

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

No. 002 of 2016

BETWEEN:

CHIEF REGISTRAR

Applicant

AND:

VILMONE VOSARONGO (AKS FILIMONI WR VOSOROGO)

First Respondent

AND

No. 003 of 2016

BETWEEN:

CHIEF REGISTRAR

Applicant

AND:

LAISA LAGILEVU VODO

Second Respondent

Coram: Dr T.V. Hickie, Commissioner

Counsel for the Applicant: Mr A. Chand and Ms V. Prasad

Respondents: Ms B. Malimali (with Mr Vosarogo) and Ms Vodo in person

Dates of Hearing: 23rd September 2016

Date of Judgment: 23rd September 2016

EX TEMPORE RULING
ON
RESPONDENTS' INTERLOCUTORY APPLICATIONS
FOR
RENEWAL OF THEIR RESPECTIVE PRACTISING CERTIFICATES
BY THE CHIEF REGISTRAR'S OFFICE

1. The Application

[1] On 27th June 2016, an Application was filed by the Chief Registrar setting out three allegations of Professional Misconduct against the First Respondent in relation to the operation of the First Respondent's Trust Account.

- [2] On 11th July 2016, an Application was filed by the Chief Registrar setting out four allegations of Professional Misconduct against the Second Respondent in relation to the operation of the Second Respondent's Trust Account.
- [3] Both Applications were made returnable on 21st September 2016, however, due to the passing of my father in Australia, the September Sittings of the Commission were rescheduled and both applications were made returnable on 22nd September 2016.
- [4] When the parties appeared before me yesterday, Counsel for the Applicant advised in both matters that as was mentioned in their Prosecution Case Statements filed on 15th and 16th September 2016 respectively, that they were now seeking the Commission's leave to amend one of the Counts in each application to include reference to sections 12(4) and 12(6) of the *Trusts Accounts Act 1996*.
- [5] The Respondents indicated that they would each be opposing those applications. Further, the second Respondent (Ms Vodo) noted that as she not had a Practising Certificate since March 2016, she would be seeking an immediate Order from the Commission for the Chief Registrar to issue her with a Full Practising Certificate pending the final hearing of the substantive matter as occurred in *Chief Registrar v Siteri Adidreu Cevalawa*, [2011] FJILSC 10 (7 October 2011) (Unreported, ILSC Case No. 006/2011, Commissioner Connors).
- [6] Both matters were adjourned until 9.00am and 9.30am today.
- [7] Prior to the matter being called this morning, I was provided with four pages of written submissions drafted by the Respondent in the Vodo matter in support of her Interlocutory Application to be issued with an interim practising certificate.
- [8] I stood the matter down and marked it "not before 12.30 pm" as I was dealing first this morning at 11.30am with a similar oral application made by Counsel on behalf of Mr Vosarongo where each counsel made oral applications that

concluded at approximately at 1.15pm.

[9] The Second Respondent's application was eventually heard at 1.40 pm. The Respondent spoke to her written submissions and Counsel for the Applicant responded by way of oral submissions.

[10] This then is my ex tempore ruling on the both of the Respondents' Interlocutory Applications to be issued with an interim practising certificate.

[11] I wish to thank the Second Respondent for drawing my attention to ***Chief Registrar v Siteri Adidreu Cevalawa***. What occurred in that matter can be summarised as follows:

(1) The Application concerned 10 Counts alleging that the Respondent had been making multiple court appearances without a practicing certificate.

(2) When the matter was first called before Commissioner Connors on 7th October 2011, the Respondent admitted Counts 1-8 and disputed Counts 9 and 10 and a hearing was set down for 5th December 2011 in relation to those two Counts.

(3) The Commissioner then raised by his own volition with the Respondent the issue of her being without a practicing certificate pending the final hearing of the matter as follows:

Commissioner : Ms. Cevalawa, one of the problems with this Commission is that it does not sit all the time and I don't next sit until the last week of November which is the first time I can hear the matter. As I can understand from the documents that are been filed and served you at this moment don't have a practicing certificate because the Chief Registrar has refused to issue you with one and it would appear from the documents that situation will continue such time as this matter is resolved, is that causing you any prejudice in your employment?

Ms. Cevalawa : It is my lord.

And Further:

Commissioner:... I am extremely concerned that because this commission doesn't sit constantly that there is significant prejudice to respondents such as this respondent when the matter can't be dealt with quickly and when the chief Registrar as it would appear refuse to issue the practicing certificate pending the outcome of this proceedings. The effect of this as I see it will be that the respondent will effectively have her Practicing certificate suspended for about 6 months and that's quite

frankly a far greater penalty that I would impose in this matter..... I am of mind to make an interlocutory order directed at the Chief Registrar to issue a practicing certificate forthwith pending the determination of the matter obviously what do you want to tell me as to why is should not do that?

