

**Chief Registrar v Sharma**  
**ILSCJ06/2016; [2016] FJILSC 5 (21 September 2016)**

*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 Suraj Sharma was the principal legal practitioner of Patel Sharma Lawyers. The following charges were laid against Mr Sharma and his law firm:

Count 1: He prepared a will for Mr Salen Maharaj (the deceased) under which Mrs Maya Prakash (mother of the deceased), was the sole beneficiary. However, he later acted for Ms Pranita Devi (wife of the deceased), and sought letters of administration for Ms Devi in the estate of the deceased, against the interests of Mrs Prakash. This was said to amount to professional misconduct as per section 82(1)(a) of the *Legal Practitioners Act 2009* ('LPA').

Count 2: He failed to keep proper record of the deceased's will, allegedly amounting to unsatisfactory professional conduct under section 81 of the *LPA*.

Count 3: He failed to exercise due care and diligence in locating the will of the deceased. Furthermore, he thereafter proceeded on instructions of Ms Devi and obtained grant of letters of administration to the detriment of Mrs Prakash, the sole beneficiary under the missing will. This led Mrs Prakash to initiate proceedings in the High Court in Suva and thus bearing unnecessary costs. This conduct was said to be contrary to section 82(1)(a) of the *LPA*, thus amounting to professional misconduct.

Count 4: He failed to exercise due care and diligence in locating the will, instead proceeding on instructions of Ms Devi by obtaining a grant of letters of administration. This meant that when the grant was subsequently revoked by the High Court in Suva, Ms Devi bore unnecessary costs. This conduct allegedly amounted to professional misconduct under section 82(1)(a) of the *LPA*.

## **Judgment**

Mr Sharma and his law firm's interlocutory application for a permanent stay of proceedings were dismissed. It was emphasised by the Commissioner that whilst the attitude of the Chief Registrar's staff caused Mr Sharma a considerable deal of concern, this was not a sufficient basis to allow a striking out of the application.

In his judgment, the Commissioner outlined 12 reasons as to why there needed to be a full hearing before the Commission:

1. to clarify the circumstances surrounding the creation of the will and its misplacement, as this would enable a determination as to whether Mr Sharma and his law firm should be held accountable for the costs incurred in relation to the various legal proceedings commenced by Ms Devi and Mrs Prakash;

2. to consider the conduct of Mr Sharma, specifically in relation to his law firm's procedures regarding the registration and record-keeping of wills;
3. to review the Chief Registrar's argument relating to 'competence and diligence', specifically in relation to the decision to make a single original of the will, without any copies;
4. to determine whether the conduct of the Mr Sharma was contrary to section 82(1) of the *LPA*;
5. to consider whether (following his death) any family members had been informed by the law firm that the deceased had not made a will, and whether Mr Sharma's decision (in 2006) to not make a second original of the will fell short of the standard of competence and diligence that a member of the public was entitled to expect of a legal practitioner or a law firm;
6. to consider whether Mr Sharma was in a position of conflict by acting on the instructions of Ms Devi, and whether Mr Sharma should have referred her to another firm after she returned with instructions without Mrs Prakash;
7. to consider the nature of the advice given by Mr Sharma to Ms Devi, and to determine whether he should have advised at all (thereby necessitating analysis of the comments made in 2010 by Mr Sharma and Ms Prakash towards Ms Devi's new solicitor Mr Hiulare, and of the rationale for Mrs Devi and Mr Hiulare's rejection of claims relating to the authenticity of the signature in the will);
8. to determine whether there was a settlement between Mrs Prakash and Mr Sharma (and his law firm);
9. to determine whether Mrs Prakash knew that her son had custody of the will;
10. to determine whether any settlement occurred between Mrs Prakash and Mr Sharma during a mediation held in June 2010, and whether comments made by Balapatabendi J, who oversaw the legal proceedings between Ms Devi and Mrs Prakash, in relation to Mr Sharma's behaviour are correct; and
11. to determine how the behaviour of Mr Sharma in pursuing a 'cause of action for the letters of administration' should be viewed.