IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 0255 of 2021

IN THE MATTER OF SECTION 9 OF THE LEGAL PRACTITIONERS ACT (2015 REVISION)

AND

IN THE MATTER OF CARLINGTON DAWSON

Before: **The Hon. Mrs. Justice Margaret Ramsay-Hale**

Appearances: **Ms Reshma Sharma QC, Solicitor General, amicus curiae and with her Ms. Heather Walker, Crown Counsel**

Mr. James Austin-Smith for the Contemnor

Heard: **12 February, 12 October and 16 December 2021**

HEADNOTE

Statutory contempt of court for acting as a lawyer - section 9 of the Legal Practitioners Act (2015 Revision) - principles to be applied in sanctioning contemnor

SENTENCE HEARING

INTRODUCTION

1. Carlington Dawson is before the Court for sentence for contempt of court for having acted as an attorney-at-law in FAM 259 of 2020 and FAM 288 of 2020 when not entitled to practice as such, pursuant to section 9 of the **Legal Practitioners Act** (2015 Revision) ("**LPA**"). Sentencing was adjourned for submissions from Counsel on the section 9 contempt jurisdiction generally and the range of sentences that might be imposed by the Court for breach of the section, as no penalties are prescribed by the law.

BACKGROUND

2. Petitions for divorce were filed and served in each of the matters. The affidavits of service on the Respondents were sworn by Mr. Dawson who identified himself therein as a Senior Administrator at CayOrchid Administration Ltd. The Respondents not having served Notice of Intention to Defend, the Petitioners applied to the Court for adjudication of the undefended Petitions. The Applications were made in Form 8 of the **Matrimonial Causes Rules** ("**MCR**").

3. On 18 December 2020, the applications were considered by the Court on the papers. Both were dismissed as they were not signed by the Petitioners or their Attorneys as required by the MCR, but by Mr. Dawson and the verifying affidavits were insufficient to prove the Petitions in accordance with the requirements of the **Matrimonial Causes Act ("MCA").**

4. Pursuant to Rule 15, the Court summoned both Petitioners. After the Court heard from the Petitioner in FAM 259 of 2020, the Petition was dismissed, as the ground for divorce was two years' separation and the Petition had been presented prematurely.

5. In FAM 288 of 2020, a number of different grounds were pleaded, not all of which were grounds for divorce in law. The evidence on affidavit was insufficient to prove the grounds. Although the Petition stated that there were no children of the marriage, the prayer for relief sought orders for maintenance and access to a child of the marriage. It also sought an order for interim maintenance. The prayer for relief was not only inconsistent with the facts pleaded in the Petition, it was inconsistent with the statement in the application for the divorce to be adjudicated that *"there were no outstanding ancillary matters to be adjourned to Chambers"*. It was a nonsense.

6. The Petitioner confirmed to the Court that there were no children of the marriage and that she was not seeking maintenance. She explained that she had signed the Petition without understanding the statements made therein, because her grasp of the English language was poor. She had relied entirely on Mr. Dawson. Having heard from the Petitioner, the Court considered that the pleadings could be amended and that she ought to be given that opportunity, otherwise her filing fee would be forfeit. Perhaps unsurprisingly, the matter was later discontinued by her attorneys.

7. The Court subsequently issued Notices to Mr. Dawson to show cause why he why he should not be held in contempt for breach of section 9 of the LPA in that he *"not being either the Petitioner or the Respondent ... did make application, in [his] own name for the marriage between the two parties to be dissolved and thereby acted as an Attorney-at-Law when not entitled to practice as such."*

8. On 12 February 2021, the Notices came on for hearing. Through his attorney, Mr. James Austin-Smith, Mr. Dawson accepted he was in contempt and immediately apologized to the Court, explaining that he did not know that what he had done amounted to acting as an attorney. He had been merely trying to assist the women, who were clients of his CayOrchid business which provides divers immigration services, get their divorces.

9. Mr. Dawson accepted that, in addition to preparing and signing the Form 8 applications for Orders that the Petitions were proved, he had also prepared the Petitions and Supporting Affidavits which he had then filed and served on behalf of the Petitioners. In respect of one of

the matters, Mr. Dawson acknowledged that he had charged and received payment for his services in the sum of $2,500.

THE LAW

10. Section 9 of the LPA provides as follows:

"9. A person who, not being himself the plaintiff or defendant or other party thereto, in his own name or in the name of any other person acts as an attorney-at-law in any civil or criminal proceeding when not entitled to practice as such may be adjudged guilty of a contempt of the court in which that proceeding in relation to which he so acts is brought, and may be punished accordingly."

11. Given the number of matters filed by 'agents' for and on behalf of in-person litigants, there have undoubtedly been a number of persons against whom contempt proceedings might have been taken pursuant to section 9. To the best of my knowledge, however, this is the first proceeding of its kind.

