

IN THE HIGH COURT AT SUVA
CENTRAL DIVISION
CIVIL (PROBATE) JURISDICTION

HPP No.11 of 2024

IN THE ESTATE OF LOSENA
TINAIROGOSAU SUVENAIKA aka
LOSENA TINAIROGOSAU late of Lot 10,
Tacirua Road, Stage 1, Suva in the Republic
of Fiji, Self Employed.

APPLICANT: **WAISAKE NUKUDUA KALOULIA** of Naibulini, Wainibuka,
Tailevu in the Republic of the Fiji Islands, Self-Employed, as
Applicant.

Date of Hearing : **11th March 2024**
For the Applicant : **Mr Toga. S**
Date of Decision : **17th April 2024**
Before : **Waqainabete-Levaci, SLTT, Judge**

JUDGEMENT

(APPLICATION BY EX-PARTE NOTICE OF MOTION FOR CORRECTION OF NAMES IN THE
SEALED LETTERS OF ADMINISTRATION NO. 69881)

PART A: BACKGROUND

1. The Plaintiff has filed an application seeking ORDERS to add or amend the names of the deceased on the Letter of Administration No. 69881.
2. This Application is made pursuant to Order 8 rule 2 of the High Court Rules.

PART B: AFFIDAVITS

3. In the Affidavit in Support, the Applicant was appointed as the Administrator in a grant of Letters of Administration No. 69881 for the deceased namely **LOSENA TINAIROGOSAU SUVENIKA aka LOSENA TINAIROGOSAU**.

4. The Applicant deposes that the deceased had additional names in her Westpac Bank Account which was not included in the deceased name on the Application for Letters of Administration. When Letters of Administration was granted, the names **LOSENA TINAIROGOSAU KALOULIA aka LOSENA KALOULIA** was not included.
5. The Applicant seeks for the Letters of Administration No 69881 be corrected on this basis.

PART C: SUBMISSIONS BY THE PARTIES

6. The submission by the Counsel is that a Letters of Administration granted by the Court does not contain the correct names relied upon by the Plaintiff.

PART D: LAW REGARDING CORRECTIONS OF LETTERS OF ADMINISTRATION GRANTED AND SEALED

7. The Counsel has relied upon Order 8 of the High Court Rules pertaining to originating Motions. Order 8 procedurally dictates how an originating motion should be filed and serve and no more than that.
8. Section 7 of the Succession, Probate and Wills Act empowers the Court to grant Letters of Administration to the following:

“Persons entitled to grant

7. The court may grant administration of the estate of a person dying intestate to the following persons (separately or conjointly) being not less than 21 years of age-

(a) the husband or wife of the deceased; or

(b) if there is no husband or wife, to one or more of the next of kin in order of priority of entitlement under this Act in the distribution of the estate of the deceased; or

(c) any other person, whether a creditor or not, if there is no person entitled to a grant under paragraphs (a) and (b) resident within the jurisdiction and fit to be so entrusted, or if the person entitled as aforesaid fails, when duly cited, to appear and apply for administration.”

9. On granting of the Letters of Administration, section 9 of the Succession, Probate and Wills Act provides all properties vested on the deceased or entitled to by the deceased shall pass and vest upon the Administrator. The provision states that:

“Upon grant of probate or administration property to vest

9. Upon the grant of probate or administration, all property of which a deceased person dies possessed, or entitled to, in Fiji shall, as from the death of such person, pass to and become vested in the executor to whom probate has been granted, or administrator for all the estate and interest of the deceased therein, in the manner following, that is to say-

(a) on testacy or on partial intestacy, in the executor or administrator with the will annexed; and

(b) on intestacy, in the administrator.”

10. Therefore, in this application, the applicant who is also the Administrator, has sort to administer the monies in the bank account held by the deceased. Unfortunately the bank account stipulates the names **LOSENA TINAIGROGOSAU KALOULIA aka LOSENA KALOULIA** which was not included in the Application for Letters of Administration initially nor in the Letters of Administration which was granted and sealed by the Court.
11. In an application for Letters of Administration or Probate, the procedure requires that the application be advertised in widely publicized newspapers or gazettes in order to ensure that families, friends and business partners as well as creditors and debtors are aware of demise of the deceased as well as the pending Application on his or her Estate.
12. The advertisement also provides a requisite time period for which creditors and debtors may come forward and formally notify the Applicants of the pending debts owing or owed to the Estate.
13. Hence when the Application is therefore advertised, the name of the Estate is advertised with it as well.
14. In this instance, the names advertised, did not include the names for which the Applicant is seeking correction in the Letters of Administration already granted and sealed.
15. Therefore the Court will not properly administer justice if the Letters of Administration orders granted were corrected by way of an underslip rule as the error was in the Application itself.

16. Furthermore, there may be members of the public can be given the opportunity to prove the debt owing by them or to them if the names in the Estate of the deceased which was not advertised is now included in the advertisement.
17. It is therefore on this note that the Court will exercise its powers under the Succession Probate and Wills Act to revoke the Letters of Administration issued and require the Applicant to re-apply.
18. In this way, when all procedures are properly complied with and the Applicant is allowed to rectify their mistakes.

Costs

19. That costs be borne by parties.

Orders of the Court:

20. *(a) That the Court revokes the Letters of Administration No. 69881;*
(b) The Applicant is at liberty to re-apply;
(c) Costs be borne by parties.

The seal of the High Court of Fiji is circular, featuring a central emblem with a crown and two figures, surrounded by the text "HIGH COURT OF FIJI" and "SUVA".
A handwritten signature in black ink, appearing to be "Mrs Senileba LTT Waqainabete-Levaci", is written over a dotted line.
Mrs Senileba LTT Waqainabete-Levaci
Judge