

IN THE HIGH COURT OF FIJI
AT SUVA
PROBATE JURISDICTION

Civil Action No. HPP 46 of 2018

IN THE ESTATE OF LITIA VOCEA TAOI,
late of 144 Lakeba Street, Suva, Domestic
Duties, Testate.

BETWEEN: **MAKERETA WAQA USUMAKI TAOI** of 144 Lakeba Street, Samabula,
Suva.

FIRST PLAINTIFF

AND: **INTENDED ADMINISTRATOR FOR THE ESTATE OF JOSAI**
USUMAKI TAOI late of 144 Lakeba Street, Samabula, Suva, Deceased.

SECOND PLAINTIFF

AND: **THE ESTATE OF LITIA VOCEA TAOI** late of 144 Lakeba Street,
Samabula, Suva, Deceased.

FIRST DEFENDANT

AND: **NAOMI FINAU VAKACEGU** of Togalevu, Lami, Housekeeping the
purported Executor and Trustee for the Estate of Litia Vocea Taoi, late
of 144 Lakeba Street, Samabula, Suva, Deceased.

SECOND DEFENDANT

AND: **MEREWALESI TAOI** of Wailea, Vatuwaqa, Domestic duties, the
purported Executor and Trustee of the Estate of Litia Vocea Taoi, late of
144 Lakeba Street, Samabula, Suva, Deceased.

THIRD DEFENDANT

AND: **MEREYANI BATI** of Lakeba Street, Samabula, domestic duties, the purported Executor and Trustee of the Estate of Litia Vocea Taoi, late of 144 Lakeba Street, Samabula, Suva, Deceased.

FOURTH DEFENDANT

AND: **DIRECTOR OF LANDS.**

FIFTH DEFENDANT

AND: **THE ATTORNEY GENERAL.**

SIXTH DEFENDANT

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

COUNSEL: **Ms. Vaurasi L.** for the 1st and 2nd Plaintiff
Ms. Tikoisuva N. for the 1st - 4th Defendants
Mr. Singh P. for the 5th & 6th Defendants [nominal Defendants]

Date of Judgment: **18th July, 2024**

JUDGMENT

[Pronouncement against and for the Deceased's Wills]

Introduction

1. In the Plaintiff's Statement of Claim filed on 03rd July 2018, subsequently amended Statement of Claim filed on 17/03/2022, the Plaintiff's sought relief from this Court as follows:
 - (i) There be a Declaration that the Plaintiffs have an equitable right through proprietary estoppel over the property at 144 Lakeba Street, Samabula in the Republic of Fiji, L.D. Ref No 4/16/5907, Lease Number 8818 containing an area of 374m² in the Province of Rewa, District of Suva, and the said property be transferred to the Plaintiffs free of encumbrances;
 - (ii) There be a Declaration that the Plaintiffs are entitled to obtain the consent of the Director of Lands to a transfer of the property at 144 Lakeba Street, Samabula in the Republic of Fiji, L.D. Ref No. 4/16/5907, Lease Number 8818 containing an area of 374m² in the Province of Rewa, District of Suva.
 - (iii) That the Chief Registrar of the High Court of Fiji is to sign the documents on behalf of the deceased to facilitate the transfer of the property at 144 Lakeba Street, Samabula in the Republic of Fiji, L. D. Ref No. 4/16/5907, Lease Number 8818 containing an area of 374m² in the Province of Rewa, District of Suva.
 - (iv) Alternatively, Restitution for the Plaintiffs from the first to fourth Defendants for their financial and non-financial contributions made towards the development and maintenance of the property for a period of more than 20 years.
 - (v) That the Court to pronounce against Contested Will Number 8718 of the Deceased that was registered with the High Court Registry, and an Order any Grant of Probate made pursuant to the said Contested will be declared null, void and revoked.
 - (vi) That the Court to pronounce the validity of the First Will dated 20th March 2012 and the Plaintiff be granted Probate under the Last Will and testament of the late Litia Vocea Taoi registered with the High Court on 20 March 2012 the First Will.
 - (vii) Costs against the first-fourth Defendants.
 - (viii) Other orders as may seem just to this Honorable Court.
2. In short substantively, the Plaintiffs are asking in the form of a pronouncement against the Will No. 8718 purported to have been executed by the deceased on 30th December 2015; and pronouncement of the validity of the Will executed by the Deceased on 28th March 2012 accordingly.

