

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CIVIL APPEAL NO. ABU 057 of 2024
[In the Suva High Court Probate Action No. 018 of 2023]

BETWEEN : **NAZREEN SHERIN NISHA** of Dreketi Feeder Road, Saweni,
Lautoka, School Teacher.

Appellant

AND : **MAHMOOD ALI** of Dreketi Feeder Road, Saweni, Lautoka,
Businessman.

Respondent

Coram : **Prematilaka, RJA**

Counsel : **Mr. M. Saneem for the Appellant**
No appearance for the Respondent

Date of Hearing : **30 July 2025**

Date of Ruling : **30 July 2025**

RULING

[1] The appellant appealed against the judgment of the High Court¹ ('HC judgment'). Security for costs has been paid. Subsequently, the appellant also filed summons for stay of the execution of the HC judgment with her supporting affidavit which have been served on the respondent as well as his solicitors in the High Court. However, there is no appearance for the respondent on record in this court. It appears that there has been no appearance for the

¹ **Ali v Nisha** [2024] FJHC 360; Probate Action 18 of 2023 (13 June 2024)

respondent before the Chief Registrar either, at the security for costs inquiry. He never appeared personally before this court.

[2] Earlier, the appellant had sought a stay of the judgment pending appeal in the High Court as well but it was refused². Therefore, the appellant's application before this court is a renewed application for stay.

[3] The High Court judge has set out the facts relevant to the stay application succinctly as follows:

“[1] The applicant filed this action under Probate Jurisdiction to obtain Limited Letters of Administration (Limited LA) for his deceased son named Nasir Mahmood Ali (Nasir). Late Nasir Mahmood Ali was divorced prior to his death from Respondent and she had also filed action in Family Jurisdiction seeking distribution of property from the estate of Nasir after death of late Nasir. She was separated from late Nasir prior to divorce and she was having a de facto relationship, which had resulted even children been taken to Police and application for child abuse and recovery filed by late Nasir.

[2] The child abuse application based on such exposure of children for violence prior to death of late Nair but this had not proceeded to hearing and residence of children continued with Respondent.

[3] Late Nasir was suffering from terminal illness and had died intestate. His two children are the sole beneficiaries of the estate of late Nasir.

[4] Late Nasir was a Taxi Driver and before his death an application for the transfer of the Taxi made but the transfer was not completed before death of late Nasir and for completion of this an administrator of the estate required . Respondent is objecting to grant of Limited LA.

[5] The estate of late Nasir comprised interest in the land where Respondent and children reside and a Taxi. After hearing limited LA was granted for the Applicant considering best interest of children as well as conflict due to Respondent's claim against the estate of late Nasir in Family jurisdiction.”

² **Ali v Nisha** [2024] FJHC 599; Probate Action 18 of 2023 (25 September 2024)

- [4] In the appellant’s notice of appeal, she had set out several grounds of appeal of mixed fact and law except the question of law as to whether the High Court erred in the application of section 32 of Non-Contentious Probate Rules (‘NCPR’).
- [5] The matters that should be considered by this Court in an application for stay pending appeal were discussed in **Natural Waters of Viti Ltd –v- Crystal Clear Mineral Water (Fiji) Ltd** [2005] FJCA 13; ABU 11 of 2004 [18 March 2005] (‘*Natural Waters*’). It is of course not always necessary to consider all seven matters as their relevance will often depend upon the nature of the proceedings and the orders made by the court below³. A stay should not be granted unless the Court is satisfied that there are good reasons for doing so. Whether there are good reasons established will be determined by reference to the principles set out by this Court in the *Natural Waters*⁴.
- [6] I cannot consider grounds of appeal based on facts or mixed fact and law at this stage as the appeal records are not yet available to this court. Having given my mind to the question of law raised by the appellant in the light of the analysis of section 32 of NCPR by the High Court, I cannot see an obvious error of law therein. However, the novelty and importance of the legal issues and the public interest considerations involved therein if any are matter upon which the appellant should convince the Full Court while arguing other grounds of appeal. Neither could I see any of the thresholds set out in *Natural Waters* being reached here warranting a stay of HC judgment or HC proceedings.
- [7] It appears that an application had been made by the respondent and intended purchaser of the said vehicle/taxi permit for setting aside the *ex parte* interim order granted on 19.9.2023 by the Magistrates court. The main concern Mr. Saneem expressed in the course of the hearing is that the learned magistrate has felt bound by the HC judgment and therefore the magistrate is sure to make the order due on 31 July 2025 by removing the seizure and detention of the vehicle concerned made as part of the *ex parte* interim order dated 19

³ See for example **Singh v Singh** [2019] FJCA 165; ABU 49 of 2018 (16 August 2019); **Prasad v Sagayam** [2019] FJCA 15; ABU82.2018 (22 February 2019)

⁴ **Singh v Singh** (supra); **Neo (Fiji) Ltd v Ausmech Services (Australia) Ltd** [2019] FJCA 174; ABU39.2018 (11 September 2019)

September 2023 and if so, the respondent as the holder of the limited letters of administration for the estate of the deceased would proceed with the transfer of the vehicle to the brother of the deceased consequent to the Sale and Purchase agreement between the deceased and his brother. Mr. Saneem asserted that this will not be in the interests of the two children of the deceased. Hence, the application for the stay of the HC judgment.

