

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE**

GRENADA

On referral from the General Legal Council compliant NO: 001 OF 2022

IN THE MATTER OF THE LEGAL PROFESSION ACT

**JEMMA MARK
EARLYN PAUL**

COMPLAINANTS

AND

RAPHAEL BAPTISTE

ATTORNEY-AT-LAW

Before:

The Hon. Mr. Justice Raulston L. A. Glasgow
The Hon. Mde. Justice Agnes Actie

High Court Judge
High Court Judge

Appearances:

Complainants present
Attorney at law absent

6th December 2023

- [1] **GLASGOW, J. and ACTIE, J.:** This tribunal has been constituted further to a referral made by General Legal Council (GLC) pursuant to that body's powers under section 37(2) of the Legal Professions Act, Cap 167A (the LPA). The referral touches and concerns complaints made by the complainants, Ms. Jemma Mark and Earlyn Paul (Ms. Mark and Mr. Paul) against the Attorney-at-Law, Mr. Raphael Baptiste (Mr. Baptiste). Section 37(2) of the LPA reads—

“If the Council, after hearing an application under this Part, is satisfied that the allegations made against the attorney-at-law to whom the application relates have been established, and that the conduct alleged against him constitutes professional misconduct, as the case may be, the Council may—

(a) where it is of the opinion that a case has been made out which justifies punishment more severe than may be imposed by the Council, such as removal from the Roll, the Council shall forward to the Supreme Court, in accordance with section 82 of the West Indies Associated States Supreme Court (Grenada) Act, Chapter 336, a copy of the proceedings before it and its findings thereon;

(b) suspend the Practising Certificate of the attorney-at-law to whom the application relates;

(c) reprimand the attorney-at-law to whom the application relates; or

(d) make such order as to costs as it thinks fit, and in addition, except where the application is dismissed under subsection (1), the Council may order the attorney-at-law to pay the applicant or person aggrieved, such sum by way of compensation and reimbursement, and such further sums in respect of expenses incidental to the hearing of the application and consideration of the matter, as it thinks fit.”

[2] Section 82 of the West Indies Associated States Supreme Court (Grenada) Act, Chapter 336 in turn reads –

“Any two Judges of the High Court may, for reasonable cause, suspend any barrister or solicitor from practising in Grenada during any specified period, or may order his or her name to be struck-off the Court Roll.”

[3] Some context and background as to how we got to this referral is warranted. A sufficiently succinct outline of the history of the matter is recorded in the GLC’s decision dated 27th April 2023 which we adopt and recite below.

Background

[4] Ms. Mark and Mr. Paul reside on a lot of land owned by them in the district of Black Bay, Concord in the parish of Saint John. Ms. Mark alleged that the land adjoining their land is owned by an elderly gentleman, Mr. Lawrence Augustine Thomas (the landowner). Ms. Mark and Mr. Paul do not have a relationship of any kind with the landowner but simply knew of his ownership of the land adjoining their own.

[5] In or around October 2019, Ms. Mark saw Mr. Baptiste on the landowner’s land giving instructions for a survey. Ms. Mark and Mr. Paul, with a view to protecting their land, were immediately interested in purchasing the lot of land adjoining their land. Ms. Mark approached Mr. Baptiste and asked him to purchase the lot of land.

[6] According to Ms. Mark, Mr. Baptiste represented himself as the lawful agent of the landowner for the purpose of selling to Ms. Mark and Mr. Paul the lot of land measuring 5,200 square feet of

the landowner's land. Ms. Mark and Mr. Paul were requested to pay the sum of Twenty-Eight Thousand, Six Hundred dollars (\$28,600.00) and this price included the cost of the survey. Ms. Mark and Mr. Paul paid the agreed price. Their evidence includes receipts for Six Thousand Dollars (\$6,000.00) dated 21st October 2019, Three Thousand Dollars (\$3,000.00) dated 11th December 2019, Fifteen Thousand Dollars (\$15,000.00) dated 10th January 2020, and Four Thousand Dollars (\$4,600.00) dated 9th July 2020. All receipts were issued by Mr. Baptiste and stated the purpose was for the purchase of land in the sum of Twenty-Eight Thousand Six Hundred Dollars (\$28,600.00).