(4) Counsel for the Applicant had noted that this was a matter for mitigation (as the practitioner had entered pleas of guilty in relation to 8 of the 10 counts). There was also an issue that the respondent was still employed even though she was not able to practice as a lawyer

Commissioner Connor's then noted

... I am addressing the simple issue that the six months that the practitioner wont have the practicing certificate and the only two reasons are the Chief Registrars refusal to issue it and the fact the commission isn't sitting if this commission were the high court, the magistrates court or whatever and sat everyday then this matter could be dealt with next week and the practitioner wouldn't be placed in jeopardy by not having a practicing certificate for six months. If it were somebody charged with murder the bail act carries a presumption that bail be granted not a presumption to be locked up pending trial but a presumption that bail be granted there is an awful [lots] of hoops the prosecution has to go through to cause the person to remain in custody.....

(5) The Leading Counsel for the Complainant then intervened and advised that she would not be opposing the making of 'an interlocutory order directed at the Chief Registrar to issue a practising certificate forthwith pending the determination of the matter'.

(6) Accordingly an interlocutory order was made on that same day (7th October 2011).

(7) On 17th October 2011, the Chief Registrar issued the Respondent with a practicing certificate valid until 17th November 2011.

(8) On 18th October 2011, Commissioner Connors made a further Order that the Chief Registrar issue a practicing certificate to the Respondent for the balance of the term (that is until 28th February 2012).

(9) On 25th October 2011, the Applicant filed a Notice of Motion with the Commission seeking that the execution of the Orders of 7th and 18th October be stayed pending an appeal to the Court of Appeal. That was made returnable on 28th November 2011.

(10) In the meantime, the Applicant filed an Appeal with the Court of Appeal,

also on 25th October 2011 together with an Affidavit in Support of Counsel for the Applicant.

(11) On 30th November 2011, an Order was made by Marshall JA, Resident Judge of Appeal, staying the Orders of Commissioner Connors until the hearing of the Chief Registrar's appeal.

(12) On 5th December 2011, Commissioner Connors delivered an ex tempore judgment n Counts 9 and 10 dismissing those two Counts. He also made Orders on Counts 1-8 that the Respondent be publicly reprimanded, fined the sum of \$1,000 and vacating his interlocutory orders of 7th and 18th October 2011.

(13) I have been advised today by Counsel for the Applicant in the present matter[Vosorgo] before me that the appeal in *Chief Registrar v Cevalawa* was withdrawn by consent.

[12] The reason that I have set out a summary of what occurred in *Chief Registrar v Cevalawa*, is twofold:

(1) There was no objection by Counsel for Applicant in either matter as to the Commission having the power to order that the Chief Registrar issue an interim practising certificate – even though there was objection raised as to the Commission dealing with the applications today. Indeed, I note that the Commission had such power was conceded by Counsel for the Applicant in the second application (Vodo).

(2) There was no ex tempore or other judgment on the Commission's file (or any written judgment of which I am aware) handed down by Commissioner Connors providing reasons as why he decided to Order that the Chief Registrar issue a practicing certificate to the Respondent. Further the Amended Order made on 18th October 2011, was made without the Applicant being given an opportunity to be heard. There was also no ex tempore or other judgment on the Commission's file (or any written judgment of which I am aware) handed down by Justice Marshall when he decided to grant the Chief Registrar's application for a stay pending the hearing of the Chief Registrar's appeal.

(3) As such, I had the Secretary of the Commission email yesterday to all parties copies of the Orders made in *Chief Registrar v Cevalawa* together with an Affidavit of Counsel for the Applicant in that matter that was filed in the Court of Appeal (not a copy of an affidavit that what was filed previously with the Commission) so all parties had a background as to why the Orders were

made by Commissioner Connors and later by Justice Marshall. Even though the providing of such material has been objected to by Counsel for the Applicant in the Vosarogo matter (which is being determined by me in conjunction with this matter), as Counsel for the Applicant in the Vosarogo matter has noted this document was filed in the Registry of the Court of Appeal and thus available for access by any legal practitioner.

[13] In any event, I note that in both matters, presently before me, Vosarago and Vodo, the practitioners have been without practicing certificates since 1st and 18th March respectively. I am concerned, as was Commissioner Connors in *Cevalawa*, that as the Commission sits part-time this can have an extremely detrimental impact on a practitioner, particularly where a hearing is to take place on 7th December 2016 with judgment not expected until the February 2017 sittings.

[14] Balanced against the above, I do take note of the arguments of Counsel for the Respondent that these are serious matters and protection of the public must be paramount.

[15] I also note that in both cases Counsel for the Applicant have confirmed that the allegations against the respective Respondents are that they have been negligent not fraudulent.

[16] I further note that I have not been referred to any case that is “on point”. The case of *Chief Registrar and Shah* was cited to me, however, it seemed to differ to what was being alleged compared with the present matters before me.

