

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**

**Civil Case No: HBC 59 of 2018**

**BETWEEN:** **JOSAIA VOREQE BAINIMARAMA** of New Wing, Government Buildings, Suva, Prime Minister of the Republic of Fiji.

**FIRST PLAINTIFF**

**A N D:** **AIYAZ SAYED-KHAIYUM** of Suvavou House, Victoria Parade, Suva, Minister of Economy and Attorney- General of Fiji.

**SECOND PLAINTIFF**

**A N D:** **AMAN RAVINDRA – SINGH** of Tukani Street, Lautoka, Fiji, Barrister and Solicitor.

**DEFENDANT**

Appearance : Mr. Devanesh Sharma with Ms. Gul Fatima for the Plaintiffs  
Defendant appeared in person

Hearing : Monday, 13<sup>th</sup> June 2022 at 10.00 a.m  
Ruled on ; Monday, 13<sup>th</sup> June 2022 at 10.30 a.m  
Reasons on : Tuesday, 21<sup>st</sup> June 2022 at 9.00 a.m

**REASONS**

- [1]. The matter before me stems from the defendant's summons filed on 07.06.2022 seeking the grant of the following orders:
1. *That in the interest of justice the legal counsel representing the first and second plaintiff recuse himself from this case due to a conflict of interest.*

2. *That in the interest of justice the law firm R Patel Lawyers which represents the first and second plaintiff recuse itself from this case due to a conflict of interest.*
3. *.....*
4. *That the Contempt of Court proceedings against the defendant be set aside for irregularity since the leave granted on 12 October 2020 to issue committal proceedings had lapsed in breach of Order 52 Rule 3(2) – Unless within 14 days after such leave was granted the motion is entered for hearing the leave shall lapse.*
5. *That the Contempt of Court proceedings against the defendant be set aside for irregularity since there was no personal service on the respondent in breach of Order 52 Rule 3(3) – Subject to paragraph 4, the notice of motion, accompanied by a copy of the statement and affidavit in support of the application for leave under Rule 2, must be served personally on the person sought to be committed.*
6. *That the Order for substituted service dated 09 November 2020 was irregular and based on hearsay, misleading and inadmissible evidence.*
7. *That there be an interim stay of the Contempt of Court proceedings which is set for hearing on 13 June 2022 pending the determination of this application.*
8. *That costs be in the cause.*

- [2]. The summons is filed pursuant to Order 2 Rule 2 of the High Court Rules, 1988 and under the inherent jurisdiction of the court. The summons is supported by an affidavit sworn by the defendant on 07.06.2022.
- [3]. Before the commencement of the hearing of the defendant's summons, the prayer (4) to (7) of the summons were withdrawn by the defendant. Therefore, the court's task is to determine the objections raised by the defendant to R Patel Lawyers and its counsel acting and appearing for the plaintiffs and the alleged issue of conflict of interest.
- [4]. Shortly after the conclusion of the arguments in this case, I was not in favour of granting the orders in the terms proposed by the defendant in the summons filed on 07.06.2022. I informed the parties that I would give my reasons at a later date. I now fully set out the reasons which led me to refuse granting the orders sought in the defendant's summons filed on 07.06.2022.
- [5]. In the affidavit in support sworn on 07.06.2022, the defendant raised objections to R. Patel Lawyers and its counsel acting and appearing for the plaintiffs and raised the issue of

conflict of interest in these terms; (reference is made to paragraph (3) to (10) of the affidavit in support of the plaintiff sworn on 07.06.2022).

