THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

CONSOLIDATED APPEAL

MISC APPEAL NO.71 OF 2020

AND

CIVIL APPEAL NO. 74 OF 2020

(BOTH ARISING FROM LCD 146 OF 2014-LAW COUNCIL)

ROBERT OKALANG::: APPELANT

VERSUS

1. **THOMAS DALE::::::::::::::::::::::::::::::::::::::RESPONDENT/CROSS-APPELLANT**
2. **THE LAW COUNCIL::RESPONDENT**

CORAM: ***HON. MR. JUSTICE SSEKAANA MUSA***

HON. MR. JUSTICE BAGUMA EMMANUEL

HON. DR. JUSTICE DOUGLAS SINGIZA

JUDGMENT

The appellant filed an appeal to the High Court challenging the Ruling and Orders of the Law Council Disciplinary Committee delivered on 7th October, 2020 in LCD No. 146/2014. The 1st respondent also Cross-appealed against the decision of the Law Council Disciplinary Committee and the two appeals were consolidated.

The appellant dissatisfied and aggrieved by the decision and orders of the Law Council Disciplinary Committee appealed against the whole decision and orders on the following grounds;

1. That the Disciplinary Committee erred in law and in fact when it failed to properly evaluate evidence adduced in that it failed to consider the documentary evidence adduced by Appellant against all the complaints against him and when it failed to find the appellant in not filing the 1st respondent's suit in court acted diligently and professionally.

2. The Disciplinary Committee erred in law and fact when it held that the appellant did not carry out the 1st Respondent's instructions to draft the Mortgage Deed as instructed by him despite the evidence adduced by the appellant to the contrary at the hearing.

3. The Disciplinary Committee erred in law and in fact when they reached a conclusion that the Appellant had not advised the 1st respondent on the viability of his suit when the appellant had done so and had specifically requested for specific information and details on the matter in order to have the suit properly filed in court.

4. That the Disciplinary Committee erred in law and in fact when they reached a conclusion that the appellant had exercised unreasonable delay and made intentional representations in carrying out instructions when the appellant had acted promptly and timely in all intended instructions the 1st respondent had given the appellant.

5. The Disciplinary Committee erred in law and fact when they failed to draw a distinction between the role/duty played by an advocate vis-à-vis the land registry official in the caveat registration and lodgement process thus reaching an erroneous decision that the appellant had delayed to lodge the caveat thus causing a miscarriage of justice.

6. That the Disciplinary Committee erred in law in finding that the appellant was guilty of conduct unbecoming of an Advocate and/or professional misconduct when the appellant had acted as a prudent Advocate would have acted in the circumstances.

7. The Disciplinary Committee erred in law when it directed that the appellant refunds all the money the 1st respondent had paid to the appellant without taking into account the work and expenses the appellant had done and/or incurred in executing the said instructions.

8. That the Disciplinary Committee erred in law in failing to find that where the 1st respondent had paid Retainer fee, the duty of the appellant as an advocate is to give accountability and not total refund of that retainer fee and that the Committee erred in law and fact when it failed to find that the appellant had discharged that duty when it gave the 1st respondent his bill/Account Statement.

9. That the Disciplinary Committee erred in law and in fact when they awarded the 1st respondent general damages of UGX 1,000,000/= without any basis and when they awarded payment of UGX 500,000/= to the 2nd respondent as punitive damages without any basis.

The 1st respondent/Cross-Appellant in his cross appeal raised the following grounds

1. The Learned Disciplinary Committee of the Law Council erred in fact when they ordered the respondent to refund all the money he received from the appellant computed at CAD 5300 (Five Thousand Three hundred) instead of CAD 7150 (Seven Thousand One Hundred Fifty Canadian Dollars.

2. The Learned Disciplinary Committee of the Law Council erred in law and fact when they directed that each party bears their costs for the complaint/Disciplinary hearing.

Background

The 1st respondent/cross-appellant (Thomas Dale) approached the appellant (Okalang Robert) in August, 2012 whom he instructed to file a law suit against 'the Sanctuary' (CBO) to help him recover his money he has invested the operations of the CBO as a donor.

