

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 17 of 2023

BETWEEN

SHARANJIT KAUR SINDHU also known as SHARAN SINDHU also known as SHARAN LATEEF also known as SHARANJIT KAUR LATEEF of 19 Sheoak Street, Middle Park QLD 4074, Australia, Accountant, as Administratrix and Trustee of the Estate of REXINA SHIREEN LATEEF.

PLAINTIFF

AND

SHAZRAN ABDUL LATEEF also known as CAESAR LATEEF of Lot 5 Albert Lee Place, Suva, Legal Practitioner.

DEFENDANT

Counsel	:	Mr. R. Singh for the Plaintiff Mr. G. O'Discoll for Defendant
Date of Hearing	:	27 th April 2023
Date of Ruling	:	19 th May 2023

RULING

[on recusal application]

- [1] Having heard the Plaintiff on their *ex parte* Originating Summons the Court granted following orders on 02.03.2023.
1. An interim charging order placed on the properties below and valid till the determination of the show cause by the Defendant.
 - a. the land contained in Certificate of Title No.23458 being Lot 3 on the Deposited Plan No.57774 in the city of Suva in the island of Viti Levu having an area of 1032 square metres (Albert Lee Property)
 - b. one undivided half share in Certificate of Title No.7121 being Lot 7 on the Deposited Plan No.1482 in the city of Suva in the island of Viti Levu having an area of 27.3 perches (Denison road Property)
 - c. one undivided half share in State sublease No.606654 being Unit 1S on SLP 30, Denarau Island in the Tikina of Nadi in the province of Ba having an area of 87 square metres (Port Denarau Office)
 - d. two fully paid Class A ordinary shares in Rankam Holdings Pte Limited (company registration number 13734) (Rankam Shares)
 2. The Defendant to attend court on 24th March 2023 to show cause as to why the interim charging order should not be made absolute.
 3. Plaintiff to attend to the service of the orders as per the rules of the court.
- [2] On 24.03.2023 Mr. O'driscoll made an oral application in court for me to recuse from hearing this matter any further. Subsequent to the directions of the Court the Defendant filed a formal application supported by an affidavit sworn by Mr. Lateef.

- [3] In that Mr. Lateef avers that prior to becoming a judge in my earlier capacity as the Chief Registrar, I have cancelled his Practicing Certificate in April 2019 and then refused to uplift the cancellation.
- [4] Mr. Lateef states that he has challenged the decision to cancel his Practicing Certificate and the Chief Registrar and the Attorney General were made parties to the action. Further in that action, upon Court's suggestion my successor has re-issued a Practicing Certificate to Mr. Lateef.
- [5] The Defendant takes up the position that there is a perception of bias due to the reasons stated above and by making the interim orders against him in this action has indicated possibility of biasness.
- [6] The Plaintiff opposes the recusal application and during the hearing submitted that Mr. Lateef's affidavit does not provide particulars of his earlier application. Further Plaintiff argues that the issue relating to the Practicing Certificate has taken place when I was exercising different judicial function as the Chief Registrar and the nature of the issues subject to the present case is wholly different from Mr. Lateef's earlier matter. The issue before the Court is not about the Defendant's ability to practice as a lawyer. It is about the Defendant owing monies to the Plaintiff pursuant to a Court order granted by another Court. That is the position of the Plaintiff.
- [7] The Defendant relied on the ruling of Hon. Justice Rajasinghe in **Fiji Independent Commission Against Corruption (FICAC) v. Laqere** [2017] HAC 53 of 2014, HAC 99 of 2014, HAC 193 of 2014. However the Plaintiff pointed out Court's concluding remarks and His Lordship states "if I continue to hear these three proceedings, I certainly have to determine the credibility and reliability of the same witnesses and their evidence on the same issues which I have already determined in HAC 56 of 2014. Hence, it is apparent, that an informed reasonable fair minded person undoubtedly apprehends that there is a real likelihood or reasonable likelihood of pre-judgment of the witnesses and their

evidence by the Judge". Plaintiff states the present case is totally different from the earlier issue relating to Practicing Certificate of Mr. Lateef.

- [8] Hon. Sriskandaraja JA in the Court of Appeal case of **Tikoniyaroi v. State** [2011] AAU0043 of 2005 stated "the principle that no man shall be judge in his own cause is based on this rule against bias and is intended to ensure that decision makers are as independent as is practicable. The rule of bias, which is the same thing as the principle of *nemo iudex in causa sua causa sua potest* which means literally that no man shall be a judge in his own cause. But as a rule of natural justice that maxim has wider connotation and prevents any person suspected of being biased from deciding a matter.

