

**IN THE INDEPENDENT LEGAL SERVICES COMMISSION**

**AT SUVA**

No. 002 of 2021

**BETWEEN: CHIEF REGISTRAR**

Applicant

**AND: SHELVIN SINGH**

Respondent

**Applicant:** Ms. J. Sharma

**Respondent:** Mr. A. Nand

**Date of Hearing:** 27<sup>th</sup> July 2022

**Date of Ruling:** 20<sup>th</sup> October 2022

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**RULING - STAY APPLICATION**

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1. This Ruling in relation to an application filed on behalf of the Respondent legal practitioner for a Stay of the proceedings of this matter pending the determination of an appeal preferred by the Applicant to the Court of Appeal.
2. The Counsel for the Applicant Chief Registrar opposes the application.
3. On 3<sup>rd</sup> March 2021, the Counsel for the Applicant filed charges against the Respondent for one allegation of Unsatisfactory Professional Conduct contrary to Section 81 of the Legal Practitioners Act 2009. On 11<sup>th</sup> April 2022, the matter was taken up for hearing and the Applicant called the complainant, Mr. Omar Niazi concluded the Applicant's case. The Counsel for the Respondent made an application for a no case to answer and the matter was then adjourned to 22<sup>nd</sup> June 2022 to hear the parties. Thereafter, Counsel for the Applicant on 22<sup>nd</sup> June 2022 made oral submissions regarding the

application made by the Respondent's Counsel on no case to answer and the Applicant Chief Registrar raised an objection of law that the Respondent does not in law have a right to make an application of this nature. The ruling on this was pronounced on 29<sup>th</sup> June 2022 and the Respondent has preferred an appeal. The Respondent now makes application for a stay of these orders pending his appeal of the Commission's Ruling.

4. This Commission received the notice of the appeal being filed in the Court of Appeal dated 19<sup>th</sup> July 2022. The Respondent, in his notice of motion pray for a stay of proceedings pending appeal until the determination of the appeal.
5. This application is made under Section 20 (1) (e) of the Court of Appeal Act and rule (26) (3) of the Court of Appeal rules and the inherent jurisdiction of this Commission. Justice Rajasinghe in the case of *Radrodro v FICAC (HACDM 009 of 2022S (22 June 2022))* considered an application to stay proceedings pending appeal in a criminal matter and discussed the circumstances in which inherent powers may be exercised and held as follows:

“3. The Applicant made this application pursuant to the inherent jurisdiction of this Court. The inherent jurisdiction of the Court should be exercised with utmost care and sparingly, (*vide Shameem J in Paek Kyeong Yeopl v The State [2003] FJHC 216; HAM0035D,2003S (1 October 2003)* Inherent jurisdiction is a valuable servant but a bad master. In exercising the Inherent Jurisdiction, the Court must not supersede or negate the statutory intention of the legislature, (*vide Tikaram J in Seru v State [1999] FJCA; Aau0041d.99 (3 August 1999)*)).

6. In **Singh v Chief Registrar - Ex Tempore Ruling on Stay [2017] FJLSC 21 (7 December 2017)** Commissioner Dr. Thomas V. Hickie summarized the law as regards stay pending appeals as follows;

**“2. The Law**

[17] In *Chief Registrar v Anand Kumar Singh* (Unreported, ILSC, Case No. 024 of 2013, Commissioner Mr. Justice P.K. Madigan, 28 November 2013), His Lordship observed (at [7]):

*'In the case of Dorsami Naidu v Chief Registrar (ABU0038.2010), the Court of Appeal sets out in very clear and in very definitive terms, the principles relating to applications for stay of proceedings where the Respondent is a successful professional regulator'.*

[18] *Dorsami Naidu v Chief Registrar* (as I have noted earlier above), concerned an appeal of the Commission's decision to refuse an application for a stay of execution of its Orders, pending an appeal on the substantive matter. After reviewing the law in Fiji, Justice Marshall concluded:

*'28. I have no doubt that the simple rules that govern the application in this case come down to two. These are:*

*(1) Is there proven a special circumstance which stands in the way of the regulator successful at first instance, whose position is strengthened by representing an important public interest, from enforcing the fruits of his judgment?*

*(2) Are there special or exceptional chances of success with regard to the practitioners [sic] appeal?' [My emphasis].*

[19] Lest there be any doubt as to the correctness of this approach, I note that in *Anand Kumar Singh v Chief Registrar* (Unreported, Fiji Court of Appeal, Case No. ABU 58 of 2013, Calanchini P, 20 December 2013); PacLII: [\[2013\] FJCA 141](#), the President of the Court of Appeal stated:

*'[12] In Native Land Trust Board –v- Shanti Lal and Others (unreported CBV 9 of 2011; 20 January 2012), the Supreme Court (Gates CJ) cited with approval the principles summarised by the Court of Appeal in Natural Waters of Viti Ltd –v- Crystal Clear Mineral Water (Fiji) Ltd (unreported ABU 11 of 2004; 18 March*

2005) for determining whether there are sufficiently exceptional circumstances for the grant of stay relief pending appeal ...

