

**IN THE INDEPENDENT  
LEGAL SERVICES COMMISSION**

**NO. 001/2011**

**BETWEEN: CHIEF REGISTRAR**

**Applicant**

**A N D: MUHAMMAD SHAMSUD-DEAN SAHU KHAN 1<sup>st</sup> Respondent  
SAHU KHAN & SAHU KHAN 2<sup>nd</sup> Respondent**

**Applicant : Ms V. Lidse, Mr A. Chand & Ms M. Rakai**  
**1<sup>st</sup> Respondent : Ms N Khan**  
**2<sup>nd</sup> Respondent : No Appearance**

**Date of Hearing : 14<sup>th</sup>, 15<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup> July 2011**  
**Date of Ruling : 27<sup>th</sup> September 2011**

**JUDGMENT**

1. The Complainant, Krishna Dutt, is the son of Ram Baran and Ram Kumari.
2. Ram Baran was the owner of Crown Lease 8165 in the Tikina of Labasa and Province of Macuata.
3. The lease was granted on the 1<sup>st</sup> April 1974 for a term of 99 years and registered into Ram Baran's name on the 21<sup>st</sup> of December 1982 [Ex A19].
4. By mortgage 197576 registered on 21<sup>st</sup> December 1982 the property was mortgaged to the Fiji Development Bank.
5. In or about November 1983 Ram Baran sought to transfer the land to Jagat Singh.
6. By letter dated 10<sup>th</sup> November 1983 from Raman Singh & Associates to the Divisional Surveyor, Northern consent to transfer CL1865 was sought for a consideration of \$80,000 [Ex A21].
7. Consent to the transfer was granted on the 2<sup>nd</sup> of December 1983 to a transfer from Ram Baran to Jagat Singh for a consideration of \$80,000 however this transfer did not take place and on the 30<sup>th</sup> March 1984 mortgage 210438 was granted by Ram Baran to the Bank of Baroda for a consideration of \$110,000 and mortgage 197576 to the Fiji

Development Bank was discharged [Ex A31].

8. On the same day a collateral or third party mortgage was granted by Ram Baran over the land [mortgage no. 201439] to secure an advance in the sum of \$30,000 to Jagat Singh [Ex A32].
9. Mortgage no. 210438 was supported by the personal guarantee of Ram Baran [Ex A38].
10. By notice dated 22<sup>nd</sup> May 1985 issued by Sir Vijay Singh & Co on behalf of Jagat Singh demand was made on Ram Baran for payment of the sum of \$25,572.93 pursuant to mortgage 210439 [Ex A34].
11. On 5<sup>th</sup> June 1985 Bank of Baroda made demand on Jagat Singh in the sum of \$77,127.04 (Demand Loan) and \$19,119.91 (Overdraft) [Ex A35].
12. Ram Baran engaged G P Lala & Associates to act on his behalf and resist the demand from Jagat Singh [Ex A37].
13. Proceedings were commenced in the Supreme Court of Fiji on behalf of Ram Baran against Jagat Singh, Singh's Services Limited, Bank of Baroda and the Attorney General for the Government of Fiji (83/1985 Labasa) [Ex A40].
14. These proceedings were defended with Govind & Co acting on behalf of the Bank of Baroda.
15. Ram Baran subsequently engaged M Sadiq of Dean & Co to obtain an "*Injunction to Restrain Sale by Mortgagee*" [Ex A45].
16. A Notice of Motion was filed in matter 83 /1985 on 22<sup>nd</sup> August 1986 by Dean & Co who took over the proceedings from G P Lala & Associates on behalf of Ram Baran [Ex A49].
17. A Caveat was filed on behalf of Ram Baran and subsequently removed by the Bank of Baroda [Ex A52].
18. On 10<sup>th</sup> September 1987 a receiving order was made against Jagat Singh [Ex A55] and on the 28<sup>th</sup> September 1987 Jagat Singh made demand on Ram Baran for payment of the sum of \$30,000 pursuant to mortgage no. 210439.
19. In or about January 1988 Ram Baran instructed the 1<sup>st</sup> Respondent to act on his behalf and by letter dated 28<sup>th</sup> January 1988 the 1<sup>st</sup> Respondent wrote to the District Surveyor Northern and the Bank of Baroda Labasa [Ex A57 & A58].
20. The 1<sup>st</sup> Respondent on the 13<sup>th</sup> April 1988 commence proceedings in the High Court of Fiji, Labasa (134/1988) [Ex A60] and on the 13<sup>th</sup> April 1988 obtained an injunction restraining Jagat Singh and the Bank of Baroda from selling the property pursuant to mortgage no. 210438 or mortgage 210439 [Ex A62]. A further order in similar terms was made on 3<sup>rd</sup> June 1988 [Ex A67].
21. A defence was filed on behalf of the Bank of Baroda in proceedings 134/1988 by Govind

& Co [Ex A68].

