

**IN THE INDEPENDENT  
LEGAL SERVICES COMMISSION**

**NO. 004/2011**

**BETWEEN: CHIEF REGISTRAR**

**Applicant**

**AND: ADI KOLORA NALIVA**

**Respondent**

**Applicant : Ms MRakai**  
**Respondent : Mr A Naco**

**Date of Hearing : 5<sup>th</sup> December 2011**  
**Date of Ruling : 5<sup>th</sup> December 2011**

**EXTEMPORE JUDGMENTON SENTENCE**

1. The Respondent has pleaded guilty to five counts of unsatisfactory professional conduct.
2. I find the allegations proved with respect to those five counts which are particularized as follows:

**Count 1**

**Adi Kolora Naliva a legal practitioner, on the 22<sup>nd</sup> day of March 2011, being employed as a Legal Officer by the Fiji Public Trustee Corporation Limited, appeared in the Suva Magistrate's Court on behalf of the Corporation in the matter between NLTB v Ratu David Toganivalu Civil Matter No. 43 of 2011 without a valid practising certificate, which conduct was a contravention of the provisions of Section 52(1)(a) of the Legal Practitioners Decree 2009.**

**Count 2**

**Adi Kolora Naliva a legal practitioner, on the 22<sup>nd</sup> day of March 2011, being employed as a Legal Officer by the Fiji Public Trustee Corporation Limited, appeared in the Suva Magistrate's Court on behalf of the Corporation in the matter between NLTB v Bal Singh f/n Bhairo Singh Civil Matter No. 44 of 2011 without a valid practising certificate, which conduct was a contravention of the provisions of Section 52(1)(a) of the Legal Practitioners Decree 2009.**

**Count 3**

*Adi Kolora Naliva a legal practitioner, on the 1<sup>st</sup> day of April 2011, being employed as a Legal Officer by the Fiji Public Trustee Corporation Limited, appeared before the Master of the High Court in Suva on behalf of the Corporation in the matter of TokasaTuwal HBP 280/10 without a valid practising certificate, which conduct was a contravention of the provisions of Section 52(1)(a) of the Legal Practitioners Decree 2009.*

**Count 4**

*Adi Kolora Naliva a legal practitioner, on the 4<sup>th</sup> day of April 2011, being employed as a Legal Officer by the Fiji Public Trustee Corporation Limited, appeared in the Suva Magistrate's Court on behalf of the Corporation in the matter between Suva City Council vPublic Trustee of FijiCriminal Matter No. 55 of 2009 without a valid practising certificate, which conduct was a contravention of the provisions of Section 52(1) of the Legal Practitioners Decree 2009.*

**Count 5**

*Adi Kolora Naliva a legal practitioner, on the 22<sup>nd</sup> day of March 2011, being employed as a Legal Officer by the Fiji Public Trustee Corporation Limited, not being the holder of a valid practising certificate, acted as a Commissioner for Oaths by witnessing a statutory declaration of one Jitendra Raj Sami, certifying a copy of his driving licence as being a true copy of the original and affixing her Commissioner for Oaths stamp, when the said Adi Kolora Naliva was not a Commissioner for Oath, which conduct occurred in connection with Ms.Naliva's practice of law, falling short of the standards of competence and diligence that a member of the public is entitled to expect of a reasonably competent or professional legal practitioner.*

3. Four of the five counts relate to appearances on the mention of matters before the Magistrate Court and the Master of the High Court.
4. The fifth matter relates to the exercise of the function of a Commissioner for Oaths.

**AGREED FACTS**

5. The Applicant and Respondent have agreed on a set of facts which are that:
  - a. The Respondent has been employed by Fiji Public Trustee Corporation Limited since 7<sup>th</sup> February 2011.
  - b. The Respondent was admitted to the High Court of Fiji on the 28<sup>th</sup> August 2009.
  - c. The Legal Practitioners Unit under the office of the Chief Registrar is responsible for

issuing practicing certificates to legal practitioners.

