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

CIVIL APPEAL NO. ABU 0002 of 2020
[High Court at Lautoka Case No. HBC 266 of 2016]

BETWEEN : **RAMESH KUMAR AND SUNIL KUMAR** of Toko Tavua Fiji, Both Trustees of the Estate of Ram Asre, Purchasing Manager and Freight Operations Co-ordinator and both of 57A Bastic Street Rockdale New South Wales, Australia.

Appellants

AND : **ANJILA WATI** of Toko Tavua, Fiji, engaged in domestic duties and widow/beneficiary of the Estate of Hari Nand.

1st Respondent

ANSHIKA NAND Clerk of Toko Tavua, Fiji and **AVITESH NAND** Fitter of Toko Tavua, Fiji and **ASHMIKA NAND** of Canada, address and occupation not known to the Appellants all children and beneficiaries of the Estate of Hari Nand as the Children of late Hari Nand pursuant to Succession Administration and Probate Cap 60 of Laws of Fiji.

2nd Respondent

Coram : **Prematilaka, RJA**
Morgan, JA
Andrews, JA

Counsel : **Mr. V. M. Mishra for Appellants**
Mr. J. Buakula and Ms. P. Mataika for the 01st Respondent
Ms. R. Serusavou for the Nominal Respondent (Fiji Public Trustee) representing the estate of Hari Nand.

Date of Hearing : **11 November 2025**

Date of Judgment : **28 November 2025**

JUDGMENT

Prematilaka, RJA

Factual matrix

[1] The appellants (original plaintiffs), Ramesh Kumar ('Ramesh') and Sunil Kumar ('Sunil'), are the sons of the late Ram Asre ('Ram'). Ram Asre died on 28 September 1978. Ramesh and Sunil are also the trustees of Ram's estate. The late Hari Nand ("Hari") was Ramesh and Sunil's brother. Thus, Ramesh, Sunil and the late Hari are siblings.

[2] The appellants became trustees as a result of the order made by the High Court at Lautoka on 8 December 2008: **Kumar v Wati HC Lautoka No 119/2008; Civil Action HBC No 179/1992 (8 December 2008)**. The order was appealed to the Court of Appeal (CA) and the Supreme Court (SC) but the appeals were dismissed: **Nand v Kumar** [2011] FJCA 24; ABU86/2008 (10 March 2011); **Ishwar Nand v Ramesh and Sunil Kumar and Hari Nand** [2012] FJSC 20; CBV6.2011 (16 August 2012):

[3] The respondents (original defendants) are the surviving widow (01st respondent) and 03 children of Hari (02nd respondent). They are the beneficiaries of his estate and entitled to 1/3rd of Hari's share of Rams'estate.

[4] The case concerns the distribution of the residue of the estate of Ram Asre to which Ramesh, Sunil and the estate of Hari have equal 1/3rd share by virtue of the Last Will & Testament of Ram. The residue of the estate of Ram to which Ramesh, Sunil and the estate of Hari have beneficial interest is a 22-acre farm which is all comprised in Lease No. 26833 ("farmland") with a Sugar Cane Contract attached to it (No. 3377), Yaladro Sector. The 22-acre farmland had been leased to the late Ram for a term of 966 years 10 months and 13 days from 01 January 1941 on a rental of $400-00 (four hundred dollars per annum). Erected on this farmland are two houses. The farmland is not specifically or demonstratively devised in the Will of Ram. It will have to pass as a residuary pursuant to Clause 5 of the said Will. The farmland is the only asset of the estate of Ram that is yet to be distributed. The balance on the lease term is 888 years or so (eight hundred and eighty eight years).

[5] Hari's wife Bhagwan Dei's life interest in the farmland ceased when she passed away on 25 June 1988 and upon her death, the appellants and Hari being sons of Ram became entitled to the farmland in equal 1/3 shares.

Litigation

[6] In a nutshell, Ramesh and Sunil in their capacity as trustees of the estate of Ram had taken out an originating summons seeking directions and orders of the High Court for the final distribution and winding up of the estate of Ram. It appeared that such an order would enable them, also as beneficiaries, to buy out the 1/3 share of the estate of Hari. The respondents do not seem to be able to buy out the appellants and the appellants have asked that the respondent's share as assessed by the Court be paid by them into Court and their one third share be extinguished or transferred to the appellants so the estate can be wound up. The proceedings were instituted pursuant to section 88 of the Trustees Act Cap 65 and Order 85 of the High Court Rules which provides trustee can seek directions for management and distribution of a Trust. It gives the Court powers to make necessary orders for administration and management of an estate.

