

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO. 012 OF 2013

BETWEEN :

CHIEF REGISTRAR

Applicant

AND:

KAFOA MUAROR

Respondent

Applicant : Ms. L Vateitei

Respondent : In Person

Dates of Hearing : 13th August 2013

Date of Judgment : 20th August 2013

JUDGMENT

1. The Chief Registrar has made one allegation of Professional Misconduct against the Respondent, which complaint reads as follows:

"Mr Kafoa Muaror a legal practitioner, failed to respond to a complaint lodged by one Taitusi Nawake within the time stipulated in the notice issued by the Chief Registrar pursuant to section 105 of the Legal Practitioners Decree and thereafter failed to respond to a subsequent reminder notice issued by the Chief Registrar pursuant to section 108(1) of the Legal Practitioners Decree which conduct was a contravention of section 108(2) of the Legal Practitioner Decree 2009 and was an act of professional misconduct."

2. At the first hearing of this matter the Respondent accepted the allegation (*i.e. that he didn't reply*) and apologised profusely for his failure. He requested another hearing date to be able to mitigate in his own behalf.

3. On the 13th of August the Respondent explained that when the first request was sent by the Chief Registrar on the 24th of April 2013, it was received by his wife who was at the time the Office Administrator. He can't remember ever having seen it. He surmises that it was probably "just left on a shelf". The reminder letter dated 10th of June is evidenced to have been sent by registered post on the 14th of June, but there is no evidence of the date it was received. The Respondent tells me that he left the country on the 16th of June to attend a conference in the U.S.A. and did not return until the middle of July when notice of this Application was served on him along with notice of proceedings to close his office for operating a firm without a practising certificate.

4. The Commission has no difficulty in accepting the acquiescence of the Respondent to the charge that he failed to respond to the section 105 notice issued by the Chief registrar on 26th of April, 2013. Whether his wife notified him or not, proof of receipt of the notice in the firm places an onus on him as sole practitioner to respond to the notice.

5. The difficulty that arises with this complaint is however that the misconduct complained of

is a failure to respond to the reminder of 28th April 2013, and there is a statutory defence to that offence in that the practitioner may furnish a "reasonable explanation for such failure".

The offence under section 108(2) is a failure to reply to the reminder, not a failure to reply to the first notice, and the "reasonable excuse" defence applies obviously to that failure accordingly. What a practitioner may say about his circumstances when the initial section 105 notice is received is irrelevant.

6. The Respondent has provided a reasonable excuse for not replying to the reminder, especially given that there is no evidence provided by the Registrar as to when the reminder was received by the firm, if at all. In any event the reminder was sent to him at the same time that his firm was being in the process of being closed down, because he was operating that firm without holding a practising Certificate.

7. In the circumstances, this Commission cannot find that the allegation has been established and even if it were, the making of such a complaint when the Registrar was taking active and drastic steps to close his firm down for other reasons is oppressive.

**JUSTICE PAUL MADIGAN
COMMISSIONER**

20 AUGUST 2013