22. On 1<sup>st</sup> November 1988 a Notice of Discontinuance was filed in matter 83/1985 by the 1<sup>st</sup> Respondent on behalf of Ram Baran.
23. Proceedings 134/1988 appear to have been transferred to Labasa from Laufoka but very little else occurred in these proceedings for some time.
24. Ram Baran died on the 12<sup>th</sup> May 1990 intestate and Letters of Administration were granted to his widow Ram Kumari on 7<sup>th</sup> December 1990 [Ex A73].
25. These Letters of Administration were obtained by M Sadiq solicitor of Labasa.
26. It would appear that M Sadiq acted as agent for the 1<sup>st</sup> Respondent in matter 134/1988.
27. The complainant Krishna Dutt says that the 1<sup>st</sup> Respondent visited him and his mother at their home in Labasa following the death of Ram Baran.
28. The 1<sup>st</sup> Respondent acknowledges that he met with Ram Kumari but says it was not at Labasa.
29. Discussions took place between the 1<sup>st</sup> Respondent and Jiten Singh then a solicitor of Govind & Co on behalf of the Bank of Baroda in an attempt to resolve the matter. Mr Singh says these discussions took place at Labasa whilst the 1<sup>st</sup> Respondent denies that. I accept the evidence of Mr Singh. The fact of the discussion is confirmed by [Ex A84].
30. By letter dated 1<sup>st</sup> November 1993 the 1<sup>st</sup> Respondent made a settlement offer in matter 134 of 1988 to Govind & Co on behalf of the Bank of Baroda [Ex A85].
31. Further settlement proposals were put by Govind & Co to the 1<sup>st</sup> Respondent by letter dated 28<sup>th</sup> February 1994 [Ex A87].
32. The matter was set for hearing however the appointed dates did not suit the 1<sup>st</sup> Respondent.
33. Following further negotiation between the 1<sup>st</sup> Respondent on behalf of Ram Baran and Jiten Singh on behalf of the Bank of Baroda a settlement was reached whereby Ram Baran's Estate would pay the sum of \$50,081 "together with reasonable legal costs" to the Bank of Baroda and the Bank would transfer the mortgage to "our client's nominee" [Ex A94]. It appears the matter was settled on 10<sup>th</sup> of July 1997 when the sum of \$55,851.34 was paid to the Bank of Baroda [Ex A102].
34. Transfer of mortgage no. 210438 from Bank of Baroda to Jai Ram Sharma was registered on 11<sup>th</sup> August 1997.
35. To an untrained eye the signatures purporting to be Jai Ram Sharma on the transfer of mortgage are very different in the two places they appear. The witness to the signature is the 1<sup>st</sup> Respondent.

36. The 1<sup>st</sup> Respondent acting on behalf of Jai Ram Sharma issued a demand notice with respect to mortgage no. 210438 to Ram Kumari and placed a mortgagee sale notice in the Fiji Times on 7<sup>th</sup> April 1999 [Ex A112].
37. Prior to this the 1<sup>st</sup> Respondent had prepared documents whereby Ram Kumari consented to the transfer of the property to Krishna Dutt by way of mortgagee sale. The mortgagee being Jai Ram Sharma [Ex A108]. Krishna Dutt was apparently to arrange finance from Home Finance Co Limited [Ex A106].
38. By letter dated 16<sup>th</sup> July 1999 [Ex A113] the 1<sup>st</sup> Respondent wrote to Krishna Dutt and Ram Kumari advising that a tender for the sale of the property would be accepted unless contact was immediately made by them with him.
39. By transfer of mortgage lodged by the 1<sup>st</sup> Respondent and registered on 17<sup>th</sup> December 2001 the mortgage on CL8165 was transferred from Jai Ram Sharma to Philip Jagdishwar Singh in consideration of the sum of \$60,000 [Ex A114] this document contains another very different "Jai Ram Sharma" signature.
40. On 11<sup>th</sup> April 2002 the 1<sup>st</sup> Respondent on behalf of Philip Jagdishwar Singh issued demand notice to Ram Kumari seeking the sum of \$88,500 [Ex A116].
41. On 27<sup>th</sup> April 2002 Ram Kumari gave her Power of Attorney to her son Krishna Dutt [Ex A120].
42. On 9<sup>th</sup> October 2002 the title to CL8165 was transmitted to Ram Kumari on registration of a transmission application [Ex A127].
43. By letter dated 19<sup>th</sup> January 2004 the 1<sup>st</sup> Respondent made a further demand on Ram Kumari on behalf of Philip Jagdishwar Singh seeking payment of the sum of \$99,468.50 together with interest "at the rate of \$16.43 per day" [Ex A134].
44. On the 27<sup>th</sup> January 2004 the property was advertised for mortgagee sale by the 1<sup>st</sup> Respondent [Ex A135] and a further advertisement in the Fiji Sun on 29<sup>th</sup> January 2004 [Ex A140].
45. G P Shankar on behalf of Jagat Singh issued a Writ of Summons (36/2005 Labasa) on the 26<sup>th</sup> July 2005 [Ex A141] and consequently upon an Ex Parte Summons filed the same day obtained orders on 28<sup>th</sup> July 2005 restraining Philip Jagdishwar Singh from transferring CL8165 or registering any dealings in respect to that lease [Ex A144].
46. The 1<sup>st</sup> Respondent filed a defence on behalf of Phillip Jagdishwar Singh on 3<sup>rd</sup> November 2005 [Ex A147].
47. Proceedings 36/2005 Labasa were on 25<sup>th</sup> October 2007 struck out [Ex A150] after mortgage no. 210438 was on the 9<sup>th</sup> October 2007 transferred from Philip Jagdishwar Singh to Eshad Ali in consideration of the sum of \$45,000 [Ex A151].
48. A demand notice seeking payment in the sum of \$124,060.27 was sent by the 1<sup>st</sup> Respondent to Ram Kumari dated 23<sup>rd</sup> February 2008 [Ex A153].