The 1st respondent furnished all the email correspondences between himself and 'the Sanctuary' where the later were admitting to the loan facility and making endless promises to pay back but in vain to which counsel admitted that this was adequate evidence to sustain a suit against them.

First, the donor paid Mr. Okalang legal fees amounting USD 1100 to register a caveat on the Certificate of Title of 'the Sanctuary' which counsel failed, neglected or ignored to do. Secondly, the donor paid Mr. Okalang $4200 Canadian Dollars as retainer/instruction fees to file a law suit against 'the Sanctuary' which civil suit was never filed to-date.

The 1st respondent contended that he incurred costs and losses on account of Mr. Okalang's professional negligence, leave alone the psychological torture, endless flights among others. He prayed for punitive action against Mr. Okalang and also to be ordered to refund USD $ 5,300 interest thereon at commercial rate, refund of costs and losses incurred by the donor as Law council will calculate.

Findings and Orders of Law Council

The Disciplinary Committee of the Law Council found for a fact that Mr. Okalang Robert unreasonably delayed the work and did not exercise due care and skill to ensure that the caveat was lodged, made intentional misrepresentations to his client that led to his detriment and was clearly in breach of his duties to his client Dr. Thomas Dale.

The Disciplinary Committee of the Law Council found that Mr. Robert Okalang did not perform his part of the bargain as an advocate. It further found that the acts and omissions of Mr. Okalang Robert in as far as deceit, failure to act in time and breach of duty to his client amounted to professional misconduct on his part.

The appellant was ordered to refund all the money the 1st respondent paid to him or received in respect to the activities complained of. The 1st respondent was further awarded general damages 1,000,000/= and punitive damages of 500,000/= and each party was bear their costs.

The appellant was admonished of the professional misconduct.

At the hearing of this appeal the court directed the parties to file written submissions which were duly filed by the parties and we have considered them in our Judgement.

Representations

The appellant was represented by *Ms Kevin Amujong and Mr. Ogoi Allan* while the 1st respondent was represented by *Mr Yovino Okwir* while the 2nd respondent was represented by *Ms Kukunda Claire (SSA)*.

The main issues for determination which formed the basis of the appeal are;

1. Whether the appellant was in breach of his duties to his client?
2. If so, whether the respondent is liable for the professional misconduct?
3. What remedies are available?

Duty of the court

We shall first of all remind ourselves of our duty as a first appellate court to re-evaluate evidence. Following the cases of ***Pandya vs R [1957] EA 336; Kifamunte Henry vs Uganda Criminal Appeal No.10.1997, Bogere Moses and Another v Uganda Criminal Appeal No.1/1997,*** the Supreme Court stated the duty of a first appellate court in ***Father Narnensio Begumisa and 3 Others vs Eric Tibebaga SCCA 17/20 (22.6.04 at Mengo*** from ***CACA 47/2000) [2004] KALR 236.***

The court observed that the legal obligation on a first appellate court is to re-appraise evidence is founded in Common Law, rather than the Rules of Procedure. The court went ahead and stated the legal position as follows:-
"It is a well-settled principle that on a first appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions."
The Court with approval, quoted the Court of Appeal of England which stated the Common Law position in **Coghlan v Cumberland (1898) 1Ch.704** as follows:-
"***Even where, as in this case, the appeal turns on a question of fact, the Court of Appeal has to bear in mind that its duty is to rehear the case, and the court must reconsider the materials before the judge with such other; materials as it may***

have decided to admit. The court must then make up its own mind, not disregarding the judgement appealed from, but carefully weighing and considering it; and not shrinking from overruling it if on full consideration the court comes to the conclusion that the judgment is wrong….. When the question arises which witness is to be believed rather than another and that question turns on manner and demeanour, the Court of Appeal always is, and must be, guided by the impression made on the judge who saw the witnesses. But there may obviously be other circumstances, quite apart from manner and demeanour, which may show whether a statement is credible or not; and these circumstances may warrant the court in differing from the judge, even on a question of fact turning on the credibility of witnesses whom the court has not seen."

In ***Pandya vs R [1957] EA 336,*** the Court of Appeal for Eastern Africa quoted the passage with approval, observing that the principles declared therein are basic and applicable to all first appeals within its jurisdiction.

