IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HPP 85 OF 2019

In the Estate of **BAL REDDY** of Rafle Range, Lautoka, Fiji, Retired Driver, Deceased, Testate

AND

In the matter of an application by **RITESHWARAN REDDY** under the Trustee Act 1966.

BETWEEN	:	**RITESHWARAN REDDY** of V. M. Pillai Road, Raffle Range, Lautoka **PLAINTIFF**
AND	:	**RANJNI RANJITA REDDY** also known as **RANJINI RANJITA REDDY** of Vitogo, Lautoka as the Administratrix and Trustee of the **ESTATE OF BAL REDDY** of Rifle Range, Lautoka, Deceased, Testate. **DEFENDANT**
DATE OF TRIAL	:	2nd & 3rd August, 2022.
APPEARANCES	:	Ms. Ali. S with Ms. Divoivoi, for the Plaintiff. Mr. S. Singh, with Mr. R. Charan, for the Defendant.
SUBMISSIONS	:	By the Plaintiff- filed on 14th November, 2022. By the Defendant- filed on 17th October, 2022.
JUDGMENT	:	On 22nd February, 2023.

JUDGMENT

A. INTRODUCTION & BACKGROUND

1. The Plaintiff and the Defendant are the Son and Daughter, respectively, of the above named Deceased Testator, namely, BAL REDDY, who died on 2nd November, 2016.

2. The Defendant (Daughter) had on 20th March, 2017 obtained the Letters of Administration number 59886, with the Will annexed, relying on the Last will of the Testator, dated 15th August,2013, (which is hereinafter sometimes referred to as "**the will of 2013**").

3. The Plaintiff (Son) claims that the Testator had left another will made on 7th October, 2016, (hereinafter sometimes referred to as **"the will of 2016**"), which according to him had revoked the will of 2013. He claims that he is the Executor and Trustee of the will of

2016 and he has beneficial interest in this will, which is different from the beneficial interest contained in the will of 2013.

4. The Plaintiff (Son) states that he was only made aware of the Grant of Probate (Letter of Administration) number 59886 unto the Defendant on the Will of 2013, when both of them were discussing about the distribution.

5. As per the will of 2013, the Defendant daughter claims that she is the appointed sole Executive & Trustee in the Estate of the Testator BAL REDDY , and all properties, both real and personal of whatsoever kind and whatever situates and entitled of the Testator, to be given to her .

6. As per the will of 2016, the Plaintiff Son claims that he is the appointed sole Executive and Trustee of the Estate of the Testator, BAL REDDY, and all properties, both real and personal of whatsoever situate and entitled of the Testator, to be given to him.

7. The plaintiff denies the interest(s) of the Defendant in being appointed as the sole executrix and beneficiary of the Estate of the Testator as per the will of 2013.

8. It is also the position of the Defendant that the Plaintiff was aware that the Deceased had revoked his Last Will and Testament dated **6th day of August 2007** (the first ever Will) by the subsequent Will of 2013, as the Plaintiff had failed to support him. Thus, the Deceased made no provisions for the Plaintiff in the will of 2013, on which the Defendant relied and obtained the Letters of Administration.

B. THE RELIEF PLAINTIFF CLAIMS:

9. The Plaintiff on 5th November, 2019 filed the Writ of Summons and his Statement of Claim against the Defendant moving for reliefs to the following effects. (***please note that the grant of the letters of Administration, with the Will annexed , has been referred to as the grant of Probate)***

   a. *The Defendant lodge with the High court Probate Registry, Suva the Original of the Grant of Probate Number 59886 in the Estate of BAL REDDY of Rifle Range, Lautoka, Fiji, Retired Driver, Deceased, and Testate.*

   b. *The original of the Grant of Probate Number 59886 in the Estate of BAL REDDY be revoked.*

   c. *A declaration that all dealings / transaction pertaining to the Grant of probate Number 59886 in the Estate of BAL REDDY, Testate are null and void.*

   d. *A Grant of Probate be issued on the Last will and Testament of BAL REDDY, Testate, made on 7th October, 2016 appointing the Plaintiff as the sole Executer and Trustee.*

   e. *Costs on indemnity basis and such further or other reliefs, the Court deems just and equitable.*

