IN THE MATTER OF THE LEGAL PRACTITIONERS ACT 2000 ACT No 15 OF 2000, PART V

IN THE MATTER OF A COMPLAINT AGAINST MOHAMED MANSARAY, A LEGAL PRACTITIONER BROUGHT BY SAIDU AZIZ KAMARA

Coram:
Hon. Justice Glenna Thompson JSC
Derek Beoku-Betts Esq.
Mrs Sally Vinod - Khatumal
Ms Millicent Stronge

Ruling

Delivered on 3rd the Dec .2020

Introduction

1. By an affidavit sworn to on the 1st October 2019, ~~Abdul~~ Saidu Aziz Kamara (hereinafter the Complainant) deposed that on the 25th March 2019, he engaged the services of Mohamed B. Mansaray, a Legal Practitioner to represent his wife Fatima Aziz Kamara in a matter against Minkailu Bangura for a tricycle. He stated that he paid Mr Mansaray the sum of Le1,850,000.00 (One million eight hundred and fifty thousand leones) on the 25th March as the agreed fees for Mr Mansaray's services in respect of the said matter. There was no receipt issued for this payment. Mr Mansaray, he said did appear at the Ross Road, Magistrates Court when the matter came up for a short while and then stopped. He has therefore requested a full refund of the Le1,850,000.00 from Mr Mansaray but this has not been forthcoming.
2. Mr Mohamed Mansaray filed an affidavit in opposition sworn to on the 15th November 2019. This was pursuant to an order of the Disciplinary Committee at the hearing of the 5th November 2019, when the Complainant was present but Mr Mansaray was absent. He deposed that he knows the Complainant as a college mate and neighbour whilst residing at Grassfield, Kissy. That sometime during the year, he met the Complainant at court at Ross Road and having enquired what the problem was, he learnt that he was having some difficulty with his lawyer Mr Biandoma. He deposed that he instantly decided to step in as his lawyer based on their relationship without discussing fees and told him to pay anything he considered reasonable. The Complainant he says, offered him Le500,000 which he accepted for representing his

wife. He was able to secure an order for the tricycle to be returned to her. A copy of that order was attached to the affidavit as Exhibit A1 and A2 and we will comment on them before we proceed to the rest of the case. The perfected order is barely understandable but it is clear that the tricycle is to be transferred to the court. We cannot see where it says transfer to the custody of Mrs Aziz Kamara. In any event, Mr Mansaray goes on to depose that some weeks after that order the Defendant in the matter issued a writ of summons against the Complainant and his wife, for which he, Mr Mansaray refused to charge any fees, save for Le1,300,000 to enable him to file an appearance. A copy of the writ is exhibited to the affidavit as Exhibit B. Exhibit B1 is also referred to as the appearance but it is not attached. Mr Mansaray goes on to state that he had cause to travel outside of Freetown during which time the matter in court Number 3 was adjourned. The Complainant went to his house in his absence uttering insults including that Mr Mansaray was a thief and a liar. The complainant also openly repeated the same insults at the Ross Road Magistrate court and he told him that he should seek another legal representation.

3. A note on Mr Mansaray's affidavit. It does not conform to Order 31 r 11 (2) of the High Court Rules 2007 in that none of the exhibits are identified by a certificate of the person before whom the affidavit is sworn. We have however allowed its use pursuant to Order 31 r 4.

The Hearing

4. The matter came up for hearing on a number of days. It could either not proceed or not listed due to Mr Mansaray's unavailability. The matter was finally heard on the 21st January 2020 when both parties were present. The Complainant testified that he knew Mr Mansaray as a collegemate and lawyer. Sometime in 2019, his wife had a matter at court No3 at Ross Road Magistrates Court. He hired the services of Mr Mansaray to represent his wife. He met Mr Mansaray at his home at 12 Consider Lane, Calaba Town to hire his services. Representation was for two matters - one in the High Court and the other in the Magistrates Court. He was asked to pay Le2,000,000 because they were collegemates and lived in the same hall. He gave Mr Mansaray Le600,000 on that date although no receipt was issued to him. In total he ended up paying Le1,850,000. Mr Mansaray started the matter at the magistrates court where he represented his wife for a few months. He thinks Mr Mansaray made a total of about 7-8 appearances for which he paid transportation at Le50,000.00 each time. He stated that he was told by Mr Mansaray that he had filed papers for his wife in the High Court and though they kept asking when they should appear in the High Court they were told nothing but excuses. One day the complainant decided to go to Justice Kamanda's court to enquire and

