

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CIVIL JURISDICTION**

**HBC 027 OF 2011**

**BETWEEN** : **MOHAMMED SAHIK KHAN** of Meigunyah, Nadi,  
Farmer.

**Plaintiff**

**AND** : **ABBAS ALI KHAN** of Papatoetoe, Auckland, New Zealand.

**Defendant**

**R U L I N G**

**INTRODUCTION**

[1]. The plaintiff (“**Sahik**”) and the defendant (“**Abbas**”) are siblings. They had two other brothers, namely Mohammed Nayeem Khan and Mohammed Ishaq Khan who are both now deceased. Their parents are also both now deceased. The late patriarch of the Khan family, Mr. Hir Khan, died testate on 02 August 1972. Pursuant to Hir Khan’s last will and testament<sup>1</sup>, probate<sup>2</sup> was granted to his surviving spouse<sup>3</sup>, Mrs. Jainab Bibi, and to Abbas. Mrs. Jainab Bibi died on 06 July 1992. Upon her passing, Abbas became the sole trustee of the Hir Khan estate on 09 April 1998<sup>4</sup>. On 10 March 2011, Sahik filed a writ of summons and statement of claim alleging that Abbas lacks accountability in administering the estate. Before me now is Sahik’s Motion of 12 December 2011 seeking Orders that Abbas provide various accounts and certain documents to Sahik. Sahik also seeks other Orders to compel Abbas to relinquish Sahid’s entitlement as beneficiary.

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<sup>1</sup> dated 01 August 1972.

<sup>2</sup> Probate No. 12302.

<sup>3</sup> on 31 January 1973.

<sup>4</sup> Abbas deposes as follows in his affidavit:

41 Our mother, Jainab Bi, died on 6<sup>th</sup> July 1992 and I was appointed her sole executor and trustee on 9<sup>th</sup> April 1998.

42 Annexed hereto and marked with letters “**AAK 11**” is copy of Probate No. 35309.

[2]. The Orders that Sahik seeks in particular are as follows:

That Abbas Accounts for:

- (i) his management of the Hir Khan estate from August 1972 date.
- (ii) all sugarcane receipts, expenses and purchases from Farm No. 2148 (Meigunyah Sector) from August 1972 to date.
- (iii) the income earned and expenses for the use of International 475 farm tractor (AZ 329) and trailer (D7336) in the harvesting gang T/T 01 Gang 3 from 1989 to 2000.

That Abbas provides:

- (v) all documents and financial and records of the purchase of farm tractor AZ329 with trailer D7336 and all implements in 1981 and details of its transfer in 1991.
- (vi) all documents, financial and other records of his (Abbas') purchase of Crown Lease No. 9750 on 02 September 1988.

And that Abbas be Ordered:

- (vii) to allow Sahik to use farm tractor No. AZ 329 with trailer D7336 and farm implements for the benefit of the estate farm No. 2148 (Meigunyah Sector) Crown Lease No. 7387.
- (viii) to do all acts deeds and things necessary including execution of all authorities to allow Sahik to harvest the standing sugarcane crop on farm No. 2148 (Meigunyah sector)<sup>5</sup>.
- (ix) not to interfere obstruct or in any way affect Sahik's quiet and peaceful occupation cultivation management operation and enjoyment of the Hir Khan estate.
- (x) not to send or mill sugar cane grown on farm No. 2148 (Meigunyah Sector) forming part of the estate of Hir Khan on account of farm No. 2176 (Meigunyah Sector) standing in Abbas' name.
- (xi) not to trespass on to the farm No. 2148 (Meigunyah Sector) being Crown Lease No. 7387.

And further Orders that:

- (xii) all receipts of sugarcane proceeds from farm No. 2176 (Meigunyah Sector) standing in Abbas' name be held in trust by the Fiji Sugar Corporation until determination of this action.
- (xiii) all receipts of sugarcane proceeds from farm No. 2148 (Meigunyah Sector) being part of the Estate of Hir Khan (deceased) be paid to him (Sahik) for the management and cultivation of the said estate property
- (xiv) Abbas surrenders his travel documents including his passport to court until such time he provides detailed list of all assets standing to his name in Fiji and elsewhere.
- (xv) only Abbas and his wife be allowed to remain and occupy the estate property until determination of this case.

[3]. Sahik opposes the application.

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<sup>5</sup> being the farm comprised in the Estate of Hir Khan (deceased) under the Crow Lease No. 7387.

## **BACKGROUND**

[4]. The slanging allegations that Sahik and Abbas hurl at each other in their affidavits shows the depth of their souring relationship. They each argue that they have contributed more towards the estate than the other. And they both accuse each other of being a freeloader on the estate. And each of them alleges that the other has misappropriated the assets of the estate.

### *Early Days*

[5]. Immediately after Sahik finished high school in 1974, he worked at Khans Service Station until 1989 when he started his rental car business. I gather from Abbas affidavit that Sahik's rental car business was wound up in or around the year 2001. Apparently, Sahik had moved to his uncle's neighbouring farm in 1990 because his uncle had emigrated overseas. However, when Abbas migrated to New Zealand in 2001, he moved back into the estate farm (CL No. 7387 Farm No. 2148)<sup>6</sup>. Abbas contends that Sahik moved back to the estate farm because Sahik's company had been wound up<sup>7</sup>. When Abbas left school or what he did immediately thereafter is unclear. According to Sahik, Abbas was briefly in "outside employment" during which time he stayed on and worked the estate farm until his emigration to New Zealand in 2001.

[6]. Sahik says that from 1975, he met all his entire family bills (groceries, electricity, water and telephone) which included Abbas' family expenses and even the education costs of Abbas son and daughter (Faiyaz & Shabnum) in New Zealand. He says he also lent his personal credit cards to Abbas wife and children which they used for various purchases and for travel.

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<sup>6</sup> Sahik deposes as follows at paragraph 16 of his affidavit.

16 That in 1990 or thereafter I moved to my uncles property as it is next door because he had migrated and I agreed to look after his property but I moved back to the Estate property when [Abbas] decided to migrate to New Zealand in 2001 but I was paying all expenses for electricity and water as well as buying groceries from my rental car business income.

<sup>7</sup> Sahik deposes as follows:

70 As to paragraph 16 of [Sahik]'s, I admit that [Sahik] moved to his uncle's property at some point but I don't recall exactly when that occurred. I think it was around 1991 or 1992.