3. *That the legal counsels including Mr. Devanesh Sharma who are representing the first and second plaintiffs be ordered to recuse themselves from this case due to a conflict of interest.*
4. *That the law firm R Patel Lawyers which represents the first and second plaintiff be ordered to recuse itself from this case due to a conflict of interest.*
5. *That the legal counsels from R Patel lawyers have been briefed by the Attorney General of Fiji to act in matters representing the government of Fiji.*
6. *That the legal counsels from R Patel Lawyers are also appearing for the first and second plaintiffs in a personal capacity in this case which is a conflict of interest.*
7. *That legal counsels who represent the government cannot and should not accept legal instructions from Ministers of Government and the Prime Minister in a personal capacity.*
8. *That when a legal counsel acts for a Minister of Government and the Prime Minister in a personal capacity, that legal counsel should not during the same period take direct instructions from the same Minister of Government and the Prime Minister to act for the government of the day as this also points towards bias, the presumption of bias and overall conflict of interest.*
9. *That when the situation is such as stated in the above paragraph the conflict arises when payment is made to the private legal counsel for the government matters and for the personal matters.*
10. *That in such a position, the Minister of Government and or the Prime Minister would appear to be favouring that one particular legal counsel or counsels and that one particular law firm.*

[6]. In reply, counsel for R Patel Lawyers submitted to court:

- *R Patel Lawyers has never acted or appeared for the defendant and there is no lawyer/client relationship existed.*

- *Therefore, R Patel Lawyers are not in receipt of information that may result in detriment to the respondent.*
- *There is no basis to restrain or disqualify R Patel Lawyers from acting on behalf of or appearing for the plaintiffs.*
- *There should be a greater scrutiny of the facts and the law if the court is going to restrain a party from having a solicitor of his or her choice (the attention of the court is drawn to the Fiji Court of Appeal decision in R.C. Manubhai & Company Limited and Ors –v- Herbert Construction Company (Fiji) Limited)<sup>1</sup>*

[7]. I find myself with complete agreement with the submissions by R Patel Lawyers

[8]. The defendant's principal submission is in these terms; (in verbatim)

- *That the legal counsels from R Patel lawyers have been briefed by the Attorney General of Fiji to act in matters representing the government of Fiji.*
- *That the legal counsels from R Patel Lawyers are also appearing for the first and second plaintiffs in a personal capacity in this case **which is a conflict of interest.***

(Emphasis added)

[9]. The question is this, how could this amount to a conflict of interest or as being a breach of a fiduciary duty or conduct offending the provisions of the Legal Practitioners Decree 2009 to have restrained and disqualify R Patel Lawyers from appearing for first and the second plaintiffs?

[10]. The defendant expounded the following arguments (in verbatim) ;

- *That legal counsels who represent the government cannot and should not accept legal instructions from Ministers of Government and the Prime Minister in a personal capacity.*
- *That when a legal counsel acts for a Minister of Government and the Prime Minister in a personal capacity, that legal counsel should not during the same period take direct instructions from the same Minister of Government and the*

<sup>1</sup> Civil Appeal No. ABU 0002 of 2010.

*Prime Minister to act for the government of the day as this also points towards bias, the presumption of bias and overall conflict of interest.*

- *That when the situation is such as stated in the above paragraph the conflict arises when payment is made to the private legal counsel for the government matters and for the personal matters.*
- *That in such a position, the Minister of Government and or the Prime Minister would appear to be favouring that one particular legal counsel or counsels and that one particular law firm.*

- [11]. In that situation, the question is, whether the defendant would suffer any 'real prejudice' which may result in substantial damage to his case; and if so in what circumstances?

The defendant did not assert that there was such 'real prejudice'. Under those circumstances, I see no ground on which the court could properly intervene. The court will not intervene unless it is satisfied that there is a 'reasonable probability of real mischief'.

I belittle defendant's worries and concerns.

