

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

**COMPLAINT NO. 136/2019**

**IN THE MATTER OF A COMPLAINT  
BY WADE MORRIS AGAINST EARL  
FERGUSON, AN ATTORNEY-AT-LAW**

**IN THE MATTER OF THE LEGAL  
PROFESSION ACT**

**PANEL:**

**MRS. URSULA KHAN  
MR. MICHAEL THOMAS  
MS. ANNA GRACIE**

**APPEARANCES:-**

**The Complainant, Wade Morris who was unrepresented  
The Respondent, Earl Ferguson who was unrepresented**

**HEARING**

**DATES: 20<sup>th</sup> June 2020; 25<sup>th</sup> July 2020; 22<sup>nd</sup> September 2020; \*29<sup>th</sup>  
September 2020 (\*evidence taken).**

**COMPLAINT**

1. The COMPLAINT AGAINST Attorney-at-Law, Mr. Earl Ferguson (hereinafter referred to as "the Attorney") and laid by Mr. Wade Morris (hereinafter referred to as "the Complainant") is that:
  - a. He has not accounted to me for all monies in his hand for my account or credit, although I have reasonably required him to do so.
  - b. He has not given full disclosure nor has he received approval and he has acted in a manner in which his professional duties and his personal interest conflict or are likely to conflict.
  - c. 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".

2. On 20<sup>th</sup> June 2020 the matter was called up and both the Complainant and the Attorney were present. The Panel made orders for various documents to be filed and served. The matter was adjourned to 25<sup>th</sup> July 2020.
3. On 25<sup>th</sup> July 2020:
  - a. The Complainant abandoned the second ground of the complaint, numbered 1 (b) above.
  - b. The Attorney also agreed to pay to the Complainant the sum of \$4,760,009.00 by 10<sup>th</sup> August 2020.
  - c. The parties were ordered to file and serve a Supplemental List of Documents with copies of the documents attached by 31<sup>st</sup> August 2020.
  - d. The matter was set down for trial on 22<sup>nd</sup> September 2020.
4. On 22<sup>nd</sup> September 2020 the parties appeared by Zoom and the Complainant confirmed receipt of the sum of \$4,760,009.00. The matter was adjourned on account of poor internet signal. Parties were ordered to attend in person on 29<sup>th</sup> September 2020 at the General Legal Council.

## **EVIDENCE**

### **The Complainant's case**

5. The following documents from the Complainant were admitted into evidence:
  - a. Vendor's Statement of Account dated 16<sup>th</sup> September 2019– Ex 1
  - b. Form of Application against an Attorney-at-Law dated 13<sup>th</sup> March 2019 – Ex 2
  - c. Form of Affidavit by Applicant sworn 13<sup>th</sup> March 2019 – Ex 3
  - d. Letter of 6<sup>th</sup> March, 2019 addressed to General Legal Council from Wade Morris – Ex 4
6. The evidence of the Complainant is contained in his statement dated 6<sup>th</sup> March 2019 (Ex 4) attached to his affidavit sworn to on 13<sup>th</sup> March, 2019 (Ex 3). The Complainant also gave viva voce evidence on 29<sup>th</sup> September 2020.
7. The Complainant deponed that he is the son of Rudolph Morris, deceased, who introduced him to the Respondent who was authorized by the deceased to sell his property situated at 4 Norbrook Terrace, Kingston 8.

8. The property was sold during the lifetime of the deceased for \$30,000,000.00 and the Complainant received a vendor's statement of account dated 16<sup>th</sup> September 2019 which was admitted into evidence as Exhibit 1. Rudolph Morris died on June 6, 2017.
9. The Complainant complained about the Respondent having transferred the following amounts out of the proceeds of sale:
  - a. \$9,320,000.00 to Keith "Headley" Barton; and
  - b. \$1,000,000.00 to Roy "Tom" McFarlane, without the authority or instructions of the deceased.
10. As far as he is concerned his late father asked him to ensure that Keith Barton received \$5,000,000.00 plus the property at 2 Elletson Road, Kingston 2, named "Sahara."
11. Also, to the best of his knowledge his father did not leave any instructions for Mr. McFarlane to be given the sum of \$1,000,000.00.
12. In addition, the Complainant is dissatisfied with the amount of \$200,000.00 paid by the Respondent to the process server as being too much.
13. The Complainant was appointed Executor under the Will of Rudolph Francis. An investigation revealed that the premises at 4 Norbrook Terrace was sold between April – May, 2017. The Agent was paid his sales commission and the sum of \$26,369,347.00 was transferred by the Purchaser's Attorney via RTGS into the Attorney's account on 8<sup>th</sup> May 2017. Whenever he made calls to the Attorney he was told that the money has not come through as yet. It was after he threatened to report the matter to the fraud squad that on 17<sup>th</sup> November 2017 the Attorney wired the sum of \$5,000,000.00 to him.
14. Arising from the dissatisfaction with the handling of the affairs of his late father, the Complainant made a complaint to the General Legal Council.
15. On cross-examination by the Attorney, the Complainant was asked whether he had any written instruction that he should receive all money coming from Norbrook Terrace. The Complainant responded that "other than being the Executor, no, there are no other written instructions but the property was sold before my father passed and the money should have been passed over to him before".
16. In answer to the Panel as to whether he was present while his father was speaking to the Attorney, the Complainant explained that he was present several times and that whenever his father went to see the Attorney there was no

