IN THE INDEPENDENT
LEGAL SERVICES COMMISSION

No. 003 of 2015

BETWEEN:

CHIEF REGISTRAR

Applicant

AND:

RAMAN PRATAP SINGH

Respondent

Applicant: Mr. A. Chand
Respondent: In Person

Dates of Hearing: 29th March 2016 and 7th February 2017
Date of Judgment: 13th February 2017

JUDGMENT

1. The application in summary

[1] This is an application alleging professional misconduct by a solicitor who has acted (or in this case arguably omitted to act) in relation to the completion of a sale and purchase agreement. It has been over 18 years since the legal practitioner first took instructions in 1998 and still the purchaser awaits transfer of the land. The solicitor's defence is that it was a condition of the sale and purchase agreement that the purchaser would first arrange, at his own expense, for a surveyor to prepare the plans and specifications for approval by the appropriate authorities and only then, once that separate title had been obtained, would the vendor execute a transfer into the name of the purchaser.

[2] Despite the solicitor being engaged in 1998 to assist the purchaser, the survey has never been completed, hence there has been no demand upon the vendor to execute a registrable transfer and/or an application to the High Court seeking specific performance of the agreement. An earlier Writ of Summons was struck out in 2005 for (what appears to have been) want of prosecution. Although over 11 years have since passed, the Solicitor appeared before this Commission on 7th February 2017 submitting that it is not his responsibility to assist the purchaser in seeing that the survey is completed before he can then seek specific performance of the sale and purchase agreement.

[3] The case is a warning to practitioners as to the need to "diarise" matters as well as to keep detailed file notes. It is also an example of the type of matter that arguably brings the overall name of the legal profession into disrepute, of which I will have more to say at the conclusion of this judgment.

2. The Counts

[4] On 9th September 2015, an Application was filed by the Chief Registrar setting out two allegations of Professional Misconduct against the Respondent as follows:

'Count 1

Allegation of Professional Misconduct: Contrary to Section 82(1)(a) of the Legal Practitioners Decree 2009.

PARTICULARS

***RAMAN PRATAP SINGH**, a Legal Practitioner, since around April 1999 to the 28th October 2005 whilst acting for one Mani Lal, failed to take any further steps or move the matter forward in the proceedings between Mani Lal v Mike Cadigan Labasa High Court Civil Action No.16 of 1999 which matter was subsequently struck out on the 28th of October 2005, which conduct was contrary to section 82(1)(a) of the **Legal Practitioners Decree 2009** and was an act of professional misconduct.'*

'Count 2

Allegation of Professional Misconduct: Contrary to Section 83(1)(a) of the Legal Practitioners Decree 2009 and Rule 8.1(1)(b) and (d) of the Rules of Professional Conduct and Practice (Schedule of the Legal Practitioners Decree 2009)

PARTICULARS

***RAMAN PRATAP SINGH**, a Legal Practitioner, since around April 1999 to September 2013 whilst acting for one Mani Lal, failed to inform the said Mani Lal by providing written confirmation both at the outset and during the course of the matter between Mani Lal v Mike Cadigan Labasa High Court Civil Action No.16 of 1999 as to the issues raised by the said matter, the steps which were likely to be required, how long it was likely to be before the matter be concluded and progress from time to time, which conduct was contrary to section 83(1)(a) and Rule 8.1(1)(b) and (d) of the Legal Practitioners Decree 2009 and was an act of professional misconduct.'*

[5] A detailed background in relation to the recent delay in this Application being heard by the Commission is set out in my Ruling in ***Chief Registrar v Singh***

(Unreported, ILSC File No.003 of 2015, 7 June 2016; Paclii: [2016] FJILSC 3, <http://www.paclii.org/fj/cases/FJILSC/2016/3.html>). In short, at the commencement of the hearing on 29th March 2016, the Respondent legal practitioner appeared on his own behalf and raised two preliminary objections, one of which involved a constitutional question. As arrangements had already been made for the complainant to give evidence by "Skype" from Labasa, I was not prepared to immediately agree to the Respondent's oral applications. Therefore, I resolved that I would take the complainant's evidence and then adjourn the matter part-heard so as to allow the Respondent legal practitioner to file written submissions on his preliminary objections and to set that Interlocutory Application down for hearing.

