

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No. 258 of 2019**

BETWEEN

**KAIAVA TADRAU** of Nawaka Settlement, Nadi, in the Republic of Fiji,  
Barrister and Solicitor.

**PLAINTIFF**

AND

**THE CHIEF REGISTRAR**, Government Buildings, Suva.

**FIRST DEFENDANT**

AND

**THE ACTING OFFICIAL RECEIVER**, Suvavou House, Suva.

**SECOND DEFENDANT**

AND

**THE ATTORNEY GENERAL**, Suvavou House, Suva.

**THIRD DEFENDANT**

**Counsel** : Plaintiff in person  
Mr. T. Kilakila for the 1<sup>st</sup> Defendant  
Ms. R. Pranjivani for the 2<sup>nd</sup> & 3<sup>rd</sup> Defendants

**Date of Hearing** : 16<sup>th</sup> October 2019

**Date Judgment** : 13<sup>th</sup> November 2019

## JUDGMENT

- [1] The plaintiff, on 06<sup>th</sup> August 2019 filed the Notice of Motion seeking an order that the Practicing Certificate No. LP615/19 and the Law-Firm Trust Account No. 41663S10 of Tadrau Legal Lawyers be reinstated forthwith.
- [2] On 20<sup>th</sup> February 2019 the 1<sup>st</sup> defendant issued a Practicing Certificate for a period of one year commencing from 01<sup>st</sup> March 2019. The said certificate was cancelled by the 1<sup>st</sup> defendant, under section 44(1)(a) of the Legal Practitioner Act 2009, by his letter dated 07<sup>th</sup> May 2019 for the following reasons (I reproduce here the reasons given by the 1<sup>st</sup> defendant in the said letter):

I note that you have not been declared an un-discharged bankrupt. However, I note from your previous Practicing Certificate application forms (2016 – 2019) that you had been aware of a receiving order made against you by the Nausori Magistrate’s Court.

Although being aware of the receiving order made against you, you did not make any attempts to repay your debts.

In your practicing certificate application form for the period of 1<sup>st</sup> March 2018 to the 28<sup>th</sup> February 2019, you had declared that upon a land sale settlement, you would make the necessary payments to A.K. Lawyers as agreed by Mr. A. K. Narayan.

Moreover, in your Practicing Certificate application for the period 1<sup>st</sup> March 2018 to the 29<sup>th</sup> of February 2020, you had stated that the matter had been settled with Mr. A. K. Narayan.

Upon Liaising with the Acting Official Receiver and upon correspondences from Mr. Adish Narayan, it seems that you have misled my office by stating that the matter has been resolved.

[3] It is common ground that that on 11<sup>th</sup> December 2015 the Magistrate's Court made a receiving order against the plaintiff and one Teresia Rigsby which has not yet been discharged or set aside.

[4] In his application for a Practicing Certificate dated 15<sup>th</sup> February 2016, in response to the question whether he has ever been adjudicated bankrupt in any jurisdiction the plaintiff has stated as follows:

There was an action against Rigsby where I was named as party to the action, then I was a government Prosecutor.

[5] To the question whether he remains an undischarged bankrupt, he has stated I am relying on the outcome of the case that is being ongoing as I was the witnessing officer.

[6] At the time the plaintiff completed and submitted this form he was well aware that the receiving order had already been made.

[6] In the application for a Practicing Certificate dated 28<sup>th</sup> February 2017 he has stated that he had never been adjudicated bankrupt, he is not an undischarged bankrupt and no receiving order had ever been made against him. These statements made in the application are incorrect.

[7] The application relevant to the matter before this court is the application dated 08<sup>th</sup> February 2018.

[8] In that application he has admitted that he had been adjudicated bankrupt and stated further that he was awaiting land sale settlement in end of February or early March and he would then make payment to A.K. Lawyers in Ba as agreed by Mr. A.K. Narayan.

[9] To the question whether he remains undischarged bankrupt he has responded in the negative and states further that they have agreed to settle out of court.



[10] To the question whether he has ever had a receiving order made against him he response is no, the case is still on foot however, he has agreed to pay as soon as possible.

[11] These information provided by the plaintiff for the purpose of obtaining the practicing certificate are misleading and some are incorrect.

[12] Section 44(1)(a) of the Legal Practitioners Act 2009 provides:

(1) The Registrar may refuse to issue a practicing certificate, and the Registrar may cancel a practicing certificate issued pursuant to this part if the applicant for or the holder of such certificate as the case may be –

(a) is an undischarged bankrupt or has taken advantage of the law relating to bankruptcy;

[13] The plaintiff submitted that he was not given a hearing before cancelling his certificate. The right to be heard. The statute does not provide for a hearing before cancellation of a Practicing Certificate. Section 44(2) of the Act provides:

The registrar shall promptly give notice in writing to any applicant whose application for a practicing certificate is refused and to any person whose practicing certificate is cancelled of such refusal or cancellation and if so required by the applicant or holder the Registrar as the case may be shall within 14 days after being so required state in writing the grounds for the refusal or cancellation.

[14] In the instant case there is no evidence that the plaintiff made a request for the grounds of cancellation of his Practicing certificate. On the other hand, the cancellation of the Practicing Certificate was based on the material available in the application itself.

[15] The plaintiff submitted that the 1<sup>st</sup> defendant has failed to act upon section 44(1)(d) the Legal Practitioners Act 2009 which provides:

(d) has after being called upon by the Registrar so to do failed to give to the Registrar an explanation in writing which is in the opinion of the Registrar sufficient and satisfactory in the circumstances touching any matter relating to his or her conduct or practice as a practitioner or to give to the Registrar any document (or copy thereof), in his or her

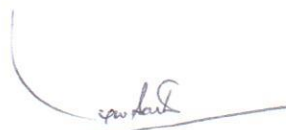
custody or possession and which he or she is entitled at law so to give required by the Registrar to enable the Registrar to satisfy itself concerning an explanation and such failure still continues;

- [16] Sub sections (1)(a) to (j) of section 44 contain separate grounds for the Registrar to either refuse an application for Practicing Certificate or to cancel a Practicing Certificate already granted. There is no requirement in law to read section 44(1)(a) with section 44(1)(d).
- [17] The plaintiff is not entitled in law to challenge the decision of the Magistrate's Court in these proceedings. He has in fact made two applications on 26<sup>th</sup> October 2016 and 28<sup>th</sup> February 2017 to the Magistrate's Court of Nausori to have the receiving order set aside and both applications have been struck out with costs. The 1<sup>st</sup> defendant submitted that the plaintiff has not yet paid costs ordered by the court.
- [18] For the reasons aforesaid the court is of the view that the plaintiff has not been able to challenge the decision of the 1<sup>st</sup> defendant successfully.

**ORDERS**

1. The Notice of Motion filed on 06<sup>th</sup> August 2019 is struck out.
2. I make no order for costs.



  
Lyone Seneviratne

**JUDGE**

13<sup>th</sup> November 2019