

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

No. 003 of 2016

BETWEEN:

CHIEF REGISTRAR

Applicant

AND:

LAISA LAGILEVU –VODO

Respondent

Coram: Dr T.V. Hickie, Commissioner

Counsel for the Applicant: Ms V. Prasad

Respondent: Mr. A. Naco (appearing on the 7th December 2016)

and Mr. E Radio appeared to take Judgment on 8th December)

Dates of Hearing: 7th December 2016

Date of Judgment: 8th December 2016

EX TEMPORE RULING

ON
RESPONDENTS' ORAL INTERLOCUTORY APPLICATION
FOR
CONTINUATION AND OR ISSUING OF AN INTRIM PRACTISING
CERTIFICATE
BY THE CHIEF REGISTRAR'S OFFICE

- [1] This is my Ex-tempore ruling on the Respondent's Interlocutory Application to be issued for the continuation of an Order that I made on the 23rd of September 2016 for her to be issued with an interim practising certificate.
- [2] On 11th July 2016, an Application was filed by the Chief Registrar setting out four allegations of Professional Misconduct against the Respondent in relation to the operation of the Respondent's Trust Account.
- [3] I note that there is pending before me a further hearing for Counsel for the Applicant to clarify their further submissions seeking the Commissions leave to amend Count 4 in their application to include reference to section 12(6) of the

Trust Accounts Act 1996.

- [4] I note that there is also pending before me the hearing of the Respondent's further submissions opposing the proposed amendment to Count 4 as well as their further submissions in support of their application for the four counts on the substantive matter to be struck out for duplicity.
- [5] The above two interlocutory applications concerning the substantive matter have not been heard in the present sittings due to the respondent's illness for which she requires travel to Australia for treatment and a period of recuperation.
- [6] I note that when I heard the Respondent's application on the 23rd September 2016 to be issued with an practicing certificate the Respondent had been without a practicing certificate since March 2016 and sought an immediate Order from the Commission for the Chief Registrar to issue her with a Full Practising Certificate pending the final hearing of the substantive matter as occurred in *Chief Registrar v Siteri Adidreu Cevalawa*, [2011] FJILSC 10 (7 October 2011) (Unreported, ILSC Case No. 006/2011, Commissioner Connors).
- [7] It is intended to deal with the pending interlocutory applications in relation to the substantive matter [once the Respondent returns from Australia in approximately 3 months' time. Therefore, have been listed for mention for Monday 6th February 2017 to allocate a hearing date in the April 2017 sittings. They will also be affected by my pending judgment in the Vosarogo matter dealing with similar applications for both the applicant and the respondent.
- [8] In the meantime, the Respondent still requires an interim practicing certificate to be issued to her. That application is opposed by the Chief Registrar.
- [9] I heard yesterday before this present interlocutory application by Ms. Vodo (argued on her behalf by Mr. Naco), a similar application by Mr. Vosarogo for the continuation of his practicing certificate .
- [10] It is important that I reiterate in this judgment two of the points I made in my ruling in the Vosarogo matter as set out in Paragraph 11 and 12 below:

[11] *In my previous ex tempore Ruling on 23rd September 2016, I noted that in Cevalawa Commissioner Connors raised by his own volition with the Respondent the issue of her being without a practicing certificate pending the final hearing of the matter concluding:*

'... I am addressing the simple issue that the six months that the practitioner wont have the practicing certificate and the only two reasons are the Chief Registrars refusal to issue it and the fact the commission isn't sitting if this commission were the high court, the magistrates court or whatever and sat everyday then this matter could be dealt with next week and the practitioner wouldn't be placed in jeopardy by not having a practicing certificate for six months. If it were somebody charged with murder the bail act carries a presumption that bail be granted not a presumption to be locked up pending trial but a presumption that bail be granted there is an awful [lots] of hoops the prosecution has to go through to cause the person to remain in custody

[12] *I also noted in my previous ex tempore Ruling on 23rd September 2016, that in Cevalawa Leading Counsel for the Complainant then intervened and advised that she would not be opposing the making of 'an interlocutory order directed at the Chief Registrar to issue a practising certificate forthwith pending the determination of the matter' and accordingly an interlocutory order was made on that same day which was then extended for the balance of the term (that is until 28th February 2012). I agree with the submission of Counsel for the Applicant in the Vosarogo matter (as I understood his submissions) that on 30th November 2011, an Order was made by Marshall JA, Resident Judge of Appeal, staying the Orders of Commissioner Connors until the hearing of the Chief Registrar's appeal because they had not been given the opportunity by the Commission to address the Commission on that further extension.*

[13] *As I have understood the submissions yesterday of Counsel for the Chief Registrar, in the Vodo matter they are as follows:*

- (1) They rely upon the same grounds as argued before me on the 23rd September 2016 opposing the granting of the interim practicing certificate;*
- (2) In addition, it was noted that Mr. Naco [who appeared as Counsel for Respondent] has stated that the Respondent will be in Australia for three months following her operation. Therefore, it was submitted that there would be no prejudice to the Respondent if she was not issued with a practicing certificate.*

