

IN THE HIGH COURT OF FIJI
AT SUVA
PROBATE JURISDICTION

Civil Action No. HPP 78 of 2023

**IN THE ESTATE OF KELEVI MAWI aka
KELEPI MAWI KORODRAU** of Nadali,
deceased, Testate.

AND

IN THE MATTER of an application for Removal
of Executor pursuant to Order 85 Rule 2 and
Rule 4 of the High Court Rules 1988.

AND

IN THE MATTER pursuant to Section 73 of the
Trustee Act 1966.

BETWEEN: **RO QIQI TUICAUMIA KORODRAU** also known as **RO QIQI TUICOLO
KORODRAU** also known as **ROQIQI TUICOLO KORODRAU** beneficiary of
the Estate of **KELEVI MAWI** aka **KELEVI MAWI KORODRAU** of Nadali,
Nausori, Businessman.

PLAINTIFF

AND: **FIJI PUBLIC TRUSTEE CORPORATION PTE LTD** of Public Trustee
House, 83 Amy Street, Toorak, Suva.

DEFENDANT

BEFORE: **Hon. Mr Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Kumar S.** for the Plaintiff
Ms. Silatolu L. for the Defendant

Date of Judgment: 17th June, 2024

JUDGMENT

[Removal and appointment of Executor/ Trustee, and Account of Deceased's Estate]

Introduction

1. The Plaintiff filed Originating Summons and sought for the following orders:
 - (i) **An Order** that the Public Trustee Corporation Ltd be removed as the Executor and Trustee of the **ESTATE OF KELEVI MAWI** aka **KELEPI MAWI KORODRAU** of Nadali, deceased, Testate.
 - (ii) **An Order** that **RO QIQI TUCAUMIA KORODRAU** aka **RO QIQI TUICOLO KORODRAU** aka **ROQIQI TUICOLO KORODRAU** beneficiary of the Estate of **KELEVU MAWI** aka **KELEPI MAWI KORODRAU** of Nadali, Nausori, businessman be appointed as an Administrator to Administer and Execute the **ESTATE OF KELEVI MAWI** aka **KELEPI MAWI KORODRAU** of Nadali, deceased, Testate.
 - (iii) **An Order** that the Defendant pays the Plaintiff all and/or any monies held under the said Administration.
 - (iv) **An Order** that the Defendant furnishes the Plaintiff with proper and complete accounts relating to the administration the **ESTATE OF KELEVI MAWI** aka **KELEPI MAWI KORODRAU** of Nadali, deceased, Testate.
 - (v) **That** this action shall continue if there is a serious dispute of facts, as if it was commenced by way of Writ of Summons as per Order 28 Rule 9 of the High Court Rules 1988.
 - (vi) **That** such further or other relief as seems just and equitable by this Honorable Court.
 - (vii) **That** Costs of this action on Solicitor - Client basis.
2. The Defendant filed an affidavit in opposition deposed by Salaseini Drekeni in her capacity as the Manager Estate and Trust.
3. A response Affidavit was filed to the Defendant's opposition by the Plaintiff on 08th April 2024.

Background

4. The deceased took demise on 20th May 1999.
5. The Defendant filed an application for a Probate Grant on 06th November 2008; after a delay of about 09 - 10 years.
6. The Defendant's delay and in action caused the distribution and disposition of the Deceased's Estate in terms of the Asset and the Deceased Will.

7. 25 years after demise of the Deceased, that still it shows that the Defendant [Fiji Public Trustee Corporation Pte Limited] had not taken any positive action to discharge their duties to administer the Deceased's estate for its disposition according to the Deceased's will.
8. Now the Plaintiff in his capacity as one of the beneficiaries of the Deceased's Will and estate is making an application for removal of the Defendant, Fiji Public Trustee Corporation Pte Limited as the appointed Executor/ Trustee of the Deceased's Will.