[13] *These principles have evolved from cases that have usually involved money judgments. It is therefore not surprising that in such cases the factor of the public interest is not one that usually calls for any substantive consideration or analysis. However as Marshall JA noted in **Naidu –v- The Chief Registrar** (unreported ABU 38 of 2010; 2 March 2011) the situation is different where a regulator in the person of the Chief Registrar representing the public interest has been successful in proceedings before a disciplinary tribunal. The Chief Registrar is the regulator of the legal profession and in opposing an application for stay of execution pending appeal as the successful party at first instance he is representing the public interest.*

[14] ... *The only special circumstance which may stand in the way of the successful regulator is the fact that the appeal will be rendered nugatory in the event that a stay is not granted ...*

[My emphasis]. ”

[20] Further, in *Iqbal Khan v Chief Registrar* (Unreported, Fiji Court of Appeal, Case No. ABU 68 of 2013, Calanchini P, 23 May 2014); PacLII: [2014] FJCA 60, , the President of the Court of Appeal again stated:

*‘[10] The principles that are usually considered by a court when determining whether there are sufficiently exceptional circumstances for the grant of stay relief pending appeal have evolved from cases that usually involve money judgments (See: **Native Land Trust Board –v- Shanti Lal and Others** unreported CBV 9 of 2011; 20 January 2012 per Gates CJ). However as Marshall JA pointed out in **Naidu –v- The Chief Registrar** (unreported ABU 38 of 2010; 2 March 2011) the position is different in a case where a regulator in the person of the Chief Registrar representing the public interest has been successful in proceedings before a disciplinary tribunal. The Chief Registrar is the*

*regulator of the legal profession under the Legal Practitioners Decree 2009 and in opposing an application for stay pending appeal as the successful party in the disciplinary proceedings at first instance he acts in the public interest. Thus it is the public interest that assumes a far greater significance in such applications than might otherwise be the case in stay applications involving money judgments.*

*[11] In proceedings before a disciplinary tribunal the only special circumstances standing in the way of the successful regulator enjoying "the fruits of the judgment" would be the fact that the appeal may be rendered nugatory in the event that a stay is not granted ..."*

7. I would adopt Commissioner Dr. Hickie's above exposition of the law in relation to stay applications arising from orders made by this Commission.
8. However, in the present application the order appeal is not a final order but is an interlocutory ruling more of a procedural nature. Section 116 of the Legal Practitioners Act empowers the Commission to notice in writing any person ***including the legal practitioner***, if it is in the opinion of the Commission that such person is able to give evidence or produce documents touching the matter in question. The statutory provisions of the Legal Practitioners Act and the scheme clearly lay down that the nature of the proceedings is such the Commission is empowered to call and consider the practitioner's evidence if necessary in determining the reference before it. This being so applications of no case to answer is strictly not within the procedure established by the Legal Practitioners Act. However, as a matter of practice applications akin to and in the nature of stay of proceedings as opposed to no case to answer may be considered in extreme cases in the exercise in its inherent powers. This was what was held in the impugned interlocutory ruling.
9. This being so I to my mind there may not be a reasonable prospect of Respondent/Practitioner succeeding in this appeal. I cannot preempt the outcome of the appeal however I am entitled to objectively consider the same in an application of this nature.

10. The Court of Appeal has considered the legal principles relevant to applications for stay in **Anand Kumar Singh v Chief Registrar** ABU58.2013 (20 December 2013). In that case Calanchini P. held that, in deciding whether a stay should be granted of orders made against a professional by a disciplinary tribunal, the public interest was of particular importance and there would have to be "exceptional circumstances" established to outweigh the paramountcy of that interest (para17). Similarly Marshall JA in **Dorsami Naidu v Chief Registrar** ABU 38 of 2010, (2 March 2011), stated that " ..... The Court should assess whether any ground of appeal has an exceptional chance of succeeding." (para 19).
11. The above was adopted and so stated by Commissioner Justice Paul Madigan in the decision of **Chief Registrar v Khan** [2014] FJILSC 13 (14 February 2014).
12. This principle was affirmed in **Shah v Chief Registrar** [(ABU0050 of 2012) 2 FLR 475] in which the appellant Practitioner appealed against both the findings of guilt and the penalty, and sought a stay pending the determination of his appeal by the Court of Appeal and Calanchini AP. held that:
  - (1) In a stay pending appeal application relating to professional discipline, one factor that is of particular importance is the public interest in the proceeding.
  - (2) For the purpose of determining whether the Court should exercise its discretion to grant a stay, the two questions identified by Marshall JA in *Dorsami Naidu* [ABU 38 of 2010, (2 March 2011)], are of assistance. Those two questions are not mutually exclusive and both may require a consideration of the various factors
13. In the present application the ruling appealed is interlocutory in nature when considered with the provisions of Section 116 does not establish any exceptional circumstances that would override the public interest which would warrant the stay of these proceedings pending this appeal. Accordingly. It is certainly not in the public interest to delay and prolong matters of this nature on interlocutory issues. On the contrary, it is certainly a matter of public interest that complaints of professional misconducting of this nature be considered and concluded promptly and without

delay. There are no exceptional circumstances that would override the public interest and which would warrant a stay of these proceedings pending appeal.

14. There is certainly no irreparable prejudice that may be caused if proceedings are not stayed as prayed for. If there be no merit in the allegation or the Applicant fails to establish the allegations and then the matter will be decided in favour of the Respondent at the conclusion of these proceedings upon hearing the Respondent's evidence. Thus there is certainly no prejudice in law or otherwise that may be caused to the respondent if the stay is not granted as prayed for. Further the grounds urged by the Respondent in appeal appears to be of procedural and interlocutory in nature and not matters of substantive importance therefore the application has no merit.
15. In the above circumstances I hold that the Respondent has failed to satisfy this Commission that there is any acceptable or lawful basis to grant a stay of proceedings as pleaded. The application has no merit and accordingly the application is refused and dismissed.

Dated the 20<sup>th</sup> day of October, 2022.

  
Justice Gihan Kulatunga  
COMMISSIONER