- d. The Respondent was issued with a practicing certificate for the period 1<sup>st</sup> March 2010 to 20<sup>th</sup> February 2011.
- e. By letter dated 18<sup>th</sup> January 2011 the Applicant notified the Respondent that she had not accumulated and continuing legal education points for the renewal of her practicing certificate for 2011.
- f. In a letter dated the 8<sup>th</sup> of February 2011 the Respondent wrote to the Applicant advising that she has not accumulated any CLE points and sought an exemption on the basis that as a result of her financial situation she was unable to pay for attendance at conferences.
- g. In a letter dated 9<sup>th</sup> of February 2011 the Fiji Public Trustees Corporation Limited wrote to the Applicant advising that the Respondent had just been duly appointed as Legal Officer and that they sought an exemption on her behalf as they needed her to appear in court on the 21<sup>st</sup> of February 2011.
- h. The Legal Practitioners Unit received an application for renewal of the Respondent's Practicing Certificate on the 28<sup>th</sup> day of February, 2011 with the filing fees of \$350.00.
- i. On the 28<sup>th</sup> February, 2011 the Principal Legal Officer, Ms Virisila Lidise wrote a minute to the Applicant advising her of the Respondent's request for exemption and that if the application was not processed by the 1<sup>st</sup> of March 2011, then the Respondent would have to be advised of the restrictions as to her ability to practice.
- j. On the 1<sup>st</sup> March, 2011 the Applicant in response to Ms Lidise's minute instructed that she would not grant exemption. However, she recommended that that the matter be referred to the Permanent Secretary for Justice who is also the Chairman of the Board of Legal Education for directions.
- k. On or about the 1<sup>st</sup> March, 2011 Ms Lidise telephoned the Respondent and informed her that she was not to make any court appearances or give legal advice as her application for renewal of her Practicing Certificate was still pending.
- l. In a memorandum dated 16<sup>th</sup> March 2011 the Applicant sought the assistance of

- the Chairman of the Board of Legal Education regarding the Respondent's application for exemption.
- m. Whilst the Respondent's application for renewal and exemption was still in process, the Respondent on the 22<sup>nd</sup> of March, 2011 witnessed a statutory declaration by one Jitendra Raj Sami. On the same day, she certified a true copy of Jitendra Raj Sami's Driving Licence.
  - n. In a letter dated 7<sup>th</sup> April 2011, the Applicant wrote to the Respondent informing her that no legal practitioner would be given exemption and that any further application for exemption was to be directed to the Chairman of the Board of Legal Education. Further the Respondent was advised to refrain from advising the public and making court appearances.
  - o. In a letter dated 14<sup>th</sup> day of April, 2011 the Respondent wrote to the Solicitor General seeking exemption from the compliance with requirement to undergo 10 hours of Continuing Legal Education points. The reasons given related among other things to the Respondent's difficult financial position. The Respondent also enclosed relevant letters which were sent to the Applicant.
  - p. In a letter dated 14<sup>th</sup> April, 2011 the Respondent's employer wrote a letter to the Permanent Secretary for Justice supporting the Respondent's application for exemption.
  - q. In a letter dated 19<sup>th</sup> April, 2011 the Permanent Secretary for Justice wrote to the Applicant stating that the Respondent had presented no valid reason for exemption and that she needed to obtain her CLE points before her renewal could be considered.
  - r. In a letter dated 18<sup>th</sup> day of April, 2011 the Applicant wrote to the Chief Executive Officer of the Fiji Public Trustee Corporation Limited advising that the application for exemption from compliance with the CLE requirement made on behalf of the Respondent was refused. The letter further stated that the Respondent was not to appear in any court or tribunal in Fiji.
  - s. Subsequently the Legal Practitioners Unit received information that the Respondent had appeared in the Suva High Court before Master in the matter, FNPF HBP 280/10 of TokasaTaoi (deceased) on behalf of her employer on Friday 1<sup>st</sup> April, 2011 at 9am. This information was subsequently verified through the respective court file notes.
  - t. The Respondent attended an Appellate Advocacy Workshop that was conducted on the 6<sup>th</sup> - 7<sup>th</sup> May, 2011 by the Legal Aid Commission. In a letter

dated 10<sup>th</sup> May 2011 the Director for Legal Aid Commission submitted the name of the Respondent as one of the participants of this Workshop to the Legal Practitioners Unit and that she be awarded 10 CLE points after completing the training.

