

IN THE HIGH COURT OF FIJI AT SUVA

IN THE CENTRAL DIVISION

CIVIL JURISDICTION

Civil Action No. HPP 105 of 2023

BETWEEN:

JASLIN JYOTIKA CHAND

FIRST PLAINTIFF

ROSELIN RONITA CHAND

SECOND PLAINTIFF

ASHLIN ASHLENIKA CHAND

THIRD PLAINTIFF

AND:

FIJI PUBLIC TRUSTEE CORPORATION LIMITED

FIRST DEFENDANT

Date of Hearing : 3 July 2024
For the Plaintiff : Ms. Prasad V.
For all the Defendants : Ms. Drole E. and Ms Silatolu L.
Date of Decision : 14 November 2024
Before : Waqainabete-Levaci, S.L.T.T, Puisne Judge

J U D G E M E N T

(APPLICATION FOR REMOVAL OF TRUSTEES IN PROBATE)

PART A - BACKGROUND

1. The Plaintiffs filed an Originating Summons seeking the following Orders:
 - 1) An Order removing the Defendant as executor and trustee of the Last Will and Testament (WILL) dated 13th August 2014 of Jai Chand also known as Jai Chand Kumar late of Lot 10 Kaluva Street, Balabala Crescent, New Town, Nasinu, Fiji, Retired Carpenter;
 - 2) An Order that the Jaslin Joytika Chand, the first named Plaintiff is appointed as Administratrix with the Will annexed of Estate of Jai Chand known as Jai Chand Kumar late of Lot 10 Kuluva Street, Balabala Crescent, New Town, Nasinu, Fiji, Retired Carpenter.
 - 3) An Order that the Defendant forthwith deliver to the Plaintiff's solicitors the original WILL dated 13 August 2014 of Jai Chand also known as Jai Chand Kumar late of Lot 10, Kuluva Street, Balabala Crescent, New Town, Nasinu, Fiji, Retired Carpenter.
 - 4) Any other orders that the Honorable Court considers appropriate in the circumstances.
2. The application is made pursuant to section 35 of the Succession, Probate and Administration Act 1970 and Order 5 Rule 3 of the High Court Rules including the inherent jurisdiction of the Court.

PART B: AFFIDAVIT

Plaintiff's Affidavit

3. The Plaintiff depose an Affidavit in support of the Summons deposing that she is a child and beneficiary of the Estate of the late Jai Chand also known as Jai Kumar

(hereinafter referred to as the Estate) who passed away on 5 February 2023. All funeral rites were conducted by the Plaintiffs.

4. The two other Plaintiffs are the sisters of the Deponent and are also beneficiaries of the Estate who both reside overseas and have given consent for her to depose on their behalf.
5. The Estate property consists of a Crown Lease No 242537 and a residential dwelling. The intentions of the Testator was to ensure that the property was divided in equal shares to the plaintiffs.
6. The mother of all three plaintiffs had passed away on 24 June 2014 and the Testator had rented part of the residential dwelling for rental income and for his upkeep and expenses.
7. The Defendant failed to conduct any funeral arrangements regarding the Testator.
8. Prior to his Death, the Testator had informed the plaintiffs when visiting New Zealand that he had prepared a Will with the Defendants when the plaintiffs' cousin persuaded him not to, given the hidden costs of administering the will.
9. The Testator had intended to return and find out if the claim was true, but passed away without returning to the Defendant.
10. When the Second plaintiff visited the Defendant's office, fees and charges were given to them in a letter dated 27 February 2023.
11. The total fees charged was estimated at \$28,522.50 for the vehicle and residential dwelling with VAT at \$4, 278.38.
12. In comparison private solicitors are willing to obtaining Grant of Probate and transfer of property for all the 3 plaintiffs at a cost of \$3000.00.
13. The Defendants will earn excessive fees from the monies left behind by the Defendant and despite correspondences with solicitors about costs, the Defendant continues to administer the property by incurring \$30,000 in administration costs of the Estate.

Defendant Affidavit

14. The Defendant's Affidavit deposes that as the manager Estate and Trusts, the Will was prepared by the Defendants on behalf of the Estate of the Deceased.
15. The fees are legislated by the Fiji Public Trustee Act as the Executor and Trustee of the Estate of the Deceased's last wishes.
16. As a result, the Defendants were duty bound as Executor and Trustees to fulfil the wishes of the Intestate and cannot be removed based only on fees.

