

IN THE INDEPENDENT LEGAL SERVICES COMMISSION

AT SUVA

ILSC CASE NO. 010 OF 2025

BETWEEN : **RADHESWAR PRAKASH DEO**

APPLICANT

AND : **SURESH CHANDRA**

RESPONDENT

THE CHIEF REGISTRAR

AMICUS CURIAE

Counsel : **Ms A Singh for the Applicants**
No Appearance for the Respondent
Ms R Wati for the Chief Registrar

Date of Decision : **7 November 2025**

DECISION

(Application for Reimbursement from the Fidelity Fund)

Background

- [1] The Applicant, Radheshwar Prakash, seeks reimbursement from the Fidelity Fund under Section 23 of the Trust Accounts Act 1996. The claim is supported by an affidavit sworn by Anaseini Yalorarawa, Law Clerk employed by Messrs Vijay Maharaj Lawyers. Losana Malani, Senior Legal Officer within the Legal Practitioners Unit, has filed an affidavit on behalf of the Chief Registrar. The

precise factual matrix concerns a sum allegedly held or lost in the course of dealings with a legal practitioner or law firm. The Respondent opposes the claim, relying both on the statutory grounds and factual denials.

Law

- [2] Section 23 Trust Accounts Act 1996 authorizes payments from the Fidelity Fund solely in instances where the claimant's loss results from "stealing or fraudulent misappropriation by a legal practitioner ... or by any clerk or servant of such legal practitioner, of any money or other property entrusted ... in the course of such practice." The provision specifically excludes losses arising from investment and places the burden of proof on the applicant to establish the statutory wrong. The Fund is explicitly not an "insurer of loss" and requires evidence of theft or misappropriation and not merely negligence, bad bookkeeping, or trust account deficiencies.

Analysis and Determination

- [3] The affidavits of Anaseini Yalorarawa and Adi Malani assert that funds were either deposited or lost in connection with dealings involving the law practice. However, there is no sufficient affidavit evidence establishing that the loss suffered was due to "stealing or fraudulent misappropriation" by a legal practitioner, clerk, or servant of the firm. The evidence discloses only, at best, administrative failings and poor record-keeping, not affirmative theft or actual fraudulent conduct. There is no evidence to show that the missing or withheld funds constitute the result of criminal or dishonest misappropriation, within the meaning of Section 23.
- [4] Recent decisions of the Commission emphasize that the Fidelity Fund may only be applied when the required statutory elements are clearly proven. The mere

circumstances of receivership, missing records, or unpaid trust money are not sufficient. The claimant must exhaust all other remedies, and the Fund is only to be used as a "last resort." Claims granted outside this mandate risk depletion of finite resources to the detriment of others more clearly within the statutory purpose.

Conclusion

- [5] It is therefore concluded that the statutory threshold for a payout from the Fidelity Fund has not been met. While the loss and distress to the applicant are manifest, and the affidavits highlight true procedural defects, the evidence required by Section 23 is wanting. The application for reimbursement is therefore declined.



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Justice Daniel Goundar
COMMISSIONER

Solicitors:

Vijay Maharaj Lawyers for the Applicant

Legal Practitioners Unit for the Chief Registrar