

IN THE INDEPENDENT LEGAL SERVICES COMMISSION
AT SUVA

No. 005 of 2022

BETWEEN: **CHIEF REGISTRAR**

Applicant

AND: **AKUILA NACO**

Respondent

Counsel: Mr. Avishay Prasad for the Applicant
 Mr. John Rabuku for the Respondent

Date of Hearing: 13th May 2022
Written submissions: 27th May and 7th July 2022
Date of Ruling: 10th November 2022

SANCTION RULING

1. On the 11th May 2022 the Chief Register ("CR") made this application against the Respondent ("The Practitioner") to this Commission with an allegation of professional misconduct as follows.

ALLEGATION BY: The Chief Registrar

PROFESSIONAL MISCONDUCT; *Contrary to section 82(1)(a) of the Legal Practitioners Decree of 2009.*

PARTICULARS

AKUILA NACO, a legal practitioner, being the principal practitioner of **NACO chambers**, failed to respond to matters contained in a complaint initiated by the **CHIEF REGISTRAR** on 21st February 2022, as required by the Chief Registrar by a notice dated 28th February 2022 pursuant to section 105 & 106 of the Legal Practitioners Act 2009 and thereafter failed to respond to a subsequent reminder notice dated 21st March 2022 issued by the Chief Registrar pursuant to section 108(1) of the Legal Practitioners Act

2009, which conduct is a breach of section 108(2) of the Legal Practitioners Act 2009 and is an act of professional misconduct.

2. The Practitioner first appeared before the Commission at the first mention of this matter on the 25th of May 2022 when the allegation was explained the Practitioner accepted liability to the said allegation of professional misconduct pursuant to Section 82(1)(a) of the Legal Practitioners Act 2009:
3. Upon so admitting the said allegation the Practitioner was granted time to mitigate. Having heard the Respondent and the submission of Applicant, this Commission is satisfied that the Practitioner has engaged professional misconduct as alleged and accordingly finds the said allegation is established on his own admission and plea.
4. The Respondent was granted several dates from 25th of March 2022 up to date to tender his submission in mitigation in writing however he has failed and not filed the same up to date.
5. I will now proceed to consider and pronounce the appropriate sanction for the said admitted professional misconduct.
6. This Commission considers the “failure to respond” to the Chief Registrar a serious form of professional misconduct. As echoed in many a ruling it is not a mere lapse but is a serious and callous disregard of, and an affront to the authority of the regulator of the legal practitioners. Majority of the matters submitted to this Commission as I observe are for the failure to respond to the Chief Registrar. Issuing of notices pursuant to section 105 of the Legal Practitioners Act 2009 is a first step in the investigative

process. The failure to respond in a timely manner to any notice a practitioner may receive from the Legal Practitioners' Unit of the Office of the Chief Registrar which is endowed with the serious responsibility of investigating complaints against members of the legal profession scuttles and retards the prompt inquiry and investigation in to complaints made by the public. The delay so caused certainly will erode the efficacy and efficiency of the entire disciplinary process and result in a serious loss of public confidence.

7. Thus, the failure to so respond is a serious breach of the ethical duty and the professional obligation of the members of the profession. Hence, the "failure to respond" should be considered with utmost seriousness unless, there be reasonable and acceptable cause shown for the said failure, and also a sufficient response be made to the said notice at least subsequently.
8. The previous Commissioners, especially Justice Madigan has emphasized the importance and the need for practitioners to respond in a timely manner to such notices in the decisions of *Chief Registrar v Luseyane Ligabalavu* [2012] FJILSC 3; Case No.003 and 004.2012 (23 October 2012) and *Chief Registrar v John Rabuku* [2013] FJILSC 6; Case No.013.2013 (30 July 2013) and has considered the perennial nature the problem of not responding in in *Chief Registrar v Teresia Rigsby*, Case No.006.2015 (dated 29 November 2015).
9. The sentiments so expressed which I myself endorse are thus; the Chief Registrar is the regulatory head of the legal profession; it is his function to ensure that the profession is competently and professionally conducted and if practitioners do not co-operate with

him in that regard then his mission is frustrated; the failure to respond to the Registrar is therefore a serious breach of professional duty not only because it is a clear breach of statutory duty as provided for in the Legal Practitioners Act 2009 but also because it is a professional courtesy which should be extended to the head of the profession.

10. It is accepted by the practitioner, that he was served personally with the s.108 notice. The practitioner pleads for leniency given his remorse, early plea and regret for not replying to the. Chief Registrar. This is not the first time that this practitioner has been before the Commission for similar violations. He had been found guilty of professional misconduct in two previous matters. Firstly in Application No. 005/2013 he has admitted liability for an allegation of having instructed another legal practitioner without holding a valid practising certificate and committing unsatisfactory professional conduct and had on 20 August 2013 been publicly reprimanded and fined \$2,500, and then in Application No. 002/2016 has admitted Overdrawing a client's trust account pleaded guilty to professional misconduct and on 29 September 2017 his practising certificate was suspended for 10 months and 17 days, a restriction imposed on his practising certificate for 20 months and seven days and a fine of \$3000.00 to be paid to the Commission and the Chief Registrar.

