

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

Probate Action No.: HPP 32 of 2019

IN THE ESTATE of **SITAMMA** late of
Kermode Road, Tavakubu Stage 1, Lautoka,
Fiji, Deceased, Testate.

APPEARANCES/REPRESENTATION

APPLICANT : Mr Banelau [Legal Aid Commission]
RESPONDENT : **Ex-parte**
RULING OF : Acting Master Ms Vandhana Lal
DELIVERED ON : **25 July 2019**

JUDGMENT

[Leave to use Photo static copy Will for proof]

1. This is an application made pursuant to Section 3(1) of the Succession, Probate and Administration Act, Section 4 of the Trustees Act and Inherent Jurisdiction of the Court seeking orders as follows:

- a. Copy Will be admitted to prove for Grant of Probate.*
- b. Leave be granted to the Applicant (Ramend) to take out grant of probate in the Estate of Sitamma on the copy will dated 09 January 1995.*
- c. That Ramend be appointed as executor and trustee for the Estate of the deceased.*

2. The Applicant is said to be the lawful son of the deceased Sitamma.

The Deceased died on 27 December 1999. The Deceased is said to have executed a Will on 9 January 1995 appointing the Applicant as the Executor and Trustee.

The Applicant has in his possession a copy of the said Will. The original is said to have burnt with his house on 9 February 1996.

As per the report from National Fire Authority there was a fire whereby the Applicant had lost his house and belongings.

3. It is not known to this Court how and where the Applicant got the copy of the said will from.

Nor is there evidence from the Solicitor preparing the will to confirm from their record that the copy annexed to the affidavit is copy of original will.

4. The practice adopted is that there should also be evidence of due execution and if both the attesting witnesses are dead, or are not conveniently available, an Affidavit as to due execution from any other person who was present at the execution of the will is acceptable.


Exception to above is said there should be shown evidence that both witnesses are dead or that there is satisfactorily evidence that they cannot be traced and that so far as is known no other person was present at the time of execution of the will and the consent of persons prejudiced to the admission of the will to proof will normally be accepted – Tristram and Cootes 29th Edition (2002) at paragraph 3.119 on page 59 – 60.

5. During the hearing the counsel of the Applicant did not submit to the court the copy that they would be submitting to the registry with the application for grant.
6. The Will must be exhibited (not endorsed) to the affidavit and endorsed with the exhibit clause, which must be signed by the commissioner for oaths.

When preparing the exhibit, care should be taken not to physically interfere with the will by attaching anything to it by fastenings such as pins or paperclips. Any interference with the Will may in turn call for evidence of its plight and condition - Tristram and Cootes 29th Edition (2002) on page 58 at paragraph 3.113

7. Hence for reasons aforementioned, I refuse to make any orders on the application and dismiss the application.




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Vandhana Lal [Ms]
Acting Master
At Suva.