

IN THE INDEPENDENT LEGAL SERVICES COMMISSION

AT SUVA

I.L.S.C Application No. 12 of 2014

BETWEEN:

CHIEF REGISTRAR

of the High Court of Fiji

Applicant

AND:

NITIJ PAL of Sydney, Australia

Respondent

Counsel: Mr. A. Chand for the Chief Registrar
Mr. T. Tuitoga for the Respondent

Dates of hearing: 29 October, 16 December 2014, 12 February, 3 April, 2015

Date of Judgment: 21 July, 2015

JUDGMENT

1. The Chief Registrar ("the Registrar") laid three counts against the respondent ("the Practitioner") on the 2nd October 2014. These three counts were the subject of strong submissions on the part of the practitioner's counsel on the grounds of duplicity, submissions which were eventually accepted. This resulted in one of the three counts being withdrawn leaving the following two counts for the practitioner to answer to;

Count One

PROFESSIONAL MISCONDUCT contrary to sections 42(2) and 83(1)(a) of the Legal Practitioner's Decree 2009.

Particulars

NITIJ DEVIKAR PAL, a legal practitioner, between the 1st day of March 2014 and the 2nd day of July 2014, operated in the practice of law, the law firm PLN Lawyers Fiji when he was not the holder of a valid practising certificate which conduct was a contravention of the provisions of s.42(2) and s.83(1)(a) of the Legal Practitioners Decree 2009 and was an act of professional misconduct.

Count Two

PROFESSIONAL MISCONDUCT: contrary to section 42(2) of the Legal Practitioners Decree 2009.

Particulars

NITIJ DEVIKAR PAL, a legal practitioner, between the 1st March 2014 and the 3rd July 2014, gave instructions to legal practitioner Laura Houlihan for the carrying out of the day to day operations of the law firm PLN Lawyers, when the said firm should not have operated in the practice of law as the said Mr. Pal, being the principal of PLN Lawyers was not a holder of a valid practising certificate which conduct was in contravention of the provisions of section 42(2) and 83(1)(a) of the Legal Practitioners Decree 2009 and was an act of professional misconduct.

2. On the 12th February 2015 the practitioner entered a plea of guilty to the first count. He then re-launched his earlier arguments to submit that the second count was duplicitous and unnecessary given his plea to the earlier count.

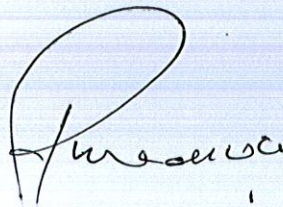
3. The Chief Registrar rebuffed this submission and the Commission thereafter proceeded to a hearing of the evidence on Count 2.
4. The facts relied on by the Registrar were agreed and the "hearing" then became a debate on the issue of abuse of process and double jeopardy, a debate which was notable by the impassioned submissions from each side.
5. It is the position of the Registrar that the second count while based on the same facts as the first charge is neither an abuse of process nor double jeopardy. Mr. Chand argues that the issues are quite different. In the first count the Registrar was making the allegation that the practitioner was operating a law firm in Fiji without holding a practising certificate whilst in the second count the allegation is that the practitioner was employing a person to operate the unlicensed practice.
6. Mr. Tuitoga submitted that the person so "employed" was not in the employ of the practitioner but in the employ of a separate entity based in Sydney, Australia. He adds that confusion about the employee's status arose when she had erroneously referred to her employer being "PLN Lawyers" when in fact she was being employed by an entity with the name "Rockwell Oliver". (The practitioner had earlier operated his firm when licensed as "PLN Lawyers Fiji").

Analysis

7. While the practitioner's submission relating to the status of Ms. Houlihan is both complicated and dubious it is nevertheless irrelevant. The practitioner has entered a plea of guilty to operating a law practice in Fiji whilst resident abroad. Obviously whilst resident abroad he cannot operate a practice without instructing another to be *in situ* as the "operator". Quite clearly the charge is duplicitous and it is rather onerous for the Registrar to lay this as an additional charge. It is therefore struck out from the charge sheet.

8. The first count is found to be **established** and the second count struck out.
9. The Commission now calls for mitigation from the practitioner on the first count.

Dated the 21st day of July, 2015.



Justice P. Madigan
Commissioner

