

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO. 024 of 2013

BETWEEN : ANAND KUMAR SINGH Applicant

AND : CHIEF REGISTRAR Respondent

**Applicant : Mr A Ravindra Singh
Respondent : Mr V Sharma with M Waibuta**

**Dates of Hearing: 15th November 2013
Date of Ruling : 28th November 2013**

RULING

1. The Applicant applies by way of Motion Inter Partes for a stay of a Judgment of this Commission pending determination of an appeal against that Judgment to the Court of Appeal. In support of the motion, the applicant relies on his own affidavit sworn on the 12th of November 2013.
2. The Respondent opposes the application.
3. Counsel for the Applicant at the hearing sought to rely on the affidavit and to rely on the applicant's grounds of appeal being seen as raising "special or exceptional circumstances". He also relies on submissions prepared by another counsel who was previously instructed by the applicant, but not instructed to move this application. They being the submissions of another counsel, the Commission did not see fit to rely on them.

4. He argued first that the person swearing the affidavit filed by the Registrar in reply to his, had no capacity to do so and secondly as a ground which counsel claimed to be "his strongest" he argued that the charge laid against his client was defective; a ground that he conceded had not been raised at the hearing.
5. The Respondent, in detailed and well researched written submissions attempts to analyze the filed grounds of appeal and concludes that they are only arguable at the very least and that they certainly are not "exceptional" enough to cause this Commission to stay its orders on the strength of any of them.
6. On the 7th of November, 2013 a charge of professional misconduct was found established against this practitioner/applicant and it was ordered that his practising certificate be suspended for a period of two months from that date. It is that order that the Applicant would have stayed by this application.

THE LAW

7. In the case of **Dorsami Naidu v Chief Registrar** (ABU0038.2010), the Court of Appeal sets out in very clear and in very definitive terms, the principles relating to applications for stay of proceedings where the Respondent is a successful professional regulator as in this case. Counsel for the Applicant would seek to distinguish the case and says it does not apply to this situation because we are not in this application dealing with the public interest. Such a submission however would appear to be made on an unfortunate misunderstanding of the import of the case.
8. In the **Naidu** case Marshall RJA analysed the history and principles of applications for stay dating back to the three great English cases of the 1880s (**Barker v Lavery**; **Atkins v Great Western Railway** and **The Annett Lyle**) in which it was decided that there will be no stay except in special or exceptional circumstances. He concluded by saying that these principles were adopted into Fiji law by the judgment in the Civil appeal of **Attorney General v Loraina Dre** (ABU0022 of 2009); the principle being :

"the most important consideration in respect of whether a stay of execution should be granted is whether there are strong grounds of the proposed appeal."

9. Although most of the cases he referred to were "Money judgment " cases he went on to say at para 15:

"I find the money judgment principles very applicable by analogy to the present situation where the Regulator representing the public interest has succeeded at first instance. I accept that in cases of this kind the factor of a direct public interest in one that does not figure in the money judgment cases from which the basic principles derive.

10. He then went on to examine the Australian "public interest" cases before concluding in para 24:

"The public interest represented by the regulator in professional discipline cases makes the regulator at least as important as the Plaintiff who must not be kept out of the fruits of his judgment in money judgment cases. Essentially the same rules apply.

11. Mr Ravindra Singh claims that there is no public interest whatsoever in a case such as this which is but a regulatory breach by not writing a letter to the Registrar.

ANALYSIS

12. The decision of Marshall J. in the Court of Appeal would dictate that the applicant's grounds of appeal must be "special or exceptional". While it is not for me in this application to judge the appeal, the very nature of the application would require that I make a cursory assessment of its likely chance of success and to this end I am greatly assisted by the submissions of counsel for the Registrar.
13. The Applicant is certainly not assisted by submitting on this particular application that his strongest ground is the appropriateness of the charge itself, a matter which was never raised at the hearing at first instance. Secondly he relies on a complaint

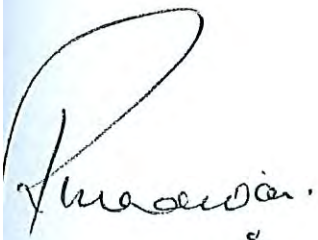
that I had become a "Judge in my own cause" when making reference to appearances of the practitioner/applicant before me in the High Court. That was certainly not information solely within my cognizance: his appearances were a matter of public record which I could take judicial notice of. My reference to them was hardly prejudicial to him; both he and the public being fully aware of those appearances.

14. I will not go into any other grounds save as to say that none of them is exceptional or special, nor is any one of them bound to succeed. Nor has any other matter (including the dubious ground of the Registrar's staff member having no capacity to swear an affidavit) moved me to find that it would be unfair to the practitioner not to grant him a stay.

15. I am aware that the practitioner/applicant has 6 more weeks of suspension of his certificate to endure, and that his Appeal will not be heard within that time. The Respondent as regulator however must in the circumstances be allowed to "enjoy the fruits of his success". To rule otherwise would in the words of Justice Finn in Robb v Law Society of A.C.T. (unreported ACT G34 of 1996 (21 June 1996) cause

"likely prejudice to public confidence both in the integrity of the disciplinary processes themselves and in the reputation of the profession if the practitioner is granted a stay".

16. The application is refused and the notice of motion dismissed.



JUSTICE PAUL MADIGAN
COMMISSIONER



28 NOVEMBER 2013