

**IN THE HIGH COURT OF FIJI AT LAUTOKA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC.134 of 2021**

**BETWEEN**

**UMA DEVI** as the Executrix and Trustee of the Estate of  
Ram Chandar through her attorney Sanjay Kumar of  
Salovi, Nadi, H. R. Manager.

**1<sup>st</sup> PLAINTIFF**

**AND**

**RANJESH KUMAR** of Salovi, Nadi, as the Administrator of the Estate of  
Shri Ramlu (deceased) of Salovi, Nadi, Farmer.

**2<sup>nd</sup> PLAINTIFF**

**AND**

**VINOD KUMAR** as the Surviving Executor and Trustee of the Estate of  
Yengtesh (deceased) of Salovi, Nadi, Farmer.

**DEFENDANT**

**Counsel** : Mr. Naidu D.S. for the Plaintiffs  
Ms. Begum S. for the Defendant

**Date of hearing** : 12<sup>th</sup> June 2023

**Date of Judgment** : 18<sup>th</sup> July 2023

## JUDGMENT

[1] The plaintiffs instituted these proceedings seeking the following orders against the defendant:

- (i) That the defendant be removed as the Trustee and the plaintiffs be appointed in his place.
- (ii) Order that the Estate of Yengtesh be wound up and the assets distributed as per the Last Will and Testament of Yengtesh (deceased).
- (iii) That the 1<sup>st</sup> plaintiff be allowed to retain the residential site with improvements presently occupied by the 1<sup>st</sup> plaintiff.
- (iv) That the defendant be allowed to remove his dwelling structure and be compensated by then Estate of Yengtesh for such relocation.
- (v) That the defendant pay compensatory, aggravated and general damages for breach of his fiduciary duties as Trustee.
- (vi) Costs on solicitor/client indemnity basis.
- (vii) Any further orders and relief that this Honourable Court may deem fit.

[2] At the pre-trial conference the parties admitted the following facts:

1. The 1<sup>st</sup> plaintiff is the Executrix and Trustee of the Estate of her late husband Ram Chandar.
2. The defendant is the sole Executor and Trustee of the Estate of Yengtesh which comprises of Agricultural State Lease No. 820602 having an area of 4.9792 hectares for 99 years with effect from 1<sup>st</sup> day of January 1996

registered in the name of the defendant as the surviving Administrator (Executor and Trustee) of the Estate of Yengtesh.

3. The plaintiffs and the defendant reside on the said property.

[3] The plaintiffs in their statement of claim allege that the defendant as the sole Executor and Trustee of the Estate failed to;

(a) act for the benefit of the beneficiaries of the Estate of Yentesh (deceased) resulting in loss and damages to the plaintiffs;

(b) wind up and distribute the assets of the Estate of Yentesh;

(c) exercise the duties of a Trustee in fair, just and reasonable manner for the administration of the Estate of Yentesh.

(d) Allow the plaintiffs to cultivate sugar cane on their share of the Estate resulting in cancellation of the cane contract.

[4] The main issue to be determined in this matter is whether the defendant has administered the Estate as expected by the testator and to the benefit of the beneficiaries. The Letters of Administration was granted on 11<sup>th</sup> May 1987 and this action was instituted on 22<sup>nd</sup> June 2021. The defendant had been holding on it without administering the Estate for 36 years. In his evidence the defendant admitted that the administration of the Estate had not yet been completed. The plaintiffs through their solicitor have requested the defendant to complete the administration of the Estate but to no avail. The only explanation offered by the defendant for not administering Estate is that he had no money. This is not a valid excuse and he could always have recovered expenses incurred in administering the Estate from the Estate. Since the defendant has failed to give sufficient reasons for not administering the Estate for such a long time he is liable to be removed as the Administrator of the Estate.

[5] The 3<sup>rd</sup> relief sought in the statement of claim is for an order for the 1<sup>st</sup> plaintiff to retain the residential site with improvements. Estate of the testator must be administered as per the last will. It is the duty of the administrator to give effect to the intentions of the testator. Even the court cannot override the testator's intentions.

Therefore, at this moment, the court cannot say which part of the property should be allocated to the 1<sup>st</sup> plaintiff.

[6] The relief (iv) sought in the statement of claim is that the defendant be allowed to remove his dwelling structure and be compensated by then Estate of Yengtesh for such relocation. In the relief there is no order sought against the defendant. If the defendant needs permission to relocate the structure he must make an application and not the plaintiff. Besides, as I stated in the above paragraph the court cannot dictate the administrator as to the manner in which the distribution must be done.

[7] The plaintiffs also claim compensation. In paragraph 7(b) of the statement of claim the plaintiffs' state,

“THAT the 1<sup>st</sup> plaintiff have constructed and made additions to their residential costing to the value of \$50,000 with the consent and acknowledge of the defendant”.

[8] In the prayer of the statement of claim the plaintiffs have prayed for compensatory, aggravated and general damages for breach of the defendant's fiduciary duties as Trustee. However, no special damages have been sought by the plaintiffs for the construction of the house. It is settled law that special damages must be specifically pleaded and proved. The 1<sup>st</sup> plaintiff's attorney in his evidence said that it cost him more than \$50,000.00 which is not sufficient for the court to award damages for the extension and repair work done. It is also pertinent to note that any improvement done of the property becomes part of the Estate.

[9] Sanjay Kumar, as the attorney of the 1<sup>st</sup> plaintiff testified that his father was entitled to 1/3<sup>rd</sup> of the Estate property. He testified further that the Fiji Sugar Corporation transferred the cane proceeds to his account but later stopped money coming to his account and since he could not continue with cane farming he started goat farming and he is still doing it. For the court to calculate damages there must be evidence showing the nature of the damage caused to the plaintiffs. The Attorney of the 1<sup>st</sup> plaintiff also testified that he suffered loss for not being able to do sugar cane farming. It is to be noted that this witness represented the 1<sup>st</sup> plaintiff as her attorney and in his evidence

he did not say anything about the damages caused to the 1<sup>st</sup> plaintiff but to himself. He is not a party to these proceedings.

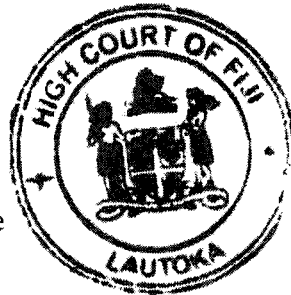
[10] From the above it is clear that the plaintiffs have failed to adduce sufficient evidence to prove their claim for damages.

### ORDERS

1. The defendant is removed as the Trustee of the Estate.
2. 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs are appointed as Administrators and Trustees of the Estate.
3. Claim for damages and other orders sought in the statement of claim are declined.
4. The defendant is ordered to pay the plaintiffs \$5000.00 (\$2500.00 each) as costs of this action.

  
Lyone Seneviratne

JUDGE



18<sup>th</sup> July 2023