

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 0709/2003

*IN THE MATTER OF COMPLAINT
OF MURIEL LOGAN AGAINST
LEELAND PLAYFAIR*

AND

*IN THE MATTER OF THE LEGAL
PROFESSION ACT.*

BETWEEN

MURIEL LOGAN

CLAIMANT

A N D

LEELAND PLAYFAIR

DEFENDANT

Appearances

Mr. C. Piper instructed by Piper & Samuda for the Claimant.

Mr. L. Playfair on his own behalf but absent when judgment was delivered.

Heard: May 13 and June 16, 2004

WILLIAMS, J.

Reasons for Judgment

The claimant retained the defendant then a practicing attorney-at-law on the 18th of March 1997, - this is evidenced by a receipt exhibited by the claimant bearing that date in the amount of \$10,000.00.

This retainer was for the services of the defendant in probating two (2) wills and the transfer of a piece of property. The wills were for the claimant's parents Carl and

Olga Williams Moodie. The property was that described in a certificate of title registered at Volume 369 Folio 69.

After an extended period in which nothing was done, the claimant made a complaint to the disciplinary committee of the General Legal Council in 1999. The matter was heard in the absence of the defendant and on the 23rd of June 2001 an order was made inter alia for the defendant to pay a full refund of the fees he'd collected; pay a fine to the complainant and deliver forthwith the documents.

Up to October 2002 the order had not been complied with and the claimant was forced to seek the assistance of the Courts. The order of the Disciplinary Committee of the General Legal Council is enforceable in the same manner as a judgment or order of the Supreme Court pursuant to section 15(3) of the Legal Professions Act.

When the motion came up for hearing the defendant had paid the monies ordered and one of the documents - the will of Olga Williams Moodie had been produced. The defendant still had failed to comply with the order in its full terms.

As a preliminary issue – it is recognized that section 53-3(b) of the Civil Procedure Rules 2002 has not been strictly complied with. This section seem to have been intended to make any defendants in matters under section 53 – section 1 dealing with committals – aware of the consequences of his non-compliance with an order or undertaking. In this matter, the nature of the proceedings and the way the matter had proceeded and given his knowledge of the law, the defendant would be well aware of his being liable to committal if he failed to comply with the order. Hence the failure to include notice as outlined at section 53.3(b) is not to my mind fatal to this motion.

In this matter it has to be proved that the defendant had adequate notice of the Court order and that he does in fact know of the terms. I am satisfied from the affidavits of service that the defendant was served with the order and was in fact aware of its terms.

The first issue I considered was whether the defendant was in fact in possession of the documents.

In his affidavits the defendant first asserted a fire destroyed all the documents on 6th January, 1994 – he listed the documents as being “the will of Olga Williams Moodie and Carl Moodie together with duplicate certificate of title registered at Volume 369 Folio 69”.

Then he stated as a result of said fire documents were removed in a disorderly fashion, thrown all over the premises, thrown into several boxes and charred remains were heaped up and returned to him. After exhaustive search after the 1st day of Court he was able to find the will of Olga Williams in one of the boxes – he was unable to locate original certificate of title or the will of Calvin Moodie.

In affidavit dated May 13, 2002 – the date of hearing – he admitted that in 1982 documents were left with him for safekeeping; instructions were to follow – none was given. The claimant, he said, did want him to do a transfer under a will that was also in his possession given to him by her father although she was not a beneficiary. He said he promised to start “**doing the papers**” although he had not received any money from her or her father. The receipt exhibited by the claimant mentioned above was not challenged.

Thus from these assertions the Court is satisfied that the defendant did have the documents in his possession at some point. He has failed to produce two (2) of them. He is therefore in contempt.

I am well aware that the committal remedy for contempt is a drastic one and it should not be readily resorted to as a means of enforcing Court orders. The Court will exercise these powers only in the clearest case – where the offender has been shown to deliberately or willfully disobey Court orders. It has been expressed repeatedly that a causal or accidental or unintentional act of disobedience will not be met by the full rigours of the law.

The defendant has set out to try to explain why he has disobeyed the orders. It is necessary therefore to examine this explanation to see if it can be said that his disobedience was such that can be regarded as intentional.

The defendant was retained in 1997. It must be assumed at the time the retainer was accepted the defendant would have had the documents necessary to do the work required – to glibly assert that the documents were destroyed some three (3) years before in a fire is at best unbelievable.

Further the defendant said he got the documents from 1982, he awaited instructions and got none. The claimant said her father died on or about 1985. There is an endorsement on the back of the will dated the 27th of December, 1984 indicating something was done with the will – was it probated?

The defendant in his submissions to the Court raised for the first time that he had not admitted to having the will of Calvin Modie. This was somewhat surprising in light of all he had set out to explain in his affidavits.

The matter is further compounded when one looks at the will that was produced. Given the explanations put forward by the defendant one would certainly not have expected the will eventually located to be in such pristine condition.

The Court in all the circumstance was satisfied that the defendant was not being forthright or indeed totally sincere. Frankly it would have been different if he had asserted his inability to find or to recall what had become of the documents but his efforts to explain their absence with these unassailable assertions that amounts to lies in the face of the Court is what has cause the court some concern.

In his careful and succinct submissions Mr. Piper for the claimant, urged the Court that the claimant's evidence establishes beyond a reasonable doubt that the defendant's conduct is contemptuous and that there is no material sufficient to demonstrate in favour of the defendant either that the omission or refusal to comply was accidental or an oversight. Neither is there an explanation for the failure to comply with the order, which could take the matter out of the level for contempt that must be punished.

With these submissions I must agree.

The Order

Motion is granted.

Defendant to be taken into custody forthwith and to be committed to the General Penitentiary for a period of thirty (30) days.

Costs to the claimant.