

IN THE INDEPENDENT LEGAL SERVICES COMMISSION

AT SUVA

ILSC No. 001 of 2021

BETWEEN: CHIEF REGISTRAR

APPLICANT

AND: ULAMILA FA TUITUKU

RESPONDENT

**Counsel: Mr. S. Ali for the Chief Registrar
Mr. J. Rabuku for the Respondent**

Date of Determination : 23rd January 2022
Written Submissions : 2nd February 2023 & 14th March 2023
Date of Sanction Ruling : 30th March 2023

SANCTION RULING

Introduction

1. A finding of professional misconduct contrary to Section 82 (1) (a) of the Legal Practitioners Act 2009 was made against the Respondent Ms. Ulamila Fa Tuituku a Legal Practitioner as it was proved that she borrowed a sum of \$300.00 from her client namely Mr. Jincho Xu in breached Rule 1.6 of the Rules of Professional Conduct and Practice.
2. It was upon inquiry that this Commission found the allegations to have been proved and now it is for the determination of sanction. Both parties have tendered their written submissions on sanctions and mitigations.

3. The alleged conduct may be the borrowing of just \$300 from a client. It is not the quantum that is paranoid but the principal that a practitioner should not borrow from a client. The Respondent by her conduct has certainly brought the profession into great disrepute in the eyes of the public. The sum being just \$300 makes this far worse and having made out a written promise to repay she had not complied with. Whatever the circumstances this conduct by itself, makes her conduct deplorable.
4. In mitigation, the practitioner submitted that she is 63 years old and was admitted to the High Court in 1998. She was is in practice for over 25 years. At present she is the principal of a law firm employing 4 associate lawyers, one inter graduate and 5 support staffs. As for her family circumstances, she is married with 2 children, 24 and 10 years respectively.
5. She says that she is remorseful and is willing to reimburse the \$300. However, in mitigation she does assert that the "\$300 is a minimal amount".
6. She also states that she is involved in community work to uplift under privilege youth and to empower women and children in rural villages. She has also supporting Vanuabalavu Rugby Club financially.
7. It is further submitted that a suspension of a licence would adversely affect several others employed under her and as she herself is the sole bread winner in her family. It is submitted that lenient sanction be considered.
8. As for the Applicant, it is submitted that the misconduct alleged is serious as it entails a breach of the fiduciary in relationship a client and the solicitor. And further their necessarily will be a conflict of interest and that borrowing only \$300 will make no difference to the culpability and gravity of her conduct. It is also submitted that her persistent refusal to repay is relevant and that her 25 years of experience would compound her gravity of her conduct.

Consideration of Sanction

9. As to determining sanction, the guiding principals have been exhaustively laid down in by Dr. Thomas V. Hickie in Chief Registrar v Bukarau [2016] FJILSC 2 (7 June 2016) in a three stage approach to sanction as follows:

(1) First Stage - Assessing the seriousness of the misconduct -

- (i) Culpability;
- (ii) Harm caused;
- (iii) Aggravating factors;
- (iv) Mitigating factors;

(2) Second Stage – The purpose for which sanctions are imposed –

(3) Third Stage – To choose the sanction which most appropriately fulfills that purpose for the seriousness of the conduct in question –

10. In considering sanctions, Dr. Hickie also adopted the, The Solicitors Disciplinary Tribunal's 'Guidance Note on Sanctions' and their approach to fines, wherein it was observed thus;

“A fine will be imposed where the Tribunal has determined that the seriousness of the misconduct is such that a Reprimand will not be a sufficient sanction, but neither the protection of the public nor the protection of the reputation of the legal profession justifies a Restriction Order, Suspension or Strike Off...

... In deciding the level of Fine, the Tribunal will consider all the circumstances of the case, including aggravating and mitigating factors. The Tribunal will fix the Fine at a level which reflects the seriousness of and is proportionate to the misconduct.”

11. In relation to the present case, I will adopted the above approach and will follow the said guidelines. I am mindful of the seniority and the personal circumstances of the practitioner. The evidence did reveal that Ms. Ulamila Fa was known to the complainant Jinchao Xu for a considerable period of time and it commenced and continued as a solicitor client a relationship. However, they developed a familiarity which also reached a degree of friendship which subsisted along with the professional relationship. In this process the Respondent appears to have failed to appreciate and demarcate the ethical parameters within

which she should operate and conduct herself as a professional practitioner. In short, she had led herself to a situation of mixing-up her professional relationship with the personal friendship which led to this allegation.

