

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

No. 013 of 2015

BETWEEN:

A SOLICITOR

Applicant

AND:

CHIEF REGISTRAR

Respondent

Coram: Dr. T.V. Hickie, Commissioner

Applicant: In Person

Counsel for the Respondent: Mr T. Kilakila

Date of Ex Tempore Ruling: 12th April 2017

Date of Reasons for Ruling: 18th April 2017

Ex Tempore Ruling on Costs

- [1] I note that on 12th April 2017, I made an ex tempore ruling that the Applicant legal practitioner give an undertaking to pay the wasted costs that were summarily assessed as a condition of my proceeding to hear further from the Applicant legal practitioner in the substantive matter.
- [2] The Applicant legal practitioner gave such an undertaking to pay the wasted costs that were summarily assessed in the sum of \$300.00 payable to the Respondent Chief Registrar and \$300.00 payable to the Commission, to be paid by 1.00pm on 18th April 2017.
- [3] I now provide my reasons for that ex tempore ruling.
- [4] As I was considering my judgment in this matter following the February 2017 Sittings, I noted that the parties had not had the opportunity to address me on two issues. Therefore, I had the Acting Secretary contact each of the parties in the week prior to the April 2017 Sittings by email to

advise them that the matter was to be relisted during the Sittings to allow each of them to address me on the two issues.

[5] When the matter was called on 11th April 2017, there was no appearance by the Applicant. The matter was stood down whilst Counsel for the Chief Registrar was asked to try and contact the Applicant legal practitioner. When the matter was called again, Counsel for the Chief Registrar advised the Commission that he had spoken by mobile telephone with the Applicant who had informed him that they were unaware of the relisting, they had been ill and sought an adjournment. Counsel for the Respondent indicated to the Commission that he opposed that request. I agreed with the objection and ruled that the matter would proceed.

[5] Why I agreed with Counsel for the Respondent's request that the relisting would proceed in the absence of the Applicant legal practitioner was as follows. First, the Commission's records reveal that the email was sent to the parties on Tuesday, 4th April 2017, advising *'that your matter will be relisted at 11.00am on Tuesday 11th April 2017 to allow each of you to clarify your positions'* on the two issues. Second, a copy of the Cause List for the April 2017 Sittings (wherein it was clearly stated that on Tuesday, 11th April at 11.00 am '013/2015' was to be heard with the notation 'Relisting – Clarification before Judgment') was emailed to the Applicant legal practitioner's three email addresses (to two addresses on Friday, 7th April 2017; and to a third email on Monday, 10th April 2017). There was no indication that any of the three emails had "bounced back" from the Applicant legal practitioner's respective emails addresses. Third, I was of the view that I had been more than generous to the Applicant legal practitioner previously in allowing them to proceed with a very late filing of their application and written submissions in support (over the written objections of Counsel for the Respondent Chief Registrar that the Applicant legal practitioner had not complied with the original timetable) so as to allow the hearing of their application to proceed during the February 2017 Sittings.

- [6] Thus, in the absence of the Applicant legal practitioner on Tuesday, 11th April 2017, I allowed Counsel for the Respondent Chief Registrar to make supplementary submissions to clarify their position on the two issues. The matter was then adjourned with “judgment to be on notice”.
- [7] After the short hearing, the Acting Secretary checked on his computer and advised me that he had received an email at 12.43pm on 11th April 2017 from the Applicant legal practitioner asking ‘*Could my matter please be called at 2.00pm or any other time suitable to the Learned Commissioner and my learned opposing Counsel?*’ I had the Acting Secretary simply reply at 12.50 pm on 11th April 2017, to advise the Applicant legal practitioner by return email (with a copy to the Chief Registrar’s office) that ‘*Please note that this matter was called today and the Judgment is on Notice.*’
- [8] The following day, the Acting Secretary received a further email from the Applicant legal practitioner seeking to file a Notice of Motion so as to be heard in the matter. I had the Acting Secretary advise the parties that the matter would be listed at 2.00 pm that afternoon. The Applicant legal practitioner appeared as did Counsel for the Respondent Chief Registrar.
- [9] I began by explaining to the parties that the reason I had relisted the matter that afternoon was that after the Acting Secretary had received earlier that day an email from the Applicant legal practitioner seeking to file a Notice of Motion to be heard, I had formed the view that it was correct that the Applicant legal practitioner was entitled to do (as to whether it would be granted was another matter) and that rather than incurring further costs for both parties and then waiting until after the Easter weekend to have a further hearing, I had decided to relist the matter that afternoon. Before proceeding to hear further from the Applicant legal practitioner, however, I explained that I wanted an undertaking from the Applicant to pay the reasonable wasted costs of both the Respondent Chief Registrar as well as those of the Commission. The Applicant agreed to the condition and undertook to pay such pay such reasonable wasted costs. Counsel for the Respondent Chief

Registrar also raised the issue and noted that he would need to obtain instructions as to the actual amount.

[10] I agreed that I would allow the Applicant legal practitioner to proceed with their submissions and for Counsel for the Respondent Chief Registrar to respond, following which I would then stand the matter down at the end of submissions to allow Counsel for the Respondent Chief Registrar to obtain instructions as to the amount they were seeking to be paid by the Applicant legal practitioner for wasted costs. The parties were agreeable to this course. The Applicant legal practitioner then addressed me on the two issues and Counsel for the Respondent Chief Registrar responded.

[11] Counsel for the Respondent Chief Registrar, after obtaining instructions, sought wasted costs of \$250.00-\$300.00. The amount sought was not opposed by the Applicant legal practitioner. Therefore, I summarily assessed the wasted costs of the Respondent Chief Registrar in the sum of \$300.00.

[12] Similarly, I also assessed the wasted costs of the Commission in the sum of \$300.00.

[13] I then ordered that the two amounts (\$600.00 in total) were to be paid by the Applicant legal practitioner before 1.00 pm on Tuesday, 18th April 2017. This was agreed to by the Applicant legal practitioner including that they would be responsible for preparing the Order as to costs as follows: first to be filed with the Commission to be signed by me; second, to be filed with the High Court Civil Registry; and third, for the original stamped Order to be returned to the Commission with a copy provided to the Chief Registrar's office.

ORDERS

[14] Even though I note that separate Orders have already been prepared and lodged with the High Court Civil Registry on 13th April 2017 in the terms as expressed in my ex tempore judgment delivered on 12th April 2017, I record that the formal Orders of the Commission are:

1. The Applicant is to pay wasted costs for their non-appearance on 11th April 2017, (resulting in the need for a further appearance of both parties before the Commission on 12th April 2017), such wasted costs are summarily assessed as follows:
 - (1) the wasted costs of the Respondent Chief Registrar fixed at \$300.00;
 - (2) the wasted costs of the Commission fixed at \$300.00;
 - (3) The two amounts to be paid by the Applicant legal practitioner to the Respondent Chief Registrar and the Commission respectively before 12 noon on 18th April 2017.
2. The Applicant is prepare this wasted Costs Order for signature by the Commissioner and then to file the same with the Suva High Court Civil Registry by 1.00 pm on 13th April 2017 and thereafter serve a copy on the Respondent Chief Registrar and file a copy with the Commission respectively.

Dated this 18th Day of April 2017

Dr. Thomas V. Hickie
COMMISSIONER