

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO. 026 of 2013

BETWEEN :

AMRIT SEN
Applicant

AND:

CHIEF REGISTRAR
Respondent

Applicant : Mr G O'Driscoll
Respondent : Ms L Vateitei

Dates of Hearing: 16th June 2014

Date of Ruling: 8th August 2014

RULING

1. By Application No 026 of 2013 the Respondent has made three allegations of professional misconduct against the Applicant. The allegations all concern the applicant's alleged possession of and dealing with an original Crown Lease document which should have been in the custody of the Registrar of Titles.

2. The allegations read as follows:

"COUNT 1

PROFESSIONAL MISCONDUCT: Contrary to Section 82(1)(a) of the Legal Practitioners Decree 2009

Amrit Sen, a legal practitioner, being the principal of Maqbool & Company, having known or ought to have known that he had unlawful custody of the Original Crown Lease document No 12426, failed to return the said Title to the Registrar of Titles, which conduct was an act of professional misconduct pursuant to section 82(1)(a) of the Legal Practitioners Decree 2009.

COUNT 2

PROFESSIONAL MISCONDUCT: Contrary to Section 82(1)(a) of the Legal Practitioners Decree 2009

Amrit Sen, a legal practitioner, being the principal of Maqbool & Company while in the practice of law demanded \$2,000 in exchange for the original title for Crown Lease No 12426, having known or ought to have known that he had unlawful custody of the original Crown Lease Title No 12426 and that the Original Crown Lease Title No 12426 should be in the custody of the Registrar of Tile at all times, which conduct was an act of professional

misconduct pursuant to section 82(1)(a) of the Legal Practitioners Decree 2009.

COUNT 3

PROFESSIONAL MISCONDUCT: Contrary to Section 82(1)(a) of the Legal Practitioners Decree 2009

Amrit Sen, a legal practitioner, being the principal of Maqbool & Company while in the practice of law improperly received payment of \$2,000 in exchange for the original title for Crown Lease No 12426, and without issuing a receipt,, which conduct was an act of professional misconduct pursuant to section 82(1)(a) of the Legal Practitioners Decree 2009.

3. By way of summons and accompanying affidavit the Applicant applies that the charges be permanently stayed and/or summarily dismissed. The grounds prayed in aid of the application are:
 - i. That the charges are prejudicial by reasons of delay. In particular it concerns his role as a solicitor acting (in a transaction) between 1994 and February 1996, the client having passed away in 1997 and the relevant file being no longer with the Applicant and furthermore that the Registrar of Titles has not provided all the relevant records and information to enable the Applicant to defend the charges; and
 - ii. That the charges are defective and does (sic) not constitute professional misconduct by reasons of the fact that the lease in question was presented to the Registrar of Titles for a transfer of the lease and it was accepted by the Registrar of Titles as the lessee's copy.
 - iii. That the charges against the Applicant are in breach of section 14(1)(a) of the Constitution 2013.
4. The law on stay is well settled in this jurisdiction and in this Commission in particular. As the Court of Appeal said in Anand Kumar Singh ABU 58 of 2013 (20 December 2013) the public interest in having a matter heard was of particular importance and there would have to be "exceptional circumstances" established to outweigh the paramountcy of that interest. (paragraph 17)
5. The Applicant submits that he is seriously prejudiced in the hearing of the substantive complaint against him, because the complaint concerns matters that he was attending to in 1996 or 1997 and the complaint not having been made until 2011, the lapse of 14 or 15 years is too long to have kept the files pertaining to the transaction.
6. The Applicant then makes submissions at length on the merit of the complaint, and even whether he should be a party to the proceedings.
7. Stay can be granted by the Commission if there is an abuse of process or if the delay within the Commission is so inordinate that it would be unconscionable for the matter to proceed. Stay is not a remedy to be granted on the basis of lack or paucity of evidence. Those are matters for the eventual hearing.
8. The complaint against the Applicant was first made to the then Commissioner in 2011 and referred then to the Chief Registrar. The Registrar first wrote to the Applicant on 9th of May 2012 asking for an explanation of the complaint. The matter was first called before the Commission on

the 30th of October 2013. This application was made on 28th of February 2014, four months later. It cannot possibly be said that there has been an inordinate delay in the proceedings in the Commission and any delay in laying the complaint, which might cause embarrassment to the Applicant, whilst not inordinate will be a matter for consideration in the hearing proper.

9. Whilst the Applicant says that he would be prejudiced by not having his file anymore, he is able in his submissions to reconstruct the contents of the file, and it is difficult to understand what more use the file could be to assist him. The nature of the allegations does not necessitate his having the file in his possession. His disposal of the file and the consequences of that for the Applicant will be canvassed in the course of the enquiry.

10. The application to stay on the grounds of delay is dismissed.

11. The second limb of the application is on the basis that the allegations are defective in that it is "preposterous" to assume that the Registrar of Titles would endorse a memorial on and return to solicitors the Registrar's copy of the lease. Whilst this may well be "preposterous" in the words of the Applicant, it is not impossible and it will again be a matter for evidence and determination at the hearing of the allegation. There may be other reasons for the release of the original lease from the Registry of Titles.

12. Section 14(1)(a) of the Constitution 2013 reads as follows:

(1) A person shall not be tried for (a) any act or admission that was not an offence under either domestic or international law at the time it was committed or omitted...

13. In his submissions under this heading, the Applicant prays that the Commission cannot hear an allegation into conduct occurring in 1995 or 1996 when the enabling section (s.82) of the Legal Practitioners Decree was enacted only in 2009. He submits that section 14 of the Constitution forbids it. He concludes by saying that "any act or admission which happened prior to 2009 cannot be subject to prosecution under the present Decree."

14. This ground and the submissions to support it are misconceived. There is no evidence before the Commission that possession of the original Registrar's copy of the lease was not misconduct in 1995, and as such section 14 of the Constitution would not apply.

15. More importantly the Applicant appears to have overlooked the provisions of section 101(2) of the Legal Practitioners Decree; which section reads

"101(2) – A complaint under section 99 may be made, or an investigation under section 100 may be carried out, in relation to any alleged professional misconduct or unsatisfactory professional conduct occurring before the commencement of this Decree."

16. The complaint being validly made and not statute barred and not in contravention of the practitioner's constitutional rights; this application for stay or dismissal is refused.

**JUSTICE PAUL MADIGAN
COMMISSIONER**

8TH AUGUST 2014