

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

No. 002 of 2016

BETWEEN:

CHIEF REGISTRAR

Applicant

AND:

VILIMONE VOSARONGO (AKA FILIMONI WR VOSOROGO)

First Respondent

Coram: Dr T.V. Hickie, Commissioner

Counsel for the Applicant: Mr A. Chand

Respondents: Mr. Vosarogo In person

Dates of Hearing: 7th December 2016

Date of Judgment: 7th December 2016

EX TEMPORE RULING

ON
RESPONDENTS' ORAL INTERLOCUTORY APPLICATION
FOR
CONTINUATION AND OR ISSUING OF AN INTRIM PRACTISING
CERTIFICATE
BY THE CHIEF REGISTRAR'S OFFICE

- [1] This then is my ex tempore ruling on the both of the Respondent Interlocutory Application to be issued for the continuation of an Order that I made on the 23rd of September 2016 for him to be issued with an interim practising certificate.
- [2] On 27th June 2016, an Application was filed by the Chief Registrar setting out three allegations of Professional Misconduct against the Respondent in relation to the operation of the Respondent's Trust Account.
- [3] I have heard before me today Counsel for the Applicant's further submissions seeking the Commissions leave to amend Count 3 in their application to include

reference to section 12(6) of the *Trust Accounts Act 1996*.

- [4] I have also heard before me today the Respondent's further submissions opposing the proposed amendment to Count 3 as well as their further submissions in support of their application for the three counts on the substantive matter to be struck out for duplicity.
- [5] I note that when I heard the Respondent's application on the 23rd September 2016 to be issued for an practicing certificate the Respondent had been without a practicing certificate since March 2016 and sought an immediate Order from the Commission for the Chief Registrar to issue him with a Full Practising Certificate pending the final hearing of the substantive matter as occurred in *Chief Registrar v Siteri Adidreu Cevalawa*, [2011] FJLSC 10 (7 October 2011) (Unreported, ILSC Case No. 006/2011, Commissioner Connors).
- [6] In my previous ex tempore Ruling on 23rd September 2016, I noted that in *Cevalawa* Commissioner Connors raised by his own volition with the Respondent the issue of her being without a practicing certificate pending the final hearing of the matter concluding:

'... I am addressing the simple issue that the six months that the practitioner wont have the practicing certificate and the only two reasons are the Chief Registrars refusal to issue it and the fact the commission isn't sitting if this commission were the high court, the magistrates court or whatever and sat everyday then this matter could be dealt with next week and the practitioner wouldn't be placed in jeopardy by not having a practicing certificate for six months. If it were somebody charged with murder the bail act carries a presumption that bail be granted not a presumption to be locked up pending trial but a presumption that bail be granted there is an awful [lots] of hoops the prosecution has to go through to cause the person to remain in custody ...'

- [6] I also noted in my previous ex tempore Ruling on 23rd September 2016, that in *Cevalawa* Leading Counsel for the Complainant then intervened and advised that she would not be opposing the making of 'an interlocutory order directed at the Chief Registrar to issue a practising certificate forthwith pending the determination of the matter' and accordingly an interlocutory order was made on that same day which was then extended for the balance of the term (that is

until 28th February 2012). I agree with the submission of Counsel for the Applicant (as I understood his submissions) that on 30th November 2011, an Order was made by Marshall JA, Resident Judge of Appeal, staying the Orders of Commissioner Connors until the hearing of the Chief Registrar's appeal because they had not been given the opportunity by the Commission to address the Commission on that further extension.

- [7] As I have understood the submission today of Counsel for the Chief Registrar,
- (1) There is no objection as to the Commission having the power to order that the Chief Registrar issue an interim practising certificate;
 - (2) There has been no breach by the Respondent of the conditions I attached to my Order for the granting of an interim practicing certificate on 23rd September 2016 (for which I thank the Counsel for the Applicant for clarifying this issue);
 - (3) The application is opposed because of the seriousness of the matters alleged.

- [8] As I mentioned in my ex tempore Ruling on 23rd September 2016, I am concerned, as was Commissioner Connors in *Cevalawa*, that as the Commission sits part-time this can have an extremely detrimental impact on a practitioner, particularly when no I have two applications before me, one to amend Count 3 and the other for the counts to be struck out for duplicity such a judgment will not be delivered on those applications until the February 2017 sittings of the Commission.

