

JUDGEMENT

(APPLICATION ON ORIGINATING SUMMONS – REMOVAL OF EXECUTOR AND APPOINTMENT OF NEW TRUSTEES)

Cause and Background

1. The plaintiffs are siblings of the Defendant. They had filed an Originating Summons under Order 35 and Order 85 of the High Court Rules seeking for the following orders:
 - i. That the Defendant, **ROHIT RAJENDRAN NAIR**, as the Executor and Trustee of the **ESTATE OF SHRI RAMLU aka SHIRI RAMLU aka SIRI RAMLU** pursuant to the Will dated be removed and discharged as the Executor and Trustee of the **ESTATE OF SHRI RAMLU aka SHIRI RAMLU aka SIRI RAMLU**, Probate No. 70901 granted on 31st day of January 2023.
 - ii. That **AMRIT ARVINDRAN NAIR** be appointed as the Trustees of the **ESTATE OF SHRI RAMLU aka SIRIAMLU aka SHIRI RAMLU aka SIRI RAMLU**, Probate No. 70901 granted on 31st January 2023.
 - iii. That the Defendant, **ROHIT RAJENDDRAN NAIR aka ROHIT RANENDRA NAIR** surrender the Original Grant of Probate in the **ESTATE OF SHRI RAMLU aka SIRIAMLU aka SHIRI RAMLU aka SIRI RAMLU**, Probate No. 70901 granted on 31st of January 2023 to the Probate Registry, High Court, Suva;
 - iv. The Grant of Probate in the **ESTATE OF SHIRI RAMLU aka SIRIAMLU aka SHIRI RAMLU aka SIRI RAMLU** be granted to **AMRIT ARVINDRAN NAIR**.
 - v. That sureties as required by Section 20 of the Successions, Probate and Administration Act be disposed with;
 - vi. That the said Grant and the Records be noted to this effect;
 - vii. The Defendant pay the costs of the application; and
 - viii. Such other orders as the Court deems just.

2. The Applicant had also filed his Affidavit in support as follows –

“4. That our father, the late Shiri Ramlu aka Siriamlu aka Shiri Ramlu aka Siri Ramlu (hereinafter referred to as “deceased”) died testate on the 17th of November 2022 and a Probate was issued in favour of the defendant on the 31st of January 2023 vide Probate Registration Number 70901 (hereinafter referred to as “the Probate”) (Annexed hereto is a Copy of the Probate Registration Number 70901 dated 31st day of January 2023 marked as “AAN-03”);

5. That pursuant to the Will annexed in the said Probate the following issues were particularized:

- a) To give a sum of \$30,000 each to my daughter **ASHMI NAIR** and **ASHWINI ANURUP NAIR** and my son **AMRIT ARVINDRAN NAIR.**
- b) With regards to my property more so comprised in NL No. 16739 to allow my son **AMRIT ARVINDRAN NAIR** to occupy a flat (presently in occupation) as long as he chooses to live. All utilities such as water, electricity, phone and gas to be paid by himself.
- c) Further with regard to my property more so comprised in NL No. 16739 to allow my sister **GANGAMMA** occupy a flat (presently in occupation) as long as she chooses to love. All utilities such as water, electricity, phone and gas to be paid by herself.
- d) The rest remainder and residuary of my estate to my sons **ROHIT RAJENRA NAIR** and **AMRIT ARVINDRAN NAIR** and daughters **ASHIWINI ANURUP NAIR** and **ASHIMI NAIR** absolutely.

ASSETS OF ESTATE

6. That the Deceased had the following Assets on his name during his lifetime therefore, it is part of the Estate:
 - a) Crown Lease Number 22842;
 - b) Native Lease Number 16739
 - c) Motor Vehicle Registration Number DR 167;
 - d) Motor Vehicle Registration Number FK 932;
 - e) Motor Vehicle Registration Number FT 771.
10. That from the date of death of the Deceased, the issuance of the Probate in the name of the Defendant until March 2023, the Defendant, upon being continuously followed up and queried by the Plaintiffs, had somehow showed and maintained he income and expenses wherein, a Bank Account in the ANZ Bank was opened by the Defendant, wherein, it was agreed between the parties that all the income from the rental obtaining from the Commercial Property must be deposited in the ANZ Account.
11. That initially, the Defendant, after successfully distributing the \$30,000 to each party held into the Fixed account, made comment regarding that he has completed the distribution as per the Will of the Deceased and later on, made threatful comments of the Plaintiff when we questioned him on the income and expenses of the Estate.

