

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO. 006/2011

BETWEEN: CHIEF REGISTRAR

Applicant

A N D: SITERI ADIDREU CEVALAWA

Respondent

Applicant : Ms V Lidise
Respondent : In Person

Date of Hearing : 5th December 2011
Date of Ruling : 5th December 2011

EXTEMPORE RULING ON SENTENCE

1. The Respondent has pleaded guilty to eight counts of unsatisfactory professional conduct contrary to Section 83(1)(a) of the Legal Practitioners Decree 2009.
2. The counts are particularized in the application filed before the Commission.

Count 1

Siteri Adidreu Cevalawa a legal practitioner, on the 4th day of March 2011, being employed as a Senior Legal Officer by Telecom Fiji Limited, appeared in the Suva High Court on behalf of the company in the matter between Mika Ravuiwasa v Telecom Fiji Limited, Digicel Fiji Limited and Native Land Trust Board HBC No. 415 of 2009 without a practicing certificate, which conduct was a contravention of the provisions of Section 52(1)(a) of the Legal Practitioners Decree 2009.

Count 2

Siteri Adidreu Cevalawa a legal practitioner, on the 14th day of March 2011, being employed as a Senior Legal Officer by Telecom Fiji Limited, appeared in the Suva High Court on behalf of the company in the matter between Asha Investments Limited v Native Land Trust Board and Telecom Fiji Limited HBC No. 310 of 2008 without a practicing certificate, which conduct was a contravention of the provisions of Section 52(1)(a) of the Legal Practitioners Decree 2009.

Count 3

Siteri Adidreu Cevalawa a legal practitioner, on the 2nd day of March 2011, being employed as a Senior Legal Officer by Telecom Fiji Limited, appeared in the Suva Employment Relations Tribunal on behalf of the company in the matter between Levi Niunitoga v Telecom Fiji Limited ERT No. 126 of 2010 without a practicing certificate, which conduct was a contravention of the provisions of Section 52(1)(a) of the Legal Practitioners Decree 2009.

Count 4

Siteri Adidreu Cevalawa a legal practitioner, on the 24th day of March 2011, being employed as a Senior Legal Officer by Telecom Fiji Limited, appeared in the Suva Employment Relations Tribunal on behalf of the company in the matter between Levi Niunitoga v Telecom Fiji Limited ERT No. 126 of 2010 without a practicing certificate, which conduct was a contravention of the provisions of Section 52(1)(a) of the Legal Practitioners Decree 2009.

Count 5

Siteri Adidreu Cevalawa a legal practitioner, on the 31st day of March 2011, being employed as a Senior Legal Officer by Telecom Fiji Limited, appeared in the Suva Employment Relations Tribunal on behalf of the company in the matter between Levi Niunitoga v Telecom Fiji Limited ERT No. 126 of 2010 without a practicing certificate, which conduct was a contravention of the provisions of Section 52(1)(a) of the Legal Practitioners Decree 2009.

Count 6

Siteri Adidreu Cevalawa a legal practitioner, on the 5th day of April 2011, being employed as a Senior Legal Officer by Telecom Fiji Limited, appeared in the Suva Employment Relations Tribunal on behalf of the company in the matter between Communications, Mining & General Workers Union v Telecom Fiji Limited & CEO of Telecom Fiji Limited ERT Misc No. 28 of 2011 without a practicing certificate, which conduct was a contravention of the provisions of Section 52(1)(a) of the Legal Practitioners Decree 2009.

Count 7

Siteri Adidreu Cevalawa a legal practitioner, on the 13th day of May 2011, being employed as a Senior Legal Officer by Telecom Fiji Limited, appeared in the Suva Employment Relations Tribunal on behalf of the company in the matter between Levi Niunitoga v Telecom Fiji Limited ERT No. 126 of 2010 without a practicing certificate, which conduct was a contravention of the provisions of Section 52(1)(a) of the Legal Practitioners Decree 2009.

Count 8

Siteri Adidreu Cevalawa a legal practitioner, on the 13th day of May 2011, being employed as a Senior Legal Officer by Telecom Fiji Limited, appeared in the Suva Employment Relations Tribunal on behalf of the company in the matter between Labour Officer (Joseph Waqanui) v Telecom Fiji Limited ERT WC No. 70 of 2011 without a practicing certificate, which conduct was a contravention of the provisions of Section 52(1)(a) of the Legal Practitioners Decree 2009.

BACKGROUND

3. The Respondent failed to apply to renew her practicing certificate as required, in February 2011.
4. An application was made in May of 2011 following which the Chief Registrar sought details from the Respondent as to whether she had appeared in any courts in the intervening period.
5. The Respondent replied and advised by letter dated 24th May 2011 that she had appeared and gave full particulars of those appearances by case name, file no, court, date and the nature of the appearances.
6. It is those admissions by the Respondent that lead to these proceedings before the Commission.
7. The Respondent has from the material filed at all times been open and frank about her failure to lodge the application for renewal and about her appearances before the courts and tribunals detailed in her letter.

