

**INDEPENDENT LEGAL SERVICES COMMISSION  
AT SUVA**

**ILSC Application No. 011 of 2021**

**BETWEEN: CHIEF REGISTRAR**

**APPLICANT**

**AND: LAUREL VAURASI t/a SHEKINAH LAW**

**RESPONDENT**

**Counsel: Ms. A. Vikash for the Applicant  
Ms. N. Tikoisuva for the Respondent**

**Date of Hearing (Pleading): 30<sup>th</sup> January 2023  
Written Submissions: 15<sup>th</sup> & 23<sup>rd</sup> February 2023  
Date of Determination: 24<sup>th</sup> March 2023**

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**DETERMINATION**

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Introduction

1. The Chief Registrar by this application preferred a single Count with an allegation of Professional Misconduct pursuant to Section 82 (1) (b) of the Legal Practitioners Act 2009 [“the LPA”] against the Practitioner Ms. Laurel Vaurasi t/a Shekinah Law. The said allegation is as follows;

Count 1

**Professional Misconduct:** *Contrary to section 82 (1) (b) of the Legal Practitioners Act 2009.*

**PARTICULARS**

**SHEKINAH LAW**, a law firm situated at Suite 1B 41 Gladstone Road, Suva, the firm having acted for late Joana Railala Cakau aka Joana Cakau for the preparation of

*the Will of the late Joana Cakau dated 24<sup>th</sup> day of April, 2014; thereafter represented the executor of the Will of Joana Cakau, namely Torika Nasilasila Waqairawai in the matter of High Court Civil Action HPP No. 51 of 2014 (Suva) which contested the validity of the Will prepared by the law firm, which conduct amounts to the law firm (acting in conflict of interest) and is an act of professional misconduct pursuant to section 82 (1) (b) of the Legal Practitioners Act 2009.*

2. The inquiry commenced on 30<sup>th</sup> January 2023 and the Chief Registrar called one witness namely the complainant Sokoveti Cakau. The Respondent, Ms. Laurel Vaurasi gave evidence and both parties filed their written submissions on the 15<sup>th</sup> and 23<sup>rd</sup> of February respectively. Upon considering the same I will now proceed to pronounce my determination.

#### The Legal Basis of the Allegation

3. According to the particulars, the law firm has been in conflict of interest as a result of the firm having acted for late Joana Railala Cakau for the preparation of her Will and thereafter representing Torika Nasilasila Waqairawai the executrix of the said Will in the Probate Action HPP No. 51 of 2014 in which the validity of the Will contested. According to the Applicant's case theory and the closing submission, the conflict of interest is based on breach of Rule 3.4 of the Rules of Professional Conduct and Practice. Thus, it is a transgression of Section 83(1)(a) which may amount to Professional Misconduct, contrary to section 82 (1)(b) of the LPA. ***The said*** Rule 3.4 reads as follows:

*3.4 – A practitioner shall not, save in exceptional circumstances, continue to act for a client in a matter in which the practitioner is likely to be a witness unless: -*

- (i) the practitioner's evidence relates solely to an uncontested matter;*
- (ii) the practitioner's evidence relates solely for formal matters;*
- (iii) the practitioner's evidence will relate solely to the nature and value of legal services rendered;*
- (iv) refusal to act or withdrawal from the matter will jeopardize the client's interest.*

4. Rule 3.4 is in Chapter 3 under the title “*Relationship with The Court*” thus it *inter alia* will be that the Practitioner was also in conflict with the Court.

Professional misconduct contrary to Section 82 (1) (b)

5. The allegation preferred against the Respondent is that of **Professional misconduct** contrary to Section 82 (1) (b) of the Legal Practitioners Act. As to what constitutes **Professional misconduct** within the meaning section 82 (1) (b) requires to be considered in detail in view of matters raised by the Respondent in the final written submission.
6. Sections 81, 82 and 83 of the LPA specify Professional standards. The types of professional wrongs that may be preferred against a Practitioner are of two types. They are *Unsatisfactory Professional Conduct* in terms of section 81 and *Professional Misconduct* in terms of section 82(1). *Professional Misconduct* is further subdivided and is of two forms as specified by sub sections 82(1) (a); the *failure to maintain competence and diligence* and 82(1) (b); *not a fit and proper person to engage in legal practice*.
7. The LPA does not have an exhaustive definition of the term “*Professional Misconduct*”, but an inclusive definition is found in a descriptive form in sections 82 (1)(a), 82(1)(b), 83(1) and 83(2) of the LPA as follows:

*“Professional misconduct*

*82.—(1) For the purposes of this Decree, '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;*

*(b) conduct of a legal practitioner, a law firm or an employee or agent of a legal practitioner or law firm, whether occurring in connection with the practice of law or*

*occurring otherwise than in connection with the practice of law, that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice, or that the law firm is not fit and proper to operate as a law firm.*

and,

*"83.—(1) Without limiting sections 81 and 82, the following conduct is capable of being "unsatisfactory professional conduct" or "professional misconduct" for the purposes of this Decree:*

*(a).....*

*(h) conduct of a legal practitioner or law firm consisting of a **contravention of the provisions of the Trust Accounts Act 1996**" (emphasis added);*

and,

*"83.—(2) 'professional misconduct' includes malpractice, and 'unsatisfactory professional conduct' includes unprofessional practice or conduct."*

8. Thus, Section 82 of the LPA defines '*professional misconduct*' inter alia to include:
  - (a) unsatisfactory professional conduct of a legal practitioner, if the conduct involves a *substantial or consistent failure to reach or maintain* a reasonable standard of competence and diligence (an aggravated form of unsatisfactory professional conduct as defined in section 81); or
  - (b) conduct of a legal practitioner, whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law, that would justify a finding that the practitioner is *not a fit and proper person* to engage in legal practice.
  
9. Section 83(1)(a) to (h) of the LPA further elaborate and specify certain conduct and violations capable of constituting '*professional misconduct*' or '*unsatisfactory professional conduct*' which *inter alia* include the contravention of the provisions of the LPA, the regulations and rules made thereunder, or ***the Rules of Professional Conduct***. The said list is not exhaustive but is inclusive and descriptive.

10. In **Chief Registrar V. Adish Kumar Narayan** [ILSC No. 009 / 2013] (25<sup>th</sup> September 2013), the scope and import of sections 81-83 was considered and it was expounded thus;

*“30. The practitioner submits that section 83 which lists 8 examples of conduct which could be seen to be 'unsatisfactory professional conduct' or 'professional misconduct' cannot apply to him because in June 2000 he was merely acting for a mortgagee trying to enforce his security. That being the case, he submits then the conduct has to fall back on the s 82 definitions ('competence and diligence' or 'not being a fit and proper person') which he argues are two limbs that do not apply to his conduct either. Therefore, he concludes, there is no offence made out against him.*

*31. These submissions again ignore the very wide terms of sections 81, 82 and 83. Section 82 plainly provides that professional misconduct includes the conduct stated thereon which assume that other conduct might will be misconduct if the Commission finds it to be so. Section 83 with its 8 examples of misconduct (subsections (a) to (h)) specifically says that they do not limit the definitions in s.82. All three sections provide very wide parameters within which the Commission could find any particular conduct to be either unsatisfactory professional conduct or to be professional misconduct. Such conduct need not be confined to competence, fitness to practise, nor to any of the examples set out in section 83”.*

11. Also, in **Chief Registrar V. Adish Kumar Narayan** ILSC No. 009/2013 (2<sup>nd</sup> October 2014) the scope of sections 82 and 83 was further expanded where it was held that that the statutory definition of professional misconduct does not exclude the common law definition thus;

*“9. As a preliminary point the Practitioner by his Counsel argues that that the mischief complained of does not come within the purview of either section 82 or 83 of the Decree. In effect he submits that the particulars of the complaint against him do not state any offence.*

*(10) This argument was dealt with in some detail by the Commission in a ruling on the practitioner's Application for Stay, (Ruling 009 of 2013 dated 25 September 2013) in which it was held that the examples of misconduct listed in*

*section 83 of the Decree are not exhaustive and in any event any conduct undertaken by the Practitioner need not necessarily be confined to competence or fitness to practice but it may include any conduct that the Commission might find to be professionally blameworthy, dishonourable or unethical.*

*In the case of Law Society of N.S.W. v Marando [2013]NSWADT267, it was said:*

*"However it is well settled that the statutory definition of professional misconduct does not exclude the common law definition emerging from the oft-cited case of Allison v Gen Council of Medical Education and Registration [1894] 1KB 750; that is "conduct which would reasonably be regarded as disgraceful or dishonourable by professional [colleagues] of good repute and competency"."*

