

IN THE INDEPENDENT
LEGAL SERVICES COMMISSION

No. 004 of 2017

BETWEEN:

ASERI VAKALOLOMA

Applicant

AND:

CHIEF REGISTRAR

Respondent

Coram: Dr. T.V. Hickie, Commissioner

Applicant: Ms. B. Malimali

Respondent: Mr. T. Kilakila

Date of Hearing: 18th September 2017

Date of Judgment: 18th September 2017

EX TEMPORE RULING ON ORAL INTERLOCUTORY APPLICATION
FOR
ISSUING OF INTERIM PRACTISING CERTIFICATE BY
THE CHIEF REGISTRAR'S OFFICE

1. The Application

- [1] This matter is set down for a final hearing next Wednesday week, 27th September 2017 (with a time allocation of the days) of the substantive matter being four allegations of Professional Misconduct against the Respondent legal practitioner.
- [2] The parties appeared this morning for mention to confirm that the matter was ready to proceed on Wednesday week, 27th September 2017. Counsel for the Respondent legal practitioner in the substantive matter

then made an oral application for an interim practising certificate. This was opposed by Counsel for the Chief Registrar.

[3] This then is my ex tempore ruling on the legal practitioner's Interlocutory Application to be issued with an interim practising certificate.

[4] In support of the application that the legal practitioner be granted an interim practising certificate, Counsel for the Applicant legal practitioner cited page 6, paragraph [12], of my initial Ex Tempore Ruling in this matter of 14th June 2017, when I granted the legal practitioner an interim practising certificate until today. That is, the Commission should consider:

- (1) The likelihood of the person attending;
- (2) The interests of the Respondent;
- (3) The public interest.

[5] Counsel for the Applicant legal practitioner submitted that the same reasoning applied to Counsel for the Applicant legal practitioner, submitted the allegations, and the interests of the legal practitioner are unchanged.

[6] As for the public interest, Counsel for the Applicant legal practitioner, submitted that what she understands is the basis of Counsel for the Chief Registrar opposing the application is based upon minor objections as to problems with compliance with the Orders made in the previous Ex Tempore Ruling. These are as follows:

- (1) \$1,000 fine imposed in the previous matter was paid incorrectly by the legal practitioner and it was resolved in an overpayment of \$1,000 being made which is to be repaid by the Chief Registrar's Office;
- (2) The condition of a fortnightly report be sent to the LPU was late for the second report and there is a dispute as to whether the third report was also late, however, there have been no problems since then (that is, since late July);
- (3) There were two overpayments of \$30.05 connected with bank charges of \$20.00 and \$10.05 respectively. The LPU believes those amounts were \$20 and \$9.00. The amounts were paid back by the legal practitioner as the bank had wrongly deducted the bank fees from the trust account.

[6] Counsel for the Applicant legal practitioner further submitted:

- (1) The Chief Registrar has now Amended Count 1 (filed on 12th July 2017) and, in her view, it does not cure the problem raised on 13th June 2017 and thus it will be defended;
- (2) The application is only until Wednesday week, 27th September 2017 as the Applicant legal practitioner has matters today and tomorrow.

[7] Counsel for the Respondent Chief Registrar replied:

- (1) \$1,000 fine imposed in the previous matter - the onus was on the legal practitioner to read the Orders and comply;
- (2) The fortnightly reports – this was a term of the Order and the onus was on the legal practitioner to comply. Instead, the LPU had to write

letters and threaten with suspension for non-compliance. Counsel did concede, however, that there have been no problems since late July;

(3) The bank charges – again, the LPU had to write letters and threaten with suspension for non-compliance. What was provided as verification is simply a bank deposit with no explanation;

(4) The Amendment to Count 1 is not relevant to this application.

[8] As I mentioned in my previous Ruling of 14th June 2017, obviously, as to the merits of the four counts, these are all matters for a final hearing and I make no formal findings at this stage. I am satisfied, however, that the four counts are going to be vigorously defended and that there is a reasonable basis to what is going to be argued.

[9] My major concern, as I raised with Counsel for the Applicant legal practitioner at the interim hearing in June 2017, is that the Applicant has been struck off the Roll in Nauru. I take her point that it may well be that I find this is not a disciplinary matter for the Commission but a separate matter for the Chief Registrar, however, as the LPU have chosen to charge it as a count before the Commission, it will need to be dealt with initially here and which can only take place at a full hearing. There is also force in her previous submission that if there was such a concern as to the protection of the public, then surely there could not have been the granting of three interim practising certificates. There is also force in the previous submission of Counsel for the Respondent Chief Registrar at the interim hearing on 14th June 2017 that the public

interest was in allowing the Applicant legal practitioner to appear at the trial earlier this year so that it could proceed.

[10] In the present matter, I note that it has been set down for a final hearing with a time estimate of three days as from Wednesday week, 27th September 2017.

[11] In coming to a decision, I have taken into account that:

- (1) Count 2, if proven, would be a fine and possibly a short suspension;
- (2) Counts 3 and 4 would be probably be a fine.

[12] Balanced against that, the Respondent is only seeking an interim practising certificate to be issued until the hearing of the substantive matters to be set down from next Wednesday week 27th September of 2017, and that conditions can be imposed to protect the public. Accordingly, I will grant the application for the issuing of an Interim Practising Certificate. I will, however, make it a condition that the Applicant pay the reasonable costs of the Chief Registrar summarily assessed in the sum of \$1,000.00

[13] I wish to record my thanks to Counsel for both in being prepared to deal with this application in a timely manner this morning at the commencement of the Sittings. I also wish to record my personal thanks to the Commission's Secretary and Acting Court Officer for working over their lunch so that a timely judgment could be delivered.

[14] I propose will now hear from the parties as to what conditions should be attached to the interim practising certificate.

[15] The formal Order of the Commission is:

ORDERS

1. Pursuant to Section 121 (3) of the Legal Practitioners Act, the Chief Registrar shall issue a Practising Certificate to the Respondent from today, 18th September 2017 up to and including 27th September 2017, on payment of the prescribed pro rata fees, and such further conditions as to be ordered this afternoon by the Commission after hearing from Counsel for both parties.
2. The Applicant is to pay the reasonable costs of the Chief Registrar summarily assessed in the sum of \$1,000.00.
3. The Applicant is to provide a signed authority to the Chief Registrar immediately (i.e. before 2.30pm today, 18th September 2017) for the transfer of \$1,000 currently held by the High Court Registry (on behalf of the Applicant legal practitioner).

Dated this 18th day of September 2017.

Dr. Thomas V. Hickie

COMMISSIONER