instruction to pay Mr. McFarlane. Further, Mr. Morris could not drive and that it was he who brought him to the Attorney and that he was present.

17. The Attorney suggested that he started with Mr. Morris in 2014 and that it is not true to say that he the Complainant was always with him. The Complainant replied that his brother Damian would take Mr. Morris to the Attorney in 2014.

## **THE ATTORNEY'S DEFENCE**

18. The following documents from the Attorney were admitted into evidence:

- a. Affidavit of Earl Ferguson in Response to Complaint No. 136/2019 sworn 11<sup>th</sup> October 2019 – Ex 5.
- b. Supplemental Affidavit of Earl Ferguson in Response to Complaint No. 136/2019 sworn 25<sup>th</sup> June 2020 - Ex 6.
- c. Last Will and Testament of Rudolph Morris dated 12<sup>th</sup> May 2014 – Ex 7.
- d. List of Documents filed 1<sup>st</sup> April 2020 – Ex 8.
- e. Letter dated 11<sup>th</sup> September, 2020 addressed to Janet Wright, Secretary, Disciplinary Committee of General Legal Council attaching a supplemental List of Documents from Earl A. Ferguson – Ex 9

19. The Attorney stated that he wished to amplify both of his Affidavits i.e paragraph 4 of both affidavits.

“I stated that I did not have any contractual obligation to Mr. Morris based on the law. I listed 4 items. In hindsight, the sum of \$4,000,000.00 as well that I was directed to pay by the General Legal Council”. [The Panel however corrected this, - there was no direction from the General Legal Council].

20. Secondly, he stated:

“In hindsight I should not have paid anything to Morris without a Grant of Probate or Administration in his father's estate. The proceeds of sale would have formed a part of the asset of the deceased who was the Vendor at the time”.

21. Thirdly, the Attorney stated:

“Paragraph 5 on page 3 regarding not making full disclosure in September 2019. I sent the statement of account to Mr. Morris by email to peruse the items and reply to any item which he objects to date. I have not had any response to that.”

22. In cross-examination by the Complainant, when asked why the money wasn't turned over to Mr. Morris before he passed, the Attorney's response was that:

"During the negotiation to sell the property Headley was a bit contentious and refused to leave until the proper arrangement was made for him. We had to take Mr. Barton to court for him to vacate the premises".

23. The Attorney further explained:

"We had to make arrangements too for Mr. Barton to find a place, and money from the proceeds was used to provide accommodation to pay rent plus to settle other transaction expenses".

24. The Attorney explained the relationships. Rudolph Morris (dec'd) was married to Brenda Veronica Ortega Morris. Keith Headley Barton is the biological son of Mrs. Morris and Mr. Morris' stepson.

25. The Attorney further explained that:

- a. The property was transferred in December 2016;
- b. The proceeds of sale received by him in March 2017;
- c. Rudolph Morris passed away on 6<sup>th</sup> June 2017; and
- d. He started making payment to Barton in April 2017 at which time he relocated.

26. To questions posed to him by the Panel, the Attorney stated that between April and June 2017 when Mr. Rudolph Morris died, Mr. Morris was in and out of the hospital and he did not know who to pay the money to. The moneys were in his client's trust account which bore no interest. In June in response to the Complainant's request he paid to him \$5,000,000.00, and this was because the Complainant was the son of Rudolph Morris.

27. On further questioning from the Panel the Attorney stated that all the money was paid out. He received no written instructions from Rudolph Morris, only oral. All the amounts paid out were based on oral instructions from Rudolph Morris. He further stated that he prepared the deceased's Will.

28. In response to the Panel's question did the deceased say why the Attorney should pay Mr. McFarlane \$1,000,000.00, he responded that it was "some debt that he owed to Mr. McFarlane".

