

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA,
SITTING IN ITS OCTOBER TERM, A.D. 2020

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR. CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA..... ASSOCIATE JUSTICE

In Re: Grievance and Ethics Committee Investigation Report on Complaint
 by Mr. Augustine T. Iriekpen against Counsellor Samuel Pearson

Heard: August 12, 2020

Decided: February 8, 2021

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

On June 14, 2014, the complainant herein, Mr. Augustine T. Iriekpen, filed a complaint to the Office of the Chief Justice, His Honor Francis S. Korkpor, Sr., against the lawyer for the Monrovia City Corporation (MCC), Counsellor Samuel S. Pearson. The complainant alleged that on July 24, 2012, three (3) of his vehicles were towed by a contractor of the Monrovia City Corporation (MCC), the PEC Towing Company; that he appealed the matter to the then City Mayor, Madam Mary Broh who conducted an investigation, and ordered that the cars be returned to him; that he met with Counsellor Samuel S. Pearson who received the instructions from Madam Broh and the Manager of the PEC Towing Company, Caroline E. Page to pursue the release of his cars, but Counsellor Pearson placed a condition for the release of the cars, to the effect that two (2) of the cars be given to himself and Madam Page and the third car returned to him, Mr. Iriekpen; and that he refused and turndown the request of Counsellor Pearson.

The complainant also alleged that Counsellor Pearson later sold two of his cars to one Gabriel Friepong and converted one to his personal use; that based upon the action of Counsellor Pearson he sought the intervention of the New Kru Town Stipendiary Magistrate, His Honor Peter Faryen, and subsequently, the Judge of the Criminal Court "B," His Honor Blamo Dixon to have Counsellor Pearson return his vehicles; that despite the orders by both judges to Cousellor Pearson to return his vehicles, Counsellor Pearson defiantly refused to comply with the judges' order, asserting that the cars being in the possession of the Monrovia City Corporation (MCC), he could not unilaterally released them to the complainant.

The complainant further alleged that on March 24, 2014, the PEC Towing Company again entered his premises and towed away a brand new car, at which time he immediately filed a complaint with the Monrovia City Corporation (MCC) against the PEC Company; that authorities at the Monrovia City Corporation (MCC) informed him that the PEC Company had shut down its business; that he filed a complaint before the Gardnersville Magisterial Court against the two (2) towed-truck drivers known as Mohammed and Collins who were later arrested and brought before the Gardnersville Magisterial Court; that Counsellor Pearson appeared at the magisterial court and made representation on behalf of the tow truck drivers, the latter who were released into his custody; that Counsellor

Pearson give his brand new car as a graduation gift to one of his friends; and that Counsellor Pearson is now the owner of the PEC Towing Company that illegally towed his car.

The records show that upon receipt of the subject complaint, and in consonance with the rules of court pertaining to said matter, the Chief Justice forwarded the complaint to the Grievance & Ethics Committee for an investigation. The Grievance & Ethics Committee served a copy of the complaint on Counsellor Pearson to which he filed his formal response on November 14, 2014, wherein made admissions that the complainant's cars were towed by the PEC Towing Company at the behest of the Monrovia City Corporation (MCC); that the cars were old, dilapidated, abandoned in the streets and in violation of the Monrovia City ordinance; that the Grievance and Ethics Committee should refuse jurisdiction over his person; that the complainant be advised to pursue his case against the Monrovia City Corporation (MCC) and not against him since he is only an agent/lawyer for the Monrovia City Corporation (MCC); and that although the former City Mayor of the Monrovia City Corporation (MCC), Madam Mary Broh ordered the release of the complainant's vehicles, by virtue of his position as legal counsel of the MCC which mandated that he pursued further action to protect the interest of his principal, he, Counsellor Pearson requested the complainant to submit title documents to prove ownership of the vehicles as condition for their release. Given the peculiarity of Counsellor Pearson's written response which shows his silence on certain grave and damning allegations contained in the complaint which we shall mention later in this Opinion, we have decided to quote same herein below, to wit:

"Michael F. Fayiah
Executive Secretary
Grievance & Ethics Committee
Temple of Justice Building
Monrovia, Liberia

Dear Mr. Fayiah:

In re: Response to Mr. Austine T. Irekpen's Complaint of June 16, 2020

Acknowledgement is made to your communication of November 14, 2014 and the annexed complaint thereto filed against me by complainant Austine T. Irekpen borders on an alleged towing of his cars.

