

**BEFORE THE IMMIGRATION ADVISERS
COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2013] NZIACDT 38

Reference No: IACDT 001/12

IN THE MATTER

of a referral under s 48 of the Immigration
Advisers Licensing Act 2007

BY

Immigration Advisers Authority

Authority

BETWEEN

NO and NTO

Complainants

AND

Hakaoro Hakaoro

Adviser

THE COMPLAINANTS' NAMES ARE NOT TO BE PUBLISHED

RULING

REPRESENTATION:

Authority: Ms T Thompson, Ministry of Business, Innovation and Employment, Auckland.

Complainants: Mr N T Tupou, Barrister, Auckland

Adviser: Mr Sutton, Barrister, Auckland.

Date Issued: 24 June 2013

RULING

- [1] This matter was adjourned part-heard on 19 April 2013; when it resumed Mr Sutton on behalf of Mr Hakaoro submitted that I should decline to hear this complaint, as I have already upheld another complaint in relation to Mr Hakaoro.
- [2] Mr Sutton noted the findings in the other complaint included findings relating to Mr Hakaoro's bigotry toward a particular ethnic group.
- [3] In essence Mr Sutton's argument was initially to the effect a judicial officer having heard and determined a matter that goes to the credibility of a party cannot again hear a matter involving the same party. He says there is an appearance of bias.
- [4] I invited Mr Sutton to provide authority for his proposition. His proposition that a judicial officer is seen to hold a personal bias as a result of issuing a reasoned decision in a judicial process is not obviously a sound one.
- [5] The judicial oath requires me to deal with each matter before me on its merits, and I am required by the legislation constituting this Tribunal to provide written reasons for decisions. I have had no contact with, or knowledge of, Mr Hakaoro outside of my judicial function as the Chair of this Tribunal. It is necessary for me to ensure evidence on one matter is not mixed with another, except to the extent the principles of evidence allow or require that.
- [6] It is far from uncommon for a judge in a summary jurisdiction to deal with more than one defended hearing in relation to a particular defendant.
- [7] The issue raised is not merely one of convenience. There has already been a day of hearing, and a number of witnesses have attended, and there has been the expense of counsel.
- [8] More generally, in the area of professional disciplinary matters, it is commonplace for a Tribunal to deal with a series of complaints against a particular practitioner.
- [9] Mr Sutton adjusted his argument to advance the proposition it was the findings in the particular case that created the appearance of bias.
- [10] He referred to the Court of Appeals decision in *Muir v CIR* 18 PRNZ 630, and also made reference to *Stuart-Menteath v Registrar of Private Investigators and Security Guards* (CIV-2010-412-000306 5/11/10), and *JEC No.2 Ltd v Official Assignee at Hamilton* [2013] NZHC 1352.
- [11] The principles in the *Muir* case are to the effect it is necessary to establish the actual circumstances, and to do so rigorously.
- [12] Mr Sutton pointed to my previous decision relating to Mr Hakaoro dealing with the imposition of disciplinary sanctions. He pointed in particular to:
- [12.1] A finding that Mr Hakaoro had shown no contrition or indication of a willingness to change.
- [12.2] Findings regarding Mr Hakaoro having procured money dishonestly.
- [12.3] Findings regarding ethnic bigotry.
- [13] Ms Thompson for the Authority largely supported Mr Sutton referring to the expense of having to hear the matter if Mr Sutton was correct.
- [14] Mr Tupou opposed the application, essentially on the ground that if the previous decision was a proper judicial decision the application had no merit.
- [15] If the findings in the previous case were gratuitous observations regarding Mr Hakaoro, there would be a well-founded concern of an appearance of bias, not only in the present matter but also in the previous matter.

- [16] However, an examination of the record relating to the previous matter discloses that the matters Mr Sutton points to were matters the Tribunal was required to determine. The process commenced with a minute that put Mr Hakaoro on notice of the potential findings.
- [17] That included evidence that Mr Hakaoro had disparaged lawyers and other participants of a particular nationality, and made allegations they acted fraudulently and unprofessionally. This he said motivated their evidence against him.
- [18] Dishonesty was the essence of the allegation the Tribunal was required to determine.
- [19] Mr Hakaoro had made threats against the complainants, and engaged in other aggressive conduct in the course of the complaint.
- [20] The Tribunal issued a substantive decision upholding the complaints, and set out the reasons.
- [21] When the Tribunal had to consider sanctions, these matters were central to whether Mr Hakaoro needed to be removed from the profession or not. His conduct and personal attributes were very much in issue.
- [22] The Tribunal certainly made strong findings, but they were not gratuitous; they were findings that were necessary in the course of the judicial process.
- [23] I do not accept that proposition that because serious findings are made in the course of a judicial process means that the decision-maker will appear to be biased.
- [24] It is well understood that judicial officers are accountable for their decisions, and required to determine each matter on its merits.
- [25] It is true that this Tribunal has made very serious findings against Mr Hakaoro, but they were findings that were founded on the evidence before the Tribunal, and necessary.
- [26] I am not satisfied there can be any appearance of bias in determining the other complaints before the Tribunal.
- [27] Mr Sutton's application is refused; the matter will proceed.

DATED at WELLINGTON this 24th day of June 2013

G D Pearson
Chairperson