

**IN THE INDEPENDENT  
LEGAL SERVICES COMMISSION**

**NO. 005/2011**

**BETWEEN: CHIEF REGISTRAR**

**Applicant**

**A N D: ALENA KOROI**

**Respondent**

**Applicant : Mr A. Chand & Ms M. Rakai**  
**Respondent : In Person**

**Date of Hearing : 30<sup>th</sup> November 2011 & 1<sup>st</sup> December 2011**  
**Date of Ruling : 1<sup>st</sup> December 2011**

**EXTEMPORE JUDGMENT**

1. This matter comes before the Commission by way of an application filed by the Chief Registrar resulting from a complainant by a judge of the High Court to the Chief Justice which complaint was forwarded to the Chief Registrar.
2. The allegation is

*Unsatisfactory Professional Conduct: Contrary to Section 83 (1) (a) of the Legal Practitioners Decree 2009*

*Particulars*

*Alena Koroi a legal practitioner, on the 9<sup>th</sup> of July 2010, appeared on behalf of the plaintiff in the Suva High Court in the matter between Board of Reproductive & Family Health v Dr. Sakeo Varea HBC 296/08 which matter was presided over by the Honorable Justice Hettiarachchi, showed discourtesy to the Court by unduly raising her voice at the Honorable Judge while the proceedings were underway and upon being directed by the Honorable Judge to calm down, persisted in her discourtesy by refusing to lower her voice, which conduct was contrary to Rule 3.2 (i) of the Rules of Professional Conduct and Practice of the Legal Practitioners Decree 2009.*

3. In support of the application the Applicant has tendered to the court a statement made by the judge together with a statement made by PC Shavneel Chand, the orderly to the

judge on that day, and a further statement from Mr Kafoa Muaror was also tendered to court.

4. Oral evidence was given by PC Shavneel Chand and Mr Muaror.
5. The judge in his statement to the Chief Justice relevantly says:-

*Counsels who appeared in this case were one Mr K Muaror and one Ms Alena Koroi.*

*The case was called for written submission in respect of an application for substitution of the defendant, but Mr Muaror informed the court that he would not pursue the application for substitution of the defendant and therefore would not be filing written submissions.*

*Subsequently, Ms Koroi moved for costs but I ordered that cost would be determined at the end of the substantive matter.*

*At this moment Ms Koroi first objected and started shouting in court, pointing her finger at me and Mr Muaror. Her conduct was outrageous and she talked in such a loud voice, I tried to calm her down. I asked her to make an appeal against the order if she is not satisfied with it, without criticizing it in open court, but she continued with her shouting.*

*I got off from the bench and call the Chief Registrar. The lawyer Ms Koroi stayed for about 15 minutes in court room shouting and raising her voice.*

6. Mr Muaror in his statement and confirmed in his oral evidence says at paragraph 9:-

9. *Before Justice Hettiarachi on that date, I made an oral application not to proceed further with my application filed on 26<sup>th</sup> February 2010 but instead, sought to have our earlier application filed on 20<sup>th</sup> January 2009 to strike out the statement of claim of the Plaintiffs, be fixed for hearing instead.*

10. *At that stage, I recall Ms Koroi then requested that costs be ordered in favour of her clients.*

11. *The judge considered and I recall he said that he would order that costs be determined at the end of the substantive matter.*

12. *At that point, I recall Ms Koroi started to raise her voice saying that she object to the ruling by the judge on costs. I cannot recall exactly what she said because in a very short time, she started to yell at the judge and refused to listen to the judge. She was pointing at the judge and also at me and saying various things (at the top of her voice) that I cannot specifically recall because I was taken by complete surprise with her sudden and abrupt tone at the top of her voice addressing the judge. I remember turning to Ms Koroi at the back table and said to her to calm down and lower her voice but that did not help.*

13. *I recall the judge trying to tell her to appeal the order if she was not satisfied but unfortunately, she was continuously shouting at the judge at the same time.*

14. *I was sitting in front of Ms Koroi in shock and I recall the judge just stood up and walked off the bench.*

7. The orderly in his written statement confirmed in his oral evidence again states that Ms

Koroi started shouting and pointing her figure at the judge and Mr Muaror.

8. Evidence was given before the Commission on behalf of Ms Koroi by Ms Davila Walker an associate of Ms Koroi outside her professional life in her community life particularly in her church involvement.