12. **In Complaints Committee No. 1 of the Auckland District Law Society v C** [2008] 3 NZLR 105 (HC) it was said;

*"[33] ... While intentional wrongdoing by a practitioner may well be sufficient to constitute professional misconduct, it is not a necessary ingredient of such conduct ... [A] range of conduct may amount to professional misconduct, from actual dishonesty through to serious negligence of a type that evidences an indifference to and an abuse of the privileges which accompany registration as a legal practitioner."*

13. Sections 81 and 82 neither define exhaustively nor give any precise content to the principal concepts of 'unsatisfactory professional conduct' and 'professional misconduct'. Sub sections (a)-(h) of section 83(1) provide in common and without distinction, instances of conduct capable of being either unsatisfactory professional conduct or professional misconduct. Hence, the inclusive definitions merely provide that the (undefined) concept includes the conduct described therein and also others. The definitions in the inclusive and descriptive form thus provide a gateway to lawfully bring other forms of conduct within the meaning to unsatisfactory professional conduct and professional misconduct.

14. This is how the common law definitions are able to lawfully find its way in to the definitions of unsatisfactory professional conduct and professional misconduct within the meaning of the LPA as held in **Chief Registrar V. Adish Kumar Narayan** (supra-2<sup>nd</sup> October 2014).
15. Professional misconduct under section 82(1)(b) of the LPA includes conduct that would, if established, justify a finding that the practitioner is *not a fit and proper person* to engage in legal practice.
16. As the said definitions are couched in the inclusive form, the matters and conduct as identified and specified in section 83 comes within the scope of unsatisfactory professional conduct as well as professional misconduct and will similarly amount to contraventions of 81 and 82 as the case may be. However, as these definitions are inclusive, and because these or similar expressions were in common use before the LPA was enacted, common law tests for the assessment of such conduct continues to be relevant. In **Adamson v Queensland Law Society Inc**, (1990) 1 Qd R 498, 507; Thomas J. said, with respect to professional misconduct:

*“...the test to be applied is whether the conduct violates or falls short of, to a substantial degree, the standard of professional conduct observed or approved by members of the profession of good repute and competency.”*

#### The standard of proof

17. As set out in the Hong Kong case of **A Solicitor v Law Society of H.K.** [2008]2HKLRD and endorsed in **Chief Registrar V Adish Kumar Narayan**, ILS No. 009 of 2013 (2nd October 2014) and adopted by this Commission in **Haroon Ali Shah** [ ILSC No. 007 of 2011] evidentiary test in professional disciplinary matters is as follows:

*"The test is not proof beyond reasonable doubt, but a varying standard of the civil standard referred to at times as the preponderance of probabilities. The more serious an act or omission alleged the more improbable it must be regarded and in proportion to the improbability the evidence will need to be more compelling". (emphasis added)*

### Respondent's Submission

18. The Respondent raises the following matters in her legal submissions that the charge is against Shekinah Law which is a law firm and the particulars of the charge does not refer to the Legal Practitioner's name as such the charge is vague and also it does not specify on who the conflict of interest was against and that the Charge and its Particulars are against Shekinah Law, a law firm, and not personally against a Respondent legal practitioner.

### The form and nature of the allegation

19. In order to consider this submission, it is necessary to appraise the form and nature of the allegation. These proceedings are not criminal in nature but are in the nature of disciplinary proceedings commenced by a regulator. The Chief Registrar and this Commission are competent and required under the Legal Practitioners Act to inquire and investigate into complaints made against Practitioners. The nature of the disciplinary proceedings before this Commission is sui generis and neither can you put these proceedings on par with disciplinary proceedings or inquiries initiated and held by the employers against their employees. These proceedings are inquiries against a legal practitioner to determine the ethical conduct of a practitioner whose competence, honesty and integrity are in issue.
20. The Chief Registrar is not the employer of such practitioners. The Chief Registrar as well as this Commission have a totally different statutory role to play and an obligation to uphold the integrity and the dignity of the legal profession. We are more concerned with the public interest, integrity and the dignity of the legal profession which is primarily of an ethical concern as opposed to employers who are more concerned with the discipline of the work force. Thus, the object of the allegation is to notify the practitioner with reasonable certainty the nature of the transgression so such practitioner can assist this Commission in reaching a correct and reasonable determination. This is certainly not a trial between parties in the traditional sense but an inquiry where the practitioner may even be compelled to give evidence (vide section 116 (1) of the LPA).



