

**IN THE INDEPENDENT  
LEGAL SERVICES COMMISSION**

Application No. 012 of 2015 and  
No. 015 of 2015

BETWEEN:

**CHIEF REGISTRAR**

Applicant

AND:

**SURUJ SHARMA**

First Respondent

AND:

**PATEL SHARMA LAWYERS**

Second Respondent

**Coram:** Dr. T.V. Hickie, Commissioner

**Counsel for the Applicant:** Mr. A. Chand

**Counsel for the Respondent:** Mr. D. Sharma and Mr. N. Lajendra

**Date of Hearing:** 20<sup>th</sup> September 2018

**Date of Judgment:** 21<sup>st</sup> September 2018

**EX-TEMPORE JUDGMENT ON COSTS**

- [1] I have handed down a judgment yesterday wherein all four counts against the First Respondent have been dismissed.
- [2] Counsel for the Applicant confirmed at a clarification hearing on 25<sup>th</sup> April 2018, that the four counts against the Second Respondent were no longer being prosecuted. Accordingly, I have also confirmed in my judgment that I have handed down yesterday that the four counts against the Second Respondent have been dismissed.
- [3] The First Respondent made a strike-out application that was dismissed by me on 21<sup>st</sup> September 2016. It was agreed between Counsel for the parties that costs would be reserved pending the outcome of the final hearing and judgment of the substantive application.
- [4] As I made clear in my ruling of 21<sup>st</sup> September 2016 and have again highlighted in my judgment handed down yesterday, an application before the Commission for a permanent stay of proceedings or that a matter be struck

out will rarely be entertained. I have noted in my judgment at para [770] what was said by Justice Madigan in *Chief Registrar v Adish Kumar Narayan* [2014] FJILSC 6; Case No.009.2013 (2 October 2014); (PacLII: <<http://www.pacii.org/fj/cases/FJILSC/2014/6.html>>) at para [4], that is:

*'... There appears to be quite a misunderstanding throughout the profession and in particular by the present practitioner, of the exact nature of proceedings in the Commission when an allegation has been referred to it by the Registrar for hearing. The operative word is hearing and not trial. Although the Commissioner and the Commission have the roles of Judge of the High Court and the High Court respectively, hearings before the Commission are hearings by way of an enquiry and not adversarial trials. As such formal rules of evidence do not apply (see section 114 of the Decree) and it will only be in exceptional circumstances that interlocutory applications and no case applications will be entertained. The whole purpose of a hearing before the Commission is to establish the validity of the application made by the Registrar and if so established to then make an appropriate penalty order; at all times seeking to protect the interests of the consumer public, while endeavoring to maintain high standards of ethics and practice within the profession'.*

[5] Therefore, such an application, raising the conduct of how an investigation was undertaken and/or proceedings instituted, will usually be refused unless it is directly relevant as the basis of a preliminary strike out application such as for abuse of process. In my judgment of 21<sup>st</sup> September 2016, I did not find that this was the case. Indeed, I listed 12 reasons as to why the four counts should proceed to a final hearing. That has now taken place.

[6] Even though the First Respondent has had the four counts against him dismissed, I have also taken note of what the *Legal Practitioners Act 2009* says in relation to costs as follows:

*'124.—(1) After hearing any application for disciplinary proceedings ... the Commission may make such orders as to the payment of costs and expenses as it thinks fit against any legal practitioner or partner or partners of a law firm.*  
*(2) The Commission shall not make any order for payment of costs and expenses against the Registrar or the Attorney-General.*  
*(3) Without limiting subsection (1) the Commissioner may,*  
*(a) without making any finding adverse to a legal practitioner or law firm or any employee or agent of a legal practitioner or law firm, and*  
*(b) if the Commission considers that the application for disciplinary proceedings was justified and that it is just to do so,*  
*order that legal practitioner ... pay to the Commission and the Registrar such sums as the Commission may think fit in respect of costs and*

*expenses of and incidental to the proceedings, including costs and expenses of any investigation carried out by the Registrar. ’*

[My emphasis]

[7] I note the history of the strike-out application was as follows, as set out in paras [8]-[11] of my Ruling of 21<sup>st</sup> September 2016 as follows:

[8] *On 10<sup>th</sup> February 2016, the Respondent filed and served an Interlocutory Application seeking Orders for a permanent stay/dismissal of the four Counts. The matter was adjourned until 24<sup>th</sup> March 2016, so as to give the Applicant time to respond.*

[9] *On 24<sup>th</sup> March 2016, Orders were made for the filing of affidavits together with the filing of submissions and the matter listed for hearing on 22<sup>nd</sup> April 2016.*

[10] *On 22<sup>nd</sup> April 2016, the matter proceeded to hearing, following which, Orders were made for the parties to file and serve written submissions.*