- [7] Following payment for the lot of land, Ms. Mark visited Mr. Baptiste's chambers on several occasions requesting the deed of conveyance for the land. On each occasion, Mr. Baptiste promised to provide the deed of conveyance in short order and stated that he had already received his "cut" from the transaction and therefore Ms. Mark and Mr. Paul would get their conveyance. This was never done and thus the complainants were prompted to proceed to institute disciplinary proceedings with the GLC against Mr. Baptiste.
- [8] The GLC heard the complaint on 9th November 2022 and delivered its decision on 27th April 2023 as follows –
1. The Attorney-at-Law shall refund the Applicants the sum paid to the Attorney-at-Law being Twenty-Eight thousand, Six hundred dollars (\$28,600.00) for cost of the land, survey and legal fees within twenty-one (21) days of the date of this Order.
 2. Pursuant to section 37(2)(a) of the Legal Profession Act, 2011 and section 82 of the West Indies Associated States Supreme Court (Grenada) Act, this complaint is forwarded to Supreme Court for consideration and determination of an appropriate punishment for the Attorney-at-Law.

Findings

- [9] Before venturing into our findings, we must comment on the conduct of these proceedings thus far. The referral came before us today for hearing at 9 a.m. Ms. Mark and Mr. Paul were present, but Mr. Baptiste was absent. We note that this is the second hearing of this referral where Mr. Baptiste is absent. On the first hearing, on 20th October 2023, Mr Baptiste was absent before the Tribunal even though there was some indication that all parties were notified. The court at that hearing adjourned the matter to today's date and gave directions that all parties were to be served and in attendance on the adjourned hearing date today. Ms. Mark and Mr. Paul were present at

today's hearing, but Mr Baptiste was absent. We enquired whether Mr. Baptiste was served with notice of the hearing. The court's bailiff (Mr. Charles) was sworn-in and gave evidence that he served Mr. Baptiste with notice of today's hearing together with a copy of the court's order dated 20th October 2023. Mr. Charles testifies that he served Mr. Baptiste on the 17th November 2023, at 9:30 a.m. at the attorney at law's home in the parish of Saint Patrick. Mr. Charles states in evidence that he was able to identify Mr. Baptiste because he has known him for over 30 years. Mr. Charles further testified that he filed an affidavit of service at the court office on the 18th November 2023. However, this document was not placed before the Tribunal. The Deputy Registrar, Mr Joshua John also informed the Tribunal that on 4th December 2023 when Mr. Baptiste visited the court office, he saw him and reminded him of the date of proceedings today. In view of all the foregoing matters, the Tribunal is satisfied that Mr. Baptiste was given adequate notice of today's hearing and an opportunity to be present. We stop to observe that the GLC indicates in its decision that Mr. Baptiste failed to appear at the hearing before that body even though he was aware of the hearing date in those proceedings. The Tribunal, being satisfied that adequate notice was given to Mr. Baptiste of today's proceedings, conducted the hearing in his absence.

- [10] For the several reasons to appear hereunder, we are of the view that Mr. Baptiste's conduct as an Attorney-at-Law in respect of the purported sale of the land flagrantly breached several provisions of the Legal Profession Act (LPA) which breaches warrant his removal from the Roll of Attorney-at-Law.
- [11] The Tribunal heard sworn testimony from Ms. Mark and Mr. Paul. We do not find that the evidence presented by Ms. Mark departs in any material respects from the evidence given before the General Legal Council (GLC) which has already been narrated above. Ms. Mark recalls her encounter with Mr. Baptiste when he came to the land when it was being surveyed. She recounts her engagements with Mr. Baptiste regarding the sale of the land, payment of the sum of Twenty-Eight Thousand, Six Hundred dollars (\$28,600.00) for the purchase of the land and her several efforts to receive the deed of conveyance for the land from him which he failed to produce. One observation must be made however with respect to Ms. Mark's evidence before the Tribunal. When pressed by Justice Actie, Ms. Mark conceded that she has never spoken to the purported landowner about the sale transaction or informed the purported landowner that she paid Mr. Baptiste for the land on the landowner's behalf. She accepted that to date she is not aware

whether the purported landowner, who is an elderly member of her community is even cognisant that his lands are the subject of a sale agreement with Mr. Baptiste as his purported agent.

[12] With respect to the evidence presented by Mr. Paul, we do not find that he was fully conversant with the finer details of the sale transaction. He concedes that he left much of the sale transaction to be conducted by Ms. Mark. He testifies that he merely provided some of the sale price to Ms. Mark to pay Mr. Baptiste for the land. He was aware though of the difficulties that the couple were experiencing with getting the conveyance for the land from Mr. Baptiste.

