

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO. 007/2009

BETWEEN: CHIEF REGISGTRAR

Applicant

A N D: AKUILA NACO

Respondent

**Applicant : Ms V. Lidise
Respondent in Person**

Date of Hearing: 13 April 2010

Date of Ruling: 13 April 2010

**EXTEMPORE RULING
ON APPLICATION TO VACATE HEARING DATE**

1. This matter came before the Commission on the 9th of December 2009 when it was set down for hearing for the 13th and 14th of April 2010. The matter was again mentioned before the Commission on 3rd of February 2010 when the hearing date was confirmed. On that occasion the respondent was represented by Mr Vosarogo.
2. On Friday the 9th of April 2010 at about or after 4.00 pm a letter was delivered to the Commission from Vakaloloma & Associates signed by Mr Vosarogo advising the Commission that he was unable to appear at the hearing today due to a commitment in the High Court where a Criminal trial was proceeding longer than anticipated. Whilst it commenced on Tuesday the 6th of April it was now thought to require all the week commencing 12th of April to complete.
3. The Commission by the letter dated 12th of April 2010, sent via email, advised Mr Vosarogo that his application would be considered by the Commission at 9.30 am today and that it should not be assumed that the adjournment sought would be granted.
4. Mr Naco appears unrepresented today and seeks to make the application envisaged by Mr Vosarogo's letter.

5. Mr Naco submits that Mr Vosarogo was engaged by him to represent him in the course of these proceedings before the Commission and that it was anticipated that the Criminal Trial before Mr Justice Temo would conclude on Friday last. He indicates that it was only late Friday that he became aware that Mr Vosarogo would not be available to appear today.
6. The application is opposed and the Applicant advises the Commission that all but one of the complainants are present before the Commission and the matter is ready to proceed subject to a proposed amendment to complaint no 6.
7. It is now cast in legislation in many jurisdictions that proceedings in any court have to be managed having regard to the just determination of the proceedings, the efficient disposal of the business of the court, the efficient use of available judicial and administrative resources, the timely disposal of the proceedings and all other proceedings in the court at a cost affordable to the respective parties.
8. There is no such legislation applicable to this Commission or in existence in Fiji. Notwithstanding it would appear to me that the principles that such legislation expresses are principles that need to be applied to proceedings not only before courts but also before tribunals and commissions such as this.
9. Time is finite and money for the administration of the commissions as such as this is also finite. There are a significant number of members of the bar in Fiji and there would seem to be no good reason why another counsel could not have been briefed on Friday when Mr Vosarogo's lack of availability became apparent. This certainly would have occurred in other jurisdictions.
10. Whilst my first reaction is to refuse the application I am cognisant of the obligation to ensure that the proceedings are determined in a just manner but in saying that I am also cognisant and send a very loud warning to other members of the profession appearing before this Commission, that the just determination whilst being a very significant consideration is not the only consideration and in determining what is just it is necessary to consider not only the respondent to the proceedings but also the various complainants, witnesses and the like.
11. The Commission has the capacity to make interim orders. Interim orders can include the suspension of practising certificates and I would have no hesitation in taking that action if it were in any way apparent to the Commission that the proceedings were being deliberately delayed or that the time of the Commission was being wasted unnecessarily.
12. The Commission sits for almost five months a year but not continuously and in these circumstances it is even more important that when hearing dates allocated that they be utilised and be not wasted.

13. The current session of the Commission continues until the 7th of May. It is my intention that these proceedings will be called on a regular basis throughout the current session with the intention that they be determined during the current session should any time become available.
14. The Applicant seeks witness expenses with respect to the witnesses and complainants who have been brought before the Commission today and I note that the quantum of those expenses has been agreed between the parties.
15. The significant expense which is of course not compensated is the loss of time of the Commission and again this is a matter that I would consider making the subject of an order in the event of future applications such as this.
16. As have indicated, in the circumstance, whilst my initial reaction was to refuse the application I am satisfied that in this instances the just determination of the proceedings requires that the hearing dates allocated be vacated.

ORDERS

1. Hearing dates for the 13th and 14th April 2010 be vacated
2. The respondent is to meet with the applicant today and if necessary tomorrow to facilitate the preparation of a statement of agreed facts and issues
3. The respondent is to pay witness expenses in the sum of three hundred and twelve dollars [\$312.00]. Such amount to be paid by 1.00 pm today as follows:

\$15.00	-	Taniela Roko
\$25.00	-	Mohammed Yasin Khan
\$70.00	-	Kitione Tawake
\$202.00	-	Sainivalafi Toroki
4. By consent leave is granted to the Applicant to amend complaint no 6 and to file such amended complaint by 4.00 pm on the 14th of April 2010.
5. Statement of agreed facts signed by the parties it to be filed by 4.00 pm on the 14th of April 2010.
6. The proceedings are adjourned for mention at 9.00 am on the 16th of April 2010.


JOHN CONNORS
COMMISSIONER



13 APRIL, 2010