

IN THE INDEPENDENT LEGAL SERVICES COMMISSION
AT SUVA

ILSC CASE NO. 016 of 2019

BETWEEN: CHIEF REGISTRAR
APPLICANT

AND: MEHBOOB RAZA
RESPONDENT

Counsel: Mr. A. Vikash for the Applicant
Ms. M. Naco for the Respondent

Date of Hearing (Pleading) : 6th October 2022
Written submissions : 10th November 2022
Date of Ruling : 9th January 2023

SANCTION RULING

1. On the 21st of November 2019 the Chief Register ("CR") filed this application against the Respondent (also referred to as "The Practitioner") in this Commission with a count of professional misconduct contrary to section 82(1)(a) of the Legal Practitioner Act 2009.
2. On the 6th of October 2022 when the allegation was explained the Practitioner accepted liability to the said allegation of professional misconduct contrary to Section 82(1)(a) of the Legal Practitioners Act 2009:

ALLEGATION BY: The Chief Registrar;

CHARGE

State of Offence (a)

Professional Misconduct: Contrary to Section 82 (1) (a) of the Legal Practitioners Act 2009.

Particulars of Offence (b)

MEHBOOB RAZA, a legal practitioner, being the principal; practitioner of MEHBOOB RAZA & ASSOCIATES, failed to respond to complaint lodged by one MANISHA VANDHANA dated 15th March, 2019 as required by the Chief Registrar by a Notice dated 29th July, 2019, pursuant to section 106 of the Legal Practitioner Act 2009 and thereafter failed to respond to a subsequent reminder Notice dated 3rd October, 2019 issued by the Chief Registrar pursuant to section 108 (1) of the Legal Practitioner Act 2009, which conduct is a breach of section 108(2) of the Legal Practitioners Act 2009 and is an act of professional misconduct.

3. The Practitioner when he appeared before the Commission on the 6th of October 2022 in answer to the allegation the Practitioner readily admitted the said allegation and was granted time to mitigate. Having heard and seen the mitigation of the Respondent and the submission of Applicant, this Commission finds the said allegation established on his own admission and plea.
4. I will now proceed to consider and pronounce the appropriate sanction for the said admitted professional misconduct.
5. This Commission considers the “failure to respond” to the Chief Registrar is a serious form of professional misconduct. As echoed in many rulings it is not a mere lapse but is a serious and callous disregard of and an affront to the authority of the regulator of the legal practitioners. I observe that a majority of the matters submitted to this Commission are for the failure to respond to the Chief Registrar. Issuing of notices pursuant to section 105 of the Legal Practitioners Decree 2009 is a first step in the investigative process by the Legal Practitioners’ Unit of the Office of the Chief Registrar. The failure to respond in a timely manner to any such notice will scuttle and retards the prompt inquiry and investigation in to complaints made by the public against practitioners. The delay so caused will most certainly erode the efficacy and efficiency of the entire disciplinary process and result in a serious loss of public confidence.
6. Thus, the failure to so respond is no doubt a serious breach of the ethical duty and the professional obligation upon members of the profession. Hence, the “failure to respond” should be considered with utmost seriousness unless, there be reasonable

and acceptable cause shown for the said failure and also a sufficient response be made to the said notice at least subsequently.

7. The previous Commissioners have emphasized the importance and the need for practitioners to respond in a timely manner to such notices in the decisions of *Chief Registrar v Luseyane Ligabalavu* [2012] FJLSC 3; Case No.003 and 004.2012 (23 October 2012) and *Chief Registrar v John Rabuku* [2013] FJLSC 6; Case No.013.2013 (30 July 2013) and has considered the perennial nature of the problem of not responding in *Chief Registrar v Teresa Rigsby*, Case No.006.2015 (dated 29 November 2015).
8. The sentiments so expressed which I myself endorse are thus; the Chief Registrar is the regulatory head of the legal profession; it is his function to ensure that the profession is competently and professionally conducted and if practitioners do not cooperate with him in that regard then his mission is frustrated; the failure to respond to the Registrar is therefore a serious breach of professional duty not only because it is a clear breach of statutory duty as provided for in the Legal Practitioners Act 2009 but also because it is a professional courtesy which should be extended to the head of the profession.
9. It is accepted by the Practitioner, that the Chief Registrar's office served notices pursuant to section 104 & 105 of the Legal Practitioners Act 2009 (hereinafter referred to as "the Act") dated 9 May 2019, on the Respondent which was received and acknowledged on 13 May 2019 and that he sent his response to the Chief Registrar's Office on 22 May 2019.
10. The Chief Registrar's office then served a Notice pursuant to section 106 of the Act dated 29 July 2019 on the Respondent which was received and acknowledged on 29 July 2019. However, upon no response being received by the Chief Registrar's Office, a Notice pursuant to section 108 of the act was served on the Respondent which was received and acknowledged on 4 October 2019.
11. The Respondent sent his response to the Section 108 Notice on 17 October 2019 but was received by the Chief Registrar's Office on 15 November 2019. However, this

application was filed against the Respondent on 21 November 2019 though, the Respondent provided his response on 15 November 2019.

