

IN THE INDEPENDENT  
LEGAL SERVICES COMMISSION

NO. 019 of 2013

BETWEEN : CHIEF REGISTRAR

Applicant

AND : ROBINSON KAMAL PRASAD

Respondent

Applicant : Mr. A Chand  
Respondent : Mr. S Nandan

Dates of Hearing: 31<sup>st</sup> January 2014  
Date of Judgment: 19<sup>th</sup> March 2014

---

JUDGMENT

---

1. The Chief Registrar has brought one allegation of professional misconduct before the Commission against the Respondent ("the practitioner"). The allegation reads:

*Robinson Kamal Prasad, a legal practitioner, on the 15<sup>th</sup> of September, 2005 whilst acting for one Hemant Kumar in the matter Hemant Kumar v Westpac Banking Corporation Civil Action No. 11 of 2004 which matter was before the Sigatoka Magistrate's Court, acted without his client, Hemant Kumar's instructions by withdrawing the said matter, which conduct was a contravention of section 82(1)(a) of the Legal Practitioners Decree 2009 and was an act of professional misconduct.*

2. The practitioner opposed the allegation and the matter went to hearing.

### EVIDENCE OF THE COMPLAINT

3. The Complainant, Hemant Kumar ("HK"), gave evidence that he had purchased a piece of land in Bilalevu, Sigatoka from a land purchase co-operative society. He finished all payments for the land in about 1996 but did not receive a title. He assumed that the Westpac Bank who was the mortgagor held the title and he spent some years corresponding with the bank in order to get title to the land. The bank told him that the title was lost. He instructed the practitioner to act for him and the practitioner suggested that he sue the bank to which he agreed and he paid an initial fee of \$500 with a percentage of any compensation also to be paid if the suit succeeded. The matter went to court (at Sigatoka). The day of the hearing was in September 2005. He went to court but did not go inside the court room. He sat outside in the passage as the practitioner had instructed him to do. When the practitioner came out from court he told the complainant that the case was dismissed, there would be no compensation. He (the practitioner) had received a letter from one Suga Ram, the secretary of the co-operative. The contents of the letter were never explained to him. When shown the letter at the hearing he said it was the first time he had seen it and the contents were not true. [The letter states that the co-operative were holding the title and the complainant was free to collect his]. He was surprised to see the contents because he said all along that Suga Ram, whom he knew quite well, was telling him that it was the bank's fault. The practitioner never sought his instructions to have the case dismissed; he actually wanted the case to continue because he wanted the title and he wanted compensation. To this day he still does not have the title or even a provisional title.

### EVIDENCE OF THE PRACTITIONER

4. The practitioner gave evidence to say that he accepted the instructions of Hemant Kumar ("HK"), the complainant, on the 19<sup>th</sup> of September 2003 to commence action against the bank and the co-operative to get title to his land. HK was adamant that only the bank should be sued, not the co-operative. The writ was issued and Mr Kumar (as he then was) of Young & Associates acted for the respondent bank. The hearing was on the 15<sup>th</sup> of September 2005. The practitioner took the client (HK) to court with him – they were well prepared. HK went into court with him. Other matters were called for mentions and then Mr Kumar came out and showed the practitioner a letter from Suga Ram which the practitioner read with surprise. It was damaging to HK's case and the practitioner told Mr Kumar he would have to take instructions. He went to HK the client, showed him the letter and told him that in the light of the letter they would lose the case. It would not be in his interest to proceed – they could incur costs and it would be best to withdraw. HK said "yes" so he went to Mr Kumar and persuaded him not to press for costs which he agreed. All three went back into court – the matter was called, the practitioner withdrew the action and no costs were awarded. He then told HK to come back to the office and he would advise him where to go from there.

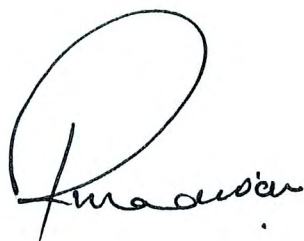
## EVIDENCE OF MR JUSTICE KUMAR

5. On the day of hearing, Mr Kumar was then the solicitor acting for the bank as respondent to HK's action. He told the Commission that on the day before the hearing at Sigatoka he came across a letter in his file stating that the title in question was in the possession of the co-operative society. He realized that this letter would absolve his client bank from all actions to claim the title. When he went to Sigatoka for the hearing and after the case had been called and stood down he showed the letter to the practitioner outside court. He saw the practitioner speak to his client (HK) but didn't hear what was said. A short while later the practitioner came to him and said that he would withdraw the suit and asked him not to press for costs. He agreed and the matter was called again and the practitioner withdrew. Mr Kumar could not recall if the complainant (HK) was present or not.

## ANALYSIS

6. The evidence can be seen to produce a direct conflict between the complainant and the practitioner as to whether instructions were given by HK to the practitioner to withdraw the suit. HK says he gave no such instructions and was surprised when he was told the matter would not proceed: the practitioner says he showed HK the letter damaging to his case and suggested that they withdraw to which the complainant said "yes". Defence counsel, Mr Justice Kumar (as he is now), is unable to assist in this contradictory situation because although he saw the practitioner talking to HK he didn't hear what was being said. HK was adamant that he did not want the action withdrawn and wanted to pursue the claim and in order to obtain his certificate of title; the practitioner was equally adamant that he had been instructed to withdraw.
7. I am conscious of the requisite standard of proof in hearings before the Commission, that standard being a varying standard of the civil standard, referred to at times as the "preponderance of probabilities". The more serious an act or omission alleged, the more improbable it must be regarded, and in proportion to the improbability the evidence will need to be more compelling.
8. In applying that standard to these proceedings, the test must operate to the benefit of the practitioner. To withdraw an action without consent is very serious misconduct indeed and the evidence that he did in fact do so must be strong in the face of the improbability that the practitioner would in fact do so. The evidence being a one-on-one allegation and denial, more would be needed certainly to satisfy the Commission that the practitioner did conduct himself contrary to the interests of his client. Such evidence is not before the Commission and I must therefore find that the Registrar's allegation is **not established**.

9. If there is a lesson to learn from these proceedings, it must be that whenever a practitioner is faced with an unusual course of action *vis a vis* his client, be it a reversal of plea, be it an instruction to terminate proceedings for example then the obvious action to take to safeguard the practitioner from later allegation would be to obtain written instructions.



**JUSTICE PAUL MADIGAN  
COMMISSIONER**



**19<sup>th</sup> MARCH 2014**