

IN THE HIGH COURT OF FIJI
AT SUVA
PROBATE JURISDICTION

HPP 31 of 2019

**IN THE ESTATE of AISAKE DIKE
NAIGULEVU aka AISAKE DIKE
NAIGULEVU SEREA TOTOKA**

AND

JOSAIA KOROI NAIGULEVU

BEFORE : M. Javed Mansoor, J

COUNSEL : Mr. V. Faktaufon for the Applicant
Ms. L. Prasad for the Respondent

Date of Hearing : 24 September 2020

Date of Decision : 17 November 2023

DECISION

Caveat – Removal – Letters of administration – Application for joint administration – Section 47 (3), Succession, Probate and Administration Act Cap 60

1. This is an application for the removal of a caveat filed on 16 August 2018 and for the grant of letters of administration de bonis non in the estate of Aisake Dike Naigulevu aka Aisake Dike Kaunigade Serea Totoka Naigulevu, who died on 23 August 1989 at the Colonial War Memorial Hospital in Suva (“deceased”). The application was made under section 47 (3) of the Succession, Probate and Administration Act and supported by the affidavit of Lavenia Ranadi Naigulevu Vuikadavu (“applicant”).
2. The applicant is the proposed administratrix de bonis non and the eldest daughter of the deceased. She said that she is authorised by the majority of her siblings and beneficiaries of the deceased to defend proceedings in HBA 28 of 2018 filed by Josaia Koroï Naigulevu (“caveator”). The applicant is the elder sister of the caveator.
3. The applicant states that she has obtained letters of administration for the estate of her mother Diradrava Mere aka Mere Diradrava Tuiqiri Naigulevu aka Adi Mere Diradrava Tuiqiri aka Mere Naigulevu aka Mere Diradrava aka Mere Diradrava Tuiqiri aka Adi Mere Diradrava Tuiqiri.
4. The applicant’s mother was granted letters of administration to administer the deceased’s estate. However, her mother was unable to complete administration of the estate. The applicant applied and obtained letters of administration to administer her mother’s estate. She says it was necessary to do so in order to apply for letters of administration de bonis non for the deceased’s estate.
5. The application to administer the deceased’s estate was made on 5 November 2018. The applicant says she received a letter from the probate section of the judicial department on 4 December 2018, informing her that a caveat was lodged by the caveator to prohibit the grant of letters of administration.

6. The applicant's solicitors responded by filing a warning to caveator on 12 December 2018. On 8 March 2019, her solicitor wrote to the chief registrar advising that no summons was received from the caveator and seeking the grant of letters of administration de bonis.
7. The caveator filed an affidavit on 14 June 2019. His fears concern a parcel of land owned by the deceased. The land is described as lot 6, section 4, Lami sub division contained in native land lease No. 10556 and known also as 9, Waimate Street ("subject property").
8. The caveator says the deceased prepared and signed a transfer document concerning the subject property transferring it to his mother, an older brother and himself. He states that since 1979 he has been paying all outstanding mortgage payments and annual land rates of the subject property. He states that he was unaware that the transfer document was not registered by his brother.
9. The caveator says that as the property was in a dilapidated condition, he invested \$13,000.00 to \$14,000.00 in 2009 to repair the subject property. Thereafter, he resided in it until the middle of 2010, when he left Fiji. He says the subject property is currently occupied by his children and sister, Naomi Silikatava Naigulevu.
10. The caveator says that since 2014 his relationship with some of his sisters became strained and he was not consulted about the application for letters of administration. He says that his solicitor's written proposal to the applicant requesting joint administration of the property did not receive a response. He says he is not supportive of the applicant's appointment as sole administrator because of the need to protect his substantial financial and equitable interests, and the current joint occupancy of the property by his children.
11. The applicant replied that she is not aware of the alleged mortgage and rates payments made by the caveator. She states that any intention of the deceased to transfer the property was never communicated to her and the other siblings.

12. She states that her sister Naomi made mortgage payments from January 1995 to December 1996. Naomi paid ground rent to the Native Land Trust Board from March 1992 until 2019. She also paid electricity bills from March 1992 to June 2009. Naomi paid town rates from March 1992 to December 2009, and again from January 2017 to date. She says that Neomi made renovations to the property and contributed a sum of \$29,286.34 towards the subject property. Her sister, Laisa Bogitini Naigulevu Bataba (Laisa) resided on the property from 1997 to 2004, and during that period contributed to the payments of bills.
13. The applicant says she is aware of the repairs undertaken by the caveator in 2009, but disagrees with the sums claimed by him. She says that the caveator lived on the subject property for about 6 months before he left Fiji, and the property is currently occupied by her sister, Naomi.
14. The applicant denies that the caveator has a legal and equitable interest in the subject property. She also denies that the caveator's children are in occupation of the subject property. The applicant says she has no vested interest in the property and has nothing to gain from administering the deceased's estate except from what she may be entitled to as a beneficiary. She states she has the consent of all the siblings, except for the caveator to complete the administration process and that her attempts to obtain his consent were not successful. The applicant states that the caveator, a beneficiary of the estate, has not cooperated or assisted in trying to wind up the deceased's estate.
15. Having considered the respective affidavits, the court is of the view that the caveat should be removed to facilitate the administration process. Mr. Aisake Dike Naigulevu died on 23 August 1989. The application for letters of administration was made on or about 5 November 2018. The caveat was filed on 16 August 2018. The caveator says he has substantial interests in a property that belonged to the deceased. However, he has not taken any steps to administer the property belonging to the deceased. There is also no evidence that he has taken steps to establish his claims to the property. The court notes that the caveator has been away from the country. The applicant has obtained letters of administration

in respect of her mother's estate in order to complete administration of the deceased's estate. Allowing the applicant to administer the estate should not disadvantage the caveator from his beneficial entitlement. His interest can be taken into account when the estate is distributed. In these circumstances, joint administration of the property is neither suitable nor necessary.

ORDER

- A. Caveat bearing No.28/ 2018 lodged on 16 August 2018 concerning the estate of Aisake Dike Naigulevu aka Aisake Dike Kaunigade Serea Totoka Naigulevu is to be removed.
- B. The applicant is to be issued letters of administration de bonis non in the estate Aisake Dike Naigulevu aka Aisake Dike Kaunigade Serea Totoka Naigulevu.
- C. The caveator is to pay the applicant costs summarily assessed in the sum of \$2,000.00 within 21 days of this decision.

Delivered at **Suva** on this 17th day of **November, 2023**.



M. Javed Mansoor
Judge