[6] In my Ruling on the Respondent's interlocutory application handed down on 7th June 2016, I noted that a similar argument in relation to section 14(1)(a) of the Constitution had been raised before the Commission in ***Amrit Sen v Chief Registrar*** (Unreported, ILSC File No.026 of 2013, Justice P.K. Madigan, 8 August 2014); Paclii: [2014] FJILSC 5, <http://www.paclii.org/fj/cases/FJILSC/2014/5.html>), and I agreed with the view therein expressed by the previous Commissioner, Justice Madigan. That is, that the Respondent's argument on this issue was misconceived for the reasons set out by Madigan J in *Sen*.

[7] As to the second objection raised by the Respondent that Count 2 involved an isolated breach of Rule 8.1(b) of the *'Rules of Professional Conduct and Practice'*, and, thus, it could not be said to be a case where the Respondent's behaviour comes within the definition *'wilfully refuses or consistently neglects'* so as to justify his being prosecuted as per Rule 8.1(3), again, I was of the view that the objection was misconceived. Instead, this was a matter for hearing the whole of the evidence and then considering submissions once all the evidence had been heard.

[8] I further noted, however, that in *Sen* the legal practitioner had lodged an appeal from the judgment of the Commissioner and that was pending before the Court of Appeal. Despite my preliminary view that the constitutional argument was misconceived, I ordered that the part-heard hearing of the substantive

Application in this matter before me be stayed pending the handing down of judgment by the Court of Appeal in *Sen*. The appeal in *Sen* was heard by the Court of Appeal on 9th November 2016 with judgment being handed down on 29th November 2015. The appeal was dismissed with costs. (See in ***Sen v Chief Registrar***, Unreported, Court of Appeal File No.ABU 0064 of 2014, Calanchini P, Basnayake and Kumar JJA, 29 November 2016; Paclllli: [2016] FJCA 158, <http://www.paclii.org/fj/cases/FJCA/2016/158.html>.)

[9] Following the Court of Appeal's judgment in *Sen*, the present matter was relisted before me in the Commission on 8th December 2016, to allocate a date for the continuation of the part-heard hearing of the substantive Application which took place on 7th February 2017.

[10] Initially, the Respondent legal practitioner had pleaded not guilty to both Count 1 and Count 2. During his evidence-in-chief on 7th February 2017, he conceded that he was in breach of Rule 8.1(b) and (d) of the *Rules of Professional Conduct and Practice* and advised that he now wished to change his plea on Count 2 to one of guilty.

[11] Even though the change in plea was late, the Commission appreciates that the Respondent took this course of action thus saving a number of hours of potential cross-examination, perhaps supplemented by questions from the Commission and probably would have resulted in the writing of a longer judgment.

[12] This has meant that the major focus of this judgment will be solely in relation to whether the Applicant has established Count 1.

[13] Count 1, in summary, is an allegation of professional misconduct contrary to section 82(1)(a) of the *Legal Practitioners Decree 2009* which states:

> '*82.—(1) For the purposes of this Decree, '**professional misconduct**' includes –*
>
> *(a) unsatisfactory professional conduct of a legal practitioner, a law firm or an employee or agent of a legal practitioner or law firm, **if the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence**'.*
> [My emphasis]

[14] The particulars in Count 1, in summary, allege that around April 1999 until 28th October 2005, the Respondent legal practitioner failed to take any further steps or to move the matter forward in the proceedings between *Mani Lal v Mike Cadigan* in the High Court at Labasa, Civil Action No.16 of 1999, such that the matter was subsequently struck out on 28th of October 2005.

3. Background

[15] The background to this matter was that on an unspecified date (perhaps in the early 1990s) Mike Cadigan agreed to sell Mani Lal five acres of land in Savisavu. On 25th July 1997, Joseph K. Maharaj, barrister and solicitor, acting on behalf of Mr Lal, wrote to Mr Cadigan alleging that surveyors, engaged by Mr Cadigan *'working on the rest'* of Mr Cadigan's land, had allegedly *'put pegs in the wrong places'* thereby reducing the size of Mr Lal's land to less than five acres. Mr. Maharaj concluded his letter by asking Mr Cadigan to '*sort this matter out and thereby avoid a legal action'*.

(*Draft Agreed Bundle of Documents,* 24th February 2016, 'Complaint letter received from Mani Lal with attachments dated16/06/2011', pp.1-21 - see page 3, Letter from J.K. Maharaj dated 25th July 1997.)