Determination

The appellant argued grounds 1,2,3 & 4 together under the different limbs of Mortgage Deed, Caveat and Civil Suit.

The appellant faults the disciplinary committee for it's finding that there was no evidence that he drafted the Mortgage deed and yet there was clear evidence of the mortgage deed that was sent on 10th October 2012. Secondly, that the complaint to Law Council did not include any complaint against mortgage deed not being drafted as indicated in the decision.

The appellant further submitted that the disciplinary committee failed to take into consideration of the documentary evidence which clearly reflected that the caveat was lodged on the 27th November 2012 after payment of the necessary fees and found that the caveat was lodged on 07th September 2018. The appellant acted diligently when he drafted the caveat for the signature of the 1st respondent on 11th/11/2012 and were duly signed on 12th/11/2012 and were sent back to counsel and were lodged on 27th November 2012.

The appellant further argued that he duly drafted the civil suit pleadings and that the 1st respondent failed to avail further information and he opted to have the matter settled out of court.

The appellant contended that the Law Council failed to draw a distinction between the role/duty played by an advocate and the Land Registry official. The delay it took to lodge a caveat was on the part of the lands registry and not on the advocates who had diligently lodged the documents.

The 1st respondent's counsel submitted that the appellant was found liable on his own admission and confession. He was remorseful after his admission that it warranted the committee to offer a lighter decision or order against him. He was remorseful and apologised to the claimant during cross examination and later in mitigation proposed to refund part of the fees or monies that had been advanced to him by the respondent.

The 1st respondent contended that the mortgage deed was never sent to the 1st respondent but rather to Sandra Dale who was not known to him. It was the appellant's role to ensure that the mortgage deed is prepared and sent to his client or brought to his attention which on his own admission was not done which in the council's view were acts of professional misconduct.

The appellant was also found liable for failure to lodge a caveat on the certificate of title. He had a duty to ensure that the caveat is lodged. He failed to follow up from the date of filing of the caveat in November 2012 until September 2018 (an entire 6 years). The Law Council did not agree that there were issues at the office of registrar of titles for six years hindering lodgement or attendance to the 1st respondent's caveat.

The 1st respondent further submitted that the defendant failed to file the suit due to the out of court negotiations and that there were some legal issues such as lack of a legal person for purposes of litigation. Despite the lack of legal person, the appellant drafted a plaint which would never have succeeded and this was an act of negligence on the advocate. The appellant drafted a plaint and provided a legal opinion to the success of the very suit he claimed was lacking in evidence to lead to

its successful prosecution. The appellant's actions were a scheme to acquire money from the 1st respondent while not intending to execute the tasks to him.

The 2nd respondent submitted that it was close to 4 years after the date on which the appellant claimed to have had the caveat received by the office of registrar of titles. The 1st respondent presented a letter dated 12th August 2016 confirming his fears that the alleged caveat had never been received and registered in the office of titles which was authored by Commissioner Land Registration under Ministry of Lands, Housing and Urban Development.

The letter alluded to by the appellant from the land registry was only giving reasons why the caveat was not registrable. This information was never brought to the 1st respondent's attention and therefore was a breach of duty by the appellant. As an advocate, the appellant owed the 1st respondent a duty of care and not informing him for close to 6 years was very negligent.

The appellant agreed that he did not file the suit even though he had drafted it and never intended to file the same. There was therefore no need to draft the plaint if the matter was to be settled out of court.

Analysis

Evaluation of relevant and material evidence and ascription of probative value to such evidence are the primary functions of the trial court which saw, heard and watched the demeanour of witnesses while they testified. Where the trial court evaluates the evidence and exhaustively appraised the facts. It is not the business of the appellate court to substitute its own views for that of the trial court. It is only where and when the trial court fails to evaluate such evidence properly or at all that an appellate court can intervene and re-evaluate such evidence.

