

**IN THE INDEPENDENT  
LEGAL SERVICES COMMISSION**

**NO. 007/2009**

**BETWEEN: CHIEF REGISTRAR**

*Applicant*

**A N D: AKUILA NACO**

*Respondent*

**Applicant: Ms V. Lidise**

**Respondent: Mr V Vosarogo**

**Date of Hearing: 2<sup>nd</sup> July 2010**

**Date of Judgement: 9<sup>th</sup> July 2010**

**JUDGEMENT ON SENTENCE – COMPLAINTS 2 & 3**

1. The Respondent was on the 16<sup>th</sup> June 2010 found guilty of two counts of unsatisfactory professional conduct.
2. The particulars of complaint no 2 are :-  
*Akuila Naco a legal practitioner, since the 6<sup>th</sup> of May 2009 having received payment of the sum of \$258,600 from the Attorney General's Chambers has failed to distribute the monies received therein to Taniela Roko and the other respective claimants according to the orders made by Justice Jiten Singh in the matter of Waisea Kaloumaira v The Fiji Police Force, Minister for Home Affairs & the Attorney General HBC 472 of 2004S, which conduct occurred in connection with Akuila Naco's practice of law, falling short of the standards of competence and diligence that a member of the public is entitled to expect of a reasonable competent or professional legal practitioner.*
3. As it is set forth worth in the judgment of 16<sup>th</sup> of June 2010 in this matter the Respondent acknowledged that he was engaged by Waisea Kaloumaira with respect to the receipt and payment of the judgment sum in matter HBC 472 of 2004S.
4. As was found in the earlier judgment the Respondent merely received the monies from the Attorney General's Chambers and paid them directly to Waisea Kaloumaira without recourse to the judgment delivered by Singh J, where the gross amount was

apportioned between the respective people on behalf of whom Waisea Kaloumaira had taken the representative action.

5. The result of the monies been paid directly to Waisea Kaloumaira rather than in accordance with the award of Singh J is that each of the people other than Waisea Kaloumaira fail to receive that to which the court found them entitled.
6. In mitigation the Respondent submits that he acted in accordance with the order that had been taken by others.
7. It is further submitted that the Respondent acted in accordance with the instructions he received from his client Waisea Kaloumaira.
8. It is not enough for a legal practitioner to merely act in accordance with instructions received whilst disregarding the practitioner's obligations to the court, the profession and the community at large.
9. Whilst the complaint has only been bought by Taniela Roko one of those entitled under the judgment of Singh J and whilst all of those entitled would have a right of action against Waisea Kaloumaira for the respective amount awarded to each of them they have all suffered a loss as a result of the conduct of the Respondent.
10. It may be argued that an appropriate result would be for an order to be made for the Respondent to pay the amount to each of the parties entitled pursuant to the judgment. Such an order however would disregard the rights those parties have against Waisea Kaloumaira and would disregard the obligation that Waisea Kaloumaira has to each of them.
11. The aim of professional disciplinary proceedings is a means to safeguard the reputation of the profession – *Southern Law Society – Westbrook* (1910) 10 CLR 609. Related to this are the objectives of maintaining proper standards in the profession and setting an example to other lawyers – *De Pardo v Legal Practitioners Complaints Committee* (2000) 170 ALR 709. It cannot be denied, to this end, that a disciplinary sanction may deter other lawyers from engaging in the impugned conduct and also deter the lawyer disciplined and so indirectly protect the public against like defaults. It is said that this means that a court or tribunal, in making a disciplinary order, takes account of the message that the order conveys to other lawyers, particularly young lawyers – *Re Drew* (1920) 20 SR (NSW) 463 at 466.
12. The fact that professional disciplinary proceedings are directed at a chiefly protective objective does not deny that they may generate an outcome that is punitive in effect. The courts have not denied the deterrent effect of disciplinary orders, but have

emphasized the link between deterrence and the central protective aim – *Law Society of New South Wales v Foreman (No 2) (1994) 34 NSWLR 408 at 441*. Protection of the public may thus justify a "punitive response". Such a response shows the grave view the court or tribunal takes of the misconduct; a failure to mark its censure and disapproval via a punitive response in the case of grave misconduct may be viewed by the public as almost tacit approval – *Legal Practitioners Conduct Board v Boylen (2003) 229 LSJS 32*. The imposition of a fine, although apparently punitive in effect, may have a protective effect in discouraging other lawyers from misconduct – *Re a Medical Practitioner [1995] 2 Qd R 154*, or at least a deterrent effect on the lawyer who has been fined. It may even operate, in some circumstances, to deprive the lawyer of monetary gain that was secured by the unprofessional conduct – *Legal Services Commission v Mullins [2006] LPT 012*.