12. THAT we had then instructed our Solicitors, Messrs Rams Law of Nadi to issue a 7 day Demand Notice to the Defendant to provide the Accounts of the Estate from April and May, 2023 regarding the Income and expenses of the Estate of the Defendant has chased out the Third Named Plaintiff out of Estate Residential Dwelling situated at Navo, Nadi where the 3rd Named Plaintiff had resided from birth. (***Annexed hereto is the Copy of the Demand Notice dated 08th day of June, 2023 which was served on the Defendant on the 09th day of June, 2023 marked as AAN-05***)

13. THAT I am being advised by my Solicitors and I verily believe that the Defendant, through the Solicitors, vide a letter dated 15th June 2023 had requested for further 7 days to respond to the issues raised in the Demand Notice (***Annexed hereto is a Copy of a Letter dated 15th June 2023 marked as AAN-06***)

14. THAT on the 20th day of June 2023 our Solicitors, on our instructions had issued a letter to Messrs Babu Singh and Associates informing them that the Defendant should be aware that the Plaintiffs are also the beneficiaries of the Estate and that it has been over 10 days since the service of the Demand Notice and that the Defendant had not made any attempts to administer the Estate accordingly which has 2 Properties and 3 vehicles and went on to the extent of forcefully removing the Third Named Plaintiff from the Residential Dwelling therefore, a time frame until close of business on the 21st day of June 2023 was given to the Defendant to provide the particulars as per the Demand Notice (***Annexed hereto is a Copy of the Letter dated 20th day of June, 2023 marked as "AAN-07"***).

15. THAT I am being advised by my Solicitors and I verily believe that on the 21st day of June 2023, the Defendants Solicitors, Messrs Babu Singh and Associates, through a letter dated 21st day of June 2023 whilst admitting, transferring the Subject Vehicle on the Defendants name, using obscene Language and that the Defendant suffers from high blood pressure and is sickly person and had provided an improper estate account wherein, he had failed to show the actual sum being paid by the Tenants on the Commercial Property and Expenses which the Estate had to bear on the Commercial Property (***Annexed hereto is a Copy of the letter dated 21st day of June 2023 marked as "AAN-08"***)

16. THAT I am advised by my Solicitors and I verily believe that Defendant, through its Solicitors vide the said letter dated 21st June 2023 had annexed a vague list of expense (with receipts/invoices) of the Estate without providing Evidence of Rental income received from the Months of April, May, June 2023 and only stated that the Estate had an ANZ Bank Account which had a balance in the sum of \$26,639.43 whilst the Estate Income generates in the sum of \$11,900.00 as had been admitted by them whilst the calculations for

the 3 months should sum up to \$37,500.00. (***Annexed hereto is a copy of the Estate of Shri Ramlu – List of Expenses marked as “AAN-09”***)

17. THAT from my understanding and scrutinizing of the expenses which has 30 entries, I am aware that the majority of the items listed for the expenses did not take place on the Commercial Property rather, at the Residential Dwelling situated in Navo, Nadi wherein, there is a major renovation taking place on that property from the Estate Expense for which, our entitlement is being utilized as well as unnecessary expenses on Estate Vehicles which are under the Defendants name (***Annexed hereto are the Copies of the receipts marked from “1 to 30” marked as “AAN-10”***):

PARTICULARS

- a) Invoices numbers 4,5,6,7 and 8 are from the Personal Expenses of the Defendant which are carried out at the Residential Dwelling in Navo, Nadi.
 - b) Invoices number 9,10 and 11 are for the Estate Vehicles which are not being used by any beneficiaries of the Estate apart from the Defendant however, the Estate Expenses are being accrued for unnecessary upgrading of the Vehicles;
 - c) Invoices 14,1,18 and 26 are again for Personal Expenses of the Defendant and does not relate to the Plaintiff as the Defendant has been using the Vehicles of the Estate and is unnecessarily using the Estate Funds to add expansive features on the Vehicle.
 - d) Invoices no. 16, we are unaware as to how this reflects on the Estate.
 - e) Invoice no. 23 is the personal Electricity Bill of the Defendant.
 - f) Invoice no. 29 and 30 are also for the personal expense of the Defendant paid from the Estate funds which is unwarranted.
18. That based on the above, our Solicitors on our instructions, vide letter dated 27th of June 2023, had informed the Defendant Solicitors of the particulars as per paragraph 17 hereinabove and had further notified them that the Defendant had used grumpy and forceful nature of attitude towards the Third Named Defendant whilst she was having her meal on the basis that the Defendants daughter in law does not like the Third Named Defendant having her meal at the Dining Table on the Residential Dwelling wherein, the behavior of the Defendant was unreasonable and not equal to mankind. We had also given them option to buy the Shares

of the Vehicle, provide the Bank Statement of the Estate, add myself as another Trustee, and provide the quarter payments as agreed to by all the parties for April May June 2023, as such payments took place until March 2023 however the Defendant failed to consider the same (***Annexed hereto is a Copy of the Letter dated 27th day of June, 2023 marked as AAN-11***).