SUBJECTIVE MATTERS

8. The Respondent submits that she has been a practitioner for 14 years.
9. That she has to date an unblemished record.
10. And importantly she has admitted these matters and been open and frank with the Chief Registrar's office with respect to them.
11. She says that she is remorseful and she apologizes to the Chief Registrar's office, this Commission and the profession at large.
12. She also says that she is a single parent with two children one at university and one at primary school.
13. Both of her children reside with her in Suva.

SUBMISSIONS

14. The Applicant refers the Commission to the decision of the Victorian Civil and Administrative Tribunal in **Legal Services Commissioner v Owens [2010] VCAT 1686** where a practitioner had not applied for a practicing certificate for five years and had previously been reprimanded eight times and fined once with respect to other unrelated disciplinary proceedings.
15. That practitioner was ultimately suspended from practice for a period of five years.
16. I see very little similarity between that matter and the matter before the Commission.
17. The Applicant highlights that the provisions of section 52 of the Legal Practitioners Decree creates a criminal offences for a person practicing without a practicing certificate.
18. The proceedings before this Commission are not criminal proceedings and are allegations of conduct contrary to section 83(1)(a) of the Legal Practitioners Decree that is conduct that amounts to unsatisfactory professional conduct.
19. It is submitted that it would be appropriate for the Commission to impose a fine of \$5,000 on the Respondent and it would be appropriate for the Respondent not to be entitled to practice until the next practice year i.e. the 1st of March 2012.
20. These submissions are made, as I understand them, in the context that there needs to be a significant deterrent in any penalty that is imposed.

CONCLUSION

21. There can be no doubt that for a legal practitioner to practice without a practicing certificate flies in the face of the whole principle of the Legal Practitioners legislation and accordingly impacts on the community.
22. The dominant purpose of disciplinary proceeding is to protect the community as opposed to punishing the legal practitioner or other professional.
23. I accept that in this instance the failure of the Respondent to lodge her application for renewal was the result of negligence, carelessness, dilatory behavior and was not a deliberate act to practice without a practicing certificate.

24. There is on the material placed before me no benefit to her in not having a practicing certificate as the fee is paid by her employer.
25. She does not receive fees for the particular services but is in receipt of a salary.
26. There can be no doubt that breaches such as this warrant an appropriate penalty that sends an appropriate message to the profession.
27. In considering what is an appropriate penalty in the circumstances I find myself significantly hampered by the fact that the Chief Registrar has seen fit to effectively suspend the Respondent's practicing certificate for a period of seven months. That in is a significant penalty and a significant deterrent all be it, in my opinion, an inappropriate way of doing it.
28. For this Commission now to impose a fine of say \$5,000 or a period of suspension would seem disproportionate to the breach that has occurred in the light of the suspension that has already been imposed on the Respondent.
29. In imposing a penalty I am obliged to take into account the period of suspension and I am in my opinion obliged to take into account that period of suspension in the same way the court would in imposing a custodial sentence on a person not granted bail pending trial.
30. For the reasons stated I am of the opinion that it is not appropriate for the Respondent to be given any further period of suspension taking account of the period of seven months that she has served to date.
31. I consider the most appropriate penalty in circumstance such as this to be a monetary penalty but again I find myself constrained in imposing a monetary penalty of any magnitude in the light of the penalty that has been served whilst this matter has been waiting to come on for hearing that is suspension for a period of seven months.
32. In attempting to balance the necessary deterrent against the punishment already imposed I consider a much lesser monetary penalty to be appropriate in the circumstances.

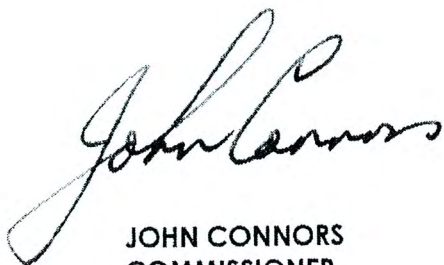
INTERLOCUTORY ORDER

33. In this matter I had previously made an interlocutory order and subsequently amended it as its term seems to be unclear to the Chief Registrar.

34. The purpose of that interlocutory order was to maintain the status quo pending the determination of this matter particularly as the Commission does not sit on a daily basis. The order was completely ineffectual and as this matter is now finalized before the Commission the order of the 7th October 2011 which was amended on the 18th October 2011 shall be vacated.

ORDERS

1. The Respondent is publicly reprimanded.
2. The Respondent is fined the sum of \$1,000 to be paid the Commission within 28 days.
3. The interlocutory order of the 7th of October 2011 amended on the 18th of October 2011 is vacated.


JOHN CONNORS
COMMISSIONER



5 DECEMBER 2011