It is not sufficient for the appellant to allege the trial court did not evaluate properly the evidence before it. The appellant must go further by pointing out the error he complains about and, in addition he has to convince the appellate court that if corrections of the error are made, the decision of the court will not stand. See ***Oluyede v Access Bank Plc (2015) 17 NWLR (pt 1489) p.596***

The appellant's case is that the lower court-Disciplinary Committee of the Law Council failed to evaluate the evidence on record and thus came to a wrong decision. Therefore, once the evidence is re-evaluated the court would make a correction to the decision which found him professionally negligent. At page 5 of the ruling it was noted *"Heal(Hell) broke loose when at cross-examination and when answering questions put to him by committee members in clarification, the respondent clearly admitted to have not done the work instructed by his client, the complainant"*

According to the proceedings which appear to be extremely summarised, it is clear that the appellant admitted possibility of miscommunication, the caveat was done but was mishandled and there is an admission of there being minimal inefficiencies. In law an admission must be clear and unambiguous. This is a clear admission of failure to execute the instructions as given by the 1st respondent.

In law an admission must be clear and unambigous. The law is that where the evidence of a witness is unchallenged in cross-examination, it is deemed to have been admitted by the other side. See ***Ashanti Goldfields Co Ltd v Westchester Resources Ltd [2013] 56 GMJ 84***

An omission or neglect to challenge the evidence-in-chief on a material or essential point by cross-examination would lead to the inference that the evidence is accepted subject to its being assailed as inherently incredible or probably untrue. See ***Supreme Court CRIMINAL APPEAL NO. 5/90 A.I JAMES SAWOABIRI & A.2 FRED MUSISI v UGANDA***.

The appellant on his own admission during the trial admitted that he never executed the work of the client as instructed and this clearly influenced the Law Council Disciplinary Committee in its finding of his professional negligence. In the case of ***Haj Asumani Mutekanga v Equator Growers (U) Ltd SCCA No. 7 of 1995***, it was held that there can be no better evidence against a party than an admission by such a party. The appellant's admissions during trial properly formed the basis of the decision of the respondent since it formed an admission of guilt and such admission create an estoppel without any further proof required under section 28 and 57 of the Evidence Act. The appellant admitted miscommunication on his part and also the caveat mishandling.

The appellant failed in his duty towards the 1st respondent when he failed to execute the instructions urgently and professionally. The appellant drafted the mortgage deed but unfortunately sent the same on a wrong address and no explanation is made towards this confusion which was a failure on his part. Secondly, the appellant drafted court papers to file a suit which in the 2nd respondent's view was a non-starter. The suit was merely intended to extort money from the 1st respondent since it was intended against a non-existing party. The appellant ought to have advised the 1st respondent that the suit would not be sustainable against a non-existing party instead of carrying out instructions which are baseless.

The appellant equally failed in his duty to carry out instructions to lodge a caveat as per the instructions of the 1st respondent. Whereas the appellant properly drafted and managed to get the same duly signed by the 1st respondent in time and paid for the same and lodged it at land registry. The appellant failed to properly follow up on the caveat to ensure that the same is entered on the land title. The argument of the appellant that the land registry was under decentralization was not tenable owing to the duration of time it took. It took the intervention of the 1st respondent to personally follow up with the lands office/ministry to understand what was happening to the caveat after the appellant had failed in his duty.

It will therefore be an understatement to say that every practicing advocate or legal practitioner should exhibit a reasonable degree of care and competence while handling a client's brief. The degree of care expected from an advocate/lawyer in a given situation will depend on the nature of brief and other supervening circumstances. The time within which to execute the brief, the instruction of the client and the ability of the client to foot the cost of executing the brief and other related issues, would all be taken into the consideration while determining the issue of negligence.

Negligence generally may be defined as the breach of any duty of care which results in damage to the defendant. It is a reckless or careless conduct or omission on the part of defendant who is usually indifferent to the result of or the consequences of his/her actions. An advocate is liable to any damage attributable to his negligence while acting in his capacity as a legal practitioner/advocate. No client would ever approach a lawyer if he was not convinced that the brief would be given the utmost attention it deserves.

The appellant was liable for the negligent advice he gave the client of filing a suit against a non-existent party (legal entity) and further going ahead to draft pleadings between the 1st Respondent-Thomas Dale vs 'The Sanctuary'. The negligence would be presumed since the appellant ought to have known the position of the law on the subject or the true state of facts thereof had he exercised due diligence by conducting necessary research before rendering such advice. In addition, the appellant was also found liable in failing execute the instructions of a client by failing to lodge a caveat in a timely manner and thus was negligent while carrying out the solicitor work of drafting a caveat and ensuring that the same is lodged in a timely manner. The 2nd respondent could not be faulted in their findings and ruling which found the appellant liable in his negligent conduct of his work towards the 1st respondent.

