

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO. 001/2011

BETWEEN: CHIEF REGISTRAR

Applicant

**A N D: MUHAMMAD SHAMSUD-DEAN SAHU KHAN
SAHU KHAN & SAHU KHAN**

1st Respondent

2nd Respondent

Applicant : Ms V. Lidise, Mr A. Chand & Ms M. Rakai
1st Respondent : Ms N Khan
2nd Respondent : No Appearance

Date of Hearing : 3rd October 2011
Date of Ruling : 6th October 2011

JUDGMENT ON SENTENCE

1. The 1st Respondent was on the 27th September 2011 found guilty of seven counts of professional misconduct and one count of unsatisfactory professional conduct the 2nd Respondent was found guilty of professional misconduct.
2. These findings justify a finding that the 1st Respondent is not a fit and proper person to engage in legal practice.
3. The conduct occurred whilst the Respondents were acting for Ram Baran and his wife Ram Kumari and their son Krishna Dutt.
4. The main causes of complaint related to the transfer of mortgages and the enforcement of those mortgages which were over a parcel of land in Labasa.
5. The Respondents continued to act for Krishna Dutt and or his parents and repeatedly acted against them in seeking to enforce the rights of the mortgagees from time to time.
6. The situation was on each occasion alleviated by the replacement of the mortgagee i.e.

the mortgage was transferred to another of the Respondents' clients.

7. The only mortgagees to give evidence were Philip Jagdishwar Singh and Jai Ram Sharma both of these persons denied ever having given the Respondents money or having instructed them with respect to the mortgages.
8. The 1st Respondent maintains that the Jai Ram Sharma who gave evidence was a different Jai Ram Sharma to the one they dealt with and that Philip Jagdishwar Singh was a trustee for Albert Gounder.
9. Neither Albert Gounder nor the other Jai Ram Sharma was called to give evidence on behalf of the Respondents.
10. The Applicant called Jiten Singh to give evidence, who at the relevant time was a solicitor in Labasa acting for the Bank of Baroda, the outgoing mortgagee at the commencement of this chain of events.
11. Mr Singh later became a magistrate and subsequently a judge of the High Court of Fiji before returning to private practice. He described the 1st Respondent's conduct as creating a "huge potential for a conflict". He further said that it was the first time he had witnessed something like this being done and that "it should send obvious signals".
12. Whose money was actually been advanced is, on the evidence, unclear.
13. The fact that the Respondents were acting for the mortgagee and mortgagor simultaneously whilst advancing the monies and were then enforcing the mortgage and thought the behaviour to be appropriate conduct for a legal practitioner is astounding.
14. The 1st Respondent's total behaviour was as if he was above the law.
15. When the 1st Respondent attempted to negotiate a settlement of the High Court proceedings in which he was a Defendant and acted for the other Defendants and Krishna Dutt was the Plaintiff and was represented by a lawyer, who was not present, shows the same disregard of safeguards that have been enshrined to protect the public and to ensure that lawyers do not abuse the privileged position they hold in the community.
16. Section 121 of the Legal Practitioners Decree sets forth the powers of the Commission upon a finding of professional misconduct or unsatisfactory professional conduct. The ultimate sanction is that the legal practitioner's name be struck from the roll and the most lenient penalty is a reprimand.

17. When considering the appropriate penalty it is necessary to consider not only the nature of the misconduct but also those of the following issues as are relevant:-

- (i) The frequency of the misconduct and prior finding of misconduct;
- (ii) The lawyers age and professional experience;
- (iii) The lawyers attitude;
- (iv) The lawyers (lack of) appreciation of wrong doing;
- (v) Testimonials and opinions by third parties;
- (vi) Illness and stressors suffered by the lawyer;
- (vii) The loss suffered by third parties as a result of the lawyers misconduct;
- (viii) The loss already suffered by the lawyer personally as the result of the misconduct.

18. If satisfied that the conduct is an isolated blight on an untarnished professional career then a less severe penalty may be appropriate – Legal Practitioners Conduct Board v Nicholson (2006) 243 LSJS 293.