29. The Attorney called no witness and after addressing the Panel he closed his defence.

## **THE BURDEN AND STANDARD OF PROOF**

30. The Panel recognizes that in law, the burden of proof rests upon the Complainant. The standard of proof in cases of professional misconduct is that of "beyond reasonable doubt".

## **ANALYSIS OF THE EVIDENCE**

31. The Attorney was retained by the Complainant's father to "handle" the sale of his property situated at 4 Norbrook Terrace, Kingston 8.
32. The property was transferred in December 2016 and Rudolph Morris died on 6<sup>th</sup> June, 2017. The Attorney stated that he did not pay any funds to the deceased between April 2017 when he received the proceeds of sale and 6<sup>th</sup> June 2017, when Rudolph Morris died.
33. He states his reasons were that:
- a. Headley Barton (the deceased's step-son) was contentious and refused to leave until property arrangement was made for him. He had to be taken to court for him to vacate the premises.
  - b. Arrangements had to be made to find a place and money from the proceeds was used to provide accommodation to pay rent plus to settle other transaction expenses.
  - c. The deceased was in and out of the hospital. He had no information as to where to pay the money, as to which bank.
34. The fact that the property (4 Norbrook Terrace) was sold during the lifetime of the deceased means that under his Last Will and Testament the specific Devise made of the said property to Damion Morris and Joyce Morris would be of no legal effect. It is because this gift failed that the Attorney contended that the deceased died partially intestate and that in order to determine who the proceeds of the sale should be paid to, there was need for a grant of Letters of Administration appointing a representative. The Will (Ex 7) as drafted by the Attorney contained a residuary clause and therefore the net proceeds of sale would legally fall under the residue of his estate.
35. As stated in paragraphs 1 and 3(a) above, the Complainant in his complaint against the Attorney brought 3 grounds which are listed at (a) (b) and (c) under the heading Complaint. During his evidence in-chief the Complainant abandoned ground (b) of his complaint.
36. The other 2 grounds remain for a decision to be made as to whether the Attorney breached same and is guilty of professional misconduct.



37. The evidence discloses that there was nothing in writing from the deceased which authorized the Attorney to pay out the proceeds of sale to anyone. The most contemporaneous evidence is to be found in two letters found in Ex. 8 dated 21 July 2015 and 29 September 2015.
38. In the letter dated 21 July 2015, the Attorney is writing to Mr. Barton advising of the deceased's intention to sell 4 Norbrook Terrace, which he occupied as a licensee and that upon the sale, the Attorney was instructed to offer the sum of \$10,000,000.00 and the property at 2 Elletson Road. In the letter dated 29 September 2015, the deceased is writing to Mr. Barton and advising that he had found a buyer, giving Mr. Barton 60 days to vacate the premises and ending with stating that upon completion of the sale Mr. Barton would be contacted and advised of the amount which would be given to him.
39. The Attorney admitted that the payments made to Keith "Headley" Barton i.e. \$9,320,000.00 and \$1,000,000.00 to Mr. McFarlane were made on the oral instructions of the deceased. It is the evidence of the Complainant that his father told him that \$5,000,000.00 plus the property at 2 Elletson Road, Kingston 2 named "Sahara" should be given to Mr. Barton. He also said that his father left no instructions to give Mr. McFarlane \$1,000,000.00. The Attorney produced 4 receipts purportedly from Mr. McFarlane representing sums received from the Attorney on 4 different dates totaling \$1,000,000.00. The Complainant directed the Panel's attention to the fact that Roy McFarlane was one of the attesting witnesses to his late father's Will and that the signatures on the Will and on the receipts tendered differed.
40. The Complainant also questioned the payment of the sum of \$200,000.00 by the Attorney to process server to deliver a letter as being unreasonable. In his address to the Panel, the Attorney stated that this sum was paid between 2014-2017.
41. The Attorney has stated on several occasions throughout his evidence including his amplification of both of his affidavits, that it was an error to pay any of the net proceeds of sale to the Complainant / Executor before a Grant of Probate had been made to him.
42. This statement is not in accord with the law.
43. The learned authors of the text "Executors, Administrators and Probate" 1982, (being the 16<sup>th</sup> edition of Williams on Executors and the 4<sup>th</sup> edition of Mortimer on Probate) Williams, Mortimer and Sunnucks at chapter 8, page 85 under the sub-head "What executor may do before grant" stated thusly:

*“From this it follows that an executor who is of full age at the date of the testator’s death, before he proves the will, may do almost all the acts which are incident to his office, except only some of those which relate to actions. Thus he may seize and take into his hands any of the testator’s effects. He may pay, or take releases of debts owing from the estate; he may receive or release debts which are owing to it and distrain for rent due to the testator. If, before probate, the day occurs for payment upon bond made by, or to, the testator, payment must be made to, or by, the executor, though the will is not then proved, upon like penalty as if it were. So he may at his discretion sell or otherwise deal with the testator’s undisposed goods. He may assent to, or pay, legacies and he may enter on the testator’s land.*

