

IN THE HIGH COURT OF FIJI
AT SUVA
PROBATE JURISDICTION

PROBATE NO.: HPP 41 of 2013

IN THE ESTATE of **ELIZABETH**
CUNNINGHAM SUGAR of Pacific
Harbour, Deuba, Retired Missionary,
Deceased, Testate.

BEFORE : Acting Master of the High Court Mr. Rajasinghe

COUNSEL : Mr. S. Singh

Date of Hearing : 24th September, 2013

Date of Ruling : 4th October 2013

R U L I N G

1. The applicant by way of Ex – Parte Summons instituted this proceedings seeking following orders inter alia,
 - i. That the photocopy of the deceased's last will and testament dated 19th of August 1993 be admitted to prove as therein contained and the said Executor and Trustee be permitted to make an application for grant of Probate on the said photocopy until the original or a more authentic copy thereof be brought into and left in court.
2. The applicant stated in the summons that this application was made pursuant to rule 53 of Non – Contentious Probate rules.
3. Order 1 rule 11 of the High Court's rules states that "*the rules for the time being in force in Her Majesty's High Court of Justice in England and the practice and procedure of that*

court with respect of Non – Contentious Probate business shall apply so far as they are applicable, with such modifications as may be necessary, to grants of probate and administration issued in common form from the Registry of the High Court”.

4. In view of the Order 1 rule 11 of the High Court’s rules, I find that the relevant rules for the time being in force in England are “The Non – Contentious Probate Rules 1987”.

5. Rules 54 of the Non – Contentious Probate Rules 1987 deals with the issue of nuncupative wills and copies of wills where it states that;

“ Subject to paragraph (2) below, an application for an order admitting to proof a nuncupative will, or a will contained in a copy or reconstruction thereof where the original is not available , shall be made to a registrar”.

6. Rules 54 (3) stipulates that “ an application under paragraph (1) above shall be supported by an affidavit setting out the grounds of the application , and by such evidence on affidavit as the application can adduce as to –

a. *The will’s existence after the death of the testator or where there is no such evidence, the facts on which the applicant relies to rebut to presumption that the will has been revoked by destruction;*

b. *In respect of a nuncupative will, the contents of that will; and*

c. *In respect of a reconstruction of a will, the accuracy of that reconstruction.*

7. Having reviewed the relevant laws and procedures in respect of the application in this nature, I now proceed with my order as follows.

8. The applicant stated that he is the only remaining trustee names in the will of Elizabeth Cunningham Sugar dated 19th of August 1993. He further stated that other trustee named in the said will Thomas Cunningham Reid died on 21st of February 2011. The testator died on 11th of March 1996. The death certificates of the testator and the other

trustee named in the will were tendered as annexure to the affidavit in support for my perusal and consideration.

9. The testator executed her will at the office of Mr. Rajendra Pal Chaudhary at the presence of Mr. Chaudhary and Mrs. Kiran Lata where both of them confirmed the execution of the will and the existence of the same in two separate affidavits filed with the summons. The will was drafted and prepared by Messrs Munro Leys and Company in Suva. Subsequent to the execution of the will before Mr. Chaudhary, it was sent back to Messrs Munro Leys by the applicant. However, Messrs Munro Leys informed the applicant in a letter dated 28th of June 2013 that they could not locate the original will which they kept at their deeds room under folder reference No s118c. The said letter of Messrs Munro Leys was tendered as an annexure to the affidavit in support for my perusal and consideration.

10. In view of these evidence presented by the applicant, I am satisfied that the applicant successfully established the execution of the will of Elizabeth Cunningham Sugar dated 19th of August 1993 and its existence after the death of the testator. I accordingly grant order in terms of the Ex Parte Summons to admit the photocopy of the deceased's last will and testament dated 19th of August 1993 and to permit the trustee to make an application for grant of probate on the said photocopy until the original or a more authentic copy thereof be brought into and left in court.

Dated at **Suva** this **4th** day of October, **2013**.

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R.D.R Thushara Rajasinghe
Acting Master of high court,
High Court, Suva