

IN THE INDEPENDENT LEGAL SERVICE COMMISSION

AT SUVA

ILSC CASE NO. 019 OF 2021

BETWEEN : THE CHIEF REGISTRAR

APPLICANT

AND : SURESH CHANDRA

RESPONDENT

Date of Hearing : 15 December 2021

Date of Ruling : 20 December 2021

Appearances:

Ms V Prasad with Mr A Chand for the Applicant

Mr D Sharma with Ms G Fatima for the Respondent

RULING

- [1] On 8 December 2021, the Chief Registrar initiated disciplinary proceedings against the legal practitioner, Mr Suresh Chandra by charging him with six counts of professional misconduct contrary to section 82(1) (b) of the Legal Practitioners Act.
- [2] The Chief Registrar also sought an ex-parte order prohibiting the legal practitioner from travelling overseas pending determination of the allegations of professional misconduct.
- [3] Due to the urgency of the matter to effect service of the charges on the legal practitioner, I issued an interim stop departure order and set the matter to be heard inter-parte the following day.

- [4] On 9 December 2021, the legal practitioner appeared before the Commission represented by counsel. The practitioner objected to the stop departure order and sought to lift it to allow him to travel to Australia for a medical treatment. Both parties consented to an adjournment to allow the legal practitioner to file an affidavit in response and the Chief Registrar to reply. The matter was adjourned to 15 December 2021 for a hearing.
- [5] Section 121 (3) of the Legal Practitioners Act gives the Commission power to make any interlocutory or interim orders as it thinks fit before making its final determination of the disciplinary allegation against the legal practitioner. The legal practitioner through his counsel concedes that the Commission has power to issue a stop departure against him pending determination of the allegations of professional misconduct.
- [6] A brief background of the allegations against the practitioner is set out in a document titled 'Prosecution Case Statement' filed by the Chief Registrar.
- [7] The practitioner was a Principal of MC Lawyers and Trustee of MC Lawyers Trust Account kept with Bank of Baroda. That trust account is currently frozen. The practitioner is not a holder of a valid practising certificate since 2020.
- [8] Section 12 of Trust Accounts Act requires a trustee to submit audit reports for each financial period.
- [9] The practitioner did not submit his audit reports for three financial periods from 2016 to 2018. He provided the Chief Registrar with four extensions from the Office of the Attorney-General to submit his pending audit reports. The extension was given pursuant to section 12 (2) of the Trust Accounts Act.
- [10] The last extension was granted until 31 July 2020 for the practitioner to submit his three pending audit reports. After that no further extension was granted and the practitioner's practising certificate was not renewed.

- [11] Eventually when the Chief Registrar received the pending audit reports, an anomaly of unreconciled sum of \$2.139 million trust funds was reflected in the audits reports.
- [12] It must be said that the current proceedings are not strictly criminal in nature. Disciplinary proceedings are hybrid in nature. The proceedings have incorporated some of the rules of criminal procedure but the rules of evidence are relaxed and the standard of proof is that of a civil standard.
- [13] In his affidavit the practitioner has disclosed the nature of his medical condition for which he wants to travel to Australia for treatment. It is not necessary to publish the practitioner's medical condition in this ruling. The practitioner is entitled to his right to privacy in that regard. The medical condition of the practitioner and the proposed medical treatment plan are supported by both local and overseas doctors. The practitioner proposes to travel to Australia for his medical treatment and return to Fiji on 29 January 2022. He has attached evidence of his return ticket.
- [14] Further, the practitioner has provided evidence of the properties that he owns. He offers to hand over titles of two of his properties to be held as security undertaking by the Commission.
- [15] Counsel for the Chief Registrar submits that the properties are jointly owned by the legal practitioner and his spouse and that his spouse is not a party to the proceedings. Counsel submits that the value of properties offered as security undertaking is far less than the amount of \$2.139 million involved. Counsel further submits that a cash deposit of \$2.139 million will be an adequate security undertaking.
- [16] Counsel for the practitioner submits that the practitioner does not have \$2.139 million cash to offer as security undertaking but he has shown his good faith by offering his two properties. Counsel further submits that the practitioner has so far fully cooperated with the investigation of the allegations and that he has no history

of absconding to escape professional accountability. Counsel says that in any event the practitioner can be tried in absentia.

