

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

ILSC Action No: 014 of 2015

BETWEEN:

CHIEF REGISTRAR
Applicant

AND:

ANGELINE KIRAN LATA
Respondent

Counsel for the Applicant : Mr. A. Turuva

Respondent : In Person

Date of Hearing : 11th February 2016

Date of Judgment : 24th March 2016

JUDGMENT and SENTENCE

1. The Counts

[1] On 29th October 2015, an Application was filed by the Chief Registrar setting out two allegations of Unsatisfactory Professional Misconduct against the Respondent as follows:

Count 1

Allegation of Unsatisfactory Professional Misconduct: pursuant to Section 81 of the *Legal Practitioners Decree 2009*.

PARTICULARS

ANGELINE KIRAN LATA, a Legal Practitioner, being the sole proprietor of **WEST LAW** on the 22nd day of January 2015, failed to appear at the Lautoka High Court for High Court Case No. HAC 181 of 2013 between ***State v Joeli Baleilevuka & Ors*** wherein the legal practitioner was Counsel for the 1st Accused, namely Joeli Baleilevuka and failed to make a formal application for her withdrawal as Counsel for the 1st Accused at the Lautoka High Court which conduct was a non-compliance paragraph 3 of the **Practice Direction No. 1 of 2011** on **Withdrawal of Counsel in Criminal Proceedings** and is an act of Unsatisfactory Professional Misconduct contrary to **Section 81** of the ***Legal Practitioners Decree 2009***.

Count 2

Allegation of Unsatisfactory Professional Misconduct: pursuant to Section 81 of the *Legal Practitioners Decree 2009*.

PARTICULARS

ANGELINE KIRAN LATA, a Legal Practitioner, being the sole proprietor of **WEST LAW** on the 23rd day of March 2015, failed to give precedence to the Lautoka High Court over the Sigatoka Magistrates Court when the practitioner appeared at the Sigatoka Magistrates Court for Criminal Action No.50 of 14 between *State v Marriapa* and failed to appear at the Lautoka High Court for Criminal Action No. HAC 109 of 2012 between *State v Steven Prasad & Ors* which conduct was a non-compliance of Rule 3.2 (i) and (ii) of the **Rules of Professional Conduct and Practice of 2009** and is an act of Unsatisfactory Professional Misconduct contrary to **Section 81** of the *Legal Practitioners Decree 2009*.

1. When the matter was first called on 16 November 2015, before the previous ILS Commissioner, Justice P.K. Madigan, the Respondent admitted to both counts. In view of the Respondent's admissions, Justice Madigan found that both counts were established.
2. Orders were then made for submissions in mitigation to be filed and served with the notation that, as Justice Madigan had resigned as Commissioner, any decision on penalty would be a matter for the new Commissioner. The matter was then adjourned.
3. Having been sworn in as the new Commissioner on 9th February 2016, I then read the written submissions filed by each party and arranged for the matter to be relisted for 12th February 2016, so that the parties could clarify their respective submissions and to address me on penalty.

2. Background to the offences

Factual background to Count 1

4. The Respondent was admitted to the legal profession in Fiji in 2004 and has been operating her own law firm since April 2013.
5. On 11th August 2014, the Legal Aid Commission (LAC) delivered by hand to the Respondent some 42 files.
6. During December 2014, there had been various correspondence between the Respondent and the LAC wherein the Respondent was seeking urgent payment by the LAC of her firm's outstanding invoices.
7. On Monday, 12th January 2015, as payment was still outstanding, the Respondent wrote to the LAC advising that 'I am now withdrawing as Counsel for Legal Aid conflict matters' and asking the LAC to kindly make arrangements to attend and remove their files from her Office within seven days.
8. On Thursday, 22nd January 2015, when Criminal Case No. HAC 181 of 2013 was called in the High Court of Fiji at Lautoka, the Respondent failed to appear. Instead, a Legal Aid Commission lawyer appeared and informed the Court that the Respondent had withdrawn from its panel of Solicitors and they were in the process of obtaining the files from her.

9. On the following day, Friday, 23rd January 2015, the Respondent sent an email to the LAC confirming receipt of payment from the LAC and ‘also confirming that we will proceed with the hearing of the matter ... on Monday next week’ (i.e. 26th January 2015) in the High Court at Lautoka in Criminal Case No. HAC 181 of 2013.