The appellant argued the rest of the grounds of appeal separately and further contended that;
That the disciplinary committee erred in law finding that the appellant was guilty of conduct unbecoming of an advocate and /or professional misconduct when the appellant had acted as prudent advocate would have acted in the circumstances.

The appellant submitted that the finding that the act of failing to act in time was a breach of duty to the client and as such amounted to professional misconduct. It was his contention that the delay to submitted the caveat or have the same lodged was not any misconduct or did not carry any moral turpitude or delinquency. There were no unethical acts done by the appellant. Poor communication in his view did not amount to professional misconduct.

The 1st respondent's counsel submitted that from the evidence on record as a whole the appellant's acts and omissions in as far as deceit, failure to act in time, all portrayed moral turpitude in a relationship between an advocate and client which is founded on honesty among parties. The appellant's actions were unethical and immoral and thus he rightly found to have acted with misconduct.

The 2nd respondent's counsel submitted that the fact that the appellant admitted that there was a possibility of miscommunication and that the caveat could have been mishandled together with there being minimal inefficiencies in filing the civil suit. All these pointed to the appellant's failure to exercise due diligence in execution of the instructions from the 1st respondent and was therefore in breach of a duty owed to him.

Analysis

Generally, every advocate or legal practitioner should give his or her full attention, energy and professional expertise to the service of the client. An advocate should at all times seek to protect the best interests of his client within the bounds of law whether or not he has received remuneration for their services or not.

Every advocate or legal practitioner who practices the legal profession impliedly represents to the public, that he/she has the requisite competence and qualification to render legal services in respect of any brief which he has undertaken to handle. There is no rule of law that mandates prospective clients of an advocate or legal practitioner in Uganda to first investigate the professional competence of the lawyer before giving any brief.

The duty on the advocates in Uganda is to exhibit professional competence in execution of their duties while handling matters for clients. The acts or omissions which fall short of the required standard would automatically be categorised as professional misconduct. There is a duty on counsel to ensure that his/her client gets the best legal representation within the scope of his/her instructions and ensure that his conduct is within the framework of standards of professional etiquette and conduct of lawyers as stipulated in their professional conduct rules made for that purpose. See ***Martin Amidu v the Attorney General, Waterville Holdings (BVI) Ltd (Alfred Agbesi Woyome) [2013] 62 GMJ SC 91***

The appellant failed in his duty towards the 1st respondent in execution of the instructions and he indeed admitted that there was some shortfall in handling some of the legal work for the 1st respondent. The appellant failed to update the client on the process of lodging a caveat and thus failed to effect proper communication to the client which in the 2nd respondent's view was professional misconduct or conduct unbecoming of an advocate. The appellant never acted with prudence as he contends and his conduct indeed left a lot to be desired.

The Disciplinary Committee erred in law when it directed that the appellant refunds all the money the 1st respondent had paid to the appellant without taking into account the work and expenses the appellant had done and/or incurred in executing the said instructions.

That the Disciplinary Committee erred in law in failing to find that where the 1st respondent had paid Retainer fee, the duty of the appellant as an advocate is to give accountability and not total refund of that retainer fee and that the Committee erred in law and fact when it failed to find that the appellant had discharged that duty when it gave the 1st respondent his bill/Account Statement.

The appellant's counsel submitted that the award of the refund was erroneous in that the disciplinary committee did not consider the fact that work was done by the appellant and that in so doing the said work for the 1st respondent, the appellant incurred expenses and was thus entitled in law under the Advocates (Remuneration and Taxation of Costs) Rules to be paid fees.

It was his contention that if the 1st respondent was dissatisfied with the billing by the appellant his remedy was to apply for client/advocate bill of costs under section 56-58 of the Advocates Act and the rules made thereunder.

The appellant further contended that the monies paid and claimed by the 1st respondent were retainer fees. Counsel submitted that retainer fees are referred to as a reservation fees or availability fees. This is categorized as a fee amount paid specifically and solely to secure the availability of a lawyer to perform services you require. This amount does not constitute payment for any specific legal services whether past, present or future. He relied on the case of ***Peter Jogo Tabu t/a Ayume, Jogo Tabu & Co. Advocates vs The Registered Trustees of the Church of the Province of Uganda Civil Appeal No. 0016 of 2017*** to drive the point home in regard to retainer fees.

