

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CIVIL APPEAL NO. ABU 0045 OF 2023
[ILSC NO: 19 OF 2021]

BETWEEN : SURESH CHANDRA
Appellant

AND : CHIEF REGISTRAR
Respondent

Coram : Dr. Almeida Guneratne, P

Counsel : Mr V. Maharaj for the Appellant
Mr A. Chand and Ms A. Vikash for the Respondent

Date of Hearing : 26th July, 2023

Date of Decision : 7th August, 2023

DECISION

- [1] The Appellant (a legal practitioner) in this “*application*” seeks a “*stay of execution*” of the orders made by the Independent Legal Services Commission (the Commission) at the Sanction Ruling dated 25th April, 2023 consequent to it determining the Appellant was found to be in breach of Section 82(1)(b) of the Legal Practitioner Act of 2009 (the Act)

(initial determination). The Appellant having filed an appeal within time as prescribed by law and having paid security for costs to prosecute the appeal seeks a stay of the said orders made at the Sanction Ruling pending the hearing and determination of the appeal.

Orders made by the Commission at the said Sanction Ruling

[2] *"In the above circumstances I make the following orders:*

- (a) The name of the Respondent Legal Practitioner Mr Suresh Chandra be struck from the roll of the practitioner's held by the Chief Registrar.*
- (b) It is directed that the Law Firm MC Lawyers seized to operate as or engage in legal practice with immediate effect.*
- (c) That the Respondent Practitioner Mr Suresh Chandra pay a fine in a sum of \$500,000 to the Chief Registrar. If and when such fine is paid the Chief Registrar is hereby directed and ordered to pay the said sum to the credit of the Trust Account of MC Lawyers or to otherwise utilize the said sum to meet and settle the sums due to the clients of MC Lawyers.*
- (d) Pursuant to section 124 of the Legal Practitioners Act 2009, the costs payable by the Respondent towards the reasonable costs incurred by Chief Registrar is summarily assessed in the sum of \$2,000.00.*
- (e) Both of the above sums set out above are to be paid within three months of today, that is, by 12 noon on 26th July 2023, to be paid to the Chief Registrar.*

Dated the 25th day of April, 2023. "

Relevant criteria to be considered in deciding whether or not to grant "a stay"

[3] Those criteria are well entrenched in the judicial jurisprudence of Fiji. I shall only refer to some of the leading precedents in that regard.

"... Natural Waters of Viti Ltd. v. Crystal Clear Mineral Water (Fiji) Ltd [2005] FJCA46; Prasad v. Hamid [2004] FJCA10; New World Ltd v. Vanualevu Hardware (Fiji) Ltd [2015] FJCA172; Nath v. Narayan [2020] FJCA67 and Saheed Ahmed v. Manoj Kumar & Others [2020] FJCA89 and Vitilevu

Construction Limited v. Mobile Crane Hire Limited [ABU 0101/2020, 25th January 2021].”

Application and consideration of those criteria in the facts and circumstances of the present case

- [4] Bearing those criteria in mind, which I shall refer to in the course of the ensuing discussion, which I shall endeavor to do in the light of the submissions made on behalf of the parties in relation to the orders made by the Commission.

Competing factors that needed to be considered and discussion thereon

- [5] To begin with, while the Commissioner had arrived at strong findings against the Appellant in his decisions of 23rd and 24th April, 2023 the Appellant has urged well drafted grounds of appeal against the said decisions which prompted me to reflect that, the Appellant could very well have an arguable case. But then, that is a matter for the full Court to resolve in appeal, the application before me being for “*a stay*” pending that appeal.
- [6] However, if I were to grant a stay without any qualification in relation to Order (a) handed down by the Commission (referred to in paragraph [2]) above, it would amount to something in the nature of re-inventing the wheel which I do not think a single judge has jurisdiction to respond to under Section 20(1)(k) of the Court of Appeal Act, whether it being “*merely incidental or even ancillary*” on the rationale laid down in **Silimaibau v Minister of Sugar Industry** [2004] HBC 155/01L, 5th March 2004 per Gates, J.
- [7] It would appear that, it is somewhat in appreciation of that fact that, in a somewhat condescending stance, the Appellant in paragraph (c) of his summons dated 26th July has sought a direction to the Respondent (Chief Registrar) to re-consider granting a temporary restricted Practicing Certificate to the Appellant.

