

IN THE INDEPENDENT LEGAL SERVICE COMMISSION

Case No. 001 of 2020

BETWEEN : CHIEF REGISTRAR

AND : ETUATE MERU

Applicant : Ms J Sharma for the Chief Registrar

Respondent : The Legal Practitioner in Person

Dates of Hearing: 12 February 2020

Date of Sanction: 28 February 2020

DISCIPLINARY SANCTION

- [1] The legal practitioner is charged with one count of unsatisfactory conduct contrary to section 81 of the Legal Practitioners Act 2009 (the Act). The allegation is that the legal practitioner on 29 May 2019 whilst not holding a valid practising certificate, witnessed a Sale and Purchase Agreement by placing his signature and affixing his Commissioner for Oaths Stamp on the said document, which conduct is a breach of section 52(1) (a) of the Act.
- [2] The legal practitioner pleaded guilty to the charge at the first opportunity. His guilty plea is consistent with his admission to the Chief Registrar when he responded to a notice of complaint. His excuse for his conduct was that he was under a belief that he could perform the functions of a Commissioner for Oaths by virtue of his admission to the bar as a legal practitioner and that he was not required to have an existing practising certificate to perform the functions of a Commissioner for Oaths. He now accepts that he was wrong in holding that belief.

- [3] The charge alleges that the practitioner's conduct of performing a function of the Commissioner for Oaths without holding a current practising certificate is a breach of section 52(1) (a) of the Act. Section 52(1)(a) states:

A person shall not, unless that person is the holder of a current practising certificate – practice or act as a legal practitioner of the Fiji Islands or as a Notary Public.

- [4] It is clear the reference to section 52(1) (a) in the charge is an error. The legal practitioner did not perform the functions of a Notary Public without a practising certificate. He performed the functions of a Commissioner for Oaths without a practising certificate. Commissioners for Oaths are appointed by the Chief Justice pursuant to section 144(1) of the Act. The functions of the Commissioners for Oaths are also provided by that section as follows:

144. — (1) The Chief Justice may appoint, under his or her signature and the seal of the High Court from time to time, such and so many legal practitioners and other persons as may be requisite to be Commissioners for taking affidavits and declarations and receiving production of documents or for taking the examination of witnesses on interrogatories or otherwise which may be necessary to be taken in respect of any proceedings in any court, and any order of a court for the attendance and examination of witnesses or production of documents before any such Commissioner within the jurisdiction of the Court shall be enforced in the same manner as an order to attend or be examined or produce documents before the Court.

(2) No action shall be brought against any Commissioner in respect of any act or order performed or made by him or her in good faith in the execution or supposed execution of the powers or jurisdiction vested in him or her, but every such act or order, if in excess of such powers and jurisdiction, shall be liable to be revised, altered, amended or set aside upon application to the Court.

(3) A practitioner, not being the holder of an appointment under subsection (1), who is the holder of a practising certificate that is in force, shall, notwithstanding the absence of such an appointment, be deemed, for the purposes of this Act and any other written law, to be a Commissioner appointed under subsection (1)

(4) The signature of a person, when placed on a document in the exercise by

that person of the powers of a Commissioner under this Section, shall be followed by the description "Commissioner for Oaths".

- [5] Section 144 (3) allows a practitioner who holds a practising certificate to perform the functions of a Commissioner for Oaths despite not being appointed by the Chief Justice under section 144(1).
- [6] A practising certificate is issued to a practitioner pursuant to section 42(1) of the Act. Section 42(1) states:

42. — (1) Every person admitted to practice as a practitioner shall before commencing practice and thereafter, while continuing in practice, during the month of January in each and every year apply for and obtain from the Registrar a certificate (in this Decree known as a practising certificate) certifying that that person is entitled to practice as a legal practitioner according to the laws of the Fiji Islands. The certificate shall be issued by the Registrar. "Practice" includes employment as a legal practitioner, whether in private practice or otherwise.

- [7] A practitioner is a holder of a practising certificate that is current by virtue of section 42(1) of the Act. In the present case the practitioner admits that he did not have a current practising certificate when he formed the functions of a Commissioner for Oaths by witnessing a Sale and Purchase Agreement and placing his signature and affixing his Commissioner for Oaths Stamp on the said document in 2019. With this admission the wrong reference to the provision of the law has not caused any embarrassment to the practitioner. I am also mindful that the practitioner did not take any objection to the charge on the basis that it was defective.
- [8] The Commission of its own motion amends the charge to allege that the conduct of the practitioner is a breach of section 144(3) of the Act. The conduct is an unsatisfactory professional conduct because it falls short of the standards of competence and diligence that a member of the public is entitled to expect of a reasonably competent or professional practitioner.

- [9] The Commission's disciplinary powers are wide. The Commission can impose a range of sanctions under section 121(1) of the Act. In the past the Commission had adopted the following steps when imposing sanctions on the legal practitioners found guilty of professional misconduct or unsatisfactory professional conduct:
1. An assessment on the seriousness of the misconduct.
 2. Identification of the purpose for which the sanction is imposed.
 3. Selection of the sanction which most appropriately fulfills that purpose.
- [10] The practitioner's conduct is objectively serious. The rule prohibiting performing the functions of a Commissioner for Oath without a current practising certificate is a statutory rule – section 144(3). The practitioner's excuse is that he was ignorant of the statutory rule is based on thin ground.
- [11] When a statutory rule is violated by a legal practitioner the harm is to the reputation of the legal profession. Apart from causing harm to the reputation of the legal profession the practitioner also caused harm to a party involved in a conveyancing transaction. Fortunately, another practitioner timely identified the irregularity in the witnessing of the signature of a party to a Sale and Purchase Agreement and corrected it before proceeding further with the conveyancing transaction. I identify deterrence as the primary purpose of sanction in order to protect the public and the reputation of the legal profession.
- [12] In determining an appropriate sanction that fulfills that purpose I am mindful of what the practitioner has said in his mitigation. He is 32 years old and married with two children. He was admitted to the legal profession in Fiji in 2014. After joining the profession he worked in the public service at the Office of the Public Trustee. He is a first time offender and is remorseful. He has saved the Commission's time and resources by pleading guilty at the first opportunity.
- [13] Currently, he is not practising law but farming to support his family. His application for a renewal of his practising certificate is held back due to his failure to obtain a tax clearance certificate from the tax department. Suspension of the practising certificate is

not a practical sanction because the practitioner does not have a current practising certificate. He seems to have limited means to comply with monetary sanctions.

- [14] In these circumstances I publicly reprimand the legal practitioner and order that he must not apply for a renewal of his practising certificate until January 2021. He surely will have to comply with other requirements of renewal if he decides to renew his practising certificate in January 2021.



Justice Daniel Goundar

COMMISSIONER