49. Krishna Dutt caused an Originating Summons to issue in the High Court of Fiji at Labasa (12/2008) against the 1<sup>st</sup> Respondent, Jagat Singh, Jai Ram Sharma, Philip Jagdishwar Singh, Eashad Ali, Registrar of Titles and The Attorney General of Fiji on 31<sup>st</sup> March 2008 [Ex A156].

50. These proceedings were commenced by Sunil Kumar solicitor on behalf of Krishna Dutt.

51. On 4<sup>th</sup> December 2009 the High Court in matter 12/2008 Labasa extended "until the hearing and determination of the within action" a caveat 724855 over CL8165 filed on behalf of Krishna Dutt [Ex A199].

52. The 1<sup>st</sup> Respondent on 14<sup>th</sup> January 2010 filed a Writ of Summons (02/2010 Lautoka) against Krishna Dutt seeking damages of one million dollars together with an apology, injunctive relief and costs [Ex A200].

53. Krishna Dutt filed a defence and a counter claim to which the 1<sup>st</sup> Respondent filed a reply and defence to the counter claim [Ex A202].

54. Settlement discussions took place resulting in the 1<sup>st</sup> Respondent writing to Krishna Dutt on 21<sup>st</sup> March 2011 [Ex A206].

55. It would appear from paragraph 4 of that letter that the 1<sup>st</sup> Respondent was still acting for Ram Kumari

*"upon such deposit of \$100,000 the administratrix of the estate being the legal owner will then transfer the said land to you so that there is no mortgagee sale at all. It will be a straight out sale from the present owner to you subject of course to any mortgage that you may be granting to borrow the balance sum of \$100,000 to make up the complete purchase price."*

56. The administratrix of the estate referred to is Ram Kumari for whom the 1<sup>st</sup> Respondent purports to be acting.

57. Proceedings 83/1985 Labasa were on the 14<sup>th</sup> August 1996 adjourned sine die and it would appear have never been disposed off. On that day there was an appearance on behalf of "Sahu Khan" for the plaintiff [Ex A222].

58. The 1<sup>st</sup> Respondent did not attend the hearing before this Commission which by virtue of section 112(4) proceeded in his absence. He was represented by counsel.

## THE COMPLAINTS

### COUNT 1

***Allegation(s) of Professional Misconduct/Unsatisfactory Professional Conduct:  
Professional Misconduct: Contrary to section 82(1)(a) of the Legal Practitioners Decree  
2009***

### PARTICULARS

***Dr. Muhammad Shamsud-Dean Sahu Khan a legal practitioner, on or about the 23<sup>rd</sup> day of June 1997 in his purported capacity as solicitor for one Jai Ram Sharma f/n Ram Kissun the purported transferee in respect of the transfer of Mortgage number 210438 held in favour of the Bank of Baroda and registered against CL8165, represented that he had witnessed the signature of the said Jai Ram Sharma f/n Ram Kissun affixed on the Transfer of Mortgage (document) No. 428466, when the said Jai Ram Sharma f/n Ram Kissun did not instruct the said Dr. Muhammad Shamsud-Dean Sahu Khan to act on his behalf and did not sign the Transfer of Mortgage (document) No. 428466 purportedly witnessed the said Dr. Muhammad Shamsud-Dean Sahu Khan, which conduct, involved a substantial failure to reach a reasonable standard of competence and diligence.***

### COUNT 3

***Allegation(s) of Professional Misconduct/Unsatisfactory Professional Conduct:  
Professional Misconduct: Contrary to section 82(1)(a) of the Legal Practitioners Decree  
2009***

### PARTICULARS

***Dr. Muhammad Shamsud-Dean Sahu Khan a legal practitioner, on or about the 7<sup>th</sup> day of December 2001 in his purported capacity as solicitor for one Jai Ram Sharma f/n Ram Kissun the purported transferor in respect of the transfer of Mortgage number 210438 held in the said Jai Ram Sharma's f/n Ram Kissun favour registered against CL8165, represented that he had witnessed the signature of the said Jai Ram Sharma f/n Ram Kissun affixed on the Transfer of Mortgage (document) No. 503510, when the said Jai Ram Sharma f/n Ram Kissun had not instructed the said Dr. Muhammad Shamsud-Dean Sahu Khan to act on his behalf and had not signed the Transfer of Mortgage (document) No. 503510 purportedly witnessed by the said Dr. Muhammad Shamsud-Dean Sahu Khan, which conduct, involved a substantial failure to reach a reasonable standard of competence and diligence.***

59. The 1<sup>st</sup> Respondent contends that he had instructions from a Jai Ram Sharma and that the person he had instructions from was the person who signed the transfer of mortgage from the Bank of Baroda [Ex A105], in two places, and is also the person who signed a transfer of mortgage from himself to Phillip Jagdishwar Singh [Ex A114].
60. The transfer from the Bank of Baroda to Jai Ram Sharma was executed on 23<sup>rd</sup> June 1997 and the transfer from Jai Ram Sharma to Phillip Jagdishwar Singh was executed on 7<sup>th</sup>

December 2001.