[7] The value of the entire farmland was $145,600 on 26 July 2016 according to Trumarket Valuations & Property Consultant Limited ("Trumarket") as per the valuation obtained by Ramesh and Sunil. Ramesh and Sunil had proposed to pay the respondents (estate of Hari) a third of the sum of $145,600 ($48,533.33) less several deductions. The total deductions are $28,655.88. Once that amount is deducted, Ramesh and Sunil are willing to pay $19,877.45 to the respondents to buy out their share of 1/3rd of Ram's estate.

[8] In 2018, Anjila Devi[1] (the 01st respondent) and Avitesh Nand (one of the 02nd respondents) also engaged Trumarket to value the 7-acres portion of the farmland which they occupy, and which comprises approximately 1/3 of the 22 acre farmland. Trumarket valued the 07 acres at $65,000-00 (sixty five thousand dollars). This is the figure at which Anjila Devi and Avitesh Nand are willing to settle if they are to sell their 1/3 share of the 22 acres.

[1] Erroneously referred to as Anjila Wati in the caption and by the trial judge

[9] In the impugned Order dated 22 November 2019[2], the High Court came to the following conclusions:

> *'[48] I accept the valuation of $65,000 as being the value of the defendants' 1/3 share of the farmland. That in itself, without any further deduction, would be a more than a fair bargain for the plaintiffs considering the size (7 plus acres) of what is essentially close to a freehold tenure (balance 888 years). I am not prepared to make any deduction on legal costs, considering that the plaintiffs have already recovered $30,000 and considering the points I have raised above. I am only prepared to make deductions on account of the estate of Hari Nand's contribution to land rental based on the formula above ($315÷ 3 = x no. of years unpaid).*
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> *[49] It is unclear to me at this stage as to whether Anjila Wati and/or Avitesh Nand have authority to agree to the sale of the share of the estate of Hari Nand at the price of $65,000 less the rental deductions, on behalf of the other beneficiaries namely Ashina Nand and Ashmika Nand. Unless they are the appointed personal representatives of the estate of Hari Nand, they do not have such an authority.*
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> *[50] I can only direct that Anjila Wati and/or Avitesh Nand produce to this Court conclusive evidence that Ashina Nand and Ashmika Nand are agreeable to the sale on the above price and terms before the a final Order for sale can be made.*
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> *[51] Once that evidence is produced, then Ramesh, Sunil, Anjila Wati and Avitesh Nand may further apply for an Order for the sale of the estate of Hari Ram's share in the farmland at the price of $65,000 less the rental deductions.*
>
> *[52] The matter is now taken off the cause list. Parties at liberty to apply.'*

[10] The appellants have challenged the said order on the basis that the net result of the case being taken out of the cause list with liberty for the parties to apply is that this long outstanding estate is left in abeyance and un-administered with the respondents as 1/3rd beneficiaries not having to pay any estate expenses or liabilities other than one third of rental. Significantly, some portion of the estate farm occupied by respondents is left uncultivated.

[11] The trial judge was prepared to accept the sum of $65,000.00 less deductions on account of the estate of Hari Nand's contribution to land rental based on the formula above ($315÷ 3 = x no. of years unpaid) as the price that should be paid by the appellants if

[2] **Kumar v Wati** [2019] FJHC 1112; HBC266.2016 (22 November 2019)

they were to buy 1/3rd share (07 acres) from the respondents. It is common ground that the 1/3rd contribution to land rental is $1260.00. However, he stopped short of making an order to that effect because it was unclear to him as to whether Anjila Devi and/or Avitesh Nand had authority to agree to the sale on behalf of the other beneficiaries namely Ashika Nand and Ashmika Nand. The judge indicated that once he has evidence before him to that effect, he would make the order accordingly.

[12] I shall first examine this issue. The address given in the caption for Ashmika Nand is in Canada. Ashika Nand's address in the caption is similar to that of Anjila Devi and Avitesh Nand at Toko Tavua in Fiji. It is common ground that Anjila Devi and Avitesh Nand reside on the estate.