The appellant argued that the 2nd respondent erred in law and fact to order a refund of the retainer fee and yet expenses and fees were incurred. The appellant discharged his duty as per the law and provided accountability for the retainer fees.

The 1st respondent counsel submitted that the appellant's actions and omissions were orchestrated to defraud the 1st respondent of money. The appellant lied and misrepresented to the 1st respondent that he would draw a mortgage deed, lodge a caveat on the property in dispute, or as a last resort file a civil suit for the 1st respondent to get a remedy.

It was further contended by the 1st respondent that some of these undertakings, as shown above were misconceived or preconceived as not being viable solutions for the respondent but regardless, in bad faith the appellant solicited for money from the respondent under the guise of carrying out tasks to fulfil the 1st respondent goals.

The 1st respondent submitted that the ground of appeal that the money paid was retainer fees is misplaced and false. There was no such arrangement whatsoever between the 1st respondent and appellant. The 1st respondent engaged the appellant on specific undertaking each time, and would fully make payment for such undertaking only. There was no retainer relationship or agreement whatsoever between the parties and neither did the 1st respondent intend to engage the appellant in such a manner. For the length of their relationship spanning from September 2012 until around July 2014, the 1st respondent only made about five payments to the appellant.

The 2nd respondent's counsel submitted that the basis of the award to refund of all money was made on the basis that the appellant acted without reasonable care and due diligence owed to the 1st respondent. Having found that the appellant acted unprofessionally, the disciplinary committee was justified in ordering a full refund to the 1st respondent and not just an accountability.

Analysis

An advocate or a legal practitioner like any other professional ordinarily offers his legal services for a fee or in expectation of some sort remuneration or reward. The nature or type of remuneration which an advocate or legal practitioner may receive from the client will receive will depend on the nature of services rendered to client, existence of an agreement between him and the client relating to the retainership and other statutory considerations which affect fees of advocates generally.

However, whatever fee or remuneration an advocate or legal practitioner may demand or receive from the client should not be tainted with illegality, neither should it be apparently excessive having regard to the services rendered. Also

charging an unreasonably low fee by an advocate with the intention of undercutting his colleagues is unprofessional.

The professional fee of a lawyer may be agreed upon between the client and the advocate at the time of accepting the brief and in fact may be in writing signed by the parties. Alternatively, the lawyer may render professional services to the client and bring his charges thereafter. The parties may agree on retainership of the lawyer either under a general retainership or specific retainership. The appellant has tried to argue that the fees were paid under a retainership and not merely as instalments for work to be done.

The appellant's argument is baseless and was never raised at the trial but rather came as belated as the appeal level and was never alluded too in evidence. A retainer refers to an arrangement between a legal practitioner and his client as to the manner of rendering his/her services to the client. Ordinarily, a client may approach a lawyer each time he or she has any legal work for services of the lawyer may be needed. However, in some cases, the nature of business of the client or his/her relationship with the lawyer may warrant a special arrangement between the client and lawyer concerning legal services to be rendered by the lawyer to the client. The present case did not provide for any such arrangement of retainership but rather a case of billing a client on a case by case basis for any nature of assignment. See ***Peter Jogo Tabu t/a M/s Ayume, Jogo Tabu & Co. Advocates v The Registered Trustees of the Church of the Province of Uganda High Court Civil Appeal No. 0016 of 2017***

The appellant always billed the 1st respondent for any legal work to be done and always commenced work in earnest after payment was effected to him. The appellant would take into account each item of the work to be done by him before billing the 1st respondent. He would raise fee notes in particular to a specific piece of legal work to be executed at any particular time. The appellant's failure to timely execute the instructions of the client defeated the purpose of the relationship of advocate-client and thus entitled the client to a complete refund for the money duly paid and failure to executed the said legal works in a timely manner and professional way.

The appellant stated in his witness statement that his client used to pay his fees either in advance, after work or in the course of work and either in cash of through bank transfers directly into the office account in the American Dollar Bank Account. This points to a system of pay as you go and not a retainer arrangement between the advocate and client.