71 I do remember that [Sahik] moved back onto the Estate farm because his company had been wound up by its creditors from 1995, he no longer had any rental car business, and he was in financial difficulties and needed assistance

[7]. Abbas contends that it was their mother, not Sahik, who generally paid from the estate funds the farm expenses and groceries. If Sahik did make any contribution, then why not given Sahik's own family members were the main consumers<sup>8</sup> in that homestead. Sahik could not have made any contribution from the year 2001, as he had no income from his then-wound-up company. Abbas says he too worked on the estate-farm and for that, he was paid labourer's wages and given a room to board. The original homestead on the farm was a small 2-bedroom house which was later extended to the *5-bedroom, 2-lounge with large veranda* house that it is today out of his own money and effort. Abbas alleges that for the last ten years, Sahik has taken and kept for himself all cane proceeds from the estate farm<sup>9</sup>.

### *Abbas returns after 10 years from New Zealand*

[8]. As stated, Abbas did emigrate to New Zealand in 2001 where he lived with his family for ten years. He then decided to return to Fiji. Sahik deposes that whilst Abbas was away, Abbas did not give up administration of the estate<sup>10</sup>. Abbas and his family now reside on the five-bedroom homestead on the estate farm. Sahik's and Abbas' sister also lives there with her son. Abbas says the sister had been his

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<sup>8</sup> Abbas deposes:

46 As to paragraph 6,7, and 8 of [Sahik]'s affidavit I deny the same

47 Our mother generally paid the expenses of the farm from the Estate's monies and/or bank account, including groceries. I worked on the Estate's farm and received labourer's wages and room and board from the Estate

48 Originally the farm house was very small only 2 bedrooms and I later built extension to the same and it is now a large house with 5 bedrooms, 2 lounges and a large veranda

49 [Sahik] may have contributed from time to time to the expenses of the household, as he and his family would have been the main users of the power and telephone on account of his company, Sheik's Rent A Car, using the Estate's premises from time to time for office and/or garage prior to its winding up.

50 The same would have been fair compensation in exchange for his use of the Estate's property

<sup>9</sup> Abbas deposes:

72 I deny that [Sahik] was paying any expenses from his rental car business income from 2001. [Sahik] had no such income at the material time, as his company had been wound up. The High Court decision in *Khan v Official Receiver [1999] FJHC 109; [1999] 45 FLR 220 (17 September 1999)*, refers which clearly states that "On 8 December 1995 the second plaintiff (P2) was wound up by High Court of Fiji at Lautoka".

73 I say further that not only [Sahik] and his wife but also his son were staying in the Estate's farm house, and were the primary consumers of the power and water and telephone, and it would be only just and proper that they pay for the same, however the Estate and/or my sister and nephew ended up paying many of these expenses instead

74 As to paragraph 17 of [Sahik]'s affidavit, I deny the same

75 I am not aware of any funds expended by [Sahik] on the estate of Hir Khan. For the last 10 years [Sahik] has taken or kept all the cane proceeds for himself despite that he was not the only beneficiary of the said Estate.

<sup>10</sup> Sahik deposes as follows at paragraph 26 of his affidavit.

26 That [Abbas] has migrated to New Zealand with his children and he has been there for over ten (10) years but refuses to give up the trusteeship of the Estate of Hir Khan (deceased).

agent and is now his attorney<sup>11</sup> and it was he who allowed them to live on the property. Besides, she grew up on the said property.

*Late Nayeem Khan (brother) renounced his beneficial interest in estate*

[9]. Nayeem Khan had renounced his beneficial interest in the estate. Sahid alludes that the date of renunciation was altered. The correct date of renunciation was 20 February 2007. Abbas concedes. Abbas alludes to an affidavit purportedly sworn by the late Nayeem Khan before solicitor Mr. Eroni Maopa for which the *jurat-date* actually postdates Nayeem Khan's date of death<sup>12</sup>.

*Did Abbas purchase Crown Lease 9750 using estate farm as security?*

[10]. The estate property comprises, mainly, Crown Lease 7387 (Farm 2148) which would have been the only real property that the late Hir Khan left behind. It is an issue between the brothers as to whether or not a particular other real property which Abbas acquired in his name personally in 1988 (some fifteen years after Abbas became trustee) is really an estate property. That other property is farm 2176 comprised in Crown Lease 9750. Sahik says Abbas purchased Crown Lease 9750 **“using the Estate property and my guarantee to pay for the purchase price of the said farm through the ANZ Banking Group Nadi**

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<sup>11</sup> Abbas deposes as follows at paragraphs 99 to 102 of his affidavit.

99 As to paragraph 24 of [Sahik]'s affidavit, I admit that I allow my sister and her son to stay on the estate property, as they are family members and they act as my agents. I have now appointed my sister and her son as my attorneys under limited power of attorney in respect of Crown lease No. 7387, and they have replaced [Sahik] in respect

100 I deny that my sister and her son have been abusive or intimidating towards [Sahik]. It is [Sahik] and/or his son who have been abusive and/or violent. [Sahik]'s son hit my sister, his aunt, on one occasion and she filed a complaint with the police but then withdrew the same because he is family. Recently [Sahik] has filed numerous false complaints against me, my son and my nephew and even my sister with the Fiji Police Force since I have returned to Fiji and caused us to be arrested and held overnight in the cell. No criminal charges have ever been filed against us to date in respect of these complaints.

101 I crave leave to refer to the Amended Affidavit in Support sworn by [Sahik] on the 3<sup>rd</sup> day of May, 2010 and filed in Action No. 176 of 2009 (consolidated herewith) on 4<sup>th</sup> May 2010 paragraph 10 in which he states that "I am the major beneficiary of the Estate and live on and work the Estate property as well as looking after my sister AMINUL NISHA".

102 I say this shows that our sister has resided on the property with her son with [Sahik]'s consent as well as mine

<sup>12</sup> Abbas deposes as follows:

29 As to paragraph 3 of [Sahik]'s affidavit, I say that the annexure referred to by [Sahik] is in respect of action no. 176 of 2009, not this action

30 The said annexure to the Amended Affidavit in Support filed on 4<sup>th</sup> May 2010 is the Affidavit of Mohammed Nayeem Khan aka Mohammed Naium Khan. It is witnessed by one Eroni Maopa, Barrister and Solicitor as Commissioner for Oaths and his jurat is clearly dated the 20<sup>th</sup> day of February 2009.