[13] The GLC identified several provisions of the LPA which were flouted by Mr. Baptiste. We concur with those findings. In addition, we find that the facts highlight the following infractions of Mr. Baptiste's professional obligation as set out in the LPA -

(1) Section 52 of the LPA –

“(1) Notwithstanding section 51, an attorney-at-law and his client may, either before, or after, or in the course of the transaction of any non-contentious business by the attorney-at-law, enter into an agreement as to the remuneration of the attorney-at-law in respect of the work to be performed.

(2) The agreement made by virtue of subsection (1), may provide for the remuneration of the attorney-at-law by a gross sum, by commission, by percentage, by salary, or otherwise, and it may be made on the terms that the amount of the remuneration stipulated in the agreement shall not include all, or any disbursements made by the attorney-at-law, in respect of searches, plans, travelling, stamps, fees or other matters.

(3) **An agreement made by virtue of subsection (1), shall be in writing**, and signed by the person to be bound, or by his agent.” (Bold emphasis ours)

(2) Rule 20 of the Code of Ethics set out at Third Schedule of the LPA –

20. (1) An attorney-at-law shall provide competent representation to his client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

(2) An attorney-at-law shall always act in the best interest of his client, represent him honestly, competently and zealously, and endeavour, by all fair and honourable means, to obtain for him the benefit of any and every remedy and defence which is authorised by law, steadfastly bearing in mind that the duties and responsibilities of the attorney-at-law are to be carried out within the bounds of the law.

(3) The interests of his client and the exigencies of the administration of justice should always be the first concern of an attorney-at-law, and rank before his right to compensation for his services. (Bold emphasis ours)

(3) Rule 26 of the Code of Ethics, Third Schedule of the LPA –

26. (1) **An attorney-at-law may represent multiple clients only if he can adequately represent the interest of each, and if each consents to such representation, after full disclosure of the possible effects of multiple representation.**

(2) **In all situations where a possible conflict of interest arises, an attorney-at-law shall resolve all conflicts by leaning against multiple representation.**

(3) Notwithstanding any other paragraph of this Part, no attorney-at-law shall represent both the—

(a) mortgagor and mortgagee; or

(b) **vendor and vendee,**

except where both parties seek independent legal advice and present evidence of the written consent of both parties to such joint representation. (Bold emphasis ours)

(4) Rule 27 of the Code of Ethics, Third Schedule, LPA –

27. (1) An attorney-at-law shall deal with his client's business with all due expedition and shall, whenever reasonably so required by the client, **provide him with full information as to the progress of the client's business.**

(2) **It is improper for an attorney-at-law to accept instructions in a matter unless he can handle it without undue delay.** (Bold emphasis ours)

(5) Rule 54 of the Code of Ethics, LPA –

54. **An attorney-at-law shall not solicit business,** or consent to become involved in a matter, **unless at the request of a party thereto,** but it is proper for an attorney-at-law to become involved in matters referred to him by the Bar Association, or by another attorney-at-law for which he is engaged, in any other manner not inconsistent with these Rules. (Bold emphasis ours).

(6) Rule 59(2) of the Code of Ethics, LPA –

59. (1) An attorney-at-law shall not enter into partnership or fee sharing arrangements concerning the practice of law, with non-qualified bodies or persons.

(2) **An attorney-at-law shall not enter into an agreement, or charge or collect a fee, in contravention of these Rules, the Act, or any other law.** (Bold emphasis ours)

(7) Rule 61(2) of the Code of Ethics, LPA –

61. (1) Except with the specific approval of his client given after full disclosure, an attorney-at-law shall not act in any manner in which his professional duties and his personal interest conflict or are likely to conflict.

(2) An attorney-at-law shall not accept or continue his retainer or employment on behalf of two or more clients, if their interests are likely to conflict, or if his independent professional judgment is likely to be impaired.

(8) Rule 68 of the Code of Ethics, LPA –

68. In the performance of his duties, an attorney-at-law shall not act with inexcusable or undue delay, negligence or neglect.

[14] When we examine section 33 of the LPA, we observe that the section sets out rules to “*regulate the professional practice, etiquette, conduct and discipline of an attorney-at-law.*” Section 33 divides the Code of Ethics into two parts and makes breaches falling within Part A conduct which **may** constitute professional misconduct. Breaches falling within Part B, the sections states, **shall** constitute professional misconduct. Notwithstanding the fact that the breaches committed by Mr. Baptiste with respect to rules 20, 26 and 27 of the Code of Ethics fall within Part A of the Code, we find that the conduct is egregious enough to be termed professional misconduct for which he must be sanctioned.

