

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO. 002/2010

BETWEEN: CHIEF REGISTRAR

Applicant

A N D:

VIPUL MISHRA

1st Respondent

MEHBOOB RAZA

2nd Respondent

DR MUHAMMAD SHAMSUD-DEAN SAHU KHAN

3rd Respondent

SAHU KHAN & SAHU KHAN

4th Respondent

Applicant : Ms V. Lidise & Mr A. Chand
1st Respondent : In Person
2nd Respondent : Mr A Vakaloloma
3rd Respondent : In Person
4th respondent : Dr M S Sahu-Khan

Date of Hearing : 6th December 2010
Date of Judgment : 6th December 2010

RULING

1. There is before the Commission a Notice of Motion filed by the first Respondent to these proceedings which seeks the following orders.
2. That the charges against the first respondent, Vipul Mishra, be dismissed on the bases that he acted for the vendor only in respect of the transaction complained of by the complainant and on the bases that she had her own lawyers acting for her.
3. Alternatively that the charges against the first Respondent be severed and heard separately from the other practitioners charged.
4. The first Respondent, Applicant to the Motion, relies upon an affidavit sworn by him on the 26th of October 2010 and also on the declaration of his clerk Mohammad Kazim.
5. The Motion is opposed by the second, third and fourth Respondents and by the Applicant

6. The second Respondent relies upon an affidavit of Mr. Raza sworn on the 25th of November 2010.
7. The Commission has had the benefit of written submissions filed by the 1st Respondent and of skeleton submissions filed by the 2nd Respondent.
8. The substantive matter before the Commission is comprised of 8 counts the 1st, 2nd and 3rd counts make allegations against the 1st Respondent the 4th count makes an allegation against the 2nd Respondent the 6th count makes an allegation against the 4th Respondent and the 7th and 8th counts make allegations against the 3rd Respondent.
9. The issue the substance of the substantive matter would appear to be a conveyancing transaction in which the 1st Respondent/Applicant on the motion acted for the vendor in that transaction and the 2nd Respondent acted for the purchaser the 3rd and 4th Respondents appear to have acted for a mortgagee and to have had some dealings with the purchaser. Those observations are made solely from the 8 counts comprised within the application.
10. The 1st Respondent/Applicant on the motion submits that his only involvement in the matter is in acting for the vendor and that the vendor is not the complainant with respect to the conduct of the 1st Respondent and that accordingly it is appropriate that the 1st, 2nd and 3rd counts be severed and dealt with independently of the remaining counts.
11. The 1st Respondent/Applicant also submits that the 1st, 2nd and 3rd counts in the application should be summarily dismissed on the bases that he acted only for the vendor and there being no complaint by the vendor the relevant provisions of the Legal Practitioners Decree to found a finding of unprofessional conduct are not present.
12. The Applicant submits that the Commission has no jurisdiction to deal with an application for summarily dismissal.
13. In support of this submission the Applicant relies on section 112 (1) of the Legal Practitioners Decree 2009 which states that upon receipt of the application to commence disciplinary proceeding under section 111 the Commission shall conduct a hearing into each allegation particularized in the application.
14. The submission is amplified to require that there be a hearing that is that evidence be taken on all allegations in accordance with section 112 and without that occurring there is no capacity to dispose of the application.

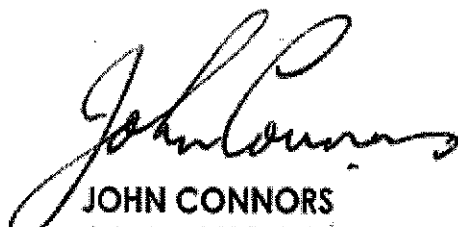
15. On this issue it should be noted that the Commission is a creature of statute and unlike the High Court has no inherent jurisdiction the Commission can only do those things that the statute enables it to do.
16. In that regard the statute is indeed extremely broad in the orders and ancillary orders that it facilitates the Commission making and in the broad facilitation of the conduct and management of proceedings before the Commission.
17. The Applicant on the motion also submits that material necessary to deal with the allegations against the 1st Respondent will be the subject of a claim or maybe subject of a claim of legal professional privilege and makes the point quite correctly that the only person who can waive that privilege is the client.
18. The Rules of Professional Conduct and Practice set out in rule 1.4 that information received by a practitioner from or on behalf of a client is confidential and shall not be communicated to others save with the clients consent or where so required by law. There is there no elaboration on what is meant by the words or so required by law at common law.
19. The matters that might be protected by a claim for legal professional privilege are indeed limited and I am of the opinion that that argument is an insufficient bases to either sever or dismiss the allegations against the 1st Respondent and should it be that any claims for legal professional privilege are made they can be dealt with on their merits at that time.
20. The other Respondents apart from the 1st Respondent submit that they will be prejudiced if severance be granted.
21. They submit that the transaction is one transaction one course of events and therefor should be dealt with together in fairness to all parties.
22. Commissions been referred to two authorities in that regard the first being *R V Assim* [1966] 2 All ER 881 and a decision the Fiji Court of Appeal - *Tamaibeka V the State* [1999] FJCA 1. The applicant to the action has also referred the Court to a decision of Madam Justice Shameem in *State V Ashneel Prasad and others* (2009, FJHC 5).
23. These authorities to which I have been referred relate to the conduct of criminal proceedings but despite that I think the words quoted in paragraph 24 of the *Director of Public Prosecution V Singh* [2010] FJMC 5 quoting Justice Shameem it is said that:

" both at common law and under statue, the prosecution is entitled to charge principal offender and secondary offenders in one charge or information provided there is sufficient evidential and factual nexus in relation to each accused and provided there is no prejudice to the accused."

24. I would have thought that the the principle therein expressed would apply equally to proceedings before this Commission.
25. There is in my opinion nothing that has been placed before me to show that prejudice would flow to the 1st Respondent should the matter not be severed.
26. If it is that in the course of the hearing of the substantive matter any issue arises which might result in prejudice then I think that can be dealt with at that time.
27. The Commission is by virtue of section 114 of the Legal Practitioners Decree obliged to act fairly in its proceedings whilst having flexibility in the reception of evidence and not being bound by the rules of evidence. The dominant procedural requirement is that the Commission act fairly to all parties before it. In exercising that discretion I am not satisfied that there is any prejudice to the 1st Respondent or that it would be unfair to the 1st Respondent to proceed with the substantive matter in its entirety and I see no bases to summarily dismiss the allegation against the 1st Respondent without taking evidence whether or not the provisions of the decree require it as a matter of law that evidence be taken to facilitate the determination of an application before the Commission.
28. In the circumstances therefore I am not satisfied that the orders sought should be granted and the Notice of Motion is dismissed.

ORDERS

1. Notice of Motion is dismissed.


JOHN CONNORS
COMMISSIONER



6 DECEMBER 2010