The Monrovia City Corporation entered into contract with PEC Towing Company and that persistent with said agreement the PEC is under municipal obligation to tow all dilapidated and abandoned vehicles within the City of Monrovia and its surrounding in keeping with **City Ordinance #1, section 8.**

Mr. Irekpen claims to be engaged in driving school related activities but it appears that most of his cars he uses to conduct his affairs are old and dilapidated to the extent that these cars break down in the streets and still

there for a protracted period in gross violation of City Ordinance cited supra.

The cars, subject of Mr. Irekpen's Complaint was towed by PEC Towing Company and such, Mr. Irekpen was requested to pay municipal fine as a precondition to have said cars release. Mr. Irekpen wrote an apology letter to the Management of the Monrovia City Corporation, based on the applogy letter, the then Management Specialist, Mr. Frank Krah wrote a letter to the PEC Company but the Company insisted that Mr. Irekpen produce title document as precondition to any alternative action which Mr. Irekpen failed to do and while Madam Broh was trying to render him assistance, the following day Mr. Krekpen went at the Corporation Office and started to disturb creating unnecessary public scene and as such Madam Broh got mad at him and ordered the City Police to maintain law and order. The next day, there was Newspaper front page story "Torture at MCC's Prison" with Madam Broh' photo being displayed.

All of the claims, as being alleged against me by Mr. Irekpen are characterized by inherent falsehood and lacks iota of truth and more besides, the entire complaint is legally unfounded and should not be countenanced by the Grievance and Ethics Committee in that the cars which was allegedly towed was not towed by me rather by an agent of the Monrovia City Corporation, as part of its statutory obligation. I am not the proper party to institute an action against and moreover, in Mr. Irekpen's Complaint, he indicated that he did file a Bill of Information in Criminal Court "B" which is still pending before said court and in such case he should have proceeded with the making of assignment to ensure the hearing of said Bill of Information but instead elected to filed a complaint to the Grievance and Ethics Committee which out rightly contravene our practice and procedure in this jurisdiction; hence a ground for dismissal. The Complaint should be dismissed in that the entire complaint does not raise any ethical issue rather a mere allegation which is determinable by a jury.

Thanks for your consideration within the premises.

Respectfully submit
Atty. Samuel Pearson"

On June 5, 2015, Counsellor Pearson in furtherance to his response, also filed a bill of information before the Grievance & Ethics Committee asserting that the complainant had filed an action of damages for wrong in the Civil Law Court against the Monrovia City Corporation (MCC) for the identical vehicles subject of the Grievance & Ethics Committee's investigation; that the complainant in his law suit alleged that the Monrovia City Corporation (MCC) had confiscated his vehicles and sold them and as such the Grievance & Ethics Committee should dismiss the current complaint against him and allow the complainant to pursue his case against the Monrovia City Corporation (MCC).

The Grievance & Ethics Committee conducted its investigation into the complaint, the written response thereto, and the bill of information and thereafter, found that

Counsellor Pearson committed conflict of interest by refusing to comply with the Monrovia City Corporation (MCC) orders instructing him to release the complainant's vehicles; that his behavior was unethical and warrant disciplinary action; and that Counsellor Pearson should be held liable to return the complainant's vehicles.

The Grievance & Ethics Committee having concluded its fact finding investigation along with its recommendations then forwarded the matter to the Supreme Court *en banc* for final determination thereon. On August 4, 2020, this Court, in keeping with its rules and policies appointed Counsellors F. Juah Lawson, J. Augustine Toe, and Denise S. Sokan to serve as *Amici Curiae* with the request to submit written briefs, clarifying the issues and aid the Court in making a final determination.

