

THE REPUBLIC OR UGANDA
IN THE HIGH COURT IF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL APPEAL NO. 93 OF 2018
(ARISING OUT OF LDC NO. 70 OF 2015 BEFORE THE DISCIPLINARY
COMMITTEE OF THE LAW COUNCIL)

GEOFFREY NANGUMYA :::::::::::::::::::::::::::::: APPELLANT

VERSUS

1. EMMY TUMWINE
2. LAW COUNCIL :::::::::::::::::::::::::::::: RESPONDENTS

CORUM: LADY JUSTICE HENRIETTA WOLAYO
LADY JUSTICE LYDIA MUGAMBE
JUSTICE MUSA SSEKAANA

1. This is the judgment in Civil Appeal No. 93 of 2018 arising from the decision of the Disciplinary Committee of the Law Council (hereinafter in the Committee). The Appellant framed 8 grounds of appeal. These are:
 - i. The Committee erred in law and fact when it ordered the Appellant to surrender Ug. shs: 59,900,000/= without recourse to his lien yet it found that he had a lien over the same.

- ii. The Committee erred in law and fact when it failed to evaluate evidence on record thereby coming to a wrong conclusion that the Appellant was guilty of professional misconduct whereas not.
- iii. The Committee erred in law when it relied on the complainant's inadmissible and contradictory evidence to find the Appellant guilty of unprofessional conduct.
- iv. The Committee erred in law and fact when it came to a conclusion that the Appellant was guilty of conduct unbecoming of an Advocate without addressing itself to whether the Appellant committed the acts complained of by the complainant.
- v. The Committee erred in law and fact when it ordered the Appellant to handover Ug. shs: 59,900,000/= to the complainant who is now willing to receive without executing the consent judgment in the matter before the High Court.
- vi. The Committee erred in law and fact when it found that the Appellant did not inform the complainant that he had received the money from the judgment debtors in the matter before the High court.
- vii. The Committee erred in law and fact when it reached a decision when one member of the Committee who had not heard the entire evidence through the proceedings participated in the ruling.
- viii. The Committee erred in law and fact when it awarded excessive damages and costs to the complainant.

2. The Appellant also prays for orders that the decision, orders and awards of the Committee be set aside with costs in this court and at the Committee.

3. The Appellant is represented by Mr. Geoffrey Ntambirweki of M/s. Ntambirweki Kandebe & Co. Advocates. The first Respondent is represented by Mr. Geoffrey Serwanga of M/s. Muhumuza-Kizza Advocates & Legal Consultants and the second Respondent is represented by Mr. Allan Mukama from the Attorney General's Chambers.
4. Briefly the facts are the first Respondent was the Appellant's client. On 15th May, 2013, the first Respondent bought two acres of land out of block 88 plot 153 land at Kasalirwe, on Kiryagonja – Semuto Road, Kezimbira zone, Matuga from Sserukuma Bbosa Isreal and Samson Wilberforce Kiyingi at Ug. shs: 76,000,000/= (Uganda shillings seventy six million only). On execution of the agreement, the first Respondent paid Ug. shs: 50,000,000/= (fifty million) to the vendors leaving a balance of Ug. shs: 26,000,000/= (Uganda shillings twenty six million) to be paid once he had carried out a search at the land registry to ascertain the authenticity of ownership and received transfer forms duly signed by the vendors.
5. The purchase failed and the first Respondent instructed the Appellant to recover the money so far paid, damages and costs. In May 2014, the Appellant filed civil suit No. 182 of 2014; Emmy Tumwine v. Sserunkuma Bbosa Isreal & Kiyingi Samason Wilberforce in Nakawa High Court seeking specific performance and in the alternative, a refund of Ug. shs: 50,000,000/=, interest and damages for breach of contract. The first Respondent was not satisfied with how the Appellant was conducting the suit and instructed M/s. Muhumuza - Kiiza, Advocates and legal consultants to take over its conduct.
6. Upon M/s. Muhumuza- Kiiza Advocates engaging the vendors' lawyers -M/s. Muwema & Co. Advocates & Solicitors, they were informed that the vendors had already paid the Appellant a total sum of Ug. shs: 63,000,000/= (Uganda shillings sixty three million only) in four instalments between May 2014 and February 2015 and a consent was executed in full and final settlement of the first Respondent's

claim. The first Respondent claimed that he was not informed by the Appellant about the payments, the consent or given the money by the Appellant.

