

IN THE HIGH COURT OF FIJI AT SUVA  
CIVIL JURISDICTION

Civil Action No. HPP 20 of 2020

IN THE ESTATE of BENEDITO RASENIVONO aka BENEDITO SENIVONO WAQAILITI  
of Lot 7 Kalabu Sub Division, Nasinu, FIJI, Deceased, Intestate.

BETWEEN

MARIA ILISABETA WAQAILITI as sole Administratrix of the Estate of the Late  
BENEDITO RASENIVONO aka BENEDITO SENIVONO WAQAILITI of 62,  
Vusavusa Street, Vatuwaqa, Suva, Retired.

PLAINTIFF

AND

SALOME RECA WAQAILITI aka SALOME RECA of Lot 41 Derrick Street,  
Raiwaqa, Suva, Fiji.

DEFENDANT

Counsel : Ms. L. Vaurasi for the Plaintiff  
Mr. V. Prasad for the Defendant

Date of Hearing : 05<sup>th</sup> August 2020

Date of Judgment : 28<sup>th</sup> August 2020

## JUDGMENT

- [1] The plaintiff filed this Originating Summons [Expedited Form] seeking the following orders:
1. An order that caveat No. 877857 lodged by the defendant on 20<sup>th</sup> June 2019; and registered onto HASL 94160 being Lot 41 on DP 2810, Situated in the Province of Rewa in the City of Suva be removed.
  2. An order for sale of the asset in the Estate of **BENEDITO RASENIVONO** aka **BENEDITO SENIVONO WAQAILITI** of 62, Vusavusa Street, Vatuwaqa, Suva, Intestate; namely the property HASL 94160 being Lot 41 on DP 2810, Situated in the Province of Rewa in the City of Suva to Marica Gasautukula, Arieta Baninu Ratubuli for One Hundred Thousand dollars (\$100,000.00).
  3. Such further and other relief as seems just and equitable by this Honourable Court.
  4. Costs of this action against the defendant.
- [2] The plaintiff is the executrix of the estate of her father **BENEDITO RASENIVONO** aka **BENEDITO SENIVONO WAQAILITI** and the defendant is the daughter of the plaintiff's late brother.
- [3] The defendant's position is that she is interested in purchasing this property but she has to wait till she finds a buyer for her another property. However, she has so far not been able to find a buyer for the other property. She has already entered into a sale and purchase agreement to sell her other property. According to that agreement the transaction has to be completed within 60 days from the date of the agreement. This agreement has been entered into by the defendant and her intended purchaser two

days before the hearing. The caveat was registered with the Registrar of Titles on 20<sup>th</sup> June 2019. The defendant had not done anything towards the purchase of this property for over one year until agreement dated 3<sup>rd</sup> of August 2020 was executed.

[4] The plaintiff has also entered into an agreement with the prospective buyers and the learned counsel for the defendant submits that the said sale and purchase agreement has already expired and also that there is no payment of deposit. It is correct to say that the sale and purchase agreement has expired but there is a clause in the agreement (Clause 3) which provides for the extension of the closing date. The defendant is not entitled to raise issue of non-payment of the deposit does not arise since there is no payment of a deposit in her agreement. If this is a ground to invalidate the agreement, both agreements will have no force or avail in law.

[5] The question here is whether the defendant has a caveatable interest in the property in question.

[6] Section 106 of the Land Transfer Act 1971 provides-

Any person-

(a) claiming to be entitled or to be beneficially interested in any land subject to the provisions of this Act, or any estate or interest therein, by virtue of any unregistered agreement or other instrument or transmission, or of any trust expressed or implied, or otherwise howsoever; or

(b) transferring any land subject to the provisions of this Act, or any estate or interest therein, to any other person to be held in trust,

may at any time lodge with the Registrar a caveat in the prescribed form, forbidding the registration of any person as transferee or proprietor of, and of any instrument affecting, such estate or interest either absolutely or unless such instrument be expressed to be subject to the claim of the caveator as may be required in such caveat.

[7] Since the defendant is the daughter of one of the beneficiaries of the estate of BENEDITO RASENIVONO aka BENEDITO SENIVONO WAQAILITI she has an interest in the property. However, she will receive her share of the property once the estate is



administered. In my view, the defendant in the guise of purchasing the property cannot delay the administration of the estate which will be detrimental to the other beneficiaries of the estate. As I have discussed above the defendant has not made a genuine attempt assist the administration of the estate which has been awaiting for nearly 20 years.


- [8] For the above reasons it is nothing but fair to remove the caveat lodged by the defendant.
- [9] Once the caveat is removed the executor will be at liberty to administer the estate of the deceased to the benefit of all the beneficiaries. Therefore, there is no necessity for the court to make an order to sell the property to a particular person.

#### ORDERS

1. It is ordered that the caveat No. 877857 lodged by the defendant be removed forthwith.
2. The defendant is ordered to pay the plaintiff \$1000.00 as costs of this application.



28<sup>th</sup> August 2020

  
Lyone Seneviratne

JUDGE