C. **THE RELIEF DEFENDANT CLAIMS:**

10. The Defendant on 14th February ,2020 filed her Statement of Defence and moved for;

a. *That the Court will pronounce against the alleged Will propounded by the Plaintiff; and*
b. *That the Court do pronounce in solemn form of law for Probate Number 59886 of the said will of the deceased dated 15th August, 2013; and*
c. *That the Court do award costs in favor of the Defendant of this action; and any other and further reliefs.*

D. **AGREED FACTS & ISSUES"**

11. For the sake of clarity and easy reference, I shall reproduce the Agreed facts and Issues as follows;

Agreed Facts:

1. *THE Plaintiff brings this action against the Defendant as the beneficiary of the Estate of BAL Reddy, the deceased, who died on 2nd Day of November, 2016.*
2. *THE Defendant is sued in her capacity as the Administratix and Trustee of the Deceased's Estate.*
3. *At the time of the Deceased's death, the Deceased had left a Will.*
4. *ON or about 20th March, 2017 the Defendant obtained a Grant of Letters of Administration (with will annexed) No; 59886 in the Deceased's Estate.*
5. *The Grant of Letters of Administration (with will annexed) No.59885 in the Deceased's Estate was issued based on a Will of the deceased dated 15th Day of August, 2013.*
6. *ACCORDING to the Will of the Deceased dated 15th day of August, 2013, the Defendant is the Sole beneficiary.*

Agreed Issues:

7. *Whether the will of the Deceased dated 15th day of August 2013 is the true Last will and Testament of the Deceased?*
8. *Whether the Deceased made another will dated 7th day of October.2016 wherein the Plaintiff is the sole beneficiary?*
9. *Whether the will of the Deceased dated 7th day of October 2016 is the true Last will and Testament of the Deceased.*
10. *Whether the signature of the will of the Deceased dated 7th day of October, 2016 was true and proper?*
11. *Whether the Plaintiff was aware that the Deceased had revoked his last will and Testament dated 6th day of August, 2007 by the Deceased's Last will and Testament dated 15th August, 2013?*

12. *Whether the Plaintiff was aware as to the reasons for the Deceased to exclude him from his Last Will dated 15th August 2013?*
13. *Whether the circumstances of drawing of the 2007 and 2013 Will are relevant to these proceedings?*

E. APPLICABLE LAW:

12. The burden imposed on a party who seeks to propound a will was stated clearly by Lord Hanworth MR **in the Estate of Lavinia Musgrove, Davis v Mayhew.**

> "It is clear first, that the onus of proving a Will lies upon the party propounding it, and secondly, that he must satisfy the conscience of the Court that the instrument so propounded is the last will of a free and capable testator. To develop this rule a little further – he must show that the testator knew and approved the instrument as his testament and intended it to be such."
>
> *Parke B in the course of his judgment in Barry v Bultin (1) says;*
>
> *"the strict meaning of the term onus probandi is this, that if no evidence is given by the party on whom the burden is cast , the issue must be found against him. In all cases the onus is imposed on the party propounding a will, it is in general discharged by proof of capacity, and the fact of execution, from which the knowledge of and assent to the contents of the instrument are assumed".*

13. The Court will usually pronounce for a will if one of the attesting witnesses deposes to the due execution of the will. However, the Court will not exclude further relevant evidence for the purpose of ruling out fraud. ***Vere – Wardale v Johnson and Oth***ers is authority for the proposition that *"evidence of the attesting witness to a will is not necessarily conclusive, and the court is competent to receive evidence in rebuttal."* Willmer LJ at page 397 stated;