3. **On the grounds:**
- (1) Of proprietary estoppel;
 - (2) Obtaining the alleged Will by undue influence;
 - (3) Deceased was of unsound mind, memory or, understanding when allegedly signed the alleged Will; and
 - (4) Unjust enrichment.

The Statement of Defence:

4. The 2nd, 3rd and 4th Defendant filed their Amended Statement of Defence on 19th April 2022 and pleaded in summary that the 1st named Plaintiff is in law and was only married to Defendant's biological brother. Her intentions to claim the property and dismiss the legitimate entitlements of the Defendants is a reflection of the Plaintiff's ulterior motive and selfishness which is unjust to the Defendants.
5. Further, the property is always full as each family is aware of the existence of a family home, where each bona fide member are entitled to voice their opinion and live freely without any fear of victimization or allegation. All the children, inclusive of the Plaintiffs are entitled to live off the property.
6. The case proceeded to trial wherein the Plaintiffs called 4 witnesses to testify in the proceedings whilst the Defendants called 2 witnesses.

Determination

7. There are two (2) Wills in Contention allegedly executed by the Deceased, Litia Vocea Taoi which are as follows: -
 - (a) Will dated 28th March 2012 appointing her daughter in law, **Makereta Waqa Usumaki [First Plaintiff] as the Executrix/Trustee**, and
 - (b) **Will dated 30th December 2015 appointing all of her daughters, Naomi Finau Vakacegu, Merewalesi Taoi, Mereyani Bativerega Taoi Coka, Bui Talebulamaijana Taoi and Sovei Yalewavuku Ericson as executor (ix) /Trustee of the deceased's Estate.**
8. Will dated 28th March 2012 is endorsed with the signature of the Deceased/ Testatrix whilst Will dated 30th December 2015 has the Deceased's Thumb print impressed therein.
9. **The 1st Will of 28th March 2012 benefitted the First Plaintiff and her children whilst the 2nd Will benefitted the 2nd to the 4th Defendants and their children.**
10. The Defendants deny that the deceased will dated 28th March 2012 was the last will of the deceased. However, the will deposed by the deceased on 30th December 2015 before Vakaloloma and Associates was the last will of the deceased
11. The Substantive issues for this Court to deliberate and determine upon are:

- (i) Whether the Court to pronounce against the contested Will No 8718 Executed on 30th December 2015, and a further order to any grant of Probate made pursuant to the said contested Will be declared as null and Void and revoked?; and
 - (ii) Whether to pronounce the validity of the Will dated 28th March 2012 and the Plaintiff's be granted Probate Grant under the Will of the late Litia Vocea Taoi registered with the High Court on 20th March 2012; the First Will?
12. If this Court finds and pronounces that the Deceased's Will Executed and dated on 28th March 2012 be accorded the validity in its form, than a Grant of Probate be issued in favour of the Plaintiff, **Makereta Waqa Usumaki Taoi**.
13. Further, it will follow if that is the case herein that the Will dated 30th December 2015 to be invalid then and revoked and Probate Granted to the 1st to 4th Defendants vide grant No. 61438 of 15th March 2018 with the Will intact to be revoked accordingly.
14. It is for the 1st to 4th Defendants to show and satisfy to this Court that the Will executed and dated on 30th December 2015 was validly made to them and hence executed by the Deceased, Litia Vocea Taoi accordingly.
15. The Amended **Pre Trial Conference Minutes** raises the following issues to be deliberated upon and determined in terms of the evidence before this Honorable Court:
 - i) *First Cause of Action*
First Issue: Proprietary estoppel
 - ii) *Second Cause of Action*
Second Issue: Whether the Will was duly Executed
 - iii) *Third Cause of Action*
Third Issue: Defendants obtained the Alleged Will by vulnerability and Undue Influence
 - iv) *Fourth Cause of Action*
Fourth Issue: Deceased was of unsound mind, memory or understanding when allegedly signing the Alleged Will.
 - v) *Fifth Cause of Action*
Fifth Issue: Unjust Enrichment
16. I will deal and deliberate with the above Cause(s) of Action coupled with the issues in the Amended Pre Trial Conference Minutes in order of my priority as follows:

Undue influence and unsound mind, memory or understanding when allegedly signing the alleged Will dated 30th December 2015. [Fourth Cause of Action]

17. The Plaintiff raised that, the second, third and fourth Defendants had obtained the second

purported Will dated 30th December 2015 by **undue influence**.