*It follows that if a cause of action arises in favour of the estate of a deceased person at or after his death, time will at once begin to run, if there is an executor, even though probate has not been obtained.”*

44. In the Jamaica Supreme Court case of **Howard Jacas (Executor estate Sylbert Juan Jacas, deceased) v Bryan Jacas et al, Claim No. 2014 HCV 02984**, Simmons J at paragraph 24 of her judgement stated:

*“An executor’s title is derived from the will and he may pay or release debts as well as get in and receive the testator’s estate even before probate is granted. He holds the assets of the estate for the sole purpose of carrying out his duties and functions and is therefore in a fiduciary position in relation to those assets and may be held liable if he is negligent or reckless in his management of the estate. It is for this reason that he is bound by his oath to “faithfully collect, get in and administer according to law all the real and personal estate of the deceased” and to “render a just and true account of” his “executorship whenever required by law so to do”.*

45. As regards the alleged payment of the sum of \$9,320,000.00 to Keith “Headley” Barton, this item is presented as exhibit #13 of the Vendor’s Statement of Account dated 16<sup>th</sup> September 2019 admitted into evidence as Exhibit No. 1. The payment is shown as consisting of:

- a. Direct bank transfer – NCB of \$8,000,000.00;
- b. 1 year rental of premises at 15 Candlewood Place, Kingston 20 - \$1,040,000.00;
- c. Purchase of refrigerator and stove \$280,000.00

46. The Attorney has not stated in his viva voce evidence or by any affidavit for whose benefit was the premises at 15 Candlewood Place rented. Was it for Mr. Barton who he said was taken to court for him to vacate the premises and for



whom arrangements were made to find a place or for Mr. Morris for whom he said money was advanced in connection to rental payment?

47. As regards the purchase of a refrigerator and stove for Mr. Barton, why was he obliged to make this purchase? The Attorney has not provided any explanation.
48. Concerning the payment of the sum of \$200,000.00 to process server, the Attorney has provided a receipt dated July 29, 2020 purportedly signed by a Mr. Alexander (last name not legible) Cpl. No. 7369, for bearer services rendered. There is no detail of the services rendered.

## THE LAW

49. The Panel reminds itself that the burden of proof to establish the complaint rests solely and entirely on the Complainant. The Panel also reminds itself that the standard of proof which is required from the Complainant is proof beyond a reasonable doubt. **(Winston Campbell v David Hamlet (as executrix of Simon Alexander) Privy Council Appeal No. 73 of 2001.**
50. The Panel has carefully reviewed the several Affidavits, the exhibits and the evidence of the Complainant and the Attorney.
51. The Panel has found the Complainant to be honest forthright and a reliable witness and accepts his evidence.

## FINDINGS OF FACT

52. Having reviewed the evidence presented by the Complainant and the documents admitted, the Panel accepts the evidence of the Complainant which has not in any material respect been displaced by the Attorney. We therefore find that the following has been established beyond reasonable doubt:-
- a. The Attorney was employed by Rudolph Morris, father of the Complainant to have the Carriage of Sale of the property situate at 4 Norbrook Terrace, Kingston 8.
  - b. The property was transferred in December 2016 for the sum of \$30,000,000.00 during the lifetime of Rudolph Morris and the proceeds of sale received by the Attorney in Mach 2017.
  - c. Rudolph Morris died on 6<sup>th</sup> June 2017 without receiving any of the net proceeds of sale.

- d. There were no instructions made in writing as to how or to who the net proceeds of sale should be distributed.
- e. Rudolph Morris told the Complainant that he was to ensure that Mr. Barton received \$5,000,000.00 plus the property at 2 Elletson Road named Sahara.
- f. It was not until the Complainant threatened to go to the Fraud Squad in connection with the Attorney disavowing any knowledge of having received the proceeds of sale that the Attorney transferred the sum of \$5,000,000.00 to the Complainant's account.
- g. The claimant received the first payment in November 2017 in the sum of \$5,000,000.00 and received the second payment in August 2020 in the sum of \$4,760,009.00.

## **CANONS**

53. **Canon VII (b)(ii)** states-

"An Attorney shall account to his client for all monies in the hands of the Attorney for the account or credit of the client, whenever reasonably required to do so."

54. **Canon I(b)** states:

"An Attorney shall at 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."

