

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

PROBATE ACTION NO.: HPP 62 of 2019

**BETWEEN : ANNE CATHERINE KADO MCGOON**  
**PLAINTIFF**

**AND : MOSES EDWARD MCGOON**  
**FIRST DEFENDANT**

**: SALLY VERONICA MCGOON**  
**SECOND DEFENDANT**

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**APPEARANCES/REPRESENTATION**

**PLAINTIFF : Ms. S. Kunatuba [Law Solutions]**

**FIRST & SECOND DEFENDANTS : Mr. N. Sharma [Nilesh Sharma Lawyers]**

**RULING BY : Acting Master Ms Vandhana Lal**

**DELIVERED ON : 30 March 2022**

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**RULING**

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1. This is an application by the First Defendant seeking orders for the Plaintiff to give security for costs of these proceedings until the final determination of the action.
2. In the substantive claim the Plaintiff is challenging a Will dated 31<sup>st</sup> January 2017 and any other Will prior to the said date by the deceased Samuel Little McGoon.

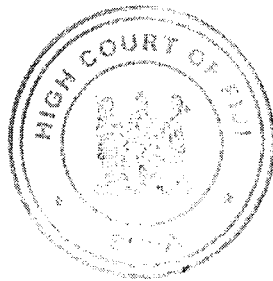
The Plaintiff also seeks other orders as follows:

1. *A declaration that Anne Catherine Kado Mcgoon legal wife and lawful widow of the deceased be appointed as the Administrator of the late Samuel McGoon's estate in accordance to law.*
2. *A declaration that there should be no grant of Probate on the Will of the Sam Little McGoon, deceased until the validity of the Will is determined.*
3. *A declaration that the property located at Lot 42 Tacirua Plain Sub-Division also known as Lot 42 Biau Drive, Stage 2 Cunningham Road, Tacirua on Native Lease No 20081 is matrimonial property as it was bought during the time of marriage between the Plaintiff and the deceased.*
4. *A declaration that the one undivided half share of the property located at Lot 42 Tacirua Plain Sub-Division also known as Lot 42 Biau Drive, State 2 Cunningham Road, Road. Tacirua on Native Lease No. 20081 legally belongs to the Plaintiff by virtue of the payments that were deducted directly from her salaries to pay off the loan.*
5. *An order for vacant possession of the property located at Lot 42 Tacirua Plain Sub-Division also known as Lot 42 Biau Drive, Stage 2 Cunningham Road, Tacirua on Native Lease No. 20081.*
6. *An order that the Plaintiff and her son have access on to the property located at Lot 42 Tacirua Plain Sub-Division also known at Lot 32 Biau Drive, Stage 2 Cunningham Road, Tacirua on Native Lease No. 20081 until the determination of this action.*

7. *A restraining order against the deceased's children from his first marriage namely Lavenia Bale Mcgoon, Sally Veronica Mcgoon and Moses Edward Mcgoon from entering on to the property located at Lot 42 Tacirua Plain Sub-Division also known as Lot 42 Biau Drive, Stage 2 Cunningham Road Tacirua on Native lease 20081 and/or interfering with Plaintiff and her son until the final determination of this action.*
3. According to the Defendants, the Plaintiff was separated from the deceased. The first Defendant is the named executor on the Will of the deceased.

The Defendants claim the Plaintiff has been residing out of the country since 2015 and are not aware if she has assets in Fiji.
4. The Plaintiff claims to have made financial contribution towards the property of the deceased and is a Fiji Citizen. She is said to be returning to Fiji upon expiration her contract.
5. The power conferred upon the Court under Order 23 Rule 1(1)(a) of the High Court Rules is discretionary. The Court has to have regard to all circumstances of the case and think it is just to order such security in the circumstances of the case.
6. The purpose of the exercise of the inherent power is to prevent the defendant, if successful, being left with an unenforceable costs order.
7. The Court is not required to go into the detailed examine of merits of the case.
8. This is a contentious probate action. The Plaintiff is challenging the validity of the Will of the Deceased.

9. Upon perusing the pleadings before me, it would not be just to conclude that the Plaintiffs have no reasonable prospect of success in their claim.
10. Considering the above I do not find the circumstances of the case warrants the court to make an order for security for costs.
11. Accordingly, the Defendant's application for security for cost is dismissed with no order for costs.



A handwritten signature in black ink, appearing to be "Vandhana Lal", is written over a horizontal dotted line.

**Vandhana Lal [Ms]**  
Acting Master  
At Suva.

**30 March 2022**

**TO:**

1. **Suva High Court Civil Action No. HPP 62 of 2019;**
2. **Law Solution, Solicitors for the Plaintiff;**
3. **Nilesh Sharma Lawyers, Solicitors for the Defendants.**