

DECISION OF THE DISCIPLINARY COMMITTEE
OF THE GENERAL LEGAL COUNCIL

COMPLAINT NO: 24/2014

In the matter OF HEWLOXLEY LUMLEY VS AUDLEY
EARL MELHADO an Attorney-at-Law
AND

In the matter of THE LEGAL PROFESSION ACT 1971

Panel: Peter Champagnie, Q.C. -Chairman
Katherine P.C. Francis
Annaliesa Lindsay

Appearances: The Complainant, HewLoxley Lumley (by Skype) &
Respondent, absent.

Hearing: 15th June, 2019, 6th & 20th July 2019, 28th September 2019, 23rd
November, 2019 and 25th January, 2020

- 1) This complaint was filed in the matter by the Complainant, Hewloxley Lumley on December 20, 2013 and was supported by Form of Affidavit of Applicant in support of the complaint. These were admitted into evidence as Exhibits 1 and 2. The evidence led included viva voce, affidavit and documentary evidence. The trial commenced on June 15, 2019. It should be noted that prior to commencing to the hearing the Panel confirmed that the Respondent, Mr. Melhado was properly served with the date of hearing. The Panel also noted that Mr. Melhado had sent an email requesting an adjournment as the matter is the subject of criminal proceedings. However after due consideration the Panel ruled that the reason for the request was not a bar to proceeding and ruled that the matter would commence particularly given the vintage of the matter, serious nature of the complaint and the fact that the Respondent had never attended any of the hearing dates nor had he filed an affidavit in response.
- 2) The Panel found support in this position by the case of from the decision of Norman v Arlean Beckford Complaint No. 21 of 2012, citing R v. Lloyd Chuck (1991) 28 JLR 422, albeit a criminal case, which speaks to the conduct of a hearing in the absence of an accused, particularly in the absence of any excuse or any reasonable excused from

an accused person, that a tribunal is well within its right in exercising its discretion to conclude its hearing notwithstanding the absence of the accused. This position appears to be no different from tribunals which concern itself with disciplinary matters such as this present matters. In this regard reference can be made to Awan v. Law Society [2001] All ER (D) 156 (Dec).

- 3) At the end of the Complainant's evidence, the matter was adjourned part heard to allow for the notes of the evidence to be sent to the Respondent and to give him an opportunity to attend for purposes of cross-examining the Complainant. However, at the next hearing the Respondent did not attend nor did he file any affidavit in response and the Complainant's case was closed. After due consideration the Panel made certain findings of evidence.
- 4) The Panel finds that the Respondent, Mr. Melhado was retained by the Complainant to represent the Complainant in a civil matter before the Supreme Court and in a related matter, specifically to conduct of the sale of land situate at No. 4 Georgiana Close, Vineyard Town, Kingston 3 and registered at Volume 1045 Folio 215 to the Complainant's Aunt, Ms. Mercedes Lumley.
- 5) The Panel further finds that in or about December 2012, the Complainant was advised by the Respondent that the sale had been completed and that the Respondent was in possession of the proceeds of sale of approximately \$5 million. The Complainant, who resides in Canada requested that the Respondent hold the money until he could attend upon the Respondent and collect the money. The Complainant gave evidence that he had expected to receive approximately \$4 million but that to date he had not received the proceeds of sale or any money whatsoever.
- 6) The Panels finds that the Complainant attended on the office of the Respondent twice in person in or about 2013 and made several other attempts to get in touch with the Respondent without success since then. The Panel further finds that to date the Complainant has not received any proceeds of sale, that the Respondent has not provided the Complainant with all the information as to the progress of his business albeit he reasonably required him to do so, that the Respondent has not dealt with his business with due expedition and that the Complainant has received no accounting of the monies the Respondent had for the Complainant.

- 7) The Panel is reminded that in these matters the burden of proof is evidence beyond a reasonable doubt and the Panel so finds that the evidence in this case has met that burden.
- 8) In the circumstances the Panel finds the Respondent guilty of professional misconduct and finds that the Complainant has proven all five complaints against the Respondent, namely:
- i. He has not provided the Complainant with all information as to the progress of his business with due expedition, although he has reasonably required him to do so;
 - ii. He has not dealt with his business with all due expedition;
 - iii. He has acted with inexcusable or deplorable negligence in the performance of his duties;
 - iv. He has not accounted to the Complainant for all monies in his hands for his account or credit although he has reasonably required him to do so; and
 - v. He is in breach of Canon 1(b) which states that "An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behavior which may tend to discredit the profession of which he is a member."
- 9) In light of the Court of Appeal decision in the case of *Clunie (Owen) v The General Legal Council(2014)*, the matter was adjourned to afford the Respondent Attorney an opportunity to address the Panel on the sanctions to be imposed against him, consequent on the findings above.

Sanction Hearing - January 25, 2020

- 10) The matter was fixed for sanction hearing however, yet again the Respondent did not attend. Despite having no plea in mitigation on behalf of the Respondent the Panel after due consideration of the facts, egregious nature of the matter in that the Respondent has kept the Complainant out of his funds for several years concluded that the sanction imposed could not be a mere reprimand. The Panel therefore finding support in the decision of the mitigation hearing of Owen Kirkwood Clunie: Complaint No. 187 of 2012 - Mitigation Hearing citing Bolton v Law Society [1994] 1 WLR 1286 noted that although the consequence of striking off an attorney from the

rolls of practice has significant consequences, that the reputation of the profession is more important than the fortunes of the individual. All members who enjoy the privileges of the profession should therefore understand that that there is a price to be paid for dishonesty. The unfortunate consequences that arise from striking off do not warrant a conclusion that it is the wrong sanction for dishonesty in the present case.

11) Accordingly, pursuant to the foregoing findings of the Committee, the Committee unanimously orders that: -

Pursuant to section 12 (4) (a) of the Legal Profession Act as amended:

1. The name of the Attorney Audley Earl Melhado is struck off the Roll of Attorneys-at-law entitled to practise in the several courts of the Island of Jamaica;
2. The Attorney Audley Earl Melhado to pays costs in the amount of \$100,000.00 being \$50,000.00 to the General Legal Council and \$50,000.00 to the Complainant; and
3. The Respondent Attorney is ordered to make restitution in the sum of \$4 million to the Complainant.

Dated the 25th day of January 2020


PETER CHAMPAGNIE, Q.C. - Chairman


KATHERINE P. C. FRANCIS


ANNALIESA LINDSAY