At the call of the case for hearing, the *Amici Curiae* argued that it was wrong for Counsellor Pearson to disobey the orders of his superior, the former City Mayor of the Monrovia City Corporation (MCC), Madam Mary Broh, and then sell the vehicles without the consent of the Monrovia City Corporation (MCC); that his action is tantamount to conflict of interests and criminal in nature; and that he was in clear violation of his oath as a lawyer when he retained possession of the cars and sold same.

Counsellor Pearson argued that he committed no conflict of interest by serving as a lawyer for the Monrovia City Corporation and the PEC Towing Company as the latter was an independent contractor of the Monrovia City Corporation; that his decision as a lawyer to give advice contrary to the orders of his superior is purely administrative and not an ethical transgression to be cognizable before the Grievance and Ethics Committee; that the Monrovia City Corporation (MCC) was responsible for the towing of the complainant's vehicles; and that the complainant should pursue his case against the Monrovia City Corporation (MCC) and not him since he is only an agent/lawyer for the Monrovia City Corporation (MCC).

Before delving into the merits of this case, we firstly acknowledge the efforts of the Grievance and Ethics Committee which conducted the fact finding investigation into this case and submitting their recommendations to this Court for its consideration. Also, we acknowledge the work of the three member *Amici Curiae* who timely responded to the Court's request by filing a joint legal brief and preparing for oral arguments. From the investigation of the Grievance and Ethics Committee, the brief filed by the *Amici Curiae*, and the brief filed by Counsellor Samuel Pearson we have established the following undisputed facts herein below:

- 1) That Counsellor Pearson is a lawyer for the Monrovia City Corporation, thus an agent of the said Corporation.
- 2) That the Monrovia City Corporation contracted the PEC Towing Company to towed abandon vehicles within the City of Monrovia in pursuit of applicable city ordinances.

- 3) That the PEC Towing Company did tow three (3) of the Complainant's vehicle, which act was acknowledged by the Monrovia City Corporation
- 4) That on July 24, 2012, the Monrovia City Corporation instructed Counsellor Samuel S. Pearson and the PEC Towing Company to release the complainant's vehicles unconditionally.
- 5) That Counsellor Pearson admitted receiving the orders from his superior to effect the release of the complainant's three (3) vehicles, but did not comply with the said orders.
- 6) That on December 12, 2012, Associate Magistrate Peter M. Faryen of the Bushrod Island, New Kru Town Magisterial Court issued an order mandating Counsellor Pearson to release the complainant (3) vehicles but Counsellor Pearson refused to comply with the magistrate's order.
- 7) That on March 20, 2013, His Honor A. Blamo Dixon, Assigned Judge, Criminal Court "B" issued an order mandating Counsellor Pearson to release the (3) vehicles to the complainant, but again Counsellor Pearson refused to comply with the judge's order.
- 8) That Counsellor Pearson has not denied nor rebutted the damning allegation by the complainant that he sold the complainant's vehicles to one Gabriel Friepong and converted one of the vehicles to his personal use;
- 9) That Counsellor Pearson has not denied or refuted the allegation that on March 25, 2014, the PEC Towing Company truck operated by one Mohammed and Collins re-entered the complainant's premises and towed away another brand new car jeep;
- 10) That Counsellor Pearson has not denied or refuted the fact that after the arrest of the two towed-truck drivers by the Gardnersville Magisterial Court he, Counsellor Pearson appeared at the magisterial court, effected the release of the said drivers into his custody, and relieved them from answering the charges levied against them by the Gardnersville Magisterial Court.
- 11) That there are no evidence in the records to show that after the release of the two drivers Counsellor Pearson or the PEC Towing Company ever returned the complainant's brand new car that was towed away from his premises on March 25, 2014.
- 12) That the complainant has been deprived of his vehicles for four (4) years as the result of Counsellor Samuel Pearson's refusal to release the complainant's vehicles.

- 13) That Counsellor Pearson released one of the vehicles on May 17, 2016, only after the Grievance and Ethics Committee found him in breach of his professional code of ethics and liable to the complainant for his cars.

