

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

Probate Action No. HPP 55 of 2023

**IN THE MATTER of the ESTATE of
**DAVID ANAND PRASAD late of Savura
Road, Wailoku, Suva, Driver, Deceased,
Testate.****

BETWEEN: **URMILA DEVI** of Naganivatu Settlement, Naitasiri, Wailoku,
Tamavua, Fiji, Domestic Duties.

Plaintiff

AND: **SHAMILA DEVI** of Fulaga Street, Samabula, Suva, Fiji,
Administration Officer as **EXECUTRIX & TRUSTEE** in the
ESTATE OF DAVID ANAND PRASAD of Savura Road,
Wailoku, Suva, Driver, Deceased, Testate.

Defendant

Representation:

Ms. A. Singh for the Plaintiff (Kohli & Singh Suva).
Mr K. Jannadas for the Defendant (Jannadas & Associates).

Date of Hearing: 16th January 2024.

Ruling – Striking Out

A. Introduction

[1] On 23rd October 2023, the lawyers for the Defendant filed Summons to Strike Out the action. It was filed with an affidavit of the Defendant. They sought the following orders:

“1. That the Plaintiff’s Claim against the Defendant as it relates to prayers 1 to 7 of the Statement of Claim be struck out as the claim is frivolous, vexatious and/or an abuse of process.

2. *That the Plaintiff's Claim against the Defendant as it relates to Prayers 1 to 7 of the Statement of Claim be struck out as it is contrary to the doctrine of Res Judicata and/or issue Estoppel.*
3. *The Plaintiff pay the costs of this Application on an indemnity basis or a higher scale."*

The application was made pursuant to Order 18 Rules 18 (1) (b) and (d) of the High Court Rules 1988, Section 3 (10) of the Inheritance (Family Provision) Act 2004 and inherent Jurisdiction of the Court.

B. History of the Matter

- [2] On 3rd July 2023 the Plaintiff filed Writ of Summons seeking that the Probate No. 71725 granted to the Defendant be lodged in the High Court Probate Registry within 14 days of the service of the Writ, that Probate No. 71725 granted to Defendant be cancelled and revoked, a declaration that the will dated 10th September 2016 is the last will and testament of the Deceased, the Court decree probate of will dated 10th September 2016 in solemn form and alternatively, an Order under Section 3 of the Inheritance (Family Provision) Act 2004 that a provision be made out for the Plaintiff in the Estate for the deceased.
- [3] A Statement of Defence was filed on 10th August 2023. A Reply to Statement of Defence was filed on 25th August 2023. Summons to Lodge Probate was filed by the Plaintiff on 4th August 2023. On 31st August 2023 Summons for Directions was filed. An Affidavit in Opposition to application to deposit Probate was filed by the Defendant on 17th November 2023.

C. Discussion

- [4] The application to strike out is unopposed. No affidavit in opposition has been filed. No submission on behalf of the Plaintiff was made at the hearing of this matter. Order 18 Rule 18 Provides "*(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that—*
 - (a) it discloses no reasonable cause of action or defence, as the case may be; or*
 - (b) it is scandalous, frivolous or vexatious; or*
 - (c) it may prejudice, embarrass or delay the fair trial of the action; or*
 - (d) it is otherwise an abuse of the process of the court;*

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be." (I have highlighted the part relied upon by the Defendant in this application).

- [5] To better understand the matter a brief background will assist. This background is taken from the unopposed submission of the Defendant. The Deceased passed away on 10th August 2018. The Plaintiff on 12th September 2018 lodged an application for Probate. This was not granted due to a caveat being lodged by two of the deceased's children. The Plaintiff subsequently filed a Writ, being Probate Action No. HPP 65 of 2019 against the beneficiaries. The Plaintiff sought declarations of a will or wills in her favour. The beneficiaries defended the action and for their part sought that a dated 23rd June 2016 be declared as the valid last will of the deceased. A Judgement in HPP 65 of 2019 was delivered by Justice Liyanage on 6th April 2023. Where the following orders were made:

1. Plaintiff's claim is wholly dismissed.
2. I pronounce against the Wills dated 04th September 2017 and 6th September 2017.
3. The Will dated 23rd June 2016 is valid and admitted by the Court.
4. Cost assessed at \$2000 (two thousand dollars) and shall be paid by the Plaintiff to the Defendants within 14 days."

