REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal 069-2013

Complaint # 50 -2011

SHAHEED HOSEIN

APPELLANT

AND

UTHRA RAMNARINE-HILL

RESPONDENT

PANEL: Bereaux, J.A.
Jones, J.A.
Rajkumar, J.A.

APPERANCES: Appellant in person
Mr. S de la Bastide for the Respondent

DATE OF DELIVERY: 3rd July, 2018

I have read the Judgment of Jones, J.A. and I agree with it.

N. Bereaux
Justice of Appeal

I too agree.

P.Rajkumar
Justice of Appeal

JUDGEMENT

Delivered by J. Jones, JA.

1. This is an appeal from a decision of the Disciplinary Committee of the Law Association of Trinidad and Tobago (the Committee) by which it found that the appellant, an attorney at law, had derogated from the standards of conduct expected of an attorney at law and had breached rules 1, 12 and 21 of Part A of the Third Schedule to the Legal Profession Act Chap. 90:03 (the Act). The Committee also found that the Attorney had committed acts of professional misconduct in breach of rule 29 of part B of the Third Schedule to the Act.

2. These rules state:

PART A

"1. An Attorney-at-law shall observe the rules of this Code, maintain his integrity and the honour and dignity of the legal profession and encourage other Attorneys-at-law to act similarly both in the practice of his profession and in his

private life, shall refrain from conduct which is detrimental to the profession or which may tend to discredit it."

"12. An Attorney-at-law should also bear in mind that he can only maintain the high traditions of his profession by being a person of high integrity and dignity."

"21. (1) An Attorney-at-law shall always act in the best interests of his client, represent him honestly, competently and zealously and endeavor by all fair and honorable 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 and not without the bounds of the law.

(2) 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."

1. PART B

"29. An Attorney-at-law shall not knowingly make a false statement of law of law or fact."

3. The Committee was of the view that the case made out by the Respondent, the person making the complaint, justified a punishment more severe than the payment of a fine and/ or compensation and or/ costs and that the punishment of suspension from practice or removal from the roll was warranted. Accordingly, and in accordance with section 39(3) of the Act, it forwarded a copy of the proceedings to the Chief Justice and the Attorney General for action.

4. The Respondent was not a client of the Appellant but rather an employee of an Insurance Company (the Insurance Company) with whom the Appellant had entered into negotiations on behalf of his client at the time, Nazreen Ali, (Ali) to settle a motor vehicle claim. An agreement had been reached between the Respondent, acting on behalf of the Insurance Company, and the Appellant, acting on behalf of Ali, by which the Insurance Company was to pay to Ali damages in the sum of $535, 000.00 and the sum of $15,000.00 in costs.

5. The Committee found that the Appellant presented to Ali two letters (the disputed letters) prepared or caused to be prepared by the Appellant and purporting to bear the signature of the Respondent in which lower settlement figures were offered. The Committee determined that these disputed letters were not true copies of the actual letters sent to the Appellant by the Respondent. The Committee concluded that the Appellant deliberately and with intent to deceive misrepresented to Ali that by the disputed letters a settlement offer had been made in the sum of $406, 598.32 instead of the sum of $460,000.00 with respect to the first disputed letter and in the sum of $439,275.00 instead of the sum of $529,900.00 with respect to the second disputed letter. This, it determined, was done in order to persuade Ali to settle the claim in the sum of $439,275.00. This sum was $90,625.00 less than the sum that the Insurance Company was prepared to pay at the time.

6. Before the Committee and before us the Appellant represented himself. Although the Notice of Appeal contained some 13 grounds the submissions of the Appellant before us were limited to the following:

(i) the Respondent had no locus standi to make the application as she never sought leave of the Committee to make the application and was not a person aggrieved;

(ii) the affidavit filed by the Respondent in support of the application was hearsay and inadmissible and ought to have been struck out;

(iii) the application ought to have been made by Ali who, in accordance with the Act, ought to have provided a sworn statutory declaration;

(iv) the Committee failed to indicate the standard of proof applied by it in coming to its conclusions; and

(v) the evidence of the witnesses had been so discredited in cross-examination that it would be unreliable for any court or tribunal to rely on the evidence.

Locus Standi

7. Section 37 of the Act permits an application to be made to the Committee by a client or, with the leave of the Committee, a person who alleges that she or he is aggrieved by an act of professional misconduct committed by an attorney at law who is subject to the Act. The section requires that the allegations be contained in a statutory declaration made by the person alleging that they are aggrieved.