10. In the meantime, however, following the Respondent’s non-appearance in the High Court at Lautoka on Thursday, 22nd January 2015, a complaint was forwarded on that same date from Justice De Silva to the Chief Registrar, High Court of Fiji, in relation to the Respondent’s non-appearance earlier that morning.

11. According to a copy of the “Judge’s Notes” written by His Lordship on 22nd January 2015 (that were subsequently forwarded by the Deputy Registrar of the High Court at Lautoka to the Legal Practitioners Unit together with a complaint forwarded by the Trial Judge for Ms Lata’s non-attendance), the hearing in the High Court at Lautoka was a ‘continuation of [a] Voir Dire hearing’. It involved five co-accused, three of whom were represented by legal practitioners and two were appearing in person. Apparently, both the 1st and 2nd Accused had each been on remand for 17 months in relation to the case, and the 3rd Accused had been on remand for 11 months. The Prosecution informed the Court that it was ‘ready to proceed’ and two witnesses were also present ‘only in respect of [the] 2nd Accused’. A further voir dire inquiry was adjourned until the following Monday, 26th January 2015.

12. An investigation was then undertaken by the Applicant including having the Chief Registrar write to the Director of LAC on 13th July 2015 advising of the complaint from His Lordship, Justice De Silva, and that ‘the Lautoka High Court file minute directive affirms’ that the Respondent ‘had informed your office of her withdrawal prior to the matter ... being called’. The Director was asked to provide the Chief Registrar ‘with any withdrawal letter and/or email pertaining to’ the Respondent’s ‘withdrawal as Counsel’ in relation to this matter.

13. On 24th July 2015, the Director of the LAC replied to the Chief Registrar confirming that:

- (1) the Respondent ‘is still on the Commission’s brief out Panel of Practitioners’;
- (2) the Respondent ‘was approved to represent a Commission’s client ... in the High Court of Fiji at Lautoka on 26 January 2015’;
- (3) the Respondent ‘on 23 January 2015 ... had via an email confirmed that she will be proceeding with the hearing of the matter’.

14. Unfortunately, the Director’s letter did not address either what had occurred between the Respondent and the LAC during December 2014 regarding outstanding invoices, or the Respondent’s letter of 12th January 2015, wherein she advised that she was ‘now withdrawing as Counsel for Legal Aid conflict matters’ and asking the LAC to kindly make arrangements to attend and removal their files from her Office within seven days.

Factual background to Count 2

15. At approximately 4.00pm on Friday, 19th March 2015, the Respondent had just completed the first week of a trial in the High Court of Fiji at Lautoka appearing as Defence Counsel. His Lordship, Justice S. De Silva, was to commence his summing up in the trial on the following Monday, 23rd March 2015.

16. The problem for the Respondent was that she had two other matters listed on Monday, 23rd March 2015, one being a privately-funded matter in Nasinu Magistrates Court and the other being a Legal Aid matter in Sigatoka Magistrates Court.

17. Unfortunately, the Respondent had failed to mention on the previous Friday afternoon when appearing in the High Court at Lautoka before His Lordship, Justice De Silva, that because the trial had “run over” she was now “double booked” and would need the Court’s indulgence for Justice De Silva to agree to having an agent or representative from Legal Aid appear before him on the following Monday at the summing up until the Respondent was able to appear.

18. When the matter was called in the High Court of Lautoka at 10.15am on Monday, 23rd March 2015, there was no appearance by the Respondent in the High Court at Lautoka. Instead, a representative from Legal Aid appeared and asked the Court if could the matter be stood down until 11.00am.

19. Apparently, earlier that morning a representative from the LAC had informed the trial judge’s secretary that they would be making such a request. Also, a letter from the Senior Legal Officer of the LAC’s Lautoka Office was also sent that morning (the time is unclear) to the Senior Court Officer of the Lautoka High Court advising ‘please be informed that Ms Lata will be travelling from Sigatoka this morning and as such has kindly requested if this matter could be listed for Summing Up at 11pm [sic]. She is sorry for any inconvenience caused’. It also provided a contact telephone number for the Senior Legal Officer and concluded noting ‘we look forward to your usual cooperation’.