- [6] I note that in HPP 65 of 2019, the Plaintiff was relying on a will dated 26th September 2017. She had also mentioned about wills dated 29th October 2014, 10th September 2016 and 4th September 2017. The Court found in favour of will dated 23rd June 2016. In the matter before me the Plaintiff is now seeking declaration in favour of a will dated 10th September 2016. The Plaintiff in HPP 65 of 2019 had pleaded the existence of the 10th September 2016 Will. She was at that time relying on the 26th September 2017 Will. After the Court found that the will of 23rd June 2016 to be valid the Plaintiff has come back to Court to validate that the 10th September 2016 will is the last will. The Plaintiff had her day in Court. In HPP 65 of 2019 she had made her arguments in relation to the wills she wanted to be validated. She had pleaded the 10th September 2016 will. The Court found the will of 23rd June 2016 to be the valid will. The Plaintiff did not appeal the judgement of Justice Liyanage. She cannot come back to this court on the same issues. The matter is *res judicata*. A matter is *res judicata* when a "decision pronounced by a judicial or other tribunal with jurisdiction over the cause of action and the parties, which disposes once and for all of the fundamental matters decided, so that, except on appeal, they cannot be re-litigated between persons bound by the judgment." **Varani v Native Lands Commission [2022] FJSC 16; CBV0014.2018 (29 April 2022), at para [41].**

- [7] The Supreme Court Practice 1988 (Volume 1- Part A) (White Book) on striking out pleadings and indorsements in p. 324 (18/19/17) states that "*Para (I) (d) confers the Court in express terms powers which the Court has hitherto*

exercised under its inherent jurisdiction where there appeared to be "an abuse of the process of the Court." This term connotes that the process of the Court must be used bona fide and properly and must not be abused. The Court will prevent the improper use of its machinery, and will, in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation (see Castro v. Murray (1875) 10 ex 213; Dawkins v. Prince Edward of Saxe Weimar; Willis v. Earl Beauchamp (1886) 11 P. 59, per Bowen L.J. P 63)..."

Furthermore it clearly states that "it is an abuse of law for a suitor to litigate again over an identical question which has already been decided against him even though the matter is not strictly *res judicata* (*Stephenson v. Garrett* [1898] 1 Q.B 677, C.A and see *Spring Grove Services Ltd. V. Deane* (1972) 116 S.J. 844)."

- [8] The Plaintiff had a chance to oppose the strike out application. She did not oppose it. At the hearing she had the chance to make submissions through her lawyers. They did not make any submissions. I find that the issues relating to the wills have been determined in HPP 65 of 2019. It is now *res judicata*. It is therefore an abuse of process to file a similar action, as has been filed by the Plaintiff.
- [9] The Defendants summons seeking to strike out the Plaintiff's action succeeds. In this matter the lawyer for the Defendant, Mr Jannadas filed comprehensive submissions on striking out. Costs cannot be ignored. Parties who file claim which are an abuse of process, as is in this matter where a matter is *res judicata* should be prepared to pay costs. I summarily assess that the Plaintiff pay the Defendant \$3000.00 as costs in this matter, within 30 days.

D. The Court Orders as follows:

- (a) The Defendants Summons for striking out Plaintiff's action succeeds.
(b) The Plaintiff to pay Defendant \$3000.00 as costs (summarily assessed) within 30 days.



Chaitanya Lakshman

Acting Puisne Judge

28th February 2024