Now, this Court, having meticulously presented the facts and circumstances pertaining to the present case as contained in the records, says that there are three (3) issues dispositive of this case, which are:

- 1) Whether or not Counsellor Samuel S. Pearson legal services to both the Monrovia City Corporation and the PEC Towing Company are tantamount to conflict of interest.
- 2) Whether or not Counsellor Samuel Pearson's refusal to return the complainant's vehicles after being mandated by the New Kru Town Magisterial Court and the Criminal Court "B" constitute a breach of the Code of Ethics.
- 3) Whether or not Counsellor Samuel Pearson should be held liable for the complainant's vehicles that were towed by the PEC Towing Company.

As to the first issue, the Grievance and Ethics Committee, and the *Amici Curiae* found Counsellor Pearson guilty of committing conflict of interest by serving as a lawyer for the PEC Towing Company and the Monrovia City Corporation at the same time. The *Amici Curiae* argued that Counsellor Pearson disobedience to his superior's orders was tantamount to conflict of interest and a violation of Rule 9 of the Code of Moral and Professional Ethics. We are not persuaded.

Conflict of interest is a situation in which a person is involved in multiple interests, financial or otherwise, and serving one interest could involve working against another. Conflict of interest in legal parlance is defined as: "*a real or seeming incompatibility between the interests of two of a lawyer's clients, such that the lawyer is disqualified from representing both clients if the dual representation adversely affects either client or if the clients do not consent.*" Black's Law Dictionary 9th Edition. The Supreme Court in setting the legal perimeter as to what conflict of interest is, adopted Rule 8 and 9 of the Code of Moral and Professional Ethics and held thus:

"It is the duty of the lawyer at the time of retainer to disclose to the client all of the circumstances of his relations to the parties, if there be any interest in or connection with the controversy, which might influence the client in the selection of the counsel. It is unprofessional to represent conflicting interests.

Within the meaning of this Rule, a lawyer represents conflicting interests when, on behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose. The obligation to represent the client with undivided fidelity, and not to divulge his secrets or confidences, forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed." LIMINCO v. Paye et al, Supreme Court Opinion, October, A.D. 2016 Term.

This Court says that viewing the facts of the present case, in light of the above quoted precedents, we are unable to see any conflicting interest on the part of Counsellor Pearson when he choose to serve the Monrovia City Corporation (MCC) and the PEC Company, a contractor of the Monrovia City Corporation (MCC) since the interests of both institutions were not adversarial. It should be noted that although Counsellor Pearson's disobedience to his superiors at the Monrovia City Corporation (MCC) raises serious concern, it must be stated here that said disobedience warrants administrative penalties from his superiors at the Monrovia City Corporation (MCC) and that said penalties cannot extend beyond the administration of the Monrovia City Corporation (MCC). We hold therefore that pursuant to Rule 8 and 9 of the Code of Moral and Professional Ethics Counsellor Pearson acts did not constitute conflict of interest.

As to the second issue which is whether Counsellor Samuel Pearson was in breach of the Code of Ethics when he refused to return the complainant's vehicles after being mandated by the Bushrod Island, New Kru Town Magisterial Court and the Criminal Court "B", we hold that he did.

The records are replete with several orders from the Bushrod Island, New Kru Town Magisterial Court and the Criminal Court "B" wherein both the Circuit Judge and the Associate Magistrate mandated Counsellor Pearson to return the complainant vehicles that were towed by the PEC Towing Company, but he deliberately decided to flout, frustrate, and snubbed the judges' mandate thus bringing the image of our courts and the judiciary as a whole to disrepute. This grandstanding posture of sheer arrogance on the part of Counsellor Pearson is not only an affront to the foundation of our entire judiciary and justice system and the rule of law, but it openly challenges and defies every sacred sanctity of our courts in that Counsellor Samuel Pearson sought to undermine Rule 1 and 2 of the Code of Moral and Professional Ethics which speaks to respect, discipline, and a polite demeanor towards our judges and the courts.

