

**IN THE INDEPENDENT  
LEGAL SERVICES COMMISSION**

NO. 010 of 2013

BETWEEN:

**CHIEF REGISTRAR**

Applicant

AND:

**AMRIT SEN**

Respondent

**Applicant :** Ms. L. Vateitei

**Respondent :** Mr. G. O' Driscoll

**Dates of Hearing:** 15th July, 13th August and 29th October 2013

**Date of Judgment:** 6th November 2013

**JUDGMENT**

1. The respondent ("the practitioner") was charged by the Applicant with the following two offences:

***COUNT 1***

***"Mr Amrit Sen, a Legal Practitioner, on the 10th May, 2011 while appearing for the matter State v Hari Lal Junior, attacked the reputation of the prosecutor without a good cause by stating "you tell lies to the court and your mouth stinks, nobody wants to sit near you", which conduct was a contravention of Rule 3.5 of the Rules of Professional Conduct and Practice and was an act of Professional Misconduct."***

***COUNT 2***

***"Mr Amrit Sen, a Legal Practitioner, on 10th May 2011 while appearing for the matter State v Hari Lal Junior, showed discourtesy to the court by raising his voice to an unacceptable level and by attacking the reputation of the Prosecutor in the presence of the Magistrate which conduct was a contravention of Rule 3.2(i) of the Rules of Professional Conduct and Practice and was an act of Professional Misconduct."***

2. To these counts the practitioner entered a plea of not guilty and the matter proceeded to hearing on the 29th October.

3. In the case for the Registrar, two witnesses were called. They both being in Labasa and unable to travel, they gave evidence by "Skype", a computer generated mutually visual and audio tool. The complainant, a Mr. Khalid Hassan (PW1) took oath on the Koran and said that he was at one time a Police Prosecutor in the Magistrates' Court at Labasa and at Savusavu, Vanua Levu. He had been a Police Officer for 22 years.

4. On the 11th April 2012, PW1 was at the Bar table in the Savusavu Magistrates' Court with the practitioner. The practitioner threatened him by saying: "watch out; your days are near". The practitioner added that he (PW1) was a liar and told lies in Court, his mouth stinks and nobody wants to sit next to him. When saying these things the practitioner was seated to his immediate left at the Bar table. The learned Magistrate was sitting on the bench before them. PW1 said he immediately stood up and told the Magistrate what the practitioner had said to him. He told the Magistrate that he was threatened and called a liar. The witness said that the practitioner immediately stood up and told the Magistrate in a very loud voice: "stinking mouth - I said it. No-one wants to sit next to him. . PW1 said he felt threatened and embarrassed, because members of the public were present. The Court Room was full.

5. The witness continued by making references to the practitioner's normal Court habits which were both derogatory and irrelevant to these charges. In cross-examination he admitted that he had been suspended from the Police Force for an alleged offence of annoying a female. That matter has yet to be determined. He also admitted that he was the Respondent in a civil case where a complaint had been lodged by the practitioner - a case alleging violence on Hassan's part to a client of the practitioner.

6. Jale Waromauriano (PW2) was at the time a clerk of Court in Savusavu. He recalls being in Court on the 12th April 2012 for a traffic case. The practitioner was acting for the defendant and Cpl. Hassan was appearing for the State. Before Court started he saw the practitioner mumbling something to Cpl Hassan but he couldn't hear what was being said. As soon as the Magistrate came in Cpl Hassan stood up and told the Magistrate that the practitioner had been threatening him saying that his day is near and he would be reporting him in writing. The practitioner then stood up and tried to justify himself loudly in Court. He protested loudly that he couldn't stand sitting next to him with his bad breath. The practitioner said that he is not fit to be a prosecutor and that he would complain in writing. Thereupon Cpl Hassan asked if he could make a complaint and the Court assured him that he could.

7. The practitioner gave sworn evidence in his own defence. He said that he had had many "issues" with Prosecutor Hassan. On the day in question there were 4 people seated at the small bar table in a small court room. He and Cpl Hassan were in the middle with the practitioner being to the immediate left of Hassan. Lawyer Mr. Lomaloma was seated just behind. Sen said that before the Magistrate came in Cpl. Hassan was "talking to my face". The practitioner told him that he had bad breath. It was merely by way of giving friendly advice. Hassan then started spitting and the practitioner said "put your face away; you have bad breath."

8. He said nothing else apart from that. However, because Hassan had spoken inappropriately to Sen's client, Sen told him that his conduct was unbecoming for a prosecutor. The practitioner saw the Magistrate writing in the court record. The practitioner testified that he never said "he tells lies" or that he has a "stinky" breath, and Hassan never complained about that at the time. He claims that the complainant Hassan has fabricated these matters after the practitioner had made a complaint about his general performance to the Police. The whole incident in court (on the 12th April) would not have lasted more than a minute. There was no ill-will when he spoke to Hassan and there was no discourtesy to the bench - the Magistrate never expressed any opinion about the matter, nor did he (Magistrate) ask for an apology or report discourtesy.