19. The level of experience may be relevant and it may, if the misconduct is a one-off in and otherwise unblemished lengthy professional career, support the conclusion that it was entirely out of character and does not warrant a severe disciplinary sanction, dependant of course on the seriousness of the misconduct - Chamberlain v Australian Capital Territory Law Society (1993) 118 ALR 54.

20. It was said in New South Wales Bar Association v Evatt (1968) 117 CLR 177 at 184

"The Respondent's failure to understand the error of his ways of itself demonstrates his unfitness to belong to a profession where, in practice, the client must depend on the standards as well as the skill of his professional adviser."

21. It is not in issue that the 1st Respondent was admitted in New Zealand in 1964 and commenced practice in Fiji in that same year. He graduated in 1963 and graduated with Masters Degree with honors in 1964 in 1975 he obtained a Doctorate of Philosophy.

22. The 1st Respondent's practice in Fiji was initially with his father, then with his brothers, then with his daughter and ultimately on his own.

23. The 1st Respondent has a distinguished career and has contributed significantly as a member of the Fiji Law society serving as its president from 1983 to 1987.

24. He has contributed significantly to his community in various capacities perhaps the most notable of which is his participation in the Fiji Football Association which commenced with his presidency of the Ba Football Association in 1969 leading to him being president of the Fiji Football Association from 1985 to date.

25. He had also had a distinguished involvement with football in Oceania and throughout the world.

26. In Ziems v Prothonotary of the Supreme Court of NSW [1957] 97 CLR 279 Kitto J said

"It has been said before, and in this case the Chief Justice of the Supreme Court has said again, that the Bar is no ordinary profession or occupation. These are not empty words, nor is it their purpose to express or encourage professional pretensions. They should be understood as a reminder that a barrister is more than his client's confidant, adviser and advocate, and must therefore possess more than honesty, learning and forensic ability. He is, by virtue of a long tradition, in a relationship of intimate collaboration with judges, as well as with his fellow-members of the Bar, in the high task of endeavoring to make successful the service of the law to the community. That is a delicate relationship, and carries exceptional privileges and exceptional obligations. If a barrister is found to be, for any reason, an unsuitable person to share in the enjoyment of those privileges and in the effective discharge of those responsibilities, he is not a fit and proper person to remain at the Bar."

27. In Law Society of New South Wales v Foreman [1994] 34 NSWLR 408 the New South Wales Court of Appeal when dealing with an appeal from the Legal Professional Discipline Tribunal said at 444

"The disciplinary jurisdiction remains one concerned with whether the solicitor is a fit and proper person to be held out by the court as such In deciding whether a person is a fit and proper person for this purpose, the court may, in accordance with the circumstances, take into account matter going beyond the mere protection of the public against similar misconduct. The court may consider the character of the practitioner or those aspects of it relevant to the office of a solicitor. A solicitor may affirm and sincerely believe that she will not offend again. But the character of the solicitor - demonstrated by the offence or otherwise - may be such that no sufficient reliance can be placed upon that affirmation... It is also, I think relevant for the court to take into account the effect which its order will have upon the understanding, the profession and amongst the public, of the standard of behavior required of solicitors. The court will no doubt, where appropriate, articulate the standards required and that they are high. However, the court must, I think, also take into account the effect upon what it has said of, for example a decision to allow a solicitor guilty of a serious infringement of those standards, to continue to practise."

28. The New South Wales Court of Appeal was there dealing with a legal practitioner who it was acknowledged was one of the leading practitioners in her field in Australia.

29. In New South Wales Bar Association v Cummins (2001) 52 NSWLR 279 Speigiman CJ said at page 284

"Honesty and integrity are important in many spheres of conduct. However, in some spheres significant public interest are involved in the conduct of particular persons and the state regulates and restricts those who are entitled to engage in those activities and acquire privileges associated with a particular status. The legal profession has long required the highest standards of integrity.

There are four interrelated interests involved. Clients feel secure in conducting their secrets and entrusting their most personal affairs to lawyers. Fellow partitioners must be able to depend implicitly on the word and behaviour of their colleagues. The judiciary must have confidence in the legal profession by reason of the central role the profession plays in the administration of justice. Many aspects of the administration of

justice depend on the trust by the judiciary and/or the public in the performance of professional obligations by professional people."