## **CONCLUSION**

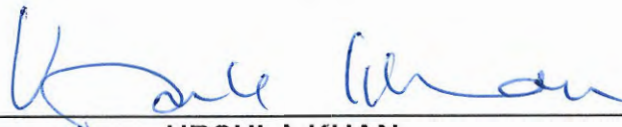
(i) **Whether the Attorney has acted in breach of Canons (VII (b) (ii) and I(b)**

55. The Attorney has presented a statement of account (ex 1) which purports to account for monies received by him representing the net proceeds of sale of property at 4 Norbrook Terrace, Kingston 8. It omits particulars of Attorney's fees and certain expenses and does not include any interest which an Attorney is obliged to account for in transactions kept for over 30 days in respect to sums of money exceeding \$200,000 as stipulated in section 9 of the Legal Profession (Accounts and Records) REGULATIONS 1999.

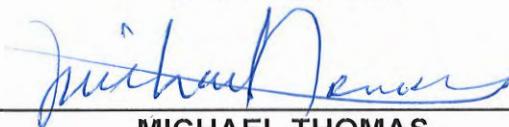
56. The Attorney also admitted to not having placed the net proceeds of sale in an interest-bearing account which would have enured to the benefit of the deceased's estate.
57. Bearing in mind that the Attorney received the moneys in March 2017 and the deceased died on 6<sup>th</sup> June 2017, the Panel is not convinced that the Attorney took sufficient or any steps at all to pay the net proceeds to the deceased or his account which he could have ascertained with reasonable diligence.
58. The Attorney knew the Complainant long before the death of Rudolph Morris (deceased) to be the son of Rudolph Morris. He also knew that the Complainant was appointed Executor of the Will of the deceased. He admitted to having prepared the Will.
59. In the case of *Owen Fearon v Gresford Jones* Complaint No. 79/96(pages 26-28) the Disciplinary Committee of the General Legal Council found as a fact that:
- a) the Statement of Account prepared by the Respondent and presented to the Complainant did not include a payment for interest on the proceeds of sale;
  - b) the proceeds of sale having not placed in an interest bearing account
- amounted to "a seeming indifference to the best welfare and maximum use of the proceeds of the estate as opposed to a vigorous vigilance to protect the Respondent's own interest all of which amount to a breach of the Canons i(b)...and VII(b)(ii).
60. Not having paid the net proceeds of sale to the deceased while he was alive, he properly ought to have paid over the moneys to the Executor which money represented the residue under the Will of the deceased, or at least it ought to have been placed into an interest-bearing account. We are therefore not satisfied that the Attorney has accounted for monies he held on behalf of the deceased.
61. Canon 1(b) is one of the Canons that is listed in Canon VIII (d), the breach of which shall constitute misconduct in a professional respect.
62. Under the threat of the Complainant to report him to the fraud squad the Attorney paid the Complainant the sum of \$5,000,000.00 and later a further amount of \$4,760,009.00. If the Attorney honestly believed that the gift under the Will had failed and that he required Letters of Administration he would have had no fear of being reported as he would have had a genuine, albeit incorrect belief.

63. The Panel has noted and disapproves of the Attorney's failure to provide details of what services were rendered by the Process Server to justify the payment of \$200,000.00 to him.
64. The Panel is also constrained to comment that all sums that the Attorney admitted to having paid out were done without the written authorization of the deceased. To have done so on the alleged oral instructions of the deceased was improper, negligent and falls way short of best practices in the profession. There was no complaint filed against the Attorney for negligence therefore the Panel is not able to find him guilty of inexcusable or deplorable negligence or neglect.
65. In the case mentioned at paragraph 59 supra, at page 17 of the decision the Committee stated that "Canon 1 (b) has a wide application. It relates to the conduct befitting the Attorney (Respondent) in relation to the Court, the regulatory body governing the profession, the law practice, the client, colleagues and certain other persons".
66. Having carefully considered the oral and affidavit evidence and the exhibits the Panel finds that the Attorney is guilty of the complaint as set out in paragraph (a) and (c) above in that he failed to maintain the honour and dignity of the profession and to abstain from behaviour which would discredit the profession of which he is a member in breach of Canon 1(b) of the Legal Profession (Canons of Professional Ethics) Rules.
67. In accordance with the procedure recommended by the Court of Appeal in **Owen Clunie v General Legal Council SCCA No. 03/2013**, the Panel directs that a date be fixed to give the Attorney an opportunity to be heard in mitigation before a sanction is imposed.

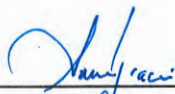
Dated this 31st day of march 2021



URSULA KHAN



MICHAEL THOMAS



ANNA GRACIE