

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

**Civil Action No. 25 of 2008**

**BETWEEN** : **SUREN PRASAD** father's name Jag Deo of Qalitu, Lautoka,  
Farmer.

**PLAINTIFF**

**AND** : **JOTISH PRASAD** father's name, Jag Deo of Qalitu, Lautoka,  
Farmer and Sole Executor and Trustee of the Estate of Vidya  
Wati.

**1<sup>ST</sup> DEFENDANT**

**AND** : **SURESH SINGH** father's name Jag Deo of Qalitu, Lautoka,  
Carpenter.

**2<sup>ND</sup> DEFENDANT**

**AND** : **CHANKA PRASAD** father's name, Jag Deo of Qalitu, Lautoka,  
Farmer; **DHURUP PRASAD** father's name, Jag Deo of Qalitu,  
Lautoka, Farmer; **JYOTISH PRASAD** father's name, Jag Deo  
of Qalitu, Lautoka, Farmer; **ATMA RAM** father's name, Jag Deo  
of Qalitu, Lautoka, Farmer.

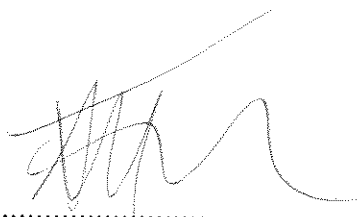
**R U L I N G**

1. The first defendant, Jotish Prasad, seeks an Order that the High Court Registry in Suva release the original Probate No. 42457 in the Estate of Vidya Wati father's name Pancham to Messrs Chaudhary & Associates for and on behalf of Jotish Prasad. The supporting affidavit of Prasad deposes as follows:

1. ....
  2. **THAT** on 12<sup>th</sup> March 2009 this Honourable Court made an Order that Probate No. 42457 in the Estate of Vidya Wati father's name Pancham be lodged with High Court Registry.
  3. **THAT** on 17<sup>th</sup> March 2009 by their letter dated 17<sup>th</sup> March 2009 my Solicitors Messrs Chaudhary and Associates posted the Original Probate No. 42457 to the Chief Registrar, Probate Registry, High Court, Suva. A copy of the said letter is annexed hereto marked "A".
  4. **THAT** on 1<sup>st</sup> December 2010 the within action was struck out by this Honourable Court. A copy of the Order is annexed hereto marked with the letter "B".
  5. **THAT** I respectfully seek Order in Terms of the summons filed herein.
2. I have perused this file (HBC 25 of 2008) and I gather that all the parties in this case are surviving issues of the late Vidya Wati. The plaintiff is a surviving son. The 1<sup>st</sup> defendant is a surviving son and also the sole executor

and trustee of the Wati estate. The second defendant is also a surviving son of Vidya.

3. The plaintiff pleads in his claim that the purported last Will and Testament of the late Vidya Wati was procured by the first and defendants at a time when the late Vidya Wati was not of sound mind. It is also alleged that the defendants applied undue influence over the late Wati. It is further pleaded that Wati had always promised her sons that on her passing, the land in question would be distributed equally to all of them.
4. I also see from the records a sealed Order of Master Udit made on 12 March 2009 in which he had Ordered:
  1. That the 1<sup>st</sup> Defendant is ordered to lodge with the Probate Registry in Suva the original Probate No. 42457 by 26<sup>th</sup> March, 2009.
5. On 13 October 2010, the plaintiff's former solicitors were granted Order in Terms of their application to withdraw as counsel. They had not been able to keep in touch with the plaintiff who resides in the United States of America and who owes them substantive fees.
6. On 01 December 2010, the action was struck out with costs in favour of the first defendant on account of there being no appearance of the Plaintiff. It has now been five years or so since and the plaintiff has taken no action to drive this action. From where I sit, there is every indication that the plaintiff is not interested in pursuing his claim.
7. Accordingly, I grant Order in Terms of the application with a further costs of \$500 against the plaintiff in favour of the first defendant.



Anare Tuilevuka  
**JUDGE**  
05 October 2016.