8. The evidence discloses that on the first date of hearing, prior to the commencement of the hearing of the evidence, leave was granted by the Committee for the Respondent to make the complaint. The evidence also discloses that the Appellant was present on that occasion. While accepting that the notes of evidence disclosed

that leave was granted, before us, the Appellant submitted that what was required was a formal application for leave to be made by the Respondent. There is no such requirement by the Act or by the Rules. As we have seen the Act merely requires that where the complainant is not a client of the attorney at law for the complaint to proceed the Committee must grant leave. Leave having been granted by the Committee there is no merit in the Appellant's submissions in this regard.

9. By her affidavit in support of the application, formatted in accordance with Form 2 of the Appendix to the Fifth Schedule to the Act, the Respondent alleges that while acting on behalf of the Insurance Company she engaged in negotiations with the Appellant who was at that time acting on behalf of Ali as the legal personal representative of the estate of Ali's deceased husband. She deposes that:

    (i) on or around 3rd February 2011 Ali showed her a copy of a letter that purported to be addressed by the Insurance Company to the Appellant containing settlement figures that differed from and were significantly lower than those agreed by her and bore her signature;

    (ii) Ali told her that the letter had been delivered to her by the Appellant and she had been told by him that this was the final settlement offer and was advised to accept the settlement by signing a letter of acceptance prepared by the Appellant;

    (iii) The Respondent denied preparing or signing the letter or making the lower settlement offer;

She therefore complains that the Appellant:

(i) prepared or procured the preparation of a replicated letter purporting to be sent by the Insurance Company detailing a lower agreed settlement figure than had been agreed;

(ii) the Appellant forged or procured a forgery of her signature in her capacity as claims officer of the Insurance Company;

(iii) the Appellant misrepresented the facts of the true settlement offer to him and specifically attempted to convince Ali that the settlement figure was lower than the actual agreed figure;

(iv) the Appellant did not represent the true position to Ali with regard to what was legally due to Ali and attempted to convince Ali to accept a lower figure than that agreed by the Insurance Company and

(v) the Appellant personally delivered to Ali forged correspondence knowing that the said correspondence was not prepared and/or sent by the Insurance Company and attempted to convince Ali that it was from the Insurance Company.

10. The submission that the Respondent was not a person aggrieved by the actions of the Appellant was made by way of a preliminary objection prior to the oral evidence being taken. This submission was overruled by the Committee on 11th July 2011. The Committee did not furnish reasons for the rejection of the submission. However, although the Respondent did not use the word aggrieved in the application to the Committee, the facts deposed by the Respondent comprised sufficient material upon which the Committee could have come to the conclusion that the Respondent was alleging acts of professional misconduct committed by the Appellant and that she was aggrieved by this misconduct.

11. The mere fact of her allegation that the Appellant had forged or procured a forgery of her signature is enough to support such a conclusion. This allegation was sufficiently personal to the Respondent to support a finding that she was a person aggrieved by the acts of the Appellant. In these circumstances the Committee was not wrong in granting leave to the Respondent to pursue the complaint.

12. Insofar as the Appellant submits that the proper applicant ought to have been Ali again there is no valid basis for this submission. The Respondent's case was simply that there had been a fraudulent misstatement by the Appellant of the terms of the settlement proposed by her on behalf of the Insurance Company and that her signature had been forged or a forgery of same procured by the Appellant. Her case was never that she was acting on behalf of Ali as suggested by the Appellant. Ali was simply a witness in the complaint. In these circumstances, Ali not being the complainant and the application not being made by the Respondent on Ali's behalf, it follows that there was no requirement by the Act that Ali's evidence be obtained by way of a statutory declaration.

Hearsay evidence

13. The Appellant also submits that the evidence of the Respondent contained in paragraph 2 of her affidavit in support of the application is hearsay, inadmissible and ought to be struck out. We find that there is no merit in the submission. The Act requires an application to be made in accordance with the Legal Profession (Disciplinary Proceedings) Rules (the Rules) contained in the Fifth Schedule to the

Act[1]. The Rules require an applicant to make its application to the Committee in Form 1 of the Appendix "which shall be sent to the Secretary of the Committee together with an affidavit by the applicant in Form 2 of the Appendix"[2]. In accordance with the rule the affidavit is required to contain the matters of fact relied on by the applicant in support of the application. Paragraph 2 of the affidavit is that paragraph which, in accordance with Form 2, contains the matters of fact relied on by the Respondent.

