

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO. 021 OF 2013

BETWEEN :

CHIEF REGISTRAR
Applicant

AND:

SAVENACA KOMAISAVAI
Respondent

Applicant : Ms. L. Vateitei
Respondent : In Person

Dates of Hearing : 20th September and 30th September 2013
Date of Judgment : 8th October 2013

JUDGMENT

1. The Respondent ("practitioner") faces the following two allegations alleged against him by the Chief Registrar:

COUNT 1

Allegations of Professional Misconduct: Pursuant to section 83(1) (a) of the Legal Practitioners Decree 2009.

Particulars

Savenaca Komaisavai a legal Practitioner, whilst being and /or acting as the principal of Komai Law, around the 2nd of October 2012, drafted and sent a letter to the Deputy Registrar on behalf of his client, the said letter was directed at the opposing client, Mr Mark Borg, which included the following statement 'Could this recalcitrant, playboy streak be due to the fact that he is the youngest in the family one wonders?', which was an attack on a person's reputation without good cause contrary to Rule 3.5 of the Rules of Professional Conduct and Practice of the Legal Practitioners Decree of 2009, which conduct was a contravention of section 83 (1)(a) of the legal Practitioners Decree of 2009 and was an act of unsatisfactory professional conduct.

COUNT 2

Allegation of Unsatisfactory Professional Conduct: Pursuant to section 81 of the Legal Practitioners Decree 2009.

Particulars

Savenaca Komaisavai a legal practitioner, whilst being and /or acting as the principal of

Komai Law, around the 2nd of October 2012, during a meeting with the Deputy registrar suggested that the Complainant, Mr Mark Borg, was not Fijian and when the Complainant produced his certificate of citizenship, Mr Komaisavai stated that he was of the 'wrong colour', this was a discriminatory and racist attack on Mr Mark Borg which was directed to place undue influence on him to reach a settlement which conduct amounts to unsatisfactory professional conduct pursuant to section 81 of the Legal practitioners Decree of 2009.

2. The practitioner readily admitted writing the letter in question and admitted making the statements therein that the Registrar is claiming to be offensive, but he denies that the words used were offensive nor were they an "attack on a person's reputation", in the words of the Rules of Professional Conduct.

3. The facts of the allegation are that the practitioner was acting for the wife in a matrimonial dispute. The husband acted for himself in the proceedings. The husband, a Caucasian, was formerly a citizen of Malta but now, having lived in Fiji for the past 18 years and remarried to a Fijian lady held in addition a Fiji passport. He was previously employed by the UNDP.

4. Unfortunately the matrimonial proceedings became acrimonious and for reasons which are not quite clear, the Deputy Registrar (Family Court) became seized of the matter. On the 2nd October 2012, the practitioner filed written submissions to the Deputy Registrar, which submissions form the basis for the two charges.

5. Excerpts from those submissions read:

"The Respondent still clings to the trappings of a former affluent life of bliss with its plastic "well-heeled" so called appearances complete with expensive suit and footwear ensemble"

and later

"Clearly the Court has a contemptuous individual on her hands who seems to have this indifferent feeling that his so called European background puts him on a false pedestal higher and smarter than the Fiji Family Court and its accompanying orders. Could this recalcitrant, playboy streak be due to the fact that he is the youngest in the family one wonders?"

6. In his letter of complaint the complainant states that in that meeting with the Deputy Registrar (Family Court) on the 2nd October 2012 the Practitioner suggested that the complainant was not a Fijian and on being shown the husband's Fijian passport the practitioner commented that he was "the wrong skin colour".

7. In his letter of mitigation the Practitioner "vehemently denies" the racist comments which form the basis of Count 2, yet in a hearing before the Commission he "agreed the bundle" which bundle contains the complaint of the husband with this specific allegation.

8. It is manifestly clear that the practitioner had lost all objectivity in his handling of this matrimonial cause (he tells me that it has now been settled). Of course all practitioners become frustrated at times with their cases or with their clients but a good counsel will not let that frustration intrude on his relationship with opposing counsel. That injunction must apply equally if not more so to an unrepresented opponent. Such an opponent will be feeling handicapped and

vulnerable and for the "big" lawyer on the other side to be berating him or criticising him would have a greater effect on him than it would on a fellow Counsel.

9. The submissions produced to the Deputy Registrar are indulgent, rancorous and acerbic apart from being totally unnecessary. Taken in the round they certainly offend against Rule 3.5 of the Rules of Professional Conduct and Practice. The words "recalcitrant and playboy" highlighted by the Registrar in the first count, although being abusive, are not nearly so abusive as "contemptuous individual".

10. In a mitigation submission produced to the Commission, the practitioner appears to be still obsessed by the "hypocrisy" of the husband in the matrimonial cause and submits that if he objected to the comments, he could have complained to the Deputy Registrar. The details of the matrimonial dispute are irrelevant to this complaint and there is no evidence that the husband had even seen the practitioner's offensive submissions at the time of the meeting with the Deputy Registrar.

11. The difficulty with the first count as alleged by the Chief Registrar in the amended charges is that the allegation is one of professional misconduct but in the particulars of the allegation, the Registrar claims the publication of the offensive submissions to be unsatisfactory professional conduct. Professional misconduct it may well be and unsatisfactory professional conduct it definitely is, and to give the benefit of the uncertainty in the Registrar's mind to the practitioner, the Commission finds that the offensive submissions are in breach of Rule of Practice 3.5 and an allegation of unsatisfactory professional conduct is **established**.

12. Despite conceding the contents of the Registrar's "bundle" at the hearing before the Commission, the practitioner denies the racial allegation contained in count 2 and the practitioner submits that the allegation is a "low down racist slur on my professional integrity" because the complainant is still very sour about the (then) unresolved matrimonial property dispute.

13. There being no evidence before the Commission to counter the practitioner's denial of these racist comments, then again the benefit of the doubt is given to the practitioner and the allegation in count 2 is **not established**.

PENALTY

14. The practitioner has appeared before this Commission earlier (Matter No 009 of 2012) in which along with another he was found to have indulged in professional misconduct. In that hearing his practising certificate was suspended for three months. Unlike the situation in the Criminal Courts, previous findings of misconduct against a practitioner are highly relevant in that they, along with the charge he/she is facing, establishes a pattern of conduct which would give an indication as to whether the practitioner concerned was a fit and proper person to remain in practice.

15. The misconduct here, found to be unsatisfactory professional conduct, is a breach of the Rules of Professional Conduct and Practice (section 3.5) in which he has unnecessarily and unreasonably attacked the reputation of an opposing unrepresented party in a matrimonial dispute. The practitioner would have the Commission examine the merits of the dispute, however they are totally irrelevant. What is in issue are the personal aspersions and character criticism of the complainant contained in legal submissions to the Deputy Registrar (Family). Such innuendo is unprofessional, unobjective and unethical. The practitioner is warned that should any further allegation against him be found to be established; his fitness to be a practitioner at all will be seriously considered.

ORDERS

1. The practitioner is again publicly reprimanded.
2. His practising certificate is to be suspended for four (4) months from the date of this judgment.
3. He is to pay costs to the Commission of \$750 by the 31st October 2013.
4. Should the \$750 costs not be paid by 31st October, an additional two months suspension will be added to the suspension already ordered.

**JUSTICE PAUL MADIGAN
COMMISSIONER**

8 OCTOBER 2013