

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HPP 76 of 2019

BETWEEN: SHREEN LATA RAI of 86 Woodpark Road, Sydney, Australia, Customer Service Specialist and ROSELEEN MOHINI LATA of 35 Elford Crescent, Merrylands, West Sydney, Australia, Customer Services Assistant.

PLAINTIFF

AND: CATHERINE KAMINI LATA of 65 and 67 Ono Street, Domestic Duties.

DEFENDANT

BEFORE: Hon. Mr Justice Vishwa Datt Sharma

COUNSEL: Ms Fong M. for the Plaintiff/Applicant
Mr Filipe V. for the Defendant/Respondent

Date of Decision: 30th August, 2023 @ 9.30am

DECISION

[Notice of Motion to remove/Appoint Administrator, Furnish all financial records and dealings and declare personal properties in the Estate of Chandra Prabha].

Introduction

1. The Plaintiff filed the Notice of Motion coupled with an Affidavit in Support of Shreen Lata Ram and sought for the following orders:
 - (a) That the Defendant be removed or discharged as Administratrix and Trustee of the Estate of Chandra Prabha late of Ono Street, Samabula, Fiji, Domestic Duties, Deceased, Intestate.
 - (b) That the Plaintiff/Applicant be appointed as Administratrix and/or Trustees of the Estate of Chandra Prabha late of Ono Street, Samabula, Fiji Domestic Duties, Deceased, Intestate.
 - (c) That the Defendant provide to the Plaintiffs/Applicants all financial records of Estate of Chandra Prabha from the date of her being granted letters of Administration to date;
 - (d) That the Defendant provide to the Plaintiff/Applicants a full account of all dealings and earnings of the Estate property situated at 65 and 67 Ono Street, Samabula, Fiji, Suva from the date of her being granted Letters of Administration to date;
 - (e) That all earnings from the property situated at 65 and 67 Ono Street, Samabula, Fiji Suva, be immediately placed into the Plaintiff's/Applicant's solicitors trust account until finalization of this matter or further order of the Court;
 - (f) That the Defendant provide to the Plaintiffs/Applicants any and all personal property of the Estate of Chandra Prabha in her possession including but not limited to furniture, Kitchenware/cookware, jewellery, clothing, private letters and similar documents, photographs and/or albums and where such items are not in her possession, an itemized list of such specific property including dates ad details of its disposal;
 - (g) Any other relief the Court deems just and equitable in the circumstances.

2. Subsequently, the Respondent filed its Affidavit in Reply on 23rd October 2019

Factual Background

3. The Plaintiff and the Defendant are biological sisters.
4. The Defendant was granted Letters of Administration De-Bonis-Non grant to the mother [Chandra Prabha] on 25th April 2013. To date, the Estate remains unadministered.

5. The Plaintiff's Contention is that as beneficiary, She has tried but failed to obtain any accounting of property and distribution from the Defendant.
6. Chandra Prabha died Intestate on 30th September 2010.
7. Original Administration was their late father Shiu Shankar who took demise on 10th December 2011, hearing the Estate unadministered.
8. The Defendant applied for and obtained a Letters of Administration De-Bonis-Non grant on 25th April 2013.
9. Accounts were sought for by the Plaintiff on the Deceased's Estate from the Defendant but did not eventuate has denied several of the claims made by the Plaintiff.
10. However, the Plaintiff's Contention is that as the Administratrix of the Deceased's Estate, the Defendant has failed to carry out the Duties and obligations as the appointed Administratrix of the Estate and seeks the removal of the Defendant as the administratrix accordingly.

Analysis and Determination

11. The fact that the Plaintiff's are the beneficiaries of the Deceased's Estate of Chandra Prabha together with Irene Lata and Keshni Lata Shankar is not in dispute, nor is the fact that the defendant Catherine Kamni Lata is currently the administratrix of the Estate of Chandra Prabha's Estate and currently holds a grant of Letters of Administration De-Bois-Non (L/A DBN) since 25th April 2013.
12. The Defendant has continued in her role as the administratrix of the estate of Chandra Prabha for some ten years now. The performance of her duties as administratrix has been the subject of significant contention and dispute. The relationship of the Plaintiff and the Defendant is not just a family relationship. The Plaintiff and the Defendant are biological sisters. Both have beneficial interest and entitlement together with other children of the deceased's estate of Chandra Prabha who puts the Defendant into a relationship with them that is Fiduciary.
13. Once appointed, the executor or administrator of an estate (often referred to as the "personal representative") has fiduciary duties which are imposed under the law. A fiduciary duty is one of the highest duties. A fiduciary is a person put in a position of trust and is expected to be loyal to the person to whom he or she owes the fiduciary duty. The fiduciary duty holds fiduciaries to attentive and honest conduct and behavior. The administrator of an estate has the duty to make decisions that benefit the entire estate. There is a high degree of care, diligence, personal and fiduciary obligation involved in the administration of an estate. The personal representative is obligated to act as a prudent person in the care and management of the estate and to act in a manner consistent with the will and not in conflict with any applicable estate administration laws or the laws of

intestacy. The personal representative is barred from self-dealing. The personal representative may not gain any personal benefit from serving as executor or administrator except as provided by the will or by relevant law.

