IN THE INDEPENDENT
LEGAL SERVICES COMMISSION

NO. 018 of 2013

BETWEEN:

CHIEF REGISTRAR
Applicant

AND :

KALISITO MAISAMOA
Respondent

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

Date of Hearing: 20th August, 13th September, 19th September 2013 & 24th February 2014
Date of Ruling : 3rd March 2014

RULING

1. The Respondent has been brought before the Commission facing eight charges of unsatisfactory professional conduct all of which allege that without having practised for two years he appeared to argue matters in the High Court in Suva on divers days in 2012 and 2013, in contravention of section 50(2) of the Legal Practitioners Decree 2009 ("the Decree").

2. Before proceeding to hearing of those charges and before entering a plea to those charges, the practitioner seeks to have the matter struck out on the basis that section 50(2) does not prohibit him from "appearing" in court; the proscription being confined to "arguing" a matter.

3. Section 50(2) reads as follows:

> *A practitioner shall not be entitled to argue any cause or matter before the Supreme Court, the Fiji Court of Appeal or the High Court (other than in chambers or before the Registrar except on an originating summons), unless with another practitioner of at least three year's standing in the Fiji Islands until he or she has practiced for a period of at least two years either as a practitioner in the Fiji Islands, or as a barrister or solicitor in the United Kingdom, the Republic of Ireland, Australia or New Zealand."*

4. In his brief written submissions, counsel for the practitioner argues that a practitioner is entitled by law to appear in the High Court if he has been admitted to the Bar. He says that in doing so it is "to take directions on the progress of the case as the matter on the relevant occasions were only for mention". He continues that the section is "clear and precise" in that the section only states that a practitioner may not **argue** any cause of matter in one of the higher courts. It does not say that the practitioner may not **appear**. He is entitled to enter an appearance for the purpose of directions, fixing of hearing dates and receiving of judgments.

5. In reply, counsel for the Registrar submits that the offence is one of strict liability, and a

section put in place to ensure quality of legal services to members of the public. She submits that even though a matter may be expected to be a mention or merely a pro forma hearing for directions; it can at times develop into a need for argument. The public must be protected from delay or excessive charges if a more senior practitioner is needed to come back to argue the matter.

ANALYSIS

6. In a legal context the word "argue" does not necessarily mean to dispute or disagree. It means to affirm, propose, submit, explain or to assent to a proposition.

7. Any practitioner attending court must be prepared if called upon by the tribunal to defend his cause or to make an appropriate application in the interests of his client.

8. The intent of the proscription of section 50(2) of the Decree is to protect both the court and the public from the incompetency and ineptitude of a newly qualified practitioner. The Registrar is correct in saying that it is a matter of strict liability; it is a proscription that must be applied objectively. It matters not that the practitioner thinks he has the experience and competence to deal with anything that might arise.

9. Even if counsel for the practitioner were correct in that an appearance for nothing more than a hearing is allowed by the section; it is well known fact to anybody appearing in court that hearings on mentions can easily become contested hearings by matters arising such as bail applications, applications for severance, consolidation, applications for stay of proceedings etc. The spirit of the legislation is to allow time to newly admitted practitioners to gain knowledge, confidence and competence before they are to appear in the higher courts. Such a restriction must be in the interests of the consumer public and of the judicial officers that they appear before.

10. The practitioner's submission is creative but ill conceived. A practitioner appearing can never know when he might be called upon to "argue" a matter before the tribunal, even if he thinks he is there to do no more than receive directions or to have the matter mentioned.

11. If exceptions were made to allow junior counsel to appear in the High Court with less than 2 years call, then there would be no proper regulation of those who would seek this exemption. Any appearance to "argue" or an appearance that could well lead to "argument" must be confined, as it is, to those with 2 or more years experience. It is not for a practitioner after the event to say, well I appeared but nothing happened apart from an adjourned date being given; it is the **possibility** that issues may arise which will have to be dealt with by a counsel with experience.

ORDERS

1. The application to strike out is dismissed.

JUSTICE PAUL MADIGAN 3RD MARCH 2014
COMMISSIONER