

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 271 of 2020

BETWEEN: **SOPHIA KHAN** of 84 Ragg Avenue, Suva, Businesswoman

PLAINTIFF

A N D: **VIJAI WATI** as administratrix of the Estate of Gopal aka Gopal Pillay 34 Matanitobua Street, Suva, Domestic Duties.

DEFENDANT

Counsel : Mr. Jiaoji Savou for the plaintiff
Mr. Rameshwar Prakash for the defendant

Hearing : Thursday, 23rd June, 2022 at 9.30am

Decision : Tuesday, 30th August, 2022 at 9.00am

DECISION

- [1]. The plaintiff is a beneficiary in the estate of Gopal aka Gopal Pillay, deceased.
- [2]. The defendant is the administratrix of the estate of Gopal Pillay by Letters of Administration No. 62485 granted on the 27th July 2018.
- [3]. Under clause 4.9.2 of the **Terms of Distribution** (Annexure B in the affidavit of Sophia Khan, the plaintiff) executed on 19.07.2018, the plaintiff together with the other beneficiaries in the estate of Gopal Pillay deceased, agreed to renounce their interest in Housing Authority sublease no. 333236 in favour of Krishna Pillay, a cousin of the deceased Gopal Pillay. The defendant is also a signatory to the Terms of Distribution.

- [4]. A title search conducted at the Registrar of Titles by the plaintiff's solicitors in May this year revealed that the defendant, as administratrix has not transferred Housing Authority Sublease 333236 to Krishna Pillai as agreed by all the beneficiaries of the estate under the Terms of Distribution.
- [5]. The plaintiff in this action filed originating summons on 16.09.2020 seeking the following orders against the defendant.
- i). *That the defendant perform her obligations under clause 4.9.2 of the Terms of Distribution dated 19th July 2018 and Transfer Housing Authority Sublease 333236 to Krishna Pillai.*
 - ii). *That the defendant pay costs.*
- [6]. The defendant opposed the application and filed an affidavit in opposition on 30.10.2020. The plaintiff filed an affidavit in reply on 19.11.2020.
- [7]. As I understood the defendant's affidavit in opposition filed on 30.10.2020, **the defendant has raised only one ground of opposition to the plaintiff's application.** (Reference is made to paragraph (4) of the affidavit in opposition of the defendant sworn on 30.10.2020).
- (4). As to paragraph 1 of the said affidavit, I say that although the plaintiff is a beneficiary of the estate of Gopal aka Gopal Pillai, Deceased, I am informed by my solicitors and verily believe that she has **no locus to bring this action** against me on behalf of Krishna Pillai.

[Emphasis added]

- [8]. Therefore, the defendant's one and only opposition to the plaintiff's application was that the plaintiff had no locus to bring this action on behalf of the third party Krishna Pillai.
- [9]. On the hearing of the plaintiff's application, out of the blue, counsel for the defendant made a scathing attack on the plaintiff's application. I do not intend to set them out in detail or verbatim. However, as I understood his submission, the gist of his issues are that:
- i). *The plaintiff is not seeking the remedy and relief for her own benefit but for the benefit of the third party Krishna Pillai.*

- ii). *In this action, the court is being asked to give effect to one portion of the said Terms of Distribution, the enforceability of which terms is itself questionable.*
- iii). *The estate of Gopal aka Gopal Pillay is not a party to the Terms of Distribution and the relief in this action is sought against the said estate.*
- iv). *The plaintiff's cause of action pleaded is not about the distribution and administration of the estate of Gopal aka Gopal Pillay. The plaintiff's cause of action is rather seeking the enforcement of the Terms of distribution involving several parties other than the beneficiaries of the estate of Gopal aka Gopal Pillay.*

[10]. This is most unsatisfactory. There was no notice all in the affidavit in opposition in relation to the defendant's stance. I cannot accept that it would be in any way proper to entertain such a submission which sprung on the plaintiff and the court at the last minute. I get the distinct impression that counsel for the defendant's argument and scathing attack on the plaintiff's application was formulated and perhaps conceived as the proceedings developed. It is not only placing an unnecessary burden on the court to ask it to search through the transcript of hearing to find out what they may be to complained of, but it is also unfair to the plaintiff who is entitled to know what case she has to meet.

[11]. As per the Terms of Distribution:

- *The defendant is the first beneficiary in the estate of Gopal and also lawful wife of the deceased.*
- *The plaintiff is the third beneficiary in the estate of Gopal and also de-facto partner of the deceased.*
- *One Hansel Nealesh Pillay is the second beneficiary in the estate of Gopal and the lawful issue of the deceased.*

[12]. All three beneficiaries are signatories to the Terms of Distribution and it was executed on 19.07.2018.

[13]. Clause 4.9.2 of the Terms of the Distribution provides:

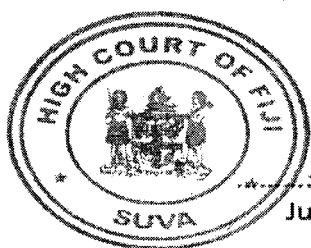
4.9.2 *The 1st, 2nd and 3rd beneficiary relinquish and forever renounce all their interest in Housing Authority Sub-Lease No. 333236 for the sole and absolute benefit of **Krishna Pillai**, a cousin brother of the late **Gopal***

- [14]. **It is plain that all three beneficiaries have agreed to renounce their interest in Housing Authority Sub-Lease No. 333236 in favour of Krishna Pillai.**
- [15]. Clause 5.1 of the Terms of Distribution provides:
- 5.1 *The Date of Dissolution of the Estate shall be no later than 180 days from the date of execution of this Terms of Distribution or such other date as may be mutually agreed in writing between the parties.*
- [16]. It is plain that the date of Dissolution of the estate was to have been no later than 180 days from the execution of the Terms of Distribution executed on 19.07.2018.
- [17]. The defendant, the administratrix of the estate of Gopal has exceeded the Dissolution date by more than two years.
- [18]. The defendant as the administratrix in the estate has a duty to act in the best interest of the estate and the beneficiaries at all times. The plaintiff is entitled to have the above transaction (clause 4.9.2) completed as per clause 5.1. The defendant's failure to complete the above transaction shows that the defendant is not acting in the best interest of plaintiff and Hansel Nealesh Pillay who are the remaining two beneficiaries of the estate of Gopal.
- [19]. The defendant's failure to complete the above transaction may lead to claim being made against the estate for breach of contract which will not be in estate's interest. It is in the estate's interest that the transaction be completed. The balance of convenience therefore dictates that the transfer of Housing Authority Sub-Lease 333236 to Krishna Pillai as agreed by all the beneficiaries of the estate under the Terms of Distribution be completed.
- [20]. The plaintiff as a beneficiary of the estate of Gopal and also as a party to the Terms of Distribution has a right **[locus]** to enforce the provision of 4.9.2 and 5.1 in the best interest of the estate and the remaining beneficiaries.
- [21]. I do not accept the arguments advanced on behalf of the defendant, which in my view is fundamentally misconceived. The arguments advanced on behalf of the defendant are incapable of explaining the wording referred to in Clause 4.9.2 of the Terms of Distribution. How can it not be to beneficiaries and the estate's advantage to have the obligations imposed on the defendant administratrix under clause 4.9.2 be performed?

ORDERS

[01]. Application allowed.

[02]. The defendant to pay costs of FJ\$ 1250.00 to the plaintiff within seven (07) days hereof.



Jude Nanayakkara
JUDGE

HIGH COURT – SUVA
Tuesday, 30th August, 2022