7. On 8th May 2015, M/s. Muhumuza- Kiiza wrote to the Appellant seeking the monies he received on behalf of the first Respondent. The Appellant replied on 19th May 2015 claiming that all the monies were received in anticipation of signing the consent judgment which the Appellant objected to without general damages being paid to him. He also claimed that the first Respondent owed his law firm money for several matters handled for him and that this was the reason why he was holding on to the money.
8. On 22nd May 2015, the first Respondent filed a complaint against the Appellant at the Law Council for professional misconduct, high level of unprofessionalism, indiscipline and ethical misconduct. On 17th June 2015, the Appellant filed his response to this complaint in which he claimed that he was holding the monies as a lien for the legal services rendered to the first Respondent that were unpaid. During the hearing, the Committee ordered the Appellant to deposit the monies with them twice which the Appellant did not do. For this, the Committee ordered the suspension of his practising licence till he deposited the money.
9. After hearing from both parties on several occasions, the Committee found that the first Respondent admitted indebtedness to the first Appellant for services rendered. However most of the bills of costs were not taxed therefore the Appellant could not hold the monies on that basis. The only taxed bill in respect to the complaint before them was allowed at Ug. shs: 3,100,000/= (Uganda shillings three million one hundred thousand only) and it was the only money the Appellant was entitled to. Further that although the Appellant had the right to a lien, it did not exonerate him from disclosing to the first Respondent that he had received money on his behalf and accounting for what he had received. The Committee found that the Appellant had failed in this duty which amounted to professional misconduct.

10. In the end, the Committee ordered the Appellant to; (i) remit to the first Respondent Ug. shs: 59,900,000/=; (ii) pay the first Respondent costs of Ug. shs: 1,000,000/=; (iii) pay the Committee costs of Ug. shs: 1,500,000/=; (iv) pay interest on (i) above at 28% with effect from March, 2015; (v) suspended the Appellant from practice for a period of two years less the time so far served during the interlocutory suspension earlier imposed against him on 24th November 2017 (this translated to suspension for a further 16 months). The Committee also ordered the Secretary of the second Respondent to take note of the disciplinary action taken against the Appellant and the sanctions imposed and cause them to be inscribed on his official record. If within five years the Appellant appeared before the Committee for any disciplinary action for professional misconduct involving client's money, he would stand to be disbarred and his name struck off the roll for good. The Appellant is dissatisfied with this ruling hence the appeal.

11. In **Mulindwa Janies v. Uganda SCCA No. 23 of 2014**, the Supreme Court cited the **Nomensio Tiberanga** case **SCCA No. 17 of 2007** and held that "it is a well settled principle that on first appeal the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as law. Although in case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witness. It must weigh the conflicting evidence and draw its own inference.

12. Section 46 of the Advocates Act cap 267 as amended provides that "nothing in this Part of this Act or in the Advocates Accounts Rules or the Advocates Trust Accounts Rules shall deprive an advocate of any recourse or right, whether by way of lien, setoff, counterclaim, charge or otherwise against monies standing to the credit of a client account or a trust bank account."

13. Section 18 of the Advocates Act establishes the Committee. Subsection 5 provides that "the quorum of the Disciplinary Committee shall be three, and any question before the committee shall be decided by a majority of votes."

14. Regulation 8 of the Advocates (Professional Conduct) Regulations SI 267-2 (herein after the Regulations) provides that; “(1) an advocate shall not use money held on behalf of a client either for the benefit of himself or herself or of any other person. (2) an advocate shall make full disclosure to his or her client of the amounts and nature of all payments made to the advocate on behalf of that client and, when making any payments to the client, shall set out in writing the sums received on behalf of the client and any deductions made by the advocate from those receipts. (3) an advocate shall return any sum or part of the sum paid to the advocate by a client as a retainer if the amount paid exceeds the value of the work done and disbursements made on behalf of the client.”
15. Regulation 29 of the Regulations provides that “every advocate shall account to his or her clients promptly and correctly for all monies held in respect of clients and in accordance with the Advocates Accounts Rules set out in the First Schedule to the Act.”
16. Regulation 31 provides that “(1) any act or omission of the advocate, which is an offence under the Advocates Act, shall be professional misconduct for the purposes of these Regulations. (2) Any conduct of an advocate, which in the opinion of the Disciplinary Committee, whether the conduct occurs in the practice of the advocate’s profession or otherwise, is unbecoming of an advocate shall be a professional misconduct for the purposes of these regulations.”