[15] All in all, we extrapolate the following from the LPA and its Code of Ethics cited above –

- (1) Since Mr. Baptiste was engaged to perform non contentious business, he was required to have an agreement in writing for his services.
- (2) Mr. Baptiste was prohibited from representing multiple clients or more properly both vendor and vendee on the transaction for sale of land without first ensuring that both parties seek independent legal advice and that both parties present evidence of their written consent to such joint representation.
- (3) There has been a more than three-year delay since Mr. Baptiste has received payment from Ms. Mark and Mr. Paul for his services. He has failed to act with the requisite expedition required of an Attorney-at-Law in concluding the brief for which he was retained. He has also failed to provide Ms. Mark and Mr. Paul with full information about the progress of their matter as he is required to do.
- (4) Mr. Baptiste was prohibited from soliciting business from Ms. Mark in the manner that he did. A person may request or solicit the services of an Attorney-at-Law. The court may request that an Attorney-at-Law assists a litigant. Another Attorney-at-Law may refer any matter to an Attorney-at-Law. But no Attorney-at-Law is permitted to solicit instructions from any person to act as their lawyer or insist that he or she act as their Attorney-at-Law for any reason.

[16] Mr. Baptiste's absence from participation in today's proceedings has, in addition to all the attendant difficulties which it presents for our consideration of all the facts, has also left us with no information as to whether Mr. Baptiste was ever engaged by the purported landowner to sell his lands. If Mr. Baptiste was not so engaged, then his lack of instructions highlights several other concerns for us with respect to possible criminal fraud. We therefore recommend to the Commissioner of Police and the Director of Public Prosecutions that this matter be fully investigated to determine whether criminal breaches of the law have in fact been committed.

[17] Our conclusion is therefore, that Mr. Baptiste has committed sufficiently serious breaches of his professional duties under the LPA and as such he ought to be removed from the Roll of Attorneys-at-Law. Ms. Mark indicated to the court that she wishes for an order that Mr. Baptiste convey the lands to her. We refrain from making such an order for the fact that there is no evidence that this transaction was sanctioned by the landowner or as we have stated above that he was even aware of the sale. We allude again to Ms. Mark's own admission that she has not sought to find out whether the landowner authorised sale of his land or received monies for the sale, even though she concedes the landowner lives within her community. Compounding this, as we have stated, we have no assistance from Mr. Baptiste to guide us in a determination of his powers as agent or otherwise that he may have had to conduct the sale on behalf of the landowner. What we do have before us and we have so found, is the fact that Mr. Baptiste received monies for services which he has failed to render. He must return those moneys with interest to Ms. Mark and Mr. Paul. We also note that Mr. Baptise has flagrantly breached the GLC order to pay the sums due within twenty-one (21) days of the GLC's order made on 9th July 2020.

ORDER

[18] In conclusion and for the foregoing reasons, we accordingly rule as follows:

1. The Attorney-at-Law, Raphael Baptiste, is hereby struck off the Roll of Attorneys-at-Law in the State of Grenada for serious professional misconduct.
2. The Registrar of the High Court is to make the appropriate alteration to the Roll of Attorneys-at-Law, and publish the appropriate notice in the Gazette in accordance with section 30 (1) of the LPA.
3. The Attorney-at-Law, Raphael Baptiste, is to repay the complainants, Miss Jemma Mark and Mr. Earlyn Paul, the sum of Twenty-Eight Thousand, Six Hundred dollars

(\$28,600.00) with interest accruing thereon at the rate of 6 percent per annum from the 9th July 2020 until full repayment along with any legal fees received from the complainants further to the transaction for sale of lands before this tribunal.

4. The Attorney-at-Law, Raphael Baptiste, is to return all files, documents and briefs received from his clients in furtherance of his office as legal practitioner within (thirty) 30 days of this order.
5. The Attorney-at-Law, Raphael Baptiste, is to pay the complainants' costs of these proceedings in the sum of One thousand dollars (\$1,000.00) within twenty-one (21) days of today's date.

Raulston Glasgow
High Court Judge

Agnes Actie
High Court Judge

By the Court

Registrar