31 [Sahik] is not a party or witness to the said annexure and therefore he cannot give evidence in respect of that document. Only Mohammed Nayeem Khan or the Commissioner of Oaths Mr Eroni Maopa can give evidence as to the correct date thereof.

32 It still remains that the date of the jurat thereof is dated after the death of Mohammed Nayeem Khan, and the same is irregular and/or fraudulent on its face and this is a matter for evidence at trial, not affidavit evidence.

**Branch**<sup>13</sup>. Sahik asserts that the reason why CL 9750 was registered in Abbas' name was because of a government policy that discouraged an individual from holding two agricultural leases. The arrangement was that Abbas would hold CL 9570 on trust for the estate. Abbas should therefore also account for all income from CL 9750<sup>14</sup>.

[11]. Abbas admits that he purchased CL 9750 for himself personally. That purchase was bank-financed on the security of a mortgage over CL 9750 as well as on the guarantee of Sahik. He says his mother had assisted him to use the estate land as security. He has since repaid his bank loan in full from his own share in the estate, from gifts from his mother, and from cane proceeds from CL 9750. The mortgage has been discharged and were (obviously) never called upon by the Bank. Neither Sahik nor the estate ever contributed to the purchase of CL 9750<sup>15</sup>.

[12]. If Abbas did pay for the land partly out of "his own share" in the estate, from gifts from his mother, and from cane proceeds from CL 9750, these are matters that should properly be accounted for. When did he pay himself and how much did he pay himself? How much did his mother gift to him? Can he establish for sure that

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<sup>13</sup> He annexes to his affidavit marked "MKS1" a copy of letter from ANZ verifying the guarantee and also deposes as follows:

10 That I know from my own knowledge and verily believe that [Abbas] in purchasing Crown Lease No. 9750 (farm No. 2176) used the estate farm as security and used the sugar cane proceeds from the estate farm to pay the loan acquired from ANZ for purchase of the said Crown Lease No. 9750 (*annexed herein and marked "MSK2" is a copy of the said Crown Lease No. 9750*).

<sup>14</sup> Sahik deposes:

17 That it was agreed and understood that [Abbas] would repay the funds expended by me on the Estate of Hir Khan and also the Crown Lease No. 9750 standing in the name of [Abbas] would be held by him for and on behalf of the Estate of Hir Khan (deceased) and hence the beneficiaries.

18 That the reason the said Crown Lease No. 9750 was purchased in the name of [Abbas] was because there is in existence a policy in regards to state land which discourages the holding of two agricultural leases by individuals or entities and since the Estate of Hir Khan (deceased) was already registered as proprietor of Crown Lease No. 7387 it was agreed with [Abbas] that he would hold Crown Lease No. 9750 in his personal name but as trustee for the beneficiaries of the Estate of Hir Khan (deceased).

19 That [Abbas] now refuses to account for the income earned from the Crown Lease No. 9750 or admit that he hold the same on trust for the Estate of Hir Khan (deceased).

20 That [Abbas] has now come back from New Zealand and has now taken over the management of Crown Lease No. 9750 standing in his personal name as well as the Crown Lease No. 7387 standing in the name of the Estate of Hir Khan (deceased) and has revoked the Power of Attorney whereby I had been cultivating and looking after both farms from 2001 till the early part of this year when this litigating was instituted.

<sup>15</sup> Abbas deposes:

52 My mother also assisted me by allowing me to use the Estate farm as security for that mortgage

53 However, the said guarantee and security were never called upon by the bank as I paid the mortgage in full from my own wages as labourer on the Estate farm and from my share of the Estate's income as a beneficiary thereof

54 I also cultivate the said Crown lease No 9750 which is Farm No. 2176, and applied the cane proceeds to payment of the mortgage

55 My mother also gave my gifts of money from time to time. Just as she did for [Sahik] and my other brothers

56 [Sahik] did not pay the purchase price of Crown lease No. 9750, he only provided a guarantee to the bank which was never called upon

57 The Estate of Hir Khan did not pay the purchase price of Crown Lease No. 9570, it only provided certain security for the mortgage, which security was never called upon.

58 I say that I am the registered proprietor of Crown lease No. 9750 and [Sahik] cannot claim ownership of the same on the basis of a mere guarantee

his mother had not “gifted him” estate funds? How much was used from cane proceeds from CL 9750?

[13]. Abbas refutes that he holds CL 9750 on trust for the estate. The bank mortgage was under his name and neither Sahik nor any of the other beneficiaries ever worked on the said farm. He says that he granted power of attorney to his sister and son to work CL 9750<sup>16</sup>.

[14]. Abbas insists he has always managed farm 2176 (CL 9750) through his attorney (sister) and also farm 2148 (CL 7387) through Sahik. He has since revoked that Power of Attorney to Sahik due to Sahik’s impropriety<sup>17</sup>.

[15]. Sahik had cultivated CL 7387 pursuant to the Power of Attorney Abbas granted him. But, according to Abbas, Sahik did secretly lobby the Lands Department to forfeit CL 7387 and issue a new lease to him (Sahik)<sup>18</sup>. Abbas says Sahik had misled the Lands Department in the process in not telling them about the Power of Attorney. But that is all water under the bridge now as Abbas did clear all misunderstanding with the Lands Department upon his return from New

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<sup>16</sup> Abbas says:

76 I strongly deny that I ever agreed or there was ever any understanding that Crown Lease No. 9750 would be held by me for and on behalf of the Estate of Hir Khan or as a trustee thereof.  
77 The Estate of Hir Khan and/or the other beneficiaries, including [Sahik] did not purchase and/or cultivate Crown Lease No. 9750. I purchased the same in my name and the bank mortgage was in my name and the same has since been paid off and discharged by me.  
78 My mother may have given me gifts of monies to help pay for the same, but to the best of my recollection I never borrowed from the Estate of Hir Khan to buy that farm. I got the purchase price by taking a mortgage from the bank.  
79 As to paragraph 18 of [Sahik]’s affidavit except to admit that currently there is a policy of the Lands Department discouraging one person from holding more than one agricultural Crown Lease, I deny the same  
80 As to paragraph 19 of [Sahik]’s Affidavit, I admit the same. The Estate of Hir Khan has no claim to ownership or income of Crown lease No. 9750 and I do not hold the same as trustee  
81 I say further that I granted Power of Attorney in respect of Crown lease No. 9750 to my sister and her son, and it is my sister and her son who have been cultivating that land as my agents and attorneys, not [Sahik]

<sup>17</sup> Abbas says:

83 I have always had the management of Crown Lease No. 9750 as I am the principal under the power of attorney granted to my sister and her son for cultivation and operation of the cane farm on that lease, and the actions of my agents are imputed to me by law.  
84 I have also always had the management of Crown Lease No. 7387 as I am the principal under the power of attorney previously granted to [Sahik] and recently revoked, and the actions of [Sahik] as my agent are imputed to me by law.  
85 I admit revoking the Power of Attorney previously granted to [Sahik]. I am entitled to do so by law, especially considering that I have discovered that [Sahik] has been diverting Estate funds to his personal bank account and acting in flagrant breach of his fiduciary obligations as my attorney and agent by attempting to defraud the Estate of Hir Khan of its title to Crown Lease No. 7387.

