

THE HIGH COURT

[2019 No. 61 SA]

**BETWEEN**

**IN THE MATTER OF THE SOLICITORS ACT, 1954-2011**

**AND**

**IN THE MATTER OF JEAN CONNORS, A SOLICITOR**

**AND**

**IN THE MATTER OF AN APPLICATION BY SANDRA McGRATH, ALAN KINSELLA and  
DAVID KINSELLA TO THE SOLICITORS DISCIPLINARY TRIBUNAL**

**APPELLANTS**

**AND**

**JEAN CONNORS AND THE SOLICITORS DISCIPLINARY TRIBUNAL**

**RESPONDENTS**

**JUDGMENT of Mr. Justice Meenan delivered on the 6th day of March, 2020**

**Background**

1. The above named appellants applied to the Solicitors Disciplinary Tribunal on 29 January 2019, setting out three alleged grounds of misconduct: -
  - “(i) The respondent solicitor failed to officially notify the beneficiaries of her self-appointed position as administrator of her late mother’s estate;
  - (ii) She failed to respond to direct instructions by us, the beneficiaries;
  - (iii) She has abused her position as a solicitor bringing lawsuit against our brother with absolutely no evidence.”
2. On 2 August 2019, the Solicitors Disciplinary Tribunal delivered its decision. In a detailed consideration of the complaints made, the Tribunal were of the opinion that no *prima facie* case of misconduct on the part of the Solicitor had been established for an inquiry in respect of the allegations set out in the various affidavits of the appellants.
3. On 21 August 2019, pursuant to s. 7 of the Solicitors (Amendment) Act, 1960 (as substituted by s. 17 of the Solicitors (Amendment) Act, 1994 as amended by s. 9 of the Solicitors (Amendment) Act, 2002), the appellants appealed the decision of the Tribunal to this Court. The grounds of appeal were set out in an affidavit sworn by the appellants. They stated in the affidavit: -

“We are not happy with the decision of the Disciplinary Tribunal... We are appealing the decision to the High Court...”

Exhibited to the affidavit was a statement setting out the allegations being made. These allegations were that the Solicitor: -
  - (i) *“filed a vexatious and false claim” against the appellants’ brother;*
  - (ii) *“...was granted the position of administrator of our late mother’s estate without informing any of the beneficiaries”;*

- (iii) "...obtained this position illegally and is attempting to change her position from administrator to legal personal representative"; and
- (iv) "...is trying to claim the house as her own".

#### **Relevant legislation**

4. S.I. No. 701 of the 2004 Rules of the Superior Courts (Solicitors (Amendment) Act, 2002), 2004 provides, *inter alia*, that the court, in determining an appeal, shall read the papers that were before the Tribunal, the motion and affidavit grounding the appeal, the replying affidavit of the respondent Solicitor, in chambers, in the first instance, and shall then list the appeal for hearing in open court when submissions may be made by or on behalf of the appellants and the respondent and such appeal shall then be decided by the court, which may: -
  - (i) confirm the finding concerned, or
  - (ii) make a finding that there is *prima facie* case and require the tribunal to proceed to hold an inquiry, or
  - (iii) rescind or vary any finding of the tribunal.

#### **Consideration of appeal**

5. Prior to hearing this matter in open court, I considered the documentation that was before the Solicitors Disciplinary Tribunal, and the detailed decision of that Tribunal, dated 2 August 2019. I then considered the Notice of Motion and grounding affidavit for the appeal and the response of the respondent Solicitor involved.
6. At a hearing before me, I heard submissions both from the appellants and the respondent. In addition, I had the benefit of written submissions on the part of the Solicitor and a book of authorities.
7. In my view, the finding of the Solicitors Disciplinary Tribunal of 2 August 2019 should be confirmed. It is clear to me that the complaints made by the appellants against the respondent Solicitor should be resolved by civil proceedings and there is no evidence to support the allegations of misconduct made against the respondent Solicitor.
8. The appellants have failed to understand that the respondent Solicitor, as an adult child of the late Frances Kinsella deceased, was entitled, pursuant to the Rules of the Superior Courts, to apply for grant of letters of administration. It was open to the appellants to apply for a grant themselves, but they failed to do so. Further, it was also open to the appellants to seek to revoke the grant of the letters of administration, which they also failed to do.
9. As regards the proceedings entitled *Jean Connors v. Daniel Kinsella & Ors. (the High Court (2014 No. 10908 P))*, the proceedings referred to by the appellants herein, an application was brought to strike out and/or dismiss the proceedings on the grounds that they were frivolous and vexatious and/or an abuse of process. This application was refused in a judgment delivered by Simons J. on 21 June 2019 ([2019] IEHC 451).

**Conclusion**

10. By reason of the foregoing, I am satisfied that the decision of the Solicitors Disciplinary Tribunal was correct and in accordance with law, holding that there was no *prima facie* case of misconduct on the part of the respondent Solicitor. I therefore refuse the appeal.