

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

PROBATE ACTION NO.: HPP 75 of 2019

BETWEEN : **LOSALINI TATATAU AKA LOSALINI
TATATAU BIGGS**
FIRST PLAINTIFFS

: **SAKIUSA MATEINAVUSO BUINIMASI
MERESEINI TAILASAD SOLVALU
GRAVE MATELITA ULUDOLE DUNN**
SECOND PLAINTIFFS

AND : **FIJI PUBLIC TRUSTEE CORPORATION
LIMITED**
FIRST DEFENDANT

: **TOKASA BUINIMASI AKA TOKASA
KUBUNAQOLI BUINIMASI**
SECOND DEFENDANT

: **JEREMAIA BUINIMASI**
THIRD DEFENDANT

: **THE REGISTRAR OF TITLES**
FOURTH DEFENDANT

: **ATTORNEY GENERAL OF THE REPUBLIC
OF FIJI**
FIFTH DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFFS	:	Ms. Chaudhary (Vama Law)
FIRST DEFENDANT	:	Ms. P. Lal (Legal - FPTCL)
SECOND & THIRD DEFENDANTS	:	Mr. J. Volauvaraki (Torah Law)
FOURTH & FIFTH DEFENDANTS	:	Mr. S. Kant (AG's Chamber)
RULING BY	:	Master Ms Vandhana Lal
DELIVERED ON	:	01 August 2023

INTERLOCUTORY RULING

1. This is an application by the Second and Third Defendants to strike out the writ as there is no reasonable cause of action and that the claim is time barred.

The application is made pursuant to Order 18 Rule 18 of the High Court Rules and Section 9 of the Limitation Act.

2. The claim by the Plaintiff relates to a Deed of Family Arrangements entered by Plaintiffs and their siblings on 07th July 2004 regarding property being house on Lease No. 398320 being Lot 88 on Deposited Plan 4021 Wainibuku Subdivision.

The Plaintiffs seeks orders for revocation of the deed claiming it was not properly executed and explained to the Plaintiffs and further orders that Transfer Dealing No. 608667 be revoked and the Plaintiffs be registered as beneficiaries of the deceased.

3. In their application, the Plaintiffs have failed to outline under what provision of Order 18 Rule 18 of the High Court Rules in particular they seek that the matter be struck out.
4. They have failed outline how the claim falls within the provision of Order 18 Rule 18(1) (a) – (d).

5. Hence the application shall fail under Order 18 Rule 18 of the High Court Rules.

6. Section 9 of the Limitation Act reads:

(1) No period of limitation prescribed by the provisions of this Act shall apply to an action by beneficiary under a trust, being an action

–

(a) In respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(b) To recover from the trustee, trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his or her use.

(2) Subject as aforesaid and to the provisions of the Trustee Act 1966, an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of 6 years from the date on which the right of action accrued provided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property, until the interest fell into possession.

(3) No beneficiary as against whom there would be a good defence under the provisions of this Act shall derive any greater or other benefit from a judgment or order obtained by any other beneficiary than he or she could have obtained if he or she had brought the action and this Act had been pleaded in defence.

7. Section 10 of the Limitation Act reads:

“Subject to the provisions of section 9(1), no action in respect of any claim to the personal estate of a deceased person or to any share or

interest in such estate, whether under a will or on intestacy, shall be brought after expiration of 12 years from the date when the right to receive the share or interest accrued, and no action to recover arrears of interest in respect of any legacy or damages in respect of such arrears, shall be brought after the expiration of 06 years from the date on which the interest became due.”

8. Neither fraud or fraudulent breach of trust is pleaded in the Plaintiffs statement of claim for the provision of Section 9(1) of the Act to apply.

Nor did the trustee for the Estate of Meli Buinimasi had possession of or received the said property for its own use.

9. For limitation period under Section 10 of the Act to apply, first issue would be to identify when the Plaintiffs acquired the right to receive share in Late Meli’s estate being his share in the above-mentioned property.
10. If cause of action was said to have accrued when the one undivided half share of Meli Buinimasi was transferred to Josefata Vuka Buinimasi on 20 June 2007, the limitation period of 12 years expired on 20 June 2019.
11. This claim was filed on 04 October 2019 which is 04 months out the limitation period.
12. And if the cause of action was said to have accrued when a grant was issued for the Estate of Meli that is on 24 March 2004 or when the Deed was executed on 07 July 2004, the 12 years period expired on 20 March 2016 or alternatively on 07 July 2016.
13. Again, this claim was filed out of the limitation period.
14. Considering the above, I find that the Plaintiff’s claim is statute barred under Section 10 of the Limitation Act.

15. Accordingly, the writ of summon and statement of claim filed herein is wholly dismissed.
16. The Plaintiffs shall pay the Defendants cost assessed at \$800 for the Second and Third Defendants and \$200 for the First Defendant and \$200 for the Fourth and Fifth Defendants. Said cost is to be paid within 14 days of this ruling.



01 August 2023

TO:

1. **Suva High Court Probate File No. HPP 75 of 2019;**
2. **Vama Law**, Solicitors for the Plaintiffs;
3. **Fiji Public Trustees Corporation Limited**, the First named Defendant;
4. **Torah Law**, Solicitors for the Second and Third Defendants;
5. **Attorney-General's Chambers**, Solicitors for the Fourth and Fifth Defendants.