



ON APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS

**CICA (Civil) Appeal No 13 of 2021
(LPDC 1 of 2017)**

IN THE MATTER OF SECTION 7 OF THE LEGAL PRACTITIONERS ACT (2015 REVISION)

AND IN THE MATTER OF MR A, ATTORNEY-AT-LAW

BETWEEN

ATTORNEY 'A'

Appellant

-AND-

ATTORNEY GENERAL OF THE CAYMAN ISLANDS

Respondent

**BEFORE: THE HON RT. HON SIR JOHN GOLDRING, PRESIDENT
THE HON C. DENNIS MORRISON, JUSTICE OF APPEAL
THE RT. HON SIR. ALAN MOSES, JUSTICE OF APPEAL**

**Appearances: Mr. Colin McKie, QC instructed by Ms. Kate McClymont of Broadhurst LLC for the Appellant
Ms. Claire Allen, of the Attorney General's Chambers for the Respondent.**

Heard: 15 September 2021

Draft circulated: 6 October 2021

Judgment delivered: 27 October 2021

JUDGMENT

The Rt. Hon Sir John Goldring, President

Introduction

1. On 8 March 2021 Acting Justice Worsley QC, following a four day hearing, found that the Appellant, *“had conducted [himself]...in a manner unbecoming of a member the legal profession and an Officer of the Court, in that, being an attorney-at-law, admitted to practice in the Cayman Islands on April 10, 1995, and acting in the capacity of an attorney-at-*

law,...[he] engaged in conduct which is [sic] discreditable to an attorney-at-law and an Officer of the Court and...continue[d] to do so, in that:

- 1 In...Cause No. XXX of 2004...[he] failed expeditiously to resolve [his]...clients' case.
- 2 ...
- 3 ...he...failed to pay the entire amount of monies payable to [his]...clients as well as to relevant third parties working on their behalf from the damages and costs awarded to [his]...clients by the Court.
- 4 ...[he] repeatedly failed to respond or respond in a satisfactory manner to [his]...clients and/or to [his]...clients' representatives upon their reasonable requests for information regarding the account of [his]...clients' monies awarded by way of damages and costs by the Court.
- 5 ...[he] failed to safeguard adequately or at all, records and/or information relating to [his]...practice in respect of the said Cause...
- 6 ...[he] repeatedly failed to provide a response, or provide a satisfactory response, or produce records of accounts and related documents to the Hon. Chief Justice of the Cayman Islands in respect of the said Cause...when reasonably requested to do so.”

2. On 12 March 2021 the judge ordered that the Appellant be suspended for a period of six months. On 15 September 2021 the court allowed the Appellant's appeal against the judge's finding and remitted the case to a fresh judge. These are the reasons.

The legal framework

3. As relevant, section 7 of the Legal Practitioners Act (2015 Revision) (“the Act”), entitled, “*Suspension and striking off Roll*,” provides:

“(1) A judge shall have power, for reasonable cause shown, to suspend any attorney-at-law from practising as such during any specified period, or to order his name to be struck off the Court Roll.

(2) Before a judge takes such action as is laid down in subsection (1) hereof, he shall communicate or cause to communicate in writing to the attorney-at-law concerned the nature of the complaint against him and such attorney-at-law shall be entitled to call witnesses and to be heard.”

4. Surprisingly, there are no rules regarding the procedure to be followed.

The background to the allegations

5. Given the basis upon which the court allowed the appeal, I can take the facts shortly.
6. On 24 August 2001 Mr and Mrs W were injured in a road traffic accident in Grand Cayman. Mr W's injuries were very serious. The Appellant was retained on 13 January 2002. There was no issue on liability. The plaintiffs obtained judgment on 20 October 2004. Damages were to be assessed. It was only on 26 May 2011 that the case came before the Chief Justice for the assessment of damages. On 14 June 2011, the Chief Justice awarded damages in the sum of \$1,588,000. On 19 June 2012 there was the first complaint to the Chief Justice. Thereafter there were many complaints set out in emails from Mr and Mrs W and others. There was correspondence from the Chief Justice. Four witnesses (although not the Chief Justice) made statements setting out their accounts of what had happened. It suffices to say that the charges reflect the nature of the complaints. The contents of the emails, correspondence and the witness statements raised a clear prima facie case of professional misconduct.