21. What is preferred against the Practitioner is an allegation particularised and not a charge in the criminal sense. The present application is preferred against *Laurel Vaurasi t/a Shekinah Law of Suite 1B, 41 Gladstone Road, Suva*. The Respondent named is Ms. Laurel Vaurasi the Practitioner and the allegation is preferred on the basis that Ms. Vaurasi was **trading as** Shekinah law firm.
22. It is in this context that the allegation of professional misconduct of the law firm in the particulars of the allegation has been preferred against the Practitioner and commencing disciplinary proceedings in this form is in accordance with section 111 of the LPA. Section 111 of the legal Practitioners Act is as follows:

*Commencement of disciplinary proceedings*

*111 (1) The Registrar may commence disciplinary proceedings against a legal practitioner or a law firm or any employee or agent of a legal practitioner or law firm by making an application to the Commission in accordance with this Act and containing one or more allegations of professional misconduct or unsatisfactory professional conduct.*

*(2) Any complainant whose complaint has been summarily dismissed by the Registrar under section 110(1), may commence proceedings against a legal practitioner or a law firm or any employee or agent of a legal practitioner or law firm by making an application directly to the Commission in accordance with this Act and containing one or more allegations of professional misconduct or unsatisfactory professional conduct.*

*(3) Disciplinary proceedings may be commenced by the Registrar under subsection (1) or by a complainant under subsection (2) before the Commission, against—*

- (a) in the case of allegations of professional misconduct or unsatisfactory professional conduct against a legal practitioner, the legal practitioner;*
- (b) in the case of allegations of professional misconduct or unsatisfactory professional conduct against a law firm, all the partners of the law firm; or*

- *(c) in the case of allegations of professional misconduct or unsatisfactory professional conduct against any employee or agent of a legal practitioner or law firm, **the legal practitioner or the one or more partners of the law firm.***

23. Section 111(1) provides that that disciplinary proceedings may be commenced against:
1. a legal practitioner or
  2. law firm or
  3. any employee or agent of a legal practitioner or law firm.
24. Section 111(1) simply provides that an act or conduct which results in or amounts to professional misconduct or unsatisfactory professional conduct if committed by of any legal practitioner, law firm or their employees or agents may be the subject matter of an application and is actionable and justiciable before this Commission. However, Section 111(1) is subject to and should be read with the provision of 111(3).
25. Sub section 3 of section 111 then specifies and determines the person/s against whom such disciplinary proceedings may be commenced. Section 111(3) provides that, in cases of allegations of professional misconduct or unsatisfactory professional conduct against *a legal practitioner, a law firm, any employee or agent of a legal practitioner or law firm*; the said disciplinary proceedings be commenced before the Commission, against, ***the legal practitioner or the one or more partners.*** According to which any complaint commenced under section 111(1) should necessarily be against a legal practitioner or a partner/s of a law firm. The import of Section 111(3) is that allegations of professional misconduct or unsatisfactory professional misconduct based on the act or conduct of a *law firm or employee or agent* will necessarily have to be filed against the **legal practitioner or partner/s of such law firm**. Applications under Section 111 cannot be commenced against a law firm or employee or the agent without in the first instance naming a legal practitioner as the respondent.
26. This stands to reason firstly, as Law firms in Fiji do not appear to have a legal personality nor are they bodies corporate. As defined in section 2 of the LPA “law

firm” means a legal practice carried out by partnership by legal practitioners, or by a sole practitioner. As evident from the certificate of business name registration at page 189 of the bundle of documents, “Shekinah Law” is a business name registered under the Registration of Business names Act (Cap. 249). This does not create any legal personality. It only registers a name under which a law firm may be operated by a practitioner or partners. Ms. Laurel Vaurasi is the Proprietor and Principal of Shekinah law. She is trading as Shekinah law and is the sole trader of the Law firm. Thus, “Shekinah law” a law firm of which the legal practice is carried out by Ms. Laurel Vaurasi as a sole practitioner. She may have associates and paralegal staff. It is not a partnership (vide- the Application for her Practising certificate at page 131 of the bundle of documents).

