

**IN THE INDEPENDENT  
LEGAL SERVICES COMMISSION**

**No. 004 of 2017**

**BETWEEN:**

**ASERI VAKALOLOMA**

**Applicant**

**AND:**

**CHIEF REGISTRAR**

**Respondent**

Coram: Dr. T.V. Hickie, Commissioner

Counsel for the Applicant: Ms. B. Malimali

Counsel for the Respondent: Mr. T. Kilakila

Date of Hearing: 29<sup>th</sup> September 2017

Date of Judgment: 29<sup>th</sup> 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 is an application for the granting of an interim practising certificate as from today until the next mention of this matter on Monday, 27<sup>th</sup> November 2017, when it is anticipated that I will be delivering a ruling in relation to the admissibility of some evidence to support the Respondent's Chief Registrar's case in relation to Count 1.
- [2] The substantive matter began as a final hearing on Wednesday this week, 27<sup>th</sup> September 2017 (with a time allocation of three days) in relation to four allegations of Professional Misconduct against the Respondent legal practitioner.
- [3] As a result of objections raised by Counsel for the Respondent legal practitioner in the substantive matter concerning the prosecution of the Applicant's case, Counsel for the Applicant Chief Registrar has been

granted a number of adjournments over the past three days finding three witnesses and some associated documentation.

- [4] Even though the case had been allocated three hearing days, it had originally been anticipated when it was mentioned in the June 2017 Sittings setting it down for hearing in these Sittings (September 2017) that it would have concluded easily within the three days as Counsel for the Applicant Chief Registrar had advised that he was not calling any witnesses and would be just relying upon documents to prove his case.
- [5] When the matter was called for mention at the Call Over on the first day of these Sittings (18<sup>th</sup> September 2017) to confirm that the matter was ready to proceed on 27<sup>th</sup> September 2017, Counsel for the Respondent legal practitioner in the substantive matter made an oral application for an interim practising certificate so that the Respondent could appear in some matters between the Call Over and last Wednesday, 27<sup>th</sup> September 2017. The application was opposed by Counsel for the Chief Registrar.
- [6] In coming to that decision last week, I took 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.
- [7] Balanced against that, I also took into account that the Respondent legal practitioner was only seeking an interim practising certificate to be issued until the hearing of the substantive matters to be set down from Wednesday week 27th September of 2017, and that conditions can be imposed to protect the public.
- [8] Accordingly, I granted the practitioner's application, however, I made make it a condition that he was to pay the reasonable costs of the Chief Registrar summarily assessed in the sum of \$1,000.00.

- [9] Being an ex tempore ruling, I dealt with my reasons why I was granting the interim practising certificate but did not elaborate on costs. I have mentioned today that the reasons costs were awarded last week was that the Applicant practitioner was well aware that the grant of the interim practising certificate was until the beginning of the Sittings and should not have been agreeing to appear in matters even if it was subject to a further extension on 18<sup>th</sup> September 2017. This necessitated an urgent further hearing requiring the time of the Counsel for the Respondent Chief Registrar to that application during a very busy Sittings, not to mention that of the Commission.
- [10] In support of the application today that the legal practitioner be granted an interim practising certificate until the commencement of the November/December Sittings on Monday, 27<sup>th</sup> November 2017, Counsel for the Applicant legal practitioner cited the reasons in my ex tempore ruling in Vosarogo and Vodo dated 23<sup>rd</sup> September 2016. In particular, she relied upon paragraph [17] therein:

*'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)).'*

*(See **Chief Registrar v Vosarogo; Vodo**. Unreported, ILSC Case No. 002 of 2016 and 003 of 2016, 23<sup>rd</sup> September 2016; PACLII: [2016] FJILSC 6 <http://www.pacii.org/fj/cases/FJILSC/2016/6.html>)*

[11] In addition, Counsel for the Applicant legal practitioner has submitted that the minor objections as with compliance with the Orders made in the previous ex tempore ruling had been resolved. I note that this has been discussed in my Ruling of 18<sup>th</sup> September 2017.

[12] Counsel for the Respondent Chief Registrar disputed the issue of delay late at their feet and said the delay would not have happened if Counsel for the Applicant had made clear their objections prior to the hearing. In addition, he noted that should I be minded to grant an interim practising certificate, then any condition should include that the practitioner be required to submit monthly bank statements to the Chief Registrar noting that the initial problems following the appearance in June 2017. I note from my previous Ruling of 18<sup>th</sup> September 2017, that Counsel did concede, however, that there have been no problems since late July 2017. I do not believe such a condition is relevant to the present matter.

[13] As I mentioned in my previous Ruling of 18<sup>th</sup> September 2017, obviously, as to the merits of the four counts, these are all matters for a final hearing and I we are still dealing with the case of the Chief Registrar I make no formal findings at this stage. I am satisfied, however, that the four counts are being vigorously defended.

[14] 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 note that this is now the subject of written submissions for which I will be making a Ruling on 27<sup>th</sup> November 2017. I do not wish to make any further comment on that issue at this stage.

[15] I propose to grant the application on the same terms and conditions as per my Orders of 18<sup>th</sup> September 2017, save the \$1,000.00 costs order.

[16] The formal Order of the Commission is:

ORDERS

1. Pursuant to Section 121 (3) of the Legal Practitioners Decree, the Chief Registrar shall issue a Practicing Certificate to the Respondent from today, 29<sup>th</sup> September 2017 up to and including 27<sup>th</sup> November 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.

Dated this 29<sup>th</sup> day of September 2017



Dr. Thomas V. Hickie

COMMISSIONER