

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

**Probate Action No. HPP 22 of 2020**

**IN THE ESTATE OF MOHAMMED YUNUS** late of Muasara, Sigatoka, in the  
Republic of Fiji, Businessman, Deceased.

---

**MOREEN SAINAZ KHAN**

**APPLICANT [CAVEATEE]**

AND

**GEOFFREY MONTGORMARY JOSEPH SHAIRAZ YUNUS**

**RESPONDENT [CACEATOR]**

**Counsel** : Mr. Naidu D.S. for the Applicant  
Ms. Mausio L. for the Respondent

**Date of Hearing** : 18<sup>th</sup> December 2020

**Date of Ruling** : 29<sup>th</sup> January 2021

---

## RULING

*(On an Application to remove a Caveat)*

---

- [1] Mohammed Yunus (the testator) dies on 18<sup>th</sup> May 2019 leaving a last will. In the said last will he appointed his wife Moreen Sainaz Khan as the Trustee and Executor of his estate and the beneficiaries are the Executor herself and his son Luqmaan Irfaan Yunus.
- [2] On 02<sup>nd</sup> January 2020 the executor named in the will made an application for the grant of probate and on 02<sup>nd</sup> October 2019 the respondent in these proceedings had lodged a caveat giving notice to the Probate Division of the High Court that he intends to contest the will.
- [3] On 02<sup>nd</sup> March 2020 the applicant served on the respondent "WARNING TO CAVEATOR" requiring him to enter and appearance within 08 days from the service which the respondent failed to comply with.
- [4] The applicant filed a Notice of Motion pursuant to section 47 of the Succession, Probate and Administration Act, seeking to have the caveat removed and discharged and on 29<sup>th</sup> October 2020 filed an affidavit in reply to the affidavit in support of the Notice of Motion.
- [5] The learned counsel for the applicant submits that since the respondent failed to make his appearance and also to file Summons of Directions within eight days as require by law the caveat is liable to be removed.
- [6] At the hearing of this application the applicant and the respondent relied on two judgments of the High Court on this issue which are contrary to each other.
- [7] **In re the Estate of Chinnaiya Gounder** [1994] FJHC 112; HPC0019d.1993s (7 September 1994) Justice Fatiaki upheld the objection and ordered the caveat be removed for failure on the part of the caveator to enter an appearance within eight days.
- [8] In the case of **Hakiman Bi v Mohammed Habil & Another** (Caveat No. 29 of 1993 and Probate No. 29863) the caveator entered appearance out of time but Justice Patik held that the court has inherent power to extend the time and made an order allowing the caveat to remain until further order, on the affidavit evidence filed out of time.



[9] Rule 44(10) of the Non-Contentious Probate Rules 1987 provides:

A caveator having an interest contrary to that of the person warning may within eight days of service of the warning upon him (inclusive of the day of such service) or at any time thereafter if no affidavit has been filed under paragraph (12) below, enter an appearance in the registry in which the caveat index is maintained by filing Form 5 and making an entry in the appropriate book; and he shall serve forthwith on the person warning a copy of Form 5 sealed with the seal of the court.

[10] "Warning to Caveator" was served on the respondent on 02<sup>nd</sup> March 2020 and his affidavit in reply was filed on 29<sup>th</sup> October 2020, after more than seven months from the service. In the affidavit in reply the respondent has not explained the delay in filing the affidavit (making an appearance) nor has he sought of an extension of time to make an appearance.

[11] There is no doubt that the court has inherent power to extend time but such an extension can be granted only on an application explaining the delay and showing that grave injustice will be caused to the party if an extension is not granted.

[12] In this matter no such application there is no such application and there is even no averment in the affidavit indicating that the respondent seeks an extension of time.

[13] In paragraph 1(a) of the affidavit in reply the respondents avers as follows:

That the purported last Will of my late father Mohammed Yunus dated 17 January 2017 marked MSK1 in Moreen's Affidavit is not a testamentary instrument. It is not a testamentary instrument as it disposes of properties not belonging to my late father, it disposes nothing to me and my sibling who are issues of the first marriage and I verily believe that the signature purporting to be my late father's, is not his.

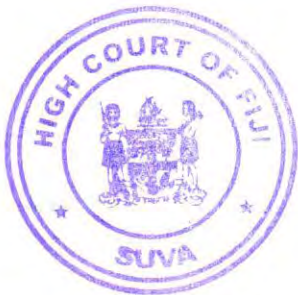
[14] Ground one as averred in the above paragraph challenging the validity of the last will is that the testator disposes properties not belonging to him. Before making this allegation the respondent should have known which property out of the three properties referred to in the last will does not belong to his estate. The applicant has

not stated which of the properties mentioned in the last will does not form part of the estate of the deceased.

- [15] Another ground averred in the affidavit is that the last will is defective for the reason that the children of the testator by the earlier marriage have not been given any properties out of the estate. Last will reflects the intention of the testator. There is no rule or law that he should give properties to each and every child. They were his properties and he is entitled to dispose his properties at his own freewill.
- [16] The last ground is that he believes the signature of the testator in the last will is not his father's. What he believes is not sufficient to create a suspicion in the mind of the court as to the validity of the last will.
- [17] For the reasons setout above the court makes the following orders.

#### **ORDERS**

- (1) The caveat lodged by the respondent is removed forthwith.
- (2) The probate can be granted to the applicant after processing the application already made by her.
- (3) The respondent is ordered to pay the applicant \$2000.00 as costs of this application within 30 days.



29<sup>TH</sup> January 2021

  
Lyone Seneviratne

**JUDGE**