[11] *This judgment has taken into account the written submissions filed by each party before and after the hearing on 22<sup>nd</sup> April 2016, as well as the oral submissions they each made the hearing on 22<sup>nd</sup> April 2016. I note that two affidavits have also been filed: one by the First Respondent sworn on 9<sup>th</sup> February 2016, and one by Kelevi Veidovi (a Court Officer employed by the Applicant) sworn on 8<sup>th</sup> April 2016 ...’*

[8] I then handed down a Ruling of 21<sup>st</sup> September 2016 of 87 paragraphs that set out:

(1) A factual chronology;

(2) The judgment of Balapatabendi J in *Prakash v Devi* (Unreported, High Court of Fiji at Suva, Civil Action No. HPP 03 of 2010, 11 October 2013)

(PacLII: [\[2009\]](#) [FJHC](#) [43](#),

<http://www.pacii.org/fj/cases/FJHC/2013/528.html>);

(3) A ruling on reach of the four Counts and associated complaints;

(4) The law on -

(i) ‘*Abuse of process*’;

(ii) Whether the ‘*Charges are doomed to failure*’; and

(iii) Whether ‘*Truly exceptional circumstances*’ existed for the four counts to be struck out.

[9] I note that in my Ruling of 21<sup>st</sup> September 2016, I listed 12 reasons as to why the matter had to proceed to a final hearing. I also note, however, that in my closing at para [87] I thanked Counsel for both parties for their assistance, concluding:

*'Even though I have ruled against the Respondents, I wish to place on the record my appreciation for the detailed and thoughtful written submissions of their Counsel including the clear oral arguments placed before me at the hearing on 22<sup>nd</sup> April 2016. I also thank Counsel for the Applicant for his assistance.'*

[10] In relation to what costs should be ordered to be paid by the Respondent to the Chief Registrar in defending the strike-out application, I note that Counsel for the Applicant Chief Registrar has submitted that it is a matter for the Commission. I have also noted that perhaps part of the reason for the strike-out application was the unavailability to the Respondent of any minutes from the mediation and/or a report from the mediator, Ms. Akanisi, such that the Respondent and his legal advisers could have then considered the relevance or not of the mediation to the four counts later filed with the Commission.

[11] My initial view was that the Respondent should pay the reasonable costs of the Applicant for defending the strike-out proceedings in the sum of \$500.00. I have, however, considered that further overnight and taken into account the overall costs incurred in the substantive matter for which the Respondent has been entirely successful. Accordingly, I make no Order for costs against the Respondent payable to the Chief Registrar.

[12] In relation to what costs should be ordered to be paid by the Respondent to the Commission in relation to the strike-out application, I note that the Commission put aside a lot of time dealing with the strike-out application in which the Respondent was entirely unsuccessful. I have also noted, however, the assistance provided by Counsel. As such, I am of the view that a sum of \$1,000.00 should be paid to the Commission.

[13] In relation to what costs should be ordered in relation to the final defended hearing of the substantive application, I have noted that section 124(2) states that *'The Commission shall not make any order for payment of costs and expenses against the Registrar ...'*. Further, whilst I consider that *'the application for disciplinary proceedings was justified'*, balanced against that I note that the Respondent, after a lengthy and, no doubt, costly hearing, represented by two counsel, has had all four counts against him dismissed. Accordingly, although I could make an order for costs against the Respondent, I do not believe *'that it is just to do so'*. Accordingly, I will not make such an


Order payable to the Applicant for bringing the proceedings and/or the Commission for hearing the matter.

## **ORDERS**

[14] The formal Orders of the Commission are:

1. In the Application filed in ILSC Case Nos. 012 of 2015 and 015 of 2015, *Chief Registrar v Suruj Sharma*, pursuant to section 124(1) of the *Legal Practitioners Act 2009*, I make no Order as to costs payable by the Respondent towards the reasonable costs incurred by the Applicant Chief Registrar in defending the Respondent's strike-out application which was dismissed on 21<sup>st</sup> September 2016,
2. In the Application filed in ILSC Case Nos. 012 of 2015 and 015 of 2015, *Chief Registrar v Suruj Sharma*, pursuant to section 124(1) of the *Legal Practitioners Act 2009*, the Respondent is to pay the sum of \$1,000 towards the reasonable costs incurred by the Commission in hearing the Respondent's strike-out application which was dismissed on 21<sup>st</sup> September 2016,
3. If Order 2 is not satisfied by 12 noon on 27<sup>th</sup> September 2018, the Respondent's practising certificate is to be suspended without further order until the Respondent has paid the said sum of \$1,000 to the Commission.
4. There be no Order as to costs payable by the Respondent to the Chief Registrar for the bringing of the substantive application for which judgment was handed down on 20<sup>th</sup> September 2018 whereby all four counts were dismissed.
5. Similarly, there be no Order as to costs payable by the Respondent to the Commission for the hearing of the substantive application brought by the Chief Registrar for which judgment was handed down on 20<sup>th</sup> September 2018 whereby all four counts were dismissed.

Dated this 21<sup>st</sup> day of September 2018.

  
-----  
Dr. Thomas V. Hickie  
COMMISSIONER

