

**IN THE INDEPENDENT  
LEGAL SERVICES COMMISSION**

No. 004 of 2017

BETWEEN:

**ASERI VAKALOLOMA**

Applicant

AND:

**CHIEF REGISTRAR**

Respondent

Coram: Dr. T.V. Hickie, Commissioner

**Applicant:** Ms. B. Malimali

**Respondent:** Mr. T. Kilakila

**Date of Hearing:** 29<sup>th</sup> November 2017

**Date of Judgment:** 6<sup>th</sup> December 2017

**EX TEMPORE RULING**  
**ON ORAL INTERLOCUTORY APPLICATION**  
**FOR**  
**ISSUING OF INTERIM PRACTISING CERTIFICATE**  
**BY THE CHIEF REGISTRAR'S OFFICE**

**1. The Application**

- [1] This is an application for the granting of an interim practising certificate as from tomorrow, 7<sup>th</sup> December 2017, until the next mention of this matter on Monday, 5<sup>th</sup> February 2018, when an update will be provided by the Counsel of the Chief Registrar as to Count 1.
- [2] The hearing of the substantive matter began on 27<sup>th</sup> September 2017 (with a time allocation of three days) in relation to four allegations of Professional Misconduct against the legal practitioner.
- [3] As a result of objections raised, Counsel for the Chief Registrar was granted a number of adjournments during those Sittings to find three witnesses and to produce some associated documentation.

- [4] At the conclusion of those Sittings, the matter was adjourned part-heard whilst the parties provided written submissions for a ruling as to whether a judgment from the Supreme Court of Nauru (whereby it was ordered that the name of the legal practitioner be struck off from the Roll of legal practitioners in Nauru), could be tendered in disciplinary proceedings in Fiji.
- [5] The matter was mentioned at the beginning of these Sittings, when the Applicant made an oral application for the granting of an interim practising certificate until Thursday, 7<sup>th</sup> December 2017, the final day of the Sittings. That application was granted for which Counsel for the Respondent Chief Registrar indicated that he did not require a written ruling.
- [6] In the meantime, a ruling was provided the following day, on 28<sup>th</sup> November 2017, wherein I advised the parties that I had come to the view that the judgment from Nauru could be tendered in the substantive proceedings alleging professional misconduct in Fiji, however, the weight that I may give to that judgment from Nauru will be another matter entirely. In my ruling, I put Counsel for the Chief Registrar on notice that simply tendering the judgment from Nauru without more may not satisfy the onus that he carries. Further, I noted that in my view, the judgment from Nauru raised three matters relevant to the disciplinary proceedings in Fiji. That is, whether what the legal practitioner did in Nauru was improper and that, even if it did amount to professional misconduct, did it automatically follow that the name of the legal practitioner should be struck from the Roll of legal practitioners. Further, if it was correct that the legal practitioner was not given an opportunity to make submissions in mitigation prior to the judgment being handed down in Nauru, then did it follow that the judgment was fundamentally flawed and if so, then what weight, if any, could be attributed to it in misconduct proceedings in Fiji?
- [7] In view of my ruling, I stood the matter down to give both Counsel time to consider their positions and to seek instructions including whether each now wished to make separate oral applications for an adjournment to arrange for witnesses from Nauru to come to Fiji or for the Commission to take their evidence by "Skype" or some other form of video telecommunication. In addition, whether Counsel needed to discuss between them how they wished to

jointly proceed. At the request of Counsel for the Chief Registrar the matter as adjourned until the following day, 29<sup>th</sup> November 2017, to allow Counsel the opportunity to send email to the Chief Registrar who was overseas and, hopefully, obtain instructions. Counsel for the legal practitioner indicated that she would be agreeing to the adjournment until the February 2018 Sittings, however, she submitted that, in the circumstances, the Chief Registrar should not be opposing an application for continuation of the legal practitioner's interim practising certificate.

[8] On 29<sup>th</sup> November 2017, Counsel for the Chief Registrar advised that as he had not received a response from the Chief Registrar he sought a further adjournment until 6<sup>th</sup> December 2017. In relation to the question of the legal practitioner's oral application for the continuation of an interim practising certificate until the commencement of the February 2018 Sittings, Counsel for the Chief Registrar indicated that he was relying upon his previous submissions (made in relation to the two oral applications) heard during the September 2017 Sittings. Further, he was not agreeing to the application but he was also not opposing the application.

[9] In support of the application that the legal practitioner be granted an interim practising certificate until the commencement of the February 2018 Sittings, Counsel for the Applicant legal practitioner indicated that she was relying upon her previous submissions made in relation to the two oral applications heard during the September 2017 Sittings, for which the rulings were made on 18<sup>th</sup> and 29<sup>th</sup> September 2017. I note that those submissions cited, in turn, the reasons set out in my ex tempore ruling in *Vosarogo and Vodo* dated 23<sup>rd</sup> September 2016. (See *Chief Registrar v Vosarogo; Chief Registrar v Vodo*, ILSC, Case No 002 and 003 of 2016, 23 September 2016; [2016] FJILSC 6, <<http://www.pacii.org/fj/cases/FJILSC/2016/6.html>>.) In particular, Counsel for the Applicant legal practitioner had relied upon paragraph [17] therein:

*The submissions made on behalf of each Respondent have include reference to the Constitution as the statement by Justice Madigan in **Chief Registrar v Devanesh Prakash Sharma** [2014] FJILASC 7 (Unreported, ILSC Case No 029 of 2013, 12 November 2014) at [52]:*

*Although practitioners are not "accused persons" as envisaged by the Constitution, I will now declare that for this matter and all future*

*matters before this Commission, the rights of persons being investigated and charged under the Legal Practitioners' Decree will be afforded all of the rights afforded to accused persons in the Constitution 2013.'*

*In that regard, Counsel for Mr Vosarago has highlighted the presumption of innocence (s.14(2)(a) and right to trial without unreasonable delay (s.14(2)(g). Ms Vodo has also cited s.14(2)(a) as well as the right to economic participation (s.32(1)).'*

[10] Further, Counsel for the Applicant legal practitioner submitted:

- (1) Through no fault of the legal practitioner, Counsel for the Chief Registrar has not been able to close his case;
- (2) If the application were refused, the Applicant legal practitioner would be deprived of a practising certificate and his livelihood for two months remembering that he is 62 years of age with a family. I also note that this was discussed by me in my ex tempore ruling in *Vosarago and Vodo* of 23<sup>rd</sup> September 2016 wherein I discussed at [11]-[12] the decision of Commissioner Connors in *Chief Registrar v Cevalawa* (Unreported, ILSC, Case No. 014 of 2015, 7 October 2011; PaCLII: FJILSC 10, <<http://www.paclii.org/fj/cases/FJILSC/2011/10.html>>, Orders.) I noted in *Vosarago and Vodo* at [13] that: '*... I am concerned, as was Commissioner Connors in Cevalawa, that as the Commission sits part-time this can have an extremely detrimental impact on a practitioner ...*';
- (3) The condition in the previous grant of an interim practising certificate requiring the practitioner to provide fortnightly reports to the Chief Registrar has been complied with and the latest report due last Friday was provided on Monday at the beginning of the Sittings. Therefore, the interests of the public can be protected with such a condition;
- (4) In my rulings of 18<sup>th</sup> and 29<sup>th</sup> September 2017, I took into account that Count 2, if proven, would be a fine and possibly a short suspension and that Counts 3 and 4, if proven, would probably be a fine. This then leaves Count 1 for which the Applicant legal practitioner is arguing due process and disputing what the Chief Registrar has alleged is the basis of that count and how, without more, that can be the basis of a disciplinary offence in this jurisdiction. Counsel for the Applicant legal practitioner noted that there are more submissions to be filed in relation to Count 1.

[11] As I mentioned in my previous Ruling of 29<sup>th</sup> September 2017, obviously, as to the merits of the four counts, these are all matters to be decided after hearing all of the evidence at a final hearing and, as we are still dealing with the case of the Chief Registrar, I make no formal findings at this stage. I am satisfied, however, that the four counts are being vigorously defended.

[12] My major concern, as I raised with Counsel for the Applicant legal practitioner at the interim hearings in June and September 2017, is that the Applicant has been struck off the Roll in Nauru. I note, however, that this has now the subject of written submissions for which I delivered a Ruling on 28<sup>th</sup> November 2017. I do not wish to make any further comment on that issue at this stage. In that regard, I note that the current status of the substantive matter is that it is part-heard with Counsel for the Chief Registrar to decide before the call over on 5<sup>th</sup> February 2018, whether (and if so what) further evidence he needs to call before closing his case.

[13] Counsel have appeared before me again today when Counsel for the Applicant Chief Registrar has highlighted the ongoing problems that he has been having liaising with relevant persons in Nauru and that he needs more time to decide what persons may need to be called as well as to have witness statements prepared together with any relevant documentation that may also need to be provided to Counsel for the Respondent as well as filed with this Commission. Counsel for the Applicant Chief Registrar has said his position on the granting of an interim practising certificate until the commencement of the next Sittings on 5<sup>th</sup> February 2018 is that it is not opposed.

[14] In the circumstances, I propose to grant the application on the same terms and conditions as per my Order of 29<sup>th</sup> September 2017.

### **ORDER**

[1r] The formal Order of the Commission is:

1. Pursuant to Section 121 (3) of the *Legal Practitioners Act 2009*, the Chief

Registrar shall issue a Practicing Certificate to the Respondent from today, 6<sup>th</sup> December 2017 up to and including 5<sup>th</sup> February 2018, on payment of the prescribed pro rata fees, and such further conditions as follows:

- (1) The Respondent and his law firm Vakaloloma & Associates is to operate under the direct supervision of Naco Chambers until 5<sup>th</sup> February 2018.
- (2) The Respondent is to provide fortnightly reports of all litigated and non-litigated matters attended by Vakaloloma & Associates until the 5<sup>th</sup> February 2018.
- (3) The subject fortnightly reports to include any special remarks highlighting by the supervisor from Naco Chambers only operation of Vakaloloma & Associates until the 5<sup>th</sup> February 2018.

Dated this 6<sup>th</sup> day of December 2017.