An advocate who fails to execute their duty professionally cannot claim fees by contending that after all the work had been done. The laisse faire approach to work would disentitle the lawyer to fees or to be ordered to return the fees collected for no work done or failure to execute the work in accordance with the instructions. The 2nd respondent was justified in directing the appellant to refund all the money as instruction fees since it affected the 1st respondent who was forced to engage services of other people to follow up on the same matters and above all to travel back to Uganda to establish what was the problem after a breakdown of communication.

That the Disciplinary Committee erred in law and in fact when they awarded the 1st respondent general damages of UGX 1,000,000/= without any basis and when they awarded payment of UGX 500,000/= to the 2nd respondent as punitive damages without any basis.

The appellant contended that the award of damages is contrary to the Advocates Act and is thus illegal and ought to be set aside since this was not a civil suit. The contention is premised only on the fact that law only provides a fine. Secondly the appellant also argued that even if the 2nd respondent acted lawfully, they failed to exercise their discretion on principles of award of damages.

The appellant argued that the 1st respondent did not prove any damages suffered by him due to any actions of the appellant and thus it was an error for the 2nd respondent to award general damages to the 1st respondent without any reasons thus causing a miscarriage of justice.

The 1st respondent submitted that the general damages are intended to compensate the aggrieved, thus under section 20(4) (e) of the Advocates Act

provides that an advocate can be ordered to pay to the complainant or to any person who has suffered loss as a result of the misconduct.

The 2nd respondent's counsel submitted that the 1st respondent adduced evidence to prove that he suffered psychologically since 2012 owing to the appellant's failure to execute his instructions. The award of damages was based on evidence as it was deemed reasonable and the decision was buttressed by section 20 which allows the disciplinary committee to award the complainant compensation it deems fit.

Analysis

Section 20(4) of the Advocates Act (as amended) provides;

After hearing the complainant and the advocate to whom the complaint relates, if he or she wishes to be heard, and considering the evidence adduced, the Disciplinary Committee may order that the complaint be dismissed or, if of the opinion that a case of professional misconduct on the part of the advocate has been made out, the committee may order-

(a) That the advocate be admonished;
(b) That the advocate be suspended from practice for a specified period not exceeding two years;
(c) That the name of the advocate be struck off the roll;
(d) That the advocate do pay a fine not exceeding two hundred and fifty currency points or
(e) That the advocate do pay to any person who has suffered loss as a result of the misconduct of the advocate, such sum as, in the opinion of the Committee is just, having regard to the loss suffered by the aggrieved party,

Or such combination of the above orders as the commit thinks fit.

The above provision envisages compensation or any payment for the loss being paid to any aggrieved party like the 1st respondent. This payment may take any form and broad enough to include general damages or punitive damages as awarded by the Disciplinary Committee of the Law Council.

A claim or an award for damages could only arise if there is a breach of any duty to the claimant or complainant. Damages are compensation in money; sums of money given to a successful party as a compensation for the loss or harm of any kind. General damages flow naturally from the wrongful act of a person complained of as the immediate, direct and proximate result, or the necessary result of the wrong complained of.

The awards given to the 1st respondent are within the range allowed under the law of 250 currency points and it was baseless to challenge such an award made to compensate the complainant having suffered professional misconduct of the appellant without any lawful excuse.

The 1st respondent by way of cross-appeal raised the following two grounds of appeal;

The Learned Disciplinary Committee of the Law Council erred in fact when they ordered the respondent to refund all the money he received from the appellant computed at CAD 5300 (Five Thousand Three hundred) instead of CAD 7150 (Seven Thousand One Hundred Fifty Canadian Dollars.

The Learned Disciplinary Committee of the Law Council erred in law and fact when they directed that each party bears their costs for the complaint/Disciplinary hearing.

The cross-appellant/1st respondent submitted that the appellant had remitted to the respondent through their engagement a sum of 5,300 USD which the equivalent to 7,150 CAD. Therefore, according to counsel the amount claimed by the cross-appellant to be in Canadian dollars and not American dollars was a factual mistake insisted on by the law council despite the transactional documents and complaint being in USD 5,300. The variation in currencies created confusion and error leading to a miscarriage of justice. The court erroneously denied the appellant costs and that costs follow the event unless the successful party is guilty of misconduct.