Analysis

17. The record reflects that different members of the Committee sat as part of the panel in this case. This is understandable considering that membership to the Committee can expire. Of importance the panel that heard the Appellant’s case on 4th May 2018 is the same panel that returned the ruling on 27th July 2018. In particular, three members of this panel heard the case and signed the returned ruling. These were Ms. Joyce Nalunga Birimumaaso, Ms. Namutebi Mariam and Mr. Bruce Kyerere. This is in

conformity with section 18 of the Advocates Act which requires quorum of three members. Accordingly ground 7 fails.

18. The record clearly demonstrates and the Committee found that the Appellant acting as counsel for the first Respondent received the first Respondent's money totaling Ug. shs: 63,000,000/= from Mr. Sserunkuma Bbosa Isreal and did not disclose such receipt or remit the same to the first Respondent. The first Respondent only learnt that the said money had been received by the Appellant after the he acted suspicious and the first Respondent instructed another lawyer to take over the conduct of his suit.
19. The only part of this money that the Appellant could hold onto under section 46 of the Advocates Act was Ug. shs: 3,100,000/= for which he had a taxed bill. By failing to disclose and/or remit the said monies to the first Respondent, the Appellant was in breach of Regulations 8 and 29.
20. The Committee therefore rightly found as this court also finds that the Appellant's conduct was unbecoming of an advocate and therefore amounted to professional misconduct under Regulation 31. Accordingly grounds 2, 3 and 4 fail.
21. Moreover by the Committee requiring the Appellant to remit Ug. shs: 59,900,000/= - the money he received less the taxed costs amount, we consider that the Committee acted reasonably and without error in law or fact. This court also considers that the Committee properly addressed the issue of the consent judgment in the matter in the High Court and finds no error. In addition, the Committee properly found that the Appellant did not inform the first Respondent that he had received his money. If the Appellant had so informed him, then there would have been no need for the first Respondent to instruct another law firm to recover the same. Moreover the Appellant failed to demonstrate to the Committee and in this court in any way that he informed or remitted the same to the first Respondent. The Committee properly evaluated all the evidence before it. Grounds 1, 5 and 6 fail.

22. In ground 8, the Appellant claimed that the Committee awarded excessive damages yet there was no award of damages. This shall be disregarded. This court considers the award of costs of Ug. shs: 1,000,000/= to the first Respondent to be low but shall not tamper with the discretionary power of the Committee to award the same. The award of Ug. shs: 1,500,000 costs to the Law Council is reasonable and we shall not tamper with it. We find the award of interest was reasonable given the money has to have current value. Ground 8 fails.

23. Based on all the above, the appeal is dismissed in its entirety with costs for both Respondents. The interim order of 24th November 2017 is hereby vacated. The Committee's ruling is upheld and all its orders shall take immediate effect. For clarity, the orders we uphold are:

- (i) The Appellant shall remit to the first Respondent Ug. shs: 59,900,000/= (Uganda shillings fifty nine million nine hundred thousand shillings only).
- (ii) The Appellant shall pay the first Respondent costs of Ug. shs: 1,000,000/= (Uganda shillings one million only).
- (iii) The Appellant shall pay the Committee costs of Ug. shs: 1,500,000/= (Uganda shillings one million five hundred thousand only).
- (iv) The Appellant shall pay interest on (i) above at 28% per annum with effect from March, 2015 till payment in full.
- (v) The Appellant is suspended from practice for a period of 16 (sixteen) months with effect from the date of this judgment.
- (vi) The Secretary of the second Respondent is to take note of the disciplinary action taken against the Appellant and the sanctions imposed and cause them to be inscribed on his official record. If within five years the Appellant appeared before the Committee for any disciplinary action for professional misconduct involving client's money, he would stand to be disbarred and his name struck off the roll for good.

We so order.

Dated at Kampala this 10th day of June 2020

LADY JUSTICE HENRIETTA WOLAYO

LADY JUSTICE LYDIA MUGAMBE

JUSTICE MUSA SSEKAANA