

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**PROBATE JURISDICTION**

Civil Action No. HPP 03 of 2023

In the Estate of **Rupeni Talakuli**  
No. 3 late of Eddie Wong Road,  
**Kashmir, Lautoka**, died Intestate.

**BETWEEN:**                   **MERI CAUCAUNITABUA** of Natabua Prison Compound, Lautoka,  
Housekeeper.

**PLAINTIFF/APPELLANT**

**AND:**                         **LITIANA NAQILAI** of Vuda Backroad, Lautoka, Domestic Duties.

**DEFENDANT/RESPONDENT**

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

**COUNSEL:**               **Ms. Raikaci N.** for the Plaintiff/Appellant  
**No Appearance** for the Defendant/Respondent

**Date of Judgment:**   **24<sup>th</sup> September, 2024 @ 9.30am**

**JUDGMENT**

**[Stay of Execution of Order granted on 05<sup>th</sup> October 2023 pending  
Appeal and Costs)**

On the outset, it will be noted that the Summons and the substantive Writ together with the Statement of Claim are almost seeking for the same and or duplication of orders that can be dealt together herein.

### Introduction

1. The **Plaintiff/Appellant, Meri Caucaunitabua** filed a summons on 17<sup>th</sup> November 2023 and sought for the following orders:
  - (a) That the orders granted on 05<sup>th</sup> October 2023 be stayed pending the final determination of the Appeal; AND
  - (b) That the costs of this Application be costs in the Appeal.
2. The Plaintiff/ Appellant relied on the Grounds reflected in the Affidavit in Support deposed on 16 November 2023.
3. The Summons is filed pursuant to *Order 45, rule 10 of the High Court Rules 1988* and inherent Jurisdiction of this Court.
4. The **Respondent, Litiana Naqilai** did not file any opposition to the Plaintiff/Appellant's Summons.
5. However, only the Plaintiff/Appellant filed her respective written submissions and argued the summons scheduled for hearing on 10 July 2024 for **Stay Pending Appeal**.
6. The Plaintiff's two (2) tier applications by filing a Summons coupled with an Affidavit in Support and the Substantive Amended Statement of Claim filed on 10 February 2023 sought for the following orders:
  - (i) The grant of Letters of Administration No. 70446 issued to the Defendant on 11 November 2022 be recalled and revoked;
  - (ii) The Plaintiff be issued with Letters of Administration in the Deceased estate of Rupeni Talakuli No. 3.
  - (iii) That processing of the Defendant's claim for compensation by the Accident Compensation Commission to be suspended forthwith pending the outcome of this action.
  - (iv) That the Plaintiff be paid the compensation for the fatal injuries sustained by the Deceased at his workplace by the Accident Compensation Commission.
  - (v) Any further order this Court may deem just under the circumstance; and
  - (vi) Costs.

7. Upon hearing the Plaintiff's aforesaid Summons, this Court determined that the **Summons** coupled with the Affidavit in Support and the **substantive Amended Statement of Claim** filed on 10 February 2023 are **both accordingly dismissed and the Plaintiff to pay the Defendant summarily assessed costs of \$800.**
8. Hence, the Plaintiff/Appellant is seeking for above '**Stay**' of orders granted on **05 October 2023 pending final determination of Appeal with costs.**

### The Law

9. *Order 45 Rule 10 of the High Court Rules 1988 provides:*

*Matters occurring after judgment: stay of execution, etc. (O.45, r.10)*

*10. Without prejudice to Order 47, rule 1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.*

10. Reference is made to the case(s) of:

**Natural Waters of Viti Ltd v Crystal Clear Mineral Water (Fiji) Ltd (2004) FJCA 10, New World Ltd v Vanualevu Hardware (Fiji) Ltd (2015) FJCA 172 and Stephen Patrick Ward v Yogesh Chandra, CBV 0010/2010, 20 April 2011.**

11. Above decisions deal with the application of well-established principles relating to the grant of '**Stay Orders**' within the context of this Court's undisputed jurisdiction.

### Determination

12. It is entirely a discretionary matter for the court whether to grant a stay or not. There are, however, two important matters which a Court would consider:

**Firstly**, the Court does not "make a practice of depriving a successful litigant of the fruits of his litigation,...pending an appeal" (**The Annot Lyle** (1886) 11 PD at p.116, CA).

**Secondly**, that "when a party is appealing, exercising his undoubted right of appeal, this Court ought to see that the appeal if successful, is not nugatory" (**Wilson v Church (No. 2)** (1879) 12 Ch. D at pp. 458, 459 CA).

On 'stay' in **Halsbury's Laws of England** Vol. 17 4<sup>th</sup> Ed. at page 455 it is stated:

*"The Court has an absolute and unfettered discretion as to the granting or refusing of a stay, and as to the terms upon which it will grant it, and will, as a rule, only grant a stay if there are special circumstances, which must be*

*deposed to in affidavit unless the application is made at the hearing ...."*

Further in 'staying proceedings' it is stated in **Wilson** (supra) at p. 454 -

*"Where an unsuccessful party is exercising an unrestricted right of appeal, it is the duty of the Court in ordinary cases to make such order for staying proceedings under the judgment appealed from as will prevent the appeal, if successful, from being nugatory. But the Court will not interfere if the appeal appears not to be bona fide, or there are other sufficient exceptional circumstances..."* (underlining mine).

