



INDEPENDENT LEGAL SERVICES COMMISSION

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Tuesday, 10 July 2012

Mr Rajendra Chaudhry
Barrister & Solicitor
Gordon & Chaudhry Lawyers
19 Rewa Street
SUVA

Facsimile: 3319033

Dear Mr Chaudhry

**RE: CHIEF REGISTRAR -v- KINI MARAWAI & RAJENDRA CHAUDHRY
MATTER NO 02 OF 2012**

Thank you for your undated letter which was placed before the Commissioner for his directions. The Commissioner directs that I reply to you in the following terms:

Unfortunately Mr Chaudhry appears to misunderstand the nature of the proceedings against him. These proceedings are by way of an enquiry and are not an inter-partes adversarial trial hearing. The normal rules of trial evidence do not apply (see Section 114 of the LPU). Therefore the rule in *Brown and Dunn* has no relevance whatsoever to evidence before the Commission.

As Justice Goundar's Ruling is mixed fact and opinion, if those same facts are before the Commission, then it will be for the Commissioner to form his own opinion on those facts. Justice Goundar's opinion is for him alone although a decision of the High Court must be respected and given due weight. It is both outrageous and unethical to even consider cross-examining a Judge of the High Court on his rulings or judgments.

Similarly Ms Vateitei (who was writing on behalf of the LPU) has expressed opinions which are for the LPU alone and not necessarily those that the Commission will arrive at. Ms Vateitei will be a member of the prosecuting team and the Commission will not allow her to be called to be cross-examined on the opinions of the LPU.

For the reasons given, the Commission will not accede to the calling of the two parties requested.

The hearing will begin on the 18th of July 2012 at 9.00am and not the 19th of July 2012 as Mr Chaudhry states in his letter.

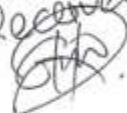
The Commission will not entertain any further unsolicited ex parte correspondence on either evidence or procedure."

Yours faithfully

INDEPENDENT LEGAL SERVICES COMMISSION



Afrana Nisha
Secretary

Received
 10/07/12.

Rajendra Chaudhry

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SUVA
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MS AFRANA NISHA
Secretary
Independent Legal Services Commission
Civic Tower - Level 5
Victoria Parade
SUVA

URGENT

By fax: 3309 013

Dear Madam

Re: Production of Complainant Justice Daniel Goundar and Ms Litia Vateitei for purposes of cross examination (ILSC Matter 02/ 2012)

I write on the above matter, seeking the presence of Justice Daniel Goundar and Ms Litia Vateitei, at the aforementioned matter, which is set for hearing on 19th and 20th July 2012. I am the 2nd Respondent. The bases for the presence of Justice Goundar and Ms Vateitei are stated in the following paragraphs.

1. It was pursuant to Justice Goundar's decision as delivered on 16th March 2012, wherein he said:

[13] After considering the court records, there are certain aspects of conduct of counsel appearing for the appellant in the Magistrates' Court that is of concern to this Court. But without knowing the full facts, it is difficult to determine whether the appellant was prejudiced by the conduct of counsel representing her in the Magistrates' Court. To do justice to her appeal, an independent inquiry is necessary to determine if counsel had acted professionally under the Legal Practitioners Decree when representing the appellant in the Magistrates' Court.

[14] Firstly, it appears that counsel played "ducks and drakes" in the court below. Mr Vakaloloma made two appearances and disappeared. Mr Marawai made four appearances in which the appellant pleaded guilty and admitted the facts tendered by the State. He then disappeared without any explanation. Mr Chaudhry then appeared to mitigate and to vacate the appellant's guilty plea. He withdrew when this Court raised the issue of conflict of interest.

[15] Secondly, there is an issue as to who was the counsel with instructions from the appellant. The appellant in her sworn statement dated 22 July 2011 said she instructed Mr Marawai to draw her affidavit withdrawing her complaint against Mr Chaudhry. She makes no mention of giving any instructions to Mr Vakaloloma. When Mr Chaudhry appeared, he gave an impression to the court that he will involve himself in the case only with the consent of the appellant. However, Mr Marawai, on an earlier appearance, informed the court that Mr Chaudhry has already involved himself and was seeking a character reference for the appellant from her employer in Melbourne.

[16] Thirdly, there is an issue of Mr Marawai representing the appellant after witnessing her affidavit upon which the charge of giving false information was founded.

[17] Fourthly, there is an issue of Mr Chaudhry representing the appellant in the circumstances of clear conflict of interest.

[18] Finally, there is an appearance of collusion between counsel to achieve a

favourable result for Mr Chaudhry at a detriment of having the appellant plead guilty to the charge of giving false information so that any investigation against Mr Chaudhry is deflected.

[20] I direct my decision and the court records of this appeal to be forward to the Chief Registrar for an independent inquiry into the professional conduct of Mr Vakaloloma, Mr Marawai and Mr Chaudhry as legal practitioners under the Legal Practitioners Decree on the issues raised above.

2. It was upon the direction of Justice Goundar that the Legal Practitioners Unit sought an explanation and subsequently charged the writer. As a rule of fairness and in accordance of the rule in *Brown v Dunn*¹ we require Justice Goundar to be present for cross examination as to the reasons for his referral of this matter to the ILSC. In his absence we will object to any evidence regarding the said decision of Justice Goundar, as may sought to be introduced by the Applicant without the maker being present for cross examination.
3. Similarly, the writer also requires the presence of Ms Litia Vateitei for the purposes of cross examination on her letter dated 2nd April 2012 seeking an explanation from him and wherein certain conclusionary comments were made in the same letter. We refer in particular to the following paragraph:

We note that you had acted for the accused, Ms. Balaggan in the matter State v Muskan Balaggan Criminal Case No. CF 1190 of 2011 before the Suva Magistrates Court. The accused was charged with one count of giving false information to a public servant.

The accused had initially complained to the Police that she was sexually assaulted by you and gave a statement to that effect. Later she withdrew the said complaint. Her withdrawal of the said complaint against you gave rise to the charges that were laid against her in the matter State v Muskan Balaggan Criminal Case No. CF 1190 of 2011.

As such you should not have acted for the accused as it was a direct conflict of interest. You had vested interest in this matter and should have refrained from so acting for Ms. Balaggan. The matter that was before the court to decide was whether the accused had given false information to a public servant regarding her initial allegations against you. Her conviction in this matter would have meant that her allegations against you would hold no water. As such you were a party that was to be directly affected by the decision in this matter.

It is important that Ms Vateitei be available to be cross examined for the above quoted statements as it is important for the integrity of the investigation and prosecution processes of legal practitioners. Again, and in her absence, we shall be objecting to any evidence regarding the above referenced comments of Ms Vateitei, as may be sought to be introduced by the Applicant without the maker being present for cross examination.

Yours faithfully



RAJENDRA CHAUDHRY

¹ *Brown v Dunn* (1893) 6 K. 67, H.L. is a famous British House of Lords decision on the rules of cross examination. From this case came the common law rule known as the "Brown v Dunn rule" or "the rule in Brown v Dunn". The rule in Brown v Dunn says that a cross examiner cannot rely on evidence that is contradictory to the testimony of the witness without putting the evidence to the witness in order to allow them to attempt to justify the contradiction.