<sup>18</sup> Abbas deposes:

6 Further, despite having filed legal proceedings with this Honourable Court in 2009 asking to be appointed administrator of the Estate of Hir Khan in my place, and despite cultivating Crown Lease No. 7387 pursuant to Power of Attorney from me as Executor and Trustee, [Sahik] has secretly lobbied the Lands Department and/or the Divisional Surveyor Western to forfeit the current lease and transfer the entirety of Crown Lease No. 7387 to himself.  
7 I crave leave to my Affidavit in Opposition filed on 5<sup>th</sup> October, 2010 in action No. 176/2009, Annexure “AAK 2”, being Power of Attorney.  
8 Annexed hereto and marked with the letters “AAK 1” is a copy of letter dated 23/05/2011 from Ministry of Lands and Mineral Resources, Lautoka to the Defendant, alleging breach of ALTA and threatening re-entry

Zealand. The Department, he says, is no longer threatening to re-enter the lease<sup>19</sup>.

- [16]. Abbas also alleges that Sahik had unlawfully orchestrated the Lands Department to procure the Fiji Sugar Corporation Limited (“FSC”) to pay into Sahik’s account all cane proceeds from Farm No. 2148<sup>20</sup>. Abbas says that Sahik has even gone to the extent of lodging a police complaint alleging trespass and other offences<sup>21</sup>.

### *The Tractor & Trailer*

- [17]. There is a tractor and a trailer registered in Abbas’ name which Sahik asserts really belongs to the estate. These were purchased in 1981, allegedly, for \$12,000<sup>22</sup> using estate funds. Sahik says that he contributed some \$7,500-00 out of his own pocket towards the purchase price. He annexes two affidavits to his in which the deponents appear to verify the same<sup>23</sup>. Over the years, the tractor has been used in cane harvesting and has earned income which Abbas has kept. Sahik demands an account for all income from the tractor from Abbas.

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<sup>19</sup> Abbas says:

- 9 I recently visited the Lands Department in Lautoka and met with the Divisional Surveyor Western, Mr. Taniela Wacokecoko, about this matter and he told me he had never been informed by [Sahik] about the Power of Attorney that [Sahik] held from me authorizing him to cultivate that cane farm on my behalf.
- 10 As a result of my meeting with the Divisional Surveyor Western, I was told that the Ministry of Lands has dropped any plans for re-entry on Crown Lease No. 7387 and forfeiture thereof.

<sup>20</sup> Abbas says:

- 11 [Sahik] has also embezzled and/or diverted misrepresentations to the Divisional Surveyor Western.
- 12 Annexed hereto and marked with the letters “**AAK 2**” is a copy of letter dated 21/10/2010 from the Divisional Surveyor Western to the Chief Executive, Fiji Sugar Corporation, requesting that the cane proceeds from the Estate’s Farm No. 2148 to be paid to [Sahik]’s account with South Pacific Bank.
- 13 Annexed hereto and marked with the letters “**AAK 3**” is a copy of the letter dated 15<sup>th</sup> October 2012 from my solicitors to [Sahik]’s solicitors, advising that [Sahik] holds Power of Attorney and instructing him as agent/attorney in fact that he is not to disburse or withdraw any cane proceeds without my express authorisation.
- 14 It is a reasonable inference that [Sahik] went to the Divisional Surveyor Western to obtain the letter dated 21/10/2010 to FSC because of and in response to my solicitor’s letter instructing him not to take cane proceeds belonging to the Estate without my approval.
- 15 Annexed hereto and marked with the letters “**AAK 4**” is a copy of Grower’s Statement for Farm No. 2148, Est. of Hir Khan, showing payments to Colonial National Bank Nadi [now known as Bank of South Pacific or BSP] totalling \$3,876.00.
- 16 The Estate’s account is with ANZ Bank, not BSP, and none of the said payments have been received by the Estate of Hir Khan.
- 17 I verily believe that [Sahik] is guilty of embezzlement from the Estate of Hir Khan and breach of fiduciary obligation under Power of Attorney in the circumstances.

<sup>21</sup> Abbas deposes:

- 24 Despite my being the registered proprietor of Crown Lease No. 7387 [Sahik] has lodged complaints with the Fiji Police Force alleging trespass and other offences and has tried to evict me and my family from the premises of which I am the registered proprietor.
- 25 Annexed hereto and marked with the letters “**AAK 8**” is copy of letter dated 16<sup>th</sup> September 2011 from [Sahik]’s solicitors stating that I am in unlawful occupation and demanding that I give vacant possession of Crown Lease No. 7387 to [Sahik]. Similar letters were also address to my son, my sister and my nephew.
- 26 Annexed hereto and marked with the letters “**AAK 9**” is a copy of letter dated 21<sup>st</sup> September 2011 from my solicitors to [Sahik]’s solicitors, responding to their letter dated 16<sup>th</sup> September 2011.
- 27 I verily believe that [Sahik] has brought this application in lieu of a section 169 application as he knows he is not the registered proprietor of Crown Lease No. 7387 and is not entitled to vacant possession thereof.
- 28 I say that the Notices to vacate issued by [Sahik]’s solicitors to my son, my sister, my nephew and myself are false and/or fraudulent and that [Sahik] and/or his solicitors knew them to be false and/or fraudulent at all times.

<sup>22</sup> tractor 475 registered number AZ329.

<sup>23</sup> (annexed herein and marked “**MSK3**” are affidavits of Pushkar Charan and Mohammed Ismail verifying the same).