there he discovered that there had been a judgment in default against his wife who was the defendant in the matter. He has since been chasing Mr Mansaray for his refund but he has yet to get his money back. They informed Mr Mansaray of the judgment in default and he said he would refund the money or find another lawyer. He stated that Mr Mansaray told him that he had an international job, although he did not believe that to be true as they still saw him at Ross Road Magistrates court representing other clients. He testified that he asked Mr Mansaray several times for his money back by phone and also went to his house after Mr Mansaray stopped picking his calls. He went to Mr Mansaray's house more than 5 times and sometimes would leave a message. Prior to Mr Mansaray they had engaged the services of Mr Victor Biandoma to whom Le3,000,000.00 was paid. He reported his difficulties with Mr Biandoma to Mr Mansaray. He also made a complaint to the CDIID, the Complaints Department of the Police, against 3 officers involved in this matter.

5. The Complainant was cross examined by Mr Mansaray. The complainant stated that he met Mr Mansaray in court once, not twice and that he did introduce his wife to him. It was not correct that his wife is a school mate of Mr Mansaray's daughter nor is she his second wife. He accepted he complained about Mr Biandoma and said he told Mr Mansaray that he had not "met" him before because he did not have contact details for him. He went to Mr Mansaray's house alone and not with his wife and has never done so. He stated that Mr Mansaray said that because of the amount already paid to Mr Biandoma, the Complainant should only pay Le2,000,000.00 but later he said because of their friendship then he should just give him what he felt was reasonable. He also stated that before Mr Mansaray came into the matter the tricycle had been at the police station for about 8 months and it was brought to the court due to the application by Mr Mansaray. The tricycle was handed over to him as a result of that court order. He went on to state that Mr Mansaray was absent for several dates so much so the Magistrate threatened to throw the case out. He stated that the order had not been perfected and that Mr Mansaray did not represent him after that. Mr Mansaray told him that he had an international job and he had to secure the services of another lawyer. The court clerk told him that the order had not been done properly. His new lawyer Kabba Conteh perfected the order and it was sent to the police station. He doesn't know how it was done but Kabba Conteh was representing him at the time. Once when he was absent he gave his wife "the transportation" to give to Mr Mansaray. He gave his wife Le500,000 to give to Mr Mansaray which is separate and was an installment. The payment was for both the High Court and Magistrates court matters

and he had given him Le1,300,000.00 before this payment of Le500,000.00. Initially he had paid Le600,000 to Mr Mansaray at his home but he has not included that. The Le1,300,000 was for the high court matter, Le500,000 was for the magistrates court matter and Le50,000 for transportation. They were still in the magistrates court when the High Court matter started. He denied confronting Mr Mansaray in court nor did he call him a thief and a liar. He met him at Upgun and greeted him and he, the complainant was not in an angry mood. He maintained that he asked him for his money back or a lawyer. Mr Mansaray never told him he would discontinue representation because of the way he was talking to him. He told Mr Mansaray that his wife will not go to his house to collect the money because he hired him and not his wife.

6. Following this hearing there were several aborted listings. However, the matter was heard on the 18th October 2020. The Complainant was present but Mr Mansaray was absent. The Secretary informed the hearing that Mr Mansaray sent a text message to her stating that he would refund Le1,100,000 in 2 installments. The Complainant however maintained that he wanted a refund of Le1,800,000 and not Le1,100,000. The Committee withdrew the file for ruling as because we had to consider whether there had been any breaches of the Rules of the Legal Practitioners Code of Conduct 2010 irrespective of whether the money was refunded.