12. The LPA does not prescribe any penalty for the section 9 contempt and there is no local jurisprudence on this point. I express my gratitude to the Solicitor General, Ms. Sharma QC, and to Mr. Austin-Smith, who, in the highest tradition of the Bar, represents Mr. Dawson *pro bono* at the invitation of the Court, for their submissions on the scope of the Court's jurisdiction to punish contemnors under the LPA.

13. It was common ground that Court's power to deal with a contemnor includes the power to commit him to prison. The issue arose, however, as to the term for which a contemnor may be imprisoned.

14. Mr. Austin-Smith submitted that by virtue of section 11 of the **Grand Court Act (2015 Revision) ("GCA")** the maximum period was two years.

15. Section 11(1), provides that:

"The Court shall be a superior court of record and, in addition to any jurisdiction heretofore exercised by the Court or conferred by this or any other law for the time being in force in the Islands, shall possess and exercise, subject to this and any other law, the like jurisdiction within the Islands which is vested in or capable of being exercised in England by-

(a) Her Majesty's High Court of Justice; and
(b) the Divisional Courts of that Court,

as constituted by the Senior Courts Act, 1981, and any Act of the Parliament of the United Kingdom amending or replacing that Act."

16. In developing his submissions on the point, Mr. Austin-Smith noted that the penalty for contempt in England and Wales is prescribed by the **Contempt of Court Act 1981** ("**CCA**"). Section 14(1) provides:

"in any case where a court has power to commit a person to prison for contempt of court and (apart from this provision) no limitation applies to the period of committal, the committal shall (without prejudice to the power of the court to order his earlier discharge) be for a fixed term, and that term shall not on any occasion exceed two years in the case of committal by a superior court, or one month in the case of committal by an inferior court."

17. Counsel noted further that the CCA came into force on 27 July 1981. The following day, 28 July 1981, the Senior Courts Act 1981 ("**the SCA**") was enacted. The SCA sets out the jurisdiction capable of being exercised by the High Court in sections 19 - 43. Section 19 provides:

"(1) The High Court shall be a superior court of record.

(2) Subject to the provisions of this Act, there shall be exercisable by the High Court -

(a) all such jurisdiction (whether civil or criminal) as is conferred on it by this or any other Act; and

(b) all such other jurisdiction (whether civil or criminal) as was exercisable by it immediately before the commencement of this Act (including jurisdiction conferred on a judge of the High Court by any statutory provision).

..."

18. Mr. Austin-Smith contends that, given that the jurisdiction of the High Court of England and Wales to punish for contempt is limited by the CCA and SCA to two years imprisonment, the power of the Grand Court is also limited to two years imprisonment by virtue of GCA section 11(1).

19. I respectfully disagree. By virtue of section 11, the Grand Court's jurisdiction to hold persons in contempt is the same as that of the English High Court. The statutory limit in the **CCA,** on the Court's exercise of its power to punish the contemnor is not, however, made part of our law by section 11(1).

20. The point was made by Smellie J, as he then was, in *Wheeler v Wheeler* 1997 CILR 362 at 375, who said this on the question of whether English statutory provisions were imported into our law by virtue of section 11 of the **Grand Court Law** as it then was:

"... this court has expressed the view that s.11 of the Grand Court Law does not have the effect of importing the substantive provisions of English Statues. Summerfield CJ in MacCallister v Tortuga Club (no 2) concluded that the provision in s. 11 - "the Court ...shall possess and exercise the like jurisdiction within the islands which is vested in or capable of being exercised in England by Her Majesty's Court of Justice."- was an expression of technical meaning, namely, the "range of judicial power" descriptive only of different types or range of causes or matters over which the court would exercise jurisdiction. That was not the same thing as the substantive statutory jurisdictional powers which may be exercised from time to time by the English Court, but a reference only to the areas in which the court exercises its jurisdiction.

21. In my view, the Solicitor General's submission, that the Grand Court's power to commit the contemnor to prison is at common law and is unlimited, is correct.

SENTENCING PRINCIPLES

22. That difference notwithstanding, the English authorities provide helpful guidance on the approach the Court should take in determining the appropriate sanction for contempt. The most relevant of the cases to which the Court was referred by the learned Solicitor General is the case of *Ravinder Ballli* (2011) All ER (D) 141 which dealt with contempt through the provision of legal services when not qualified. That case was very different and considerably more serious than the instant case, as Mr. Austin-Smith submits, but the principles articulated by the Court are applicable.

23. In that case, the contemnor was a solicitor who had been struck off the rolls for divers disciplinary offences. After he was struck off, he continued to hold himself out as a solicitor. He plainly knew the law and understood his obligations to cease practise yet he continued to practice in defiance of the decision of the professional body. His conduct prompted the Court which sentenced him to 6 months for contempt to observe that the contemnor continued to *"masquerade as a solicitor before the Court and in dealings with other legal representatives engaged in ongoing proceedings. In so doing he deceived the Court, counsel he instructed and opposing representatives, albeit not his own clients"*. The contemnor was sentenced to 6 months in prison.

