

**IN THE INDEPENDENT LEGAL SERVICES COMMISSION  
AT SUVA**

ILSC No. 010 of 2021

**BETWEEN: CHIEF REGISTRAR**

**APPLICANT**

**AND: KEVUELI TUNIDAU**

**RESPONDENT**

**Counsel:** Mr. Nikhil Narayan for the Chief Registrar  
Respondent was absent (in absentia)

**Date of sanction Hearing** : 03<sup>rd</sup> March 2023

**Written submissions** : 09<sup>th</sup> March 2023

**Date of Ruling** : 14<sup>th</sup> March 2023

**SANCTION RULING**

1. On the 27<sup>th</sup> of February 2023 the Commission after reviewing the evidence presented by Counsel for the Chief Registrar found that the three allegations of Professional Misconduct preferred against the Respondent practitioner, Mr. Kevueli Tunidau were established and the Practitioner was found to be culpable and liable for the same. Now it is to determine the appropriate sanction.
2. If I may recap, the Respondent failed and neglected to appear before this Commission and did not participate in these proceedings. He was personally served with the notice of hearing, copies of the allegations and the bundle of disclosures on 10<sup>th</sup> of November 2021 and several notices were sent by email thereafter. As all effort made by this Commission as well as the Chief Registrar to contact the Respondent were not successful and of no avail

and therefore the Commission proceeded ex-parte pursuant to section 112(4) of the Legal Practitioner's Act.

3. It was proved that the Respondent practitioner as the sole partner and trustee of the Trust Account of 'Kevueli Tunidau Lawyers' kept with ANZ Bank, Lautoka branch bearing account No. 11213916, *failed to ensure a sum of \$105,000 received on 20<sup>th</sup> November, 2018 from his client Mr. Kalim Hussein for the purpose of making payment for assignment of a land bearing TLTB No. 4/7/41257 was not utilized for unauthorized purposes* and also that the Respondent practitioner *failed to ensure the said trust account was not overdrawn*. It was also proved that *Respondent failed to respond* in a timely manner to the notice sent under section 108 of the LPA. These are acts of professional misconduct within the meaning of Sections 82(1)(b) and 82(1)(a) of the LPA.
4. The Appellant's written submission on sanction was tendered on 9<sup>th</sup> March 2023. As the Respondent was absent, I perused the disclosures and documents to ascertain if there be any grounds of mitigation in favour of the Respondent. I will now proceed to pronounce the sanction as it deems fit and appropriate to this Commission.

**Facts in brief of counts 1 and 2**

5. The facts of this inquiry are that the practitioner was the principal of 'Kevueli Tunidau Lawyers' and the sole trustee of the said trust account. The complainant, Mr. Kalim Hussein retained the service of Mr. Tunidau in respect of a land transaction and a sum of \$105,000 was paid into the Trust Account by a telegraphic transfer for this purpose. This was to be utilized to settle the balance payment due to Mr. Ponipate Turuva, the transferor. It was proved that the practitioner failed and did not make the payment notwithstanding requests made by Mr. Kalim Hussain. The practitioner in order to evade and avoid payment used some fraud or irregularity at the TLTB. However, that was sorted out and the approval and consent of the TLTB was granted for this transaction. The practitioner persisted and refused to pay even upon he been informed of the same. Then it was proved that the Trust Account was overdrawn and the balance went below \$105,000 which *ipso facto* proved that these funds were utilized for unauthorized purposes.

6. After numerous failed attempts to contact the Respondent and the persistent refusal to pay as directed or to return the said sum, a complaint was lodged with the LPU and then the Respondent failed to respond and provide the information as called for by the Chief Registrar in this regard.
7. There is ample judicial authority that trust account matters are amongst those most damaging to public confidence and that they will be dealt with as such. In *Law Society of New South Wales v Jones*, (1977) NSWCA 333, Street CJ (with whom Reynolds and Samuels JJA agreed) remarked that;