[13] In his affidavit in opposition, Avitesh Nand states that he was duly authorised by Anjila Devi, Ashika Nand and Ashmika Nand to depose his affidavit. Thus, he has filed the affidavit in opposition purportedly on behalf of all respondents. The written submissions (28/08/2018) for 'all the respondents' had been filed jointly by Anjila Devi and Avitesh Nand. Their second set of written submissions (12/09/2018) too has been for respondents. The third written submissions (05/10/2018) again filed by Anjila Devi and Avitesh Nand has been titled as respondents' submissions. Avitesh Nand in his belated affidavit (15/03/2019) states that he had been authorised to file the affidavit by his co-respondents.

[14] When the matter came up for the first time in court on 26 January 2017, the appellants were represented by Mr. Mishra whose firm had handled the distribution of the estate of Ram as well. Avitesh Nand was present in person and stated that Ashika Nand was living in Canada and Ashmika Nand was residing at Eden Lautoka. Avitesh Nand said that he could call her on Viber and get Ashmika Nand's address. This information is different to the caption. On 27 January 2017, Mr. Mishra had informed court that Ashika Nand's (third respondent) email address had been given to him by Avitesh Nand and Mr. Mishra would serve her documents by email. When the matter came up on 15 March 2017, Mr. Mishra informed court that *"We've served all documents on all Defendants"*. Then, from 14 June 2017 to 26 February 2018, Mr. Charan has appeared for all respondents. One of the respondents, most likely Avitesh Nand had informed the court on 26 February 2018 that he had applied to the Legal Aid Commission. Hearing

had been fixed for 11 July 2018 and on that day too Mr. Mishra had told the judge that that he had served papers on respondents and wished to proceed. The respondents were absent. After 14 August 2018 until the end of the proceedings, Anjila Devi and Avitesh Nand were present in person.

[15] The trial judge does not seem to have raised any concerns whether or not Ashika Nand and Ashmika Nand in fact have been duly served with case documents. He never probed into that in any way after Mr. Mishra informed court that *"We've served all documents on all Defendants"*. Nor have Anjila Devi and Avitesh Nand been questioned on that fact either. They seem to have acted throughout, particularly in filing affidavits and submissions, as if they were acting for all respondents. But, no proper authority was ever produced to court.

[16] Therefore, in my view, the trial judge acted as if it was too late in the day for him to have stalled the entire proceedings on the premise whether Anjila Devi and Avitesh Nand had authority to represent Ashika Nand and Ashmika Nand and decided to allow their mother and brother who reside in the estate to proceed with the matter because it was one of the oldest matters still pending in his court. However, the trial judge's comments in the judgment show that he had become concerned with this aspect by the time he wrote the Order. I will deal with this crucial issue in detail later.

[17] At the hearing of the appeal, counsel from the Legal Aid Commission represented Anjila Devi. Avitesh Nand appeared in person. Fiji Public Trustee Corporation Pte Ltd (Public Trustee) represented the estate of Hari (not the beneficiaries) in terms of section 8 of the Succession Probate and Administration Act 1970. In its written submissions Fiji Public Trustee has opposed the appeal and supported the impugned Order of the High Court.

[18] In short, I am not satisfied that Ashika Nand and Ashmika Nand had sufficient notice of the proceedings and were adequately represented by Anjila Devi and Avitesh Nand. If Ashika Nand and Ashmika Nand shared a different perspective to that of Anjila Devi and Avitesh Nand of how the residue of Ram's estate should be distributed, they as beneficiaries should have had the right to come forward and place their position before

court provided they had notice of the matter. They have to be part of any sale of 1/3rd share of Hari in Ram's estate to the appellants.

[19] The result of the Order of the High Court is that if Anjila Devi and/or Avitesh Nand fail to produce to court conclusive evidence that Ashina Nand and Ashmika Nand are agreeable to the sale on the price agreed to by Anjila Devi and Avitesh Nand, then the estate of Ram would remain for ever un-administered. Needless to say, that this is totally unsatisfactory.

