

**DECISION OF THE DISCIPLINARY COMMITTEE OF THE GENERAL  
LEGAL COUNCIL**

COMPLAINT NO137/2000

BETWEEN	LEPHENUS WILLIAMS YVONNE WILLIAMS	COMPLAINANTS
AND	NOEL WILLIAMS JNR.	THE ATTORNEY
PANEL	PAMELA E BENKA-COKER Q.C. GLORIA LANGRIN ALLAN WOOD	

**HEARING DATE-26<sup>TH</sup> October 2001**

**BACKGROUND HISTORY:** The respondent attorney –at –law, Noel Williams Jnr. (hereinafter referred to as the attorney), conducts his practice in the parish of Portland. Lephenus and Yvonne Williams (hereinafter referred to as the complainants) are husband and wife who reside in Miami, Florida in the United States of America. In the year 1994 the complainants became interested in purchasing land in the parish of Portland. Having made enquiries, they agreed to buy 72 acres of farmland situate at Buff Bay in the parish of Portland.

The vendor of the land was one Reverend James Ferguson. An Agreement for Sale was prepared and signed by the parties in or around July 1994. Under the Agreement the attorney acted for the vendor and consequently had carriage of sale. Yvonne RidGaurd was the attorney –at-law for the purchasers. At all material times Truman Williams, the brother of Lephenus Williams acted as the agent of the complainants.

The purchase price of the lands was 2.6 million dollars. As required under the terms of the Agreement, the complainants paid the deposit of approximately 1.3 million dollars to the attorney. To this date the agreement for sale has not been completed and the complainants have not received title to the land. The complainants wrote letters to the attorney in an effort to discover the cause of the delay, the attorney did not respond to these letters.

They telephoned him and on one occasion when they managed to speak to him, he advised them that everything was under control. The attorney assured them that everything was being done to enable them to get their title.

Truman Williams made many efforts to persuade the attorney to complete the sale. The attorney always had an excuse as to why the sale was not complete. The granddaughter of the vendor wrote several letters to the attorney demanding that he complete the sale and that he pay over the monies he had collected from the complainants. The attorney did not respond to these demands either. Neither imprecations nor threats were of any use in inducing the attorney to act. He stood firm in his apparent determination to procrastinate.

Having suffered prolonged and agonizing frustration owing to the failure of the attorney to complete the transaction, the complainants initiated the within complaint.

**THE COMPLAINT:** in their affidavit in support of the complaint, the complainants averred that owing to the facts stated in the history leading up to the complaint, the attorney was guilty of professional misconduct in that:

- 1 The attorney has not dealt with their business with all due expedition.
- 2 He has acted with inexcusable or deplorable negligence in the performance of his duties.
- 3 He has not accounted to the complainants or to the vendor for the 1.3 million deposit that the complainants paid to him.
- 4 He has not provided the complainants with the full information for which they have asked repeatedly.

The attorney did not respond to the complaint and did not appear on the 26<sup>th</sup> October 2001 when the complaint was scheduled for hearing before this panel of the Disciplinary Committee. The panel was satisfied that the attorney had been properly served with the notice of hearing in keeping with the provisions of the Fourth Schedule to The Legal Profession Act. There was no explanation for the attorney's absence. Further, the complainant Lephenus Williams had travelled from the United States in order to attend the hearing.

In the circumstances of the case, the Panel decided that it was prudent to hear the complaint in the absence of the attorney. This is permissible in law

by reason of Rule 8 of the Fourth Schedule to the Legal Profession Act. The other complainant, Yvonne Williams was unable to attend the hearing

**THE EVIDENCE:** Two witnesses gave evidence in support of the complaint. Lephenus Williams and Truman Williams. The following is a summary of the evidence.

Lephenus Williams stated that he resided in Florida in the United States of America and had so resided for the past twenty two years. He is married to Yvonne Williams, the other complainant who had signed the affidavit in support of the complaint. She was unable to attend the hearing. His occupation is that of an electrician.

In the year 1994, his wife and himself decided to purchase land in Portland, Jamaica. The land which they agreed to purchase belonged to one Reverend James Ferguson, who also resided in the United States of America. The complainant had spoken to Reverend Ferguson once over the telephone prior to the signing of the agreement but he had never met him.

Truman Williams was his agent in the transaction. Yvonne Ridguard was the attorney-at-law for the complainants and Noel Williams Jnr. was the attorney-at-law for the vendor. The purchase price for the land, which amounted to 72 acres, was 2.6 million dollars. The complainant paid over as a deposit an amount of 1.3 million dollars. The complainant was of the opinion that deposit was too much, but the vendor advised that they would get possession of the property before completion of the sale. Indeed, they were given possession of the property. Since then, he has made a lot of improvements to the property.