9. The rules of Professional Conduct and Practice pursuant to the Legal Practitioners Decree stating in paragraph 3.2 a practitioner shall at all times:-

(i) Act with due courtesy to the Court;

10. It is that rule that the Applicant says the Respondent has breach.

11. The Applicants then brings the complaint pursuant to Section 83(1)(a) of the Legal Practitioners Decree which provides:-

*Without limiting sections 81 and 82, the following conduct is capable of being 'unsatisfactory professional conduct' or 'professional misconduct' for the purpose of this Decree:-*

*(a) Conduct consisting of a contravention of this Decree, the regulations and rules made under this Decree, or the Rules of Professional Conduct;*

12. The issue is whether conduct of this type amounts to unsatisfactory professional conduct notwithstanding that no action is taken for contempt has been considered by the relevant tribunals and courts in Australia where it has been held that it's a matter for consideration of the particular facts in the particular circumstance of each case.

13. The Applicant has referred the Commission to a decision of the Administrative Decisions Tribunal in New South Wales *Bar Associates v di Savero* [2000] NSWADT 194 where at paragraph 17 the Tribunal said:-

*"Any advocate appearing before a court in this state does as a member of a learned and noble profession. He or she has the privilege granted by law of appearing for citizens, corporations and governments. Courts are entitled to expect from the advocate competence, honesty, integrity and learning. The advocate is immune from suit for defamation in respect of anything which he or she says during the course of the court proceedings. This privilege is one which can be abused and if it is abused, in our opinion, serious harm is caused not only to the persons involved in the matter but to the legal profession. Apart from this, such abuse of privilege, harms the reputation and standing of the advocate and damages the relationship of trust should exist between advocates and the Bench."*

14. At paragraph 44 the Tribunal said:-

*"In our opinion, if the conduct alleged against a barrister in proceedings before this tribunal amounts to a contempt of court, then that would also be conduct which was unsatisfactory professional conduct."*

15. At paragraph 45 the Tribunal said:-

*"However, conduct which is not sufficiently serious to be regarded as a contempt of court could still amount to unsatisfactory professional conduct."*

16. At paragraph 85 the Tribunal said:-

*"In our opinion, counsel are entitled, and indeed, obliged, to point out to the Bench impropriety on the part of the judge, if it exists. From time to time, counsel make application that a judge should disqualify himself/herself because of perceived or actual bias. It would also be appropriate for counsel to take objection to undue or unfair interference by the judge in the conduct of the trial, it would be perfectly appropriate for counsel to be incapable of continuing to hear a trial, it would be perfectly appropriate for counsel to submit that he/she should cease to have further involvement on the trial."*

17. At paragraph 179 the Tribunal said:-

*"As we have earlier pointed out, if the conduct of the barrister amounted to a contempt of court then that could amount to unsatisfactory professional conduct, but the fact that it was not in the legal sense, contemptuous, does not mean that the conduct could not be unsatisfactory professional conduct."*

18. At paragraph 180 the Tribunal said:-

*"The courts, in our opinion, have made it clear that if a barrister insults a judge that may be a contempt of court, but mere rudeness and arrogance would not necessarily be a contempt of court. In our opinion, rudeness and arrogance by a barrister directed to a judge, whilst it may not be sufficient to ground a charge of contempt of court, may be sufficient to ground a complaint for unsatisfactory professional conduct. However, the facts in each case necessarily determine whether the conduct is unsatisfactory professional conduct."*

19. The Respondent submits that the order made by the judge on the day was inappropriate and that she was pointing out to him that fact and that she was doing it in the interests of her clients and putting her client's case forcefully.

20. The Respondent further submits that she has a right in deed an obligation to protect the interest of her client and effectively to do what is necessary in that regard.

21. As the authority to which I referred clearly indicates that it is a matter for determination on the particular facts of the particular matter as to whether the conduct in fact amounts to unsatisfactory professional conduct.

22. The only evidence before me as to the conduct is that contained in the statement from the judge, the statement and oral evidence of Mr Muaror and the statement and oral

evidence of the police orderly Shavneel Chand.

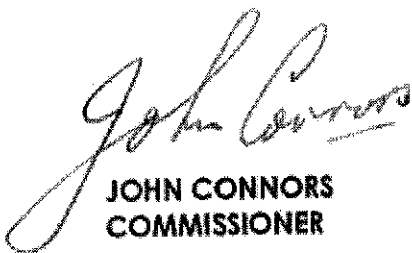
23. These statements are all relevantly consistent.

24. Submissions of the Respondent go to a justification of her conduct rather than a denial.

25. On the basis of the evidence and the tests set forthwith in the authorities to which I have referred I am satisfied that the Applicant has established the allegation contained in the complaint and I find it proved.

#### ORDERS

1. The Respondent is found guilty of Unsatisfactory Professional Conduct.

  
JOHN CONNORS  
COMMISSIONER



1 DECEMBER 2011