[20] The appellant's appeal grounds (03rd ground of appeal abandoned) could be summarised as follows:

1. *Trial judge's finding regarding the tractor and ownership of farm equipment and sale of tractor by Avitesh Nand (01st ground of appeal) was erroneous.*
2. *It will be unfair for the appellants to personally bear all estate expenses out of their two thirds share as there had been no cultivation by the respondents on approximately one third area of the Lease No. 26833 occupied by them and no contribution by them towards expenses (02nd ground of appeal).*
3. *The appellants wish to fully administer and complete distribution of the estate of Ram Asre. The respondents hinder the proper administration of the estate of Ram Asre (largely covered under the 01st and 02nd grounds of appeal).*

[21] The trial judge has analysed the matters raised in the 01st ground of appeal under the heading "Car & Tractor". The appellants' submissions were mainly on the tractor No.V645 (Massey Fergussen 135 Engine/Chassis No. 894 682 M3). The car registration number is AU 600. No identification details of other 'farm equipment' is available. It appears that the appellants have simply quoted from Justice Finnigan's words *'....a tractor, farm equipment and a car'* in his judgment in 2008.

[22] The trial judge said in his Order:

'40. There is no clear evidence before me that the car or the tractor ever belonged to the late Ram Asre at the time of his death, or that anyone else has a claim on these assets.
41. Notably, these assets (car and tractor) have always been in the possession of the late Hari Nand.

42. *Avitesh Nand has sworn an affidavit that the tractor belonged to his father Hari Nand. That effectively raises the bar to the plaintiffs to prove that these assets belong to the estate of Ram Asre.*
43. *Where ownership of a motor vehicle is disputed, a good starting point in resolving the issue is the production of an extract of the relevant Land Transport Authority registration records.*

44. *However, no such document is annexed in any affidavit filed by or on behalf of the plaintiffs.*

45. *As such, and given the fact that both the car and the tractor have always been in the possession of the late Hari Nand, albeit that he lived and cultivated on the farmland of his father, Ram Asre, it is just as probable that the car and the tractor did belong to the late Ram Asre as the late Hari Ram.*

46. *In the circumstances, I am guided by the principle that a person in possession of a chattel has a better title to it than anyone except the true owner. Accordingly, taking account of the fact that the car and the tractor were always in the possession of the late Hari Ram, and that there is no conclusive evidence that the late Ram Asre owned the car and the tractor, I find that the estate of Hari Ram has a better claim to these assets than the estate of the Ram Asre.'*

[23] The appellants argue that Avitesh Nand conceded that he had sold the tractor and it belonged to the estate of Ram as decided by Justice Finnigan in his judgment on 8 December 2008. At that time Avitesh Nand was only 08 years old. Under cross-examination he said according to what his father Hari told him he would not accept that the tractor belonged to the estate but it belonged to his father Hari. However, when he was told that Justice Finnigan had held so, he said if so he had to accept because he did not know.

[24] Thus, it was not an unqualified admission on the part of Avitesh Nand. According to him the tractor was not registered with LTA at that time. But, he admitted having sold it for $7000.00.

[25] The appellants have cited paragraph 10 of Justice Finnigan's 2008 judgment in support of their position that the tractor indeed belonged to the estate of Ram:

'10. The remainder consisted of a cane and vegetable farm of 22 acres Lease No. 26833, together with the family house, a tractor, farm equipment and a car.'

[26] Further, contrary to what the appellants say in their written submissions, the CA judgment and SC judgment were decided on totally unconnected footings and there is

no reference to any of the matters referred to in paragraph 10 of Justice Finnigan's judgment in either of the CA or SC judgments. On the other hand, one of Avitesh Nand's affidavits annexes the LTA vehicle registration certificate, which shows that the tractor they had was a different one to the one claimed by the appellants as part of the estate. The appellants' written submissions filed in this court have not challenged this position.

[27] On the other hand, the SC judgment shows that the relief claimed by the appellants (who were the plaintiffs in the proceeding before Justice Finnigan) were to have alleged "settlements" entered into by Anil Kumar (another son of Ram), Ishwar Kumar (also a son of Ram) and Hari (as attorney for the appellants) on 22 and 24 March 1992, set aside, and for Ishwar and Hari to be removed as Trustees and the appellants appointed as trustees of Ram's estate. Therefore, it is in my view more likely that paragraph 10 of Justice Finnigan's judgment does not contain a decision on anything mentioned therein except a narration. Thus, the issue which the appellants say is now res judicata was not an issue for determination before Justice Finnigan. This is proved by what Justice Finnigan had said at paragraph 38 of his judgment:

> *"There has been throughout only one issue, were the plaintiffs parties to the two alleged settlements in 1988 and 1992?"*

[28] Further, the CA judgment has quoted the following paragraph from Justice Finnigan's judgment which demonstrates that Hari was the one farming sugarcane on 2/3rd of the estate and not the appellants and therefore, it is not inconceivable that Hari had his own tractor and equipment required for farming:

> *"[41] Certain other things are clear. The first, nothing was done about the residual estate while the widow was alive. That was as it should be.* ***Hari Nand worked about two-thirds of the farm and produced sugarcane.*** *Anil Kumar worked a part of the farm, with some sugarcane and vegetables and fruits.* ***Cane farming was Hari Nand's full occupation****. Anil Kumar ran his own business at the Tavua market, selling produce from the farm. Ishwar Nand in Suva handled financial matters for the estate. There is no evidence whether Anil Kumar accounted to the life tenant or to the estate for his profits or paid anything to the estate for use on the farm."*
>
> (Emphasis added)

[29] In the circumstances, I am not inclined to hold that the doctrine of res judicata, with due respect to all legal authorities cited by the appellants, would prevent the trial judge from canvassing the issue as to whether or not the tractor belongs to Ram's estate afresh.

[30] The appellants also argue that the trial judge in the course of taking oral evidence has remarked that the tractor, it is established, belongs to the estate. In my view, the judge simply reiterated what the appellants' counsel had put forward and Avitesh Nand's reply was that if Justice Finnigan had said so he would have to accept. In my view, in his somewhat casual remarks the trial judge had not expressed a determination or finding on the issue as to who owns the tractor. Nor could the judge have done so at that stage. However, in his judgment after careful consideration of all relevant material he obviously could not form the opinion that the tractor belongs to the estate. The trial judge was entitled to do so.

[31] Little supporting evidence was placed before us by the appellants to show that car AU 600 belongs to the estate of Ram. On the contrary, Avitesh Nand had submitted LTA registration to show that AU600 is registered in Hari's name after he acquired it in 1983. Hari had bought AU 600 which the appellants claim as part of Ram's estate. This alone shows how unsafe it is to rely on paragraph 10 of Justice Finnigan's judgment as res judicata. Either Justice Finnigan was talking about a different car or he got it all wrong. Anjila Devi has said that the appellants bought a car with estate money. I do not know what car she is referring to. She seems to say that 1/3rd of the value of that car should go to Hari's estate. With regard to the car her husband Hari had, her evidence is that *'vehicle is rotten and in the grass somewhere. We never sell it'.*

[32] There is a paucity of evidence of the so called 'farm equipment'. Anjila Devi was not cross-examined on 'farm equipment' at all. Avitesh Nand in his affidavit in opposition says that farm equipment was bought by Hari for his use on the farm. This may well be true as he was farming sugarcane in 2/3rd of the 22 acre land at one point of time. This prompted the trial judge, quite justifiably in my view, to conclude that there was no clear evidence before him that the car or the tractor ever belonged to the late Ram at the time of his death, or that anyone else has a claim on these assets.

[33] Therefore, with regard to farm equipment, the same analysis would apply. The doctrine of res judicata would not apply and the judge was right in saying that he had no clear evidence on them as well.

02nd ground of appeal

[34] Avitesh Nand in his affidavit in opposition states that of the two residential houses, one was built by Hari by a loan taken on mortgage in 1992 on his own (after Ram died in 1978 and his wife also died in 1998) and paid off partly by Hari from sugarcane proceedings by cultivating his 1/3rd share of the land. He claimed that the second house is not part of estate residential property. Most importantly, Avitesh asserts that land rental for the share of Hari is being deducted from his share of cane proceeds and he alleges that land rental accumulated after the appellants failed to cultivate their portion of the farm. He wants the tractor, car and the house built by Hari to be excluded from the estate property. Ramesh Kumar in his affidavit in reply has not accepted Avitesh Nand's position and said that both houses belong to the estate. He has not produced evidence to show that the loan obtained upon the mortgage of estate land to build the second house where Hari lived was paid off through estate income. Ramesh Kumar also did not agree with Avitesh Nand on the tractor and the car but had no contrary evidence to LTA registration in favour of Hari with regard to the car. Both parties seem to agree that the tractor was not registered with LTA as it was used only on the estate land and not taken on public roads.