20. At approximately 11.20am on the same date, the Respondent eventually appeared in the High Court at Lautoka.

2. Submissions in mitigation

Submissions in relation to Count 1

21. The Respondent submitted in mitigation in relation to Count 1, in summary, as follows:

- (1) The Respondent opened her firm on or about April 2013 and relied heavily upon the timely payments from her clients to run her business;
- (2) She had been representing the Legal Aid Commission on its panel for conflict matters in three jurisdictions, Sigatoka, Nadi and Lautoka;
- (3) This involved the referral from Legal Aid of approximately a large number of files with no provision for transport costs, such that the Respondent was having to pay for travel between the three jurisdictions at her own expense;

(4) Legal Aid only paid her fees on the basis of closed files and there were costs that she had invoiced to Legal Aid which were outstanding leaving her out-of-pocket and with very little income as a sole practitioner to operate her practice;

(5) On or about 12th January 2015, due to the problems of non-payment, the Respondent withdrew from the LAC's "conflicts panel" and put them on notice of her withdrawal asking them to attend and removal their files from her Office within seven days;

(6) On 22nd January 2015, when Criminal Case No. HAC 181 of 2013 was called in the High Court at Lautoka, a LAC lawyer appeared and informed the Court that the Respondent had withdrawn from its panel of Solicitors and they were in the process of obtaining the files from her;

(7) The accused was at all material times a client of the LAC such that the onus was on the LAC to inform the Court, which it did, that the Respondent was no longer on record as its Counsel;

(8) The Respondent was out of pocket to such an extent that she was virtually penniless at that time as she awaited payment from Legal Aid such that she did not have the funds to travel to Lautoka and appear in the High Court to obtain the leave of the Court to withdraw as Counsel;

(9) The Respondent felt that she was now being punished for non-payment by the LAC when it was that body through its non-payments that placed her in such a position where she had exhausted her own funds and thus had difficulty arranging and paying for travel to and from the High Court in Lautoka.

22. The Applicant submitted in reply as follows:

(1) On the first call, the Respondent admitted to the charges;

(2) The Respondent's alacrity to admit the allegation and her obvious remorse stand her in good stead as it saved the Commission time and resources;

(3) The Respondent is a first offender and at no time meant disrespect to the Honorable Court;

(4) The Respondent was facing financial problems due to late payment from the LAC who had instructed her to appear yet failed to fulfill their end of the bargain.

(5) There are no aggravating factors;

(6) As for the appropriate penalty, the Applicant cited as a guide *Chief Registrar v Kalisito Maisamoa* [2013] FJILSC 2; Case No.10.2012 (23 January 2013) wherein the Respondent was found guilty of eight counts of Unsatisfactory Professional Misconduct contrary to Section 50(2) of the *Legal Practitioners Decree 2009* and the Chief Registrar's Directive to Legal

Practitioners No. 1 of 2014 (because he appeared in the High Court to argue matters on behalf of six co-accused facing serious allegations of sexual abuse involving children and also made a bail application on behalf of one of them when, at the time, he was an Associate with less than two years post-admission experience and thus should not have been appearing '*unless with another practitioner of at least three years' standing*). The Commission agreed with the Respondent in *Maisamoa* that this should be seen as one transgression and thus one penalty of \$1,500.00 was imposed to be concurrent for each offence.

Submissions in relation to Count 2

23. The Respondent submitted in mitigation in relation to Count 2, in summary, as follows:

- (1) If Legal Aid had provided her with transportation she would have turned up on time at 9.30am in the High Court at Lautoka High Court on the Monday morning, 23 March 2015;
- (2) The matter was for summing up and in previous cases when similar situations arose the same judge had allowed other lawyers to have another lawyer appear on their behalf;
- (3) The Respondent has been in practice for over 10 years and this was the first time that she had committed such an offence having always given precedence to High Court matters and said that she would not be repeating her mistake in the future;
- (4) The steps that she had taken to ensure that this was not repeated were that she has been having most of her private clients providing her with transportation and she has not been "double booking" so that whatever client she takes is for that particular day;
- (5) If, in future, a case does "run over", she will engage agents in the week before such other cases are called in the Magistrates Courts to appear on her behalf in those other matters so that she can continue to give precedence to the High Court;
- (6) If things go well with her practice, she may have an employee to assist and, in that regard, she has been in contact with the Ministry of Labor Department who have a program where they are able to pay half the wages of an employee and the employer pays the other half;
- (7) In terms of penalty, a warning would suffice because she will not repeat this mistake again. Alternatively, a small fine might be imposed.