> *"It appears to me that the object of the legislature in imposing the strict formalities required by the Wills Act .1837 was to prevent fraud. My duty here is to do all that I can see that no fraud is perpetuated; and if I exclude further evidence such a ruling can only assist the possibility of the perpetration of fraud."*
>
> *In the circumstances it is my opinion that it would be quite wrong, and not in accordance with authority, to exclude such further evidence with regard to the attesting of the will as may be available."*

14. The ordinary rule is that in the absence of fraud, the fact that a will has been duly read over to a competent testator on the occasion of its execution, or its contents have been brought to his notice, that fact followed by proof of execution is conclusive evidence that he knew and approved its contents [1]. Where there is due execution, a propounder of a will is ordinarily deemed to have discharged his burden. This is based on the maxim ***Omnia Praesumuntur rite et solemmniter esse acta****[2].* This general rule is subject to exceptions.

15. In **Tyrrell v Painton**[3], Lindley LJ said that the onus of proving that the will propounded was executed as required by law is on the plaintiff or party propounding it, and that the onus was a shifting one. The court said that if the will is not irrational and was not drawn by the person propounding it and benefiting under it, the onus is discharged.

16. In cases where there is legitimate suspicion surrounding the execution of the will, the court needs to be vigilant and the evidence demands the closest scrutiny. Such cases stand on a different footing. The presence of suspicious circumstances makes the initial onus heavier and, therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

17. The High Court of Australia, relying on the decision of **Barry v Butlin**[4], said **in Nock v Austin**[5]: "In general, where there appears no circumstance exciting suspicion that the provisions of the instrument may not have been fully known to and approved by the testator, the mere proof of his capacity and of the fact of due execution of the instrument creates an assumption that he knew of and assented to its contents".

18. The degree of suspicion will vary with the circumstances of the case [6]. Whether such suspicion has been dispelled is a question of fact that must be decided upon the totality of the circumstances. In cases where a benefit is claimed by a person involved in drawing up a will, a greater burden rests on the propounder, and courts are likely to take a close look at the surrounding circumstances.

19. In ***Muni Deo Bidesi v Public Trustee of Fiji***, the Fiji Court of Appeal, quoted with approval a passage from ***Fulton v Andrew***[7]: "*There is one rule which has always been laid down by the court having to do with wills, and that is that a person who has been instrumental in the framing of a will, and who obtains a bounty by that will, is placed in a different position from ordinary legatees who are not called upon to substantiate the truth and honesty of the transaction as regards their legacies. It is enough in their case that the will was read over to the testator and that he was of sound mind and memory and capable of comprehending it. But there is a further onus on those who take for their own benefit, after being instrumental in preparing or obtaining a will. They have thrown on them the onus of showing the 'righteousness' of the transaction*". This principle holds firm to the present.

20. It is in connection with wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasizes that in determining the question as to whether an instrument is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

21. In re ***Nickson,*** the Supreme Court of Victoria explained the phrase 'righteousness of transaction in this way. *"I do not understand the righteousness of the transaction to mean that*

the will was a wise and just one, but that there was no unrighteousness in the conduct of the person who drew the will and took a benefit under it".[8]

22. Where there are allegations such as fraud, coercion, etc. in regard to the execution of the will, these have to be proved, but even where such claims are absent, the circumstances surrounding the execution of the will may raise a doubt whether the testator was acting of his own free will. In that event, it is a part of the initial onus of the will's propounder to remove all reasonable doubts.