He has planted coffee and bananas, and has made several roads on the property. He would have built his own house had he had the title. He had wanted the title within 3 months of the signing of the agreement, but under the terms of the agreement he should have had it within a year. He has never gotten the title. He has never received any communication from the attorney. When he spoke to the attorney by telephone he assured him that he would get his title and everything was under control.

He knew both the daughter and granddaughter of the vendor. He met them on the property in Jamaica in relation to the said problem. The daughter is Ruth Abrahams and the granddaughter is Andrea Abrahams. This meeting

took place in or around 1998. They promised to follow up on the problem and gave him copies of letters written by Andrea Abrahams.

Yvonne Ridguard the complainants' attorney had also told him that all her letters to the attorney had gone unanswered. He had since terminated the services of Yvonne Ridguard.

The following documents were tendered in evidence through this witness.

- Exhibit 1 Agreement for Sale
- Exhibit 2 Letter from Lephenus Williams to the attorney
- Exhibit 3A Letter dated 26/5/99 Andrea Abrahams to the attorney
- Exhibit 3B Letter dated 12/8/99 Andrea Abrahams to the attorney
- Exhibit 3C Letter dated 20/10/99 Andrea Abrahams to the attorney
- Exhibit 3D Letter dated 20/10/99 Andrea Abrahams to the General Legal Council.

Truman Williams then gave evidence. He stated that he lived at Hart Hill, Buff Bay, in the parish of Portland and that he is a businessman. He owns a bakery. He is the brother of the complainant Lephenus Williams. He knows the attorney. He practices in Port Antonio and Buff Bay. Lephenus and Yvonne Williams purchased the land in 1994. The attorney told him that the land amounted to 75 acres. After the land was surveyed he told him it was 72 acres.

This witness became aware that the land was being sold when he saw a sign on it. He contacted "Property Management Services". Noel Williams Snr. owns this company. He was directed to contact the attorney about the land being sold. The attorney and his father operate their businesses from the same premises at Blake Street, Port Antonio.

The attorney confirmed to this witness that he was responsible for selling the land. He then retained Yvonne Ridguard to act on behalf of the complainants in the sale. This witness identified exhibit 1 and said that he had paid over the deposit of \$1,383,469.72 to the attorney as the deposit paid by the complainants on the sale. The attorney did not give the witness a receipt nor did he send a receipt to Yvonne Ridguard as he promised. The witness produced the counterfoil of the manager's cheque dated the 25<sup>th</sup> August 1994 as exhibit 4.

The attorney advised the complainants that they could take possession of the land the subject of the sale. The land was agricultural land cultivated with coconuts, coffee and bananas. He visited the attorney on many occasions. The last time he saw the attorney was the 22<sup>nd</sup> October 01. On the occasions that he saw the attorney he would give him different excuses, such as the surveyor was holding up the matter, the Parish Council was holding up the subdivision plan. He checked with the surveyor and the Parish Council. The attorney was always the hardest person to find.

The attorney advised him that he had paid the monies to the vendor. The daughter and granddaughter of the vendor came to Jamaica about two years ago. The witness took them to see the attorney but he did not see the attorney. He left the vendor's daughter and granddaughter at the offices of the attorney. As far as the witness knows the vendor has not received any money from the attorney nor has his daughter or granddaughter.

The sum of \$1,383,479.72, which he paid to the attorney on the complainants' behalf included legal costs. The witness was of the view that the delay in the completion of the transaction was due to the attorney. The survey of the land had not been completed, the surveyor had not been paid. A stamped agreement for sale was tendered in evidence as exhibit 5.

The complainant was then resworn. He advised the panel that the land, which he and his wife were purchasing, comprised two lots. One of forty acres and the other of thirty acres. There was a road running between the two lots so the land had two titles. A copy of a title registered at Volume 1152 Folio 911 was admitted in evidence as exhibit 6.

**THE BURDEN AND STANDARD OF PROOF.** The complainants are obliged in law to prove the complaint they allege against the attorney. In the light of the fact that the complaint involves allegations of moral turpitude the standard of proof is that of "beyond reasonable doubt." This tribunal must feel sure, on the evidence that the attorney is guilty of professional misconduct.

**EVALUATION OF THE EVIDENCE:** The attorney chose not to appear at the hearing of this complaint and to defend himself against these serious allegations. The panel is obliged to look at the evidence it has before it and arrive at its conclusions being ever mindful of the standard of proof applicable.

We are of the opinion that the complainant and the witness Truman Williams gave credible evidence in support of the charges laid against the attorney. The demeanour of the complainant was convincing and so was that of the witness. We are persuaded that both witnesses spoke the truth in relation to the allegations against the attorney. There was documentary evidence to support the allegations made. In the circumstances the Committee makes the following findings of fact in keeping with section 15 of the Legal Profession Act.