24. The Applicant submitted in reply (as I understood the submissions) as follows:

- (1) On the first call, the Respondent admitted to the charge;
- (2) 'Legal practitioners ought to know where their duties lie' and citing Lord Denning in *Rondel v Worsley* [1967] 1 QB 443 at 503 '... [The advocate] has a duty to the court which is paramount';

- (3) The Respondent ‘having had sufficient legal experience enough to operate her own law firm should know that priority goes to the higher court’;
- (4) The Applicant’s general submissions in relation to Count 1 also apply, that is –
- (a) the Respondent’s alacrity to admit the allegation and her obvious remorse stand her in good stead as it saved the Commission time and resources;
 - (b) The Respondent is a first offender and at no time meant disrespect to the Honorable Court;
 - (c) There are no aggravating factors.
- (5) As for the appropriate penalty, the Applicant cited as a guide *Chief Registrar v Chand* [2013] FJILSC 14; No.017.2013 (3 October 2013) wherein a practitioner appeared in a contested hearing in the Magistrates Court when on the same day he wrote to the High Court advising that he was medically unfit to appear and sought an adjournment. The Commission found the allegation established and ordered that the practitioner be publicly reprimanded, have his practicing certificate suspended from 3 October 2013 until 1st March 2014 (a period of nearly five months) and he pay a fine of \$5,000.00, and, in default, his practicing certificate be suspended for a further three months.

3. Penalty

Count 1

25. It is important to set out in full *Practice Direction No.1 of 2011* in relation to *Withdrawal of Counsel in Criminal Proceedings* that was issued on 11th April 2011 by His Lordship, Chief Justice A.H.C.T. Gates. [see - www.paclii.org/fj/directions/prac_directions/pn1o2011wocicp607/] It states as follows:

‘1. This Direction applies to counsel appearing in all courts in Fiji including the Court of Appeal and the Supreme Court. It repeats much of the same sentiments as in the Practice Direction published by Nimmo CJ in 1971 [see *CPC annotated by Marie Chan 2008 at p 400*].

2. Occasionally counsel is obliged to withdraw from a case. This may be because instructions have been withdrawn, counsel no longer feels able to represent the client satisfactorily, or considers there to be a conflict of interest, or conflict with his or her duty to the court in continuing to appear for the client, or that counsel is physically incapacitated from appearing. This is not an exhaustive list of instances, for there are likely to be other and proper reasons for seeking withdrawal.

3. **Where counsel needs to withdraw, it is counsel’s duty as a matter of courtesy and good practice to appear on the next listed mention or hearing date and seek leave to withdraw.** But application for leave to withdraw need not await the next court date. Counsel may apply before such date by motion and affidavit. The court will then consider whether to grant

leave. This may involve a consideration as to whether or not counsel may be able to continue to serve his or her client's best interests if he or she were ordered to continue and if leave were declined: *Ram Sharan v Kanyawati* [1969] 15 Fiji LR 220 at p 223; *Lockhart-Smith v United Republic* [1965] E.A. 211 at p 265.

4. However this Direction is no more than a restatement of earlier practice, with which newer members of an increasing Bar may be unfamiliar. **It is framed to avoid the situation where counsel, previously briefed and appearing in a matter, fails to appear on the next occasion thus abandoning his or her client.** Procedurally, if there is to be a withdrawal by counsel, it is necessary for that counsel to appear before the court and obtain leave for his or her withdrawal from the case.

5. At the interlocutory stages leave may more readily be obtained. At the commencement of a trial or during a trial, leave may not so easily be granted.