Deliberations

7. Before going on to deal with the issues in this matter, we observe that Mr Mansaray was replacing another legal practitioner. Rule 17 (4) of the Code of Conduct states that "*A legal practitioner who finds, on receiving a brief or instructions that acceptance of the papers would amount to his replacing another legal practitioner who has previously been instructed in the same matter shall inform that legal practitioner that the papers have been delivered to him; except where the brief or instructions have been returned by that legal practitioner or the person instructing him in the matter has already informed that legal practitioner of the termination of his services or there has been no reasonable opportunity to inform him before the* hearing." Whatever the reasons for replacing Mr Biadoma, and there may well have been good reasons, the Code must be respected and adhered to.
8. Now to the substantive matter. It is clear that due to the relationship between the parties the arrangement was quite friendly. Nevertheless, Mr Mansaray's services were contracted and payment was made. No receipt was given but it is not disputed that Mr Mansaray was paid. Mr Mansaray however did not complete the cases. He states that it was

because of the Complainant's behavior. One would have expected some sort of letter in writing to the Complainant and the court that he was no longer acting for Mrs Aziz Kamara. There is no such record. Mr Mansaray should as soon as possible after he became aware that he would no longer be able to represent the Complainant's wife inform him. This is so regardless of the reasons. Rule 24 (1) states as follows: *"A legal practitioner shall inform the person instructing him in a matter as soon as there is an appreciable risk that he may not be able to undertake a brief which he has accepted; and he shall return that brief in sufficient time to allow for another legal practitioner to be engaged and to master the brief."* His failure to do so caused his client much anguish and resulted in a judgement in default being entered against him and his wife. That said, we are in no way condoning the Complainant's behaviour, if indeed he did insult Mr Mansaray.

9. That said, Mr Mansaray did represent Mr Aziz Kamara at the magistrate court for some of the hearings leading to the order which brought the tricycle into the court's custody. He did also file an appearance in the High Court. He is therefore entitled to payment for the work he did do.

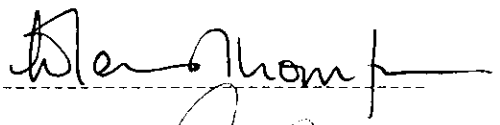
Conclusion

10. We note that he accepted to pay the sum of Le1,100,000 as refund to the Complainant. We have been informed by the Secretary that Le700,000 has so far been refunded by Mr Mansaray. We order that the remaining sum of Le400,000 be refunded within 7 days from the date of this ruling in full and final settlement of the refund.
11. We find that Mr Mansaray's conduct was unprofessional and dishonourable such that he failed to uphold the standard, dignity and high standing of a legal practitioner. We therefore find that Mr Mansaray did breach the following Rules:

    i. Rule 2 – Failing to uphold the standard, dignity and high standing of the legal profession
    ii. Rule 17 (4) - Failing to inform previous legal practitioner Mr Victor Biandoma that the papers have been delivered to him
    iii. Rule 24 (1) - Failing to inform the Complainant that he may not be able to undertake the brief which he had accepted and returning it in sufficient time to allow for another legal practitioner to be engaged and to master the brief
    iv. Rule 25 (1) - Failing to ensure that his practice is efficiently and properly administered and in particular take all reasonable and practicable steps to ensure that professional engagements are fulfilled or that early notice is given if they cannot be fulfilled.

12. In view of our findings above, we recommend that Mr Mohamed Mansaray, a Legal Practitioner be fined Le1,000,000.00 pursuant to Section 36 (1) of the Legal Practitioners Act 2000 as amended. It is regrettable that this Act has not been updated to reflect the value of the currency today. Le1,000,000 is the maximum fine that we can levy and that is our recommendation.

Signed:



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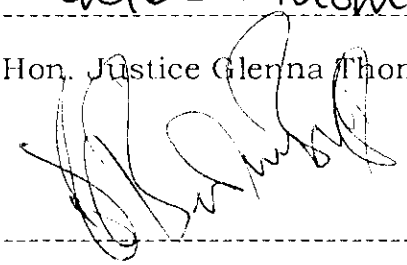
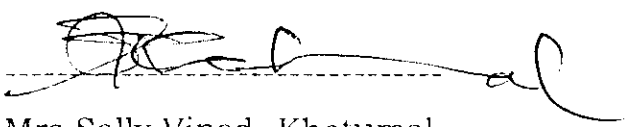
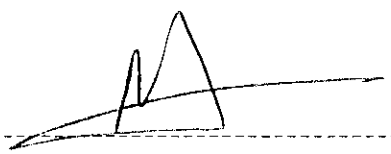


Derek Bcoku-Betts Esq.



Mrs Sally Vinod- Khatumal



Ms Millicent Stronge