61. The 1<sup>st</sup> Respondent says in his oral evidence that Albert Gounder was the owner of the funds advanced to Ram Baran on transfer of the mortgage from the Bank of Baroda. He says that Albert Gounder was not a resident of Fiji and that he got Jai Ram Sharma to act as his trustee.
62. He further says that he did not know Jai Ram Sharma but that he came from Ba. He says he does not know where Jai Ram Sharma now resides but believes it is somewhere in Australia.
63. He further says in his oral evidence that when Jai Ram Sharma was going overseas to live a new trustee was required and he, the 1<sup>st</sup> Respondent arranged for Philip Jagdishwar Singh to fulfil his role.
64. He acknowledges that there was no deed of trust or other document evidencing the appointment of the new trustee and says that to disclose the trust would raise issues pursuant to the Exchange Control Act.
65. This proposition was not address by counsel for the 1<sup>st</sup> Respondent.
66. The 1<sup>st</sup> Respondent says that he obtained instructions from Albert Gounder who gave instructions on behalf of Jai Ram Sharma when needed.
67. Jai Ram also known as Jai Ram Sharma (I/n Ram Kissun) swore an affidavit [Ex A229] in which he says he operated as a tax agent in Ba prior to migrating to New Zealand in 1993 and had done some work for the 1<sup>st</sup> Respondent.
68. In his affidavit he denies executing either transfer of mortgage.
69. Passport records [Ex A225] and travel history [Ex A209] show that Jai Ram Sharma the deponent of the affidavit [Ex A229] was not in Fiji at the date the transfer and mortgage were executed.
70. Jai Ram Sharma also says that the signatures on the transfer of mortgages are not his. Whilst no expert evidence has been placed before the Commission with respect to the signatures they did not have the appearance of being signed by the same person.
71. The 1<sup>st</sup> Respondent did not place any evidence before the Commission from Albert Gounder to corroborate his evidence that it was his money or to corroborate the identity of Jai Ram Sharma who he allegedly appointed as his trustee. This being despite the evidence of the 1<sup>st</sup> Respondent that he was aware of the phone number of Albert Gounder and was in contact with him.

## COUNT 2

***Allegation(s) of Professional Misconduct/Unsatisfactory Professional Conduct:  
Professional Misconduct: Contrary to section 82(1)(a) of the Legal Practitioners Decree  
2009***

### PARTICULARS

***Dr. Muhammad Shamsud-Dean Sahu Khan a legal practitioner, between the 23<sup>rd</sup> day of June 1997 and the 7<sup>th</sup> day of December 2001, having been initially instructed by Ram Baran f/n Machal and the Estate of Ram Baran to challenge the validity of Mortgage Numbers 210438 and 210439 registered on CL8165, subsequently purported to act on behalf of Jai Ram Sharma f/n Ram Kissun to whom Mortgage number 210438 had been transferred and sought to advance the said Jai Ram Sharma's f/n Ram Kissun interests pursuant to the Transfer of Mortgage (document) 428466 in respect of Mortgage number 210438, against the Estate of Ram Baran, thereby creating a conflict of interest, which conduct involved a substantial failure to reach or maintain a reasonable standard of competence and diligence.***

72. It is not in dispute that the 1<sup>st</sup> Respondent made a demand on Ram Kumari and advertised the property for sale by the mortgagee Jai Ram Sharma [Ex A112].
73. At this time the 1<sup>st</sup> Respondent had also prepared documents for signature by Ram Kumari to facilitate the transfer of the property to Krishna Dutt by mortgagee sale.
74. The 1<sup>st</sup> Respondent also wrote to Home Finance Co Limited on behalf of Krishna Dutt [Ex A106]. This letter states that the 1<sup>st</sup> Respondent is acting for the Estate of Ram Baran.
75. The letter of 23<sup>rd</sup> March 2011 confirms that the 1<sup>st</sup> Respondent is even at that date still acting for Ram Kumari [Ex A206].

## COUNT 4

***Allegation(s) of Professional Misconduct/Unsatisfactory Professional Conduct:  
Professional Misconduct: Contrary to section 82(1)(a) of the Legal Practitioners Decree  
2009***

### PARTICULARS

***Dr. Muhammad Shamsud-Dean Sahu Khan a legal practitioner, on or about the 7<sup>th</sup> day of December 2001 in his purported capacity as solicitor for one Phillip Jagdishwar Singh f/n Ram Sukh, the purported transferee in respect of the transfer of Mortgage number 210438 held in favour of Jai Ram Sharma f/n Ram Kissun and registered against CL8165, represented that he had witnessed the signature of the said Phillip Jagdishwar Singh f/n Ram Sukh affixed on the Transfer of Mortgage (document) No. 503510, when the said Phillip Jagdishwar Singh f/n Ram Sukh had not instructed the said Dr. Muhammad Shamsud-Dean Sahu Khan to act on his behalf in respect of the transfer of Mortgage number 210438, which conduct, involved a substantial failure to reach a reasonable standard of competence and diligence.***



