

IN THE HIGH OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HPP 39 of 2017

IN THE MATTER of the estate of Ram Lagan late of Lot 10 Hasmat Place,
Waila, Nausori in the Republic of Fiji, Dairy Farmer, Deceased, Testate.

AND

IN THE MATTER of Letters of Administration No. 57067 granted on the
23rd day of July, 2015.

BETWEEN

OM WATI a beneficiary of the ESTATE OF THE LATE RAM LAGAN of
Waila, Nausori.

PLAINTIFF

AND

KEOLA PATI also known as KEOLAPATI LAGAN in her capacity as the
administratrix of the ESTATE OF LATE RAM LAGAN Testate.

DEFENDANT

Counsel : Mr. N. Lajendra for the Plaintiff / Respondent.

Mr. N. Sharma for the Defendant / Appellant.

Date of Hearing : 25th September, 2018

Date of Ruling : 04th October, 2018.

RULING

(On the application for stay pending appeal)

- [1] The plaintiff-respondent came to court by way of originating summons seeking to have the property which is the subject matter of this action transferred in her name. It is a fact undisputed that the said property was given to her by the testator by his last will. He died on 19th August, 2014 and for three years of his death the defendant-appellant who is the administratrix of the estate in question failed to administer the estate.
- [2] After hearing the parties the court granted the order sought by the plaintiff-respondent and the defendant-appellant preferred and appeal to the Court of Appeal.
- [3] The decision in **Natural Waters of Viti Ltd v Chrystal Clear Mineral Waters (Fiji) Ltd** ABU 0011.04s on the question whether stay of the judgment pending the appeal should be granted or not has now become the settled law. In that case in considering whether the stay of the execution pending appeal should be granted or not the court must take into consideration the following grounds:
- (a) Whether, if no stay is granted, the applicant's right of appeal will be rendered nugatory (this is not determinative).
 - (b) Whether the successful party will be injuriously affected by the stay.
 - (c) The *bona fides* of the applicant as to the prosecution of the appeal.
 - (d) The effect on third parties.
 - (e) The novelty and importance of questions involved.
 - (f) The public interest in the proceedings.
 - (g) The overall balance of convenience and the status quo.

- [4] The appeal of the defendant-appellant is based on eleven grounds of appeal out of which grounds of appeal 2, 3, 4 and 5 are in relation to the joint account of the testator and the plaintiff-respondent. The court has not made any finding on that issue because there was no prayer for that relief. It was a ground taken by the defendant-appellant at the hearing in opposing the application of the plaintiff-respondent. Even if the defendant-appellant is successful in appeal on those grounds, the transfer of the property prior to the decision of the appeal will not have the effect of rendering the judgment nugatory. It is also important to mention that at the hearing it was revealed that the plaintiff-respondent was prepared to pay the amount whatever was due to the estate of the testator.
- [5] The other ground of appeal is that the defendant-appellant has instituted proceedings in the High Court as the administratrix claiming part of another property which was not included in the last will and that matter has not yet been decided. The counsel for the defendant-appellant submitted if the stay is not granted and if the defendant is successful on its appeal she will not be able to recoup the just debts, funeral, testamentary expenses and costs of the ongoing Civil Action No. HBC 352 of 2016 for the preservation of the estate property. I do not wish to deal with the said issue in detail in this ruling because I have already dealt with it in my judgment in detail. However, in my view, that will not be a ground for stay of execution of the judgment pending appeal because cost of that action will have to be recovered from the defendant in that matter. It is also important to note that the defendant-appellant has initiated the above proceedings in respect of a property which is not included in the last will and the testator before his death had executed a transfer of that property. If the said transfer was not an act of the testator or the transfer had been executed fraudulently without his knowledge, there was no reason for him not to include that property in the last will. On the other hand it is the duty of the administratrix to administer the estate without any delay and to prepare accounts but so far she has not done anything towards the administration of the estate. Once the administration is completed only she can recover the expenses from the other beneficiaries.
- [7] The counsel for the defendant-appellant also submitted that the plaintiff-respondent is in possession of the property. This does not mean that she has become the owner of it. It is the duty of the administratrix to give effect to the intention of the testator and that is the very reason why someone is appointed to administer the estate. It is the legal right of the plaintiff-respondent to have the ownership of the property registered in her name.

[9] The learned counsel for the defendant-appellant submitted that there would be no impact on third parties if stay is granted. There won't be any impact on third parties whether the stay is granted or not. He also submitted that there is novelty and important questions are involved in that the court has to determine as to what constitutes just debts, funeral expenses, testamentary and administration expenses and whether the preservation of other estate properties form part of the properties.

[10] As I have stated above this not a question to be determine at the hearing of the appeal for the reason that it is settled law that the administrator is entitled to the expenses incurred by him in administering the estate. For her to become entitled to such expenses the administratrix must at least initiate the administration process. She cannot delay the process until the matter relating to a property which is not a part of the estate, is finally disposed of. If stay of execution is granted it will only cause further delay in the administration of the estate.

[11] For the aforementioned reasons the court makes the following orders.

ORDERS

1. The application for stay of the execution of the judgment pending appeal is refused.
2. The defendant-appellant is ordered to pay \$1000.00 as costs of this application to the plaintiff-respondent.



A handwritten signature in blue ink, appearing to read 'L. Seneviratne', written over a horizontal line.

Lyone Seneviratne

JUDGE

04th October, 2108