

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO. 001/2012

BETWEEN: CHIEF REGISTRAR

Applicant

A N D: LAISA LAGILEVU

Respondent

Applicant : Mr A. Chand
Respondent : In Person

Date of Hearing : 15th March 2012
Date of Ruling : 16th March 2012

DECISION

1. The Respondent faces one allegation of Unsatisfactory Professional Conduct contrary to section 83(1)(a) of the Legal Practitioners Decree 2009. The particulars of the charge read :

Laisa Lagilevu a legal practitioner, on the 2nd day of March 2012, being the sole proprietor of Lagilevu Law, appeared in the Suva High Court before the Honorable Justice Madigan on behalf of Epeli Ratabaca in the matter between Epeli Ratabaca v State HAM No. 019 of 2012 without a valid practising certificate, which conduct was a contravention of the provisions of Section 52(1)(a) of the Legal Practitioners Decree 2009.

2. In an enquiry conducted before the Commission the Respondent denied the allegation. On further enquiry she admitted that she did appear in Court on 2nd of March 2012, and that on that day she had not been issued with a practicing certificate, however she disputes the fact that in so acting she was professionally conducting herself unsatisfactorily and that furthermore she was not acting *male fides*, she being under the misapprehension that she was entitled to the issuance of a practicing Certificate.

3. Unfortunately for the Respondent, the conduct she has been accused of is categorized as unsatisfactory professional conduct by Decree. [Section 83(1)(a) of the Legal Practitioners Decree]. It is in effect a "strict liability" offence and once it is proved that she appeared and that there was no practicing certificate, then the complaint is established, whether the Respondent was acting in good faith or not. The conduct is also a criminal offence with a maximum penalty of \$5,000 [section 52(2) of the Legal Practitioners Decree] but the Respondent has not been charged with that, nor does she face the more serious complaint of Professional Misconduct. She has no right to complain therefore of the inculpation cited.
4. In the circumstances, I find on the respondents own admissions that **the allegation is established.**

PENALTY

5. In defending the allegation before the Commission, the Respondent spent much time in written and oral submissions which were to all intents and purposes submissions in mitigation. With the Respondent's leave, I now consider those submissions as mitigation and having heard submissions on penalty from counsel for the Applicant I proceed to make appropriate penalty orders against the Respondent.
6. The Respondent gave evidence to the Commission that she is a very new practitioner in private practice. She has worked for some years in the Office of the Director of Public Prosecutions and in the office of the Fiji Independent Commission against Corruption. She established her sole practice at the beginning of 2011 and attests that at that time she obtained all necessary authorities to set up the practice: nor did she have any difficulties in obtaining a practicing certificate 12 months ago.
7. She says that in the first few months of this year she did what she thought she needed to do to renew, including paying the certificate renewal fee and earning the 10 points of continuing legal education points that were required. The difficulties arose, the Respondent claims, over a misunderstanding over the need for a trust audit report of her Professional trust account. The respondent had no transactions on her trust account and her accountant had told her that a nil report would be a waste of time and money. She imparted this advice to the Chief Registrar who in turn told her [by fax] that the report was nevertheless compulsory. The respondent then stresses as one of her main arguments in mitigation that she had never been told prior to her appearance in Court on March 2 "*either by email, letter or telephone that my practicing certificate was being withheld pending the submission of my trust account report*".
8. This submission is both mendacious and misconceived. Firstly she was advised by fax on the 23rd of February at 4.04 pm that a trust account audit report had to be provided in any event. The respondent replied to this notification on 29th February in which she says that she noted the advice and asked for time to liaise with her accountant. This correspondence imputed knowledge of the requirement to the Respondent and she did

nothing about it. She would have known on the 2nd March that she had not complied with the requirement and had therefore no right in her expectation that she was already certified. Secondly, it is unreasonable for the Respondent to expect that the Legal Practitioners Unit in the Chief Registrar's office should notify every applicant for a Certificate of the status of their application. In any event the Respondent had been notified of an outstanding requirement and she did nothing about it.

9. As Commissioner Connors said in CR v Siteri Cevalawa ISLC 006 of 2011;

"There can be no doubt that for a legal practitioner to practice without a practicing certificate flies in the face of the whole principle of the Legal Practitioners legislation and accordingly impacts on the community."

10. The process of licensing practitioners is to maintain control over them. If there were no such system there would be chaos and no protection whatsoever of the consumer public. For this reason alone, any breach of the licensing system be it intentional or not, must be visited with stern penalties if only to keep practitioners vigilant in the need to fulfill requirements of the licensing process.
11. The Respondent's initial refusal to agree this allegation of strict liability along with her reliance on an unsupportable excuse denotes in my view a distinct lack of remorse on her part. As a consequence she is not able to lay claim to the most lenient of penalties that she submits should be passed on her.
12. In the premises the following orders are made:

ORDERS

1. The Respondent is publicly reprimanded.
2. The Respondent is to pay a fine in the sum of \$1,000 to the Commission.
3. The Respondent's Practicing Certificate is suspended until the fine is paid and until she satisfies the Trust Account requirements of the Chief Registrar.


JUSTICE PAUL MADIGAN
COMMISSIONER



16 MARCH 2012