

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

**PROBATE JURISDICTION**

Probate Action No. HPP 81 of 2022

BETWEEN

**JACQUELINE JANE STANDRING** also known as **JACQUELINE JANE SINGH** of  
Vuninokonoko Back Road, Navua.

PLAINTIFF

AND

**KELERA URUWALE** also known as **KELERA RAILOA** of Mountain View Estate, Martintar,  
Nadi. Domestic Duties.

DEFENDANT

Counsel : Mr. A. Nand for Plaintiff  
Mr. E. Maopa for Defendant  
Date of Hearing : 03<sup>th</sup> April 2023  
Judgment delivered : 11<sup>th</sup> August 2023

## JUDGMENT

- [1] The Plaintiff filed this Originating Summons to seek following orders against the Defendant:
1. That Jacqueline Jane Standring be appointed as the Executrix and Administratrix of the Estate of Donald William Standring.
  2. That Letters of Administration be issued in favour of Jacqueline Jane Standring as the Executrix and Administratrix of the Estate of Donald William Standring.
  3. High Court Registry to issue a new grant.
  4. The appointed Executrix and Administratrix to attend to the transfer of the Estate to the following beneficiaries ;
    - a. 1/3<sup>rd</sup> to Kelera Uruwale also known as Kelera Railoa; and
    - b. 2/3<sup>rd</sup> to Jacqueline Jane Standring also known as Jacqueline Jane Singh.
  5. The cost of this Application be paid by the Defendant.
- [2] The Plaintiff is the daughter of late Donald William Standring. Her father died on 25<sup>th</sup> October 2012 in New Zealand. Letter of Administration No. 68883 was granted by the Suva Civil High Court Registry on 22<sup>nd</sup> April 2022 to the Defendant. The Defendant is the step mother of the Plaintiff. During the hearing of this Summons learned counsel for the Defendant assisted Court to understand the delay of granting the Letter of Administration as there was case in High Court challenging the Wills made by the deceased.

- [3] The Plaintiff states that the Defendant is the sole Executrix and Administratrix and also a beneficiary in the Estate of her father. The Estate comprises two properties which needs to be attended by the Administratrix. Plaintiff submits to this Court that since May 2022, the Defendant has not distributed the Estate accordingly and that she is refusing to do so.
- [4] The Plaintiff submits two emails written to the Solicitors of the Administratrix. The first email was sent on 4<sup>th</sup> May 2022 and the second was 07<sup>th</sup> June 2022. Plaintiff states there was no response from the Defendant's Solicitors. Therefore the Plaintiff seeks that the Defendant be removed from her responsibilities as Administratrix and appoint her instead.
- [5] The Defendant in her Affidavit in Opposition states that she has applied to the Family Court to declare and grant of 50% share of the Estate to her. The Defendant states that her late husband's estate cannot be distributed within a short period of time as the Letter of Administration was granted recently. She has undertaken to attend to the distribution once the Family Court matter gets finalised. However during the hearing of this matter the learned counsel for the Defendant submitted that the Family Court action has been withdrawn recently.
- [6] The Plaintiff's Originating Summons states that it has been initiated pursuant to Order 7 Rule 2(1) of the **High Court Rules 1988**. The Rule provides the form under which the Originating Summons should be initiated and refers to Appendix 1 of the Rules. The Court also notes that the Summons does not make reference to any other High Court Rule or statutory basis, under which the application has been made.
- [7] However this was not contested by the Defendant at the hearing of the application. Instead the Defendant raised that this action should have been filed by way of a Writ pursuant to Order 76 Rule 2 (1) of the High Court Rules and not by way of Originating Summons.

- [8] The Plaintiff states that the action can be considered under Order 85 as an “Administration action”. Therefore the Originating Summons can be used to seek relief. However the Summons before me does not refer to Order 85.
- [9] The Defendant in support of their argument referred my attention to **Singh v Krishna** [1999] Civil Appeal ABU 0051 of 1998. In that the Court of Appeal held ‘the reference to non-contentious business in rule 1 of the Order does not include a dispute over a grant of administration between next of kin of the same entitlement, which clearly must be a contentious matter’. Therefore a Writ action should be filed.
- [10] Based on the findings of the Court of Appeal in *Singh v Krishna* the Defendant argues that if the Plaintiff wants to remove the Defendant, wife of the deceased and include her as the Executrix and Administratrix for the estate of her late father, then it would no longer become a non-contentious matter. Therefore the Plaintiff must come under Order 76 Rule 2(1).
- [11] Plaintiff’s evidence is that since May 2022 the Defendant has not distributed the estate and failed to carry out her duties as Executrix and Administratrix and that she is refusing to carry out her duties as well. To the contrary the Defendant in her affidavit has not refused to carry on with her responsibilities. And there has been no reply affidavit filed by the Plaintiff to clarify this position further.
- [12] The Court would be inclined to accept the argument of the Defendant. An application to remove the Defendant from her entitlement under section 7 (a) of the Succession, **Probate and Administration Act** shows that there is an ongoing dispute between the parties to this action. The Summons seek to distribute the 1/3 of estate to the Defendant and remaining 2/3 to the Plaintiff. Hence the action should have initiated by way of a Writ under Order 76 Rule 2(1).

[13] The Court has discretion to allow the Plaintiff to continue this action as if it had been begun by way of Writ pursuant to Order 28 Rule 9 (1). I reiterate that the Originating Summons has not appropriately shown the legal basis to initiate this action. During the hearing Court noted that there are some undisclosed facts in the affidavits relating to the history of this dispute which in my view pertinent for a determination. Therefore the Court declines to make an order to convert this action to a Writ.

### ORDERS

1. The Originating Summons dated 26<sup>th</sup> July 2022 of the Plaintiff hereby dismissed.
2. Plaintiff to pay cost of \$1000 (one thousand dollars) to the Defendant within 14 days.

A blue circular seal of the High Court of Fiji, Suva, is partially obscured by a handwritten signature in black ink. The seal features the text 'HIGH COURT OF FIJI' at the top and 'SUVA' at the bottom, with a central emblem. The signature is written over the seal and extends to the right.

Yohan Liyanage

JUDGE

At Suva on 11<sup>th</sup> August 2023