76. The 1<sup>st</sup> Respondent says that he approached Philip Jagdishwar Singh to be the trustee of the funds owned by Albert Gounder when Jai Ram Sharma wished to go overseas.
77. He says there were no documents evidencing the appointment of Philip Jagdishwar Singh as trustee.
78. When shown the transfer of mortgage from Jai Ram Sharma to himself [Ex A114] Philip Jagdishwar Singh said he gave no instructions to the 1<sup>st</sup> Respondent to act on his behalf or to transfer the mortgage to him.
79. He said however that the 1<sup>st</sup> Respondent asked him to assist him and he trusted him and agreed to do so.
80. He acknowledged that "the bottom signature" on the transfer of mortgage dated 7<sup>th</sup> December 2001 from Jai Ram Sharma to him was his signature.
81. He says he did not pay any money to Jai Ram Sharma and that no explanation of the document was given to him.

#### COUNT 5

***Allegation(s) of Professional Misconduct/Unsatisfactory Professional Conduct:  
Professional Misconduct: Contrary to section 82(1)(a) of the Legal Practitioners Decree 2009***

#### PARTICULARS

***Dr. Muhammad Shamsud-Dean Sahu Khan a legal practitioner, between the 7<sup>th</sup> day of December 2001 and the 9<sup>th</sup> day of October 2007, having been initially instructed by Ram Baran f/n Machal and the Estate of Ram Baran to challenge the validity of Mortgage Numbers 210438 and 210439 registered on CL8165, subsequently purported to act on behalf of Philip Jagdishwar Singh f/n Ram Sukh to whom Mortgage number 210438 had been transferred and sought to advance the said Philip Jagdishwar Singh's f/n Ram Sukh interests pursuant to the Transfer of Mortgagee (document) 503510 in respect of Mortgage number 210438, against the Estate of Ram Baran, thereby creating a conflict of interest, which conduct involved a substantial failure to reach or maintain a reasonable standard of competence and diligence.***

82. Philip Jagdishwar Singh says he gave no instructions to the 1<sup>st</sup> Respondent to make demand upon Ram Kumari or the Estate of Ram Baran nor did he give instructions for the mortgagee notice of sale to be placed in the newspaper.
83. Not only were proceedings 134/1988 still ongoing but the 1<sup>st</sup> Respondent was still acting for Ram Kumari and the Estate of Ram Baran [see paragraphs 54 & 55]

## COUNT 6

***Allegation(s) of Professional Misconduct/Unsatisfactory Professional Conduct:  
Professional Misconduct: Contrary to section 82(1)(a) of the Legal Practitioners Decree  
2009***

### PARTICULARS

*Dr. Muhammad Shamsud-Dean Sahu Khan a legal practitioner, on or about the 12<sup>th</sup> day of January 2009, purportedly acting on behalf of Philip Jagdishwar Singh's f/n Ram Sukh interest, falsely represented to the Native Land's Trust Board that the said Philip Jagdishwar Singh f/n Ram Sukh was the Mortgagee under Mortgage numbered 210438 registered against CL8165 when in fact Transfer of Mortgage No. 694615 of the Mortgage number 210438 lodged by Sahu Khan & Sahu Khan had been registered on the 16<sup>th</sup> of October 2007 effecting the transfer of Mortgage number 210438 to one Eshad Ali f/n Jaffar Ali, which conduct involved a substantial failure to reach or maintain a reasonable standard of competence and diligence.*

84. It is not denied that the 1<sup>st</sup> Respondent sent letter dated 12<sup>th</sup> January 2009 [Ex A170] to the Native Land Trust Board and that transfer of mortgage 210438 by Philip Jagdishwar Singh to Eshad Ali [Ex A151] was registered on the 16<sup>th</sup> October 2007.
85. The letter of 12<sup>th</sup> January 2009 purported that the mortgagee was Philip Jagdishwar Singh and enclosed an application for Consent to Assign purportedly signed by Philip Jagdishwar Singh and witnessed by the 1<sup>st</sup> Respondent.
86. Philip Jagdishwar Singh denies that it is his signature on the document and says that he gave no instructions to the 1<sup>st</sup> Respondent to make such an application.
87. He said in his evidence that he had never seen the document before.
88. The 1<sup>st</sup> Respondent by letter dated 26<sup>th</sup> January 2009 [Ex A174] forwarded a further application for Consent to Assign with respect to the same land, CL8165, on behalf of Eshad Ali as mortgagee.
89. The transfer of mortgage from Philip Jagdishwar Singh to Eshad Ali was registered by the Land Titles Office on the mortgage but not on the crown lease and the evidence of the Registrar of Titles acknowledged this to be the practice of that office.

