

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

IN CHAMBERS

CIVIL APPEAL NO. ABU0041 OF 1997S
(High Court Civil Appeal No.HBC001 of 1996)

BETWEEN:

THE FIJI MEDICAL ASSOCIATION

APPELLANT/
APPLICANT

-AND-

RAMON FERMIN ANGCO
THE FIJI MEDICAL COUNCIL

RESPONDENT

Mr. M. Raza for the Appellant/Applicant
Mr. A. Kato for the 1st Respondent
Mr S. Kumar for the 2nd Respondent

Place of Hearing : Suva
Date and Delivery of Order : 7 November, 1997

ORDER

The appellant is applying for an injunction to be issued restraining the first respondent from practising as a medical practitioner pending the hearing and determination of the appeal, unless he obtains full registration in Part II of the medical register kept by the second respondent under the provisions of the Medical and Dental Practitioners Act (Cap. 255) ("the Act") or produces evidence to this Court that he has been registered previously by the second respondent in Part II of that register to practise as a private medical practitioner.

The proceedings to date in the High Court and in this Court have followed a rather unusual course. The first respondent is a national of the Philippines, apparently holding a degree of Doctor of Medicine from a university in that country. He came to Fiji in 1992 to take up employment with the Government of Fiji to work as a doctor in public hospitals. Some time later he ceased to be, and is no longer, employed by the government. In 1992 he was granted a temporary certificate by the second respondent under the Act entitling him to practise medicine in Fiji for a limited period. That is not the same as registration in Part II of the medical register. In 1994 the second respondent suspended what it referred to in the High Court as his registration. He appealed to the High Court under section 28 of the Act. On 17 November 1995 the second respondent apparently rejected an application by him for registration to practise as a private medical practitioner in Part II of the medical register; it granted another temporary certificate. He appealed to the High Court against that decision.

The second respondent was the respondent in both appeals. Scott J. heard and decided both appeals together. He recorded his dissatisfaction with the manner in which both parties had presented their cases. He found that, the grant of a temporary permit to work as an employed doctor in a public hospital amounted to refusal of the application for registration to practise as a private medical practitioner. He found, rightly in my view, that the grants of temporary certificates had been irregular. However, he recorded that it was not in dispute that the first respondent was registered in Part II of the medical register but observed he was not shown the first respondent's certificate of registration. On the basis that he was registered, Scott J. found that there was no statutory authority for suspending his registration and that, therefore, he remained registered to practise generally. He noted, however, that the question whether the

first respondent was entitled to practise privately in Fiji depended on his immigrant status and on whether he held a work permit.

The appellant is an association established by section 41 of the Act. Its objects are set out in section 42; they include promoting the welfare, and maintaining the integrity and status, of the medical profession, and protecting and assisting the public and the medical profession in all matters touching, ancillary or incidental to the practice of medicine. As matters of considerable public importance were in issue in the proceedings in the High Court, matters in respect of which the appellant has a strong interest, leave was given by this Court for it to appeal against Scott J's judgment. Leave has also been given for it to adduce additional evidence.

The President of the appellant has sworn an affidavit in which he has set out facts concerning the first respondent's employment in Fiji and his so-called registration in the medical register. Those facts differ to some extent from the evidence apparently given in the High Court. They are also considerably more detailed. The deponent exhibited to his affidavit a number of documents supporting the statements of facts made in it. One is, by its terms, "a temporary certificate of permission to practise medicine to the extent and limitations related to persons registered in Part II of the medical register" for a period of six (sic) months from 1 January 1993 to 31 May 1993. It is stated to be issued in exercise of powers conferred by section 18(1)(a) of the Act. Section 18(1) enables such a certificate to be issued to a person who has applied for registration but it cannot remain in force for longer than three months. A temporary

certificate could have been issued under section 18(2) for one year and could have been renewed for one further year.

The President of the appellant has deposed that the first respondent was given further temporary certificates covering the periods from 3 September 1993 to 25 October 1993 and from 26 October 1993 to 25 October 1994 but did not apply for further registration. I note that that last assertion appears to be incorrect and that the first respondent sought registration in November 1995. Documents exhibited to the affidavit show that in May 1994 the first respondent was called upon by the second respondent to answer allegations of breach of the code of ethics and malpractice but did not attend the hearing and that the second respondent then suspended his "registration under Part II of [the Act]". The second respondent informed him that the period of suspension would be reviewed and reconsidered at its next meeting and that he would be called upon to attend that meeting. The President of the appellant states in his affidavit that the first respondent, accompanied by a barrister and solicitor, attended a meeting of the second respondent on 28 October 1994, that his temporary registration expired on 25 October 1994 and that his employment by the government ceased on 1 February 1995. Exhibited to the affidavit is a copy of a letter dated 14 November 1995 addressed to the second respondent by the first respondent in which he "begs forgiveness for misdeeds I might have committed" but denies any actual wrongdoing. That was apparently sent when he sought registration to practise as a private medical practitioner. The second respondent then granted temporary conditional registration. It was for six months; he was to be employed by the Ministry of Health at Lautoka Hospital. That grant was the subject of one of the appeals to the High Court.

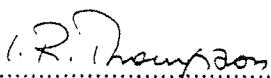
Also exhibited to the affidavit is a copy of a letter dated 3 December 1996 from the Immigration Department to the appellant stating that the first respondent had been granted a permit to reside in Fiji until 24 December 1996 whilst awaiting the result of a "project proposal" made by him to the Fiji Trade and Investment Board, that he was not allowed to work but that he had applied to be permitted to work as a private medical practitioner and that application was pending and depended on "the outcome of the project proposal and the appeal pending in the High Court." However, the first respondent has filed an affidavit stating that the project proposal, to open a medical clinic, has now been approved and that he has been given a work permit. The Minister for Immigration is not a party to these proceedings. If he wishes to take action against the first respondent for breach of any condition of his permit to reside in Fiji, he can do so. It is not appropriate for this Court to interfere in the matter unless it is properly before the Court in proceedings in which the Minister is a party.

The situation now is that the appellant has placed before me evidence that clearly shows the first respondent was never registered in Part II of the medical register. The grant of a temporary certificate under section 18 authorises the person to whom it is granted to practice medicine *as though* he was registered; it is not such registration. It appears that the second respondent was under a misapprehension that such a grant constituted such registration and incorrectly conceded in the High Court that the first respondent was so registered.

It is not clear from Scott J's judgment whether the university from which the first respondent obtained his degree is the University of the East, which is one of the universities

specified for the purpose of s.19(2) in the Schedule to the Act, but it appears likely. In the state of the evidence before me I should, I think, proceed on the basis that it is. That being so, it appears that the first respondent may well have been entitled to be registered in Part II of the medical register in November 1995. I can, of course, make no finding to that effect but at the same time it would not, I believe, be fair or reasonable for me to grant the injunction sought.

Accordingly the application for the injunction is dismissed. The appellant is to pay the respondents' costs in any event. I fix them as \$200 in the case of the first respondent and \$100 in the case of the second respondent.


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Mr Justice I.R. Thompson
Justice of Appeal