

**IN THE INDEPENDENT  
LEGAL SERVICES COMMISSION**

NO. 006 OF 2012

**BETWEEN** : **CHIEF REGISTRAR** Applicant  
**AND** : **KINI MARAWAI** 1<sup>st</sup> Respondent  
**MARAWAI LAW** 2<sup>nd</sup> Respondent

Applicant : Mr. A Chand  
Respondent : In Person

Dates of Hearing : 11<sup>th</sup> October 2012, 12<sup>th</sup> April 2013 and 30<sup>th</sup> April 2013  
Date of Judgment : 15<sup>th</sup> May 2013

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**JUDGMENT and SENTENCE**

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1. The 1<sup>st</sup> Respondent in person is charged with three counts of professional misconduct contrary to section 83(1)(a) of the Legal Practitioners Decree in that he instructed another lawyer to appear in the High Court when he did not have a practising certificate and therefore had no authority to instruct, and one count of himself appearing in the High Court without practising certificate. The 2<sup>nd</sup> Respondent (the 1<sup>st</sup> Respondent as sole practitioner of a law firm) is charged with one count of professional misconduct again contrary to section 83(1)(a) in that the firm did not establish and maintain a trust account which was a requirement of the Trust Accounts Act 1996.
2. The charges read as follows:

**COUNT 1**

***Professional Misconduct: Contrary to Section 83(1)(a) of the Legal Practitioners Decree 2009***

***Particulars***

***Kini Marawai a legal practitioner, around the 12<sup>th</sup> of March 2012, instructed Mr Ami Kohli, a legal practitioner and partner of Messrs Kohli & Singh, to appear in the Labasa***

High Court on the 12<sup>th</sup> of March 2012 before the Honorable Justice Goundar on behalf of the accused persons in the matter between State v Puratake Tapoge, Kitlone Veskula and Filomena Uluviti Criminal Case No HAC 048 of 2011 when the said Mr Marawai did not possess a current practising certificate, which conduct was a contravention of the provisions of Section 52(1)(a) & (b) of the Legal Practitioners Decree 2009 and was an act of unsatisfactory professional conduct.

#### COUNT 2

Professional Misconduct: Contrary to Section 83(1)(a) of the Legal Practitioners Decree 2009

#### Particulars

Kini Marawai a legal practitioner, around the 30<sup>th</sup> of March 2012, instructed Mr Ami Kohli, a legal practitioner and partner of Messrs Kohli & Singh, to appear in the Labasa High Court on the 30<sup>th</sup> of March 2012 before the Honorable Justice Madigan on behalf of the accused persons in the matter between State v Puratake Tapoge, Kitlone Veskula and Filomena Uluviti Criminal Case No HAC 048 of 2011 when the said Mr Marawai did not possess a current practising certificate, which conduct was a contravention of the provisions of Section 52(1)(a) & (b) of the Legal Practitioners Decree 2009 and was an act of unsatisfactory professional conduct.

#### COUNT 3

Unsatisfactory Professional Conduct: Contrary to Section 83(1)(a) of the Legal Practitioners Decree 2009

#### Particulars

Kini Marawai a legal practitioner, on the 17<sup>th</sup> day of May 2012, being sole proprietor of Marawai Law, appeared in the Labasa High Court before the Honorable Justice Goundar on behalf of the accused persons in the matter between State v Puratake Tapoge, Kitlone Veskula and Filomena Uluviti Criminal Case No HAC 048 of 2011 without a practising certificate, which conduct was a contravention of the provisions of Section 52(1)(a) of the Legal Practitioners Decree 2009 and was an act of unsatisfactory professional conduct.

#### COUNT 4

Professional Misconduct: Contrary to Section 83(1)(a) of the Legal Practitioners Decree 2009

#### Particulars

Kini Marawai a legal practitioner, around the 17<sup>th</sup> of July 2012, instructed Mr J Singh, a legal practitioner, to appear in the Labasa High Court on the 17<sup>th</sup> of July 2012 before the Honorable Justice Madigan on behalf of the accused persons in the matter between State v Puratake Tapoge, Kitlone Veskula and Filomena Uluviti Criminal Case No HAC 048 of 2011 when the said Mr Marawai did not possess a current practising certificate, which conduct was a contravention of the provisions of Section

**52(1)(a) & (b) of the Legal Practitioners Decree 2009 and was an act of unsatisfactory professional conduct.**

**COUNT 5**

**Professional Misconduct: Contrary to Section 83(1)(h) of the Legal Practitioners Decree 2009**

**Kini Marawai a legal practitioner, between July 2009 to April 2012, being the sole practitioner of Marawai Law, failed to establish and keep a trust account which conduct was a contravention of Section 3a of the Trust Account Act 1996 and was an act of professional misconduct.**