30. The words of Speigman CJ in New South Wales Bar Association v Cummins at paragraph 30 where he said:

"In the present case, unlike other cases, the barrister did not admit that his actions have jeopardized the reputation and standing of the legal profession. There is no doubt, however, that he has done so. The conduct of the barrister, particularly a barrister who has received the distinction of a Commission as one of Her Majesty's Counsel, who has behaved in such complete disregard of his legal and civic obligations, was necessarily such as to bring the entire legal profession into disrepute."

support the proposition that the 1st Respondent's standing in the profession is an aggravation of the misconduct.

CONCLUSION

31. Having found that the 1st Respondent's conduct would justify a finding that he is not a fit and proper person to engage in legal practice it is now for the Commission to consider if the totality of the conduct, circumstances and the antecedents of the 1st Respondent do justify such a finding.
32. The authorities leave no doubt as to the special position a legal practitioner holds and the responsibilities that flow from that special position.
33. In a country such as Fiji where the level of literacy and understanding is not as high as in developed countries the position held by a legal practitioner is even more special and the responsibilities are even greater.
34. It follows from to the authorities that the seniority and notoriety of the 1st Respondent exacerbates the conduct and does not mitigate it.
35. The public must be protected from conduct of the type displayed by the 1st Respondent in this matter. Young practitioners must be made to realize that this type of conduct is not acceptable.
36. The submissions for the 1st Respondent urge that in the circumstances of the age of the 1st Respondent [71 years] and his antecedents, including his significant contribution to the community, that a lenient penalty should be imposed.
37. I am of the opinion that the conduct of the 1st Respondent warrants an order that his

name be struck from the roll.

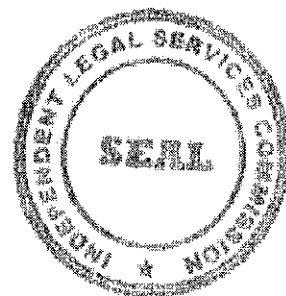
38. The 1st Respondent's name having already been struck from the roll it is in my opinion not appropriate for such an order to be made a second time.
39. The Applicant submits that the analogous situation is the imposition of successive life sentences to be served concurrently. I do not accept this submission.
40. It is acknowledged on behalf of the 1st Respondent and the Applicant that an order under section 121(1)(e) of the Decree that a practising certificate not be applied for for a period of time is an order that may in the circumstance be made.
41. In *Abhay Kumar Singh -v- Chief Registrar ABU 003 of 2010* the Court of Appeal considered a period of ten years to be appropriate where the practitioner's name was ordered to be struck from the roll. The Applicant submits that a period of from 5 to 10 years is appropriate in this matter.
42. The Applicant also submits that a fine be imposed as a deterrent. Having found that an appropriate order would be that the 1st Respondent's name be struck from the roll I do not think any further deterrent is necessary.
43. The Applicant also seeks an order that witness expenses be paid and this is not opposed.
44. In addition the Applicant seeks an order under section 121(1)(q) of the Decree for a refund of legal fees paid to the Respondents by the complainant. I do not think this is appropriate as despite the conduct of the Respondents the mortgagee sale was at all times avoided.
45. An order under section 121(1)(j) of the Decree is also sought for payment of legal fees incurred by the complainant with respect to matter 12/2008 and matter 2/2010 both matters in the High Court. Both of these proceedings are still current before the High Court and I think it is inappropriate for any order to be made.
46. No submission have been made on behalf of the second Respondent and the Applicant seeks that an order under section 121(1)(b) be made that it cease to operate and engage in legal practice.

ORDERS

1. The 1st Respondent must not apply for a practising certificate for 10 years from today.
2. The 1st Respondent shall pay to the Independent Legal Services Commission for payment out witnesses expenses totally \$862.10 within 28 days.
3. The 1st Respondent shall on return to Fiji surrender his passport to the Secretary, Independent Legal Services Commission to be held until order 2 is complied with.
4. The 2nd Respondent shall cease to operate and shall not engage in legal practice.



**N CONNORS
COMMISSIONER**



6 OCTOBER 2011