- [17] There is some force in the practitioner's submissions. Section 112 (2) of the Legal Practitioners Act states that the Commission must give notice to the legal practitioner of any disciplinary proceedings commenced by the Chief Register. In the event the legal practitioner having served with the notice, does not attend the hearing, the Commission has power to determine the allegations against the legal practitioner in his or her absence pursuant to section 112 (3) of the Legal Practitioners Act.
- [18] In this case, the practitioner responded to the notice of the proceedings by making his appearance with counsel of his choice. After having notice of the proceedings against him, it is his right to participate in it or not. If he chooses not to participate, the proceedings can be held in absentia.
- [19] The Chief Registrar's main concern is the recovery of the missing trust funds from the practitioner in the event the allegations are proven against him in absentia. Enforcement of monetary sanctions against a practitioner who has absconded is also a legitimate concern for the Commission.
- [20] However, there must exist very compelling grounds to curtail the constitutional right to personal liberty provided by section 9 of the Constitution. In *Williams v R* (1986) 161 CLR 278 Mason and Brennan JJ (as they then were) held that at common law the balance was to be decided in favour of the liberty of the subject.
- [21] In *Attorney General v Yaya* [2009] FJCA 60; ABU0037.2007 (9 April 2009) the Court of Appeal held that in each case, there must be a balancing of the means with the end, and necessarily with the rights and freedoms of others.
- [22] The gist of the allegations against the practitioner is that he was negligent in his duty as a trustee of trust funds belonging to his clients. There is no suggestion that the practitioner himself has swindled trust funds or cheated his clients.

[23] In his affidavit the practitioner has stated that he himself is a victim of fraud by an employee of his law firm. He has stated that the funds were stolen by the employee using a systematic and sophisticated method over a period of time. He has stated that when he discovered the fraud, he confronted the employee and that the employee has made full admissions in writing to him. He has stated that the matter was reported to police and the case is currently being investigated by the Commercial Crime Unit.

[24] In the final paragraphs of his affidavit the practitioner said:

I will defend my position and I have asked my Counsel to write to the Chief Registrar and request of a review of the 6 charges which I believe can be rolled into one Charge. I can then take a progressive approach as I am not blind to the issue of my shortcoming. I believe that I have very strong mitigating factors and I still (sic) a career in law for myself beyond this charge.

I have a clean record and I have no intention of not turning up at the hearing.

[25] The legal practitioner came to know about the anomaly in his law firm's trust account in 2019. On 6 November 2020, the Chief Registrar gave him Section 104 Notice of the disciplinary investigations against him. From 2019 until the date of charge, the practitioner made no attempts to leave the jurisdiction of Fiji to avoid accountability, despite holding a residency visa to Australia. The only reason that he wants to travel to Australia now is for his medical.

[26] I am satisfied that the practitioner has a genuine medical condition that requires overseas treatment. I am further satisfied that the practitioner has very strong financial ties in Fiji. He has substantial real estate investments in Fiji. In the event the disciplinary allegations are proven against him in absentia, orders can be made to recover the shortfalls in the trust account from his assets.

- [27] Finally, the practitioner is aware that his reputation is at stake if he breaches his undertaking to return to answer the allegations of professional misconduct. The consequences of not turning up to face the allegations will be grave.
- [28] For the reasons given, I lift the stop departure order made against the legal practitioner on 8 December 2021 and allow him to travel to Australia for medical and return to Fiji before his next appearance on 1st February 2022.
- [29] The practitioner is to hand over the original titles of his two properties to the Commission as security undertaking before his departure date.
- [30] The practitioner is ordered not to dispose any of his assets in Fiji pending determination of the disciplinary allegations against him.



Hon. Mr Justice Daniel Goundar
COMMISSIONER

Solicitors:

Office of the Chief Registrar (Legal Officer) for the Applicant
R Patel Lawyers for the Respondent.