PART C: SUBMISSIONS BY PARTIES

3. In their written submissions, the Plaintiff submitted that in accordance with Order 7 Rule 2 of the High Court Rules (referred to as HCR) the originating summons should be *inter-parte* in the Form 3 and not Form 4 and hence the form is correct.
4. The Plaintiff also submits that the application is an abuse of funds and failure by Defendant to properly distribute the property as prescribed under the Will of the Deceased. The Plaintiff contends that the will is not challenged at all as to its validity. The allegations for which the Plaintiff have filed Affidavits in support of this is that the defendant has failed to consult the beneficiaries on administration of the estate by using the funds on the Estate including payment of large transactions. In doing so has failed to distribute and administer the Estate in a proper manner. The Counsel preferred to refer to the case of Roserin Nita -v- Vimlesh Kumar and Vijay Kumar Lal HPP 12 of 2022 where my brother Lakshman J held that in light of Letterstedt -v- Broers (1884) 9 A.C 371 in which the –

“Court has the general jurisdiction to remove trustees and substitute others where the welfare of the beneficiaries and of the trust estate requires such a remedy that is where the Court considers that the continuance of the trustee in the trust would prevent the proper execution of the trust”.

5. The Defendant has argued that that the application is a nullity as the form used is incorrect. He also argues that given that the Orders sort the removal of the Administrator in light of the failure of the Administrator to properly distribute the property, the application should have commenced by Order 76 of the HCR and not by originating summons. Reference was made to case of Jacqueline Jane Standing -v- Kelera Uruwale HPP 81 of 2022 Liyanage J held:

“[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 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 been initiated by way of Writ under Order 76 Rule 2 (1).

[13] The Court has discretion to allow the Plaintiff to continue this action as if 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 the 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.”

6. Further submissions made by Defendant was that there are allegations of breach of trust, duty of care and damages which require that the proceedings commence by Writ of Summons in order to hear and determine evidence submitted into court.
7. In response Applicant stated that the crux of the application is based on the administration of the Estate as prescribed by the deceased. The Respondent has not filed an application under Order 2 of the High Court Rules to challenge the form in which the application in this Court is currently being made.

Part D: Law on Administration of Estates

Order 85 Rule 2 of the High Court Rules

8. The Plaintiff relied upon Order 85 rule (2) (2) (a) (c) and Order 85 rule 2 (3) (e) and Order 85 rule (4) of the Fiji High Court Rules 1988 and section 35 of the Successions, Probate and Administration Act that provide for Administration and Similar Actions.
9. Order 85 Rule 2 (2) (a) (c) reads –

“(2) without prejudice to the generality of paragraph (1), an action may be brought for the determination of any of the following questions:-

(a) Any question arising in the administration of the estate of a deceased person or in the execution of a trust;

(c) any question as to the rights or interests of a person claiming to be a creditor of the estate of a deceased person or to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust.”

10. Order 85 rule 2 (3) (e) of the Fiji High Court Rules states –

‘(3) Without prejudice to the generality of paragraph (1), an action may be brought for any of the following reliefs –

(e) an order directing an act to be done in the administration of the estate of a deceased or in the execution of a trust which the Court could order to be done if the estate or trust were being administered or executed, as the case may be, under the direction of the Court.”

11. Order 85 Rule (4) of the Fiji High Court Rules prescribes –

“4. In an administration action or such an action as is referred to in rule 2, the Court may make any certificate or order and grant any relief to which the plaintiff may be entitled by reason of any breach of trust, wilful default or other misconduct of the defendant notwithstanding that the action was begun by originating summons, but the forgoing provision is without prejudice to the power of the Court to make an order under Order 28, rule 9, in relation to the action.”