[35] Avitesh Nand in his submissions has said that Hari paid all lease rental fully by himself from the 1980's to 2008 and the appellants who were in Australia made no contribution at all. According to him, appellants have not paid Hari's share of cane proceedings from 2008 which if collected would be enough to pay for their share of rental for another 10 years. It was Hari and Anil Kumar who looked after the estate land in Fiji. According to Avitesh Nand he got the tractor V645 registered in his name after Hari's death after spending $2000.00 (no receipt produced) to upgrade it to LTA standard. He emphasised that Hari cultivated only his 1/3rd share of the estate land. Avitesh also says that the costs of legal proceedings were recovered from Ishwar Nand (and Anil Kumar) who challenged Justice Finnigan's judgment up to the SC. It is clear that Hari was only a respondent in the SC proceedings. Anil Kumar was not a party to the appellate

proceedings. According to Avitesh, he and Hari spent money ($5000.00) to renovate the second house and the appellant's valuation reflects those improvements as well.

[36] The appellants have replied to Avitesh Nand's submissions.

[37] On another aspect, Avitesh states in evidence that Hari stopped cultivating sugarcane in 2008 because the appellants did not pay him any money. Hari called the appellants in Australia but without success. Then, Hari took to vegetable farming. Since then Avitesh only plants vegetables but he admits some parts of Hari's share of the land remain idle. Anjila Devi has said in her evidence that Hari paid the loan taken to build the house out of his share of 1/3rd of cane proceeds. Avitesh has said that they wanted at least $60,000.00 as part of Hari's 1/3rd of the land. However, it was valued at $65,000.00.

[38] Therefore, one can see that there are a lot of areas of disagreement between the parties on how deductions should be made from $65,000.00. Those areas briefly cover everything the appellants seek to deduct except 1/3rd share of lease rentals. On what I have read, most of the deductions may not be sustainable. However, I express no judgment for the following reasons.

[39] Unfortunately, the trial judge has not properly analysed the evidence as complained by the appellants under the 02nd ground of appeal. Other than not accepting the appellants' claim on the tractor and the car on stated grounds, the trial judge has not specifically dealt with other deductions claimed by the appellants in adequate detail. Thus, there is merit in the appellant's complaint under the 02nd ground of appeal. The 04th and 05th grounds are covered by the 01st and 02nd grounds of appeal and therefore need no separate discussion.

[40] The Court of Appeal in **Professional Security Services Ltd v The Labour Officer**[3] and **Khan v Coca Cola Amatil (Fiji) Ltd**[4] dealt extensively with the duty of a judge to give reasons and allied matters which need no repetition here. In ***Professional Security Services Ltd v The Labour Officer*** the court summarized the law as follows:

[3] [2024] FJCA 224; ABU099.2023 (28 November 2024)
[4] 2025] FJCA 112; ABU0127.2023 (25 July 2025)

> *'[38] Therefore, while it goes without saying that the giving of adequate reasons lies at the heart of the judicial process and therefore a duty to give reasons exists, the scope of that duty is not to be determined by any hard and fast rules. Broadly speaking, reasons should be sufficiently intelligible to permit appellate review of the correctness of the decision and the requirement of reasons is tied to their purpose and the purpose varies with the context. A judge's reasons should not be so 'generic' as to be no reasons at all but they need not be the equivalent of a jury instruction or summing-up to the assessors. Not every failure or deficiency in the reasons provides a ground of appeal, for the appellate court is not given the power to intervene simply because it thinks the trial court did a poor job of expressing itself. Where the trial decision is deficient in explaining the result to the parties, but the appeal court considers itself able to do so, the appeal court's explanation in its own reasons is sufficient. There is no need in that case for a new trial.'*

[41] In my view, the total lack of reasons for the rejection of the appellants' claims other than the tractor, car and farm equipment, would not permit this court to read the record and make our own findings. Despite enormous delays, the only option in the circumstances is a retrial. Otherwise, this long outstanding estate is left in abeyance and un-administered even for ever. The other option is for the parties to amicably settle the matter as Avitesh says that they are not enemies but blood-relations and can sit down as a family and discuss. Why rewriting the High Court judgment cannot be done in this case and why it should not be done, I will now explain.