[16] On 29th July 1997, Mr Lal paid $50.00 to Maganlal Vithal Bhai, barrister and solicitor, to prepare a sale and purchase agreement.

(*Draft Agreed Bundle of Documents,* 24th February 2016, 'Complaint letter received from Mani Lal with attachments dated 16/06/2011', pp.1-21 - see page 20, Receipt dated 29th July 1997 from Maganlal Vithal Bhai.)

[17] On 30th July 1997, a sale and purchase agreement was signed by Mike Cadigan and Mani Lal in the presence of Maganlal Vithal Bhai. The relevant clauses of that agreement to which my attention was drawn by the Respondent legal practitioner are:

> *'(11) THE PURCHASER shall engage and employ his own Surveyor who shall prepare the proper plans and specifications for approval by the proposer authorities in Fiji with the ultimate view of obtaining a separate Title of the said Land sold herein.*
>
> *(16) THE PURCHASER shall bear the subdivision of the part of the said Certificate of Title and shall also bear all costs and disbursements for obtaining a separate Certificate of Title for the said Land himself.*
>
> ...

(20) SHOULD the Vendor not execute a registrable Transfer into the name of the Purchaser after the separate Title is obtained for the said land then in that event the Vendor shall pay $1000=00 [sic] liquidated damages, and all costs of subdivision and processing of or obtaining of a separate Title for the said land by the Purchaser, and shall also refund to the Purchaser all deposits paid herein with 10% interests from the date of such disbursements or payments of costs etc as aforesaid.'

(Draft Agreed Bundle of Documents, 24th February 2016, 'Complaint letter received from Mani Lal with attachments dated16/06/2011', pp.1-21 - see pp.4-11, Sale and Purchase Agreement dated 30th July 1997.)

[18] On 29th August 1997, Mani Lal paid $150.00 to A.P. Consultants Limited to survey the land.

(*Draft Agreed Bundle of Documents,* 24th February 2016, 'Complaint letter received from Mani Lal with attachments dated16/06/2011', pp.1-21 - see page 18, Receipt dated 29th August 1997 from A.P. Consultants Limited).

[19] According to the evidence of the complainant, Mr Lal, despite engaging a surveyor problems arose such that he engaged the Respondent legal practitioner as he explained:

Mr. A Chand: *Okay, now what happened next witness after you had hired the services of the surveyor?*
Witness: *The surveyor had surveyed the land sir.*

Mr. A Chand: *Yes and what was the outcome of that survey?*
Witness: *After the land had [been] surveyed sir, the owner have told his caretaker that I don't want Mani Lal to enter that land sir.*

Mr. A Chand: *Now after learning that from the caretaker what did you do next Mr. Lal?*
Witness: *From there sir I went to Savusavu Police Station and police told me sir its civil case you have to go to civil registry to file a proper application sir.*

Mr. A Chand: *Now witness what did you do then after getting that advice from the police.*
Witness: *Sir from there I came to Raman Pratap Singh's office.*

Mr. A Chand: *Now witness would be able to say which year you first went to Raman Pratap Singh?*
Witness: *In 1998 sir.'*

[20] Mr Lal then paid the Respondent legal practitioner the following amounts:

(1) 26/06/1998 - $300.00
(2) 05/09/1998 - $200.00
(3) 09/09/1998 - $100.00
(4) 03/03/1999 - $300.00
(5) 09/10/1999 - $100.00
(6) 10/10/1999 - $100.00
Total = $1100.00

(*Draft Agreed Bundle of Documents,* 24th February 2016, 'Complaint letter received from Mani Lal with attachments dated16/06/2011', pp.1-21 - see pp.12-17 – Receipt, Office Account, Kohli & Singh.)

[21] On 16th March 1999, a Writ of Summons was filed in the High Court at Labasa seeking:

(1) 'Specific performance of the said agreement';

(2) 'Special damages in the sum of $10,000.00';

(3) 'General damages';

(4) 'Costs of this action'.

(*Draft Agreed Bundle of Documents,* 24th February 2016, 'Writ of Summons filed in the High court of Fiji at Labasa by Kohli & Singh dated 16/03/99 with affidavit of service', pp.72-79.)

[22] According to the Judge's notes, the above Writ was 'S/0', that is, struck out on 28th of October 2005. Presumably, the reason that this occurred was for want of prosecution.

(*Application,* 9th September 2015, 'List of Documents relied upon', 'Judges [sic] Notes dated 28/10/2005', p.83.)

