

IN THE INDEPENDENT LEGAL SERVICE COMMISSION

AT SUVA

ILSC CASE NO. 001 OF 2024

BETWEEN : **VIKASH KUMAR**

APPLICANT

AND : **AKUILA NACO t/a NACO CHAMBERS**

RESPONDENT

AND : **THE CHIEF REGISTRAR**

AMICUS CURIAE

Counsel: Ms P Prasad for the Applicant
No Appearance for the Respondent
Mr A Chand for the Chief Registrar

Date of Hearing: 3 March 2025

Date of Decision: 4 April 2025

DECISION

(Reasons)

[1] The applicant, Vikash Kumar is seeking reimbursements from the Fidelity Fund as follows:

1. Loss of Trust money - \$9000.00.
2. Conveyancing costs - \$800.00.
3. Financial losses - \$3000.00.

[2] The facts are contained in the applicant's affidavit.

[3] On 9 November 2015, the applicant entered into a Sale and Purchase Agreement for purchase of a freehold land from Stephen Joe, the vendor. Both the purchaser and the

vendor consented to the same solicitor, Akuila Naco of Naco Chambers, to carry out the conveyancing. Mr Naco is now deceased, but at time when the Agreement was prepared, he was the principal solicitor in Naco Chambers.

[4] According to the Agreement, the full purchase price for the property was \$90,000.00 (VIP) to be paid as follows:

\$70,000.00 upon signing of the Agreement and
\$20,000.00 on the date of settlement.

[5] Settlement was supposed to take place within 90 days from the date of execution of the Agreement.

[6] Immediately after signing the Agreement, the applicant made the following payments:

- \$70,000 paid directly to the vendor which the vendor acknowledged receipt of in writing.
- \$400.00 paid to the solicitor for preparing the Sale and Purchase Agreement.
- An additional \$400.00 paid to the solicitor to prepare transfer documents.

[7] Naco Chambers acknowledged receipt of \$800.00 from the applicant for conveyancing costs.

[8] On 14 December 2015, the applicant paid the balance sum of \$20,000 as follows:

- i. \$9,000 (10% of the purchase price \$90,000) into Mr Naco's trust account for payment of Capital Gains Tax on behalf of and on the instructions of the vendor.
- ii. \$11,000 into the vendor's personal bank account.

[9] After making the full payment, the settlement did not take place and the property was not transferred to the applicant.

- [10] The applicant contacted Mr Naco and his conveyancing clerk on numerous occasions via phone, email and in person to get the transfer of the property finalized, but of no avail.
- [11] In 2019, the applicant found out that the vendor had passed away and that the vendor's estate was being administered by the Fiji Public Trustee Corporation Limited (the Public Trustee). Thereafter, the applicant contacted the Public Trustee to have the property transferred to him since he had paid the full purchase price in accordance with the Sale and Purchase Agreement he had with the vendor. The transfer is currently being handled by the Public Trustee.
- [12] The transfer of property was also delayed due to disbarment of the legal practitioner, Mr Naco, closure of his law firm, closure of his trust account and his subsequent demise.
- [13] When the applicant realized that his options to recover the money from his solicitor were limited, he sought reimbursement of the lost money from the Fidelity Fund.
- [14] Fidelity Fund was established by Trust Accounts Act 1996 as amended by Trust Accounts (Amendment) Act 2009 for the purpose of reimbursing person who suffer loss of money or other property entrusted to a legal practitioner, through theft or fraudulent misappropriation by a legal practitioner in practice or by an employee of such legal practitioner. The burden is on the person seeking reimbursement to prove that he or she lost money or property entrusted to a legal practitioner through theft or fraud by the legal practitioner or his or her employee and the standard of proof is balance of probabilities (*Kumar v Ligabalavu* [2023] FJILSC 2 (5 January 2023)).
- [15] It is clear from the receipt dated 14 May 2015 drawn from the Trust Account of Naco Chambers that the legal practitioner, Mr Naco received \$9000.00 from the applicant for a specific purpose, that is, to pay Capital Gains Tax to Fiji Revenue and Customs on behalf of the vendor. The bank statement of the solicitor's trust account for the relevant period does not show that this money was ever deposited into the trust account. Both, the Official Receiver engaged by the Chief Registrar and the Chief Registrar confirms that there is no

accounting of this money in the records kept by the legal practitioner. The Bank Account was closed on 24 July 2018.

- [16] When the Public Trustee took over the administration of the vendor's estate, the applicant came to know that the Fiji Revenue and Customs Service had not been paid the capital gains tax for the transfer to take effect. On 18 January 2024, the applicant paid that amount of money to Fiji Revenue and Customs Service on the account of the vendor as Capital Gains Tax as per his earlier arrangement with the vendor when he was alive. The applicant has submitted the official receipt from the Fiji Revenue and Customs Service as proof of this payment.
- [17] From all these proven facts, I am satisfied that it is more likely than not that the \$9000.00 entrusted to the legal practitioner for payment of Capital Gains Tax to Fiji Revenue and Customs Service was fraudulently converted to some other use either by the legal practitioner himself or by his employee. The applicant lost the money and he had to fork out an additional \$9000.00 from his pocket to pay the Tax to Fiji Revenue and Customs Service for the transfer of property to take effect.
- [18] The applicant is entitled for reimbursement of \$9000.00 from the Fidelity Fund. His other claims for reimbursement from the Fidelity Fund are declined. The payment of solicitor's costs to carrying out conveyancing is operational costs and they are not trust money. A person is not entitled for reimbursement of solicitor's costs from Fidelity Fund. The claim for \$3000.00 as compensation for financial losses is declined for the same reason.
- [19] The sheer number of Fidelity Fund claims pending for determination before the Commission has swayed me from awarding interests on the reimbursement amount of \$9000.00. The Commission has a duty to protect the sanctity of the Fund so as to enable it to be applied for the purposes for which it was established (*Prakash v Lala* [2024] FJCA 176; ABU046.2020 (27 September 2024)). Unnecessary award of interests and costs to the applicants may exhaust the Fund.

- [20] The Funds Trustee is directed to pay the applicant, Vikash Kumar a sum of \$9000.00 as reimbursement for loss of trust money pursuant to section 23 of the Trust Accounts Act.
- [21] The ILSC, Secretary is directed to forward a copy of this decision to the Funds Trustee.


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Justice Daniel Gougeon
COMMISSIONER



Solicitors:

Nambia Lawyers for the Applicant

Legal Practitioners Unit appearing as Amicus Curiae