23. The principle laid down in In the ***Estate of Osment, Child and Jarvis v Osment***[9], has been quoted time and again. The relevant passage was reproduced in ***Nock v Austin***[10]: *"It is well established that if a party writes or prepares a will under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion of the court and cause it to be vigilant and jealous in examining the evidence in support of the instructions for the will; it ought not to pronounce for the document unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true will of the deceased".*

24. The taking of a benefit, however, will not invalidate a will. In ***Low v. Guthrie***[11] the court held, *"A principle was laid down by Parke B. in Barry v. Butlin (1), which has been referred to, and upon which judgment, I think, all other subsequent decisions have been based. That only requires that, where a person is interested, vigilance shall be exercised in seeing that the case, if he has to meet one, of undue influence is fully met or the knowledge of the testator is fully proved. It does not go further than that. There is no disqualification in the making of a will through a person who takes an interest having made it. Therefore, all you have to do in this case is to vigilantly look and see whether there is any evidence that can shake the fact that the will was made".*

25. In the well-known case *of* ***Barry v. Butlin***[12], the Judicial Committee of the Privy Council said this: *"The rules of law according to which cases of this nature are to be decided do not admit of any dispute so far as they are necessary to the determination of the present appeal, and they have been acquiesced in on both sides. These rules are two: the first, that, the onus probandi lies in every case upon the party propounding a will, and he must satisfy the conscience of the court that the instrument so propounded is the last will of a free and capable testator. The second is, that if a party writes or prepares a will under which he takes a benefit, that is a circumstance that ought generally to excite suspicion of the court, and calls upon it to be vigilant and jealous in examining the evidence in support of the instrument, in favour of which it ought not to pronounce unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true will of the deceased".*

F. <u>THE TRIAL:</u>

26. At the two days trial held before me, the Plaintiff and one Ropate Tuigunu, his attesting witness to the, purported, will dated 7th October, 2016, gave evidence marking documents from "Pex-1" to "Pex-3", namely, (**1**) the Will of 2013 relied on by the Defendant for her Probate dated 20th March, 2017, (**2**) the very Probate No.59886 and (**3**) the Will of 2016 dated 7th October, 2016 propounded by the Plaintiff, respectively.

27. On behalf of the Defence four witnesses , namely, (**1**) the Defendant ,Ranjini Ranjita Reddy , (**2**) Rajinesh Chand (Husband of the Defendant) , (**3**) Ms. Jaswin Jyotika Devi,

and, (**4**) Ms. Navnita Devi Kumar(DW-3 & DW4 being the attesting witnesses to the 2013 Will) , gave evidence marking documents from **"Dex-1"** to "**Dex-4**", namely, (**1**) the Probate No.59886, (**2**) the Instructions to will dated 15th August,2013, (**3**) the Housing Authority Sub Lease No 294538, and (**4**) a Memorandum dated 20th February,2020 issued by the Lautoka Hospital, confirming that the deceased was attending the Clinic on 7th October,2016 , on which day the Plaintiff claims that the Deceased's 2016 Will was executed.

28. Both the parties have filed respective written submissions, and I am thankful to both the Counsel for the same.

G. <u>ANALYSIS:</u>

29. In this case in hand , the tussle is between a Brother, as the Plaintiff , who relies on the, purported, subsequent Will of the deceased dated 7th October,2016 , and a Sister, as the Defendant , who relied on the deceased's 2013 Will , on which she has already obtained the Probate (the letter of Administration with the Will annexed).

30. On careful reading of the Pleadings , particularly, the Statement of Claim, the Agreed facts, Agreed issues in dispute and the evidence adduced , it is clear that the Plaintiff does not dispute or object to the execution and/ or the existence of the Deceased's Will dated 15th August,2013, on which the defendant obtained the Grant of Probate No. 59886, which was marked as "**Pex-2**" and "**Dex-1**" by the Plaintiff and the Defendant respectively.

31. The position of the Plaintiff is that the Last will dated 15th August, 2013, which was relied on by the Defendant to obtain the Probate on 20th March, 2017, had already been revoked by the subsequent will of 2016, by which he claims that he became the only beneficiary of the Estate of Deceased BAL REDDY.

32. This puts the entire burden on the Plaintiff to prove that the Deceased did execute the Will on 7th October,2016, **revoking his 2013 Will (**earlier Will dated 15th August,2013**)** by which he had granted the properties to the Deceased's Daughter (the Defendant) and in turn by the subsequent will dated 7th October,2016 the Deceased bequeathed all his properties , including the subject matter of the action, unto him.