[23] On 16th June 2011, a letter of complaint letter was sent from Mani Lal to the Chief Registrar titled '*Concern on Performances of Solicitor Kohli & Singh (Mr Raman Pratap Singh)'* highlighting that *'I ... would like to bring to your attention, that [sic] pathetic performances of above mention [sic] Solicitor'*.

[24] Correspondence then took place between the complainant, the Chief Registrar and the Respondent legal practitioner over the next three years (including a statement being taken from the complainant on 17th October 2011), resulting in the present application eventually being filed with the Commission on 9th September 2015.

(*Draft Agreed Bundle of Documents,* 24th February 2016, pp.1-21, 22, 23-26, 27, 28, 29, 30-31, 32, 33, 34-35, 36, 37-38, 39, 40-41, 42-60, 61-64.)

[25] A very brief set of *'Draft Agreed Facts'* was filed in the Commission on 24th March 2016, as follows:

> *'1. The Respondent legal practitioner acted as counsel for one Mani Lal … from around April 1999 to September 2013.*
> *2. As counsel for the complainant, the Respondent filed an action on behalf of the complainant in the Labasa High Court on 16th March 1999. The matter being* ***Mani Lal v Mike Cadigan*** *Civil Action No.16 of 1999.*
> *…*
> *4. From the day the matter was filed until the 28th of October 20015 [sic], the Respondent never appeared in the matter* ***Mani Lal v Mike Cadigan*** *Civil Action No.16 of 1999[.]*
> *5. The matter* ***Mani Lal v Mike Cadigan*** *Civil Action No.16 of 1999 was subsequently struck out by Justice Coventry on the 28th of October 2005.'*

[26] According to the written 'Closing Submissions' of Counsel for the Applicant dated 8th February 2017, the charge has already been made out as follows:

> *'5. The Applicant relies on the court record of the matter* ***Mani Lal v Mike Cadigan*** *Civil Action No.16 of 1999 …*
> 6. ***The court record clearly shows*** *that apart from the fact that the Labasa High Court matter was initiated by the Respondent on behalf of the complainant by way of Writ of Summons and Statement of Claim, and it being served on the defendant,* ***there had been nothing further done by the Respondent to move the matter forward*** *and consequently, the matter was struck out some six years later on 28th October 2005 …*
> 7. *Clearly, one cannot go behind the record and as the record depicts so is the charge made out.*
> 8. *The Respondent in his evidence agreed that the matter had been struck out and that he did not file any further documents after the Writ and affidavit of service was filed. He also stated in his evidence that he had mistakenly filed the Writ and only realized his mistake after the Writ was filed.*
> *…*
> *18. … The Respondent's own evidence should also be considered which corroborates the fact that no action was taken in moving the Labasa High Court matter forward.*
> *19. The Applicant submits that* ***the practitioner by not moving the Labasa High Court matter forward for a period of more than six years after being paid a sum of $1100 which consequently resulted in the matter to be struck out*** *was a substantial as well as a consistent failure on the part of the Respondent to reach or maintain a reasonable standard of competence and diligence.'*
> [My emphasis]

[27] For the record, I have noted certain relevant parts of the Respondent's evidence-

in-chief (including his answers to questions asked by me to clarify his statements) as follows:

(1) The Respondent legal practitioner *"can't locate the original file"* of Mr Lal as this is an *"old matter from Labasa"* and the Respondent legal practitioner finally left Labasa in 2006 when he had completed his move to Suva;

(2) Usually a person was only required to keep a file for seven years;

(3) The Respondent legal practitioner could not seek specific performance of the agreement until the survey had been completed;

(4) The Writ of Summons and Statement of Claim had been *"done in a hurry"* by him and it was a *"rash decision to file the Writ"*, such that he only realised his mistake much later that the purchaser had to complete the survey before he could claim that their had been default on the part of the Vendor;

(5) The vendor, Mike Cadigan, could not be located and served with the Writ as *"he had left"* Labasa and the Respondent legal practitioner could not recall the person whom he had used as a process server who had attempted such service of the Writ upon Mr Cadigan. The Respondent legal practitioner later retracted this evidence when he was taken to the Affidavit of Service sworn on 8th April 1999 by Sharmendra Prasad wherein it was stated that on 26th March 1999 Mr Prasad had personally served Mike Cadigan at Lami with a true copy of the Writ of Summons;