R v. Gough [1993] UKHL 1; [1993] AC 646 the House of Lords considered various tests in relation to an allegation of bias on the part of a juror in a criminal trial. Having carefully considered the authorities, it was held that direct pecuniary or proprietary interest always disqualified the decision-maker. Outside of that category, it was held that the correct test is whether, in the circumstances of the case, the court considers that there appeared to be a "real danger of bias". In such a case, the decision should not stand. This test is similar to that of the "real likelihood of bias" and it was made clear that it refers to the possibility-not probability – of bias. The "reasonable suspicion test" was thus rejected. It was also held that the same test should be applied in all cases of apparent bias (whether concerning justices, members of inferior tribunals, arbitrators, justices' clerks or jurors). It was held too that the "real danger" test should be applied from the point of view of the court, not from that of the "reasonable man".

- [9] In **Khan v. Chief Registrar** [2014] ABU0068 of 2013 Hon. Gunaratne JA (as His Lordship then was) discussed a matter similar to the one before this Court. In the judgment His Lordship stated "It must be noted that, the learned Commissioner is also a member of the High Court. The Appellant is a senior practitioner appearing frequently in the High Court

before the Commissioner as a High Court Judge. Is the Commissioner then as a Judge required to step down each time the Appellant appears in a case before him?

The application had been based on the fact that, the Commissioner, sitting as a High Court Judge in a case in which Mr. Khan (the Appellant) had appeared in the past had made a reference to him as being 'dishonest'. Refusing the arguments made on the basis of bias His Lordship stated "Mr. Khan may well have harboured a suspicion that, the Commissioner was prejudiced against him. But prejudice must be viewed as distinct from bias. ... In the ever continuing working relationship between the bench and the bar, Judges will naturally form opinions regarding lawyers who appear before them"

[10] In 2003 the Supreme Court of Canada in **Wewaykum Indian Band v. Canada** [2003] 2 SCR 259 had to deal with a matter where two Indian bands claimed exclusive entitlement to two reserves on Vancouver Island. The action was dismissed after trial and was upheld by the Federal Court of Appeal of Canada. Hon. Binnie J provided written judgment with the concurrence of other judges in the Supreme Court and dismissed the appeal. Thereafter one band made access to information to the Department of Justice and requested all records of Binnie J regarding band's claims during his term as a Deputy Minister of Justice. He had supervisory authority over these matters. They were successful in finding information concerning Mr. Binnie as he was then. The Crown filed a motion in the Supreme Court seeking directions. Binnie J filed a statement stating that he has no recollection of any personal involvement.

The bands jointly sought to set aside Binnie J's judgment. The point discussed whether his involvements as Deputy Minister could have given rise to a reasonable apprehension of bias under the Canadian test. The Supreme Court of Canada explicitly held that neither Binnie J's past status as Deputy Minister nor his long standing interest in matters by itself sufficient to justify his disqualification. The Court held that Binnie J's involvement in the dispute was confined to a limited supervisory and administrative role.

- [11] Mr. Lateef in his affidavit states that the summons filed by the Plaintiff should have handled *inter-parte* as the Court is not obliged by the rules to handle it *ex-parte*. Further he states that I should have disclosed the matter filed by the Respondent challenging non issuing of his Practicing Certificate.
- [12] The jurisdiction of the Court to issue a charging order emanates from section 32 of the **High Court Act 1875** and Order 50 rule 1 and 2 of the **High Court Rules 1988**. Order 50 rule 3 provides for an application to be made *ex-parte*. The Plaintiff supported their *ex-parte* application before me on 27.02.2023. The Court delivered its ruling on 02.03.2023 after perusing the papers, the law and written submissions filed. After the delivery of the ruling it had been properly served on the Respondent and given opportunity to show cause.
- [13] The matter relating to Mr. Lateef's Practicing Certificate was part of administrative process that required my supervisory involvement as the Chief Registrar, a process governed by **Legal Practitioners' Act 2009**. Fact that a decision of the Chief Registrar can be challenged in Court of Law shows the legal recourse available to a party aggrieved. Nothing more than that. Thus mere fact that Respondent has challenged a decision made by the Chief Registrar is nothing extraordinary for separate consideration on bias. I do not see much difference between the said scenario and a party aggrieved appealing a decision of a judicial officer to a higher forum as allowed by the law.
- [14] The Plaintiff pointed out the Constitution, in particular section 97 (2) where it empowers the judicial officers by taking an oath to apply provisions of the Constitution and the law without fear, favour or prejudice.
- [15] It takes my mind to a statement made by Lord Bingham in *The Business of Judging: Selected Essays and Speeches* page 69,74 "Such an oath: if one were to attempt a modern paraphrase, it might perhaps be that a judge must free himself of prejudice and partiality

and so conduct himself, in court and out of it, as to give no ground for doubting his ability and willingness to decide cases coming before him solely on their legal and factual merits as they appear to him in the exercise of an objective, independent, and impartial judgment”

[16] I am of the view that the reasons raised by the Respondent would not lead to reasonable apprehension of bias.

[17] Accordingly Court makes following orders.

ORDERS

1. Recusal application is hereby dismissed.
2. Parties to bear cost.



Yohan Liyanage

JUDGE

At Suva on 19th May 2023