- [18]. Sahik says the said tractor was previously in the names of Abbas and Jainab Bi. However, in 1991, Abbas transferred the tractor and trailer into his own personal name. He says Abbas refuses to allow the tractor be used in the harvest in the estate farm. He swears also that sometime in 1991 or 1992, the tractor fell into a creek and he had to pay for costs to repair the damage since the estate could not meet the costs<sup>24</sup>. If this is true, it would tend to go towards proving that the tractor indeed was part of estate property.
- [19]. Abbas says he purchased the tractor out of his own funds and, **“to the best of my recollection”** funds borrowed from his late mother and/or the estate. He **“[does not] recall”** ever receiving any funds from Sahik. He says Jainab Bi’s name was on the tractor initially as security in lieu of a Bill of Sale. However, he has since repaid all monies borrowed from his mother. Because the tractor belongs to him, he has a right to all income derived from its use<sup>25</sup>.
- [20]. I note that Abbas’ recollection, as deposed, appears to be couched in a language of uncertainty. But since he has conceded having borrowed from his mother and/or the estate, he will have to provide documentary proof of how much was borrowed and how much he has paid back – and to whom.

*Has Sahik kept all income from the estate farm to himself?*

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<sup>24</sup> Sahik further deposes as follows:

- 12 That the said tractor has been used in the cane harvesting gang T/T No. 1 Gang No. 3 since 1981 and has earned income which [Abbas] has failed to account for to the Estate.
- 13 That [Abbas] did in 1991 unlawfully and without right transferred the said tractor and trailer into his own personal name as it was previously registered in the name of [Abbas] and Jainab Bi (*annexed herein and marked “MSK4” is a copy of the LTA search*).
- 14 That [Abbas] is now refusing to allow me the use of the said tractor and trailer for harvest of sugarcane from the farm of the Estate of Hir Khan (deceased).
- 15 That sometime in 1991 – 1992 the tractor fell into a creek and was extensively damaged and as the Estate of Hir Khan did not have sufficient funds, I met the cost of repairs and paid a sum in excess of \$4,500.00 in carrying out the repairs and for spare parts.

<sup>25</sup> Abbas deposes as follows:

- 60 As to paragraphs 11,12 and 13 of [Sahik]’s affidavit, I deny the same
- 61 I purchased the said tractor, AZ 329, with my own funds and to the best of my recollection, with funds borrowed from my mother and/or the Estate of Hir Khan. I don’t recall actually receiving any funds from [Sahik] despite whatever promises he may have made in front of others
- 62 I did put my mother’s name, Bi, on the registration of the tractor initially, as I had borrowed a portion of the purchase price and this provided security for the same in lieu of a Bill of Sale.
- 63 I later repaid the amount of the borrowed monies in full
- 64 I further refer to [Sahik]’s Affidavit, Annexure “MSK3”, being the Affidavits of Pushkar Charan and Mohammed
- 65 Both deponents merely say that in their presence [Sahik] agreed to finance my purchase of the tractor which corroborates that I am the purchaser of the tractor not [Sahik]. Neither deponent actually saw [Sahik] provide any such financing.
- 66 Further, it is clear that I bought a tractor, not [Sahik]. Therefore the ownership and any income earned with the tractor is rightfully mine, and I have every right to deny [Sahik] the use thereof
- 67 On his own evidence, any claim that [Sahik] might have would be limited to a claim for repayment of borrowed monies from 1981, and [Sahik] has no basis for claiming ownership of the tractor and/or use of the same

[21]. This is what Abbas alleges. Whilst he was in New Zealand, he did give a power of attorney to Sahik over the estate property, namely CL 7387. Sahik however did abuse that power by keeping all income from the estate for himself for the last 10 years. Abbas says Sahik refuses to account for the same. As such, Abbas says there is nothing for him to account for and nothing to distribute. Abbas has since revoked the Power of Attorney he gave Sahik. If what Abbas alleges is true, obviously, this will have to be offset one way or another from Sahik's inheritance in the estate. But we must be clear first as to what assets are there before this can be considered further.

### *Sahik not fit to take over trusteeship of estate*

[22]. Abbas says Sahik hardly fits the bill to take over from him as administrator because Sahik had embezzled estate funds and had tried to get the estate lease forfeited to his advantage. That, together with his failure to account under the Power of Attorney, all testify to Sahik's disposition to dishonesty. Abbas even alleges that Sahik has destroyed most of the estate records.<sup>26</sup> He wants an Order that Sahik vacate CL 7387. I am not inclined to even consider this as Sahik is also a beneficiary.

### *Abbas' Open Settlement-Offer*

[23]. Abbas deposes that he has tried to settle the matter on previous occasions with Sahik but Sahik makes exorbitant counter-offers which are hard for him to accept<sup>27</sup>. Sahik appears to confirm at paragraph 21 of his affidavit that Abbas had

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<sup>26</sup> Abbas says:

111 As to paragraph 28 of [Sahik]'s Affidavit, I say [Sahik] cannot claim my share of the Estate property and income or justify his embezzlement of Estate funds and his unethical and unconscionable conduct merely by saying he has no other income and I stay overseas.

112 I say there is good reason not to give up the trusteeship of the Estate of Hir Khan to [Sahik]. His recent embezzlement of Estate funds, his unconscionable conduct in trying to have the Estate's Crown Lease forfeited so he could claim the same for himself which his own legal proceedings as beneficiaries of the Estate were pending, and his current refusal to account under Power of Attorney, all show that he is dishonest and untrustworthy.

113 I say further that, not only has [Sahik] refused to account for the last 10 years under Power of Attorney, but he has also taken or destroyed all or most of the Estate records, as the same were left in the Estate farm house in the bedroom that I formerly occupied and they are now missing from there. How can I prepare an accounting for the Estate when [Sahik] has deprived me of access to the Estate records?.

<sup>27</sup> Abbas deposes as follows:

86 As to paragraph 21 of [Sahik]'s Affidavit, I deny the same. I never promised to settle this matter. When [Sahik] first commenced legal proceedings in 2009, I tried to negotiate a reasonable settlement demands that not only the entire Estate cane farm but my personal cane farm and the tractor be transferred to him in the hope that I would capitulate to the same rather than return to Fiji.

87 I never agreed or acceded to his exorbitant demands but instead made reasonable proposals for settlement which [Sahik] rejected out of hand. No settlement was ever agreed upon because of [Sahik]'s greed.

indeed tried at some point to settle the matter. However, Sahid says that Abbas had merely raised everyone's hopes without being truly committed to settling the estate matter and has since kept everyone in abeyance and in limbo<sup>28</sup>.

