

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO. 007/2009

BETWEEN: CHIEF REGISTRAR

Applicant

A N D: AKUILA NACO

Respondent

Applicant: Ms V. Lidise
Respondent: Mr V Vosarogo

Date of Hearing: 4th & 5th May 2010
Date of Ruling: 16th June 2010

JUDGEMENT ON SENTENCE – COMPLAINT NO. 1

COMPLAINT 1

Unsatisfactory Professional Conduct: Contrary to section 81 of the Legal Practitioners Decree No 16 of 2009

Particulars

Akuila Naco a legal practitioner, between the 29th day of March 2005 and the 31st of March 2005 overdrew the Trust Account of Naco chambers, namely Naco Chambers Ltd Trust Account number 4407444 held at Colonial National Bank which account he was a Trustees thereof, which conduct occurred in connection with Akulla Naco's practice of law, falling short of the standards of competence and diligence that a member of the public is entitled to expect of a reasonably competent or professional legal practitioner.

1. The Respondent on the 4th of May 2010 admitted the allegation in contained within the complaint.

2. The agreed facts are:
 - a. The Respondent was admitted to the Bar of the High Court of Fiji on the 14th of April 1994.
 - b. The Respondent has a law practice operating in the style Naco Chambers where he is the sole practitioner and sole trustees of the Trust Account styled Naco Chambers Ltd – Trust Account number 440744 held with the Colonial National Bank, Samabula, Suva.
 - c. On 24th of March 2005 the Respondent issued a Trust Account cheque payable to Kundan Singh in the amount of \$2,000.
3. It is acknowledged that the Respondent's Trust Account was overdrawn for 3 days from the 29th to 31st of March 2005 [Ex R1].
4. The Respondent also acknowledges that he had mixed his own funds with those of his clients in his Trust Account at that time.
5. The Respondent seeks to place some responsibility on an employed clerk for the errors in the administration of his Trust Account at the relevant time.
6. Following the commission of the offence the Respondent undertook the first and only Practice Management Course conducted by the Fiji Law Society in 2008. It is submitted on behalf of the Respondent that he is indeed remorseful for what occurred that since 2005 his Trust Account has been audited annually without difficulties and that in the circumstance an appropriate penalty would be a private reprimand and a fine.
7. On behalf of the Applicant it is submitted that the offence whilst having been committed some 5 years ago is serious as a result of the high standards placed upon legal practitioners in these circumstances.
8. It is further submitted that there is a significant public interest element in offences of this type which should be reflected in the penalty imposed upon the Respondent.
9. It is regrettable that the breach occurred in 2005 and it has only been dealt with in 2010 as a result it would appear of the inaction of the Fiji Law Society throughout that period of time.

10. In circumstance such as this the appropriate disciplinary sanction ultimately rests heavily on whether or not the lawyer has been dishonest when dealing with Trust funds. Technical breaches of the Trust Account requirements that involve no element of dishonesty, such as an isolated failure to pay money directly into a Trust Account or a failure to account, may not justify suspension or disbarment.

11. In *Law Society of New South Wales v Lee* [2005] NSW ADT 242. The New South Wales Administrative Decisions Tribunal opted to fine and publicly reprimanded the Respondent solicitor arising out of his failure to maintain proper trust account records in circumstance involving no tinge of dishonesty. The Tribunal appears to be influenced by the Respondent's solicitor's subsequent conduct. In that matter the Tribunal also ordered the solicitor to undertake and satisfactorily complete a trust account management course with subsequent three monthly trust account inspections.

12. It is regrettable that in Fiji there is apparently no current Continuing Legal Education being conducted by the Fiji Law Society and that the Practice Management Course of 2008 has not been repeated.

13. I note that the Respondent was admitted to practice in 1994 and that in 2004, within 12 months prior to the commission of this offence, he commenced practice on his own account.

14. Imposing the penalty I take into account that nobody has suffered financially as a result of the actions of the Respondent and I note his apparent adherence to the requirements throughout the past five years.

15. There is, as the Applicant points out a significant public interest in matters such as this and whilst I accept there is no suggestion of dishonesty on the part of the Respondent a breach of the trust account requirements warrants the imposition of at least a monetary penalty.

ORDERS

1. The Respondent is fined the sum of \$1,000 such amount to be paid to the Commission within 28 days. Failing payment the Respondent's practising certificate is suspended until such time as payment is made.

2. The Respondent is to pay by way of costs the sum of \$500 for payment out to the Chief Registrar within 28 days. Failing payment the Respondent's practising certificate is suspended until such time payment is made.

3. The Respondent is publicly reprimanded.

John Connors
**JOHN CONNORS
COMMISSIONER**



16 JUNE, 2010