9. The practitioner called a witness to testify on his behalf. He was Penjamini Lomaloma, a Northern practitioner in private practice. He gave sworn evidence that he was a Magistrate from 2006 to 2009 before establishing a practice in Labasa. He was familiar with both Hassan and the practitioner because he had seen them in Court almost on a daily basis.

10. On the 12th April 2011, Lomaloma was in the Savusavu Magistrates' Court sitting behind Hassan and the practitioner who were in front of him at the small main Bar Table. He was within 2 feet of them. When the witness arrived in Court he saw Hassan and the practitioner having a discussion. Their faces were about 2 feet apart. Hassan was facing Sen and Sen was telling him to get his face away because he had bad breath. The witness saw spittle coming from Hassan's mouth; in fact some landed on Lomaloma's knee. Both gentlemen were talking in a loud voice - the discussion was "vigorous" but not aggressive. When the Magistrate came in Hassan complained to him that Sen had just said his breath was bad. The Magistrate didn't seem to think it was serious enough to take further but told Hassan that if he wanted to make a formal complaint he could. Lomaloma never heard words to the effect that Hassan was a "liar". Mr Sen explained himself to the Magistrate which the witness said he did so in his customary loud voice.

## **DISCUSSION**

11. The Commission is saddened that this most unseemly petty squabble between a practitioner and a Police prosecutor should be brought before it for determination. There are no doubt many other more serious allegations against practitioners awaiting hearing and determination without taking the time and expense to prosecute this matter which is trivial and embarrassing to all parties involved (including this Commission).

12. Even taken at its lowest, on the evidence of the two Solicitors involved, it was an unprofessional, demeaning and petty exchange in front of the general public and neither the practitioner, nor the Police Officer should have let it happen nor does it reflect well on either of them.

13. The notes of the Magistrate recorded at the time disclose that Hassan told him that Sen had threatened him with the words "your day is near" and that the practitioner informed the Court that Hassan's conduct was unbecoming of a prosecutor and that it was unbearable to sit next to him because of his bad breath. The Magistrate noted that the practitioner informed him of these words being "very loud and aggressive and raising his voice to an unacceptable level". There was no note of Hassan being called a liar or that his breath was "stinky" as alleged in the Count.

14. Papers before the Commission show that there is a great deal of background hostility between the practitioner and Cpl. Hassan and there is complaint and counter complaint emanating from each side. That a practitioner might descend into such an acrimonious paper war with and about a Police Officer is shameful, professionally degrading and arrogant. I must decide this matter however on the charges laid and on the evidence placed before me.

15. As Counsel for the practitioner submits, the court record is the definitive record of what happened in Court that day. The charges laid specify the date of the incident to be 10th May 2011 but the Court Record and the Witnesses all claim that the incident occurred on the 12th April 2011. This is a sloppy error on the part of the prosecution but it does nothing to defeat the charges. All are agreed that the relevant date is in fact the 12th April. The Magistrate has recorded the words "your day is near", but these words are not the subject of any allegation in the charges. He has not recorded Hassan as complaining that the practitioner said he "tell(s) lies in Court and your mouth stinks" which are the words claimed in the first count. Nor did Mr. Lomaloma, a respected Northern practitioner, ever hear these words.

16. As a result, I cannot be sure even on the test of the shifting preponderance of probabilities that these words were said and the allegation in Count 1 is **not established**.

17. It is a notorious fact that Mr. Sen frequently speaks with a raised voice in Court, and the Commission is not condoning the practice. It is a questionable and unprofessional tactic and one that the Magistrate at the time made a note of to say that his level of submission was unacceptable. That Mr. Sen often raises his voice does not make it an acceptable practice. All practitioners, including Mr. Sen, are reminded of the need to press their points with humility and dignity. That the practitioner did defend his position in an unacceptable tone obviously did disturb the Court to such an extent that the Court made a note of it in the record.

18. I find the facts of the second count are made out but I disagree that it was such a serious failing that it would make it an act of professional misconduct as charged. It is an act of unsatisfactory professional conduct and the Commission finds that lesser act **established**.

### **PENALTY**

19. The practitioner is found guilty of one charge of unsatisfactory professional conduct, contrary to section 83(1) (a) of the Decree in that he failed to act with due courtesy to the Court as stipulated in Rule 3.2(i) of the Rules of Professional Conduct and Practice .

20. The facts of the misconduct were that as a result of "vigorous discussion" with a Police Prosecutor, an allegation was made by the Prosecutor to insulting words used by the practitioner to him. The practitioner defended himself to the Magistrate but did it in a loud and aggressive manner and "was raising his voice to an unacceptable level".

21. Such conduct as referred to earlier is professionally unsatisfactory and Mr Sen as a very senior practitioner in Vanua Levu must be well aware of his professional duty to the Court.

### **ORDERS**

1. The practitioner is publicly reprimanded.

2. The practitioner is ordered to pay a fine to this Commission of \$5,000. That fine is to be paid by the 30th of November 2013 and failure to pay it will lead to suspension of the practitioner's practising certificate until such time it is paid.

**JUSTICE PAUL MADIGAN  
COMMISSIONER**

**6 NOVEMBER 2013**