PART C: LAW AND ANALYSIS

17. The powers exercised by the Court to remove a Trustee or Executor is provided for in section 35 of the Succession, Probate and Administration Act. The provision reads:

Court may remove executor

35. The court may for any reason which appears to it to be sufficient, either upon the application of any person interested in the estate of any deceased person or of its motion on the report of the Registrar and either before or after a grant of probate has been made-

(a) make an order removing any executor of the will of such deceased person from office as, such executor and revoking any grant of probate already made to him; and

(b) by the same or any subsequent order appoint an administrator with the will annexed of such estate; and

(c) make such other orders as it thinks fit for vesting the real and personal property of such estate in the administrator and for enabling the administrator to obtain possession or control thereof; and

(d) make such further or consequential orders as it may consider necessary in the circumstances.

18. The ground for which the Court will exercise its discretion to remove an Executor or Trustee is where the Court deems it sufficient to do so.
19. In the case of Shanaaz Nisha and another -v- Fiji Public Trustee Corporation Limited [2022] HPP 237 of 2022 (ruling delivered on 28 February 2024) was held by Banuve J as:

16. As summarized by the Court in the Jamal Shah case (citing Georgina Kain & Ors -v- Hutton & Ors CA 246/101 New Zealand):

“The jurisdiction to appoint and remove trustees is both inherent and statutory, the legislative authority being s 51 (1) of the Trustees Act 1956 which provides as follows:

The inherent jurisdiction is derived from the Courts general supervisory powers in equity relating to the supervision of trusts from the welfare of beneficiaries. The relevance of that objective is recognized in well known cases such as Letterstedt -v- Broer (1884) 9 App Cas 271 and Hunter and Hunter [1938] NZLR 520.

17. The principle laid down by Blackburn LJ in Letterstedt cited in Jamal Shah remains the seminal guide on the nature of the powers vested in the Court to remove trustees as derived from equity and described as ancillary to its proper duty to see that the trusts are properly executed with qualification:

“In exercising so delicate a jurisdiction as that of removing trustees, their Lordships do not venture to lay down any general rule beyond the very broad principle above, enunciated, that their main guide must be the welfare of the beneficiaries.”

PART D: ANALYSIS

20. The Application before me seeks that the Court exercise its powers to remove the Defendant as Trustee and Executor of the Estate on the basis of its exorbitant charges.

21. The Court must therefore direct itself to consider whether the Conduct or act of the Defendant is contrary to the welfare of the beneficiaries.
22. The Defendant deposes that it has not misconducted itself in a manner in which it had abused its powers nor misspent the Estate entrusted onto him.
23. The reason is because the Defendant has now prepared the paper work to obtain probate on the basis of the Will since the death of the Testator in 2023.
24. The only meeting between the Defendant and the plaintiffs was to inform the Defendant that the Testator was deceased and funeral rites had been completed. In addition the charges pertaining to the costing of the Defendant were obtained.
25. No other meeting was made between the parties involved nor any correspondences of the same.
26. I therefore find that the Defendant has not acted in a manner contrary to the welfare of the beneficiaries. The intention of the Testator was clear when he appointed the Defendant as the Executor and Trustee.
27. The fees for all works conducted by the Defendant are indeed legislated under section 29 of the Fiji Public Trustees Corporation Act (referred to as the Act) recovered from monies held under the Act.
28. Therefore there is no reason why the Defendant cannot charges fees in accordance with the provisions under section 17 and 18 of the Act.
29. I therefore find that the application is misconstrued as there is no evidence to suggest and establish that there is any reason whatsoever that the welfare of the beneficiaries are not considered in light of the Testators intentions under the Will.

PART D: ORDERS

30. The Court orders as follows;
 - (a) **Application for removal of Trustee and or Executor and appointment of a new Trustee and Executor for the Estate of Jai Chand known as Jai Chand Kumar is hereby dismissed;**

(b) Costs to the Defendant summarily assessed at \$800.



A handwritten signature in blue ink, consisting of a large, stylized 'S' followed by a horizontal line.

Justice Senileba Waqainabete-Levaci

Puisne Judge

14 November 2024