- u. The Legal Practitioners Unit received a further application for renewal of the Respondent's Practicing Certificate by the Respondent on the 10<sup>th</sup> of May 2011.
  - v. Consequently, in a letter dated 14<sup>th</sup> day of June, 2011 the Applicant wrote to the Respondent informing that investigations had commenced against her as a result of her alleged court appearances following the expiry of her Practicing Certificate on the 28<sup>th</sup> February, 2011. The Respondent was required to provide details for all the matters she appeared in.
  - w. In a letter dated 27<sup>th</sup> June, 2011 the Respondent wrote to the Applicant stating all the court appearances she made whilst her Practicing Certificate was being processed.
6. Those admissions resulted in counts 1 to 4 detailed above.

#### **SUBJECTIVE MATTERS**

- 7. The Respondent is a young practitioner having been admitted on the 28<sup>th</sup> of August 2009.
- 8. She made her application to renew her practicing certificate in a timely manner as required.
- 9. She made a plea to be exempt from the requirements of 10 points of continuing legal education.
- 10. When her application for exemption was refused she was ultimately successful in attending an appropriate course and obtained the necessary continuing legal education points on the 6<sup>th</sup> and 7<sup>th</sup> of May 2011.
- 11. Notwithstanding that she was then compliant with the requirements to have her practicing certificate renewed the Chief Registrar refused to issue a practicing certificate to her.
- 12. The appearances were made it is said on her behalf pursuant to an interpretation of section 17 of the Fiji Public Trustee Corporation Limited Act 2006 which gives a right of

appearance on behalf of the Corporation *to a duly admitted legal practitioner* no reference is made to a practitioner holding a current practicing certificate.

13. It is submitted on behalf of the Respondent there have been no appearances in any court or tribunal since June of this year.
14. The effect of this is that the Respondent's practicing certificate has been effectively suspended for a period of six months.

### CONCLUSION

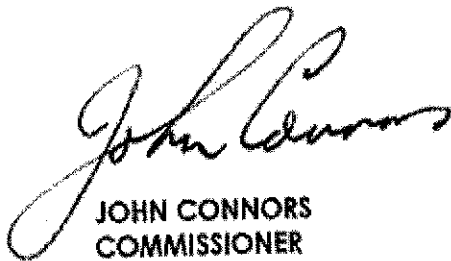
15. The need for there to be a licensing requirement with respect to professionals including legal practitioners is obvious. The Legal Practitioners Decree sets up a regime to facilitate that occurring.
16. The Legal Practitioners Decree creates a criminal offence for a person who practices without a practicing certificate and prescribes a monetary penalty for that offence.
17. Indeed it is equally obvious that if there were not a regime that was properly monitored and managed that the control of the profession would disappear and the consequences of that would be that the community would not be protected which is the intent of the licensing requirements of legislation such as the Legal Practitioners Decree.
18. As I have said in an earlier matter I find myself significantly restrained in the penalty that I am able to impose on the Respondent by virtue of the action taken by the Chief Registrar in refusing to issue a practicing certificate notwithstanding that the Respondent was compliant in that she tendered the prescribed fees, completed the prescribed form and had the prescribed continuing legal education points.
19. But for this constraint I would suspend the Respondent's practicing certificate for a period of three months or even six months may be considered appropriate but I reiterate I am constrained from imposing any such penalty by virtue of the Applicant's action.
20. As the fundamental cause of the Respondent being before the Commission was her impecuniosity and as she is now in employment but earning only \$18,000 gross per annum with the responsibility of financially assisting her brother who is a university student and her parents I don't consider a monetary penalty to be appropriate in the particular circumstances of this matter.
21. I do not intend to diminish the seriousness of the conduct of the Respondent by the

penalty I intend to impose.

22. This penalty is imposed merely by virtue of the subjective factors present in this matter the most dominant of which is the penalty already suffered, that is a period of suspension for a term of six months.

**ORDERS**

1. The Respondent is to be publicly reprimanded.

  
JOHN CONNORS  
COMMISSIONER



5 DECEMBER 2011