

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO. 005 OF 2013

BETWEEN:

CHIEF REGISTRAR

Applicant

AND:

VILIMONE VOSAROGO

Respondent

Applicant : Mr. A Chand

Respondent : Mr. D Toganivalu [20th June 2013]

No Appearance [13th August 2013]

Dates of Hearing : 20th June 2013 and 13th August 2013

Date of Judgment : 20th August 2013

JUDGMENT

1. The Chief Registrar has proffered an allegation of Unsatisfactory Professional Conduct against the Respondent.

The allegation reads:

"Vilimone Vosarogo a Legal Practitioner, of Mamlakah Lawyers on the 2nd day of March 2012, without being a holder of a valid practising certificate instructed LAISA LAGILEVU of LAGILEVU LAW who also was not a holder of a valid practising certificate, to appear in the Suva High Court on behalf of the Accused in the matter between State v Epeli Ratabacaca Criminal Matter No. 252 of 2011 which conduct was a contravention of the provisions of Section 52(1) (b) of the Legal Practitioners Decree 2009 which conduct was an act of unsatisfactory professional conduct."

2. Section 52(1) of the Legal Practitioners' Decree reads:

"52.—(1) A person shall not, unless that person is the holder of a current practising certificate—

(a) practice or act as a legal practitioner of the Fiji Islands or as a Notary Public;

(b) pretend to be entitled to practise as a legal practitioner of the Fiji Islands or as a

Notary Public; or

(c) draw or prepare any instrument relating to any real or personal estate or

Property or any legal proceeding or grant of probate or letters of administration, whether as agent for any person or otherwise, unless he or she proves that the act was not done for or in expectation of fee, gain or reward, either direct or indirect."

3. At the first mention of this matter on the 20th of June 2013, Counsel for the practitioner told the Commission that his client disputed the allegation on the basis that he never "pretended" anything. When questioned on the proper interpretation of the word "pretended", an adjournment was granted for Counsel to obtain advice on the proper interpretation of the word, before proceeding to full hearing.
4. On the 12th August 2013, the date given for adjournment, neither the practitioner nor his counsel appeared and no advice was given to the Commission to explain the absence. Pursuant to section 112 (2) and (4) of the Decree the Commission then proceeded to determine the reference in the practitioner's absence.
5. There is no doubt that on the 2nd of March the practitioner was without a practising certificate. There is no doubt that on that date he instructed Ms. Laisa Lagilevu of Lagilevu Law to appear in the Suva High Court in the case of *State v Epeli Ratabacaca (HAC 252 of 2011)* . There is no doubt that Ms Lagilevu did appear in accordance with those instructions. (There is no doubt that at the time Ms Lagilevu was also without a practising certificate).
6. With all of those foundation facts being validated then it is for this Commission to determine whether the conduct of the practitioner was professionally unsatisfactory in terms of section 52 (1)(b) of the Decree.
7. Chambers English Dictionary defines "pretend" as to make believe or to feign, as well as to "imply, assert or to claim falsely "and it is clearly this latter definition that the section would found its validity on, and not to be feigning or deceiving as the practitioner originally submitted through his counsel.
8. When a practitioner instructs a fellow practitioner, he/she is making the implied representation or "pretending" that he or she is competent to give these instructions, that competency extending to his/her proper standing within the profession. If the instructing solicitor is not licensed, no matter for what reason, then he/she does not have the capacity to so instruct.
9. In the instant case, the counsel being instructed did not herself have a practising certificate. That is an interesting but irrelevant feature of this complaint. Ms Lagilevu's irregular status at the time has already been a matter dealt with by the Commission (*Matter No 001 of 2012*) and as a consequence she was publicly reprimanded and fined.
10. The Respondent submits that he was completely unaware of this deficiency when giving the instructions to Ms. Lagilevu, but that is not the point. It is not **her** professional competency that is in question here, but **his**.
11. It is the finding of this Commission that, to instruct another practitioner to act for him/her is an act of professional practice, and to do so without being licensed, is *per se* unsatisfactory professional conduct. That being so, this allegation is **established**.
12. It is very common in early March, which is the start of the practitioners' annual licensing period, for many practitioners to find themselves without a practising Certificate because he/she has not furnished all of the requisite documentation to the Registrar. In these circumstances it must be very tempting for a busy practitioner, in the Criminal Courts especially, mindful of his/her incapacity to appear him/herself, to instruct another to appear, just to keep the practice "going" until the certificate arrives. In the light of the Commission's finding (*supra*), this conduct cannot be condoned; it being unsatisfactory professional conduct.

PENALTIES

13. Being unsatisfactory professional conduct, rather than professional misconduct, there is no question of the practitioner's practising certificate being at risk of being suspended, His conduct must be viewed and punished in correlation with the penalty assessed on Ms Lagilevu, the Counsel the practitioner instructed; his conduct being part of the same transaction.

14. Ms Lagilevu was publicly reprimanded and being a very junior practitioner was fined the sum of \$1000.

15. There are nevertheless aggravating features pertaining to this allegation compared with that made against Ms. Lagilevu.

- This practitioner is a senior practitioner with many years' call and has at one time held a post of high public importance as Director of Legal Aid.
- The practitioner showed discourtesy to and disrespect to this Commission by not appearing with his Counsel on the date fixed for the hearing of this allegation. By doing so he also deprived himself of his right to address the Commission in mitigation of penalty.

ORDERS

1. The practitioner is publicly reprimanded.

2. He is fined the sum of \$2,500, to be paid to the Commission by 30th September 2013, failing which his practising certificate will be suspended for a period of three months.

3. He is to pay wasted costs of \$750 to the Commission for his un-excused failure to attend the hearing of this allegation on 12th of August 2013, such costs also to be paid by the same date and with the same default penalty as for the fine.

**20 AUGUST 2013
JUSTICE PAUL MADIGAN
COMMISSIONER**

ADDENDUM

1. Since arriving at this judgment with its attendant orders and before it has been handed down, the Commission received a letter from the Respondent in which he apologises profusely for his failure to attend the hearing of the 12th of August. He states that he had mis-recorded the date, thinking it was the 15th August and because he had been bedridden with flu for the preceding week he was unable to take steps to confirm the date of hearing. He had no intention to be disrespectful to the Commission nor should he be seen to be nonchalant.

2. With those excuses, he asks for a re-opening of the hearing in order to advance these pleas before the Commission.

3. Without fixing another hearing, the Commission accepts these timely excuses and notes the Respondent's remorse for his failure to attend but would wonder at his ability to manage his practice if he cannot indeed manage his own affairs.
4. The fact is that the Respondent did not appear for a hearing for which he had good notice. The hearing was quite properly heard in his absence and he still bears the self-imposed disadvantage of not having been able to mitigate his penalty.
5. In the circumstances however, and in acknowledgement that the Respondent was not intentionally showing disrespect to these proceedings, the wasted costs order (*supra*) is rescinded.

**JUSTICE PAUL MADIGAN
COMMISSIONER**

20 AUGUST 2013