[24]. If I may state so here, this matter may be suited for mediation if the parties are willing at some point down the line.

### *Cultivation & Harvesting of Cane*

[25]. Sahik deposes that he has cultivated cane on Crown Lease 9750 and CL 7387<sup>29</sup>. He says Abbas had harvested cane on CL 9750 but was delaying harvesting on CL 7387. This, Abbas denies vehemently. Abbas says that Sahik rather, had trespassed onto CL 9750 without his permission and planted some cane to make it look as if he was cultivating the land. Sahik had then made representations to the Department of Lands to have Abbas' lease forfeited and a lease given to him. However, Abbas has since set the records straight at the Lands Department and the Department is no longer threatening to forfeit the lease<sup>30</sup>. Abbas also alleges that Sahik has been trying to make things difficult for him and has resorted to blocking the cane access road to his farm through CL 7387<sup>31</sup>.

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88 I have recently renewed those reasonable proposals for settlement by commissioning scheme plan for subdivision of Crown Lease No. 7387 into two shares, with the larger share for [Sahik] and the smaller share adjoining Crown Lease No. 9750 being for me.

<sup>28</sup> Sahik deposes:

21 At the time of institution of this litigation [Abbas] had initially agreed to resolve all issues and distribute the properties of the Estate of Hir Khan (deceased) and kept me waiting for almost a year before he decided to back out of settlement.

<sup>29</sup> Sahik deposes:

22 That the sugarcane cropping on both Crown Lease No. 9750 and Crown Lease No. 7387 was cultivated by me and though [Abbas] has harvested all cane standing on Crown Lease No. 9750 but he is delaying the harvest of standing cane on Crown Lease No. 7387 and [Abbas] also is refusing to allow me to harvest the same and I know and verily believe that the longer this takes will result in exorbitant costs to the Estate of Hir Khan.

<sup>30</sup> Abbas deposes:

93 I deny that [Sahik] has cultivated cane on Crown Lease No. 9750 except to the extent that [Sahik] wrongfully and fraudulently obtained certain grant monies from FSC in respect of my personal farm and, acting surreptitiously and without my permission, trespassed upon my personal farm and planted some cane for the purpose of manufacturing a false and fraudulent claim that he is the cultivator of that farm, which claim [Sahik] has made with Lands Department in an attempt to have my lease forfeited and Crown Lease No. 9750 transferred to [Sahik]'s name. Annexure "AAK 3" refers.

94 Except for that one isolate instance of cultivation which was part of [Sahik]'s fraudulent scheme, [Sahik] has never cultivated Crown Lease No. 9750. It is my sister and her son who cultivate that land on my behalf and under power of attorney from me.

95 [Sahik] has now been advised by the Ministry of Lands not to involve himself in cultivation of my farm. Annexed hereto marked with the letters "AAK 12" is a copy of letter dated 14/10/2010 from the Ministry of Lands and Mineral Resources to [Sahik] to that effect.

<sup>31</sup> Abbas further deposes:

96 I say further that in harvesting the cane on Crown Lease No. 9750, I attempted to use the cane access road through Crown Lease No. 7387 to reach the main road. This is the normal procedure and it does not cause any damage to the land or the cane, however, this year [Sahik] parked his truck to block the cane access road and to prevent me from harvesting my cane.

97 I say that any damage was caused by [Sahik] and the actions he took to obstruct my harvesting of cane.

## *Abbas delay in distributing assets of estate*

[26]. Sahik says Abbas is deliberately dragging his feet in distributing the assets of the estate. This is causing him a lot of problems because, he, as major beneficiary, has no source of income<sup>32</sup>. However, Abbas says that Sahik had embezzled estate funds and for that reason, he (Abbas) had revoked the Power of Attorney he had given Sahik. Abbas also says that he cannot be expected to give account for the period prior to his appointment as trustee<sup>33</sup>.

## *Limitation period*

[27]. Abbas deposes:

45 I say that [Sahik] has waived and/or is stopped and/or is barred by laches and/or the  
Limitation Act from demanding accounting of the Estate for the time my mother was  
joint executrix and trustee of the same, as it has been 19 years since she died.  
59 I say further that [Sahik]'s claims are barred by the Limitation Act and/or laches  
and/or the Land Transfer Act in respect of indefeasibility of title  
68 Is any that any claim [Sahik] may have for repayment of borrowed funds is now  
statute barred by the Limitation  
69 As to paragraph 15 of [Sahik]'s affidavit, I deny the same

And further.

117 I say further that [Sahik]'s request for accounts is barred by the Limitation Act  
and/or laches and/or his unclean hands.

[28]. But the robust provisions of sections 9 and 10 of the **Limitation Act (Cap 35)**<sup>34</sup>  
would, *prima facie*, appear to allow the claim.

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<sup>32</sup> Sahik deposes:

25 That since the closure of my rental car business I have no other source of income except the income from the Estate of Hir Khan (deceased) but [Abbas] is refusing to distribute the income earned from the Estate of Hir Khan (deceased).

<sup>33</sup> Abbas deposes:

116 [Sahik] is now coming to this Honourable Court asking for an Estate accounting going back 39 years, even from before my appointment as trustee, despite all the estate records having been left with him and he having acted under Power of Attorney for the last 10 years. The same is a travesty of justice.

<sup>34</sup> Sections 9 and 10 provide as follows:

### Limitation of actions in respect of trust property

9.-(1) No period of limitation prescribed by the provisions of this Act shall apply to an action by a beneficiary under a trust, being an action-

(a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(b) to recover from the trustee, trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.

(2) Subject as aforesaid and to the provisions of the Trustee Act, an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of six years from the date on which the right of action accrued:

Provided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property, until the interest fell into possession.

(3) No beneficiary as against whom there would be a good defence under the provisions of this Act shall derive any greater or other benefit from a judgment or order obtained by any other beneficiary than he could have obtained if he had brought the action and this Act had been pleaded in defence.

### Limitation of actions claiming personal estate of a deceased person

10. Subject to the provisions of subsection (1) of section 9, no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, shall be brought after the expiration of twelve years from the date when the right to receive the share or interest accrued, and no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be brought after the expiration of six years from the date on which the interest became due.

