

IN THE HIGH COURT IN FIJI AT SUVA
CENTRAL DIVISION
CIVIL JURISDICTION

Civil Action No.: HPP No. 24 of 2024

IN THE ESTATE OF UDAY RAJ aka
UDAYRAJ late of Lovu, in the district of
Lautoka in the Republic of Fiji, Driver,
Deceased, Testate.

And

IN THE MATTER of an application by
BASANT RAJ of Lovu, Lautoka, Driver as
the Applicant.

JUDGEMENT
(EX-PARTE APPLICATION FOR AN ORDER TO PROVE A WILL)

Date of Hearing : 2nd day of May 2024
For the Applicant : Ms Henao. G

Date of Decision : 2 May 2024
Before : Waqainabete - Levaci, SLTT Puisne Judge

PART A - BACKGROUND

1. The Applicant is seeking Leave of the Court, by way of ex parte Summons, to admit a copy of the Will.
2. The Orders sort by the Applicant is as follows:
 1. "The Photocopy of the deceased last Will and Testament dated 11th April 1994 be admitted to prove as therein contained and the said indented

Administrator be permitted to make an application for Grant of Probate on the said Photocopy Will.

2. Such further or other relief this Honorable Court deems just and equitable in the circumstances.”

PART B: APPLICATION FOR ADMISSION OF COPY OF WILL

3. In the Affidavit of the Applicant, he deposes he is the biological son of the Deceased and a beneficiary in the Will together with his two sisters, Indra Bai and Saroj Lata.
4. His late father made a will on 11th day of April 1994 appointing his mother, Tarawati as his sole Executrix and Trustee of the Estate to be devised and bequeathed to her during her lifetime and thereafter to the Applicant absolutely.
5. There has not been any further codicils after this first will. The First Will cannot be found or located and therefore the Applicants is seeking that leave be granted to admit the copy of the Will by the Applicant.
6. The Applicant deposes that the copy of the will was obtained from a Will that was duly executed by the Testate in the presence of the two witnesses and was never destroyed, defaced or marked so as to render it destroyed.

PART C: LAW ON ADMISSION OF COPIES OF WILLS AND ANALYSIS

7. Order 1 Rule 11 of the High Court Rules empowers the Court to:

“**Non-Contentious Probate Rules** (O.1, r.11)

11. The Rules for the time being in force in Her Majesty’s High Court of Justice in England, and in the practice and procedure of that Court with respect of non-contentious probate business shall apply so far as they are applicable, with such modifications as may be necessary, to grants of probate and administration issued in common form from the Registry of the High Court.”

8. Order 53 of the Non-Contentious Probate Rules 1954 provides as follows-

“53.- (1) An application for an order admitting to proof a nuncupative will, or a will contained in a copy, a completed draft, a reconstruction or other evidence of its

contents where the original will is not available, may be made to the court on motion or to a registrar of the principal registry:

Provided that where a will is not available owing to its being retained in the custody of a foreign court or official, a duly authenticated copy of the will may be admitted to proof without any such order as aforesaid.

(2) The application shall be supported by an affidavit setting out the grounds of the application and by such evidences on affidavit as the applicant can adduce as to-

- (a) The due execution of the will;
- (b) Its existence after the death of the testator;
- (c) The accuracy of the copy or other evidence of the contents of the will,

Together with any consents in writing to the application given by any persons not under disability who would be prejudiced by the grant.”

9. In this application, the Applicant is seeking for the copy of the Will to be admitted. In their Affidavit the deponent confirms the signature of the Will was signed in front of two witnesses.
10. He also confirms that the Will has not been replaced or revoked by another Will and is the authenticated original Will of the Testator. The Applicant has annexed searches conducted with the High Court Registry for Probate purposes. The probate searches also confirms that there are no records of the said will registered.
11. There is evidences by way of Statutory Declaration that both the other beneficiaries have consented to and do not contest the Copy of the Will admitted as proved.
12. On this basis the Court finds that the Applicant has proven the conditions for admission of the Copy of the Will.
13. The Court will grant Order in Terms of the Application.


Orders of the Court:

14. The Court orders as follows:

(a) The court grants the application to Admit the Copy of the Will of Uday Raj.

(b) No Order as to costs.




Mrs Senileba LTT Waqainabete- Levaci

Puisne Judge