

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO. 009 of 2009

BETWEEN :

CHIEF REGISTRAR
Applicant

AND:

IFTAKHAR IQBAL AHMAD KHAN
Respondent

Applicant : Ms L Vateitei
Respondent : Mr G O'Driscoll

Date of Hearing : 26th November 2013
Date of Judgment : 11th December 2013

RULING

1. By way of Notice of Motion and accompanying affidavit Respondent ("practitioner") applies that complaints against him already heard be now heard *de novo* before another Commissioner on the basis of what he claims to be a highly prejudicial written submission made to the Commission by the Chief Registrar's counsel.
2. The mischief claimed in essence is this: after hearing of the two complaints against the practitioner, this Commission asked for written submissions ahead of judgment and assessment of penalty (if appropriate).
3. The practitioner did not attend the hearing of the complaints, claiming to be in need of medical attention on the basis of a highly dubious medical report [see Extempore Ruling, dated 11th of November 2013].
4. Not having attended, he then sought to file submissions ahead of judgment, submissions which were attempting to provide evidence and mitigation on the charges that had been heard. He even had the audacity to file a "no case" submission after the hearing.
5. At the hearing there were originally four charges that the Registrar intended to proceed on but discussion of two of them prior to hearing led to them being withdrawn. One of those charges concerned the practitioner having been struck off in Queensland and whether that professional fact had any impact on his propriety as a practitioner in Fiji.
6. The Chief Registrar filed submissions as ordered by the Commission and in these

submissions counsel asked the Commission to consider the fact that the practitioner was not facing discipline proceedings for the first time, in that in the past he had his practising certificate as a solicitor suspended and had been struck off by the Queensland Barristers' Board.

7. In written submissions filed by the practitioner on the within application, he relies on case law that discusses bad character being adduced in evidence before a jury. He says that bringing the matter to the attention of the Commission before judgment was given meant that there was a "substantial miscarriage of justice" and that it was "tantamount to mistrial".

DISCUSSION

8. It is ironical that the practitioner who has been assiduously avoiding having these complaints heard since they were filed on 1st of December 2009, would now take such a great interest in what was said and what transpired at a hearing that proceeded in his absence.

9. His reliance on the "bad character" case law is misconceived. He would be able to make the point he does if the Commission was unaware of his previous professional disciplinary history. But the Commission was well aware of the fact that he had been struck off in Queensland in 2001, and aware through two channels;

- The judgment of the Barristers' Board striking him off is a matter of public record;
- The striking off has been the subject of a complaint by the Registrar since 2009 and documents relating to that complaint have been in the bundle with the Commission for all to see since the complaint was first filed.

10. This is not a case of prejudicial information being brought before the Commission for the first time and counsel for the Registrar is not being improper in asking the Commission to "consider" it (no more than that) if it were to assess penalties.

11. I do not consider that the practitioner has made out a case of potential prejudice by the counsel for the Registrar making the submission it did, however I now go further to deal with abuse of process.

ABUSE OF PROCESS

12. Since complaints were first laid against the practitioner on 1st of December 2009, he has made multiple applications to both Commissioner Connors and to me for recusal (2 to Connors, now 2 to me), leave to appeal recusal ruling, applications to vacate trial dates etc, none of the applications being successful. Now that 2 of the complaints have been heard (in his unauthorised absence) he now seeks to attack counsels submissions on the hearing and have me yet again disqualify myself.

13. The actions of the practitioner which would in the ordinary course of things be quite within his rights, they are now becoming vexatious and an abuse of process. Whilst the practitioner has these rights to ensure due process, the Commission must also protect the rights

of the Chief Registrar, as regulator of the profession, those rights including having complaints against practitioners heard in good and proper time.

14. Commissioner Connors dealt with exactly the same issues in his ruling in Chief Registrar v Iqbal Khan (21st June 2010) on a second application to Connors C to have him recuse himself. Even then finding that the application was an abuse of process, Connors C referred to the High Court of Australia case of Jeffery & Katauskas Pty Limited and SST Consulting Pty Ltd & Ors [2009] HCA where it was said:

"The power of each Court over its own process is unlimited; it is a power incident to all Courts, inferior as well as superior; were it not so, the Court would be obliged to sit still and see its own process abused for the purpose of injustice."

15. The Registrar having every right to have his complaints determined by proper hearings in this Commission is being denied that right in respect of the proceedings against this practitioner by the practitioner's persistent interlocutory actions and his reluctance to appear at any trial date set.

16. This present application has no merit substantially and in addition I find it to be abuse of process.

17. The application is refused and the Notice of Motion dismissed.

**JUSTICE PAUL MADIGAN
COMMISSIONER**

11 DECEMBER 2013