33. The Plaintiff, apart from giving evidence on his behalf, called the person who is said to have served as a Conveyancing Clerk at Messrs. Nacalowa & Associates law Firm, during the time material and signed as a witness to the impugned Last Will of 2016.

34. Though, as discussed above, the calling of an attesting witnesses to a disputed will may sometimes discharge the propounder from his further burden of proof , when the impugned Will is surrounded by doubts and/ or if the circumstances prevailed allude to some forgery or foul play , the Court is empowered to receive further evidence in rebuttal .

35. In the case in hand, as brought out by the evidence and correctly alluded to by the learned Counsel for the Defended, I find that there are so many grey areas around the purported Will dated 7th October, 2016. The Plaintiff, being the propounder of that 2016 Will, is bound to clear those doubts and dispel clouds surrounding it. Until and unless such doubts are cleared in the manner expected of the Disputed Will cannot be considered to have been duly proved in the eyes of the law. Thus, he should not be allowed to be a beneficiary of such a Will.

36. The only issue that begs adjudication was whether the subsequent Will dated 7th October, 2016, was duly executed in terms of the law discussed above and whether the earlier Will dated 15th August, 2013 was duly revoked by it.

37. It is to be observed that, though the execution of the 2013 Will was not in dispute, the Defendant took pain to call the two witnesses to the said Will, namely, **Jasweeni Jyotika Devi** and **Navnita Devi Kumar,** and their evidence with regard to giving instruction for the Will and signing of it by the deceased BAL REDDY and by them, stood unassailed.

38. The Plaintiff's onus in proving the, purported, subsequent Will dated 7th October, 2016 is more heavier, in the light of the fact that he has become the sole beneficiary of this 2016 Will propounded by him, whereas under the former Will dated 15th August, 2013 both the Plaintiff and the Defendant had become beneficiaries, though the degree of beneficial right given to the Plaintiff by it was lesser.

39. ***Ei incumbit probatio qui dicit non qui negat"*** which means – "He who asserts and not he who denies, must prove". There is sufficient evidence before the Court that the 2013 Will propounded by the Defendant had been properly executed and the Grant of Probate was obtained by the Defendant by relying on the said Will. By the Admissions (Agreed facts) No.2, 4, 5, and 6 recorded before the trial, this has been admitted. The Plaintiff did not dispute this. The Defendant was no under duty to prove the execution of the 2013 Will.

40. Accordingly, the burden is solely on the Plaintiff in proving that the subsequent Will of 2016 propounded by him was an act of the Deceased BAL REDDY, it was duly executed, the 2013 Will dated 15th August, 2013, relied on by the Defendant to obtain the Probate was, was duly revoked and there was no forgery or foul play in the execution of the said subsequent 2016 Will dated 7th October, 2016.

41. The Plaintiff, deposed in paragraph 11 of his Affidavit of Testamentary Scripts, that the original of the 2016 Will dated 7th October, 2016, now remains in the Principal Probate Registry. But, the same Plaintiff, under cross examination, in page 8 of the transcript, has stated that the Original Will is with him at home. The Plaintiff for the reason best known to him did not produce the Original of the purported Will. Nor he gave a reason for not producing it.

42. The safest inference that can be drawn is that the Plaintiff either did not have the Original of such a Will or he deliberately avoided it from being produced in Court, fearing that, had he produced, it would have become detrimental to him, in case it is

subjected to a forensic examination by an Examiner of Questioned Documents (EQD) to verify the geniuses of the Deceased's Signature therein.

43. The Plaintiff, if he was so serious, could have produced the Original of the purported Will, along with some documents with the signature of the Deceased, so that the Court could have sought some expert evidence on it. The evidence adduced by the plaintiff at the trial is not sufficient for the Court to arrive at the firm conclusion that the deceased had in fact visited the Solicitor's Office on 7th October, 2016 to given instruction for the preparation of the, purported, Will and placed his signature, bestowing all the benefits upon the Plaintiff and depriving the Defendant of any benefits out of it.