*“Reliability and integrity in the handling of trust funds are fundamental prerequisites in determining whether an individual is a fit and proper person to be entrusted with the responsibilities belonging to a solicitor. Members of the public, many of them wholly inexperienced and unskilled in matters of business or of law, inevitably must put great faith and trust in the honesty of solicitors in the handling of moneys on their behalf. The Court must ensure that this trust is not misplaced.”*
8. The applicant submits that in all the circumstances, the Practitioner’s name be struck-off the roll, this being the appropriate penalty in cases of dishonesty. The Full Court of the Supreme Court of South Australia in **Re a Practitioner** (1982) 30 SASR 27 King CJ., held that;

*“..whenever a client’s money is deliberately used for a purpose other than the purpose for which the client entrusts it to the practitioner, there is an act of dishonesty.”*
9. With regard to trust account irregularities and defalcations this Commission has been of the consistent view that such derogations by a practitioner is a very serious professional misconduct and it is an offending which would attract harsh sanctions and extreme penalties. [vide- CR v. Haroon Ali Shah (ILSC No. 007 of 2011), CR v. Kini Marawai (ILSC No. 006 of 2012), CR v. Jolame Uludole (ILSC No. 025 of 2013) and CR v. Luseyane Ligabalavu (ILSC No. 002 of 2013 and No. 003 of 2013).

10. In determining the appropriate sanction and penalty for the abuse of a clients trust account, the Commission is reminded of the dicta from the **South Australian Supreme Court v Bayes** [2001] SNSC 319 where it was said:

*"All practitioners must take very seriously the obligations imposed on them with respect to trust accounts. Maintaining a trust account is a basic professional obligation in relation to the charging of clients and accounting to them."*

**Failing to respond (count No.3)**

11. "Failing to respond" to the Chief Registrar is 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 the very authority that issues the practicing certificate and the regulator of the legal practitioners. Majority of the applications submitted to this Commission have been in respect of such failures to respond. Issuing of notices pursuant to section 104 or 105 of the Legal Practitioners Act 2009 is a first step in the investigative process. The failure to respond in a timely manner to such notices, scuttles and retards the prompt inquiry and investigation in to complaints made by the public. The delay so caused certainly will erode the efficacy of the entire disciplinary process and result in a serious loss of public confidence.
12. These charges in my view raise an important issue in relation to the ethical duty and the professional obligation upon members of the profession to respond in a timely manner to a notice they may receive from the Legal Practitioners' Unit of the Office of the Chief Registrar who is endowed with the serious responsibility of investigating complaints against members of the legal profession.
13. Thus "*failure to respond*" should be considered with utmost seriousness in determining the sanction. However, the seriousness may be mitigated firstly, if there be some remorse and cause for the said non-response and secondly, if a sufficient response even belated be provided to the Legal Practitioners Unit as at the date of imposition of section.

14. 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 of 2012 (23 October 2012) and *Chief Registrar v John Rabuku* [2013] FJILSC 6; Case No. 13 of 2013 (30 July 2013) and in *Chief Registrar v Teresia Rigsby*, Case No. 006 of 2015 (dated 29 November 2015) has considered the perennial nature of the problem of not responding.
15. The sentiments expressed in the said decisions which I 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 cooperate with him in that regard, then his mission is frustrated. Failure to respond to the Registrar is therefore a serious breach of professional duty not only as it is a clear breach of a statutory duty but also a professional courtesy which should necessarily be extended to the regulator of the profession.
16. It is proved, that Respondent was served with the section 108 notice. The Respondent did not in any way attempt to respond. After the institution of these proceedings, he was personally served with the disclosures, the charges/allegations and the notice of hearing. The Respondent continued to maintain his contemptuous silence and made no attempt to submit any reasonable response or appearance but continued to be of the same attitude until the conclusion of this inquiry. The conduct of the Respondent is unpardonable and unethical. The complainant and the transferor continued to remain frustrated without any tangible progress in respect of their complaints due to the said conduct of the Respondent.
17. It is also in evidence that the practitioner deliberately and continuously avoided answering calls and meeting his client Mr. Kalim as well as Mr. Turuva. The fact that this was a deliberate avoidance was proved by the fact of the practitioner answering the phone when Mr. Kalim called him using a different phone. The practitioner also did not comply with the request made by Mr. Turuva through Ravneet Charan lawyers and the practitioner also failed to respond even when the Chief Registrar requested for information on the beneficiaries of the overdrawn amount and the trust account.

