

Chief Registrar v Vosarogo (No 3)
ILSCJ01/2017; [2017] FJILSC 1 (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 Vosarogo, the principal of Mamlakah Lawyers and trustee of the Mamlakah Lawyers Trust Account, was charged with three counts of professional misconduct in relation to the operation and management of 12 clients' trust accounts:

Count 1: He failed to ensure that multiple clients' trust accounts were not overdrawn, which constituted a breach of section 82(1)(b) of the *Legal Practitioners Act 2009* ('LPA'). This prohibited conduct alleged in Count 1, if established, would mean that Mr Vosarogo was not a 'fit and proper person' to engage in legal practice. There were two main issues in relation to Count 1: firstly, whether the 12 acts alleged in the particulars were the components of one offence or 12 separate offences; and secondly, whether or not sanctions had been pleaded in the particulars.

Count 2: He failed to discharge his duties as a trustee to properly monitor the internal account system, which resulted in 12 clients' accounts being overdrawn. This was said to amount to a breach of section 82(1)(b) of the *LPA*. Once again, two issues arose: firstly, whether Counts 1 and 2 were in fact the same offence or whether the particulars in both Counts 1 and 2 were identical; and secondly, whether the evidence to be relied upon in both Counts 1 and 2 were from the same source (namely the auditors).

Count 3: He failed to provide the auditors with an authority letter from the client (Mr Daniel Wah) for withdrawal of monies from the trust account, after being requested by the auditors. This was said to be in breach of sections 12(5) and 17(b) of the *Trust Accounts Act 1996* ('TAA'), and was therefore an act of professional misconduct pursuant to sections 82(1)(a) and 83(1)(h) of the *LPA*.

This judgment concerns the outcome of Mr Vosarogo's application to have the counts struck out, in addition to the Chief Registrar's outcome to amend Count 3 to further include breaches of sections 12(4) and (5) of the *TAA*.

Judgment

The Commissioner found that all three counts were duplicitous, in addition to Count 2 offending the rule against double jeopardy.

Count 1 was held to be duplicitous as it incorporated 12 separate offences, namely a breach for each account which was allowed to be overdrawn. Further, the count impermissibly referred to sanctions within the particulars.

Count 2 was held to be in breach of the rule against double jeopardy as it was, in substance, identical to Count 1. This is because both Counts 1 and 2 referred to the same offence and particulars, and were also seen to rely on the same sources of evidence. It followed that this count was also duplicitous.

Count 3 was also held to be duplicitous as it alleged the commission of two separate offences, namely the breach of two provisions of the *TAA*. The Chief Registrar's application for leave to amend this count was refused on the basis that it could create further duplicity.

However, notwithstanding these findings, Mr Vosarogo's application seeking a ruling that the three counts be struck out was refused. Instead, the Chief Registrar was granted leave to file a further amended application to remove the observed defects in the counts.