(6) The Respondent legal practitioner had not sent any letters to Mr Lal to advise him as to the status of the matter as Mr Lal *"used to come by and ask what was happening"* and *"I told him that I cannot serve"* until the survey was completed, that is, first the surveyor had to complete the survey and then to have that lodged with Town & Country Planning Board for approval as a deposited plan;

(7) The Respondent legal practitioner kept a diary *"just for court dates"*, he has no file, no recollection as to what dates Mr Lal came by his office, there was no costs agreement and he has no recollection as to what he told Mr Lal as to how much it was going to cost to get the land transferred;

(8) The Respondent legal practitioner agreed he would normally have filed a Notice of Discontinuance in such a matter when he realised that the Writ had been prematurely issued, however, here he was hoping that the complainant (Mr Lal) would have corrected the matter by having the survey completed and, if there was then a refusal by Mr Cadigan to the transfer, the proceedings could

have been continued;

(9) The complainant was incorrect in his evidence when *"he said that the survey was done"* as the *"land was not surveyed"* and the *"witness has got it wrong"* as the *"surveyors plans were not ready"*;

(10) As no survey was done, nothing further was done by the Respondent legal practitioner in relation to the Writ and even though he had *"not returned $1100 back"* to the complainant, he was *"willing to return back with interest"*;

(11) The Respondent legal practitioner conceded:

(i) *"I should have followed up the surveyor"*;

(ii) The complainant is *"a simple farmer"*;

(iii) *"I may have called the surveyor, I can't remember"*;

(12) As *"the vendor's default had not arisen"*, the Respondent legal practitioner *"did not withdraw the Labasa High Court"* proceedings (Writ and Statement of Claim), *"nothing has been done and no caveat has been filed"* to protect the interests of the purchaser.

[28] On the question of issuing a caveat, neither party drew my attention to clause 8 of the sale and purchase agreement that stated:

> *'(8) THE PURCHASER* ***shall not and it is hereby specifically covenanted that he will not lodge or enter any caveat*** *with respect to the property sold herein upon the certificates of title involved by the property in this Agreemen[t][.]'*
> *[My emphasis in bold]*

[29] As to why such a clause that was arguably against the interest of the purchaser was allowed to be part of the agreement was obviously something that the Respondent legal practitioner could not answer as the agreement had been drafted prior to his engagement.

[30] The issue for me to consider is whether the Respondent legal practitioner '*failed to take any further steps or move the matter forward in the proceedings ... which matter was subsequently struck out on the 28th of October 2005'.*

[31] According to the Respondent legal practitioner in his Closing Submissions dated 9th February 2017:

'It is submitted that even know[sic] the complainant could get a surveyor to make the necessary application for approval by the Town & Country Planning Board and then continue from there and if there is a default by Mike Cadigan then he could go to court to get redress.

It is apparent that the applicant is putting [a] lot of emphasis on the Writ of Summons filed in court as if to say that the Writ of Summons would resolve all matters in favour of the complainant. ***What I have said was that the Statement of Claim was wrongly filed. We could not prove a breach by the vendor, Mike Cadigan, of the agreement.*** *It was for the surveyor to get the necessary approval of the Town & Country Planning Board and as soon as some default by the vendor was evident that I could amend the claim and successfully do the case against him.* ***A lot of times a Statement of Claim in the High Court is amended, discontinued or even allowed to be struck out depending on the nature of the case. This is a case in which it was prudent not to proceed and lose the case and thereby incur cost[s] against the Complainant.'***
[My emphasis]

[32] I agree with the above submission from the Respondent legal practitioner in part: *'the Statement of Claim was wrongly filed. We could not prove a breach by the vendor, Mike Cadigan, of the agreement.'* **I am not sure, however, whether it was a strategic move by the Respondent legal practitioner to allow the proceedings in the High Court at Labasa to be struck out for want of prosecution or, instead, it was due to his incompetence combined with pure chance that a default judgment was not sought by him. I further agree that if a default judgment had been sought, it surely have resulted in it not only being dismissed if the matter had been defended, (as the plaintiff could not have proven at that stage a breach by the vendor), but an Order for costs would have followed.**