27. The particulars specify the conduct by which Shekinah Law had come into a conflict of interest. They are firstly, the preparation of the last Will of Late Joana Cakau. Secondly, representing the Executrix of the Will namely Torika Nasilasila Waqairawai in the Matter of High Court Civil HPP 50 of 2021. Thus, when one reads the allegation in its totality, it is clear and obvious that Ms. Laurel Vaurasi has been preferred with or and an allegation is made against her on the basis of her trading as Shekinah Law. The alleged acts have in fact been performed by the said law firm through its employees, representatives or associates. In this instance, the sole Trader and Proprietor is the Respondent Ms. Vaurasi. When acts and deeds are performed by the law firm the particulars of the allegation should state it in that form for the simple reason as the said acts have been performed by the law firm. Ms. Vaurasi as the Sole Trader is liable and responsible for the acts and deeds of Shekinah Law and she as the principal Legal Practitioner is liable and can be named as the Respondent in respect of the allegations based on the said acts performed by Shekinah Law. Therefore, I see no defects, illegality or irregularity in the allegation as preferred in the application. The allegation particularized is in the proper form and the Practitioner is neither prejudiced nor misled by the allegation being in this form.
28. Thus, naming Ms. Vaurasi as the Respondent and particularizing the acts committed by the law firm in the particulars is correct and lawful and is in accordance with the provisions of the section 111 of the LPA.

## Facts and Evidence

29. The **Complainant Sokoveti Cakau** was the only witness called by the Applicant. She is the sister of Joana Cakau and had lodged a complaint with the LPU in respect of the execution of a sister's last Will. Her allegation is basically against the conduct of the Law firm. She admitted that the Will was proved at the Probate proceedings and there was no appeal against the said judgment. She mentioned that in view of certain differences seen in the hand written instructions and the Will she was initially suspicious of the same.
30. She admitted that several complaints were lodged and civil cases filed against the lawyers were all dismissed. She said that Ms. Vaurasi conducted the trial at the hearing of Probate Application No. 51/2014. She also admitted that she was ordered to pay \$3000 after dismissing her application.
31. According to the **Respondent Ms. Vaurasi** she has been a legal practitioner for over 20 years operating the law firm Shekinah Law for almost 10 years and she has now three lawyers and three support staffs employed and working with her. She admitted that Monifa Manueli a para legal who brought late Mrs. Cakau and the preparation of her Will was handled by her associates Ms. Seruwaia Nayacalevu. Mrs. Vaurasi said that she had no involvement in the process of drafting the Will and also of taking instructions. She admits that upon receiving instructions from the Executrix Torika Waqairawai she appeared and represented her at the Probate hearing. It is her position that she found no conflict in appearing and the allegation of undue influence was not against the law firm or its lawyers.
32. It is her position that the evidence of her employee was merely of a technical nature and was to tender her notes and to state the nature of legal services provided to late Ms. Cakau and that at the Probate hearing no objection or issue was raised against her representation and her appearance. The entire bundle of documents (disclosures) and Judges' notes were all admitted by her.
33. The Respondent Ms. Laurel Vaurasi is the Proprietor, Principal of Shekinah Law and sole trader and she was also trading as Shekinah law. The incidents and the facts on

which this allegation is based and the bundle of disclosures including the judge's notes are all admitted. The relevant undisputed facts are, that Shekinah law did attend to the preparation of the last Will and Testament of late Joana Railala Cakau; the matters in relation to obtaining instructions and the preparation of the Last Will and Testament dated 24<sup>th</sup> April, 2014 was attended to by Monifa Manueli a paralegal of Shekinah Law; and the said last Will had been witnessed by Seruwaia Nayacalevu a barrister of Shekinah Law. It is not in dispute that the preparation of the said Last Will was carried out by Shekinah law.

