

DELIVERED AS AN ORAL JUDGMENT

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION
CLAIM NO. 2011 HCV 01376

BETWEEN OSWALD JAMES APPLICANT

AND THE DISCIPLINARY COMMITTEE
 OF THE GENERAL LEGAL COUNCIL RESPONDENT

Mr Oswald James and Mr Leighton Miller instructed by James and Co. for the Applicant.

Mr Allan Wood Q.C. and Mr Miguel Williams instructed by Livingston Alexander and Levy for the Respondent.

Civil Procedure – Judicial Review – Application for leave to apply for Judicial Review – Application to stay proceedings pending Judicial Review – Whether application supported by sufficient evidence – Whether alternative remedy exists - Section 12 B, 15 and 16 of the Legal Profession Act

Attorney at Law – Disciplinary proceedings by the GLC – Whether Judicial Review available as a remedy in respect of a decision by the Disciplinary Committee of the GLC – Section 16 of the Legal Profession Act

8 April 2011

BROOKS, J.

This is an application for leave to apply for judicial review of a decision of the Disciplinary Committee of the General Legal Council (the committee). The decision complained of, is a refusal by the committee to stay a disciplinary hearing, where criminal proceedings in respect of the same subject matter of the hearing, are also proceeding.

I accept as valid the submissions of Mr Wood, Q.C. that this application should fail on two bases.

Firstly, section 12B (1) of the Legal Profession Act, (the Act) makes it clear that, in circumstances such as these, the decision concerning granting or refusing the stay has been given by Parliament to the committee. The section states as follows:

- “12B (1) It is hereby declared, for the avoidance of doubt that where –
- (a) an application made in respect of an attorney pursuant to section 12 is pending; and
 - (b) criminal proceedings arising out of the facts or circumstances which form the basis of the application are also pending,

The Committee may proceed to hear and determine the application, unless to do so would, **in the opinion of the Committee**, be prejudicial to the fair hearing of the pending criminal proceedings.

- (2) Where the Committee hears an application in the circumstances described in subsection (1), the Committee may, if it thinks fit, on its own initiative or at the request of the attorney, defer the filing, pursuant to section 15(2), of any order made by it in relation to that application until the conclusion of the criminal proceedings mentioned in subsection (1) (b). (Emphasis supplied)

For the applicant to be granted permission to apply for judicial review of the committee’s decision, the applicant must show that the committee acted unreasonably in refusing the application for the stay.

I accept Mr Wood’s submission that the evidence in that regard, in the instant case, is not sufficient to allow this court to come to the conclusion that the committee acted unreasonably. Mr Miller’s submission, on behalf of the applicant, that all such cases are likely to result in prejudice to the defendant/attorney-at-law, is to reverse the burden of proof as to the unreasonableness of the decision.

The reference, in section 12B, to section 15 (2) of the Act, contrary to what was submitted by Mr Miller, could not be intended to apply to rulings such as that complained of by the applicant. For completeness, I shall quote section 15 of the Act.

- 15-(1) Every order made and all directions given by the Committee under this Act shall be prefaced by a statement of their findings in relation to the facts of the case and shall be signed by the chairman of the Committee or division of the Committee, as the case may be, so, however, that if the findings are not unanimous, dissenting opinions may be expressed in the statement.
- (2) The Committee shall, subject to rules under section 14, cause a copy of every such order to be filed with the Registrar.
- (3) Every order filed pursuant to subsection (2) shall, as soon as it has been so filed be acted upon by the Registrar and be enforceable in the same manner as a judgment or order and all directions of the Supreme Court to the like effect.
- (4) Upon the filing of any order or directions as aforesaid –
- (a) The Register shall cause a notice stating the effect of the operative part of the order or directions to be published in the *Gazette*; and
- (b) the Committee may, in such manner as it thinks fit, publish a notice of the operative part of any order –
- (i) suspending an attorney from practice or withdrawing an order of suspension; or
- (ii) striking the name of an attorney from the Roll or reinstating the name of an attorney to the Roll.
- (5) The file of orders and directions made by the Committee under this section may be inspected at the Registry of the Supreme Court by any person, during office hours, without payment.
- (6) An order of the Committee shall be enforceable at the instance and on the application of the Secretary of the Council.

In my view, there would be no need, in the instant case, to deliver to the Registrar of the Supreme Court, a ruling refusing an application for a stay, or indeed, to publish same in the *Gazette*. In any event a failure to register such an order with the Registrar would not affect the issue of unreasonableness. The failure to file the interlocutory ruling with the Registrar is, therefore, not a relevant factor for the present application.

The second basis on which the application should fail, is that I also find that the applicant has an alternative means of redress. This redress has been provided by section 16 of the Act. The applicant's means of redress is an appeal to the Court of Appeal and this applies to both interlocutory and to final decisions of the committee. The section states as follows:

- “16 (1) An appeal against **any order made by the Committee** under this act shall lie to the Court of Appeal by way of rehearing at the instance of the attorney or the person aggrieved to whom the application relates, including the Registrar of the Supreme Court or any member of the Council, and every such appeal shall be made within such time and in such form and shall be heard in such manner as may be prescribed by rules of court.
- (2) The lodging of an appeal under subsection (1) against an order of the Committee shall not operate as a stay of execution of the order unless the Court of Appeal otherwise directs. (Emphasis supplied)

That the Court of Appeal will consider appeals from interlocutory orders made by the committee is demonstrated by the case of *Elsie Taylor v General Legal Council* SCCA 91/2005 (delivered 13 July 2007). The applicant, in the instant case, has not stated, as is required by rule 56.3 (3) (d) of the Civil Procedure Rules 2002, why that alternative mode of redress is not appropriate, in the present circumstances.

For those reasons, the application for permission to apply for judicial review is refused.

The orders, therefore, are:

1. Application refused;
2. Costs to the respondent to be taxed if not agreed;
3. The application for certificate for counsel is refused.