

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

No. 002 of 2016

BETWEEN:

CHIEF REGISTRAR

Applicant

AND:

VILIMONE VOSAROGO (AKA 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) for First Respondent; and
Mr A. Naco for Second Respondent

Dates of Hearing: 6 February 2017

Date of Judgment: 6 February 2017

EX TEMPORE RULING
ON
RESPONDENTS' ORAL INTERLOCUTORY APPLICATIONS
FOR
CONTINUATION AND/OR ISSUING OF THEIR RESPECTIVE INTERIM
PRACTISING CERTIFICATES
BY THE CHIEF REGISTRAR'S OFFICE

1. The Application

[1] This is my ex tempore Ruling on both of the Respondents' Oral Interlocutory Applications to be issued with the continuation of their respective interim

practising certificates up to and including 28th February 2017.

- [2] 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.
- [3] 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.
- [4] I have today handed down a judgment in relation to the First Respondent whereby an Application by the Chief Registrar for Leave to Amend Count 3 has been refused and also objections raised by the First Respondent in relation to the three Counts pending against him have been upheld. Rather than dismiss the entire application, however, I have given the Applicant leave to file and serve a Further Amended Application by 12 noon this Friday, 10th February 2017, in relation to the three Counts presently filed with the Commission.
- [5] I note that in relation to the Second Respondent there is an application pending by the Chief Registrar for Leave to Amend Count 4 and also objections raised by the Second Respondent in relation to the four Counts filed against her. I further note that as the Second Respondent is currently in Australia undergoing medical treatment, those interlocutory applications are still pending to be heard.
- [6] On 23rd September 2016, I heard an oral application by each Respondent seeking the issuing of an interim practising certificate until 7th December 2016, such applications were each opposed by Counsel for the Applicant. I granted such applications for the reasons set out in my ex tempore judgment dated 23rd September 2016. (See *Chief Registrar v Vosarogo; Chief Registrar v Lagilevu-Vodo (Interim Practising Certificates)*, ILSC Application No.003 of 2016, 23 September 2016; Paclii: [2016] FJILSC 6. <<http://www.paclii.org/fj/cases/FJILSC/2016/6.html>>.)
- [7] On 7th December 2016, I heard a second oral application by each Respondent

seeking the issuing of an interim practising certificate until 6th February 2017, such applications were each opposed by Counsel for the Applicant. I granted such applications for the reasons set out in my ex tempore judgment dated 7th December 2016.

- [8] The parties have appeared before me again today following upon my handing down judgment in relation to the Interlocutory Applications involving the three Counts against the First Respondent that I have mentioned in paragraph 4 above, seeking a further continuation of their interim practising certificates until 28th February 2017. Again, such applications are opposed by Counsel for the Applicant.
- [9] According to Counsel for the Applicant Chief Registrar appearing in response to the Application of the First Respondent, the basis of opposing the application is, in summary:
- (1) The seriousness of the offence;
 - (2) This is an alleged trust account breach;
 - (3) The public interest in protecting trust account money;
 - (4) There was a question whether the Respondent legal practitioner (the Applicant in this oral application) had complied with one of the conditions of the Orders made on 7th December 2016, that is, provided a copy of his monthly bank statement to the Chief Registrar.
- [10] Counsel for the Respondent legal practitioner replied, in summary:
- (1) The January 2017 bank statement was forwarded at 2.09pm today;
 - (2) Both she and her client are not quite sure as to the offence/s in light of my earlier Ruling of today and drew my attention to page 43 of my Ruling where I have indicated that the Applicant has to make some choices as to how he wishes to proceed;
 - (3) Count 3 cannot stand;
 - (4) There is no serious charge pending against the Respondent and they will not be any the wiser until the Applicant files and serves his Further Amended Application by 12 noon this Friday, 10th February 2017;
 - (5) She submitted that the matter should, be treated in the similar vein as a bail application, as she previously submitted on 23rd September 2016, such that there

has been no change in the circumstances – indeed, the only change is that the charges against the Respondent have to be amended or withdrawn. I also note that counsel for the Applicant has confirmed that he has received the January 2017 bank statement and the matters are in order.

[11] According to Counsel for the Applicant Chief Registrar appearing in response to the Application of the Second Respondent, the basis of opposing the application is, in summary:

- (1) The seriousness of the offence;
- (2) The Respondent legal practitioner is undergoing medical treatment, the Applicant has not received any updated medical report as to the status of her health and it does not appear that she needs a practicing certificate.

[12] Counsel for the Second Respondent legal practitioner replied, in summary:

- (1) They rely upon the medical report dated 23rd November 2016;
- (2) The Respondent legal practitioner is currently undergoing medical treatment in Australia, however, she is still an employee of his firm undertaking legal work from there, in particular, obtaining instructions from clients for which she requires a practising certificate.

[13] I note that in both matters, presently before me, Vosarago and Vodo, the practitioners were without practicing certificates from 1st and 18th March 2016 respectively until 23rd September 2016. I am concerned as was Commissioner Connors in *Chief Registrar v Siteri Adidreu Cevalawa* (unreported, ILSC Case No006 of 2011, Commissioner Connors; Paclii: [2011] FJILSC 10, <http://www.paclii.org/fj/cases/FJILSC/2011/10.html>), that I have cited in my two previous ex tempore judgments in these two matters, that is, as the Commission sits part-time, this can have an extremely detrimental impact on a practitioner. This is now particularly so where I have today delivered a Ruling questioning the basis of the three Counts presently filed against the First Respondent and it is uncertain as to what type of a hearing is now to take place (either a further interlocutory hearing or a final defended hearing) and when? Similarly, in relation to the Second Respondent, in light of my Ruling today involving the First Respondent, it may well be that it is also uncertain as to what type of a hearing is now to take place (either an interlocutory or a final hearing)

and when for the Second Respondent. There is also the further issue as to when her treating medical practitioner may permit her to travel back to Fiji.

[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. I also note, however, 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.

[15] 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, as I have said, I have taken note of what was said by Commissioner Connors in *Cevalawa*, that the Respondents are only seeking practising certificates to be issued at this stage until the end of the "2016 practising year", that is, 28th February 2017 and that conditions can be imposed to protect the public. Accordingly, I will grant the application in each matter.

[16] The formal Orders of the Commission are:

ORDERS

1. In respect of **VILIMONE VOSAROGO (AKA FILIMONI WR VOSAROGO)**, 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 up to and including 28th February 2017 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. 7706348 held at the Bank of the South Pacific unless approved in writing by the Chief Registrar.
 - (iii) The Respondent is to email scanned copy of the monthly bank statement for Mamlakah Lawyers Trust Account No. 7706348 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. Simone 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 Practising Certificate to the Respondent up to and including 28th February 2017 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 6th day of February 2017.