34. By the said last Will, Torika Nasilasila Waqairawai was named as the sole trustee and Executrix of the estate of late Joana Railala Cakau. Upon her death, her siblings Sokoveti Cakau and Lawrence Cakau filed a writ of summons challenging the said will inter alia alleging fraud and Probate Action, No HPP 51 of 2014 was instituted of which Torika Nasilasila Waqairawai was the Defendant and the Ms. Vaurasi appeared for the Respondent.
35. It is common ground that the Respondent was the Principal of Shekinah Law and the sole trader and Proprietor. Ms. Vurasi has admitted receiving a request from late Joana Railala Cakau to prepare her last will, she has instructed this to her assistant Monifa Manueli. The said had met Ms. Joana Cakau and obtained written instructions and prepared the last Will which was the subject matter of the Probate Application number HPP 51/2014. It is also common ground that the Respondent appeared for the Executrix. In the said case, she had appeared for her law firm. According to the Judgment on the said Probate matter pronounced by Justice Alfred on the 18<sup>th</sup> of July 2018, the said Will had been declared and determined that the said Will had been executed when the Deceased was of sound mind and free from any undue influence.
36. According to the issues, the following matters were in contest and to be determined:
  1. *Whether the Will was obtained by undue influence by the Defendant.*
  2. *Whether the Will was signed by the Deceased.*
  3. *Whether the Will was a forgery executed at a time when the Deceased of unsound mind and did not understand the nature/ contents of the will.*

4. *Whether the Defendant was in a position of Power over the Deceased which caused undue influence over the Deceased when she made her Will and appointed the Defendant as the Executrix and the Trustee of the Will.*

37. The trial proceeded on the said issues and the Hon. Judge Alfred held that the deceased was *compo mentis* and that the Will was made without any undue influence and the Will was thus declared proved.

#### Conflict of Interest

38. Most ethical dilemmas will involve conflict between the various duties solicitors owe which can be described as being to the Court, to the client, to the administration of justice, to the profession and to the public. This was explained in **New South Wales Bar Association v Cummins** (2001) 52 NSWLR 279, [19]-[20] (Spigelman CJ., with whom Mason P and Handley JA agreed) as follows;

*“There are four interrelated interests involved. Client must feel secure in confiding their secrets and entrusting their most personal affairs to lawyers. Fellow practitioners must be able to depend implicitly on the word and the behaviour of their colleagues. The judiciary must have confidence in those who appear before the courts. The public must have confidence in the legal profession by reason of the central role the profession plays in the administration of justice. Many aspects of the administration of justice depend on the trust by the judiciary and or the public in the performance of professional obligations by professional people.”*

39. Thus, conflict of interest cannot be exhaustively defined but may be described as a conflict of duties or a conflict between interests or as a conflict between interest and duty that may arise where: -
- a. a practitioner acts for two or more parties in a matter: such as for two or more parties to a conveyancing or commercial transaction; for two parties on the same side of the record in litigation; or for insured and insurer;
  - b. a practitioner acts against a former client having previously acted for that party in a related matter in which the Practitioner may also have acted for the

present client when it involves the duty of confidentiality owed to a former client; or

- c. a practitioner's own interest is involved, for example where a practitioner acts in a transaction in which the practitioner or a law firm in which the practitioner or an associate or an employee is involved or has an interest; or where for some other reason a practitioner's own interests or an associate's, may conflict with that of the client's, such as where the practitioner may be a material witness in the client's matter.
- d. a Practitioner places him/herself in a position where he/she effectively prevents him/her from freely assisting Court in placing the correct legal position or the true factual position.

40. As for the circumstances of the present allegation it is a situation of conflict of interest within both (c) and (d) above.

41. However, the Practitioner submits that the allegation (charge) does not specify as to between whom the conflict of interest was or against whom such conflict of interest was and that there is no conflict of interest with any party in the said proceeding. In the present case, the Practitioner Ms. Vaurasi through her law firm accepted instructions and prepared the Last Will of which the beneficiary and the proposed Executrix was her client at the Probate proceeding. The propriety and the circumstances of the preparation and execution of the said Last Will were directly and seriously in issue.

42. As soon as Shekinah Law becomes a party to the preparation of the last will, Shekinah Law became part and parcel of the process of preparation and execution of the Will. If there be any allegation of impropriety or illegality of the due execution, then Shekinah Law, its employees and agents as well as the Principal are tainted by such allegation to that extent. Upon the demise of the author of the Will, only such employees of Shekinah Law will now know if there be any truth in the allegation. Shekinah Law, its employees and principal become parties to the execution of the Will. Thus, when Shekinah Law appears as solicitors of the Executrix and Trustee of the Will, the proof and the due execution of the Will are matters of necessary interest. In these

circumstances, Shekinah Law or Ms. Vaurasi as the sole trader will therefore never be able to fulfil her duty to Court vis-à-vis the client in respect of probate proceedings in which the allegations of impropriety and illegality of the due execution of the will were in issue. Shekinah Law and Ms. Vaurasi as sole trader are compromised, are no longer in a position to assist the Court as an officer of Court.