14. The Defendant is the trustee and Administratrix of all the Estate property and in terms of the Law held two-thirds in trust on behalf of all the children of late Chandra Prabha.
15. That Chandra Prabha took demise on 30th September 2010 and Letters of Administration [L/A] grant was given to the husband, Shiu Shankar to administer her Estate. However, Shiu Shankar also took demise on 10th December 2011 and Chandra Prabha's Estate remained unadministered.
16. The burden lies on the Applicant Shreen Lata Rai to show cause as to why Catherine Kamni Lata as the appointed Administratrix ought to be removed as the Administratrix of the Deceased's Estate.
17. The general terms, the Court will expect that the Administratrix to have been efficient, vigorous, and unbiased to complete the administration and the disposition of the deceased's estate of Chandra Prabha expeditiously and in accordance with the requirements of the respective law. If not, then the Court may exercise its discretion to grant the removal sought herein.
18. It is noted that since the grant of the Letters of Administration De-Bonis- Non on 25th April 2013 to the Defendant, Catherine Kamni Lata she has failed to fully administer the Deceased Estate as Chandra Prabha as was required of her to do so in terms of the set down law. A period of 10 years has lapsed to the current since the grant of the Letters of Administration De- Bonis -Non. The beneficiaries to the Deceased's Estate have been deprived of their beneficial interest and entitlement in the Deceased's Estate of Chandra Prabha.
19. The Defendant Catherine Kamni Lata as Administratrix held two-thirds of the property in Trust on behalf of all the children of the late Chandra Prabha.
20. The Plaintiff in her Affidavit in Support has deposed the following:
 13. That from around 2015 I was communicating with the Defendant, asking her to account for what she was doing with the property and how she planned to administer the same and give out proper shares of income etc. to all of the siblings; the Defendant advised me she was working on this however nothing came to pass.
 14. That I kept pressing the issue and demanding an account of what was happening with the estate, however our last communication was over social media in or around July 2016 where-after the Defendant blocked me from being able to contact her.
 15. That I had no choice but to hire a Fiji based solicitor to demand an accounting of the estate from the Defendant and therefore instructed

Jamnadas & Associates to proceed with such work.

16. That my solicitors duly issued a letter demanding such account of administration of the estate from the Defendant. Annexed and marked "C" is copy of such letter.

17. That in response. The Defendant had a meeting with my solicitors and tried to give various excuses and eventually have a hand-written letter in reply and documents of 'accounts'. Annexed and marked "D" are copies of these documents.

20. That in response to the second letter, the Defendant met with my solicitors again suggesting that a meeting take place between all the siblings to amicably sort out the matter however these are the same promises made to me by the Defendant years ago and I verily believe the only way forward was to proceed with litigation of the case.

21. That there has been no written response by the Defendant to our solicitor's letter annexed herewith marked 'E' and therefore there has been a clear failure to account for the estate and/or administer the estate in the appropriate way by the Defendant.

22. To date, and to my knowledge, the Defendant has failed to advise the beneficiaries of the status of the estate, failed to call meetings to discuss any matters of the estate going forward, failed to account for how she is managing the estate going forward, failed to account for how she is managing the estate, failed to account for what income is derived by the estate and failed to distribute shares of the estate to any of the beneficiaries (apart from herself).

23. That I believe the Defendant has been obtaining income from the estate without properly accounting to the beneficiaries on the same; we are not aware how much income is being accumulated and where it is all going.

25. That the Defendant has claimed monies are being used for maintenance and/or upgrading of the property however no receipts have been forthcoming, and I believe proper accounting of these expenses should be advised to us beneficiaries, so we are fully aware of such expenses.