The meeting of 15 March 2017

7. As an acting judge who did not live in Cayman, and had no knowledge of the parties, Justice Worsley was asked by the Chief Justice to conduct the professional misconduct hearing. He was at some stage provided with the papers. On what seems to have been 15th March 2017, the judge held a meeting with the Solicitor-General of the Cayman Islands. By then, the Attorney-General's office had been brought in by the judiciary to conduct the proceedings against the Appellant. It is not clear at whose instigation the meeting was arranged. In what must be a very recent email, the judge has stated that:

“[The] AG [sic] came unannounced to see me in Chambers, seeking advice on how procedurally to conduct a Professional Misconduct allegation: it was the first time in living memory that such a hearing had taken place in Cayman.”

8. There is a transcript of the meeting (first disclosed on 4 February 2021), which suggests it was organised at rather longer notice than the judge now recollects. What is clear, is that the Appellant was not present at the meeting. The transcript reveals a detailed knowledge by the judge of the allegations against the Appellant. Among other things, the judge said:

“...[the Appellant] initially appears to have behaved diligently, as you would expect. But the long and the short of their allegation, brought to the attention of the Chief Justice, is first, that [the Appellant]... has failed diligently to pursue their claim...As I say, the claim took a long time to come to fruition...”

...The money seems to have come through in dribs and drabs. [The Appellant]...has failed to provide an account to say exactly where the money has gone...So the complaint which...[Mr and Mrs W] make is that his conduct has been unbecoming a member of the Caymanian legal profession and they want an enquiry to be held...

...What I would like you...[Solicitor General] to consider, well perhaps not just consider, I am directing you if you like that counsel be appointed to prosecute this this allegation. All I can say at the moment is that, having read the papers, there is a prima facie case on the basis of what...[Mr and Mrs W] say in their statements, that [the Appellant]...has failed to conduct himself as becomes a member of the legal profession. As I say, I can make no judgment on the matter, I haven't heard both sides; I have not heard any evidence at all. I simply have the file...

...It seems to me that we should set a timetable so there should be a charge drawn up, there should be a timetable requiring [the Appellant]...to produce at least an immediate response to the allegation...

...The nature of the charge would be along the lines, I think: That you have conducted yourself in a manner unbecoming to a member of a legal profession, in that being a solicitor, qualified on or admitted on or whatever date, and acting in the capacity of a solicitor or whatever, received instructions...and then set out the ways in which he failed to live up to the standards rightly expected of the legal profession, for example, failed to proceed expeditiously with the conduct of the case, failed to reply expeditiously or all to correspondence with the clients, failed to account for the damages awarded..."

9. In short, it is clear that by the time of the meeting, the judge had the papers forming the basis of any allegation of professional misconduct, that those papers revealed a prima facie case against the Appellant and that the judge anticipated that the Appellant would be charged. He advised on the wording of the charges, advice which was accepted. He directed how matters should then proceed. All this took place in the absence of the Appellant.

The argument

10. Mr McKie QC, on behalf of the Appellant, submitted that in those circumstances, it was quite wrong for the judge to have held what amounted to a private meeting with the 'prosecutor.' He should not have met the Solicitor General in the absence of the Appellant. Mr McKie in the main advanced the Appellant's case on the basis of apparent bias: that a fair minded and informed observer would have concluded that the judge was biased; that in holding the meeting

at that stage of the proceedings in the absence of the Appellant, he not acting as an independent and impartial adjudicator of the charges. Mr McKie relied upon several well-known cases such as *Porter v Magill* [2002] 2 AC 357 and *Helow v Secretary of State for the Home Department* [2008] 1 WLR 2416.