Rule 1 states that: *"it shall be unprofessional for any lawyer to advise, initiate or otherwise participate directly or indirectly in any act that tends to undermine or impugn the authority, dignity integrity of the courts or judges thereby hindering the effective administration of justice."*

Rule 2 states that: *"it is the duty of every lawyer to maintain towards the courts a respectful attitude, not only towards the judge temporarily presiding, but for the purpose of maintaining the supreme importance of his judicial office. Whenever there is proper ground for complaint against judicial officer, it is the right and duty of the lawyer to submit his grievance promptly and fairly."*

In addition thereto, this Court says that Counsellor Pearson disrespect to our judges of the Bushrod Island, New Kru Town Magisterial Court and the Criminal Court "B" respectively, stands in sharp contradiction to his oath as a lawyer and a member of the Supreme Court Bar. We recall that at the admission of Counsellor Samuel Pearson into the practice of law he placed his hands on the Bible and swore

that he will always demean himself as a gentlemen, and a respectable and honorable citizen of the Republic of Liberia; that he will support and uphold the Constitution, the laws of the Republic of Liberia, the Rules of courts of Liberia, and those governing the conduct of lawyers; and that at all times he will give due respect to the courts of Liberia and will recognize the judicial offices and authority thereof; and that he will do nothing to impugn the dignity and undermine the authority of the court.

It is evidenced that all of these sacred words carefully crafted by our distinguish predecessors meant nothing to Counsellor Pearson. Therefore, we hold that the refusal of Counsellor Samuel S. Pearson to comply with the orders of the Stipendiary Magistrate of New Kru Town Magisterial Court and the Judge of the First Judicial Circuit, Criminal Assizes "B" that he returns the complainant's vehicles, constitutes a violation of Rules 1 and 2 of the Code of Moral and Professional Ethics as his acts undermined the authority, dignity and integrity of the courts.

As to the last issue which is whether or not Counsellor Samuel Pearson should be held liable for the complainant's vehicles that were towed by the PEC Company we observed that the Grievance and Ethics Committee and the *Amici Curiae* have found in the affirmative. On the other hand, we observed that Counsellor Samuel Pearson has attempted to hide behind the corporate shield of the Monrovia City by arguing that the Monrovia City Corporation should be held liable and not him, since he is only an agent of the latter and serving as its lawyer; that since the Monrovia City Corporation is his employer and he acted within the scope of his authority as a lawyer for the Monrovia City Corporation the said Corporation should be held responsible and not him.

To further buttress this trend of argument, Counsellor Pearson in an attempt to impress us has drawn our attention to the pending action of damages for wrong filed by the complainant before the Civil Law Court, Sixth Judicial Circuit, Montserrado County against the Monrovia City Corporation (MCC) for the identical vehicles; and has argued that the complainant should pursue his case against the Monrovia City Corporation (MCC) and not him since he is only an agent/lawyer for the Monrovia City Corporation (MCC). We are not impressed or persuaded by this argument.

As stated earlier on July 24, 2012, the Monrovia City Corporation whose contractor towed the complainant's vehicles, specifically instructed Counsellor Pearson to release the said vehicles to the complainant, but he out rightly refused. In addition to disobeying his superior's instructions, Counsellor Samuel Pearson also sold one of the complainant's vehicles to Gabriel Friepong; gave another away as a graduation gift and then converted one to his personal use. All of these actions on the part of Counsellor Pearson were orchestrated without the expressed consent or approval of his employer, the Monrovia City Corporation (MCC). And, this Court is unhesitant to say that the conduct of Counsellor Samuel Pearson is tantamount to fraudulent conversion, and misappropriation.

Given the un-gentlemanly behavior of Counsellor Pearson in this case we cannot agree with him that he acted within the scope of his authority as an agent of the Monrovia City Corporation. We cannot equate his gross disobedience and the subsequent conversion of the complainant's vehicles as actions that fall within the scope of authority of a lawyer for which he should be shielded by the Monrovia City Corporation.

The Supreme Court has held that an agent [or a lawyer] must not use his his/her position entrusted to him during agency to acquire for himself, without the principal knowledge and consent, adverse right or interest in subject matter of the agency nor should he acquire for himself, during the course of his agency any adverse right or title to the principal's property. Any such act by the agent will lead to the conclusion that fraud was committed. *Sneh v. Republic*, 35LLR 136, 142 (1988). We hold that the illegal sales and conversion of the complainant's vehicles without the expressed consent of the Monrovia City Corporation was completely outside the scope of authority of Counsellor Samuel Pearson and as such he should be held liable for the complainant's vehicles.