## COUNT 7

***Allegation(s) of Professional Misconduct/Unsatisfactory Professional Conduct:  
Professional Misconduct: Contrary to section 82(1)(a) of the Legal Practitioners Decree  
2009***

### PARTICULARS

*Dr. Muhammad Shamsud-Dean Sahu Khan a legal practitioner, between the 9<sup>th</sup> day of October 2007 and the 23<sup>rd</sup> day of June 2009, having been initially instructed by Ram Baran f/n Machal and the Estate of Ram Baran to challenge the validity of Mortgage Numbers 210438 and 210439 registered on CL8165, subsequently purported to act on behalf of Eshad Ali f/n Jaffar Ali to whom Mortgage number 210438 had been transferred and sought to advance the said Eshad Ali's f/n Ram Sukh interests pursuant to the Transfer of Mortgagee (document) 694615 in respect of Mortgage number 210438, against the Estate of Ram Baran, thereby creating a conflict of interest, which conduct involved a substantial failure to reach or maintain a reasonable standard of competence and diligence.*

90. It is not in dispute that the 1<sup>st</sup> Respondent caused demand to be made on Ram Kumari on 23<sup>rd</sup> February 2008 [Ex A153] on behalf of Eshad Ali.
91. The 1<sup>st</sup> Respondent was still acting for Ram Kumari at that time [see paragraph 55].

### COUNT 8

***Allegation(s) of Professional Misconduct/Unsatisfactory Professional Conduct:  
Unsatisfactory Professional Conduct: Contrary to section 81 of the Legal Practitioners Decree 2009***

### PARTICULARS

*Dr. Muhammad Shamsud-Dean Sahu Khan a legal practitioner, on or about the 2<sup>nd</sup> day of March 2011, being the First Defendant in the civil matter Krishna Dutt, v Mohammed Shamsud Din Sahu Khan, Jagat Singh, Jai Ram Sharma, Philip Jagdishwar Singh, Eshad Ali, Registrar Titles and Attorney General Civil Action No. 12 of 2008 at Labasa, discussed the possibility of settlement out of court with the Plaintiff Krishna Dutt f/n Ram Baran at the said Dr. Muhammad Shamsud-Dean Sahu Khan's Ba Office, in the absence of the said Krishna Dutt's f/n Ram Baran instructed legal counsel, which conduct occurred in the practice of law, falling short of the standards of competence and diligence that a member of the public is entitled to expect of a reasonably competent or professional legal practitioner.*

92. There is no dispute that settlement discussions took place between the 1<sup>st</sup> Respondent and Krishna Dutt with respect to action 12 of 2008 in which Krishna Dutt was the plaintiff and the 1<sup>st</sup> Respondent was the 1<sup>st</sup> Defendant.
93. It is also not in dispute that Krishna Dutt was represented by Sunil Kumar in those proceedings.
94. The 1<sup>st</sup> Respondent was also acting for the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants to those proceedings being respectively Jai Ram Sharma, Philip Jagdishwar Singh and Eshad Ali.
95. The 1<sup>st</sup> Respondent says that he spoke as a Defendant in the proceedings and not as a lawyer.

**COUNT 9**

***Allegation(s) of Professional Misconduct/Unsatisfactory Professional Conduct:  
Professional Misconduct: Contrary to section 82(1)(b) of the Legal Practitioners Decree  
2009***

**PARTICULARS**

***Dr. Muhammad Shamsud-Dean Sahu Khan a legal practitioner, between the 23<sup>rd</sup> day of June 1997 and the 23<sup>rd</sup> of June 2009 having initially been instructed by Ram Baran f/n Machal and the Estate of Ram Baran to challenge the validity of Mortgage Numbers 210438 and 210439 registered on CL8165, subsequently sought to advance the interests of the persons to whom Mortgage number 210438 had been transferred, namely, Jai Ram Sharma, f/n Ram Kissun, Philip Jagdishwar Singh, f/n Ram Sukh and Eshad Ali f/n Jaffar Ali, which conduct was consistently opposed to the interest of the Estate of Ram Baran, which conduct occurred in the practice of law and would justify a finding that the said Dr. Muhammad Shamsud Dean Sahu Khan is not a fit and proper person to engage in legal practice.***

96. This count relies on the consistent failure to maintain a reasonable standard of competence and diligence by virtue of the allegations in counts 2, 5 and 7.

**COUNT 10**

***Allegation(s) of Professional Misconduct/Unsatisfactory Professional Conduct:  
Professional Misconduct: Contrary to section 82(1)(b) of the Legal Practitioners Decree  
2009***

**PARTICULARS**

***Sahu Khan & Sahu Khan a law firm, between the 23<sup>rd</sup> day of June 1997 and the 23<sup>rd</sup> day of June 2009 having initially been instructed by Ram Baran f/n Machal and the Estate of Ram Baran to challenge the validity of Mortgage Numbers 210438 and 210439 registered on CL8165, subsequently sought to advance the interests of the persons to whom Mortgage number 210438 had been transferred, namely Jai Ram Sharma, f/n Ram Kissun, Philip Jagdishwar Singh, f/n Ram Sukh and Eshad Ali f/n Jaffar Ali, which conduct was consistently opposed to the interest of the Estate of Ram Baran, which conduct occurred in the practice of law and would justify a finding that Sahu Khan & Sahu Khan is not fit and proper to operate as a law firm.***

97. Whilst the allegation is against the 2<sup>nd</sup> Defendant it also relies on the repeated failure to maintain a reasonable standard of competence and diligence.
98. At all relevant times the 1<sup>st</sup> Respondent was a partner in the 2<sup>nd</sup> Respondent or was a sole practitioner trading as the 2<sup>nd</sup> Respondent.