13. As observed by McPherson JA of the Queensland Court of Appeal in *Baker v Legal Services Commission [2006] QCA 145*

*"the sanction for violation is not intended to punish but is designed for the protection of the public and to maintain confidence in the profession in the estimation of the public and of the profession as a whole."*

14. The particulars of complaint no 3 are:-

*Mr Akuila Naco acted for the Complainant, Mr Kitione Tawake in Rakiraki Magistrate Court in a civil case of Pratibha Kumar v the Complainant after the payment of \$400. The Complainant's property was on mortgage and sod by the mortgagor, Colonial Bank to the plaintiff. The Complainant was served with an order to vacate his property on 13<sup>th</sup> February 2008 and he requested for further time until 23<sup>rd</sup> March 2008. In the course of court proceeding Mr Naco failed to appear in court and the judgment was issued against the Complainant.*

15. The complaint here is a complaint that is all too common in Fiji. A culture appears to have developed whereby practitioners contact Magistrate's Courts by telephone or fax to advise of their inability to be in attendance.
16. Legal Practitioner's have a duty to the court as well as duty to their clients. This duty obliges practitioners to fulfil their obligations to the courts by appearing when required or by having an agent appear on their behalf. It is a failure to comply with their obligations to the court to merely communicate by telephone or facsimile transmission.
17. The Complainant having paid his money to the Respondent clearly did not get what he paid for and must be entitled to a refund of part of those fees.

18. In mitigation it is submitted that the Respondent is a graduate of Bond University in Australia having graduated in 1992 and with a break between 2001 and 2003 has practiced law since that time.
19. It is submitted that the Respondent has practiced on his own account since 2004.
20. It is further submitted that he is a married man with 5 children and in addition maintains 5 other children from his village.
21. All of these matters are indeed commendable however as is highlighted above the dominant role of a tribunal such as this is not to punish the legal practitioner but to protect members of the public and to preserve the profession.
22. The Applicant urges that with respect to complaint no 2 an order be made for compensation to be paid to the Complainant and that the Respondent be fined a significant sum of money.
23. With respect to complaint no 3 the Applicant submits that again a fine be imposed upon the Respondent and an order made for refund of fees to the Complainant.

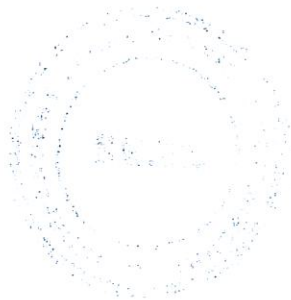
#### **CONCLUSION**

24. In the circumstances I do not think it is appropriate that the Respondent be fined. I do however consider it appropriate that the Respondent pay some compensation to Mr Taniela Roko however the amount should take into account the other rights that Mr Roko has with respect to the matter.
25. With respect to complaint no 3 again I think it is inappropriate that the Respondent be fined however it is appropriate that he refund a significant amount of the fees paid to Mr Kitione Tawake.

**ORDERS**

1. With respect to complaints 2 and 3 the Respondent is publicly reprimanded.
2. With respect to complaint no 2 the Respondent is to pay the sum of \$3,600 to the Commission to be paid to Taniela Roko by a way of compensation. Such amount is to be paid within 3 months. Should payment not be made the Respondent's practicing certificate shall be suspended without further order.
3. With respect to complaint no 3 the Respondent is to pay the sum of \$300 to the Commission for payment out to Kitione Tawake. Payment is to be made within 1 month. Should payment be not made within the time allowed the Respondent's practicing certificate shall be suspended without further order.
4. Respondent is to pay the Commission for payment to the Applicant witness expenses in the sum of \$25 with respect to Taniela Roko and \$30 with respect to Kitione Tawake. Payment of these amounts are to be made within 1 month failing in which the Respondent's practicing certificate shall be suspended without further order until such time when payment is made.

  
**JOHN CONNORS  
COMMISSIONER**



**9 JULY 2010**



# INDEPENDENT LEGAL SERVICES COMMISSION

Legal Practitioners Decree 2009

Application No. 007 / 2009

**APPLICANT:** Chief Registrar

**RESPONDENT:** Akuila Naco

## ORDER

It is hereby ordered:

### ORDERS

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**JOHN CONNORS**  
**COMMISSIONER**



9 JULY 2010

IN THE HIGH COURT OF FIJI

No. HBI 009 of 2010

INDEPENDENT LEGAL SERVICES COMMISSION

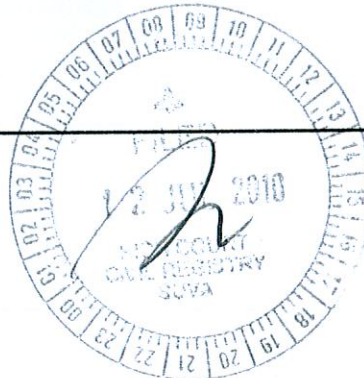
Application No. 07 of 2009

APPLICANT: CHIEF REGISTRAR

RESPONDENT: AKUILA NACO

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ORDER



INDEPENDENT LEGAL SERVICES COMMISSION  
Level 5 Civic Tower  
Victoria Parade  
SUVA