

**THE HIGH COURT OF FIJI AT SUVA**

**CIVIL JURISDICTION**

**PROBATE No. 53717**

**Caveat No. 17/2013**

In the estate of Hari Nath

COUNSEL: Mr K. Qoro for the caveatee  
Mr Shelvin Singh for the caveator  
Date of hearing: 25<sup>th</sup> March, 2015  
Date of Judgment: 25<sup>th</sup> August, 2016

**JUDGMENT**

1. This is an application by Sofia Fatima aka Savitri Devi, (the caveatee) for the removal of caveat No.17 of 2013 lodged against the estate of Hari Nath by Prerana Ram,(the caveator), pursuant to section 47(1) of the Succession, Probate and Administration Act and that letters of administration de bonis non be granted to her.
2. The application is supported by an affidavit in support filed on her behalf, which states that:
  - (a) The caveatee is the intended administratrix and daughter of the late Hari Nath, who died on 6<sup>th</sup> February, 2005, and is the proper person to obtain letters of administration de-bonis-non.
  - (b) The cavaetor, Prerana Ram is not a beneficiary and has no interest in his estate.
  - (c) The caveator has failed to show cause why letters of administration de-bonis-non should not be granted to her. After filing "*Appearance to Warning*", the caveator has taken no further steps .
  - (d) The caveat lodged is premature and vexatious.
3. A "*Warning to Caveat*" was issued by the caveatee to the caveator(1) to enter an appearance stating their contrary interest; or (2) serve a summons for direction should she wish to show cause against the sealing of a grant.

4. The caveator then, filed an “*Appearance to Warning*” stating that she is one of the beneficiaries of the estate of Paras Ram, a son of the late Hari Nath.
5. The caveator, in her affidavit in reply states as follows:
  - (a) Hari Nath died intestate leaving three issues Paras Ram, Prabhu Ram and the caveatee.
  - (b) Paras Ram died on 18<sup>th</sup> January 2013.
  - (c) Paras Ram left a will of 9<sup>th</sup> January, 2013, in terms of which the beneficiaries are Priscilla Ram and herself .
  - (d) She is the trustee of the estate of Paras Ram. The probate is attached.
  - (e) Paras Ram was a beneficiary of one- third share of the estate of Hari Nath.
6. The caveatee, in her affidavit in answer states:
  - (i) The caveator has 50% in the estate of Paras Ram.
  - (ii) The caveator is collecting rent from two flats of two properties of the estate and is not distributing the rent monies to the other beneficiaries.

***The hearing***

7. Mr Qoro, counsel for the caveatee submitted that the caveatee is the only surviving issue of Hari Nath. She is entitled to one-third of his estate. The caveator has failed to show a contrary interest.
8. Mr Singh, counsel for the cavaetor argued that the caveatee resides in Australia. The caveator is entitled to one-third of the estate of her father, Paras Ram. He submitted that the caveator has a larger interest than the caveatee, by reason of the developments carried out by her father, the late Paras Ram.

***The determination***

9. The rule for consideration is rule 44 (7).
10. In *Reddy vs Webb* (1994) FJCA 36; ABU0014.94S the FCA stated :

*. For the purposes of a warning, a caveator is required to give particulars of a contrary interest. We would adopt this and formulate that the purposes of removing a caveat under S 47 of the Act, the caveator is required to establish a contrary interest in the estate of the deceased. (emphasis added).*

11. Mr Qoro relied on the case of *In re the Estate of Phulla*, (1991) FJHC 48. In that case, the caveator was a grandson of the deceased. The caveatee who filed the application for removal of the caveat was his daughter. Shameem J said that:

*...the provisions of Section 6(d) of the Succession, Probate and Administration Act make it clear that the applicant's interest take priority over the caveator's and that the caveator's interest can be taken into account when the estate is distributed (emphasis added).*

12. In *In re the Estate of Chinsami Reddy*, [2000] FJHC 134; HPP 35779) as cited by Mr Singh, Shameem J stated:

*In choosing the most appropriate person to administer the estate, relevant considerations are the nature of the beneficial interests held by the parties, their good or bad character, any interest they may have which might be incompatible with the due administration of the estate .*

13. In that case, letters of administration were granted to the person who held the majority interest, as "*clearly the most suitable person to be granted letters of administration de bonis non*".

14. In my view, in the present case, the caveatee's interest, as daughter of the late Hari Nath outweighs the interest of caveator, a grand-daughter. The caveator has one-sixth share in the estate of the late Hari Nath in contrast to the caveatee's one-third share.

15. The caveatee has expressed concern with the caveator collecting rent from two properties of the estate and not distributing the rent monies to the other beneficiaries

16. In my judgment, the caveator has failed to show an interest contrary to that of the caveatee.

17. In the outcome, the application to remove caveat no 17 of 2013 is granted and letters of administration are granted to the caveatee forthwith.



18. *Orders*

- (a) I order that caveat no 17 of 2013 be removed and that letters of administration be granted to Sofia Fatima, the caveatee.
- (b) Prerana Ram, the caveator shall pay costs summarily assessed in a sum of \$ 1000 to the caveatee within 15 days of this judgment.



*A.L.B. Brito-Mutunayagam*

A.L.B. Brito-Mutunayagam

Judge

25<sup>th</sup> August, 2016