- [9] Balanced against the above, I do take note of the arguments of Counsel for the Respondent/Applicant that these are serious matters and the protection of the public must be paramount.

- [10] I also note again as I did in my earlier Ruling that the allegations against the Respondent practitioner is that he has been negligent not fraudulent.

- [11] I further note that I have not been referred to any case that is "on point" in relation to the three substantive charges brought against the Respondent.

- [12] Again, I note in my earlier Ruling, submissions were made on behalf of the

Respondent includes reference to the Constitution and the statement by Justice Madigan (sitting as the Commissioner) in *Chief Registrar v Devanesh Prakash Sharma* [2014] FJILASC 7 (Unreported, ILSC Case No 029 of 2013, 12 November 2014) at [52]:

Although practitioners are not "accused persons" as envisaged by the Constitution, I will now declare that for this matter and all future matters before this Commission, the rights of persons being investigated and charged under the Legal Practitioners' Decree will be afforded all of the rights afforded to accused persons in the Constitution 2013.'

I note that previously Counsel for Mr Vosarago highlighted from the Constitution the presumption of innocence (s.14(2)(a)) and the right to trial without unreasonable delay (s.14(2)(g)).

- [13] Mr Vosarago is seeking that he be permitted to operate his practice without a trust account and not handle any moneys other than AFTER he has appeared as an advocate and for any other matters only AFTER he has completed the invoiced work.
- [14] As I mentioned to the parties, if I treated the matter in the similar vein as a bail application (as I note was argued on the previous occasion) the Commission would consider:
- (1) Whether he has complied with the previous conditions set out in my Order of 23rd September 2016 which I am advised by Counsel for the Chief Registrar that the legal practitioner has done so;
 - (2) The likelihood of the person attending – here Mr Vosargao has attended and is arguing the three counts be struck out for duplicity;
 - (3) The Interests of the Respondent – Mr Vosarogo has a wife and six children;
 - (4) The public interest – which could be protected by imposing stringent conditions including supervision by a legal practitioner of 10 years' standing.
- [15] I have also considered the submissions of Counsel for the Applicant (Chief Registrar). In particular, I note that they are relying upon what they see as admissions by the Respondent in his correspondence with the Chief Registrar's Unit. Balanced against that, are the submissions by the Respondent that he is seeking the application be struck out for which judgment is now pending.

[16] In coming to a decision, I have taken into account these matters are serious and the importance of the protection of the public. Balanced against that I have taken note of what was said by Commissioner Connors in *Cevalawa*, the Respondent is only seeking a practising certificate to be issued at this stage until my ruling of both parties' respective applications in relation to the substantive application and that conditions can continue to be imposed to protect the public as they have been in place since 23rd September 2016. Accordingly, I will grant the application.

[17] The formal Orders of the Commission are:

ORDERS

1. In respect of **VILIMONE VOSARONGO (AKA FILIMONI WR VOSOROGO)**, the Respondent's oral application for the issuing of an interim practising certificate is granted on the following basis:
Pursuant to Section 121(3) of the Legal Practitioners Decree, the Chief Registrar shall issue a Practising Certificate to the Respondent until 6th February 2017 forthwith on payment of the prescribed pro rata fees, on the following conditions:
 - (i) The Respondent is not to operate a Trust Account.
 - (ii) The Respondent is not to operate Trust Account No. 7703648 held at the Bank of the South Pacific unless approved in writing by the Chief Registrar.
 - (iii) The Respondent is to take the monthly bank statement for Mamlakah Lawyers Trust Account No. 7703648 held at the Bank of the South Pacific to the Office of the Chief Registrar at the end of each month until further notice.
 - (iv) The Respondent will only operate or practice as a Barrister and will only receive payment upon issuance of an invoice, after the work has been done (Invoice for work done).
 - (v) The Respondent will work under the Supervision of Mr. Simone Valenitabua who was admitted as a Barrister & Solicitor of the High Court of Fiji in 2006. He is the Managing Partner in the firm of TOGANIVALU & VALENITABUA whose address is 30 High Street, Toorak, Suva.

Dated this 7th day of December 2016.