[14] I note that there was no submission made by the Counsel of the Chief Registrar that there has been a breach by the Respondent of the conditions I attached to my order for granting the interim practice certificate on 23rd September 2016. According to Mr. Naco who has appeared as Counsel for the Respondent and is also the principal of the firm presently employing the Respondent, Ms. Vodo has her own clients to whom she would be providing advice and assistance even whilst she is in Australia. Part of the problem for the Respondent is that after her operations in Australia she will be needing a period of recuperation but that does not mean that she will not be working from Australia on her file. Therefore, Mr Naco noted that the submission of Counsel for the Applicant that there would be no prejudice suffered by Ms. Vodo if she was not issued a valid practicing certificate was incorrect.

[15] As I mentioned in my Ex tempore Ruling on 23rd September 2016, and again in my ruling in the Vosarogo matter yesterday, I am concerned, as was Commissioner Connors in *Cevalava*, that as the Commission sits part-time this can have an extremely detrimental impact on a practitioner, particularly when I have two applications before me, one by the Applicant to amend Count 4 and the other by the Respondent for the counts to be struck out for duplicity, and a hearing of those applications may not take place until the April 2017 sittings of the Commission due to Ms. Vodo not being able to return to Fiji for the next three months. I note that she is scheduled to depart Fiji for Australia this coming Sunday the 11th December 2016.

[16] Balanced against the above, I have been asked by Counsel for the Applicant (who is the Respondent to the present interlocutory application for the granting of the Interim practicing certificate) that they rely on the same grounds as argued before me on 23rd September 2016, that is, these are serious matters and the protection of the public must be paramount.

[17] I also note again, as I did in my earlier Ruling on the 23rd September 2016 as well as in the Vosarogo matter yesterday, that the allegations against the Respondent practitioner is that she has been negligent not fraudulent.

[18] I further note that I have not been referred to any case that is "on point" in relation to the four substantive charges brought against the Respondent.

[19] I noted in my earlier Ruling on the 23rd of September 2016 (as I did again as in the Vosarogo matter yesterday) the submissions previously made on behalf of the Respondent included reference to the Constitution and the statement by Justice Madigan (sitting as the Commissioner) in *Chief Registrar v Devanesh Prakash Sharma* [2014] FJLASC 7 (Unreported, ILSC Case No 029 of 2013, 12 November 2014) at [52]:

Although practitioners are not "accused persons" as envisaged by the Constitution, I will now declare that for this matter and all future matters before this Commission, the rights of persons being investigated and charged under the Legal Practitioners' Decree will be afforded all of the rights afforded to accused persons in the Constitution 2013.'

I note that previously Ms. Vodo highlighted from the Constitution the presumption of innocence (s.14(2)(a)) as well as the right to economical participation (s.32(1)).

[20] Again I note Ms. Vodo is not seeking to reopen her practice. She is only seeking to be permitted as an employed lawyer and will not handle any trust account or other moneys.

[21] As I mentioned to the parties on the 23rd September 2016, as well as in the Vosarogo matter yesterday, if I treated the matter in the similar vein as a bail application the Commission would consider:

(1) Whether she has complied with the previous conditions set out in my Order of 23rd September 2016 -I have not been advised by Counsel for the Chief Registrar that she has failed to comply with such conditions ;

(2) The likelihood of the person attending – here Ms. Vodo has instructed Mr. Naco to attend yesterday's hearing, she has an application on foot for the substantive matters to be stuck out and, if that applications fails, she has previously advised that she will be contesting the auditor's report in the substantive matters.

(3) The Interests of the Respondent– Ms. Vodo has a self-employed husband and three extremely young children;

(4) The public interest – this could be protected because Ms Vodo is not seeking

to reopen her practice but work as an employed solicitor for Mr Naco (which she will be undertaking from Australia) during her period of recuperation.

[22] In coming to a decision, I have taken into account that these matters are serious and the importance of the protection of the public. Balanced against that I have taken note of what was said by Commissioner Connors in *Cevalawa*, the Respondent is only seeking a practising certificate to be issued at this stage until the next mention on 6th February 2017 and the conditions that can be attached and have been complied with to date.

[23] The formal Orders of the Commission are:

ORDERS

1. In respect of **LAISA LAGILEVU VODO**, the Respondent's oral application for the issuing of an interim practising certificate is granted on the following basis:

Pursuant to Section 121(3) of the Legal Practitioners Decree, the Chief Registrar shall issue a Practising Certificate to the Respondent until 6th February 2017 forthwith on payment of the prescribed pro-rata fees, on the following conditions:

- (i) The Respondent is not to operate a Trust Account nor receive any monies personally in relation to any legal work undertaken by her.
- (ii) The respondent is only to work as an employee lawyer.

Dated this 8th day of December 2016.