12. The Respondent is 78 years old now and has Graduated from London in 1975 and Bar-at-Law (Lincoln's Inn) in 1976 then employed with WM Scott & Co until March 1977 and joined ODPP's office in March 1977. After which he commenced his private practice in November 1987 under the name "Mehboob Raza & Associates" and ceased his practice in February 2022, and is now retired.
13. In his mitigation he submits that he is remorseful for his noncompliance with the notice sent by the Chief Registrar and the noncompliance has since been rectified after the notice has been answered.
14. It is submitted that the Respondent did not have a valid practising certificate for the year 2019 and his practice was closed during the material time. Nonetheless, the response to the section 108 notice had been drawn up to be sent on 17 October 2019 but his clerk Hemant Kumar's remissness had caused the delay in transmitting the same. However, the response had been submitted 6 days before this application was filed by the Chief Registrar's Office. The Respondent submits that he had now come to the end of his 46 year career as a respected legal practitioner. Further it is submitted that the Respondent requires regular check-ups in New Zealand for his medical conditions and thus prays for leniency so that any sanctions imposed will not affect his future applications for visitor's visa.
15. This transgression is not a deliberate or obstinate non-compliance, but an inadvertent oversight due to the said circumstances. The Respondent has subsequently, complied with the notice that too shortly prior to filling of this Application. There is thus a technical breach so to say.
16. The conduct of the legal practitioner clearly involves a substantial failure to maintain a reasonable standard of competence and diligence. The purpose of sanction is deterrence, both personal and general. The comparable cases for sanction are *Chief Registrar v Lutumailagi* [2020] FJILSC 4 (24 March 2020), *Chief Registrar v Cavubati* [2019] FJILSC 3 (13 June 2019) and *Chief Registrar v Khan* [2019] FJILSC

4 (13 September 2019). However, as to my mind in, it is a nominal sanction that is just and appropriate the present circumstances. The legal practitioner does not deny any lack of means to comply with a monetary sanction.

17. In assessing the sanction in this instance, the Commission will be conscious that the Practitioner has freely admitted his error as alleged. The infraction concerned in the present matter in my view the kinds of thing that may arise in any busy practice without necessarily attracting alarm. I am not in any way condoning or promoting laxity. Strict compliance is the usual rule. In the ordinary course, where it is discovered to be minor infraction that fall short of suggesting the Practitioner is a danger to the public and such infraction is immediately rectified and corrected leniency is justified.

18. The good character, reputation and absence of prior transgressions during his 46 years of practice count in his favour. It seems that he has run a generally tidy practice. Similarly, his immediate acknowledgment of error, wrongdoing and expressions of remorse and regret and consistent response to the Commission at this inquiry, are substantial mitigating matters and justify a lenient sanction.

19. Accordingly, the following Sanction is imposed and ordered on the Respondent;
Orders of the Commission are:

- (i) In this Application filed under ILSC Case No. 0016 of 2019, *Chief Registrar vs Mehboob Raza*, I find the count of professional misconduct have been proven by the Applicant's plea of guilty.
- (ii) As the level of seriousness of the misconduct is low, no sanction is to be imposed. Accordingly, the Respondent's name will not be entered in the Discipline Register.
- (iii) Pursuant to section 124 of the *Legal Practitioners Decree 2009*, the costs payable by the Respondent towards the reasonable costs incurred by the Applicant are summarily assessed in the sum of \$700.00.

- (iv) Pursuant to section 124 of the *Legal Practitioners Decree 2009*, the costs payable by the Respondent towards the reasonable costs incurred by the Commission are summarily assessed in the sum of \$700.00.
- (v) Both of the above sums set out in Orders and above are to be paid within one month of today, that is, by 12 noon on 10th of February 2023, \$700.00 is to be paid to the Chief Registrar and \$700.00 is to be paid to the Commission.

Dated the 9th day of January, 2022.




Gihan Kulatunga
Commissioner