- 1 The attorney carries on his practice in the parish of Portland.
- 2 In the year 1994 the complainants decided to purchase 72 acres of farmland from one Reverend James Alfred Ferguson.
- 3 This land, the subject of the sale, is situated in the parish of Portland and is part of the land registered at Volume 1229 Folio 320 of the Register book of Titles.
- 4 The parties entered into the Agreement for Sale of the said land in December 1994.
- 5 The purchase price for the land was stated as \$2,600,000.00.
- 6 The deposit payable under the said agreement was \$1,300,000.00.
- 7 The attorney acted for the vendor James Alfred Ferguson.
- 8 Attorney-at-Law Yvonne Ridguard acted for the complainants (the purchasers)
- 9 The witness Truman Williams, acting as the agent of the complainants, paid over the sum of \$1,383,479.72 to the attorney in or around the month of September 1994.
- 10 This sum represented a deposit of \$1,300,000.00 and the balance represented legal costs payable by the complainants on the sale.
- 11 Owing to the fact that the land being sold formed a part of the land registered at Volume 1229 Folio 320 of the register Book of Titles, the land had to be surveyed, and plan prepared, to enable the complainants to obtain a registered title to the portion of land they were buying.
- 12 Completion of the agreement was scheduled to take place twelve months from the signing of the agreement and the complainants should have been provided with a duplicate certificate of title registered in their name in exchange for the payment by them of the total balance of the purchase price due and owing.
- 13 The attorney failed to secure the survey of the land, which was a condition precedent to being able to obtain a registered title to the

land being sold. Indeed, the attorney had sufficient funds in hand to cover all expenses incidental to the transaction.

- 14 The attorney has not obtained the issuance of a registered title to the land.
- 15 The agreement for the sale of the land to the complainants has not been completed, nor have they obtained title to the land.
- 16 The attorney has not refunded to the complainants any of the monies paid by them to him under the agreement for sale.
- 17 There is no evidence that the attorney has paid any part of the sum paid by the complainants to the vendor.
- 18 Over six years have elapsed since the date on which the agreement should have been completed.
- 19 The Attorney has provided no credible explanation to the complainants as to why the vendor has not been put in a position to complete the sale.
- 20 The Attorney has given no credible explanation to the complainants as to the reasons for the inordinate delay in the completion of the sale.
- 21 The Attorney has never responded in writing to any of the letters written to him by the complainants.
- 22 The Attorney has never provided a statement of account to the complainants as to how the sum of \$1,383,469.72 was used by him in the conduct of the complainants' business.

**CONCLUSIONS:** In the light of the above Findings the panel concludes the following:

A The attorney is guilty of inexcusable and inordinate delay in his conduct of the transaction of the sale agreement between the complainants and James Alfred Ferguson.

He has failed to provide the complainants with information as to the progress of the sale in spite of the fact that they have repeatedly asked him for such information. He has steadfastly ignored their pleas and importunations.

B The attorney has never accounted to the complainants as to how the sum of \$1,383,469.72 paid over by them to him in 1994 has been used, nor has he established that he still has any part of this sum in his custody or control.

C The Attorney has acted with inexcusable and deplorable negligence in the performance of his duties in breach of Canon 4(s) of the Legal Profession (Canons of Professional Ethics Rules).

Viewed as a whole, the Attorney's conduct is such as to discredit the profession,  
and is clearly in breach of Canon 1(b) of the said Canons.

We conclude that the Attorney is guilty of misconduct in a professional respect.

**SANCTION:** This is always the most difficult aspect of a decision which has resulted in a finding that the attorney has been guilty of professional misconduct. We are guided by the oft quoted principle stated by Sir Thomas Bingham, Master of the Rolls, in the case of **Bolton v Law Society reported at 1994 2 All ER p 486 and at p491 paragraph f** when he says this, " it is required of lawyers practicing in this country that they should discharge their professional duties with integrity, probity and complete trust worthiness."

In dealing with the purpose of the punishment in cases such as these he says this at p 492 paragraph c-" in most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence----- The second purpose is the most fundamental of all: to maintain the reputation of the solicitor's profession as one in which every member of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission."

We are of the view that the attorney Noel Williams has been found guilty of serious lapses. We therefore make the following orders.

We hereby order that the attorney-at-law Noel Williams Jnr. be struck from the Roll of attorneys-at-law entitled to practise in the several courts of the island of Jamaica.

That the said attorney do by way of restitution pay to the complainants the sum of \$1,383,469.72 so that they are enabled to make alternative efforts to complete the sale. *The attorney is also ordered to pay interest on the aforesaid sum at the rate of 12 per cent per annum from October 1st 1994 until the date of payment*  
 That the said attorney do pay to the complainants the sum of \$50,000.00 as costs.

AW  
 PED  
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Dated the 7<sup>th</sup> day of March 02

*Pamela E Benka-Coker*  
 PAMELA E BENKA-COKER Q.C

*Gloria Langrin*  
 GLORIA LANGRIN

*Allan Wood*  
 ALLAN WOOD