## DISCUSSION

### *Principles*

[29]. The starting point is that the Courts have a jurisdiction to administer trusts. This jurisdiction is conferred both by statute and under common law. As a beneficiary, Sahik has locus to institute proceedings against the trustee namely, Abbas. Sahik's locus derives from **section 89** of the Trustee's Act (Cap 65) as well as in equity. **Section 89**<sup>35</sup> states inter alia that any person beneficially interested in any property the subject of a trust may apply to court for an order concerning such property. Sahik also has rights in equity. Rooney J confirms this at page 7 in **Ratu Epi Volavola v. Adi Lady Lalabalavu Litia Kaloafutoga Mara**<sup>36</sup>: Equity confers upon a beneficiary a right to demand information pertaining to any trust property and his or her interest in it.

[30]. The trustee has a corresponding duty to provide such information upon demand by the beneficiary. In **Patel v Nodhana Ltd**<sup>37</sup>, Fatiaki J sets out some established case law material on the point.

[31]. The information that the trustee is obliged to give on demand is set out in **Volume 8 of Halsbury's Laws of England (4<sup>th</sup> ed.)** (cited by Fatiaki J) as:

*"830...[information] as to the mode in which the trust property or [beneficiary's] share in it has been invested or otherwise dealt with, and as to where it is and full accounts respecting it, whether the beneficiary has a present interest in the trust property or only a contingent interest in remainder, or is only an object of a discretionary trust."*

.....

[32]. In **Re Watson (1904) 49 Sol. Jo. 54** (also cited by Fatiaki J), Kekewich J speaks of three duties<sup>38</sup> that the trustee must adhere to strictly. These are, firstly, the duty to **keep accounts**. Secondly, the duty to **deliver accounts** and,

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<sup>35</sup> Section 89 states:

"An order under the provisions of this Act for the appointment of a new trustee, or concerning any property subject to a trust, may be made on the application of a person beneficially interested in the property ..."

<sup>36</sup> Civil Action No. 293 of 1986.

"... a beneficiary enjoys rights against a trustee as provided for under the Trustee Act (Cap.65) and under the system of equity developed in the former Court of Chancery in England and which is now administered in this Court."

<sup>37</sup> [1994] FJHC 208; [1994] 40 FLR 118 (26 August 1994).

<sup>38</sup> Kekewich J said:

"The duty of a trustee is three-fold: there is a duty to keep accounts, the duty to deliver accounts and the duty to vouch accounts ... The duty to keep accounts is an essential duty, he must keep such accounts so as to be able to deliver a proper account within a reasonable time showing what he has received and paid."

thirdly, the duty to **vouch accounts**. The trustee must always keep proper accounts and to have them always ready when called upon to render them (as per Stuart VC in **Kemp v. Burn (1863) 141 R.R. 225, 226**)<sup>39</sup>. Hence, even if a trustee has put the estate funds into his own personal bank books, the trustee cannot tell a beneficiary that his (trustee's) personal bank account is out of bounds so to speak to the beneficiary. As Lord Eldon L.C. in **Freeman v. Fairlie (1812) 17 R.R. 7** said:

*"It is, and must be understood to be, the bounden duty of an executor, to keep clear and distinct accounts of the property which he himself is bound to administer; and I have not the slightest difficulty in saying that, if all these books were the books of a banking house in London, and an executor thought proper to put the accounts of testator's estate into his banking books, he shall not be allowed to tell me, the cestui que trust, that I have no right to see his original accounts of my property. To an executor so acting I should say, they shall see every part of these original books which contain any part of this transaction."*

[33]. It well settled in law and in equity that the Court's jurisdiction to administer trusts includes, incidental to it, the powers to remove and appoint new trustees. The Courts power to remove the trustee and appoint a new one is set out in section 35 of the Succession, Probate and Administration Act<sup>40</sup>, Cap. 60, and section 73 of the Trustee Act<sup>41</sup>. In **Vosailagi v Mara**, Fatiaki J cited the

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<sup>39</sup> Stuart V.C. said in **Kemp v. Burn (1863) 141 R.R. 225, 226**:

*"... where an account is demanded of trustees ... by a residuary legatee, there seems no doubt what the duty of the (trustee) is. Their duty is to keep proper accounts, and to have them always ready when called upon to render them."*

<sup>40</sup> s .35. *The court may for any reason which appears to it to be sufficient, either upon the application of any person interested in the estate of any deceased person or of its motion on the report of the Registrar and either before or after a grant of probate has been made—*

*(a) Make an order removing any executor of the will of such deceased person from office as, such executor and revoking any grant of probate already made to him; and*

*(b) By the same or any subsequent order appoint an administrator with the will annexed of such estate; and*

*(c) Make such other orders as it thinks fit for vesting the real and personal property of such estate in the administrator and for enabling the administrator to obtain possession or control thereof; and*

*(d) Make such further or consequential orders as it may consider necessary in the circumstances.*

<sup>41</sup> s. 73 states as follows:

*73—(1) The Court may, whenever it is expedient to appoint a new trustee or new trustees, and it is inexpedient, difficult or impracticable so to do without the assistance of the Court, make an order for the appointment of a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.*

*(2) In particular, and without limiting the generality of the provisions of subsection (1), the court may make an order appointing a new trustee in substitution for a trustee who –*

*(a) desires to be discharged;*

*(b) has been held by the court to have misconducted himself in the administration of the trust;*

*(c) is convicted of any misdemeanor involving dishonesty, or of any felony;*

*(d) is a person of unsound mind;*

*(e) is bankrupt; or*

*(f) is a corporation that has ceased to carry on business, or is in liquidation, or has been dissolved.*

*(3) An order under the provisions of this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any discharged, former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.*

*(4) Nothing in this section contained shall confer power to appoint an executor or administrator.*

*(5) Every trustee appointed by the court shall have, before as well as after the trust property becomes by law or by assurance or otherwise vested in him, the same powers, authorities and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument (if any) creating the trust.*

following English cases with authority in exploring the boundaries of the court's equitable jurisdiction in this regard.

