

IN THE INDEPENDENT
LEGAL SERVICES COMMISSION

NO. 028 of 2013

BETWEEN : CHIEF REGISTRAR
Applicant

AND : HEMENDRA KUMAR NAGIN
1st Respondent

SHELVIN SINGH
2nd Respondent

Applicant : Mr. M. Waibuta with Mr V. Sharma
Respondents : Mr. R. Naidu [1st Respondent]
Mr. R. Newton [2nd Respondent]

Dates of Hearing: 30th January 2014
Date of Ruling : 30th January 2014

RULING

1. The Chief Registrar has made an application for hearing of two complaints against these practitioners.

The complaints reading:

ALLEGATION 1

PROFESSIONAL MISCONDUCT: Contrary to section 82(1)(a) of the Legal Practitioners Decree 2009

PARTICULARS

Mr. Hemendra Nagin a legal practitioner, partner of Sherani & Company , around the 6th of June, 2013, while acting for Mr. Jagdish Narayan in a Sale and Purchase Agreement, acted without instructions of the said Jagdish Narayan who was the Director of Pyramid Pacific Investments (Fiji) Limited being the vendor in the said agreement consented to an amendment in clause 24.2 of the same agreement, which conduct was an act of professional misconduct pursuant to section 82(1)(a) of the Legal Practitioners Decree of 2009.

ALLEGATION 2

PROFESSIONAL MISCONDUCT: *Contrary to section 82(1)(a) of the Legal Practitioners Decree 2009*

PARTICULARS

Mr. Shelvin Singh a legal practitioner of the law firm Parshotam & Company, around the 6th of June, 2013 whilst acting for Orix Holdings Limited (Purchaser) amended clause 24.2(a) of a land Sale and Purchase agreement in handwriting whilst the vendor Mr. Jagdish Narayan (director of Pyramid Pacific Investment (Fiji) Limited) did not agree to the said amendment and proceeded to use the said amended Sale & Purchase Agreement to the detriment of the vendor , which conduct was an act of professional misconduct pursuant to section 82(1)(a) of the Legal Practitioners Decree of 2009.

2. At an initial hearing of the complaints the parties told me that they had unsuccessfully made representation to the Chief Registrar with regard to these complaints and the 2nd Respondent had filed a summons for dismissal of the charges and a permanent stay on the basis that his conduct did not constitute professional misconduct and he owed no duty to another solicitor's client.
3. At a resumed hearing on 30th of January 2014 it had come to the Commission's attention that the matters complained of in the allegation by the Chief Registrar are matters which form the basis of civil proceedings in the High Court [HBC 263 of 2013] which are still proceeding before Justice Mutunayagam.
4. Whilst the grounds of permanent stay relied on by the 2nd Respondent are grounds that could only be established by a hearing of the evidence in this matter, it is of course of paramount concern that this Commission should not entertain any

allegation which is sub judice. This Commission should not and cannot preempt any findings of fact to be made by the High Court. It would be most improper to do so.

5. The Chief Registrar's application is premature and regard should have been made earlier to the proceedings in the civil courts. The Registrar is well aware of these proceedings because they are referred to in the application bundle.
6. In the premises, this Commission will not hear this application at present. The complaints are not dismissed because at the conclusion of the High Court proceedings, the Registrar may wish in the light of the judge's findings to reconsider the allegation.



**JUSTICE PAUL MADIGAN
COMMISSIONER**



30TH JANUARY 2014