12. In the Supreme Court Practice 1988 (Vol 1 Sweet and Maxwell, London) p.g 1244-1245, paragraph 85/1/1 explained the scope of the Order as follows -

‘This Order deals with the actions of the administration of the estate of a deceased person, for the execution of a trust, for the determination of any question arising in the course of administration or in connection with a trust and cognate matters. The Order emphasizes that the list of questions and orders set out therein are not intended to be comprehensive.

The Originating Summons has a life of its own under O.5 r.1 and can be used for any appropriate purpose. Unless the plaintiffs claim is based on allegation of fraud originating summons will normally be the correct document for initiating proceedings with regard to the domestic affairs of an estate or trust (o 85, r.4). If however, the proceedings relate to a breach of trust or wilful default on the part of a trustee which can be specified with some precision and there is likely to be a substantial dispute of facts, the proceedings should be commenced by writ so that the trustee shall have available to him the full machinery for discovering precisely the charges against him (Re Sir Lindsay Parkinson & Co Ltd Settlement Trusts (1965) 1 WLR’ (underlining my emphasis)

13. Section 35 of the Succession, Probate and Administration Act states –

Court may remove executor

35. The court may for any reason which appears to it to be sufficient, either upon the application of any person interested in the estate of any deceased person or of its motion on the report of the Registrar and either before or after a grant of probate has been made-

(a) make an order removing any executor of the will of such deceased person from office as, such executor and revoking any grant of probate already made to him; and

(b) by the same or any subsequent order appoint an administrator with the will annexed of such estate; and

(c) make such other orders as it thinks fit for vesting the real and personal property of such estate in the administrator and for enabling the administrator to obtain possession or control thereof; and

(d) make such further or consequential orders as it may consider necessary in the circumstances.”

14. The application pending before this Court is seeking to remove the Executor as Administrator of the Estate. The application questions the exercise of the Administrators powers or the lack of exercise which has given rise to the beneficiaries concerns that the Administrator has failed to exercise their powers accordingly.

PART E: ANALYSIS

Preliminary objections: wrong form and wrong application in the High Court Rules

15. The Defendant had raised two objections.
16. In terms of the form used, the Applicant is correct, for in an inter-parte summons as this, Form 3 or 4 is the appropriate form to be used depending on the requirements in the application as stated in Order 7 (2) of the High Court Rules (refer to Singh -v- Singh [2018] FJHC 1040; HPP 59.2017 (29 October 2018).
17. The second preliminary objection is that the Defendants argued the application should have been by way of Order 76 of the High Court Rules pertaining to the construction and validity of the will.
18. Defendant referred to a Court of Appeal matter where it was determined that dispute over grant of administration between next of kin of same entitlement was a contentious matter. Reference was made to Singh -v- Krishna [1999] FJCA 31;

Abu 005u.98s(14 May 1999) Sir Tikaram, P.J.A, Sir Casey J.A and Sadal, J.A held that –

“Probate practice in Fiji is now governed by Order 76 of the High Court Rules 1988 made by the Chief Justice pursuant to the powers under s.25 of the (then) Supreme Court Act (Cap 13). 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. English practice with non –contentious business is recognized to some extent in our O.1, r.11...”

19. In this case Singh -v- Krishna (Supra) the Appellant was the administrator *de bonis non* of the Estate of the father pursuant to a grant of probate. His sister was granted an additional administrator made after a defended hearing on an originating summons in the probate jurisdiction of the Court with affidavit evidence. On Appeal in the Court of Appeal the question was whether the matter should commence by Writ. The Affidavit of the Respondent sue the estate and alleges the appellant as not being fit or proper administrator of the estate with respondent claiming a major share in the will of her late mother's interest. The appellant challenges the validity of the will and believes respondent was vindictive. It was held that:

“It is plain from the contents of the summons that it was contentious at the time it was issued, because the respondent sought in addition to her appointment, her brother's removal as administrator. That part of the application was adjourned by Fatiaki J, when he made an order for her appointment and was subsequently dismissed without objection from her, but its inclusion at the outset demonstrates an ongoing dispute between them concerning this estate.”

20. However in Singh -v- Singh [2018] FJHC 1040; HPP 59.2017 (29 October 2018) Sharma J held that:-

“15. This particular provision of the law deals with various types of applications defined within the ‘Probate Action’ but, does not have or allow for the provision for an action for the “Removal and Discharge” of the current Executor and Trustee as sought for in the current application before this Court by the Plaintiff.

16. Therefore, the Defendant's preliminary objection that the present application was a contentious Probate Action which must be begun by a Writ Action fails and accordingly dismissed.”