43. As to the duty of a Solicitors qua officer of Court, Lord Reid in **Rondel –v- Worsley** [1969] 1 AC 191 stated;

*“as an officer of the Court concerned in the administration of justice [a legal practitioner] has an overriding duty to the Court, to the standards of profession and to the public, which may and often does lead to a conflict with his client’s wishes or with what the clients think are his personal interests”.*

His lordship Justice Marsoof in **Chaudhry v Chief Registrar** [2016] FJSC 3; CBV0001.2015 (20 April 2016) on similar vein held that;

*“[24] Every lawyer is deemed to be an officer of the High Court (see section 51 of the Legal Practitioners Act (LEP). Solicitors and counsel must be regarded as owing a duty to assist the Court in achieving the overriding objective.”*

44. Accordingly, as evident from the Judgement as well as the Judge’s notes of HPP 51 of 2014, I observe that Ms. Vaurasi has appeared as Counsel (as barrister) for the Respondent Torika Nasilasila Waqairawai at the said probate proceedings whilst Shekinah Law was acting as the Solicitor. In view of section 50 of the LPA, a Practitioner with current practising certificate is entitled to perform any of the functions which may be performed by a barrister and by a solicitor, in England. In **Chaudhry v Chief Registrar** (supra) Justice Marsoof did observe that Fiji has a fused profession and a Legal Practitioner is both a solicitor and barrister and opined that;

*“[37] Both barristers and solicitors have a duty to the court; they being officers of the Court. A solicitor’s primary obligation is to his client; however a barrister’s primary obligation is to the Court.*

*[38] Anything that intervenes in that relationship almost certainly per se creates a conflict of interest. There can be instances where that conflict can*



*be overridden in the case of a solicitor's client, properly advised, giving express authority to the solicitor to act despite the conflict; such a disclaimer can never apply in the case of a barrister; his duty to the court cannot be abrogated or diluted."*

45. In view of the conflicting nature of the duties and obligation the desirability of the same practitioner or Law firm and its principle performing both these functions in the same matter for the same party and how ethical it is seriously debatable. As to my mind it appears undesirable and is best if avoided. Ms. Vaurasi may appear to be entitled to act as counsel for the respondent whilst Shekinah Law was solicitor. However, certainly in this instance Shekinah Law acting as the Solicitor by itself put Ms. Vaurasi in conflict of interest with her duty towards the Court; then she by appearing as Counsel (as barrister) at the trial compounded the conflict she was in.
46. It is submitted that her appearing for the Respondent was not objected to. It is settled that, it is not for the Court to permit her to appear, nor is it for the other party to raise objection. Once the conflict arises it is always there. It is the practitioner's duty to the court to present a case fairly and without favour in all honesty. [vide-**Chaudhry v Chief Registrar** (supra)].
47. No doubt, Ms. Vaurasi has placed herself in a position which prevented her from assisting Court as to the manner and circumstances of executing the said Will if such would be contrary to the interest of her client the Executrix if required to do so. To that extent Ms. Vaurasi has placed herself in a position which resulted in an apparent conflict of interest vis-à-vis her duty to Court. When it is known or apparent that the solicitor or an associate or employee is required to give evidence material to the determination of contested issues it is best that the solicitor should not act further.
48. In the view of the evidence of the complainant, uncontested and admitted documents placed before this Commission, I am satisfied on a balance of probabilities that Ms. Vaurasi trading as Shekinah law was in conflict of interest as alleged.