24. I extract the following principles from the judgment of Judge Simon Barker QC:

    (i) The UK Sentencing Guidelines Council's guidance on seriousness and sentencing thresholds are relevant when considering whether and for how long a custodial sentence should be imposed. I note here that the threshold for the imposition of custodial sentences is set out in para3.2 of our own Sentencing Guidelines which provides that,

"The court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that no other sentence can be justified for the offence":

(ii) When considering the imposition of a sentence of imprisonment, the court should always ask itself whether such sentence might properly be suspended: *Balli* para 24

(iii) If the court decides that a sentence of imprisonment is absolutely necessary and must be imposed, it should be for as short a term as possible commensurate with the gravity of the contempt and the need to deter the contemnor. If the appropriate period of imprisonment under consideration is 12 months or less, the court should further consider whether a shorter term will sufficiently meet the sentencing objectives, especially if the contemnor has not previously experienced imprisonment: *Balli* para 24.

25. Judge Simon Barker also relied [29] on the *"helpful checklist of factors a judge should take into account for sentencing purposes"* set out by Proudman J in *JSC BTA Bank v Solodchenko (No. 2)* [2010] EWHC 2843 (Ch). Proudman J said this at paras 18 and 19 :

"18. I must take into account for sentencing purposes the factors considered by Mr Justice Lawrence Collins in Crystal Mews v Metterick [2006] EWHC 3087 (Ch) at [13]. In brief:

- *Whether the claimant is prejudiced by virtue of the contempt and whether the prejudice is capable of remedy.*
- *The extent to which the contemnor has acted under pressure.*
- *Whether the breach of the order was deliberate or unintentional.*
- *The degree of culpability.*
- *Whether the contemnor was placed in breach by reason of the conduct of others.*
- *Whether the contemnor appreciated the seriousness of the breach.*

...."

"19. I would add to these factors the following:

- *Whether the contemnor has admitted his contempt and has entered the equivalent of a guilty plea.*

- *By analogy with sentencing in criminal cases, the earlier the admission is made the more credit the contemnor is entitled to be given.*
- *Whether the contemnor has made a sincere apology for his contempt.*
- *The contemnor's previous good character and antecedents.*
- *Any personal mitigation advanced on his behalf."*

APPLICATION OF THE PRINCIPLES

26. This Court's concern, given the nature of this contempt is twofold. The first is that it consists in the breach of a provision designed to protect the public from pretenders who hold themselves out as possessing the requisite skills to assist them with their legal matters. Section 9 is not for the mere purpose of protecting the profession. Section 9 is intended to protect the public.

27. Secondly, the Court is concerned to protect its processes from abuse. In my view, the Petitions filed and the applications made by Mr. Dawson amounted to an abuse of the Court's process. They were an utter waste of everyone's time.

28. I recognise that there is a need for affordable legal services and that those may be in short supply. This may have opened a window of opportunity for people like Mr. Dawson, but it is exploitative, to say the least, to take money to do work you are not competent to do.

29. Mr. Dawson caused both Petitioners, who foolishly placed their trust in him, to have their cases dismissed/withdrawn and to lose their filing fees. They might have suffered even more significant consequences being forced, as they were in the interim, to remain in legally binding unions, as the learned Solicitor General pointed out. Happily for Mr. Dawson, there have been no reports of either Petitioner suffering any adverse consequence as a result of his misguided attempts to help and the prejudice they suffered was capable of remedy.

30. A strong mitigating factor is Mr. Dawson's full admission and apology offered on the first day at Court. It is an aggravating feature, however, that he sought to profit from his conduct. That said, I accept that he was just trying to help persons who were otherwise his clients and that he had not solicited the divorce applications.

31. There was not much by way of personal mitigation, save that Mr. Dawson was the primary breadwinner for his family which included two school aged children.

32. The Court is tasked with imposing a sanction that would mark its disapproval of Mr. Dawson's breach of the LPA, ensure his future obedience to the law and also deter other persons from acting as lawyers. While the most effective deterrent is a term of imprisonment, having

considered all the circumstances and the checklist set out by Proudman J in *JSC BTA Bank*, I have come to the conclusion that this is not a case which justifies committal for contempt, and I say this despite Mr. Dawson's previous convictions for dishonesty to which the learned Solicitor General has drawn my attention. I do not consider there is a risk of Mr. Dawson repeating this conduct given the consequences of 'helping' people of which he is now aware.

33. I consider that Mr. Dawson's contempt may be purged by payment of a fine and payment of compensation to the Petitioner in FAM 288 of 2020.

ORDER

34. Mr. Dawson to pay a fine of $2,500, such fine to be paid in instalments of $ 500 per month beginning 17 January 2022. Mr. Dawson will also pay the sum of $2,500 as compensation to the Petitioner in FAM 288 of 2020. I note for the record that he has already reimbursed the Petitioner in FAM 259 of 2020 the fees incurred by her in filing the Petition which was dismissed.

DATED 16 DECEMBER 2021

RAMSAY-HALE J