

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

Civil Action No. HPP 2 of 2022

IN THE MATTER of the ESTATE of LAL MOAMMED SHAH aka LAL MOH'D SHAH aka LAL MOHAMMED late of Navatu, Ba, Fiji, Farmer, Deceased, Intestate.

AND

IN THE MATTER of an Application by Kamal Shah pursuant to Section 73 of the Trustee Act and Section 35 of the Succession, Probate and Administration Act.

BETWEEN: **KAMAL SHAH** of 143 Denis Dr, Daly City, CA 94015, Retired.

PLAINTIFF

AND: **JAMAL SHAH** of Auckland, New Zealand, Retired, as the Administrator of the **ESTATE OF LAL MOAMMED SHAH aka LAL MOH'D SHAH aka LAL MOHAMMED** late of Navatu, Ba, Fiji, Farmer, Deceased, Intestate.

DEFENDANT

Appearance:

**Mr R. Prasad for the Plaintiff (On Instructions of MY Law).
No Appearance for the Defendant.**

Date of Hearing: 11th August 2023

JUDGMENT

[1] The Plaintiff has sought to remove and replace the Defendant as the Administrator of the Estate of Lal Mohammed aka Lal Moh'd Shah aka Lal Mohammed. An Originating Summons with an Affidavit in Support was filed on 4th February 2022. Master Lal on 10th February 2023 allowed the Plaintiff to serve the Defendant by way

of substituted service through DHL Courier. An affidavit of service was filed on 16th May 2023 attesting that the summons and the affidavit were served on the Defendant. The Defendant has not appeared or filed a response.

[2] **Section 41 of the Succession, Probate and Administration Act 1970** gives this Court wide powers to deal with issues arising out of administration. It states that *“(1) The court may make such order with reference to any question arising in respect of any will or administration, or with reference to the distribution or application of any real or personal estate which an executor or administrator may have in hand, or as to the residue of the estate, as the circumstances of the case may require.*

(2) Such order shall bind all persons whether sui juris or not.

(3) No final order for distribution shall be made except upon notice to all the parties interested, or as the court may direct.”

Under **Section 23 of the Succession, Probate and Administration Act 1970** a court may revoke the appointment of an administrator. It provides that *“the court may, at any time, upon the application of any person interested in the estate or of its own motion on the report of the Registrar-*

(a) revoke the administration already granted; or

(b) order the administrator to execute a further or additional bond in such sum, with or without sureties, as the court may direct; and upon default may remove the administrator and appoint another in his place, with power to sue or be sued upon any contract made by the removed administrator; or

(c) order that the liability of any surety to any administration bond be reduced to such amount as the court in the circumstances of the case thinks reasonable.”

[3] An Administrator is a Personal Representative: **Section 2 of the Succession, Probate and Administration Act 1970**. In relation to removal of a personal representative, Mr Richard Snowden sitting as Deputy Judge of the High Court in **Re Steel (deceased); Angus v Emmott [2010] EWHC 154 (Ch)** at Para 108 stated *“I take from this passage that the Court's power to remove and replace a personal representative is in no way limited to cases of misconduct. That is also the view taken by the editors of Williams, Mortimer and Sunnucks on Executors, Administrators and*

Probate (19th ed) who refer to the power under section 50 of the 1985 Act at paragraph 60-14 and comment,

"...if the administration has come to a standstill because relations between the personal representatives have broken down, or relations between the representatives and the beneficiaries have broken down, the court will ordinarily remove the personal representatives and appoint new ones to enable the administration to be completed. It is not necessary to establish wrongdoing or fault by the personal representative to obtain his removal. If, for whatever reason, (such as clash of personalities, or the lack of confidence in the personal representative by the beneficiaries, even if unjustified) it has become impossible or difficult for the administration to be completed by an existing personal representative, then an order for his removal will usually be made."

- [4] The overriding consideration is 'the welfare of the beneficiaries and the due administration of the estate'. The application before the court is unopposed, the court will require to be satisfied that the proposed order is in the interests of the estate as a whole. The affidavit evidence of the Plaintiff is that the Defendant who is his brother on 15th October 2011 was granted Letters of Administration De Bonis Non. The Plaintiff claims that the estate consists of State Lease (Tenancy at Will) and that has expired. It is yet to be renewed. Apart from letter of the Plaintiff's Lawyers to the Land's Department no other evidence was annexed to the Affidavit of the Plaintiff to provide the details of the land or copy of the lease. According to the Plaintiff the Defendant is residing overseas, sickly and not in a position to manage the Estate. The Plaintiff is also based overseas. He has not explained in his affidavit how he will manage the Estate.
- [5] The Plaintiff in his affidavit stated that he was paying the annual rental to the Lands Department and that there are two dwelling houses on the land. No receipts or photos of the property or payments made to the Lands Department are annexed in the Plaintiff's affidavit. The Court must be satisfied on the evidence before it of the property and the existence of the dwellings on the property. The Plaintiff has failed to show to the Court of the existence of any lease under the estate. Even if it had expired. A letter from the Lawyer of the Plaintiff to the Lands Department does not prove the

existence of a State Lease (expired). A copy of the State Lease should have been annexed. A copy of the State Lease would have shown the details of the Land and the ownership and that it was or is part of the Estate. The Plaintiff is his affidavit evidence also did not explain what actions of the Defendant were hindering the administration of the Estate and affecting his interest as a beneficiary. It is essential that a party who intends to rely on his affidavit as his evidence in Court tenders all the relevant information and documents for the courts perusal.

[6] For the reasons given here the Originating Summons are dismissed. No orders as to costs.

[7] The **Court Orders** as follows:

(a) The Originating Summons are dismissed.

(b) No Orders as to costs.



Chaitanya Lakshman
Acting Puisne Judge
27th September 2023