Test of “fit and proper” person

49. However, proof of conflict of interest by itself will not suffice to establish an allegation of professional misconduct under Section 82(1)(b). The evidence should justify the finding that the practitioner is not a fit and proper person to engage in legal practice by virtue of engaging in such conduct. Either the act by itself or the proved act in conjunction with the attendant circumstances should justify such a finding.
50. Fit and proper person test in relation to a practitioner may arise for consideration at least in four different scenarios. At the point of admission, in relation to disciplinary proceedings where the charge requires proof of the same [section 82(1)(b)], at the point of imposing sanctions (to decide on strike-off) and when an application for re-admission is considered.
51. The test of “fit and proper” person is essential in determining whether a Practitioner is to be struck off. There, the assessment is undertaken and considered following a finding of professional misconduct under the LPA except in respect of allegations under section 82(1)(b) a conclusion of a finding of unfitness is not a necessity. In contrast, with allegations of professional misconduct preferred under s 82(1)(b) the fit and proper person inquiry is an element of the allegation/charge and is a necessity. This in effect recognises that an allegation of professional, misdemeanor/infringement if preferred under s 82(1)(b) it must be of a nature which in itself justifies a conclusion that the practitioner is not a fit and proper person to engage in legal practice or that the law firm is not fit and proper to operate as a law firm.
52. The practitioner is considered to have passed the fit and proper person test at the enrollment stage. Hence, the test of fitness when considered in the context of an ingredient of the allegation as in section 82(1)(b), it is necessary to consider if the Practitioner has in the discharge of the professional duties or in personal conduct fallen short or exhibited some form of serious issue of integrity, honesty, probity and trust worthiness.
53. The “*fit and proper*” requirement has been described as an “*amalgam of virtuous moral values and attributes or traits, which include integrity, candour and honesty*”.

[Justice Susan Keifel, 'Ethics and the Profession of the Lawyer' (Speech delivered at the Queensland Law Society, 48th Annual Symposium, 26 March 2010)].

54. Ms. Vaurasi trading as Shekinah Law appearing for the executrix was in conflict of interest. The decision to so appear is more of an inadvertent and an ill-considered professional conduct embarked upon without seriously considering the ethical import and the probable consequences. She has not acted against the interest of either her present nor her former client. Neither had she used any information she was privy qua solicitor to the prejudice of a former client or to the advantage of another. She had fallen into conflict of interest of not being able to assist court as required by the norms of professional conduct. It is this conduct that gave rise to and appears to be the reason for the complainant to suspect the impropriety. To that extent, the proved conduct of Ms. Vaurasi had the propensity to affect public confidence in the legal profession.
55. Most of the time when a practitioner represents a party in litigation there is some form of conflict interest in the strict sense. Every situation of such conflict does not require the practitioner to withdraw. It is only if such conflict is of such a degree that the practitioner may not able to perform her duties towards court or fulfil her obligation owed to a client, that a withdrawal would be required. Shekinah Law's involvement in the execution of the last Will as well as Ms. Vaurasi negotiating with the FNPF to re-name the beneficiaries or nominees of late Ms. Joana Cakau would naturally create suspicion of improper conduct in the eyes of a third a party. In these circumstances the decision to appear for Respondent at the Probate Action is injudicious and imprudent in the least. It is certainly an ill-considered and rather unwise decision.
56. However, Judge Alfred, determining the Probate action has held that the Will was executed without any undue influence and that it is a valid Will that was properly executed. It is also in evidence that the notes of instructions contain the handwriting of the deceased testator as well. Going further, the Complainant and her family members remained substantial beneficiaries from the Will prepared by Shekinah Law.

57. That being so the said, conduct to my mind does not seriously affect the integrity and the moral values, candor or honesty affecting the fitness and propriety of Ms. Vaurasi to engaging the legal practice. Thus, the evidence and circumstances of this matter does not in my view justify a finding that Ms. Vaurasi is not a fit and proper person to engage in legal practice nor that Shekinah law is not fit and proper to operate as a law firm.
58. Ms. Vaurasi's direct and personal involvement in the preparation and the execution of the Will is marginal and her liability if at all is by virtue of her being the principal of Shekinah law. To that extent even if she was to be called as a witness it would not be in respect of a substantial contested matter but of a formal nature which may relate to the nature and the value of legal services rendered to the testator. As such notwithstanding the fact she was likely to be a witness under Rule 3.4 she would be entitle to the benefit of the exceptions mentioned thereunder.


Conclusion

59. Certainly, it is proved that the Shekinah Law and the Respondent were in conflict of interest as alleged. However, it is not sufficient to justify a finding that the practitioner is not a fit and proper person to engage in legal practice, or that the law firm is not fit and proper to operate as a law firm.

Considering both the circumstances and the burden of proof on a serious allegation against a very senior practitioner this Commission finds that the complaint against the practitioner is not established.

Accordingly, the Respondent is discharged from these proceedings.

DATED this 24<sup>th</sup> day of March, 2023.

The seal is circular with the text "INDEPENDENT LEGAL SERVICES COMMISSION" around the perimeter and "SEAL" in the center. A handwritten signature is written over the seal.  
Justice Shan Kulatunga  
Commissioner