

IN THE INDEPENDENT LEGAL SERVICES COMMISSION

AT SUVA

No. 002 OF 2011

BETWEEN : **CHIEF REGISTRAR**
Applicant

AND : **KINI MARAIWAI**
First Respondent

RAJENDRA CHAUDHRY

Second Respondent

1st Respondent Absent

2nd Respondent in Person

Date of Application : **18th July 2012.**

Date of Ruling : **18th July 2012**

RULING

1. After the Chief Registrar had closed the case against the first and second respondent, the second respondent made an application to the Commission to find a no case to answer in respect of Counts 4 and 5 which lie on the indictment against him.

2. The basis of Mr. Chaudhry's submission is that neither Section 82(i)(b) nor Section 83(i)(a) of the Legal Practitioners' Decree create offences; that they are merely definition sections with no offence stated nor penalty and as a result he can be regarded as not having been charged with any offence.
3. Mr. Chaudhry extends his argument with respect to Count 5 in which he submits that the breach of conduct complained of (namely 3.2 of the Rules of Professional Conduct and Practice) are not apposite to his complaints about a Judge.
4. Section 3.2 of the Rules reads as follows:

"3.2 A practitioner shall at all times:-

 - (i) act with due courtesy to the Court
 - (ii) take all reasonable steps to avoid unnecessary expense or waste of the courts time."
5. The Registrar bases her complaint against the second respondent in Count 5, on the strength of two letters he wrote to her on the 15th April 2012 which were written in response to the Chief Registrar's initial enquiries into the complaint.
6. Mr. Chaudhry submits that as his comments about the Judge were by way of correspondence and not within the walls of a courtroom, he is not caught by the rule propounded in Section 3(2). He admits that it would be professionally unfit for him to harangue a Judge in his Court but denies that anything said outside the Court is covered by the Rules.

7. Analysis

Mr. Chaudhry's application is based on a misconception of the nature of these proceedings. This is not a trial where charges with specific penalties are laid against practitioners who the Chief Registrar believes have offended against the rules of practice and procedure.

8. The Legal Practitioner's Decree clearly sets out a procedure for the instigation of proceedings before the Commission. By Section 99 she receives complaints, they are investigated under Section 100, she can call for an explanation (Section 105) and if deemed appropriate, she may then commence proceedings before the Commission (Section 111). As can be seen, no charges as such are laid.
9. The Commission then conducts a hearing into the Chief Registrar's application (Section 112) and will decide after hearing whether the practitioner has "engaged in professional misconduct or unsatisfactory professional conduct"(Section 121(1)) and then will move to make appropriate orders.
10. There being no charges laid as there are in Court proceedings, it is not open to the Respondent to move a no case submission. It will be after a proper hearing into the application laid by the Chief Registrar that the Commission will decide whether the allegations are established or not.
11. The definitions of "professional misconduct" or "unsatisfactory professional conduct" as set out in Sections 81 and 82 and further exemplified in Section 83 are but definitions of misconduct to aid the Commission in its deliberations. They are not, and never could be interpreted as, charges.

12. The Respondent's submission that the Legislation is "penal" is erroneous and cannot be relied on. The cases he cites as authority for interpretation of penal provisions are totally irrelevant to proceedings before a Commission.

13. In the premises, the application is misconceived and it is refused.



A handwritten signature in black ink, appearing to read "Paul K. Madigan".

Justice Paul K. Madigan
Commissioner

At Suva

18th July, 2012