14. This affidavit forms the basis of the Committee's determination of whether there is a prima facie case made out against the attorney. If no prima facie case is made out then the Committee may without requiring the attorney to answer the allegations dismiss the application.[3] While the Rules provide that the Committee "may in its discretion, either as to the whole case or as to any particular facts, proceed and act upon evidence given by affidavits"[4] the Committee in this case did not do so. Rather it proceeded upon evidence led orally from the parties and Ali. In the circumstances the contents of the affidavit were not treated as evidence by the Committee but were rather merely a recitation on oath of the facts relied on by the Respondent in support of the application in accordance with the rule.

The Standard of Proof

15. The Appellant submits that the Committee failed and/or neglected to indicate the standard of proof it applied in coming to its conclusions. There is no requirement

[1] Section 38 of the Act
[2] Rule 3 of the Rules
[3] Rule 4 of the Rules
[4] Rule 8 of the Rules

in law that a tribunal, or a judge for that matter, specifically identify the standard of proof to be applied in the case before it. What is required is that the applicable standard of proof be applied in determining whether the case has been proven. Early in her written submissions before the Committee the Respondent accepted that the relevant standard of proof was that applicable in criminal proceedings and that accordingly she was required to prove beyond a reasonable doubt that the allegations were true. The Appellant does not deny this in his submissions. Indeed in his written submissions, while not quite admitting this, he states:

"The allegations made are of a very serious criminal conduct. The standard of proof however described would have to be of a very high standard. It would have to be near as high as that in criminal matters."

16. The standard of proof to be applied was therefore not an issue of dispute in the case. The only issue with respect to the standard of proof was whether the Respondent had discharged that burden. The Appellant has not identified any instance in which the Committee applied a lower standard of proof than was required by the law to any of its determinations. Neither has there been any allegation by the Appellant that the Committee applied the wrong standard of proof. In fact, on the evidence before it, once the Committee accepted the evidence of Ali and the Respondent the standard was met. In these circumstances there is no merit in this ground of appeal.

The objections to the Committee's treatment of the evidence

17. In this case the Committee made findings of primary fact after having the benefit of seeing and hearing the witnesses and drew certain conclusions from those

primary facts. In these circumstances a court of appeal will not easily disturb those conclusions unless it can be shown that there was no evidence to support the conclusions; the conclusions were based on a misunderstanding of the evidence or the conclusions are such that no reasonable judge could have reached: **per Lord Neuberger in re B (A Child) (care Proceedings): Threshold Criteria [2013] 3 All ER 929 at paragraph 53**.

18. This position has been adopted in this jurisdiction in **Beacon Insurance Co Ltd. v Maharaj Bookstore [2015] 1 LRC 235** and applied in a myriad of subsequent cases.[5] The fact that this is a determination by a tribunal and not a judge does prevent the application of this principle. It is only on a rare occasion that a court of appeal will reverse a finding of primary fact made by the judge or tribunal who has had the benefit of seeing and assessing the witnesses in the witness box.

19. The issue here was one of credibility. There were two different accounts as to the creation and presentation of the disputed letters that presented by the respondent and that presented by the Appellant. The Committee was required to determine which account it believed, whom it believed and the weight to be placed on the evidence before it.

20. The Committee found Ali to be a credible witness. They stated that she was not shaken in cross-examination and they were satisfied that she was telling the truth. With respect to the Respondent they were of the opinion that she gave her evidence

[5] Low v Lezama Civil Appeal P211 of 2012 at paragraph 16; Mungroo v Westmaas Civil Appeal 1 of 2014 at paragraph 66 and Gonsalves v Bruce Civil Appeal 183 of 2007 at paragraph 12.

in a straightforward and forthright manner. According to the Committee: "having heard the 3 witnesses and read the documentary evidence the Committee rejects the [Appellant's] evidence and accepts the evidence led by the [Respondent]". They clearly accepted the evidence led by the Respondent and disbelieved the Appellant's evidence.

21. The Appellant submits that (a) the Committee failed to give weight to two documents admitted into evidence as NA1 and NA2; and (b) failed to consider or comment on his case as put to the Respondent's witnesses in cross-examination. Orally before us the Appellant also suggested that there was a contradiction between the evidence of the Respondent and Ali with respect to when they first met and that the Committee had failed to take this into consideration when assessing Ali's credibility. Unfortunately, despite probing by the Panel, the Appellant was unable to point out in the notes of evidence the contradictions on which he was relying.