On stay of execution pending appeal in **Linotype - Hell Finance Ltd v Baker** [1992] 4 All ER 887 C.A. it was held:

*"When an unsuccessful defendant seeks a stay of execution pending an appeal to the Court of Appeal, it is a legitimate ground for granting the application that the defendant is able to satisfy the court that without a stay of execution he will be ruined and that he has an appeal which has some prospect of success."*

13. The Respondent, Litiana Naqilai is the surviving wife of the late Rupeni Talakuli No. 3. They lived together since their marriage on 24<sup>th</sup> July 2008, for a period of 12 years and have no issues of the marriage.
14. In or about April 2020, the late Rupeni Talakuli No. 3 and the Respondent, Litiana Naqilai had separated.
15. The Appellant, Meri Caucaunitabua alleges that the Respondent, Litiana Naqilai had an adulterous relationship with one Epeli Vadei.
16. Late, Rupeni Talakuli No. 3 took demise on 08 August 2022.
17. The Appellant, Meri Caucaunitabua in her Affidavit in Support admitted that she commenced living with the late, Rupeni Talakuli No. 3 in Labasa from May 2019. They have no issues out of this relationship.
18. Letter of Administration Grant No. 70446 was issued by the Court to the Respondent, Litiana Naqilai, since the Affidavit evidence pleaded before Court that she was late Rupeni Talakuli No. 3's lawful surviving widow without any issues and/or there were no other persons entitled to a share in the deceased's estate.
19. When the application for Letters of Administration Grant was advertised in the local daily's and/or if the Appellant, Meri Caucaunitabua was aware that a Letters of Administration Grant is being sought for by the Respondent then the Appellant should have filed a caveat with the Principal Probate Registry in order to stop the issuance of any grant in the estate to the Appellant.
20. The Appellant's purpose for seeking a Letters of Administration Grant was explained at paragraph 12 of her affidavit **"that she would institute Legal proceedings to claim the accident compensation payable in respect of the death of the deceased."**

21. *Section 2 of Succession, Probate and Administration Act 06 of 2018 of 1970 deals with the insertion of the following definitions:*

*"de facto partner" means a person in a de facto relationship;"; and  
"de facto relationship" means a relationship between a man and a woman who are at least 18 years of age and, although not legally married to each other, have lived with each other as spouses on a genuine domestic basis for—*

- (a) a period of more than 3 years; or*
- (b) a period of less than 3 years, provided—*
  - (i) the relationship has resulted in the birth or adoption of a child; or*
  - (ii) the court, having regard to the circumstances listed in section 154A of the Family Law Act 2003, considers it just to treat the relationship as a de facto relationship;".*

22. No doubt, Succession, Probate and Administration Amended Act of 2018 recognizes the entitlement of the De-facto partner.

23. However, *Section 6 of the Principal Act* in the distribution of property of a person dying intestate has deleted paragraph (a) and (c) and inserted the following:-

- (a) If the intestate leaves no issue, the surviving wife or husband shall, in addition to the interests taken under paragraph (a), take one-half of the residuary estate absolutely;*
- (b) if the intestate leaves issue(s), but no wife or husband, the issue of the intestate shall take per stirpes and not per capita, the whole estate of the intestate absolutely; [This is not applicable herein]*

24. The Appellant's Contention is that **Section 6 (1) (b) of Succession, Probate and Administration Act amended by Section 3 of Act No. 06 of 2018** is applicable in this case by virtue of **Section 6 (1A)**, the surviving wife [Litiana Naqilai] and the defacto partner [Meri Caucaunitabua] are entitled to the whole of the Deceased's Estate absolutely.

#### **Defacto - Relationship**

25. Amended Act No. 06 of 2018 of the Succession, Probate and Administration Act 1970 [SPA] no doubt recognizes the entitlement of De-facto partner in the distribution of property when dying intestate. The factors that *Section 2* defines that of a de-facto relationship are:

*"a relationship between a man and a woman who are at least 18 years of age and, although not legally married to each other, have lived with each other as spouses on a genuine domestic basis and the factors that ought to be taken into consideration are:*

- (a) Lived for a period of more than 3 years; or*
- (b) a period of less than 3 years, provided—*
  - (i) the relationship has resulted in the birth or adoption of a child; or*

(ii) the court, having regard to the circumstances listed in section 154 of the Family Law Act 2003 [FLA], considers it just to treat the relationship as a de-facto relationship;".