[17] The submissions made on behalf of each Respondent have include reference to the Constitution as the statement by Justice Madigan in *Chief Registrar v Devanesh Prakash Sharma* [2014] FJILASC 7 (Unreported, ILSC Case No 029 of 2013, 12 November 2014) at [52]:

Although practitioners are not "accused persons" as envisaged by the Constitution, I will now declare that for this matter and all future matters before this Commission, the rights of persons being investigated and charged under the Legal Practitioners' Decree will be afforded all of the rights afforded to accused persons in the Constitution 2013.'

In that regard, Counsel for Mr Vosarago has highlighted the presumption of innocence (s.14(2)(a) and right to trial without unreasonable delay (s.14(2)(g). Ms Vodo has also cited s.14(2)(a) as well as the right to economic participation (s.32(1)).

[18] Counsel for Mr Vosarago is seeking that he be permitted to operate his practice without a trust account and not handle any moneys other than AFTER he has appeared as an advocate and for any other matters only AFTER he has completed the invoiced work.

[19] Ms Vodo is not seeking to reopen her practice. She is only seeking to be permitted as an employed lawyer and not handle and trust account or other moneys.

[20] Counsel for Mr Vosoargo has submitted that the matter should, be treated in the similar vein as a bail application and the Commission should consider:

- (1) The likelihood of the person attending – here Mr Vosargao will be vigorously contesting the allegations;
- (2) The Interests of the Respondent – Mr Vosarogo has a wife and six children;
- (3) The public interest – which could be protected by imposing stringent conditions including supervision by a legal practitioner of 10 years' standing.

[21] If I was to applying a similar argument to Ms Vodo, it would be as follows:

- (1) The likelihood of the person attending – here Ms Vodo will be contesting the auditor's report;
- (2) The Interests of the Respondent – Ms Vodo has a self-employed husband and three extremely young children;
- (3) The public interest – which could be protected because she is not seeking to reopen her practice but work for as an employed solicitor should she be able to find employment.

[22] I have also considered the submissions of Counsel for the Applicant in both matters. In particular, I note that in each matter they are relying upon what they see as admissions by both Respondents in their correspondence with the Chief Registrar's Unit. Balanced against that, are the submissions by each

Respondent that they will argue that these will be matters for determination at a final hearing as to whether they were admissions.

[23] In coming to a decision, I have taken into account these matters are serious and the importance of the protection of the public. Balanced against that I have taken note of what was said by Commissioner Connors in *Cevalawa*, the Respondents are only seeking practising certificates to be issued at this stage until the hearing of their substantive matters set down respectively for 7th December 2016, and that conditions can be imposed to protect the public. Accordingly, I will grant the application in each matter.

[24] I wish to record my thanks to Counsel for all parties and the respondents in being prepared to deal with these applications in a timely manner. I also wish to record my personal thanks to the commission staff for being prepared to work overtime on a Friday evening so that this judgment could be delivered.

[25] The formal Orders of the Commission are:

ORDERS

1. In respect of **VILMONE VOSARONGO (AKS FILIMONI WR VOSOROGO)**, the Respondent's oral application for the issuing of an interim practising certificate is granted on the following basis:
Pursuant to Section 121(3) of the Legal Practitioners Decree, the Chief Registrar shall issue a Practising Certificate to the Respondent until 7th December 2016 forthwith on payment of the prescribed pro rata fees, on the following conditions:
 - (i) The Respondent is not to operate a Trust Account.
 - (ii) The Respondent is not to operate Trust Account No. 7703648 held at the Bank of the South Pacific unless approved in writing by the Chief Registrar.
 - (iii) The Respondent is to take the monthly bank statement for Mamlakah Lawyers Trust Account No. 7703648 held at the Bank of the South Pacific to the Office of the Chief Registrar at the end of each month until further notice.
 - (iv) The Respondent will only operate or practice as a Barrister and will only receive payment upon issuance of an invoice, after the work has been done (Invoice for work done).
 - (v) The Respondent will work under the Supervision of Mr. Simione Valenitabua who was admitted as a Barrister & Solicitor of the High Court of Fiji in 2006. He is the Managing Partner in the firm of TOGANIVALU & VALENITABUA whose address is 30 High Street, Toorak, Suva.

2. In respect of **LAISA LAGILEVU VODO**, the Respondent's oral application for the issuing of an interim practising certificate is granted on the following basis:
Pursuant to Section 121(3) of the Legal Practitioners Decree, the Chief Registrar shall

issue a Practicing Certificate to the Respondent until 7th December 2016 forthwith on payment of the prescribed pro- rata fees, on the following conditions:

- (i) The Respondent is not to operate a Trust Account nor receive any monies personally in relation to any legal work undertaken by her.
- (ii) The respondent is only to work as an employee lawyer.

Dated this 23rd day of September 2016.

Dr. Thomas V. Hickie
COMMISSIONER