12. The end result is that she has brought great disrepute to the legal profession which will affect the public confidence in the legal profession. It is not the amount involved but the ethical transgression and the failure to maintain the minimum professional standard and dignity that is in issue. Though she claims to be remorseful it was not demonstrated even during the inquiry. It is only upon the finding against her that an expression of remorse is expressed.
13. 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.
14. It is incumbent upon this Commission to impose a sanction that sends a clear message to the legal profession that the failure to maintain high standards of integrity and reputation will be dealt with stiff and serious sanctions. This was so stated in *CR v Singh* [2013] FJILSC3 as follows:
“Any sanction that is imposed must send a clear message to the legal practitioners that should they fail to maintain the highest standards of integrity and reputation, they will be dealt with condign sanction. Soft sanctions will only encourage the legal practitioners to take a cavalier attitude to their responsibility to maintain a high standard of professionalism expected to them.”
15. As for comparable cases for sanction I have not been appraised of any. However, as I will consider a sanction that is just and appropriate to the present circumstances. The legal practitioner does not deny any lack of means to comply with a monetary sanction.
16. In the decision of the Court of Appeal in *Law Society of NSW v Moulton* (1981) 2NSWLR 736. The practitioner was a solicitor. He was found guilty of professional misconduct by way of borrowing from clients by the Solicitors Statutory Committee (the equivalent of the

ILSC). The loans were obtained by him or his company which he had a substantial interest. The Statutory Committee held that his conduct constituted professional misconduct and fined him \$1,000.00. On appeal, the Court of Appeal held that the relevant professional misconduct rendered him unfit to remain on the roll and he was struck off. Hope JA, with whom Reynolds JA agreed, said:

“In cases such as the present one, it is essential to remember, indeed to emphasise, that a solicitor stands in a fiduciary relationship to his clients. If he is to have business dealings with them on his own account, and in particular if he is to borrow money from them, the requirements of the law are rigorous. The need for that rigour is obvious. Commonly, to great extent, always to some extent, the solicitor is in position of special influence in respect of his client. Clients must be able to rely upon the professional advice of their solicitor and to place in him the fullest confidence that he will protect them and handle their affairs in their interests.”

17. Thus, in the normal course the sanction for the practitioner breaching the fiduciary obligation appears to be strike-off from the role. Since there are no comparable decision in our jurisdictions, I believe that should be the standard and seriousness with which obtaining financial advantage or loans should be sanctioned. The client is generally in a vulnerable position and in the present case the complainant was in the midst of several issues requiring legal assistance. At that moment, the Respondent was his regular legal adviser. In this circumstances, the conduct of the Respondent should attract serious sanction.
18. However, since the sum involved is \$300 and there seems to have been some form of familiarity and considering the age and the long standard practice which appears to be without previous disciplinary sanction. I would consider to treat the Respondent with some leniency.
19. Accordingly, the following Sanction is imposed and ordered on the Respondent;

Orders of the Commission are:

- (i) The legal practitioner is publicly reprimanded.

- (ii) The legal practitioner is to pay a fine of \$1500.00 to this Commission.
- (iii) The legal practitioner is to pay costs to the Chief Registrar, which I summarily assess in the sum of \$1500.00.
- (iv) The legal practitioner is to pay as compensation a sum of \$400 to the complainant Jinchao Xu through the Chief Registrar who is directed to facilitate this payment.
- (v) The fine, costs and compensation as ordered must be paid in full within 2 months of this ruling i.e., on or before 30th May 2023.
- (vi) If the legal practitioner fails to pay the fine, costs and compensation in full as afore ordered, it is sanctioned that the Respondent's Practising certificate shall *ipso facto* be suspended from 1st June 2023 until 31th May 2024 for a period of 12 months or until all payments are made in full, whichever that occurs first. It is further directed that the Chief Registrar should not renew or issue the practitioner's practising certificate during such period of suspension.

DATED this 30th day of March, 2023.



Justice Gihan Kulatunga
Commissioner