18. The practitioner then stubbornly continued to evade and abscond even when he was informed of the proceedings in this Commission. His conduct of refusing to make payment based on untenable reasons when considered together with the overdrawing clearly proves his malicious and fraudulent intention to utilize these funds for unauthorized purposes. The practitioner has no doubt misappropriated the said Trust money of Mr. Kalim. It had been a preplanned and artful exercise by the practitioner.
19. Eventually, the Chief Registrar was able to institute proceedings before this Commission and serve the charges, notice of hearing and the disclosures on the Respondent. Then too the practitioner deliberately refused and failed to participate and assist these proceedings. To my mind this is one of extreme instances of a practitioner acting in derogation and disregard of all ethical rules and failing to maintain the minimum standards expected of a legal practitioner. I have found that the Respondent is not a fit and proper person to be to engage in legal practice.
20. The Respondent has also been previously found guilty of professional misconduct in ILSC Application No. 18 of 2021 for failing to respond to the Chief Registrar.
21. On the perusal of the disclosures especially exhibit A3 the application for the practicing certificate, Mr. Tunidau appears to be around 53 years of age as at now and appears to be married. He had been admitted and enrolled as a legal practitioner in 1997. He is also a barrister and solicitor of the New Zealand bar. Mr. Tunidau is the sole trader, the proprietor and the principal of Kevueli Tunidau Lawyers since 2007. It does not appear that he had any previous complaints or proceedings against him of this nature. He appears to have been in practice for over 20 years with a clean record. However, he had from around 2021 being remiss and falling short of the required professional standards which had led to several complaints being made against him. These complaints *inter alia* include the failure to make payments due to the clients from the Trust Account causing immense hardship to such clients.

22. Mr. Tunidau's conduct up to this date demonstrates a callous disregard of the authority of the Chief Registrar as well as of this Commission. His nonchalant disregard demonstrates a clear lack of remorse on his part. This persistent conduct of nonresponse is an extremely serious form of misconduct. His conduct has certainly brought great disrepute to the legal profession. There is a serious failure of his accountability as a legal practitioner. In these circumstances this Commission is left with no option but to impose a suitable sanction that sends a clear message to the Respondent and to others of similar propensity that such conduct will attract serious consequences and sanctions.
23. 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). The legal practitioner does not appear to lack means to comply with a monetary sanctions. The above will be considered subject to the peculiarities of this matter.
24. Some of the comparable past sanction rulings are;
- a. **Chief Registrar v Vosarogo** [2017] FJLSC 12; (29 September 2017) the practitioner failed to ensure that the trust account was not overdrawn. The Practitioner appeared and participated in these proceedings and he was suspended from practice for a period of 10 months and 17 days was issued with a restricted practicing certificate for a period of 20 months and 7 days, a fine of \$3,000 and costs of \$1,500 each to the Commission and the Applicant;
  - b. In the case of **Chief Registrar v Silika Vuilagi Waqabitu** (Unreported, ILSC Case No.001 of 2014, Justice Madigan, 28 July 2014; PacLII: [2014] FJILSC 4, - two counts of professional misconduct where the practitioner failed to ensure that trust monies of \$23,000 were not utilised for unauthorised purposes and then "*completed a trust account report for the period 1<sup>st</sup> October 2012 to 30<sup>th</sup>*

*September 2013.....obviously being false and misleading*". The practitioner's name was struck from the Roll.