18. What constitutes undue influence is defined at p697 of **Tristram and Cootes** as follows:

'To be influence, there must be coercion (Wingrove v Wingrove (1885) 11 PD 81); of fraud ((Boyce v Rossborough (1857) 6HLC at P45; Williams v Gaude (1828) 1 Hagg at p.581); a testator may be led but not driven; his Will must be the offspring of his own volition and not the record of someone else's (Hall v Hall (1868) 1 P & D 481).

19. Further, the Plaintiff had raised the **Deceased's mental and physical condition arguing that the Deceased lacked the Testamentary capacity to make the second subsequent Will dated 30th December 2015**.

20. The term testamentary capacity to make the subsequent second Will is defined in **Tristram and Cootes's Probate Practice, 22nd ed, p695** thus:

"The Testator must understand the Nature of the act and its effects; the extent of the property of which he is disposing; The claims to which he ought to give effect; and with a view to the letter object, no disorder of the mind must poison his affections; pervert his sense of right, or prevent the exercise of his natural facilities, and so insane delusion must influence his Will in disposing of his property, and bring about a disposal of it which if the mind has been sound, would not have been made."

21. Such a condition may arise from old age or illness at the time of the allegedly making of the second subsequent Will dated 30th December 2015, the deceased was about 83 years old. In 2012 she was about 80 years old.

22. The Plaintiff's position is that the Deceased was of ill health, bed ridden and vulnerable and the Will allegedly signed on 30th December 2015 was as a result of the influence of the first, second and third Defendants.

23. The Agreed facts at paragraph 5 and 8 of the Amended Pre-Trial Conference Minutes, as paraphrased hereunder confirms that:

'5'. The First Plaintiff, her Late husband and their children lived with the Deceased at the property at 144 Lakeba Street, Samabula in the Republic of Fiji, L.D. Ref No. 4/16/5907, Lease Number 8818 containing an area of 374m² in the Province of Rewa, District of Suva and taken care of the Deceased for about 20 years.

8. The Deceased was weak and needed constant care due to her health and old age."

24. The Deceased [Litia Vocea Taoi] according to [DW1] Naomi Finau Vakacegu was 88 years old when she executed the subsequent second Will dated 30th December 2015. She told Court that Litia Taoi could hardly speak, and was not highly depended on caregivers. She saw Litia Taoi impress her Thumb print on the said Will. Her sister Sereci was facilitating

the signing process and Vakaloloma (Lawyer) asked her to assist. She told Court that she did not influence Litia Taoi to sign this Will.

25. The Deceased was elderly and her physical capacity declined over the years that made her dependent onto others. She was cared for by the First Plaintiff [Makereta Taoi] and her family for over twenty [20] years or so. However, as she got of old age, the second, third and fourth Defendants forcefully took over the care of the Deceased in order to ensure that the Deceased became heavily dependent onto the second, third and fourth Defendants support and further exacerbated by the Defendant's isolating the Deceased from the other members of the family by causing frictions at the said property at 144 Lakeba Street and trying to forcefully remove the First Plaintiff and her family members from the said property.
26. The Deceased at that old age of 88 years or so had her health further deteriorating and spent her days in bed.
27. (PW2) Poonam Ranjita Pal, a Registered zone nurse had care of and checked the deceased [Litia Taoi] on her health condition three times a month with another Nurse since 2013 - 2016. She was bed ridden for 8 years, had some ability to communicate. Exhibit 23 reads: "bed ridden for 8 years. Renal impairment - Kidney not functioning. Swelling on left leg. Sought assistance."
28. She told Court that the Deceased slowed down and not very responsive in 2015-2016, Deceased's hand needed assistance to be lifted up. She was depended on cares, will general be sleeping, she was quite withdrawn.
29. The second, third and fourth Defendants taking over care and control of the Deceased made visiting of the deceased difficult and even impossible, and refused the Plaintiff and her family from visiting, talking, seeing and kept others isolated from the Deceased.
30. Whenever, the first Plaintiff and/or her daughter would attempt to visit the deceased, the second, third and fourth Defendants would verbally taunt and utter threatening and vulgar words at them and attempt to stop and obstruct any visitation of the Deceased.
31. Considering the given deteriorating health and physical condition of the deceased, it can be concluded that she would not be in a position to sign any documents as is evidence in the Domestic Violence Restraining Order [DVRO] Application in 2016, when the Deceased allegedly put and or impressed her thumbprint other than her usual signature as is evidence in her 28th March 2012 Will tendered into Court as Exhibit.
32. Shortly before the Death of the Deceased, when the second, third and fourth Defendants were in a position of power over the Deceased, caused to have a new Will drafted dated 30th December 2015, and allegedly lifting the deceased's hand and had her thumb print impressed on the said Will dated 30th December 2015.
33. By reason of the matters aforesaid, I find that the alleged Will No. 8718 dated 30th December 2015 of the Deceased was obtained by the second, third and fourth Defendants

by undue influence and executed at the very time when the Deceased was not in such a condition of mind and memory as to be unable to understand the nature of the act and its effect or the extent of the property of which she was disposing and/or to comprehend and appreciate the claims to which the Deceased ought to give effect to.

