

IN THE INDEPENDENT LEGAL SERVICE COMMISSION

SUVA

ILSC CASE NO: 02 OF 2020

BETWEEN : CHIEF REGISTRAR

AND : INOKE LUTUMAILAGI

Applicant : Mr A Prasad for the Chief Registrar

Respondent : The Legal Practitioner in person

Dates of Hearing: 3 March 2020

Date of Sanction: 24 March 2020

DISCIPLINARY SANCTION

- [1] On 23 July 2019, a client of Mr Lutumailagi (the legal practitioner) filed a complaint against him with the Chief Registrar arising from a conveyancing transaction that the client instructed him to carry out.
- [2] On 18 October 2019, the Chief Registrar brought the complaint to the attention of the legal practitioner in writing and gave the practitioner 21 days to respond. The following day the legal practitioner acknowledged receipt of the notice of complaint via an email to the Legal Practitioners Unit.
- [3] When the legal practitioner did not respond to the complaint within the prescribed period, the Chief Registrar gave him a further notice in writing on 14 November 2019 to respond. The legal practitioner did not respond.
- [4] On 17 February 2020, the Chief Registrar charged the legal practitioner with professional misconduct contrary to section 82(1)(a) of the Legal Practitioners Act (the Act).

[5] Section 82(1) (a) of the Act states:

For the purposes of this Act, 'professional misconduct' includes –
(a) unsatisfactory professional conduct of a legal practitioner, a law firm or an employee or agent of a legal practitioner or law firm, if the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence.

[6] The practitioner failed to comply with a statutory requirement to respond to a complaint notice after a reminder was served on him to respond within 14 days. By not complying with the statutory requirements to respond to a complaint the legal practitioner failed to maintain a reasonable standard of competence and diligence.

[7] Section 121 (1) of the Act provides for a range of sanctions for disciplinary offences. For the offence of professional misconduct arising from a failure to respond to a complaint, sanctions range from a public reprimand to a suspension of practising certificate for a period of time. In *Chief Registrar v Bukarau* [2016] FJILSC 2 (7 June 2016), the Commission said at [151]:

In my view, a fine should normally be the starting point in such matters as a failure to respond to a notice from the investigating authority. This is the case in the states of New South Wales and Queensland in Australia, the province of Ontario in Canada, as well as in England and Wales. A period of suspension may also be appropriate depending upon the circumstances, including whether the practitioner has complied with the notice between the time of service of the application upon them and the first return date of it before the Commission. Practitioners should also expect that there may well be two orders for costs – one for putting the Registrar and his staff within the LPU through the time and expense of having to bring such an application and the other for the Commission having to deal with the practitioner for failing to comply with the practitioner's statutory responsibility pursuant to s.108(1). (as per Commissioner Dr Hickie)

[8] The approach to imposition of sanction involves the following steps:

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. (The Solicitors Disciplinary Tribunal of England and Wales approach set out in its 'Guidance Note on Sanctions')

- [9] The legal practitioner has made a decision to defy the statutory requirements for accountability. He responded to the complaint on 18 March 2020 after he was charged with professional misconduct. The practitioner's defiance has brought disrepute to the legal profession. The misconduct is objectively serious.
- [10] When a misconduct is serious, the purpose of sanction is deterrence.
- [11] The practitioner is 38 years of age. He was admitted to the bar in 2008 and operates a small law practice in the West. He is the sole bread winner for his family.
- [12] He has entered an early guilty plea and is genuinely remorseful. He is a first time offender.
- [13] A comparable case for sanction is *Chief Registrar v Cavubati* [2019] FJILSC 3 (13 June 2019).

Orders of the Commission are:

1. The legal practitioner is publicly reprimanded.
2. The legal practitioner is fined \$1000.00.
3. The legal practitioner is to pay costs to the Chief Registrar, which I summarily assess in the sum of \$500.00.
4. The legal practitioner's practising certificate is suspended until such time he pays the fine and costs in full.



Justice Daniel Goundar
COMMISSIONER