## COUNT 11

**Allegation(s) of Professional Misconduct/Unsatisfactory Professional Conduct:  
Unsatisfactory Professional Conduct: Contrary to section 82(1)(b) of the Legal Practitioners Decree 2009**

### PARTICULARS

**Dr. Muhammad Shamsud-Dean Sahu Khan a legal practitioner, on or about the 1<sup>st</sup> day of April 2011, being the subject of a disciplinary complaint made by Krishna Dutt f/n Ram Baran lodged with the Office of the Chief Registrar pursuant to the Legal Practitioners Decree 2009, attempted to influence the said Krishna Dutt f/n Ram Baran to withdraw his complaint by telling him among other things that if he did withdraw his complaint, the defamation action filed by the said Dr. Muhammad Shamsud-Dean Sahu Khan would be withdrawn, which conduct occurred in the practice of law and if established would justify a finding that the said Dr. Muhammad Shamsud-Dean Sahu Khan is not a fit and proper person to engage in legal practice.**

99. The complainant Krishna Dutt says that this conduct occurred and the 1<sup>st</sup> Respondent says it did not. The 1<sup>st</sup> Respondent further says why would the conduct occur as the decision to deal with the proceedings against him rested with the Chief Registrar and not with the complainant.
100. Krishna Dutt was not cross-examined on this issue.

### THE LAW

101. Unsatisfactory professional conduct is defined in clause 81 of the Legal Practitioners Decree as including "conduct of a legal practitioner or a law firm or an employee or agent of a legal practitioner or a law firm, occurring in connection with the practice of law that falls short of the standards of competence and diligence that a member of the public is entitled to expect of a reasonably competent or professional legal practitioner or law firm."
102. The definition focuses on elements of competence and diligence. Whilst neither of these terms are defined it might be expected that they be given their ordinary meaning. The dictionary defines "diligence" to mean "care and conscientiousness in one's work".
103. "Competence" is defined as "having the necessary skills or knowledge to do something successfully". It is thought that this requires a legal practitioner to be bound not only to complete tasks in a timely and punctual manner, as required by the requirement of diligence but to complete them with the level of skill and precision that a member of the public is entitled to expect from any professional person whom they have trusted to carry out work for them.
04. The Decree provides for two categories of professional misconduct. The first category provides that professional misconduct includes unsatisfactory professional conduct of a

legal practitioner, if the conduct involves a substantial or consistent failure to reach or keep a reasonable standard of competence and diligence.

105. The second category provides that professional misconduct shall include conduct of a legal practitioner, whether happening in connection with the practice of law or otherwise, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.
106. The Decree then expands on what factors may be taken into account in determining whether a person is "fit and proper" for the purpose of section 82 by allowing that regard may be had to the suitability matters that would be considered if the practitioner were an applicant for admission to the legal profession under the Decree.

#### STANDARD OF PROOF

107. The relevant standard of proof to be applied to disciplinary proceedings was considered at length by The Court of Final Appeal of the Hong Kong Special Administrative Region in *A Solicitor and The Law Society of Hong Kong* Final Appeal No. 24 of 2007 (Civil). There the court considered inter alia relevant authorities from the Privy Council, the High Court of Australia and the High Court of New Zealand (whose decision in *Z and Dental Complaints Assessment Committee*, [2007] NZAR 343, was subsequently confirmed by the Supreme Court of New Zealand [2008] NZSC 55).
108. The Privy Council in *Campbell v Hamlet* [2005] UKPC 19 held that the criminal standard of proof was to be applied in all disciplinary proceedings concerning the legal profession.
109. The High Court of Australia in *Rejtek v McElroy* (1965) 112 CLR 517 held that the civil standard of proof applied but said at paragraph 10: "**The "clarity" of the proof required where so serious a matter as fraud is to be found, is an acknowledgment that the degree of satisfaction for which the civil standard of proof calls may vary according to the gravity of the fact to be proved: see *Briginshaw v Briginshaw* (1938) 60 CLR 336 per Dixon J..**"
110. And at paragraph 11 the court said: "**No matter how grave the fact which is to be found in a civil case, the mind has only to be reasonably satisfied and has not with respect to any matter in issue in such a proceeding to attain that degree of certainty which is indispensable to the support of a conviction upon a criminal charge: see *Hellon v Allen* (1940) 63 CLR 691 per Dixon, Evatt and McTiernan JJ.**"
111. The Supreme Court of New Zealand in *Z v Dental Complaints Assessment Committee* [2008] NZSC 55 in applying the flexible application of the civil standard said at paragraph 116: "**We acknowledge the serious impact that adverse disciplinary decisions can have on the right of individuals to work in their occupation and on personal reputations. The flexible application of the civil standard will, however, give all due protection to persons who face such proceedings.**"

112. In *A Solicitor and The Law Society of Hong Kong* the Chief Justice at paragraph 116 said:  
*"In my view, the standard of proof for disciplinary proceedings in Hong Kong is a preponderance of probability under the Re H approach. The more serious the act or omission alleged, the more inherently improbable must it be regarded. And the more inherently improbable it is regarded, the more compelling will be the evidence needed to prove it on a preponderance of probability. If that is properly appreciated and applied in a fair-minded manner, it will provide appropriate approach to proof in disciplinary proceedings. Such an approach will be duly conducive to serving the public interest by maintaining standards within the professions and the services while, at the same time, protecting their members from unjust condemnation."*
113. I am therefore of the opinion that the appropriate standard of proof to be applied is the civil standard varied according to the gravity of the fact to be proved, that is the approach adopted in amongst other places, Australia, New Zealand and Hong Kong.