26. That the Defendant is not performing her duties or fulfilling her obligations as administrator of the estate.

21. In the Defendants Reply Affidavit, she deposes at paragraph 11 and 12 as follows:

"11. As to paragraphs 13 to 21 of the Shreen Affidavit, I deny the contents thereof and say;

- (i) Account was given to the Plaintiffs for the years 2013, 2014, 2015, 2016 and 2017. Copies are attached to Shreen's Affidavit,
- (ii) Administration of my late parents' estate was made impossible by feuds and disagreements orchestrated by the Plaintiffs.
- (iii) The Plaintiffs do not accept my late father's last registered Will bequeathing all of his shares to my nephew, Shivneel Kumar.
- (iv) The Plaintiffs dispute the existence of my late father's Last Will and deny that Shivneel Kumar inherited all of my late father's estate. Sensing this dispute, I have held back on administering my parents' estate.
- (v) The Plaintiffs had also requested me to facilitate the lodgment of caveat over my late father's property situated at Lot 27 Ono Street, Samabula. However, I have refused stating that, that was my late father's last wish expressed in his Last Will.
- (vi) I am aware that all the Plaintiffs want is to liquidate or sell the property of the estate in order to receive their shares. However, since they dispute Shivneel Kumar's shares, I have refused to sell any assets to-date until the shareholding is clarified in court or amicably resolved.
- (vii) The 1st named Plaintiff owes the estate of my late father \$100,000.00 (One Hundred Thousand Dollars) and she is refusing to repay the said debt. As Administrator, I had respectfully asked her for this money, but she says that the \$100,000.00 was gifted to her. She has failed to show us the Deed of Gift giving such \$100,000.00 to her.

12. As to paragraph 22 of the Shreen Affidavit, I deny the contents thereof and say:

- (i) The Plaintiffs know the status of the estate and all the disputes associated with it.
- (ii) The Plaintiffs are Australian residents and they have never given me their suitable times and dates to sit and meet in Fiji when they visit. They frequently come in and go out of Fiji, but they do not advise us on the suitable date or time.
- (iii) I am prepared administer the estate provided that everyone's shares are legally administered according to law especially Shivneel Kumar, our nephew."

22. Having considered the above coupled with the Affidavit Evidence and the oral submissions of the parties to the proceedings it can be seriously noted that after acquiring the grant

to Administer and carry out the deposition of the Deceased's Chandra Prabha Estate, she has miserably failed to complete the responsibility of the administration of the Estate.

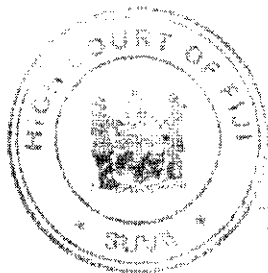
23. The Defendant has failed to discharge her duties as the administratrix and notably several years (10 year) have now passed by with the Defendant continuing to fil on this regard, to the prejudice of the Plaintiff's and other beneficiaries of the deceased's Estate depriving them of their entitlement and share on the Deceased's Estate.
24. Further, she has even failed to cooperate with the Plaintiff and her lawyers to ensure that all information pertaining to Rental Income, and information on the full extents of the Estate property is furnished that will assist all parties to the disposition of the Deceased's Estate of Chandra Prabha.
25. Accordingly, in order to see that the administration and the disposition of the Deceased's Estate is completed and that the Defendant has failed to carry out her duties and responsibilities as an Administratrix, I have no alternative but to immediately remove the Defendant Catherine Kamni Lata and relieve her of her administratrixship to give way for the Administration to be completed accordingly.
26. In the like, I appoint the Plaintiff Shreen Lata Rai as the Administratrix of the deceased's Estate of Chandra Prabha. The Plaintiff/ Counsel is at Liberty to take necessary actions to be granted with a Letter of De-Bonis-Non grant to allow her to complete the administration of the Deceased's Estate in accordance to the law.
27. The Plaintiff now being appointed with the grant must ensure to avoid any delay or otherwise, and ensure to carry out the administration expeditiously, so that no one beneficiary of the Estate is deprived of his/her entitlements and show in the Deceased's Estate.
28. The Defendant to pay the Plaintiff's a sum of \$850 as summarily assessed costs.

ORDERS

- (i) The Defendant, Catherine Kamni Lata is removed and discharged as the current Administratrix of the Estate of Chandra Prabha with immediate effect.
- (ii) The Plaintiff Shreen Lata Rai is appointed as the Administratrix of the Deceased Estate of Chandra Prabha.
- (iii) The Defendant is ordered to provide and furnish the Plaintiff/ Administratrix all financial records are pending together with a full account of all dealing and earnings of the Estate Property of Chandra Prabha from the 25th April 2013 to the date of this order.
- (iv) The Defendant to provide the Plaintiff/ Administratrix with all personal property of the Deceased's Estate of Chandra Prabha in her possession.

- (v) The Defendant to pay the Plaintiff/ Administratrix a sum of \$850 as summarily assessed costs.

Dated at Suva this 30th day of August, 2023.



A handwritten signature in black ink, appearing to read "Vishwa Datt Sharma", is written over a horizontal line.

VISHWA DATT SHARMA
JUDGE

Cc: Jamnadas & Associates, Suva.
Redwood Law, Suva