

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO. 009 of 2009

BETWEEN : **CHIEF REGISTRAR**
Applicant

AND : **IFTAKHAR IQBAL AHMAD KHAN**
Respondent

Applicant : Mr. V Sharma and Mr. M Waibuta
Respondent : Mr. G O' Driscoll

Date of Hearing: 24th January 2014
Date of Ruling : 14th February 2014

RULING - STAY APPLICATION

1. On the 11th of December 2013, after having conducted a hearing into two allegations of professional misconduct by a practitioner (the applicant herein), this Commission found the allegations established and ordered that the practitioner/applicant be fined the sum of \$1,500 and that he be suspended from practice for 15 months until 1st of March 2015.
2. The practitioner/applicant (hereinafter referred to as the applicant) now makes application for a stay of these orders pending his appeal of the Commission's findings.
3. The Commission has had notice of the appeal being filed in the Court of Appeal on the 22nd of January 2014 and notes the amended grounds of appeal which are of course relevant as to the weight to be given to this application. While this Commission cannot of course pre-empt the judgment of the Court of Appeal by making findings on the grounds of the appeal, the likelihood of success of the appeal is a factor to be considered in whether to grant a stay of the orders made and a cursory assessment of the grounds would suffice in performing that function.

4. The applicant, in his notice of motion for stay of the orders, prays that he be allowed to remain in practice until the determination of the appeal and in a document that he claims to be "Respondent's (sic) Submission in reply to the Chief Registrar's Submissions" he sets out his diary of fixtures for Court hearings from February 2014 until November 2014 and cites these fixtures as matters of public interest.
5. In an affidavit filed in support of the Notice of Motion, the Applicant refers to his record of 33 years in practice and submits that if a stay is not granted his "name and status" would be ruined. He has "twelve (10)" (sic) full time employees who would suffer hardship through loss of income. He has a total of 500 pending cases in all Courts in Fiji and his clients would be greatly affected.
6. Counsel for the Respondent has filed detailed submissions, which are concerned in the main with legal authorities on the granting of stay, authorities from both this jurisdiction and from New South Wales.
7. The Court of Appeal has very recently examined the legal principles relevant to applications for stay in **ANAND KUMAR SINGH v CHIEF REGISTRAR** ABU58.2013 (20 December 2013). In that case Calanchini P. stressed that in deciding whether a stay should be granted of orders made against a professional by a disciplinary tribunal, the public interest was of particular importance and there would have to be "exceptional circumstances" established to outweigh the paramountcy of that interest (para17). Apart from that, and in adopting the dicta of Marshall JA in **DORSAMI NAIDU v CHIEF REGISTRAR** ABU 38 of 2010, (2 March 2011), the Court stated that " a second consideration may affect the exercise of the discretion in favour of the Appellant. The Court should assess whether any ground of appeal has an exceptional chance of succeeding." (para 19).
8. The hardships that the applicant claims he and his staff will suffer are not exceptional grounds. As the Commission stated in **RAJENDRA CHAUDHRY** (Stay Application Ruling 4 December 2012)

"The applicant's personal misfortune and that of his former staff members is a situation to be faced by any practitioner being found in default by his or her regulatory body and again the authorities are clear that the public interest must outweigh consideration of personal hardship."

9. The applicant relies on his long term of practice in the West and the reputation that he claims to have established with many clients waiting for his services. Similar arguments were raised by another very senior practitioner from the Western Division of Fiji in **HAROON ALI SHAH** (Ruling Stay 23 July 2012) when the Commission said:

"Consideration of the public interest far outweighs any prejudice that is to be suffered by the Respondent or his clients. Both Lautoka and Nadi have many

able practitioners who would be well able to service the respondent's former clients".

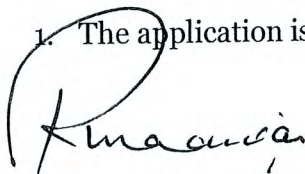
and later

"it is irrelevant to this application whether the practitioner has been in practice for 50 years or 1 year".

10. The fact that the applicant has been in practice for 33 years can work both in his favour and against him. A senior practitioner with his experience should know better than to conduct himself in a manner that led to his being found to have been professionally at fault.
11. It is not a matter of public interest, as the applicant appears to claim, to have 500 cases waiting to be heard and where the practitioner is Counsel instructed. On the contrary, it is certainly a matter of public interest that the consumer public be protected from a practitioner who has found to have been professionally misconducting himself.
12. There are no exceptional circumstances that would override the public interest and which would warrant a stay of the orders made pending appeal.
13. I turn to the second rule laid down by Marshall JA in the NAIDU case (*supra*). "Are there special or exceptional chances of success with regard to the practitioner's appeal?"
14. While constrained in this process as referred to in Para 3 *supra*, the amended grounds filed by the Applicant in the Court of Appeal are for the most part procedural complaints and they raise very little if any matters of substantive importance. There is clearly nothing relied on that could be said to have an "exceptional chance of success."
15. The applicant has come nowhere near satisfying either of the two tests laid down by the Court of Appeal in Naidu (*supra*) and therefore the application has no merit.

ORDERS

1. The application is dismissed.



**JUSTICE PAUL MADIGAN
COMMISSIONER**



14TH FEBRUARY 2014