44. The Plaintiff has stated that he became aware of the Will in question only in 2018 through the priest, namely, **Govind Lal**, when he had once met him for a Grog session as usual, and accordingly found the will from his Father's cloth drawer, when he was occupying the Flat No-2 of the disputed property, before shifting to the Flat 1, subsequently.

45. The evidence of the PW-2 , the so called attesting witness to the impugned Will, was that it was he who prepared the Will and signed it with the other witness, the said priest, Govind Lal , who according to him, had accompanied the Deceased to the Solicitor's Office on **7th October,2016**. This witness stated that he knew Govind Lal and it was told to him by the Plaintiff that Govind Lal is now dead. The Plaintiff, in his evidence, except for merely saying that the priest has passed away, did not take trouble to adduce any documentary evidence to that effect. I have a serious doubt that there is an attempt on the part of the Plaintiff to keep Govind Lal away from Court. Otherwise he would have been an important witness in proof of the Will relied on by the Plaintiff.

46. The allegation by the Defendant that the Plaintiff and the said Priest Govind Lal, colluded for the gain of the Plaintiff cannot be disregarded or lightly taken. It was when the Plaintiff had to face the Eviction proceedings before the Master in the year 2018, the purported Last Will of 2016 emerged all of a sudden from a cloth drawer in the Flat that he had been living. According to the plaintiff, on the day in question, he had been at work. The Defendant too was at work as per her evidence and that of her husband DW-2. The deceased, who was undisputedly ailing, would not have resorted to execute a 3rd Will behind the back of his Daughter and/ or Son, and kept it hidden from them.

47. Above all, the position taken up by the Defendant that the Deceased BAL REDDY was attending his Clinic at the Lautoka Hospital on 7th October, 2016, as confirmed by the evidence of the DW-2, has not been assailed by the Plaintiff. The DW-3, a Doctor from Lautoka Hospital has corroborated the evidence of DW-2 and substantiated, as per the records maintained at the Hospital, that the Deceased was attending the Clinic on the day in question from morning till 1; 00 or 2; 00 a clock in the Afternoon.

48. The DW-2 , who is the Defendant's Husband has given clear evidence that the Deceased was taken to Hospital on the day in question by him in his Car , they had to remain there the whole day , till 2:00pm until all the check-ups are over and the prescribed Medicines are obtained. According to him, thereafter, they have gone home, after

buying lunch, and remained there even after picking up the Defendant from her work at 4.45 pm. This evidence also has remained unchallenged by the Plaintiff. The annexure marked as "Dex-4" also confirms that the Deceased was attending his Clinic on 7th October, 2016. Accordingly, the conclusion that can be safely arrived at is that the Deceased could not have gone to the Solicitor's Office to sign the purported Last Will on the 7th October, 2016.

49. As per the 2013 Will relied on by the Defendant, there was beneficial interest in favor of the Plaintiff, subject to the payment of one half share of all the expenses in respect of the property, i.e. the Rental to the Housing Authority, the payments to the Local authority and other expenses. As per the evidence of DW-1, the Plaintiff had not shared any of such expenses or payments. Thus, the chances for him to be deprived of the benefits of the Deceased's Estates, through the 2013 Will, cannot be ruled out.

50. This Court need not go into the Propriety of the 2013 Will as the Plaintiff has admitted that he was aware its execution, contents and the existence of it. He has not objected the Letters of Administration being granted to the Defendant on it with the Will annexed thereto.

51. The House of Lords in **Wintle v Nye** said, *"There is no prohibition on the person preparing a will from taking a benefit under it. But, if that facts creates a suspicion that must be removed by the person propounding the will. The degree of suspicion will vary according to the circumstances of the case. It may be slight and easily dispelled. It may, on the other hand, be so grave that it can hardly be removed"* [15]. In the Matter in hand, there is a serious doubt as to whether the Plaintiff has become the sole beneficiary. The evidence adduced by him is insufficient to tilt the scale.