11. The practitioner was served with notices by the Chief Registrar as he failed to provide the following information:
 1. List of active client files in carriage of Naco Chambers from the 1st March 2021 to date (litigation and conveyancing).
 2. Details of Court matters in which Naco Chambers had made appearances in from the 1st March 2021 to date (in which court the matter was listed. Court matter

number, parties in the matter, date of appearance). The name of the practitioner that had made the appearance for each matter.

3. The total number of Associates employed by your law firm since 1st March 2021 to date along with their names.
 4. List of all new instructions received from 1st March 2021 to date.
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12. The said notices under Section 105 and 106 was served and delivered to the practitioner and he has failed to respond to the same. As such the notice under Section 108 was sent on the 21st of March 2022. However, the practitioner failed and did not respond and the CR instituted these proceedings. The practitioner did admit the allegation, however, he failed and had not make any submissions in mitigations. According to the submissions of the applicant (CR), the practitioner had not been issued with a valid practising certificate since 1st March 2021. Further, the respondent has failed to provide any explanation for the non-response and he has not provided the information sought by the Chief Registrar up to date.
 13. In matters of similar nature if the respondent admits the allegation, provides a reasonable explanation for the non-response and the requested information is provided (even late) this Commission has been lenient in imposing sanctions. However, the Respondent except admitting the allegation has not done any other.
 14. Considering the information sought for by the Chief Registrar it appears that the respondent had been investigated for continuing with his practice without a valid practising certificate. Further, the respondent appears to have not tendered the audited accounts of the trust account of Naco Chambers for the year ending 30th September

2020 and also the year ending 30th September 2021. Both these matters if correct are serious. The practitioner not providing the said information further compounds the said acts if they are true and it is a deliberate attempt to conceal the fact of operating the practice of law without a valid practising certificate. Correspondingly, he is also challenging the authority of the Chief Registrar.

15. In his mitigation he submits that, he is 45 years of age and is married with six children all of whom are still studying and he is the sole breadwinner. He had been admitted and enrolled as a practitioner in the High Court of Fiji in November 1999 and has been in practice at all levels of the Fijian Courts for over 22 years. Since 2010, he has established his law firm where he now employs three lawyers, one intern graduate awaiting admission and four supporting staff in conveyancing and accounts.

16. He is remorseful for his noncompliance with the notice sent by the Chief Registrar and the noncompliance has since been rectified after the notice has been answered. In this matter it is relevant to note that the first notice by the Chief Registrar had been responded to by the Respondent. The second notice requiring further information is the one that has not been responded to. Thus, the practitioner has responded to the initial notice and his failure had been to submit further information. According to the practitioner the period of March 2020 to around October/ November 2021 had been affected by the pandemic and regular closure of law firms had been the order of the day either as a result of the lockdown or the staff being infected. Then due to the piling up of legal work and cases getting refixed for hearings requiring more preparation time during normal times.

17. The Respondent in his mitigation submits that he had written a letter and emailed the same to the Chief Registrar dated 14th of October 2021 requesting for more time as law practices have all just resumed and work started on the 4th of October 2021 after the courts were open again and after months of being partially closed/ closed. He has sought to reply by the 28th of October 2021 and since due to the overbearing work scheduled after court resumed, this work reminder was unfortunately not attended to by the practitioner. The Respondent has since then rectified and complied with the second notice too.
18. This is not a deliberate or obstinate non-compliance, but an inadvertent oversight due to the pandemic situation and the disruption of normalcy. The Respondent has subsequently, complied with the second notice too.
19. 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. The comparable cases for sanction are *Chief Registrar v Lutumailagi* [2020] FJILSC 4 (24 March 2020), *Chief Registrar v Cavubati* [2019] FJILSC 3 (13 June 2019) and *Chief Registrar v Khan* [2019] FJILSC 4 (13 September 2019). However, as to my mind in, it is a nominal sanction that is just and appropriate the present circumstances. The legal practitioner does not deny any lack of means to comply with a monetary sanction.
20. In assessing the sanction in this instance, the Commission will be conscious that the practitioner has freely admitted her error as alleged. He will be imposed with and subjected to a reasonable sanction.

21. Accordingly, the following sanctions are imposed and ordered on the Respondent;

Orders of the Commission are:

- (i) The legal practitioner is publicly reprimanded.
- (ii) The legal practitioner is fined \$1000.00 to this Commission.
- (iii) The legal practitioner is to pay costs to the Chief Registrar, which I summarily assess in the sum of \$1000.00.
- (iv) The fine and costs must be paid within 3 months of this ruling ie; on or before 10th February 2023.
- (v) The fine, costs and the reimbursement must be paid within 3 months of this ruling ie; on or before 10th February 2023.
- (vi) If the legal practitioner fails to pay the fine and costs in full as afore ordered, it is sanctioned that the Practising certificate if issued to him by the CR shall ipso facto be suspended from the of 10th February 2023 until the 10th of February 2024 for a period of 1 year thereof unless and until payment is made in full as ordered and from such day the suspension will cease. The Chief Registrar should not renew or issue the practitioner's practising certificate during such period of suspension.

Dated the 10th November 2022.


Justice Gihan Kulatunga
Commissioner