[33] I note that in the Statement of Claim attached to the Writ of Summons it was alleged that letters dated 25th July 1997 and 7th September 1998 *'were written by the Plaintiff's solicitors'* to the defendant, Mike Cadigan, prior to the Writ of Summons being issued on 16th March 1999. Considering that the first receipted payment made by complainant, Mr Lal, to the Respondent legal practitioner, was for $300.00 on 26th June 1998, and, as I have noted above, a letter dated 25th July 1997 was written on the complainant's behalf by J.K. Maharaj to Mr Cadigan, I can only presume that the only letter written by the Respondent legal practitioner, Mr Singh, to Mr Cadigan was that dated 7th September 1998 –

some 74 days (or 2 months and 13 days) after the initial sum of $300.00 had been paid. That letter was sent two days after a second sum of $200 had been paid to the Respondent legal practitioner on 5th September 1998. A further sum of $100 was paid on 9th September 1998, two days after the letter was sent.

[34] As to the details of what was said in any letter sent by the Respondent legal practitioner to Mr Cadigan can only be pure speculation. His evidence was that he has lost his file in relation to this matter as a result of a flood on an unknown date in Labasa. As to whether the file was lost as a result of a flood on an unknown date in Labasa, or incompetence on the part of the legal practitioner, it is not necessary for me to determine. It is clear that Count 1 cannot be proven.

[35] As to why it took from 7th September 1998 up to and including 16th March 1999 (that is, 191 days, or six months and 10 days), to file a Writ of Summons together with a Statement of Claim in the High Court at Labasa, remains a mystery. Again, I do not need to determine this issue in relation to Count 1 and I note that the Respondent has pleaded guilty in relation to Count 2. In any event, after the Writ and Statement of Claim was served on 26th March 1999, there is no evidence before me that the defendant filed an acknowledgement of service of the Writ and a Notice of Intention to defend.

[36] Again, the Respondent legal practitioner in his evidence and in his later written submissions has claimed (page 2) that *'I realised later that there was no cause of action against the defendant', 'the action was filed mistakenly'* and *'was allowed to be struck'*, inferring that it was a strategic move on his part. If that is his claim or inference, I seriously doubt that this was the case. I have no evidence before me that he had any system in his office for "diarising" matters, that is, to make systematic checks through his files as to what actions were pending requiring his attention so as to (as Count 1 claims) *'take any further steps or move the matter forward'.* I also note that in his earlier evidence that I have cited above he made some comment as to a person only being required to keep a file for seven years.

[37] The problem for the Applicant in proving Count 1 is that it is a very specific allegation that the Respondent legal practitioner '*failed to take any further steps*

or move the matter forward <u>in the proceedings between Mani Lal v Mike Cadigan Labasa High Court Civil Action No.16 of 1999</u> which matter was subsequently struck out on the 28th of October 2005'. Clearly, the only step that the Respondent legal practitioner could take in relation to '*Labasa High Court Civil Action No.16 of 1999'* was to withdraw the action pursuant to Order 21 Rule 2(1) of the High Court Rules, that is:

> *'2(1) … the plaintiff in an action begun by writ may, without leave of the court, discontinue the action, or withdraw any particular claim made by him therein … no less than 14 days after service of the defence on him … by serving a notice to that effect on the defendant concerned, and filing in the Registry a copy thereof.'*

[38] Arguably, what the Respondent legal practitioner should have done is as follows: first, withdrawn '*Labasa High Court Civil Action No.16 of 1999';* second, arranged for the survey to be completed; third, sought the approval from the Town & Country Planning Board (now known as the Department of Town & Country Planning (DTCP)); and, fourth, once the title had been approved, formally sought the transfer of it from Mr Cadigan and, if he defaulted, then issued a fresh Writ of Summons and Statement of Claim. Alternatively, if Mr Cadigan was being obstructive in permitting the survey to be undertaken, then the Respondent legal practitioner could have considered advising the plaintiff to obtain Orders from the High Court in accordance with Clause 12 of the Sale and Purchase Agreement,

[39] There were other options open for the Respondent legal practitioner to advise the client to consider rather than just waiting (some 2761 days, or 7 years, 6 months and 21 days) from the date when the affidavit of service was sworn on 8th April 1999 (confirming that Mr Cadigan – wrongly typed as *Gadigan* - was served on 26th March 1999 with the Writ of Summons and Statement of Claim) up to and including when the matter was struck out in the High Court at Labasa on 28th October 2005. **What has occurred is a disgrace. <u>Unfortunately, this does not prove Count 1 and it must be dismissed.</u>** <u>It will be something, however, that I will now have to consider in relation to Count 2 and the penalty to be imposed for the failure by the Respondent legal practitioner to inform the client</u> *'both at the outset and during the course of the matter … as to the issues raised … the steps which were likely to be required, how long it was likely to be*

before the matter be concluded and progress from time to time'.

