

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA**

Civil Action No. HBC 258 of 2012

**BETWEEN**

**MOHAMMED JANIF** of 20 Murdock Street, Blackett NSW 2770, Sydney, Australia and currently of Lautoka, Fiji, unemployed.

**PLAINTIFF**

**AND**

**MOHHAMED NAGIFF** and **RASUL BANI** both of Nasoki Street, Lautoka, Businessman and Domestic Duties respectively as Executors and Trustees in the Estate of Mohammed Hanif also known as Haji Mohammed Hanif, deceased, Testate of Nasoki Street, Lautoka.

**DEFENDANT**

**R U L I N G**

1. The plaintiff and the defendants are family. The plaintiff, Mohammed Janif (“**Janif**”), is seeking to enforce a Deed of Renunciation And Release (“**Deed**”) of his late father’s estate. The said Deed was signed by both the defendants. The first defendant, Mohammed Nagiff (“**Nagif**”) is the brother of Janif. Nagif is one of two co-executors of the said estate, the other, being Rasul Bani (“**Bani**”), the second defendant, and who is the mother of both Janif and Nagif.

2. The Will in question states as follows in its relevant part:

Upon the death of my said wife **RASUL BANI** the sole surviving Trustee to pay the sum of \$300,000-00 (THREE THOUSAND DOLLARS) to my son **MOHAMMED JANIF**. It is hereby declared that in addition to the above amount to be paid to my said son **MOHHAMED JANIF** I have already paid the sum of \$250,000-00 (TWO HUNDRED AND FIFTY THOUSAND DOLLARS) to my said son **MOHAMMED JANIF**.

3. The Deed in question alters the above in its relevant part as follows:

**AND WHEREAS** the trustees agree to pay the said sum of \$300,000-00 (Three Hundred Thousand Dollars) in the following manner:-

- (a) A sum of \$24,000-00 Twenty Four Thousand Dollars) upon execution hereof (the receipt of which sum the Doner (sic) doth hereby acknowledges receipt).
- (b) The balance sum of \$276,000-00 (Two Hundred Seventy Six Thousand Dollars) payable on the 5<sup>th</sup> day of May, 2006 and thereafter by instalments of \$24,000-00 (Twenty Four Thousand Dollars) on the 5<sup>th</sup> day of May of every successive year until the whole sum is fully paid and satisfied.

4. Hence, the purported effect of the Deed is to make available now to Janif the sum of \$300,000 less the \$24,000 that he has already been paid, but which the Will had stipulated was to be paid out to him only upon the death of Bani.
5. As a starting point, I state that the distribution of an estate can be altered. This may be done under section 3 of the Inheritance (Family Provision) Act

2004, where a spouse, child or dependent applies to court if he or she feels that adequate provision is not made in the Will of the testate.

6. A Will may also be altered by Deed. Such a Deed is usually called a Deed of Variation. Some jurisdictions require such a Deed to be signed by all executor/trustees as well as all beneficiaries. To revoke such a Deed, a Deed of Revocation will have to be executed by the person who signed the Deed.
7. But the case before me is not about a revocation. Rather, it is about two executor/trustees who allege that they did sign the Deed only because the person who would benefit from the signing of it had misrepresented to them that he was in dire need of financial assistance.
8. During argument before me, it emerged that Bani was an elderly lady who did not understand English. I did note that the attestation clause indicated that Bani had signed the Deed before an *itaukei* lawyer who had explained the contents to her in English. This appears to have embarrassed the plaintiff's lawyer considerably.
9. The formalities for a Deed are set out in Part II of the Property Law Act (Cap 130). And, although section 4(1) states *inter alia* that “**...no particular form of words shall be requisite for the attestation**”, the situation here before me is a different matter altogether. Not only does it raise issues of non-est factum, but it also raises disciplinary issues for the solicitor who witnessed Bani's signature and who signed the attestation.
10. I am not inclined to grant the application at this time. I think the better course is to deem these proceedings as if begun by writ pursuant to Order 28 Rule 9. Accordingly, I direct so and further order that the affidavits filed are to stand as pleadings with liberty first to the plaintiff to file a further affidavit in 28 days (i.e. by **17 March 2014**) and 14 days thereafter to the defendants to file an affidavit in opposition (i.e. by **02 April 2014**). The plaintiff may file an affidavit 14 days thereafter (i.e. by **16 April 2014**).
11. Case is adjourned to 17 April 2014 before Master Ajmeer at 8.30 a.m.

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Anare Tuilevuka  
**JUDGE**  
17 February 2014