[8] I have considered *inter alia* the following matters as set out by the High Court judge:

- i. *The vehicle was seized and kept pursuant to an order of Magistrate's Court (made ex parte on the application by the appellant) on 19.9.2023 and the vehicle is not gaining any value and deteriorating as it was kept in the vicinity of the court and being wasted.*
- ii. *The appellant was aware that the application to transfer the taxi permit was made three months prior to death of the deceased. On or around 30.8.2022 brother of the deceased had made an application to LTA, for the transfer of the taxi permit of the deceased (died on 26.11.2022). Approval for the transfer of the taxi permit was granted provisionally by LTA on 16.12.2022.*
- iii. *The appellant's action also could result in a claim against the estate by the prospective buyer of the taxi and permit, who was granted conditional transfer of the taxi permit after the death of deceased by LTA but the taxi is yet to be transferred in terms of the agreement between the deceased and purchaser (the brother of the deceased).*
- iv. *The immediate reason for this application (seeking limited administration of the estate of the deceased by his father as the sole beneficiaries are minors) was the execution of transfer of vehicle/taxi and permit; this is an obligation of the estate to perform.*
- v. *There is a need for a limited grant to fulfill the obligations of the deceased including but not limited to said transfer of taxi along with its permit and also holding the interest of the deceased for the benefit of two children.*
- vi. *Section 7(1) (b) of Succession, Probate and Administration Act 1970 allows respondent to obtain limited grant for administration of the estate as the next of kin who is above the age of 18. Rule 32 of NCPR allows appellant for a limited grant, by default of a court order. Both provisions allows discretion of the court to be exercised.*

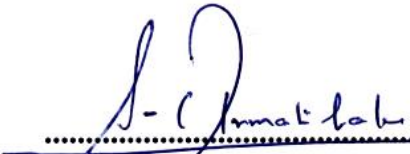
- vii. *The respondent is making the application in terms of Section 7(1) (b) of Succession, Probate and Administration Act 1970 as the next of kin of the deceased above the age of 18 years. The appellant is objecting to the application in terms of Rule 32 of NCPR as the person who is having residence of the children. Both provisions allows discretion of the court to appoint a suitable person with limited grant of administration of the estate of the deceased on the facts before the court. This appointment was pending for more than a year and there is urgency in the matter.*
- viii. *The appellant had not made an application for the grant of letters of administration of the deceased's estate since his demise on 26.11.2022, but objecting to the application of the respondent.*
- ix. *The appellant's claim under alteration of property of the deceased under Family Law was made after the death of deceased, and it will be decided by the Magistrates court as to merits and legality.*
- x. *The appellant has no beneficial interest for the estate and her application under Family Law is in conflict with her objection to respondent's request for limited grant, and that she should be appointed as administrator. A person appointed as administrator must 'hold the estate on trust 'for the distribution of the same to the children, but the conduct of the appellant regarding the estate is not in the best interest of the children. The appellant's claim in her personal capacity in the Family Law is clearly conflict with the interest of her children.*
- xi. *Considering these facts it is not in the best interest of the children to appoint the appellant to hold the property in trust till they attain the age of 18, considering the circumstances of this case.*
- xii. *The respondent being the grandfather of the beneficiaries and also an elderly person is best suited to be appointed as limited administrator of the deceased considering the circumstances of the case. The respondent must not dispose any property of the estate without sanction of a court (expert the taxi).*
- xiii. *It is a paramount consideration that estate property must be economically administered without undue deterioration in value. The appellant had an adverse claim against a property of the deceased namely the taxi which is to be dealt with by Family Court.*
- xiv. *Objections of the appellant is considered and discretion of the court is exercised in favor of respondent for the grant of limited administration of the estate of the deceased.*

- [9] Considering the facts and circumstances and the analysis of the relevant law as set out by the High Court judge, I see no compelling reason to interfere with his discretion to grant limited letters of administration to the respondent. This court will interfere with the discretion exercised by the lower court only in a few circumstances and none of is present in this matter.
- [10] The High Court in its judgment currently in appeal has not directed the Magistrates court what order it should make regarding the vehicle/taxi (and its permit) in the interim or otherwise, for the propriety or otherwise of the interim order of the MC was not the subject matter of the proceedings before the HC. It is entirely a matter for the Magistrates court to decide. The learned Magistrate is only bound by law to follow and comply with the issuance of limited letters of administration to the respondent by the High Court.
- [11] As for the order that is due shortly in the Magistrates court all what the learned Magistrate is expected do is to consider the two judgments by the High Court on 13 June 2024 (and 25 September 2024) as relevant and persuasive along with all other material placed by both parties regarding the application by the respondent and the intended purchaser of the vehicle concerned, seeking to have the interim order dated 19 September 2023 set aside or any subsequent substantive order or judgment on the vehicle now or in the future. In doing so, the learned Magistrate may consider making that order/judgment subject to adequate safeguards on the rights of the intended purchaser as well as the interests of the two children of the deceased. Mr. Saneem informed this court that by February 2026, the eldest son of the deceased would be eligible to make an application for letters of administration of the deceased's estate.

Orders of the Court:

1. *Summons for stay of High Court judgment and/or proceedings in the High Court is dismissed.*
2. *The appellant is directed to take steps to prepare appeal records as per the Court of Appeal Act, Court of Appeal Rules and Practice Directions of the Court of Appeal.*
3. *No costs of these proceedings.*




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Hon. Mr Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL

Solicitors:

Saneem Lawyers for the Appellant
No appearance for the Respondent