## CONCLUSION

### Counts 1 & 3

114. If the only matters before me were the allegations in counts 1 and 3 then it would be conceivable to conclude that another Jai Ram Sharma could in fact be the Jai Ram Sharma who purportedly executed the documents.
115. I find however that the total conduct of the 1<sup>st</sup> Respondent makes his evidence less acceptable than that given by Jai Ram Sharma of New Zealand and the passport and travel records.
116. If there was another Jai Ram Sharma and as the 1<sup>st</sup> Respondent says that he has contact with Albert Gounder and that Jai Ram Sharma was his trustee then why was there no further evidence to support the evidence of the 1<sup>st</sup> Respondent?
117. I do not accept the evidence of the 1<sup>st</sup> Respondent with respect to these counts and find the allegations proved.

### Counts 2, 5 and 7

118. It is submitted on behalf of the 1<sup>st</sup> Respondent that on the basis of *Bolkiah v KPMG* [1999] 2 WLR 215 that there is no conflict of interest.
119. There is no need to consider that authority as it relates to former clients and I find that on the evidence the 1<sup>st</sup> Respondent was acting for Ram Baran and then Ram Kumari up until at least 21<sup>st</sup> March 2011 when [Ex A206] was written. In that letter the 1<sup>st</sup> Respondent said :

*"upon such deposit of \$100,000 the administratrix of the estate being the legal owner will then transfer the said land to you so that there is no mortgagee sale at all. It will be a straight out sale from the present owner to you subject of course to any mortgage that you may be granting to borrow the balance sum of \$100,000 to make up the complete*

purchase price."

120. Even if I be wrong then until at least 15<sup>th</sup> August 1997 when the 1<sup>st</sup> Respondent wrote [Ex A106] and said:

*"We are acting for Estate of Ram Baran.*

*The property is valued by the family. It has been agreed by all concerned that the property be transferred to Krishna Dutt (son of Ram Baran) ....*

*Accordingly, we hereby confirm that once Krishna Dutt makes arrangements for the finance to pay off the above amounts and costs of transfer, the property will be transferred to Krishna Dutt amicably.*

*We do trust you will assist him with the necessary."*

121. I find each of the counts established and that Ram Baran and later Ram Kumari were clients of the 1<sup>st</sup> Respondent at all relevant times.

#### **Count 4**

122. Phillip Jagdishwar Singh is a businessman who gave very clear evidence. He trusted the 1<sup>st</sup> Respondent who had been his solicitor for a long time, since 1987.
123. He was asked by the 1<sup>st</sup> Respondent to assist him and he did by signing some documents.
124. He says he did not know that he was a trustee for Albert Gounder and he did not know the nature of the transactions.
125. He says he gave no instructions to the 1<sup>st</sup> Respondent and merely signed some documents when asked.
126. He does however say that the signature on the transfer of mortgage from Jai Ram Sharma to him [Ex A114] is his.
127. The allegation is therefore is not proved.

#### **Count 6**

128. Why the false representation was made is unclear but it is clear that it was made on 12<sup>th</sup> January 2009 and that a further application was made with the correct applicant on 26<sup>th</sup> January 2009 [Ex A170 and Ex A173].
129. It is submitted that as the misrepresentation was corrected 14 days later there is no misrepresentation.
130. I do not accept this and find the allegation is proved.



#### Count 8

131. I do not accept the submission on behalf of the 1<sup>st</sup> Respondent that he spoke as a Defendant and not as a lawyer.
132. This submission misses the point that a lawyer by his training and experience is in an advantageous position compared to a lay person.
133. It is not disputed that Krishna Dutt had a lawyer representing him in the proceedings.
134. I find the allegation proved.

#### Count 9

135. The Respondent's conduct in counts 2, 5 and 7 having been found proved I therefore find this count to be established.

#### Count 10


136. It follows that count 9 having been found proved and there being no dispute that the 1<sup>st</sup> Respondent was at all relevant times a partner in or a sole practitioner trading as Sahu Khan & Sahu Khan that this count is established.

#### Count 11

137. Whilst on the totality of the evidence it is more likely than not that the alleged conduct took place I cannot be satisfied to the required standard of proof and accordingly the count is not established.

**ORDERS**

1. Complaints 1, 2, 3, 5, 6, 7, 8, 9 and 10 are proved.
2. Complaints 4 and 11 are dismissed.
3. The Respondent<sup>s</sup> is found guilty of Unsatisfactory Professional Conduct and Professional Misconduct.

  
JOHN CONNORS  
COMMISSIONER



**27 SEPTEMBER 2011**