

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO. 020 OF 2013

BETWEEN : **CHIEF REGISTRAR** Applicant
AND : **KELERA BALEISUVA BUATOKA** Respondent

Applicant : **Ms. L. Vateitei**
Respondent : **Mr. I. Fa**

Dates of Hearing: **13th September and 30th September 2013**
Date of Judgment: **11th October 2013**

JUDGMENT

1. The Respondent ("practitioner") faces two allegations made against her by the Chief Registrar ("the Registrar") which are framed as follows:

COUNT 1

Unsatisfactory Professional Conduct: Contrary to section 52(1)(a) and 83(1)(a) of the Legal Practitioners Decree 2009.

Particulars

Kelera Baleisuva Buatoka a legal practitioner, on or about the 21st of January 2013, being an employee of the Fiji Revenue & Customs Authority, not being a holder of a valid practising certificate, acted as a Commissioner for Oaths by witnessing an affidavit of one Milika Tuiketui-Volavola, signing the affidavit and affixing her Commissioner for Oaths stamp, when the said Ms Kelera Baleisuva Buatoka was not a Commissioner for Oaths, which is contrary to section 52(1)(a) of the Legal Practitioners Decree 2009, which conduct was a contravention of section 83(1)(a) of the Legal Practitioners Decree 2009 and was an act of unsatisfactory professional conduct.

COUNT 2

Unsatisfactory Professional Conduct: Contrary to section 52(1)(a) and 83(1)(a) of the Legal Practitioners Decree 2009.

Particulars

Kelera Baleisuva Buatoka a legal practitioner, on or about the 27th of February 2013, being an employee of the Fiji Revenue & Customs Authority, not being a holder of a valid practising certificate, acted as a Commissioner for Oaths by witnessing an affidavit of one Nawalu Baravilala, signing the affidavit and affixing her Commissioner of Oaths stamp, when the said Ms Kelera Baleisuva Buatoka was not a Commissioner for Oaths, which is contrary to section 52(1)(a) of the Legal Practitioners Decree 2009, which conduct was a contravention of section 83(1)(a) of the Legal Practitioner Decree 2009 and was an act of unsatisfactory professional conduct.

2. On her first appearance before the Commission, her counsel submitted that the practitioner was going to defend the allegations on the basis that once a practitioner is admitted to practice by the High Court and enrolled as a Barrister and Solicitor, then she/he is forever thereafter a Commissioner of Oaths *ex officio*, whether or not she/he holds a practising certificate. He asked for time to "research" that point.
3. At the adjourned hearing counsel wisely abandoned that point, admitted the conduct alleged in each charge, and called his client ("the practitioner") to give evidence in her own mitigation.
4. In her sworn evidence the practitioner said that she had been admitted to the profession in September 2002. She was at that time employed by the Fiji Revenue & Customs Authority ("FRCA"). She had joined FRCA in 1984 and after the coup of 1987 when most of the department's legal staff emigrated she was working as a para-legal and attended to prosecutions in the Magistrates Court. She says that as that work gave her a "passion" for the Law, she studied law at USP and became qualified to be admitted. She did post-graduate study after which she rejoined FRCA. In 2011 she was moved by her superiors in the department to the position of Manager Policy Advice, a post she still has and which she says entails giving advice to the CEO and to the Minister of Finance on legal, tax and customs matters.
5. The practitioner said that as she was no longer in the Legal Department prosecuting, her employers decided that she did not need a practising certificate and she has therefore been without one since year 2011.
6. She then explained how she came to witness the two affidavits. It was an urgent request from a Solicitor from Nadi. Thinking that her admission entitled her to witness as a Commissioner of Oaths she witnessed the two affidavits referred to in the two charges.

7. When it was raised in court that the execution of the documents might be invalid, the practitioner immediately checked with the Registrar's Office and was advised accordingly. She immediately took steps to try to withdraw the documents. She attempted to talk to the practitioner acting for the other party in the Court proceedings, but he wouldn't reply. She approached the Court and sought leave to substitute the offending affidavits. She had received no financial reward for witnessing the documents.

DISCUSSION

8. Section 144 of the Legal Practitioners' Decree ("the Decree") makes provision for the appointment of Commissioners of Oaths and section 144(1) allows the Chief Justice to appoint Commissioners "from...legal practitioners and other persons". The section clearly envisages a separate class of officers from practitioners. Section 144(3) specifically provides for a practitioner not being separately appointed to be deemed to be a Commissioner for Oaths if she/he "is the holder of a practising certificate that is in force".
9. It is patently apparent that a person not holding a current practising certificate is not entitled to perform the duties and functions of a Commissioner of Oaths and the practitioner by her counsel admitting the conduct alleged in each of the two charges, the two allegations are **established**.
10. The evidence of the practitioner raises the interesting question of how culpable the employer of a legal employee can be if that employer does not enable the staff member to obtain a practising certificate and then he or she is then "practising law"? The employer would appear to be an accessory to the conduct, but then the question is academic until such an employer be charged.
11. The practitioner submitted in her mitigation that she was completely unaware of the restrictions against an unlicensed practitioner witnessing an affidavit; this ignorance cannot assist her at all. All practitioners are deemed to be aware of the provisions of the Decree and in particular the Rules of Professional Conduct and Practice set out in the Schedule to the Decree.

PENALTY

12. Although the practitioner has conducted herself unsatisfactorily, she has the benefit of the fact that the charges are unsatisfactory professional conduct, rather than professional misconduct. She has also advanced unchallenged forceful mitigation by showing that she had no intention to deceive and that on discovery of the misconduct she did everything in her power to have the offending affidavits withdrawn and re-executed.

ORDERS

1. The practitioner is publicly reprimanded.
2. The practitioner is fined the sum of \$300 on each charge.
3. The total fine of \$600 is to be paid to this Commission by 31st of October 2013.



**JUSTICE PAUL MADIGAN
COMMISSIONER**



11 OCTOBER 2013



INDEPENDENT LEGAL SERVICES COMMISSION

Legal Practitioners Decree 2009

Matter No 020 of 2013

APPLICANT : CHIEF REGISTRAR
RESPONDENT : KELERA BALEISUVA BUATOKA

ORDERS

1. The practitioner is again publicly reprimanded.
2. The practitioner is fined the sum of \$300 on each charge.
3. The total fine of \$600 is to be paid to this Commission by 31st of October 2013.

JUSTICE PAUL MADIGAN
COMMISSIONER



11 OCTOBER 2013

**IN THE HIGH COURT OF FIJI
No. HBI 018 of 2013**

INDEPENDENT LEGAL SERVICES COMMISSION

Matter No. 020 of 2013

APPLICANT: CHIEF REGISTRAR

RESPONDENT: KELERA BALEISUVA BUATOKA



ORDER

**INDEPENDENT LEGAL SERVICES COMMISSION
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