Will dated 30th December 2015 not duly executed?

34. While the overall burden of providing a Will lies on those who propound it, such burden is, in general, discharged by showing that **the Will was duly executed** and that the Testator had testamentary capacity (Williams & Mortimer or Executors; Administrators and Probate, 1970 ed, ch 17, pp 161 - 2).
35. The deteriorating health condition of the deceased coupled with the fact that she was about 88 years old and bed ridden in 2013 at the alleged signing [thumbprint] of the Will by her dated 30th December 2015, is evident, sufficient to ascertain that the deceased did not have the testamentary capacity and understanding as to what she was doing.
36. It will be noted that the alleged First Will dated 28th March 2012 has the signature whilst the subsequent said Will dated 30th December 2015 has a Thumb Print Impression. The DVRO application by the Deceased is not signed rather a thumb print impression appears to confirm that the deceased was not in a position to sign the DVRO application then.
37. (PW4) Elenoa Liku Usumaki told Court in her evidence that the Thumb print of the deceased in the Will of 30th December 2015 was impressed by the deceased because her hand was stiff and she was fed and she could not even hold a spoon to feed herself or pen to write. We will assist Litia Taoi [Deceased] to turn around in December 2015. Later part of 2015 and 2016, the Deceased could not hold a pen, her fingers were soar. When she sits on bed, she will raise her hand and do little but to exercise and give her hand to the nurse, reach out to the nurse.
38. It can also be ascertained from the evidence that the deceased hand was lifted by some of the family members in order to impress her thumb print on the 30th December 2015 alleged Will.
39. [DW2] Siteri Kubunavame remembered in her cross examination that her grandmother [Deceased] was crying and crawling on the floor in 2012 when the first, second and third defendants accused the deceased of her witch craft and destroyed her oil making utensils and burnt treasured Lagakali tree used in making her oils. Thus, evidence was also confirmed by second defendant Naomi Vakacegu. This incident led to the Deceased filing and seeking for DVRO protection against her daughters including the first, second and third defendants.
40. Hence, it can be concluded and it is my finding that the Will dated 30th December 2015 was not properly and duly executed in terms of section 6 of the Will's Act accordingly.

Proprietary Estoppel

41. Proprietary estoppel is a legal remedy that may be used in some circumstances to prevent a landowner who made a promise or statement to someone that part or all of the property would be transferred to them in the future, from later reneging in that promise.
42. For more than 20 years, the Plaintiff's renovated and maintained the Deceased's property with the understanding that the Deceased would transfer the property to them. Land rates was cleared by the Plaintiff's, dilapidated state of the said property was renovated and the Plaintiff's continued to maintain the property.
43. Upon reliance of the expectation, the first Plaintiff and her husband [Deceased's son] took immediate possession of the property and financially contributed major renovation works inside and outside.
44. The Deceased signed a transfer document in 1995 but settlement was rather incomplete.
45. The failure by the Deceased to complete the transfer is detrimental to the Plaintiff's and is rather unconscionable for the Deceased's Estate to renege of the Deceased's promise to the Plaintiff's to transfer the property to the Plaintiff.
46. That being the states of affairs, the evidence before this Court is determinative of the finding that the Plaintiffs have an equitable right over the said property bearing in mind the renovation, maintenance of the depleted state of the deceased's property and financial contributions made altogether including the payment of rate and continued maintenance of the said property.

Unjust Enrichment

47. This occurs when Party A confers a benefit upon party B without Party A receiving the property restitution required by law.
48. The Deceased's property transfer was initiated in 1995 by the Deceased Litia Taoi but the transfer remained incomplete.
49. The Deceased [Litia Taoi] promising the transfer of her property to the Plaintiff on the basis that the Plaintiff carry out all the renovation, maintenance of the depleted state of the property, paying the Land rates owing on the property at the expense of the Plaintiff's, and that in fact initiated a physical transfer of the property in 1995, although transfer could not be completed for one reason or the other is evident of the fact the Deceased Litia Taoi enriched herself on her promises made to the Plaintiff's accordingly.
50. On the other hand, if this Court allowed for one reason or the other the 30th December 2015 Will should stand having the Deceased's wished and intention expressed therein, then the first, second, third and fourth Defendants would be unjustly enriching themselves in acquiring the Assets and property of the Deceased, Litia Taoi.

