

***Chief Registrar v Ram***  
**ILSCJ02/2017; [2017] FJILSC 4 (6 February 2017)**

*This summary is not intended to be a substitute for the reasons of the Independent Legal Services Commission or to be used in any later consideration of the Commission's reasons*

## **Facts**

Mr Hari Ram and his law firm (Rams Law) acted as the common solicitor administering a sale and purchase agreement for a Crown lease between Mr Sheik Haque (the vendor/landlord) and Mr Abid Hussain (the purchaser/tenant). Due to an alleged conflict of interest, the Chief Registrar raised against him six counts of professional misconduct section 82(1)(a) of the *Legal Practitioners Act 2009*:

Count 1: Whilst acting for both parties to a single transaction, he failed to make a full and frank disclosure and did not obtain informed consent to continue engaging in such practice. This allegedly breached rule 1.2 of the *Rules of Professional Conduct and Practice*.

Counts 2 and 3: He acted under a conflict of interest when instituting proceedings on behalf of Mr Hussain against Mr Haque in relation to the sale and purchase agreement, firstly in the Magistrates Court (Count 2) and secondly in the High Court at Lautoka (Count 3).

Count 4: He instructed a legal practitioner from Rams Law to act on behalf of Mr Hussain in a tribunal action against Mr Haque.

Count 5: He witnessed the signatures of both Mr Haque and Mr Hussain on the relevant documents in relation to the sale and purchase agreement.

Count 6: Prior to witnessing Mr Haque's signature, he failed to read and explain to Mr Haque the contents of the relevant legal instruments.

## **Judgment**

The Commissioner held that the persuasive burden of proof is on the applicant to prove the charge upon a balance of probabilities, the civil standard, 'according to the gravity of the act to be proved' (*Chief Registrar v Kapadia* [2016] FJILSC 8 (21 September 2016)). In the present case, there were significant gaps in the evidence provided for Counts 1 and 6, and no evidence was provided for Count 5. Thus, the Chief Registrar failed to satisfy their burden in relation to Counts 1, 5 and 6.

In relation to Counts 2, 3 and 4, Mr Haque (the complainant, and vendor/landlord) was unable to identify the actual conduct which gave rise to the alleged conflict of interest, other than the fact that Mr Ram was the common solicitor between the purchaser and vendor in the sale of land transaction. This was insufficient, as its connection to Mr Ram acting on behalf of Mr Hussain (the purchaser) in later proceedings was not established. Furthermore, he was not shown to have used any confidential information, obtained when acting as the common solicitor, when acting on behalf of Mr Hussain in the three proceedings.

As such, all six counts of professional misconduct were dismissed. The Commissioner did however caution lawyers that while the six counts in the present case have been dismissed, practitioners are still to be cautious when acting as a common legal practitioner.