52. The absence of a clear rationale in excluding the Defendant from benefitting out of the Will persuades the Court to take a closer look at the circumstances surrounding the making of the will. Those circumstances excited the suspicion of court. There is no satisfactory evidence adduced by the Plaintiff concerning the testator's presence at the Solicitor's Office on 7th October, 2016, his knowledge and assent for depriving the Defendant from the benefit of the Estate of the Deceased. There is no instruction sheet prepared and signed by the Deceased as he did when executing the 2013 will.

53. The court is not convinced that the Deceased, BAL REDDY, ever intended to disentitle his Daughter, the Defendant, from becoming a beneficiary of his Estate, by a Will, purportedly, executed on 7th October, 2016, just 25 days prior to his Death on 2nd November, 2016. My above conclusion is fortified further by the evidence that the deceased was partially paralyzed, whose movement was, undisputedly, confined to the Wheel Chair and assisted by a close family member.

54. In the light of the above, the issue No.1 is answered, affirmatively, in favor of the Defendant and the issue No.2 is answered, negatively, against the Plaintiff. The issues No.3 and 4 do not require any answers in the light of the answer to the issue No.2. The issues No.5 to 7 should necessarily attract affirmative answers in favor of the Defendant.

55. The plaintiff has not convinced this court that the writing dated 7th October, 2016 is the last Will and Testament signed by or made with the knowledge and approval of Mr. BAL REDDY. The plaintiff has not satisfied the court's conscience in order to revoke the Letter of Administration granted and to pronounce that the Will dated 7th October,2016 is in solemn form of law for the grant of Probate in his favor for the Deceased's Estate. Accordingly, dismissal of the plaintiff's action is warranted. The Defendant's counterclaim can be allowed to the extent that the Letters of Administration No. 59886, granted, with the Will annexed, on the Last Will dated 15th August, 2013, to remain intact.

H. ORDERS

a. The plaintiff's action dismissed.

b. The, purported, Will dated 7th October, 2016, propounded by the Plaintiff, is not proved.

c. The relief claimed by the Plaintiff to have the Will dated 15th August, 2013 revoked, is declined.

d. The Letters of Administration bearing No. 59886, granted to the Defendant on 20th March 2017, with the Will annexed thereto, by relying on the Will of 2013, shall remain intact.

e. Considering the circumstances, no costs ordered.

HIGH COURT OF FIJI LAUTOKA

A.M. Mohamed Mackie
Judge

At High Court Lautoka this 22nd day of February, 2023.

SOLICITORS:
For the Plaintiff: **Legal Aid Commission, Lautoka**
For the Defendant: **Ravneet Charan Lawyers, Barristers & Solicitors**

[1] Farrelly v Corrigan AC [1899] 563 at 564
[2] All things are presumed to have been correctly and duly performed. See the decision in Muni Deo Bidesi and others v Public Trustee of Fiji
[3] [1894] 1 P 151
[4] (1838)2 Moores PCC 480, [1838] UKPC 22
[5] [1918] HCA 73, 25 CLR 519
[6] Wintle v Nye [1959] All ER 552
[7] [1875] L.R 7 H.L 448
[8] [1916] VicLawRp 20; [1916] V.L.R 274 at 281
[9] [1914]
[10] Supra
[11] [1909] UKLawRpAC 13; [1909] A.C 278 at 282
[12] (1838) 2 Moores PCC 480; [1838] UKPC 22
[13] Butterworths, 1984 Ed., 9
[14] [1975] FJLawRp 13; [1975] 21FLR 65 (25 July 1975). The appeal to the Privy Council was dismissed: this is reported in [1978] FJUKPC 2; [1978] UKPC 33 (11 December 1978)
[15] [1959] 1 All ER 552 at 557 **