In furtherance, the records also attest to the fact that Counsellor Pearson even defied and disrespected the constituted authority of our courts when he decided to ignore the mandates of our judges in this matter. After selling the complainant vehicles he again re-entered the complainant's premises on March 25, 2014, and towed away the complainant's brand new jeep and gifted same to a friend as a graduation present, these allegations he has not rebutted.

Rule 15 of the Code for Moral and Professional Ethics states thus:

"A lawyer should refrain from any act whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in by his client.

Money collected for his client, or other money or property of his said client coming into his possession as a result of his professional duty to his client, should be reported and accounted for promptly, and should not under any circumstances be commingled with his own or be used by him."

The Supreme Court has consistently ruled that: "a lawyer owes a fiduciary duty to his client, and as such cannot take advantage of his professional duty to acquire interest in the client's property in litigation and that a lawyer is required by the Supreme Court to be not only professionally qualified and possessing the required legal knowledge and education as professional legal practitioner, but also requires the individual to be of a high standard of ethical conduct and behavior and of good moral character." *Tulay v. Knight*, 41 LLR 262 271 (2002); *In re Wreh*, 20 LLR 535, 538(1971).

We must state here that although the complainant is not Counsellor Pearson's client to which Counsellor Pearson owes no fiduciary duty to as prescribed in the *Tulay case*, notwithstanding this Court says that as a lawyer and a member of the Liberia National Bar Association (LNBA) Counsellor Pearson cannot seek sanctuary in the *Tulay case*, as the said case cannot be and will never be a wall of

impunity to protect lawyers that have committed legal malfeasance against an innocent party who is not their client. All members of the Liberia National Bar Association who are practicing within the bailiwick of the Republic of Liberia has a legal duty to the general public, their professional colleagues, and the courts of Liberia the obligation to be respectful, honest, candid, and to deal fairly in all transactions coming before them. For by Holy Writ all lawyers have sworn to abstain from all offensive personality; to avoid all connections with any shady, dishonest or dishonorable transaction; and to desist from delaying ancient cause for unjustifiable reason or for money.

Now although we have discovered that these sacred words meant nothing to Counsellor Samuel Pearson when he took the oath of admission, however for this Supreme Court and the many other legal practitioners appearing before the courts of Liberia, these words are sacrosanct and must be revered at all times even at the cost of expunging one of our own who have transgressed and belittle the spirit of this noble profession.

Therefore, we hold that the act by Counsellor Pearson to enter the complainant's property, confiscate his vehicles, and then sell or convert same to his personal benefit is criminal in nature and can never be accepted as part of his terms of reference (TOR) at the Monrovia City Corporation (MCC). We hold then that Counsellor Pearson should account for all the complainant's vehicles.

WHEREFORE, and in view of the foregoing, the recommendations of the Grievance and Ethics Committee are hereby affirmed, however, with modifications as follows:

- 1) That Counsellor Samuel S. Pearson be and is hereby suspended from the practice of law directly and indirectly within the bailiwick of the Republic of Liberia for a period of one (1) year;
- 2) That the Grievance and Ethics Committee is hereby instructed to determine the value of the four (4) vehicles as at the time they were taken by Counsellor Pearson, and to have Counsellor Pearson pay the assessed value thereof to the complainant during the period of his suspension, and copy of the receipt of payment forwarded to the Supreme Court;
- 3) That failure by Counsellor Samuel S. Pearson to pay the assessed costs of the vehicles, his suspension will remain in full force and effect until he fully complies.

The Clerk of this Court is ordered to send a mandate to all courts within the bailiwick of the Republic of Liberia, the Liberian National Bar Association (LNBA), all relevant parties and authorities, including the Monrovia City Corporation of Counsellor Pearson's suspension and to ensure full compliance with the Mandate of this Court. IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellors F. Juah Lawson, J. Augustine Toe and Denise S. Soka appeared as Amici Curiae. Counsellor Samuel S. Pearson appeared pro se along with Counsellor James N. Kumeh for the respondent.