11. Ms Allen, who argued the case on behalf of the Attorney General with skill and judgment, accepted the Appellant had the constitutional right to a fair trial: that the judge was required to conduct the proceedings in accordance with natural justice. She submitted that in holding the meeting in the absence of the Appellant, the judge was doing no more than following the procedure laid down in section 7 of the Act. As she submitted, by section 7(1) the judge had the power for reasonable cause to suspend or strike off an attorney-at-law. By section 7(2), before doing so, the judge was obliged to communicate in writing, directly or indirectly, the nature of the complaint against the attorney-at-law. At the meeting, submitted Ms Allen, the judge was doing no more than having the nature of the complaint communicated to the Appellant. Moreover, if an issue did arise, it was remedied by permitting the Appellant to respond to the complaint.
12. Ms Allen further submitted, that if the judge did form a preliminary view, that fell short of apparent bias. This was not a case, such as those referred to in the authorities, where the judge had a link to a party. As the judge made clear more than once, he did not know the Appellant.

The court's decision

13. By paragraph 7(1) of Part 1 of the Cayman Islands Constitution Order 2009:

“Everyone has the right to a fair and public hearing in the determination of his or her legal rights and obligations by an independent and impartial court within a reasonable time.”

14. The constitutional protection afforded by paragraph 7 applied to the Appellant. The procedure adopted in the section 7 proceedings against him must reflect that. Section 7(2) of the Act must be construed having regard to the constitutional rights of the Appellant. It is axiomatic that the judge who is to adjudicate upon anticipated charges should not (wholly exceptional circumstances apart) discuss the case with one party in the absence of the other. It cannot be right for the judge to have a private meeting with the ‘prosecutor’ in the absence of the ‘defendant,’ let alone to comment and advise upon the charges to be brought, and to set a timetable. In the court’s judgment, such a procedure is unfair and contrary to natural justice and is accordingly in breach of the Appellant’s constitutional rights.

15. Although not directly analogous, what is said in the Criminal Practice Direction VI (Trial) 26N of England and Wales, entitled “*Open justice*,” reflects that approach. It provides that during a trial:

“There must be freedom of access between advocate and judge. Any discussion must, however, be between advocates on both sides.” (my emphasis)
16. If justice requires that both sides must be present when the judge discusses the case during the course of a trial, that must equally be so when proceedings are anticipated, albeit the trial may not formally have begun.
17. It follows that the court does not accept that section 7(2) permits the judge to discuss the case with one party in the absence of the other in order to communicate the charges. Moreover, in the present case, it went substantially further than merely discussing the case. The judge gave detailed advice regarding the proceedings, which on any view was not appropriate.
18. For those reasons, the court allowed the appeal on the basis of the first ground of appeal, namely that the judge, having held the meeting with the Solicitor General, should have recused himself from hearing the case. It was not in the circumstances necessary for the court to consider any of the other grounds of appeal.

Reporting restrictions

19. As we did not hear argument on this aspect, I shall only comment briefly.
20. On the application of the Appellant, the judge below ordered that there be no reporting of the proceedings. That order has remained in force. The court did not lift the restriction when hearing the appeal or when it remitted the matter to the Grand Court. It ordered that the reporting restriction should remain in force pending a further order from the Grand Court or the Court of Appeal.
21. The order for non-reporting was made on the basis that in a small jurisdiction such as the Cayman Islands, knowledge of the proceedings, even if ultimately dismissed, would be disproportionately damaging to the attorney. There should only be publicity if and when there is a finding against the attorney.
22. Without expressing a view, it does seem to me of considerable importance for the court in any proceedings before it, to have well in mind the importance of doing justice in public. No doubt

the judge who will be considering the future conduct of the case, will put that aspect into the balance when considering whether the reporting restriction should remain.

The Rt. Hon Sir Alan Moses, Justice of Appeal

23. I agree.

The Hon C. Dennis Morrison, Justice of Appeal

24. I also agree.