26. Upon perusal of the parties affidavit evidence, written and oral submission, there is no concrete evidence before this Court to prove and/or establish to Court that the Defendant, Litiana Naqilai was separated and/or legally divorced from the Deceased, Rupeni Talakuli No. 3 even though she was a married woman for over a period of time and that their legal marriage had broken down irretrievably.
27. There is also no concrete evidence that establishes that the Plaintiff, Meri Caucaunitabua had a continuous Defacto Relationship with the Deceased, Rupeni Talakuli No. 3 from May 2019 until his demise on 8 August 2022.
28. However, according to the Defendant, Litiana Naqilai the Appellant, Meri Caucaunitabua had an extra marital affair with her deceased husband.
29. Even deceased, Rupeni Talakuli No. 3's Fiji National Provident Fund was very much intact in terms of nominating the legal wife, Defendant, Litiana Naqilai, as one of the nominees of his Fiji National Provident Fund. The Deceased, Rupeni Talakuli No. 3 if he did not have the legal marriage and/or relationship intact, than he would have cancelled and/or revoked the Defendants nomination from his Fiji National Provident Fund.
30. It was obvious that the deceased, Rupeni Talakuli No. 3 was never divorced and/or separated from his wife, the Defendant, Litiana Naqilai.
31. The Appellant during the hearing in the High Court made a statement and alleged that the Defendant, Litiana Naqilai was having an adulterous relationship with one Epli Vadei. Does the alleged adulterous relationship of the Defendant, take away the Defendant's entitlement from the deceased's estate? The answer would be in negative since the Defendant still remained married to the deceased and was the legal surviving wife/spouse until his demise on 8 August 2022.
32. Therefore, Section 6 (a) of the Principal Act kicks in to determine who has the entitlement to the Deceased's Estate:
  - (a) the legal surviving wife with no issued and/or
  - (b) the Appellant as the one having the Defacto Relationship with the deceased, Rupeni Talakuli No. 3.
33. Further, Section 7 (a) [Part 4] of the Succession Probate and Administration Amended Act of 1970 deals with '**Persons entitled to grant**' and provides as follows:
  7. The Court may grant administration of the estate of a person dying intestate to the following person (separately or core jointly) being not less than 18 years of age -
    - (a) the wife or husband or defacto partner of the deceased ;
    - (b)...
    - (c) .....

Bearing above law in mind, this Court had therefore correctly and rightfully granted the issuance of Letters of Administration Grant N: 70446 to the Defendant, Litiana Naqilai in terms of Section 7 (a) of Succession Probate and Administration Act 1970.

### **In Conclusion**

34. I have considered the relevant laws, submissions and case authorities applicable in this matter with regards to the Grant of the Letters of Administration and as to who is entitled and who should be paid the workmen's compensation?
35. The Appellant had failed to establish that in accordance to law she lived with the Deceased and had a relationship with the late Rupeni Talakuli No. 3 for over a 3 years period of time and further whether the parties were divorced.
36. That the adulterous relationship of any by the Defendant, Litiana Naqilai with Epeli Vadei during her marriage with the deceased, Rupeni Talakuli No. 3 does not displace the right of the defendant from administering his estate nor does it take away the entitlement to claim the compensation from the Accident Compensation Commission or whether the fact that the impending application for workmen's compensate should be suspended.
37. The Appellants submissions and issue raised that the Substantive Writ Action was not heard and determined for the ruling sought therein rather only heard and determined the Summons seeking orders therein.
38. The Answer to above is simple, that the court had at the outset by proceeding to hearing of the Appellant's Summons seeking for orders therein, that the cause of action at that current stage stood incomplete in terms of the substantive Writ of Summons and the Statement of Claim in terms of the High Court Rules 1988 for the orders sought therein for revocation of Letters of Administration No. 70446, Plaintiff be issued with Letters of Administration grant instead together with the claim for Accident Compensation Commission to be suspended since the Plaintiff reckoned that she is also a beneficiary to the Deceased's estate.
39. The Appellant failed in her bid to establish her entitlement for Letters of Administration grant and her entitlement to the pending workmen's compensation with Accident Compensation Commission.
40. I find that in absence of the evidence before this Court coupled with the fact that in the circumstances of this case, I do not find any special circumstances enabling me to grant a 'stay' and the grounds and argument on which the Appellant, Meri Caucaunitabua rely in this application are insufficient in my view for the purposes of this 'Stay' application.
41. Therefore, in the exercise of my discretion, I refuse the order sought for 'stay' or orders and 'execution pending appeal' with costs against the Appellant summarily assessed at \$650 to be paid within 14 days.
42. Since the summons seeking for 'stay' is more or less also seeking for the same orders within the writ action with the exception of the Letters of Administration grant to the

Appellant, and in order to avoid the duplicity of decision, I proceed to also dismiss the substantive writ action coupled with the statement of claim accordingly.

### Orders

- (i) The Appellants Summons seeking for the stay of orders granted on 5 October 2023 pending Appeal is dismissed.
- (ii) The substantive Writ action and the Statement of Claim in the like in order to avoid the duplicity is accordingly dismissed.
- (iii) The Appellant to pay the Defendant a sum of \$650 as summarily assessed costs within 14 days' time frame.

Dated at Suva this 24<sup>th</sup> day of September ,2024.



VISHWA DATT SHARMA  
PUISNE JUDGE

*Cc: Ravono & Raikaci Law, Nausori.  
Pillai Naidu & Associates, Nadi*