Determination

9. The Deceased, Kelepi Mawi Korodrau executed his Will on 02nd November 1983 appointing the Defendant, Fiji Public Trustee Corporation Pte Limited as the Executor/Trustee of his Will.
10. The Deceased bequeath his Estate/Assets to his three (3) sons as beneficiaries' of his Will namely; Ratu Lenaitasi Korodrau, Ratu Tereteresoba Korodrau and Ro Qiqi Tuicaumia Korodrau accordingly.
11. The Deceased directed the Executor/Trustee [Fiji Public Trustee Corporation Pte Limited] to transfer his house erected at Nabuli, Noco Rewa onto his son the Plaintiff, Ro Qiqi Tuicaumia Korodrau.
12. Further, if his son Ratu Lenaitasi Korodrau predeceases him, then the Deceased directed the Executor/Trustee [Fiji Public Trustee Corporation Pte Limited] to transfer his interest in Native Lease No. 14644 and all the rest/residue and remainder of his Estate onto his sons, Ratu Tereteresoba Korodrau and the Plaintiff Ro Qiqi Tuicaumia Korodrau in equal shares, share and shares alike accordingly.
13. The Defendant in their capacity as the appointed Executor/ Trustee of the Deceased's Will advertised and lodged an application for a grant of Probate on 06th November, 2008. However, there was a caveat in place no. 38 of 2008 which obstructed the Issuance of grant of Probate to the Defendant [Fiji Public Trustee Corporation Pte Limited].
14. It is noted that the Plaintiff in the Current action also filed an application for a Letters of Administration Grant in the Deceased's Estate.
15. Both applications were heard as a consolidated application for Grants and was struck out. The file was closed on 30th July 2010.
16. This meant that No Grants were issued either to the appointed Defendant, as the Executor/ Trustee and/or to the Plaintiff, Ro Qiqi Tuicaumia Korodrau.
17. Therefore, it can now be ascertained that there are no impending application seeking for Grants in the Deceased's Estate in order to Administer the Deceased's Estate and carry out its disposition in terms of the Deceased's Will executed on 02nd November 1983.

In Conclusion

18. Taking into consideration that the Deceased took demised on 20th May 1999, Executed a Will on 02nd November 1983, the Defendant, Fiji Public Trustee Corporation Pte Limited filing an application for Probate Grant on 06th November 2008, after a lengthy delay of 9 - 10 years and not taking any further steps to seek Removal of the Caveat No. 38 of 2008 so that the Court could then after removal of the Caveat in place proceed to process the Grant of Probate to the Defendant, it shows and is obvious that the Defendant did not take any active part in their capacity as the appointed Executor/ Trustee of the Deceased's Will to carry out all the necessities and exhaust all avenues in order to succeed in grant of Probate and administer the Deceased's Estate to its final disposition accordingly.
19. That being the case, it is only appropriate now that I proceed to accede to and grant the Respective Orders sought by the Plaintiff in its Originating Summons of 12th September 2023 accordingly.
20. The beneficiaries including the Plaintiff should not be deprived of their Right and Entitlement to the beneficial interest of the Deceased Estate. In terms of the Deceased Will and must fully be allowed to enjoy the fruits of their right and entitlement to the Assets therein.

Costs

21. The matter proceeded to full hearing and Parties to the proceedings raised legal submission and orals arguments. It is only just and fair that I accede to grant the Plaintiff a summarily assessed costs of \$2,000 to be paid within 14 days timeframe.
22. Following are the orders of this Court.

Orders

- (i) The Public Trustee Corporation Ltd is now removed as the Executor and Trustee of the **ESTATE OF KELEVI MAWI** aka **KELEPI MAWI KORODRAU** of Nadali, deceased, Testate.
- (ii) The Plaintiff **RO QIQI TUCAUMIA KORODRAU** aka **RO QIQI TUICOLO KORODRAU** aka **ROQIQI TUICOLO KORODRAU** beneficiary of the Estate of **KELEVI MAWI** aka **KELEPI MAWI KORODRAU** of Nadali, Nausori, businessman is appointed as the Administrator to Administer the Deceased's **ESTATE OF KELEVI MAWI** aka **KELEPI MAWI KORODRAU** of Nadali, deceased, Testate and seek an order for a Letters of Administration grant accordingly.
- (iii) The Defendant is hereby ordered to pay the Plaintiff all and/or any monies held under the said Administration by the Defendant, Fiji Public Trustee Corporation Pte Limited.
- (iv) The Defendant to furnish the Plaintiff with proper and complete accounts relating to the administration the **ESTATE OF KELEVI MAWI** aka **KELEPI MAWI KORODRAU**

of Nadali, deceased, Testate.

- (v) That the Defendant is ordered to pay the Plaintiff a summarily assessed costs of \$2,000 within 14 days timeframe.

Dated at Suva this 17th day of June ,2024.



VISHWA DATT SHARMA
PUISNE JUDGE

Cc: *SUNIL KUMAR ESQUIRE, NAUSORI*
FIJI PUBLIC TRSUTEE CORPORTAION PTE LIMITED, SUVA