21. Similarly to Singh -v- Singh (Supra) is Shailendra -v- Prasad [2021] FJHC; HPP 27.2019 (24 September 2021) Monsoor J held that –

“23. The estate has slipped through two generations of administrators without fruitful steps to satisfy the beneficiaries. It is evident that the plaintiffs are

dissatisfied with the prevailing state of affairs including the conveyances and allocations said to have been made out of the estate in the past. Significant disputes of facts are likely in these circumstances. In my view a fuller inquiry with material evidence may reveal the steps needed to be taken by the eventual administrators in satisfying the various beneficiaries who may or may not be before court”.

22. In the case before me, there is no extended time lapse, since the Executor and Trustee, the Defendant was appointed in 2022. The current application seeks for the current Executor and Trustee to be removed and discharged and replaced with the Applicant.
23. Therefore in this instance, in accordance with the case of Singh -v- Singh (Supra), the current application by way of originating summons suffices.

Allegation of failure to properly administer and devolve the property

24. In Patel v Nodhana Ltd [1994] FijiLawRp 14; [1994] 40 FLR 118 (26 August 1994) Fatiaki J stated -

In Vol. 48 of Halsbury's Laws of England (4th ed.) the learned authors set out the duty of a trustee to provide information to a beneficiary in the following paragraph:

"830. A trustee must furnish to a beneficiary, or to a person authorized by him, on demand, information ... as to the mode in which the trust property or his share in it has been invested or otherwise dealt with, and as to where it is and full accounts respecting it, whether the beneficiary has a present interest in the trust property or only a contingent interest in remainder, or is only an object of a discretionary trust."

25. Similarly Fatiaki J in Patel -v- Nodhana Ltd (Supra) stated –

“That a trustee has a duty to provide beneficiaries with accounts there can be no doubting. In Re Watson (1904) 49 Sol. Jo. 54 Kekewich J. speaking of the duty said:

"The duty of a trustee is three-fold: there is a duty to keep accounts, the duty to deliver accounts and the duty to vouch accounts ... The duty to keep accounts is an essential duty, he must keep such accounts so as to be able to deliver a proper account within a reasonable time showing what he has received and paid."

In similar vein and a good deal earlier Stuart V.C. said in Kemp v. Burn (1863) 141 RR 225, 226:

"... Where an account is demanded of trustees ... by a residuary legatee, there seems no doubt what the duty of the (trustee) is. Their duty is to keep proper accounts, and to have them always ready when called upon to render them."

26. Furthermore section 73 of the Trustees Act 1966 empowers the Court to make certain orders. The powers are as follows:

“Power of Court to appoint new trustees

73.-(1) The Court **may, whenever it is expedient to appoint a new trustee** or new trustees, and it is inexpedient, difficult or **impracticable so to do without the assistance of the Court, make an order for the appointment of a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees**, or although there is no existing trustee.

(2) In particular, and without limiting the generality of the provisions of subsection (1), the Court may make an order appointing a new trustee in substitution for a trustee who-

(a) desires to be discharged;

(b) has been held by the Court to have misconducted himself in the administration of the trust;

(c) is convicted of any misdemeanour involving dishonesty, or of any felony;

(d) is a person of unsound mind;

(e) is bankrupt; or

(f) is a corporation that has ceased to carry on business, or is in liquidation, or has been dissolved.

(3) An order under the provisions of this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any discharged, former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(4) Nothing in this section contained shall confer power to appoint an executor or administrator.

(5) Every trustee appointed by the Court shall have, before as well as after the trust property becomes by law or by assurance or otherwise vested in him, the same powers, authorities and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument (if any) creating the trust.”