- c. In the case of **Chief Registrar v Haroon Ali Shah** (Unreported, ILSC Case No.007 of 2011, Justice Madigan, 1 June 2012) the practitioner was charged for seven counts alleging irregularities in a trust account or keeping a trust account and failing to render an invoice for fees deducted from a trust account. The practitioner's name was struck from the Roll.
- d. In the case of **Chief Registrar v Titoko** [2022] FJILSC 2 (21 January 2022) the practitioner was charged for seven counts of professional misconduct where the practitioner had failed to ensure that trust monies were not utilized for unauthorised purposes. The practitioner's name was struck off the roll and a sum of \$130,000 was to be reimbursed to the complainant from the Fidelity Fund.

#### **Amount due to the transferor**

25. According to the evidence placed before this Commission by the Chief Registrar, Mr. Kalim Hussein has made several requests that the balance of the consideration i.e. \$105,000 be paid to Mr. Turuva. Mr. Turuva has confirmed that out of the consideration of \$125,000 a sum of \$105,000 remains unpaid and outstanding up to date. Mr. Turuva has in fact through Ravineet and Charan Lawyers made the request for the payment of the said sum. The transfer of agreement for Lease TLTB Reference No. 4/7/41257 had been approved and consented by the TLTB. The said transfer had been registered on the 28<sup>th</sup> November, 2018 of which the transferor is Mr. Ponipate Turuva. This has clearly proved the said transfer is now effected and finalized. Mr. Hussein confirmed obtaining possession of this land.
26. The Applicant in the written submission submits for "*an order that a sum of \$ 105,000 from the Respondent's trust Account be reimbursed by the Respondent to Mr. Kalim Hussain*". The 'Kevueli Tunidau Lawyers' Trust Account remains frozen (restricted) and as per the bank statement (PE11) a sum of \$158,263.23 remains, as the balance as at 4<sup>th</sup>



March, 2021. It is proved that Mr. Hussein owes \$ 105,000 to Mr. Turuva as a part of the consideration due to him in respect of the assignment of lease TLTB No 4/7/41257 registered on 28<sup>th</sup> November 2018 bearing No. 54097. Mr. Hussein in evidence requested and has also authorized that the said sum be paid to Mr. Turuva. It is also in evidence that the said \$105,000 is deposited and is there in the trust account held on behalf of Mr. Kalim Hussain (vide-letter of the Respondent-PE4; and the Beneficiaries Ledger of the audit report of the trust account -PE10). In these circumstances, it is lawful and proper to make the payment directly to Mr. Turuva instead of Mr. Hussain.

### **Conclusion**

27. It may be assumed that striking-off may appear to be harsh given the relatively short period of the offending conduct *vis-à-vis* the Respondent's long career and the sum involved. However, that conduct must be viewed in the broader context of the practitioner's recent disciplinary history, cavalier and contemptuous manner of his dealings with clients, the Chief Registrar, the LPU and also this Commission especially his failure to submit an Audit report and be accountable for the trust funds. It is necessary that this Commission must act in the public interest so as to ensure that confidence continues to be reposed in the legal profession. In these circumstances, it must be concluded that the practitioner has by his own conduct amply demonstrated that he now lacks the qualities, character and integrity which are essential to legal practice and he is no longer a fit and proper person to continue as a Legal Practitioner. Thus, to my mind, no order short of strike-off would be appropriate and fit in these circumstances.
  
28. I will impose a common sanction for all three allegations in an aggregate form. The Practitioner will be subjected to an appropriate and reasonable sanction considering all these facts and comparable past sanction rulings. Accordingly, the sanctions imposed are as follows.

Orders of the Commission are:

- (1) The name of the Respondent Practitioner be struck of the roll of the practitioners held by the Chief Registrar;

- (2) A fine of \$5,000 be paid to this Commission;
- (3) Mr. Ponitpate Turuva be reimbursed a sum of \$105,000 from the Trust Account; and it is further ordered and directed that the Chief Registrar take necessary steps to facilitate and to make this payment from the 'Kevueli Tunidau Lawyers' Trust Account and prior to making such payment, Mr. Ponipate Turuva should confirm by way of an affidavit that the sum of \$105,000 is due to him in respect of the assignment of lease TLTB No. 4/7/41257 registered on 28<sup>th</sup> November 2018 bearing No. 54097.

Dated the 14<sup>th</sup> day of March, 2023.