6. **In summary the court is unlikely to permit withdrawal:**

(a) where counsel would be in breach of his or her duty to the client;

(b) where, though for valid reasons, the application to withdraw is made at the last minute, which would cause postponement of trial, wasted witness costs whether attending from overseas or locally, or where by the withdrawal a waste of court time and public funds is likely to be occasioned;

(c) to enable counsel to undertake an alternative commitment whether of a public or private nature;

(d) where counsel's fee in whole or in part has not been paid.

7. If the court refuses to permit withdrawal and counsel nonetheless withdraws, a report may be lodged with the Chief Registrar for consideration of future action under the Legal Practitioners Decree. With a sense of service and duty to the client and to the Court uppermost, no practitioner, it is to be anticipated, would allow such a situation to arise.

8. In the case of counsel being hospitalized, another counsel may make the application upon his or her behalf. In certain instances a court may insist on the production of a medical certificate as in Form 62 of the CPC.' [My emphasis]

26. As to why in the 10 or so days between the 12th January 2015 (when the Respondent wrote to Legal Aid withdrawing) and the 22nd January 2015 (when High Court Case No. HAC 181 of 2013 was called in the High Court at Lautoka), the Respondent had neither contacted the Court to have the matter relisted as a matter of urgency so as to make an oral application for leave to be excused, nor filed with the Court a formal application for her withdrawal as Counsel, remains a mystery.

27. Indeed, when I had this matter relisted on 12th February 2016, so that the parties could clarify their respective submissions and to address me on penalty, the

Respondent made an oral submission, that “when I am contracted by Legal Aid I also become their employee and I am also entitled to the same rights as their employee” and attempted to cite the *Legal Aid Act 1996*. If I have understood the Respondent’s argument correctly, she was submitting that it did not matter that she did not appear in the High Court at Lautoka on 22nd January 2014, so long as someone from Legal Aid appeared (which occurred), as it was Legal Aid that was acting for the client.

28. I reject the above argument. Section 11 of the Legal Aid Act ‘*Arranging for services of private legal practitioners*’ is quite clear. I suggest that the Respondent read that Section. The following excerpts may assist her:

‘11.-(1) The Commission may at its discretion cause to be prepared and maintained **lists of private legal practitioners who it approves to act on behalf of legally assisted persons**, whether generally or in relation to particular classes of matters Courts or tribunals.

....

(5) A private legal practitioner requested to provide services on behalf of a legally assisted person who accepts that request **shall not delegate the conduct of those services or any part thereof to any person other than a partner of the legal practitioner or a person employed in the legal practitioner's office**, save with the approval of the Commission.

(6) A private legal practitioner requested to provide services on behalf of a legally assisted person may, if a member of a firm, act in that matter in the name of the firm.

....

(8) The Commission shall prepare schedules setting out fees to be paid to private legal practitioners for the services rendered by them to legally assisted persons in relation to particular matters, and may prepare guide-lines for reimbursement of disbursements incurred by legal practitioners. Subject to the provisions of this subsection, **private legal practitioners shall be paid for the performance of services for legally assisted persons** such fees as the Commission in its discretion shall determine.’ (My emphasis)

29. When a private practitioner is selected to provide services to a legally assisted person, the practitioner is not engaged as an employee. Rather, as the *Legal Aid Act* makes clear, if a legal practitioner is a member of a firm, they may ‘act in that matter in the name of the firm’. By contrast Section 12 sets out the ‘*Provision of services by commission staff*’ commences ‘(1) An employee of the Commission ...’ and then sets out matters relevant to services provided by its employees. There is no mention of contracted private practitioners being the LAC’s employees.

30. The Respondent’s other submission was that she had no money to pay for transport to attend Court. Although she provided no documentary evidence to support such a claim, I am satisfied (as, indeed, the Applicant agreed in their written submissions), that ‘the Respondent was facing financial problems due to late payment from the LAC who had instructed her to appear yet failed to fulfill their end of the bargain’.

31. Perhaps, therefore, the Respondent was not totally to blame for what occurred. Indeed, the letter dated 24th July 2015 from the Director of the LAC to the Chief Registrar did not address why the LAC in the days between the 12th January 2015 and 22nd January 2015, had neither contacted the Court to advise that the Respondent had withdrawn as Counsel for Legal Aid conflict matters nor obtained the files from her so as to enable either a representative from the LAC (or another private practitioner funded by the LAC) to be in a position to proceed on 22nd January 2015, when Criminal Case No. HAC 181 of 2013 was called. The LAC's attitude and behaviour remains somewhat unclear.