[42] In my view, part of the problem here is the manner in which the proceedings were conducted. Not all of what I set out earlier came from evidence; some was in affidavits but most was in written submissions and some was in the so-called oral evidence. Even the examination- in chief, cross-examination and re-examination have been done in an unorderly manner. The trial judge had to take the role of a counsel most of the time. In between, there were lengthy discussions between the trial judge and the counsel for the appellants, Avitesh Nand and Anjila Devi in an informal manner. They cannot obviously be treated as evidence either.

[43] The problem was compounded by the fact that the respondents were unrepresented. But, it is clear that they had a story to tell the court. Yet, they did not know how to present their case with relevant documents. This has deprived the trial judge of having the full picture before him. In my mind, it has denied the respondents a fair chance to present their case.

[44] All in all, I am not satisfied with the manner in which this matter has proceeded in the High Court. It has mostly prejudiced the respondents. The trial judge was not unmindful of this aspect when he said:

> *30. 'In the circumstances of this case, I keep in mind the following:*
>
> *(i) the farmland has a balance of 888 years remaining on its lease term which is enough to last 15 to 20 generations to come,*
> *(ii) the land is 22 acres or so in size, and that the estate of Hari Nand has a beneficial interest over some 7 acres or so of the land on which stands a house which Hari Nand had occupied and cultivated during his lifetime, and which his surviving widow and son continue to occupy, and*
> ***(iii) the defendants are unrepresented in this case***
>
> (Emphasis added)

[45] The trial judge has made some other pertinent observations as well:

> *'25. The second point is that the plaintiffs, as executor-trustees of the estate of Ram Asre, hold a fiduciary duty to act loyally for the benefit of the beneficiaries. In terms of the distribution of the estate of Ram Asre, it is incumbent still on Ramesh and Sunil to act so towards the interest of the estate of Hari Nand.*
>
> *26. What would have been the wishes of the late Ram Asre? It is not too far-fetched a speculation that Ram Asre would have desired that, upon his demise, the farmland be subdivided and partitioned into three equal shares for his three sons.*
>
> *28. For one reason or another, that option of sub-division or partition is not being pursued. Rather, the plaintiffs (executors-trustees) desire to buy out the 1/3 share of the estate of Hari Nand (beneficiaries)*
>
> *29. There is potential conflict of interest for Ramesh and Sunil. On the one hand, is their duty of loyalty as trustees of the Ram Asre estate to the estate of Hari Nand as beneficiaries. On the other hand, to the ordinary bystander, they may be proposing a deal for their own personal benefit to the prejudice of the estate of Hari Nand.'*

[46] The trial judge was also not happy that the second valuation of 1/3rd share of the estate land was done by the same valuer who did the valuation for the appellants.

[47] The trial judge in his previous Ruling[5] made in the same case on 30 May 2019 on a proposed scheme produced by the appellants, has expressed his concerns of lack of representation for respondents:

> *'1. If the scheme being proposed by the plaintiffs is to be allowed for the final distribution and settlement of the estate matter in question in this case, the plaintiffs would stand to gain some 6 ½ acres or so of some agricultural land to which the defendants, are beneficially entitled.*
>
> *5. The 22-acre land was leased to the late Ram Asre for a term of **966 years 10 months and 13 days** from **01 January 1941** on a rental of $400-00 (four hundred dollars per month).*
>
> *7. The balance of lease on this land to date is 888 years or so (eight hundred and eighty eight years).*
>
> *8. The defendants are not represented in these proceedings. It appears that they cannot afford a lawyer.*
>
> *9. I am concerned that the effect of the Orders which the plaintiffs seek will effectively deprive and disentitle the defendants from a proprietary leasehold interest in the 6 ½ acres which has a remaining lease balance long enough to last fifteen to twenty more generations to come.*
>
> *10. Undoubtedly, the value of this 6 ½ acres will escalate in years and decades to come. One can only imagine the rate at which this will be so in centuries to come.*
>
> *11. At some point during the last hearing of this matter, it appeared that the defendants were willing to settle the matter by selling their share to the plaintiffs for a sum which, one might think, is a very modest one considering all that is at stake for them.*
>
> *12. I am not convinced that the defendants have had the benefit of proper legal advice. They would benefit tremendously if they did.*
>
> *13. I am of the view that the ideal solution is for the defendant to be able to keep the 6 ½ acres which they are entitled to as beneficiaries of the estate of Hari Ram which has a 1/3 interest in the estate of Ram Asre.'*
>
> (Emphasis as in original)