22. In any event, even if there were such a contradiction, given the extent of the other evidence led on behalf of the Respondent, it is difficult to conclude that a discrepancy as to the date when Ali and the Respondent first met would be a sufficient basis for us to interfere with the Committee's findings of fact. This in our view would not be a mistake in the Committee's evaluation of the evidence sufficiently material to undermine their conclusions.

23. The evidence of the Appellant and Ali both confirm that Ali was introduced to the Appellant as a client by a third party, Andre Lord, with whom Ali had an agreement to pay 20% of whatever damages were recovered on her behalf. The case presented

by the Appellant was that he did not make or give the disputed letters to Ali. He suggests in his evidence in chief and, by way of questions put to Ali in cross-examination that this was a scheme concocted by Ali and her sister to avoid paying Mr. Lord the money agreed to be paid to him and for Ali to get her hands on money which ultimately belonged to her infant son. Ali denies this. This was the extent of the defence presented by the Appellant.

24. According to the Appellant the documents NA1 and NA2 were supportive of this case. The exhibit NA1 was a document prepared by the Appellant and signed by Ali which confirmed Ali's instructions to the Appellant to act on her behalf and her agreement to pay 20% of the damages recoverable to Mr. Lord. The document also authorized the Appellant to pay the sum to Mr. Lord on her behalf.

25. NA2 was a letter written by Ali to the Appellant dated 3rd February 2011 in which she confirms that she no longer wishes the Appellant to act on her behalf. In that letter she states that she has obtained the services of another attorney. The existence of these documents were not denied by Ali. Under cross-examination Ali admits that she in fact did not obtain the services of another attorney.

26. It is clear that the Committee considered both NA1 and NA2 since they referred to them in their recitation of the facts. What the Committee did not accept was the Appellant's suggestion that the disputed letters were concocted by Ali and her sister and his thoughts on what could have been the motive for so doing. A judge, or a tribunal for that matter, is not required to identify and explain every factor considered in its deliberation. It is sufficient that the conclusions arrived at be

clearly identified and the manner in which they were resolved clearly explained so that the parties can readily understand the reason for the decision: **English v Emery Reimbold and Strick Ltd. (Practice Note) [2002] WLR 2409; Smith v Molyneaux [2016] UKPC 35.** See also **Central Broadcasting Services Ltd and Another v. The Attorney General of Trinidad and Tobago [2018] UKPC 6 at paragraph 13 to the same effect.**

27. Here the Committee had to resolve simple issues of fact. The only question was whose evidence they believed. They simply did not believe the Appellant and they stated this quite clearly. This was entirely within their remit. The fact that Ali had agreed to pay 20% of the damages received does not necessarily lead to the conclusion that she had forged the documents. Whatever the sum of money received from the Insurance Company in settlement of her claim Ali would still have had the responsibility to pay 20% of the sum to Lord under her agreement. It is not necessary for the specific purposes of this case to comment further on this agreement. Neither did Ali have to concoct the scheme in order to fire the Appellant as suggested by him in his submissions before us.

28. The fact that she told the Appellant that she had hired another attorney does not necessarily led to the conclusion that she and/or her sister had forged the documents. For example it could simply have been an attempt by Ali to avoid confronting the Appellant with the allegations of fraud. This would certainly be consistent with Ali's evidence that she considered making a complaint against the Appellant but was afraid. Neither were the answers given by her in cross-examination, to the

effect that she did not know who created the disputed letters, of assistance to the Appellant.

29. At the end of the day the Committee found on the evidence that there were material discrepancies between the disputed letters and the letters actually sent to the Appellant by the Respondent. It accepted Ali's evidence that she was presented with the disputed letters by the Appellant. It therefore determined that the Appellant prepared or caused to be prepared the disputed letters purporting to have been signed by the Respondent on behalf of the Insurance Company. In those circumstances it concluded that the Appellant deliberately and with intent to deceive misrepresented to Ali that a lower settlement figure had been offered by the disputed letters and that the disputed letters were forged documents made or produced by the Appellant or with his concurrence with intent to deceive Ali that they were genuine letters issued by the Insurance Company. These were all findings of fact, inferences and conclusions that the Committee was entitled to make on the evidence before it. The Appellant has not persuaded us that these conclusions were based on a misunderstanding of the evidence or were conclusions that no reasonable tribunal could have reached.

30. In these circumstances for the reasons contained herein we find that the appeal cannot succeed. Accordingly we dismiss the appeal and affirm the decision of the Committee.

Judith Jones
Justice of Appeal