

IN THE INDEPENDENT LEGAL SERVICES COMMISSION

COMPLAINT NO. 001 OF 2009

COMPLAINANT: ACTING CHIEF REGISTRAR

RESPONDENT : ABHAY KUMAR SINGH

Counsel for the Complainant: In person

Counsel for the Respondent: In person

Date of Hearing and Ruling: Friday, 23rd October 2009

VENUE : ILSC, LEVEL 5, CIVIC TOWERS, SUVA

EXTEMPORE RULING

This matter first came before the Tribunal for mention at 9.30am on 20th October 2009.

At that time the respondent Mr Abhay Singh was present before the tribunal and was represented by his counsel Mr Raza.

In the course of the proceedings on that day Mr Raza raised various issues and asked various questions of the Tribunal with respect to the procedure to be adopted for the hearing of complaints and whether there was any provision available for preliminary applications. He also raised as a potential issue the alleged conflict in the role of the Chief Registrar in investigating complaints pursuant to the Legal Practitioners Decree and then prosecuting those complaints before this Tribunal. He did not develop any of these arguments.

On the 20th October after a lengthy consideration of various potential hearing dates and the availability of both Mr Singh and his counsel, Mr Raza, the proceedings were set down for hearing at 10.00am on 3rd November 2009 and to continue on the 4th November 2009 if necessary.

On the afternoon of the 20th of October or more precisely 12.40pm on that day a letter was received by facsimile transmission from Mr Singh, that letter is dated 19th October 2009 but today Mr Singh acknowledges that the date is incorrect and that the letter was written and sent on 20th October 2009.

In that letter to Mr Singh and not his counsel seeks to have the hearing date vacated and seeks to have the matter proceed on 7th of December 2009 a date that was not suitable when the matter was called on 20th of October 2009.

The basis upon which he seeks to vacate the hearing date is detailed in the letter and might be summarised as he having collapsed in the course of a trial in Labasa and that he needs to go to Australia for medical treatment. In support of this issue two letters purportedly from his doctor in Brisbane indicate his inability to work between the 1st and 10th of October and also indicate that the results of the blood tests are available, but no more than that. He then details his inability to contact and subpoena various witnesses with respect to the second of the complaints being those relating to various tenancy agreements and further a delay in obtaining the transcript of civil proceedings. He then highlights the short period of time available to locate witnesses and prepare for trial.

It is of concern that none of these issues were raised when the matter came before the Tribunal at 9.30am on the 20th October. The proceedings have now come before the Tribunal today for determination of the application to vacate the hearing date.

Material has been placed before the Tribunal by way of submission that may be summarised in the points made in the letter to which I have referred.

There are four dominate complaints in the documents filed by the Chief Registrar with this Tribunal.

The first of those relates to the respondents conviction for perverting the course of justice. The second relates to tenancy agreements with respect to premises owned by Dr Kumar. The third relates to a failure to perform work in accordance with instructions and the fourth relating to a sales and purchases agreement.

From the submissions made today it appears that it is the second complaint, that is the complaint regarding the tenancy agreement with respect to Dr Kumar that is the basis of the application to vacate the hearing dates, apart from the medical condition.

I consider the first complaint to be very serious and that is not to diminish the seriousness of all the complaints. The substance of the first complaint arises in 2003 some six years ago. Mr Singh has informed the tribunal this morning of his intention or his desire to finalise all his matters that he has before courts in Fiji and it is then his intention to cease practising law and to look for other avenues such as academia and perhaps more importantly to reside with his wife and children in Australia. He has further informed the Tribunal today that he does no longer hold a practising certificate in Queensland or anywhere other than Fiji.

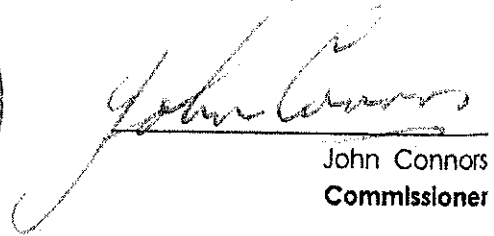
The issues with respect to vacating the allocated hearing date are predominately that it was the date accepted by the respondent in the presence of his senior counsel, and the seriousness of the substance of the complaints, the age of the substance of the complaints and the consequential public interest issues that arise from serious complaints of this nature. There is in my opinion a need for the matters to be resolved in a timely manner.

I am therefore of the opinion that on balance for the reasons detailed above that the matter should proceed on the hearing date previously set that is 3rd November 2009.

ORDERS:

1. The Application to vacate the hearing date is refused
2. The Hearing date of 3rd November and 4th November 2009 is confirmed.

Dated: 23 October, 2009



John Connors
Commissioner