- [8] For the reasons I have adduced above, I am not inclined to grant the said relief, given the additional fact that on the Appellant's own submission he has been out of practice since September, 2020.
- [9] There is yet another fact that I could not shut my mind to, and that is, the delay on the part of the Appellant in seeking "*the stay*."
- [10] The "*Sanction Ruling*" of the Commissioner was on 25th April, 2023 which was to take effect on 26th July, 2023.
- [11] The summons seeking "*a stay*" thereof is dated the same day.

Procrastination is not only the thief of time but it can also affect interests in litigation

- [12] I could not find any reasonable excuse as to why the Appellant had delayed in moving this court until the eleventh hour.
- [13] Consequently, taking into consideration the twin factors of prejudice and balance of convenience in granting or not "*a stay*", the Respondent in his statutory role to protect the conduct of affairs of the legal profession in the public interest and the Appellant's right to practice his profession which in any event he has been out of since September, 2020. I was not inclined to grant "*a stay*" in the broad terms sought in paragraph (a) of the Appellant's summons dated 26th July, 2023.
- [14] Having said all that I now turn to Order (c) of the Sanction Ruling of the Commission.
- [15] (Mr) Maharaj made an impassionate plea in submitting that, the Appellant and his firm has been without work since September, 2020 and it would be well-nigh impossible to pay the fine of \$500,000.00 ordered by the Commission and the failure to do so would lead to bankruptcy of the Appellant and at least "*a stay*" be granted in that regard until the full court hears and determine the Appeal.

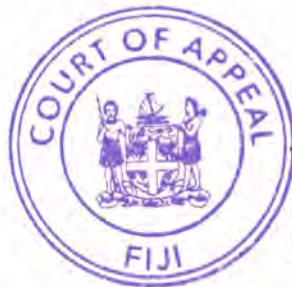
- [16] I must confess that submission of Mr. Maharaj did weigh with me which will be reflected in the ensuing orders I propose to make.
- [17] However, there is the Commissioner's order (d) in the Sanction Ruling for the Appellant to pay to the Chief Registrar the sum of \$2,000.00 which I am not inclined to interfere with in my ensuing orders.
- [18] In the result, in the overall consideration of the facts and circumstances of the application, on a balance I proceed to make the following orders, while acknowledging the fact that Mr Chand (with Ms Vikash) agreed to have the appeal pending before the full court to be listed for hearing in the September session, although there are older cases for hearing which was an alternative relief prayed for by the Appellant in paragraph (c) of his Summons dated 26th July (filed on 25th July, 2023).

Orders of Court:

1. *The Stay sought in the terms prayed for in paragraph (a) of the Appellant's Summons dated 26th July, 2023 is declined;*
2. *The Stay sought in paragraph (b) of the said Summons is refused;*
3. *The direction sought to grant a temporary restricted practicing certificate to the Appellant is refused;*
4. *The payment of \$500,000.00 ordered in the Sanction Ruling of the Commission dated 25th July, 2023 in its order (C) is stayed until the hearing and determination of the Appeal by the full Court;*
5. *However, the Appellant is hereby ordered to pay the costs of \$2,000.00 payable to the Respondent (Chief Registrar) decreed in Order (d) of "the Sanction*

Ruling” of the Commission within 14 days of notice of this decision upon failure of which the stay granted in Order 4 above shall stand lifted.

6. *The Registrar is directed to have the Appeal pending before the full court listed for hearing in the September Court of Appeal session on a date convenient to parties after conferring with them.*
7. *Costs of this application shall be in the final cause of the Appeal.*



Hon. Justice Almeida Guneratne
PRESIDENT, COURT OF APPEAL

Solicitors:

R. Patel Lawyers for the Appellant
Legal Practitioners Unit for the Respondent