

IN THE HIGH COURT OF FIJI

At Suva

Civil Jurisdiction

JUDICIAL REVIEW NO. 0029 OF 2007

IN THE MATTER of an application for
Leave to apply for Judicial Review by
Samuela Matawalu

And

IN THE MATTER of Disciplinary
Proceedings conducted by the Fiji Law
Society

And

IN THE MATTER of the decisions and
Orders made by the Disciplinary
Committee on 20h June 2007

<u>Between</u>	:	<u>BABU SINGH</u>	First Respondent
<u>And</u>	:	<u>FLORENCE FENTON</u>	Second Respondent
<u>And</u>	:	<u>VIDYA LAKHAN</u>	Third Respondent
<u>And</u>	:	<u>FIJI LAW SOCIETY</u>	Fourth Respondent
<u>And</u>	:	<u>ATTORNEY GENERAL OF FIJI</u>	Fifth Respondent
<u>Ex-Parte</u>	:	<u>SAMUELA MATAWALU</u>	Applicant

Counsel : **Applicant in Person**
Mr. L. Daunivalu for the Fiji Law Society
Ms. K. Naidu for the Attorney General

Date of Hearing : **18th September 2007**
Date of Ruling : **20th September 2007**

RULING UPON APPLICATION FOR LEAVE
TO APPLY FOR JUDICIAL REVIEW

- [1] On 20th of June 2007 the Disciplinary Committee of the Fiji Law Society suspended Mr. Matawalu from practice for six months, fined him \$5,000.00 and ordered him to refund fees and pay costs. On the 20th of August 2007 he commenced proceedings HBM0099 of 2007 in relation to the Committee's proceedings but then discontinued them on 11th of September.
- [2] On 10th September Mr. Matawalu filed proceedings seeking leave to make application for judicial review of the decisions and process by which he had been suspended and fined. He also seeks an order that the penalty be stayed pending the outcome of the Judicial Review proceedings, given that the suspension will have run its course in a few months time.
- [3] The applicant alleges failure to comply with section 98 Legal Practitioners Act 1997, failing to provide rules of procedure or gazetting them and breaches of natural justice.
- [4] The fourth and fifth respondents have entered notices of opposition. The fifth respondent, the Attorney General, sought to be removed from this case as having had no involvement in the matter. The applicant did not

object. I order that the fifth respondent is removed forthwith, and as agreed there be no order for costs.

- [5] The first ground of opposition of the fourth respondent is that this court has no jurisdiction to entertain the application as the remedy of appeal under section 100 of the Legal Practitioners Act 1997 has not been exercised. The Notice of Opposition goes on to refute all the grounds put forward by the applicant.
- [6] It is clear from Mr. Matawalu's affidavit sworn on 10th of September, annex F, that he was at the least seeking a variation of the orders. Annex F is a letter dated 18th July from Kohli and Singh, solicitors who were acting for him. It is difficult to understand the thinking behind that letter. It states that before making the appeal "we wish to afford you the opportunity of varying the orders which you have made under section 45 and 93(1)(b)(ii-ix) of the Legal Practitioners Act before we file the necessary documents of appeal". It is difficult to discern why the applicant's solicitors thought the suspension had been made under section 45 when section 93(1)(b)(iv) gives a specific power to suspend a practitioner's certificate after finding that a charge or matter had been proved. It is equally difficult to discern how the applicant's solicitors could "require you (the Fiji Law Society), in the interest of justice to revoke and vary all the orders under the provisions of section 93(5)". The Act is clear. Subsection 5 states "a person against whom an order is made may apply to the Committee at any time for a variation of the order". There was simply no basis upon which the applicant's solicitors could "require" the Law Society to revoke or vary the orders.
- [7] The penultimate paragraph of that letter reads "in the meantime, in the circumstances described above we expect that this application for revocation, operates as a stay of execution of the orders made". It was bordering on contemptuous for the applicant's solicitors to "expect" their

letter to operate as a stay of execution. Subsection 5 does nothing more than allow the applicant to apply for a variation. The applicant's solicitors appeared to have fundamentally misguided themselves when they thought that such a letter could or should operate to stop the appeal period running. Section 100(1) states "An appeal shall be to the Court of Appeal ...". Subsection 2 sets a time period by reference to the "Rules of procedure made under this Part". Rule 14 of the Legal Practitioners Disciplinary Complaints Committee Rules 2002 sets a limit of 28 days. It is also pertinent to note that the reasons given for seeking a variation do not accord with those now put forward when seeking leave to apply for Judicial Review and they fail to acknowledge in their conception that the applicant in fact pleaded guilty to the charge.

[8] Mr. Daunivalu very properly from the bar table conceded that, as far as he was aware, there had been no response to that letter. I will act on that basis.

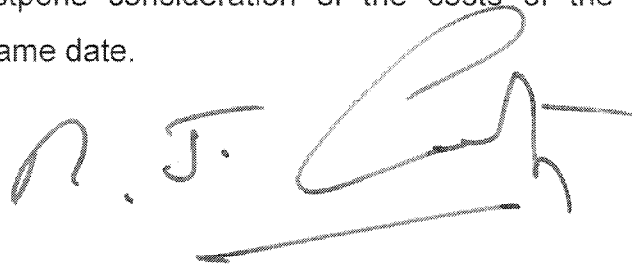
[9] Accordingly there is scope to say that Mr. Matawalu has not exhausted all available remedies. There was no appeal in accordance with the Act. He is a lawyer and has had the benefit of legal advice. However, he has applied for a variation. He is entitled to a response on that, although it would appear subsection (5) is probably not meant to be an appeal so much as a facility to reinstate after part of a suspension or a striking off has run its course.

[10] There are further factors which it is pertinent to note. First, there is the issue as to whether or not the 2002 Rules of the Disciplinary Committee should have been Gazetted (see section 21 Interpretation Act) second, what is the effect in the circumstances of this case of any failure to Gazette, third, the fact that Mr. Matawalu eventually pleaded guilty to the charge but did not reveal this important fact in his first action, the disturbing differences between the unheaded medical report in the earlier

proceedings and the headed medical report in these proceedings, the plain fact that the reasons Mr. Matawalu advances for overturning the Committee's decision change and whether a subsection (5) application to vary can be used alongside or in addition to an appeal and whether it is for use after appeal periods have ended and whether it restarts the appeal period.

[11] Whilst adjourning the hearing of this application for leave to apply for Judicial Review, I do not give any indication as to whether I find the applicant's complaints are well founded. I do find that a response to the applicant's letter of 18th is required for issues of procedural fairness. I will not, in the interim stay the suspension or payment of fines, compensation and costs. There is no appeal extant and the variation question only arose in argument. However, I will require the Law Society to respond to the variation application by 3.00 p.m. on 12th October.

[12] Accordingly I will adjourn this case to a date to be agreed with the parties. In the interim Mr. Matawalu's suspension from practice along with the requirements to pay the fine, compensation and costs will continue. I will postpone consideration of the costs of the current application until the same date.

A handwritten signature in black ink, appearing to read 'R.J. Coventry', with a horizontal line underneath.

(R.J. Coventry)

JUDGE