[34]. Scott J. said in **Chellaram v. Chellaram** (1985) 1 Ch.D 409 at p.428:

*"The jurisdiction of the court to administer trusts to which the jurisdiction to remove trustees and appoint new ones is ancillary, is an in personam jurisdiction. In the exercise of it, the court will inquire what personal obligations are binding upon the trustees and will enforce those obligations... The trustees can be ordered to pay, to sell, to buy, to invest, whatever may be necessary to give effect to the rights of the beneficiaries, which are binding on them. If the court is satisfied that in order to give effect to or to protect the rights of the beneficiaries, trustees ought to be replaced by others, I can see no reason in principle why the court should not make in personam orders against the trustees requiring them to resign and to vest the trust assets in the new trustees ."*

[35]. In **Letterstedt v. Broers** (1884) 9 App. Cas. 371, the Privy Council laid down the 'guiding principles' to be applied in the removal of trustees in the following passages by Lord Blackburn at pp. 386, 387 and 389:

*"It seems to their Lordships that the jurisdiction which a Court of Equity has no difficulty in exercising ... is merely ancillary to its principle duty, to see that the trusts are properly executed. This duty is constantly being performed by the substitution of new trustees in the place of original trustees for a variety of reasons in non-contentious cases. And therefore, though it should appear that the charges of misconduct were either not made out, or were grossly exaggerated, so that the trustee was justified in resisting them, ... yet if satisfied that the continuance of the trustee would prevent the trusts being properly executed, the trustee might be removed. It must always be borne in mind that trustees exist for the benefit of those to whom the creator of the trust has given the trust estate.*

*As soon as all questions of character are as far settled as the nature of the case admits, if it appears clear that the continuance of the trustee would be detrimental to the execution of the trust, even if for no other reason than that human infirmity would prevent those beneficially interested, or those who act for them, from working in harmony with the trustee , ... the trustee is always, advised by his counsel to resign, and does so.*

*In exercising so delicate a jurisdiction as that of removing trustees, their Lordships do not venture to lay down any general rule beyond the very broad principle above enunciated, that their main guide must be the welfare of the beneficiaries."*

.....

*"It is quite true that friction or hostility between trustees and the immediate possessor of the trust estate is not of itself a reason for the removal of the trustees. But where the hostility is grounded on the mode in which the trust has been administered, ... it is certainly not to be disregarded."*

[36]. A trustee may apply to court for directions under section 88<sup>42</sup> of the Trustee Act if he or she does not know how to go about his or her duties (see **Matai v Uluilakeba**<sup>43</sup>) and/or may simply consult a solicitor<sup>44</sup> for the same.

<sup>42</sup> s. 88(1) of the Trustee Act , to apply for directions from the Court:-

88 (1). Any trustee may apply to the court for directions concerning any property subject to a trust, or respecting the management or administration of that property, or respecting the exercise of any power or discretion vested in the trustee.

<sup>43</sup> [2011] FJHC 761; HBP08.2008 (22 November 2011).

<sup>44</sup> Section 49(1)reads:-

"49 (1). A trustee may, instead of acting personally, employ and pay an agent, whether a barrister and solicitor, accountant, bank, trustee corporation, stockbroker or other person, to transact any business or to do any act required to be transacted or done in the execution of the trust or the administration of the trust property, including the receipt and payment of money, and the keeping and audit of trust accounts , and shall be entitled to be allowed and paid all charges and expenses so incurred, and shall not be responsible for the default of any such agent employed in good faith and without negligence".

## **OBSERVATIONS**

- [37]. Abbas is obliged to provide full account of the Hir Khan estate from the August 1972. The question I ask is, whether Crown Lease 9750, and the tractor, which are both registered personally in favour of Abbas, form part of the estate. I cannot determine that question on affidavit evidence. But I can say this now, that it is possible that they are really part of estate property. Hence, as a first step to resolving this issue, Abbas must be ordered to provide all documents, financial and other records of his (Abbas') purchase of Crown Lease No. 9750 on 02 September 1988.
- [38]. Farm No. 2148 (Meigunyah Sector) Crown Lease No. 7387 belongs to the estate. Abbas is obliged to provide all accounts pertaining to this farm.
- [39]. As stated, the tractor and trailer are in Abbas' name personally. However, it is possible that they are, after all, estate property. I cannot determine the issue as to their correct ownership on affidavit evidence. But as a first step to resolving that issue, Abbas must provide all documents and financial records of the purchase of farm tractor AZ329 with trailer D7336 and all implements in 1981 and details of their transfer to him in 1991. Though the issue of their ownership must remain unresolved at this stage, I see no harm in ordering that the tractor be made available to Sahik for use only in harvesting cane in CL 7387 on a seasonal basis. The parties are to work out a suitable arrangement through their solicitors to ensure that the machine is accessible to both at harvesting time. If, in the event I was to find that the tractor and trailer belong to Abbas rather than the estate, the estate of course will have to pay Abbas for the use of the machine on CL 7387.
- [40]. I am of the view also that Abbas should do all acts, deeds, and things necessary to allow Sahik to harvest the standing sugarcane crop on Farm No. 2148 (Meigunyah Sector), and vice versa. However, the proceeds from the harvest are, for the
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moment, to be kept at FSC until further Orders of the Court. The same must apply for all cane proceeds from Farm 2176. They are to be withheld by FSC until further Orders of this Court. Abbas should also provide detailed list of all assets standing to his name in Fiji and elsewhere.

**ORDERS**

Abbas is to file and serve an Affidavit of Accounts within 42 days of the date of this Ruling on the following:

- (a) the Hir Khan estate from the August 1972.
- (b) all documents, financial and other records of his (Abbas') purchase of Crown Lease No. 9750 on 02 September 1988.
- (c) a full account of Farm No. 2148 (Meigunyah Sector) Crown Lease No. 7387 since 1988.
- (d) all documents and financial records of the purchase of farm tractor AZ329 with trailer D7336 and all implements in 1981 and details of their transfer to him in 1991.

In addition, I make the following Orders:

- (e) all cane proceeds from Farm 2176 should be withheld by the FSC until further Orders of this Court.
- (f) Abbas is to provide detailed list of all assets standing to his name in Fiji and elsewhere.
- (g) Abbas must do all acts and deeds and things necessary including execution of all authorities to allow Sahik to harvest the standing sugarcane crop on farm No. 2148 (Meigunyah Sector). The proceeds from the harvest on this farm are, for the moment, to be withheld by the Fiji Sugar Corporation Limited ("FSC") until further Orders of the Court.
- (h) the parties are to work out a mutually convenient arrangement through their lawyers regarding the sharing of the use of the tractor and trailer (as per paragraph 39 above).

Once I receive full accounts from Abbas, I will then consider orders for Sahik to account for proceeds from CL 7387 during the time he held Power of Attorney for Abbas. This case adjourned to **Wednesday 18 September 2013 at 8.30 a.m.** for mention. Costs reserved.

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**Master Anare Tuilevuka**  
**31 July 2013**