sykes J (as he then was) approved awarding interest for sums wrongfully withheld from

the aggrieved party at the borrowing rate.

34. The Complainant placed her trust and confidence in the Attorney. The Attorney breached that trust and confidence by withholding the payment that was awarded to her for her pain and suffering in having been shot multiple times in what would have been a traumatic event. She was deprived of the sum that the Court awarded her to compensate for that trauma. Having suffered at the hands of one arm of the justice system, the Attorney dealt her another blow.
35. This Panel must therefore act in the interest of the public to issue a sanction is protective and a deterrent and to ensure that the collective reputation of the profession is maintained.
36. The following statement of Sir Thomas Bingham MR in **Bolton v Law Society [1994] 2 All ER** aptly states the duty:

"Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors..."

37. Taking the guidance of Sir Thomas Bingham, MR this Panel considers that in view of the duty of lawyers to discharge their professional duties with integrity, probity and complete trustworthiness, the appropriate punishment of the Attorney for his abject failure to uphold the ethics of the profession is that he ought to receive the most severe sanction.
38. In **Georgette Scott v The General Legal Council (Ex p. Errol Cunningham) SCCA 118/2008** the Court of Appeal in upholding the General Legal Council's decision to strike the Attorney off the Roll of Attorneys stated in paragraphs 49 and 50:

"49. It is abundantly clear that the Committee has a duty under section 3(1) of the Act to uphold the standards of professional conduct of

attorneys at law. Barwick CJ stated in Harvey v Law Society of New South Wales (1975) 49 ALJ 362 at page 364:

'The court's duty is to ensure that those standards of the profession are fully maintained particularly in relation to the proper relationship of practitioner with practitioner, practitioner with the court and practitioner with the members of the public who find need to use the services of the profession.'

50. The Court ought to bear in mind also what Lord Parker CJ said **In re A Solicitor** (supra):

'... A cash shortage of this nature inevitably meant that a solicitor had spent a client's money for the purposes other than those of the client. Public confidence in the profession would be shaken if such conduct were tolerated.'

39. We do not tolerate Attorneys holding on to the money that is delivered to them in good faith and in trust for their clients. It is egregious conduct which is anathema to the high standards by which the legal profession is and is to be held. The Attorney's conduct is rendered even more contemptuous by his failure to comply with the requirements and orders of the Panel to file an affidavit in answer to the Complainant or to advance any reason for not paying his client her money, even after demand.
40. The Attorney has made payment of \$3,030,327.99. That payment was made seven and a half years after the Attorney received the judgment debt it in his hands. In his statement of account, the Attorney deducted the sum of \$1,010,109.32 being legal fees at the rate of 25% of the judgment sum plus interest accrued at the rate of 6% up to 29 September 2019. We see no reason why the Attorney should benefit from 25% of the interest accrued after receipt of the money. Despite three requests for the date(s) on which the Attorney received the payment, the Attorney did not provide the Panel that information, save to say that he had received the money by 2012. The Panel accepts the Complainant's submission accruing interest at 12% per annum from 1 January 2012.
41. Having considered the matter, pursuant to section 12(4) of the Legal Profession Act the Panel orders:
 - A. The name of the Attorney, Debayo A. Adedipe, is struck off the Roll of Attorneys-at-Law entitled to practice in the several Courts of the island of Jamaica.
 - B. Debayo Adedipe shall pay restitution to the Complainant in the sum

of \$630,000 with interest at the rate of 12% per annum from 30 July 2019 until payment.

- C. Costs of these proceedings in the amount of Three Hundred Thousand Dollars (\$300,000.00) are to be paid by the Attorney as to which Two Hundred Thousand Dollars (\$200,000.00) is to be paid to the Complainant and One Hundred Thousand Dollars (\$100,000.00) to the General Legal Council.

Dated the 23rd day of October 2019.



Mrs. Ursula Khan – Chairman



Mrs. Tana'ania Small Davis



Mr. Kevin Powell