3. After many adjournments because of ill health of the Respondent, on the 30<sup>th</sup> of April 2013 before the Commission, the practitioner entered pleas of guilty to all five charges. He handed up written submissions in mitigation which he spoke to orally. The Registrar has filed written submissions in reply.
4. The allegations are straight forward and the particulars of the individual counts set out enough facts in order that a proper assessment of the culpability of the Respondent be made.
5. The Respondent had previously appeared before this Commission as a co-Respondent with another practitioner in Matter No 002 of 2012 where two allegations of unsatisfactory professional conduct were found established against him. The facts of that matter were that the Respondent had taken instructions for and prepared an affidavit, and then witnessed the affidavit, in a case of making false allegations against a fellow practitioner; a case that was later to become fiercely fought and very much in the public domain.
6. The practitioner submits that instructions he gave to others to appear in Labasa, and indeed his own appearance on the 7<sup>th</sup> May 2012 were for a case in which he was representing relatives *pro bono*. Appearing *pro bono* can be a defence to a charge of drafting documents when not being the holder of a current practising certificate (*Section 52(1)(c) of the Legal Practitioners Decree*) but Mr Marawai is not charged with that, his charges relating to instructing others and appearing. Both acts were done without a practising certificate and as this Commission said in **Laisa Lagilevu** [Matter No 001 of 2012] they are offences of strict liability and the Registrar's complaint(s) is/are established as soon it is shown that there is no certificate and the practitioner either instructed or appeared.
7. The Respondent claims to be very remorseful and to have fallen into momentary lapse, yet the correspondence between him and the then Registrar demonstrates that he knew very well that he did not possess a practising certificate for 2012. On the 2<sup>nd</sup> day of May 2012 he sent an email to the Legal Practitioners Unit in which he confirmed that he was awaiting the issuance of his 2012 practising certificate.

8. The Respondent's 2011 practising certificate expired on the 29<sup>th</sup> of February 2012 and he never reapplied until 16<sup>th</sup> of April 2012. On the 15<sup>th</sup> of May 2012 he was granted a 2 month temporary practising certificate which expired on 15<sup>th</sup> of July 2012.
9. As a result, the Respondent's instructions to Mr Kohli to appear on 12<sup>th</sup> of March 2012 and 30<sup>th</sup> of March 2012 were a flagrant disregard for the sanctions of the Chief Registrar and his actions were more than a momentary lapse but an attack on the Chief Registrar's authority over the profession.
10. The same can be said for his own appearance on the 7<sup>th</sup> of May 2012 in Labasa, five days after he told Ms Vateitei of the Legal Practitioners Unit that he was awaiting his practising certificate. Five days is not long enough to "forget" that one doesn't have a licence to practice.
11. When the Respondent instructed Mr J Singh to appear in Labasa on the 17<sup>th</sup> of July 2012 it was 2 days after his temporary practising certificate had expired and the knowledge of that very recent and significant event in his professional life must have been uppermost in his mind.
12. This Commission finds that the offending is blatant and cynical and that there is no room for the Respondent's claim to be "careless and negligent."
13. The trust account charge is also made out and established by the practitioner's plea of guilty with reference to the correspondence in the prosecution file.
14. The Respondent was first alerted to the necessity of a trust account and to the necessity to furnish details of that account to the Chief Registrar, by letter from the then Chief Registrar on the 26<sup>th</sup> of July 2010.
15. From that date to present, and despite several written reminders, the Respondent never did open a trust account and furnish details of it to the Chief Registrar.
16. The culpability of the Respondent with regard to his trust account failure is somewhat obscured by the actions of the then Acting Chief Registrar who despite this failure on his part saw fit to nevertheless issue him a practising certificate on the 15<sup>th</sup> of March 2011, for the practising year 2011, and again on the 15<sup>th</sup> of July 2012 for an interim period of 2 months. No reason is given to this Commission why the Chief Registrar would see fit to do that, when knowing he was in default of an important provision of the Legal Practitioners Decree. Such action must be of high mitigating value to the Respondent.

**PENALTIES**

17. The Respondent at the mitigation hearing of these matters told the Commission that he has had 13 to 14 years of professional practice before being suspended as a result of the judgment in Matter No 002 of 2012. He claims to have no "burning desire" to resume practice and has unfortunately become very ill and unable to work in any field, let alone the law. He has as a result become penurious and unable to pay a large fine.
18. This Commission regards the instruction to others to appear and indeed the appearance, all without being certified, as very serious misconduct. While some leniency may be offered to practitioners of very junior call, senior practitioners have no excuse and cannot come before this Commission claiming to be ignorant of their professional ethical responsibilities. The practitioners asks that any penalty be made concurrent with the term of suspension that he is already subject to, however these blatant and insolent offences, which show a total disregard for authority are separate and distinct from the offending punished earlier in the previous case.
19. Were it not for the Registrar seeming to condone the practitioner's breach of his duty to satisfy conditions for a proper trust account, the penalties for these offences to which he has entered an early guilty plea would be very severe indeed. As counsel for the Registrar submits, offending with regard to trust account matters is venturing on to a "sacred area" in terms of professional misconduct and as a general rule such offending will attract very strict penalties.
20. In **Haroon Ali Shah** [Matter No 007 of 2011] the Commission cited with approval the dicta in **Legal Practitioners Conduct Board v Bayes** [2001] SASC 319, where the court in the Supreme Court of South Australia, said:

*"All practitioners must take very seriously the obligations imposed upon them with respect to trust accounts. Maintaining a trust account is a basic professional obligation in relation to the charging of clients and accounting to them."*
21. Were it not for the seemingly inexplicable actions of the Registrar in issuing practising certificates when she knew full well of the practitioner's lack of compliance, then the penalty against this practitioner would have been permanent removal from the profession by being struck off: however he must have the mitigation benefit of the previous Registrar's actions.
22. The Commission assesses a penalty against the Respondent that will encompass the offending in respect of all five counts to which he has pleaded guilty. It's noted that this plea was at an early stage of proceedings and that he has co-operated with this enquiry to the fullest extent.

**ORDERS**

1. The Respondent is to be suspended from practice for a period of three years. Those years are to run consecutively to the period of suspension he is already undergoing. This means that the Respondent can not apply for a practising certificate to practice until 1<sup>st</sup> of March 2019.
2. The Respondent is fined the sum of \$1,000 to be paid by 30<sup>th</sup> June 2013.



JUSTICE PAUL MADIGAN  
COMMISSIONER



15 MAY 2013