32. What became clear, however, at the hearing on 12th February 2016 in relation to this Court, was that the Respondent was using the retention of the files as some form of a "bargaining chip" for payment. Indeed, she told this Commission from the Bar Table: "Sir I had informed them that if they would pay my legal fees which was pending with them then I would release the files."

33. Meanwhile, when Criminal Case No. HAC 181 of 2013 was called in the High Court of Fiji at Lautoka, neither the Respondent appeared nor was Legal Aid in a position to proceed as they were still in the process of obtaining the file from the Respondent - a most unsatisfactory state of affairs.

34. Now if the Respondent was claiming a lien over the file, then she still had to appear on the 22nd January 2015. Her firm, not Legal Aid, was still on the record. She needed to make an application to withdraw. It would have been a matter for the Court whether to grant leave. It may well have refused leave if the Court had been made aware that the Respondent was not prepared to return the file to Legal Aid until she had received payment.

35. As Justice Madigan made clear in *Maisamoa* at [10] '... the two year restriction on newly admitted barristers is there for a purpose and in the view of the Commission it must be strictly enforced **in the interests of public protection**'. (My Emphasis) Similarly, **Practice Direction No. 1 of 2011 on Withdrawal of Counsel in Criminal Proceedings** 'is there for a purpose'. Again, it is 'the interests of public protection'.

36. Most importantly, in the dispute between the Respondent and Legal Aid, it seems to have been forgotten that there was a client, the 1st Accused, Joeli Baleilevuka, who still needed legal representation. The Respondent's attitude to both the Court and the client should not be repeated. As the Chief Justice has made clear in his Practice Direction: 'It is framed to avoid the situation where counsel, previously briefed and appearing in a matter, fails to appear on the next occasion thus abandoning his or her client.' (My emphasis) How could Legal Aid assist the 1st Accused if the Respondent was withholding Mr. Baleilevuka's file from them but she was also not prepared to appear on his behalf? Was this not a case of simply abandoning her client?

37. In addition, there were three co-accused who had been on remand for quite a lengthy period of time, as well as two witnesses in attendance to give evidence specifically in relation to the 1st Accused (Ms. Lata's client). There was also the disruption to the Court's timetable which then had to adjourn the *voir dire* hearing until the following week.

38. I have noted the submissions of the Applicant on penalty. I have also noted the submissions of the Respondent. If the Respondent is to continue to act on behalf of legally assisted persons, she must understand her obligations to both the Court and each client whom she represents. Whilst I have noted that this is the Respondent's first offence since being admitted in 2004, I am also aware of the need for both specific and general deterrence in relation to such unprofessional behavior. It clearly is unsatisfactory professional misconduct. Although the Respondent has not provided any documentary evidence as to her present financial circumstances, I have noted the financial problems she encountered through much of 2014 and into 2015. The Respondent is to be publicly reprimanded and fined the sum of \$500.00 to be paid within 28 days, that is, to be paid on or before 12 noon on Thursday, 21st April 2016.

Count 2

39. Rules 3.2 (i) and (ii) of the *Rules of Professional Conduct and Practice of 2009* (see Schedule to the *Legal Practitioners Decree 2009* http://www.paclii.org/fj/promu/promu_dec/lpd2009220/) state as follows:

3.2 A practitioner shall at all times:—
(i) act with due courtesy to the Court;
(ii) take all reasonable steps to avoid unnecessary expense or waste of the Court's time. [My emphasis]

40. It is of concern that only just under two months had passed between the offence in Count 1 and the second offence set out in Count 2.

41. As it turned out, (contrary to the particulars set out by the Applicant) the Respondent did not appear in either Nasinu or Sigatoka Magistrates Court on Monday, 23rd March 2016, when she should have been appearing in the High Court at Lautoka. Indeed, there was no evidence drawn to my attention by the Applicant to support such a claim.