27. From the Affidavit of the Applicant, the Applicant seeks for removal of the current Executor and Trustee and replacement of him as the Executor and Trustee of the Estate of Shiri Ramlu.
28. Section 73 of the Trustees Act therefore requires the Applicant to prove on evidence that the Respondent as Executor and Trustee of the misconduct for which the Court will determine and find.
29. The allegations by the Applicant is that the Respondent had only distributed the \$30,000 cash to the Deceased daughter and to the Applicant each.
30. Thereafter the allegation is that the Respondent failed to ensure that the three vehicles and rental income from the crown commercial lease is distributed fairly amongst the Applicants. The Assets included:
 - (a) Crown Lease Number 22842;
 - (b) Native Lease Number 16739;
 - (c) Motor Vehicle Registration Number DR 167;
 - (d) Motor Vehicle Registration Number FK 932;
 - (e) Motor Vehicle Registration Number IT 771.
31. There are allegations that there is no account of the actual income and expenses obtained from the Estates per month despite requests made by the Applicants for the months of April to date for the commercial property in Nadi Town. That the list of expenses was not sufficient to provide evidence of rental income and expenses.
32. That despite the Will giving the residuary estate to Ashmi Nair, that she was removed from the premises by the Respondent which was part of the Estate of the deceased, who was also her father.
33. There is evidence in the Affidavit by the Applicant that a number of purchases vide invoices referred to personal expenses paid from the Estate for the Defendant, Estate vehicles not being used by beneficiaries with unnecessary expenses arising for upgrade from Estate funds, personal bills of the Defendant paid from the Estate funds which is unwarranted.
34. Attached to the Affidavit were pictures and invoices of the usage of the unauthorized use of Estate Funds. There were allegations of transfer of the

ownership of the motor vehicles to the Respondents name. This is admitted in writing.

35. The Respondent in his affidavit denied breaching his duty of care as the Trustee. He gave a thorough explanation as to the distribution of cash to the Applicant as well as to the daughter of the deceased amounting to \$220,697.76 to the two daughters and #30,348.88 to himself for his share. He also transferred \$60,000 in addition to \$30,000 as the shares paid to the Applicant who then bought a motor vehicle for \$70,000 registered under the wives' name.
36. He also appended the two estate properties consisting of flats and shops as per the deposit slips with a closing balance of \$41, 259.43. He also appended bank statements of the proceeds from the Estate of the Deceased and deposits from the commercial rental incomes.
37. The motor vehicles were transferred to him on trust for maintenance and repairs of works relating to the estates including the cane farms.
38. The last will also allowed him to pay for incident expenses arising from administering the Estate of deceased.
39. Having considered both the Affidavits, the Court is satisfied that there is lack of transparent accountability from the Respondent as to the income and expenses of the Estate including the usage of the Estate dues.
40. This can be properly ameliorated by the Trustee in providing proper Accounts of the Estate and its usage.
41. The Will also requires that the remainder of the Estate be devolved as residuary to the three beneficiaries which also means that the remaining properties are contingent interest in the remainder.
42. The Concern of the beneficiaries is that the properties may be all transferred to the Respondent not only as Trustee as direct beneficiary, contrary to the intention of the Will.
43. Therefore it is incumbent on the Trustee and Executor to properly devolve of the property.
44. Given that there are concerns that the property of the Trustee and Executor has been renovated and repaired from trust funds, this has not been properly proven by the Applicants. I am aware that in 2022 a sum of \$30,000 was also divided for the benefit of the Respondent so the monies may have also been paid by him.

45. However he does not deny that he used the funds/income from the Estate to assist in the repairs and renovation of his personal property as well as to pay for bills.
46. The Court finds that this is bordering on misconduct and properly proven on a balance of probabilities by the Applicants.
47. It is on this basis that the Court will therefore make orders for the appointment of an additional Executor and Trustee, Mr. Ashwin Nair to be the second Executor and Trustee in order to ensure that the Funds of the Estate and its Assets are properly administered.
48. However the Court will not remove the Respondent, as he has not, apart from use of the Estate Funds without approval of beneficiaries which was his misconduct, acted seriously and grossly contrary to his duties in the Will.

Orders of the Court

49. The Court orders:
 - (i) **That the Applicant, Ashwin Nair be appointed as an additional Trustee and Executor to the Estate of Shiri Ramlu aka Siri Ramlu for Probate Number 70901 granted on 31 January 2023;**
 - (ii) **That the Respondent namely Rohit Rajendran Nair remain as the Trustee and Executor of the Estate of Shiri Ramlu aka Siri Ramlu for Probate Number 70901 granted on 31 January 2023;**
 - (iii) **That the Grant of Probate in the Estate of Shiri Ramlu aka Siri Ramlu be granted to Amrit Arvindran Nair together with Rohit Rajendran Nair;**
 - (iv) **Sureties under section 20 of the Succession, Probate and Administration Act be dispensed with;**
 - (v) **That the said Grants and the Records be noted to this effect;**
 - (vi) **That the Defendant and Applicant equally pay for the costs of the application.**



A handwritten signature in black ink, appearing to be "Mrs SLTT W Levaci". The signature is written over a horizontal dotted line.

Mrs SLTT W Levaci
Acting Puisne Judge

15.01.24