[5] **Kumar v Wati** [2019] FJHC 536; HBC266.2016 (30 May 2019)

[48] The Legal Aid Commission appears to have rejected the respondents' request for legal assistance in the High Court though they finally appeared for the 01st respondent at the hearing of this appeal. The trial judge said:

> *'21. Because the defendants cannot afford a lawyer, and have appeared unrepresented, it has always been of concern to me that they may have not had the full benefit of legal and investment advice regarding their options.'*

[49] I am not prepared to dismiss the trial judge's concerns of lack of legal representation for the respondents lightly, because he has overseen the proceedings and dealt with the parties personally. This court has no such benefit. Secondly, I myself share the sentiments of the trial judge in this respect.

[50] My most serious concern is even more fundamental *i.e.* whether in this whole process Ashika Nand and Ashmika Nand have been left out completely. Firstly, there is no proof at all that notices and case documents have been served on them. Although Avitesh Nand and Anjila Devi claim to represent them, through their affidavits, the trial judge has not asked Avitesh Nand and Anjila Devi under what authority they purport to represent Ashika Nand and Ashmika Nand. No powers of attorney from Ashika Nand and Ashmika Nand were produced. No affidavits from Ashika Nand and Ashmika Nand were filed. It was the responsibility of the appellants to make sure that Ashika Nand and Ashmika Nand were served with court documents. They produced no such proof of service. Neither did they seek permission of court for substituted service either. The counsel for the appellants said that the papers had been sent by email. There is no record of that either. Nor is there any reply email to confirm the receipt.

[51] The questions are manifold. What is the email address of Ashmika Nand supposedly used to serve the papers? Did the appellants seek permission and did court permit that mode of service? What is the guarantee that it was a valid email address? How was service done on Ashika Nand who was said to be in Lautoka. If she was in Lautoka and had notice of the proceedings of her father's land, is it not inconceivable that she abstained from attending Lautoka High Court even once?

[52] Did Avitesh Nand and Anjila Devi have any authority to represent Ashika Nand and Ashmika Nand in the High Court? If so, why were not they able to produce proper documents of authority?

[53] In the circumstances, though I am very mindful of the long delay in the estate of Ram being taken to a conclusion, I am also conscious that it cannot be done without Ashika Nand and Ashmika Nand, on the principle that however minuscule the interest of a party, he/she is nevertheless entitled as a beneficiary to have the Court's support to have his/her father's estate properly administered and his/her share made available to him/her. I also agree with the trial judge when he said:

> *'22. This Court has general supervisory powers in equity relating to the supervision of trusts for the welfare of beneficiaries (see **Letterstedt v Broers** (1884) 9 App Cas 371 and **Hunter v Hunter** [1938] NZLR 520)'*

[54] Avitesh in his written submissions has stated that the respondents also wish to end the administration of Ram's estate as soon as possible but it should be done in a transparent and faithful manner by the appellants.

Morgan, JA

[55] I have read and concur with the reasoning and conclusions of the judgment of Prematilaka, RJA.

Andrews, JA

[56] I agree with the judgment of Prematilaka, RJA.

Orders of the Court:

1. *Appeal allowed on the second ground of appeal.*
2. *Order dated 22 November 2019 is set aside.*
3. *Retrial/fresh proceedings into the appellants' originating summons/application is ordered before a judge other than the judge who delivered the impugned Order.*
4. *The retrial/fresh proceedings should be concluded as expeditiously as possible and in any event within 1 ½ years from the date of this judgment.*
5. *Legal Aid Commission is directed to assist and appear for the respondents, if they elect to seek legal aid, in the High Court to bring these proceedings to a conclusion within the above time frame.*
6. *No costs ordered.*

Hon. Mr. Justice Chandana Prematilaka
RESIDENT JUSTICE OF APPEAL

COURT OF APPEAL FIJI

Hon. Mr. Justice Walton Morgan
JUSTICE OF APPEAL

Hon. Madam Justice Pamela Andrews
JUSTICE OF APPEAL

Solicitors:

Mishra Prakash & Associates for the Appellants
Legal Aid Commission for the 1st Respondent
Fiji Public Trustees of Fiji for the 2nd Respondent