The respondent to the cross-appeal submitted that the appellant's submission regarding alleged breach of contract was misplaced since the disciplinary hearing was never about breach of contract but rather a matter of professional negligence.

In his view, the Advocates Act only speaks about specific loss suffered as a result of the said misconduct of the advocate. The respondent contended further that there was no basis or justification for the law council to order for the refund of any money paid by the respondent because he executed the instructions as directed. The costs are granted at the discretion of court and therefore the tribunal exercised its discretion with reasons and cannot be faulted.

Analysis

The cross-appellant through his lawful attorney lodged a complaint with the Law Council claiming a refund of USD 5,300. It is not in dispute that the cross-appellant dealt with the respondent (Counsel Okalang) and advanced a sum equivalent to USD 5,300 although some of the money was transmitted in Canadian dollars.

The intention of the disciplinary committee of the law council in its ruling was to refund cross-appellant the money advanced; ***"the Complainant wants a refund of all the monies so advanced to the respondent to the <u>tune of CAD 5,300</u> made to him. The respondent in concessions, proposed a refund of half the amount i.e CAD 2650 and consideration dropping a civil suit filed against the complainant to recover advocate-client bill of costs……The Committee in the circumstances <u>directs a refund of all the money the respondent received in respect to the activities</u> complained of be made to Dr. Thomas Dale without undue delay".***

The respondent stated in his witness statement that *his client used to pay his fees either in advance, after work or in the course of work and either in cash of through bank transfers directly into the office account in the* ***American Dollar Bank Account****.*

It is clear from the above evidence that the Law Council failed to evaluate evidence properly before it when it came to the award or order made for a refund of all money advanced to the respondent in Canadian Dollars instead of US Dollars. The duty of the appellate court is to evaluate the evidence and come to a decision that is correct and fair to the parties.

The cross-appellant's claims were converted in USD as set out in the complaint and the mistake of being given a refund in Canadian dollars definitely reduces the award and defeats the clear intention of the law council.

This court is satisfied that the error of making the award or refund in Canadian dollars instead of American dollars was a manifest mistake and when the correction is made the decision of the court cannot stand. It would only be fair that the court gives effect to the clear intention derived from the evidence on record that the cross-appellant is entitled to a refund of USD 5,300 and not CAD, 5300.

Secondly, the cross-appellant challenged the denial of costs after being successful at the Law council. It bears emphasis that it is solely at the discretion of the trial court to award costs. The discretion like any other discretion, must, of course, be exercised judicially, and the court ought not exercise it against successful party, except for some reason connected with the case. Similarly, the exercise of this discretion must not be affected by questions of benevolence or sympathy. See ***Roko Construction Company v Uganda Cooperative Transport Union SCCiv App No. 32 of 1997***

Costs follow the event, and a successful party should not be deprived of his costs unless for good reasons and must have reasonable bases. The essence of costs is to compensate the successful party for part of the loss incurred in litigation. Costs cannot cure all the financial loss sustained in litigation. It is not meant to be a bonus to a successful party and not to awarded on sentiments. See ***Amalgamated Bank v Fraga Oil Ghana Ltd & 5 Ors [2012] 48 GMJ 149 C.A***

Where the discretion to award or not to award costs has been exercised in an arbitrary or illegal manner without due regard for all the necessary considerations or with unnecessary factors or *malafide*, the appellate court is entitled to interfere. The award of costs involves judicial discretion which must be exercised on fixed principles, that is according to rules of reason and justice, not according to private opinion.

The cross-appellant has not shown any arbitrary denial of costs and since it is an exercise of discretion, this court would not interfere with exercise of discretion by ordering each party to meet its costs.

In the final result, this appeal fails and is dismissed with costs to the respondents in this court only.

The cross-appeal succeeds in part and the cross-appellant shall receive a refund of USD$ 5,300.

We so order.

DATED at Kampala this…….day of…….……..……..……2024

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JUDGE SSEKAANA MUSA

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JUDGE BAGUMA EMMANUEL

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Ag JUDGE DOUGLAS SINGIZA