42. Rather, I accept the Respondent's submission that she spent much of that morning on Monday, 23rd March 2016, arranging to be excused from appearing in Nasinu and Sigatoka Magistrates Courts as well as arranging for transport to take her to the High Court at Lautoka. As such, she did not appear in the High Court at Lautoka until approximately 11.20am.

43. Thus, the Respondent failed to give precedence to the Lautoka High Court over the Sigatoka Magistrates Court (evidenced not by her appearing at the Sigatoka Magistrates Court over the Lautoka High Court), rather by her spending the Monday morning arranging to be excused from appearing in Nasinu and Sigatoka Magistrates Courts when at that time she should have been already travelling to Lautoka so as to be present in Court at 9.30am when His Lordship wished to commence his summing up.

44. Clearly, the Respondent should have raised with the Trial Judge in the High Court at Lautoka on the Friday afternoon her "double booking" problems and sought His Lordship's leave to have another practitioner appear on the following Monday morning until the Respondent was able to appear later that day.

45. What the Respondent was doing on Monday morning arranging to be excused

from appearing in Nasinu and Sigatoka Magistrates Courts are matters that she should have been addressing, if not during the lunchtime adjournment on the previous Friday (when it was clear that the trial in the High Court at Lautoka would not be concluding that day), then immediately after Court on the Friday afternoon, or at the latest to have arranged over that weekend, other legal representation for her matters in Nasinu and Sigatoka Magistrates Courts.

46. Indeed, I note that there is in evidence before me of a letter dated 23rd March 2015 from the Respondent that was apparently sent by facsimile transmission that same morning to the Criminal Registry of the Nasinu Magistrates Court. This is something that should have been done the previous Friday evening, 20th March 2015, or over that weekend – not on the Monday morning when the Respondent should have been travelling to Lautoka so as to be present in the High Court when the matter was called that morning for the Trial Judge to commence his Summing Up.

47. Thus, I am satisfied that the Respondent failed to appear at the Lautoka High Court for Criminal Action No. HAC 109 of 2012 when the matter was called on Monday, 23rd March 2015, at 10.15 am and did not appear until approximately 11.20am.

48. I am satisfied that this is unsatisfactory professional misconduct.

49. I am not satisfied, however, that this is unsatisfactory professional misconduct to the level of deception evidenced in *Chand*. This was instead poor diary management and office administration.

50. Again, I have noted the submissions of the Applicant on penalty. I have also noted the submissions of the Respondent. I have particularly noted that though this is a second offence of unsatisfactory professional misconduct within a period of just under two months, there have been no further offences in the following 12 months since that second offence. I also accept the Respondent's attempts to improve her diary management and office administration so that she is not "double booked". I further accept that she now understands what she must do should a case "run over". In the circumstances, I believe it is sufficient if the Respondent is publicly reprimanded on this occasion. I will not be so lenient, however, should the Respondent appear before me again on a similar matter.

51. In that regard, the Respondent may care to note that in some jurisdictions such behavior as failure to attend Court on time has been seen as contempt of court. For example, in the High Court at Georgetown, Guyana, in November 2015, a lawyer who was almost an hour and a half late for court was 'cited for contempt of court and ordered to pay a fine of \$10,000 for his lateness [the equivalent of about FJ\$100.00] which saw the commencement of the morning's proceedings stalled' and was given seven days to pay or be imprisoned for two days. (See 'Defence lawyer fined \$10,000 for late arrival for murder trial', *Stabroek News* (online), 3 November 2015, <[http://www.stabroeknews.com/2015/news/stories/11/03/defence-](http://www.stabroeknews.com/2015/news/stories/11/03/defence-lawyer-fined-10000-for-late-arrival-at-murder-trial/)

[lawyer-fined-10000-for-late-arrival-at-murder-trial/](http://www.stabroeknews.com/2015/news/stories/11/03/defence-lawyer-fined-10000-for-late-arrival-at-murder-trial/)>, accessed 14 March 2016.)

ORDERS

1. In relation to Count 1, the Respondent is publicly reprimanded. In addition she

is fined the sum of \$500 to be paid within 28 days of today, that is, by 12 noon on 21st April 2016.

2. In relation to Count 2, the Respondent is publicly reprimanded.

Dated this 24th day March 2016.

Dr. Thomas.V. Hickie
COMMISSIONER

HLSJC