

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

HPP Action No. 56 of 2019

**IN THE MATTER** of the Estate of **Sam Little McGoon** late of Lot 42, Tacirua Plains Sub-division, Stage 2, Tacirua, Suva, Deceased, Testate.

**BETWEEN** : **ANNE CATHERINE KADO MCGOON** of C/o- Messers Law Solutions. Solicitors and Legal Consultants, 29 Pender Street, Suva.

**PLAINTIFF**

**AND** : **MOSES EDWARD MCGOON** of 8 Front Court, Marsden, Post Code 4132, Queensland, Australia.

**DEFENDANT**

**Counsel** : **Plaintiff:** Mrs Kunatuba. S  
: **Defendant:** Mr Sharma. N  
**Date of Hearing** : 20.02.2020  
**Date of Judgment** : 03.03.2020

**JUDGMENT**

**INTRODUCTION**

1. This matter was initiated by a Caveator of the estate of Sam Little McGoon, through an affidavit and a purported originating summons. I call this purported originating summons (The originating summons) as there are no parties named or format for originating summons followed. Caveator had neither complied with High Court Rules 1988 nor named the parties. The originating summons contained the orders sought from court. It was purportedly made in terms of Order 7 rule 2 of High Court Rules of 1988 and also Section 46(1) and Section 47(1) of Succession Probate and Administration Act 1970. Caveatee had filed an affidavit in opposition and facts stated in the affidavit in support are disputed, but more importantly Caveator had sought interim relief from originating

summons without a cause of action in this action. Caveator is widow of late Sam Little McGoon who was living in USA and claims an interest in house (the house) where deceased and she lived before she went to USA. Deceased had a last will and in that the house was bequeathed to one of the sons from his previous marriage. Caveator had also alleged that last will which was made in 2017 while she was working in USA. She and her children were not living with the deceased in the house, at the time of death. He was seriously ill for some time due to an illness he was bedridden. He was looked after by a caregiver, at the time of death.

## FACTS

2. Purported originating summons sought following orders;

*'For an order that the grant of probate in the estate of Same Little McGoon(Snr) who died on 30<sup>th</sup> April ,2019 is not to be approved until the application of Anne Cathrine Kado McGoon , the Legal wife and beneficiary , to the Fiji High Court contesting the will is determined''*

3. Late Anne Cathrine Kado McGoon is the widow of late Sam Little McGoon.
4. Late Sam Little McGoon had an earlier marriage, from which he had children including caveatee.
5. Late Sam Little McGoon died on 30.4.2019.
6. At the time of marriage late Sam Little McGoon was bedridden due to his sickness and had to be taken care of him.
7. Caveator had left late Sam Little McGoon in the house where they lived to USA for work.

## ANALYSIS

8. The originating summons was defective and had not complied with Form 3 to Appendix 1 to High Court Rules. There are no names and addresses of Plaintiff and or Defendants. This was raised in the affidavit in opposition but this was not corrected through an amendment.
9. Caveatee did not raise this irregularity by way of summons in terms of Order 2 rule 2 of High Court Rules 1988 for setting aside purported originating summons.
10. Caveator had not complied with Order 7 rule 2(1) of High Court Rules of 1988, and had not included a statement of question to be determined, that is required in Order 7 rule 3 of High Court Rules of 1988.

11. Caveator who had left deceased to USA to work had not come even to the funeral of deceased. She had not sworn an affidavit in this originating summons.
12. According to affidavit in support deponent had moved to Nadi due to his better employment prospects and he had left his wife on the property but she had also left property and caregiving was done by a daughter of deceased from previous marriage and another caregiver.
13. There are disputed facts relating to the house which Caveator is claiming an interest. She had also filed an action in Family Court after death of her late husband. I am not aware of the nature of these actions as no evidence of that was annexed to the affidavits filed in the originating summon.
14. In the originating summons Caveator is seeking court not allow grant of probate till 'rightful and legal owner' of the house is determined. (see paragraph 36 of affidavit in support).
15. In the affidavits filed in favour of, caveator, the objection to the probate is based on her interest in the house. This is a single property belonging to an estate of the deceased.
16. Due to a dispute as to her interest in the house, Caveator cannot prevent administration of estate of the deceased. If there is any issue as to a one property any interim order should confine only to that property alone and entire administration of an estate cannot be stalled by way of a Caveat placed on the grant of a probate.
17. Caveator had not annexed the caveat and her claim is regarding the house. She had not sworn an affidavit hence there are facts that deponent could not swear in an affidavit.
18. The originating summons only seeks an interim relief without disclosing a cause of action.

## CONCLUSION

19. Originating summons filed in this action is irregular and had not complied with Order 7 rule 2 and also Order 7 rule 3 of High Court Rules 1988. There is no Plaintiff or Defendant named in the originating summons and there is no concise statement as to the identification of cause of action. In fact there is no cause of action revealed in the originating summons and the orders sought are interim relief without a substantive cause of action by way of originating summons. Caveator is seeking an order preventing grant of probate to caveatee until a determination of an action. This type of an order can only be made within a substantive action and there is no provision in Section 46 and or 47 of



Succession Probate and Administration Act 1970 for a Caveator to institute an action or seek orders from court. It is the caveatee or person who is seeking probate who can make an application for removal of the same from court. So Section 47 of Succession Probate and Administration Act 1970 has no application to Caveator to seek said interim orders. Neither the widow nor her son looked after deceased at the time of his death. He was bedridden and sick for a considerable time period. Widow is claiming an interest in the house but she had not attend even the funeral and had not sworn an affidavit. Her interest is confined to the house, hence this application to prevent grant of probate has no merits. Originating Summons is struck off. Cost of this action is summarily assessed at \$2,000 to be paid within 21 days by caveator to caveatee.

#### FINAL ORDERS

- a. Originating Summons struck off.
- b. Cost is summarily assessed at \$2,000 to be paid within 21 days.

Dated at Suva this 3<sup>rd</sup> day of March, 2020.



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**Justice Deepthi Amaratunga**  
**High Court, Suva**