

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

CIVIL ACTION NO.: HPP 93 of 2017

IN THE ESTATE of KUMAR SAMI GOUNDAR ALSO KNOWN AS KUMAR SAMI late of NAcobi, Nadi, in the Republic of Fiji, Farmer, Deceased Testate.

BETWEEN : DHARAM LINGHAM aka DHARAM LINGAM PLAINTIFF

AND : RANGA SAMI NAICKER DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Ms V. Diroiroid [LAC]

DEFENDANT : Not Present / Not Represented

RULING OF : Acting Master Ms Vandhana Lal

DELIVERED ON : 22 November 2018

JUDGMENT

[Removal Of Executor & Trustee/Revocation Of Grant]

1. On or about 12 December 2017, the Plaintiff **DHARAM LINGHAM** aka **DHARAM LINGAM** [Dharam] caused an originating summons to be issued against the Defendant Ranga Sami Naicker [Ranga] seeking orders for removal of executor and trustee in the Estate of Kumar Sami Goundar aka Kumar Sami late of Nacobi, Nadi in the Republic of Fiji, Farmer, Deceased Testate and Dharam being appointed by executor and trustee.
2. Together with his substantive claim Dharam also caused an ex parte motion to be filed seeking orders for substitute service of the document on Ranga who resided in New Zealand.

An order was granted on 15 February 2018.

3. As per the Affidavit of Service of one Raman Jalu Naicker sworn on 3 August 2018 the Originating Summons was served on Ranga on 27 July 2018.

Despite service, the Defendant has failed to enter an appearance either by filing an Acknowledgment of Service or appearing in court on any of the call over dates.

4. According to Dharam, he is the son of the deceased Kumar Sami Goundar [Kumar] and also one of the beneficiaries in the said Estate.

Under his Will of 5 January 1990, Kumar appointed Ranga Sami Naicker as the sole executor and trustee of his Will.

Upon the death of Kumar, Ranga had applied for a Probate and one was granted on or about 24 May 2005.

According to Dharam, Ranga has for past 10 years resided in New Zealand.

Apart from taking out a Probate, Ranga has not taken any further action to distribute the estate properties to the rightful beneficiaries.

The estate property is a 4.287 hectares crown lease with a Sugar cane contract. The lease has expired and Dharam's motor has made an application for renewal of the lease.

Dharam with his motor and brother are cultivating the land for vegetable farming and sugarcane farming.

There is no security as the land was renewed under the Defendant's name and lease payment was done by Dharam.

Director of Lands has informed that the new lease will have Ranga's name as Executor and Trustee which the beneficiaries do not want. Hence, the reason for removal of Ranga as executor and trustee.

5. Section 35 of the Succession Probate and Administration Act reads;

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*

6. Ranga Sami Naicker is the son-in-law of the deceased.

7. Beneficiaries under the deceased will are – his daughter Pushpa Wati and her children; his wife Kanshaliya; two sons Vikram and Dharam Lingam.

8. The deceased died in estate leaving behind a duly executed "will" dated 5 January 1990 whereby he appointed Ranga as his sole executor and trustee.
9. A probate was granted on 24 May 2005.
10. Dharam with his mother is cultivating the land and they do not wish to have Ranga as executor and trustee for the Estate of the deceased be named on the lease.

Ranga has been residing in New Zealand for 10 years and was failed to distribute the Estate properties to the beneficiary.

11. Despite service Ranga failed to enter an appearance and contest the application.
12. Hence an order is warranted in term of the application to ensure that the Estate of Kumar Sami Goundar aka Kumar Sami is fully administered and the asset is distributed to the beneficiary in terms of the Deceased's Will.
13. The Defendant Ranga Sami Naicker forthwith is hereby removed and discharged from the duties and responsibilities in his capacity as the executor and trustee of the Estate of Kumar Sami Goundar aka Kumar Sami late of Nacobi, Nadi in the Republic of Fiji, Farmer, Deceased Testate.

The Plaintiff **DHARAM LINGHAM** aka **DHARAM LINGAM** of Korovuto, Nadi, Carpenter is hereby appointed as the personal representative/administrator of the Estate of Kumar Sami Goundar aka Kumar Sami late of Nacobi, Nadi in the Republic of Fiji, Farmer, Deceased Testate.

The Defendant is to surrender the probate granted on and dated 24 May 2005 in file No. 43698 with immediate effect upon service of the Court order.

That the said Probate No. 43698 and records to be noted to this effect.

That a new grant of Letters of Administration with Will annexed in the deceased Estate be issued under the name of **DHARAM LINGHAM** aka **DHARAM LINGAM** of Korovuto, Nadi, Carpenter as the personal representative and the Administrator of the deceased Estate.

There shall be cost in favour of the plaintiff in the sum of \$1,000 to be paid in 14 days after service of the order on the Defendant.

A copy of the order is to be served with immediate effect.


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Vandhana Lal [Ms]
Acting Master
At Suva.