51. However, this Court is mindful of the fact that the Plaintiff's evidence with regards to the influence of the first, second, third and fourth defendants onto the deceased had forcefully impressed her thumb print by uplifting the Deceased's hand and pressing the impression of the Deceased's thumb print. Thus, the intention and the wishes of the deceased in the Will dated 30th December 2015 was not of the deceased's own volition and or voluntarily made rather obtained by force when the Deceased was helpless at the very time.
52. This Court finds that the Deceased Litia Taoi in charge of her full mental faculties, must be pronounced to have intended of her own volition and free if any pressure and undue influence from others, not to include her daughters, the second, third and fourth Defendants Naomi Finau, Merewalesi Taoi and Mereyani Bati entitlement and share of her estate in her Will she executed in 28th March 2012.
53. On the other hand, I find that the Will dated 30th December 2015 [Will No. 8718] was allegedly made when the Deceased was not in charge of her full mental faculties, not presumed to have intended, of her own volition and free Will and pressure and under undue influence from others including the second, third and fourth defendants to include them into the shares and entitlements of her Assets and properties in the Will dated 28th March 2012.
54. I hold that the Deceased's Will dated 28th March 2012 is a valid Will and accordingly I pronounce its validity in its form and Order that a grant of Probate be issued and sealed upon lodgment of a formal application for a Grant of Probate in terms of succession, probate and Administration Act accordingly.
55. I pronounce against the contested Will No. 8718 of the Deceased that was registered with the High Court Probate Principal Registry for an order for a Grant of Probate made pursuant to the said contested Deceased's Will and is hereby declared Null and Void ab-initio and revoked accordingly.
56. I now proceed to grant the following declarations and orders as per items nos. (i), (ii), (iii), (v) and (vi) as sought for by the Plaintiff in his Amended Statement of Claim dated 17th March 2022 accordingly.

Costs

57. The substantive action proceeded to trial with parties to the proceedings calling witnesses to justify in the matter. Further, written submissions were filed and the trial took some time to be completed.
58. Bearing above in mind, I order the first, second, third and fourth defendants to pay a summarily assessed costs of \$3,000 to the first Plaintiff within 21 days timeframe.

Final Orders

- (i) Declaration that the Plaintiffs have an equitable right through proprietary estoppel over the property at 144 Lakeba Street, Samabula in the Republic of Fiji, L.D. Ref No 4/16/5907, Lease Number 8818 containing an area of 374m² in the Province of Rewa, District of Suva, and the said property be transferred to the Plaintiffs free of encumbrances;
- (ii) Declaration that the Plaintiffs are entitled to obtain the consent of the Director of Lands to a transfer of the property at 144 Lakeba Street, Samabula in the Republic of Fiji, L.D. Ref No. 4/16/5907, Lease Number 8818 containing an area of 374m² in the Province of Rewa, District of Suva.
- (iii) That the Chief Registrar of the High Court of Fiji is to sign the documents on behalf of the deceased to facilitate the transfer of the property at 144 Lakeba Street, Samabula in the Republic of Fiji, L. D. Ref No. 4/16/5907, Lease Number 8818 containing an area of 374m² in the Province of Rewa, District of Suva.
- (iv) That the Court pronounces against the Contested Will Number 8718 of the Deceased that was registered with the High Court Registry, and an Order any Grant of Probate made pursuant to the said Contested will is declared null and void ab-initio and revoked.
- (v) That the Court to pronounces the validity of the First Will dated 20th March 2012 and the Plaintiff is granted Probate under the Last Will and testament of the late Litia Vocea Taoi registered with the High Court on 20 March 2012, the First Will of the deceased.
- (vi) The first - fourth Defendants are ordered to pay a total summarily assessed costs of \$3,000 to be paid to the First Plaintiff within 21 days timeframe.

Dated at **Suva** this **18th** day of **July** ,2024.

 
VISHWA DATT SHARMA
PUISNE JUDGE

cc: **Shekinah Law, Suva**
Toganivalu Legal, Suva.