#### The test for conflict of interests

- [12]. A solicitor is under a duty not to communicate to others any information in his possession which is confidential to the former client. It is the solicitor's duty to ensure that the former client is not put at risk that confidential information which the solicitor has obtained from that relationship may be used against him in any circumstances.
- [13]. First, the conflict must arise out of the cause of action pleaded by the new client and any information pertaining to the former client a lawyer reasonably could be said to have been in possession. Secondly, such information must impact on the cause of action so pleaded.
- [14]. The Court of Appeal of New Zealand in Russell Mc Veagh Mckenzie Bartleet v Tower Corporation<sup>2</sup> Lord Woolf (with whose approach Otton L.J agreed) identified three questions for consideration; (1) whether there was confidential information which if disclosed was likely to affect Prince Jefri's interests adversely; (2) whether there was a "real or appreciable risk" that the confidential information would be disclosed; and (3) whether the nature and importance of the former fiduciary relationship meant that the confidential information should be protected by an order of the kind sought.

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<sup>2</sup> Unreported, 25 August 1998

- [15]. Perhaps I might refer briefly to the much quoted decision of the House of Lords in **Prince Jefri Bolkiah v KPMG**<sup>3</sup> and in particular the unanimously adopted speech of Lord Millet. In that case, the appellant, a Prince of the Sultanate of Brunei had for some period acted as a Chairman of an investment agency of the Sultanate and in that capacity had employed KPMG, an accountancy firm to act as auditors during which time they acquired a great deal of confidential information as to the personal assets and their whereabouts of H.R.H., the Prince. In 1998, the Prince was relieved of his position amidst claims of financial irregularity and subsequently the Government of the Sultanate desired to instruct the firm KPMG to act for it in its investigation of the Prince and his financial affairs. The Prince sought to have the firm injected from so acting because he regarded that they were in conflict of interest having acted for him previously and were privy to a great deal of his confidential information. The court of appeal, found in favour of the firm and the Prince appealed to the House of Lords.
- [16]. Lord Millet decided that in cases where a solicitor is acting against the interests of a former client, the only duty a solicitor has is to keep confidential any information that the Solicitor may have been privy to in the course of the prior relationship. His Lordship said this (at p.527, b):

*"Where the Court's intervention is sought by a former client, however, the position is entirely different. The Court's jurisdiction cannot be based on any conflict of interest, real or perceived, for there is none. The fiduciary relationship which subsists between solicitor and client comes to an end with the termination of the retainer. Thereafter the Solicitor has no obligation to defend and advance the interests of his former client. The only duty to the former client which survives the termination of the client relationship is a continuing duty to preserve the confidentiality of information imparted during its subsistence."*

- [17]. And later (at p527 e):

*"Whether a particular individual is in possession of confidential information is a question of fact which must be proved or inferred from the circumstances of the case."*

#### **Application to the facts of the present case**

- [18]. It has been common ground that a lawyer/client relationship never existed between the defendant and R Patel Lawyers. R Patel Lawyers has never acted or appeared for the defendant. **Accordingly, there was no fiduciary relationship subsisted between the defendant and R Patel Lawyers.** Therefore, R Patel Lawyers are not in receipt of

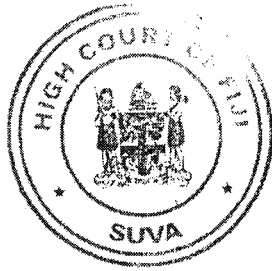
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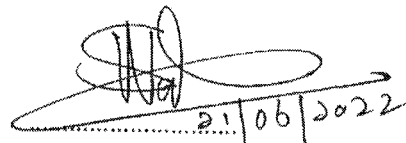
<sup>3</sup> [1998] UKHL 52; [1999] 1 All E.R. 517

information that may result in detriment to the defendant. In law there is no conflict of interest here. There is nothing in the procedural law and Legal Practitioners Decree or even in the Common Law that prevents R Patel Lawyers from appearing for the plaintiffs.

**ORDERS**

- [1]. The application to restrain R Patel Lawyers appearing for the plaintiffs is declined.
- [2]. Costs reserved.



  
21/06/2022  
Jude Nanayakkara  
[Judge]

High Court - Suva  
Tuesday, 21<sup>st</sup> June, 2022