

**IN THE INDEPENDENT LEGAL SERVICES COMMISSION**

**AT SUVA**

**ILSC CASE NO. 009 of 2019**

**BETWEEN: CHIEF REGISTRAR**

**APPLICANT**

**AND: RAJENDRA CHAUDHRY**

**RESPONDENT**

**Counsel:** Mr. Ravinesh Lal for the Applicant  
Mr. Rajendra Chaudhry, In Person

**Date of Objection** : 15<sup>th</sup> February 2023

**Written submissions** : 08<sup>th</sup> March 2023

**Date of Ruling** : 25<sup>th</sup> April 2023

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**RULING**

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**Introduction**

1. On 15<sup>th</sup> February 2023 when this matter was mentioned the Respondent made the application that I recuse myself as a substantive matter had been determined in paragraphs 33 and 34 of the Interlocutory Ruling dated 22<sup>nd</sup> June 2022.
2. The issue so commented upon in the said paragraphs 33 and 34 is in respect of the form of reference of the statute, namely, if it is “Decree” or “Act” as at the date of considering the objection. The Respondent raised this issue in his written Submissions filed on his behalf on the 31<sup>st</sup> July 2022 in its Postscript as follows:

*“Postscript*

1. *There has been some comment from Commissioner Goundar J as to the Respondent’s reference to the Legal Practitioners Decree 2009 rather than the Legal Practitioners Act 2009.*

2. *The Respondent means no discourtesy to Commissioner Goundar J but says that it is trite that any law that is not passed by Parliament but promulgated by notice is a Decree.*
3. *Section 163 (1) of the Constitution is relevant and reads:  
163.- (1) In this Constitution, unless the contrary intention appears – “Act” means an Act of Parliament, a Decree or a Promulgation.*
4. *There is no reference in the Constitution that has made any reference that decrees as to be become acts and be referred to as such.*
5. *Section s173(2) of the same Constitution is more specific on this point by reference to the dates of 5 December 2006 to the first session of Parliament, given that there was no Parliament during this period so no laws being Acts of Parliament could be passed. This section reads:  
173 (2) Notwithstanding anything contained in this Constitution, any Promulgation, Decree or Declaration (other than the laws referred to in Part C of this Chapter) and any subordinate laws made under any such Promulgation, Decree or Declaration –  
(a) made or as may be made between 5 December 2006 until the first sitting of the first Parliament under this Constitution; and  
(b) which are in force and have not been repealed or replaced by another Promulgation, Decree or Declaration or by any subordinate laws made under any such Promulgation, Decree or Declaration (as the case may be), shall continue to be in force in their entirety.*
6. *It is unchallenged that the Decree was by way of promulgation and therefore its correct reference is as a Decree and not an Act.*
7. *Furthermore, it is submitted for that any purported legislation cannot amend the Constitution to provide for all decrees to be referred to as acts.”*

3. Then the Respondent also adverted to this issue in his oral submission when the matter was taken up for inquiry on the 23<sup>rd</sup> of May 2022 which appears at page 2 of the transcript in the following form:

*“... now in terms of the regulating document, it is for me goes main at the time when the 1997 constitution had been abrogated after the Bainimarama and his demonstration lost the Court of Appeal matter and thereafter Bainimarama, that’s number 2 of my footnote. So my understanding is the legal practitioner’s Decree is the correct term and not the Act and any Decree it was, and it remains in my view.”*

4. Then also at page 14 of the transcript:

*“.....*

*Mr. Chaudhry: That is precisely what I am trying to say, it is that decree in 2009, it was a decree in 2009, it was not part by an act of parliament. This renaming of the acts is to*

*Commissioner: Yeah, yeah, as regards to that, the present constitution has ensured the continuity of all these decrees. So, as far as the law stands today, I don’t think there can be any debate as to whether it is an act or a decree. It is an Act. So, I*

*think that is the legal position. Have a look at consolidated statutes of Fiji. That is, that is there.*

*Mr. Chaudhry: After all the consultation and it did not pass-through parliament by proper debate and the likes and it would be between other countries, it was forced on the people (inaudible) as a decree. Now, so, these are the important points because I think and again, I go back to the point from, the use of this act, it's an attempt to white wash the sorted history when Fiji was not without a parliament, or legislie voice the democratic parliament. Then, there's those the issue of my initial submissions that this decree was forced on the legal profession in 2009, in an effort to get them to act to the illegal abrogation of the 1997 Constitution. I mean it is a plain delight and the way the Law Society and I was there at that time the Law Society's office was raided by then the Chief Registrar, document ceased, officers of the Law Society was intimidated. The Law Society head office was burnt down. These are all things that are obtained in the after the 2009 abrogation of the 1997 Constitution. And, the decree was then forced on the legal profession Sir, there's a difference between an Act of Parliament where a legislation is pressed for before the passing and there is debate, and there is tension and there is voting as opposed to decree that is forced.... ."*

5. This Commission has in paragraphs 33 and 34 of the said Ruling simply traced the legislative history of the Legal Practitioners Act and come to a finding of law on the legislative process and the title of the statute as it prevailed at that point.
6. This is no more than a comment and expression of a view on legal issue on a question of law raised by the Respondent both in his written submission as well as his oral submission as aforesaid.
7. In this circumstance, there is no determination of any substantive matter or a trial issue as alleged by the Respondent but only a comment on the Legal Practitioners Act as at the date of the interlocutory Ruling [22<sup>nd</sup> June 2022]. Accordingly, the submission and the application that a trial issue had been predetermined is misconceived and the application for a recusal is accordingly refused and rejected.

**Dated** the 25<sup>th</sup> day of April 2023.