[40] **In relation to Count 2,** I note the allegation is that the Respondent legal practitioner has breached Rules 8.1(1) and (d) of the *Rules of Professional Conduct and Practice (Schedule of the Legal Practitioners Decree 2009)*. Those Rules state:

> *'CHAPTER 8—CLIENT CARE*
>
> *8.1—(1) Subject to paragraph (2) of this rule,* ***every principal in private practice shall****:*
> *(a)* ***have in place a procedure whereby at the outset of a matter a client is given the information*** *set out below:*
> *(i) The name and status within the firm of the person responsible for the day to day conduct of the matter and, if appropriate, the partner responsible for its overall supervision.*
> *(ii)* ***The basis upon which costs will be charged and if reasonably possible an estimate of costs****.*
> *(iii) The procedure adopted within the firm for handling complaints where the client has been unable to resolve any problem with a person or persons referred to in subparagraph (i) above, and that the client may refer unresolved problems to the Society.*
> *(b) Both at the outset and during the course of the matter* ***cause the client to be informed****, where appropriate, as to the issues raised by the matter, the steps which are likely to be required, how long it is likely to be before it is concluded, and progress from time to time*
> *...*
> *(d) At the earliest reasonable opportunity* ***provide the client with written confirmation*** *of the matters set out in paragraphs (a) and (b) above.'*
> [My emphasis]

[41] I confirm that the Respondent legal practitioner having breached Rules 8.1(1) and (d) of the *Rules of Professional Conduct and Practice* is found guilty of professional misconduct. I find that such breach is established not only having been admitted by the Respondent in his change in plea during the hearing on 7th February 2017, but, also, in my view, being satisfied on the balance of probabilities by the evidence that has been placed before this Commission, in particular, the evidence of the complainant given on 29th March 2016, as well as having heard the evidence of the Respondent on 7th February 2017, together with the documents filed before the Commission. **Accordingly, the Respondent is found guilty of professional misconduct contrary to section 83(1)(a) of the *Legal Practitioners Decree 2009.***

[42] As for penalty, I note that the Respondent legal practitioner stated in his evidence and in his written submissions (page 3): *'Since we are unable to bring this matter to finality, I agree to refund the fees and pay for reasonable costs to the Complainant.'* I am not sure that it is that simple. **This is a serious finding of professional misconduct that has been admitted by the Respondent legal practitioner. I am also satisfied that it has been established on the evidence before me.** Further, apart from the penalty that I now have to consider to be imposed for the protection of the public, I note that the complainant made very clear in his evidence that he still wants to have the land transferred. Since he made his first payment to the Respondent legal practitioner on Friday, 26th June 1998 in the sum of $300.00 up to and including today, Monday, 13th February 2017, **the complainant has been waiting (on my calculations) some 6808 days, that is, 18 years, 7 months and 19 days for the land to be transferred. As I said above, and I can only emphasise it again, what has occurred is a disgrace.**

[43] Following my making Orders in accordance with this judgment, I will then be making separate Orders for the filing of written submissions on penalty and setting a date for hearing of a plea in mitigation in relation to Count 2. I expect that such submissions will also include suggestions as to how I should proceed in providing compensation to the complainant together with what Orders, if any, I can make to assist the complainant in finally obtaining the transfer of the land.

ORDERS

[44] The formal Orders of the Commission are:

1. In the Application filed before the Commission in Case No. 003 of 2015, *Chief Registrar v Raman Pratap Singh,* Count 1 is dismissed.

2. In the Application filed before the Commission in Case No. 003 of 2015, *Chief Registrar v Raman Pratap Singh,* the Respondent legal practitioner

is found guilty of Count 2, that is, the Respondent legal practitioner is guilty of professional misconduct contrary to section 83(1)(a) of the *Legal Practitioners Decree 2009* as he has breached Rules 8.1(1) and (d) of the *Rules of Professional Conduct and Practice (Schedule of the Legal Practitioners Decree 2009).*

Dated this day 13th day of February 2017.

I will now hear the parties in relation to Orders for the filing of written submissions on penalty and setting a date for hearing.

Dr. Thomas V. Hickie
COMMISSIONER