

**IN THE HIGH COURT IN FIJI AT SUVA**  
**CENTRAL DIVISION**  
**CIVIL (PROBATE) JURISDICTION**

**Civil Action No. HPP No.33 of 2023**

**IN THE ESTATE OF MADRE VEERAN**  
**aka MADRI VERAN** late of Field Forty  
Lautoka, Foreman, Deceased, Testate.

**And**

**IN THE MATTER** of an application by  
**BIGNESH VERAN NAIDU AND**  
**VIKASH VERAN NAIDU** of 80A Mili Way  
South Ranui, Henderson, Auckland, New  
Zealand as Applicants.

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**Date of Hearing** : **14 November 2024**  
**For the Applicant** : **Mr Madhwan. N**  
**Date of Decision** : **14 November 2024**  
**Before** : **Waqainabete-Levaci, SLTT, Puisne Judge**

**JUDGEMENT**

**(APPLICATION BY EX PARTE SUMMONS FOR ADMISSION TO PROVE WILL)**

**BACKGROUND**

1. The Plaintiff has filed an application seeking orders to admit to prove the Will dated 14<sup>TH</sup> day of June 2011 of the Deceased **MADRE VEERAN a.k.a MADRI VIRAN** late of Field Forty, Lautoka, Foreman.
2. The Applicant seeks Orders in accordance with Rule 53 of the Non-Contentious Probate Rules 1954 and the inherent jurisdiction of the Court.

## **AFFIDAVITS**

3. In Affidavit in Support, the two Applicants who are siblings and residual beneficiaries deposed as follows –

“2. That our father Madre Veeran aka Madri Veran died on 19<sup>th</sup> April 2022 and annexed hereto marked with letter ‘B’ is his Death Certificate.

3. That our lawful mother Nag Kanni died on 13<sup>th</sup> August 2021 and a copy of her Death Certificate is annexed hereto marked with letter ‘C’.

4. That on 14<sup>th</sup> June 2011 the deceased Madre Veeran aka Madri Veran executed his last Will and Testament and the same was witnessed by Ms Vikashni Nand and Prabhashni Kumar of Faiz Khan Lawyers of Lautoka.

5. Their Affidavits are filed herein.

6. That the said Will dated 14<sup>th</sup> June 2011 was made in the Faiz Khan Lawyers office in Lautoka annexed hereto with letters ‘D’ is the Will dated 14<sup>th</sup> June 2011.

7. That we could not attend the Funeral of our late parents due to Covid Travel Restrictions.

8. That on or about 28<sup>th</sup> August 2022 we gave instructions to Messrs J K Singh Lawyers to take out the Probate of the deceased. My said solicitors wrote to Messrs Faiz Khan Lawyers by their letter dated 29<sup>th</sup> August 2022 a copy of which is annexed hereto marked with the letter ‘E’.

9. That by the letter dated 1<sup>st</sup> September 2022 Messrs Faiz Khan Lawyers wrote to my solicitors and advised them they are not able to locate the Original Will of the deceased. A copy of their letter dated 1<sup>st</sup> September 2022 is annexed hereto marked with the letter ‘F’.

10. That to the best of our knowledge and belief the deceased did not make any other Will after the one dated 14<sup>th</sup> June 2011.

11. Under clause 3 of the Will the deceased bequeathed his property being Housing Authority Sub-Lease No. 344438 Lot 26 DP 6397 to his wife

Nag Kanni for her life and upon her death to Bignesh Veeran Naidu and Vikash Veeran Naidu in equal shares and shares alike.

12. The Deceased does not have any relatives, whatsoever in Fiji except for our sister Vikashni Latchmi Naidu and we verily believe the deceased died without having left any other Will, codicil or Testamentary papers whatsoever, other than the foresaid Will.
  
4. The Applicant filed a Supplementary Affidavit of Vikashni Nand of Togamasi, Nadi, a legal executive and Prabhashni Kumar of Saweni, Lautoka, Legal Executive who both depose that they were employed by Messrs Faiz Khan Lawyers on 14<sup>th</sup> June 2011 when they witnessed the Testator Madri Veeran aka Madri Veran come to execute his Will and witnessed the signature of the Testator Madri Veeran aka Madri Veran on the Will confirming that the Copy of the Will was the correct copy of the Will of the testator that they witnessed.

#### **SUBMISSIONS BY THE APPLICANTS**

5. The submission by the Applicant is that pursuant to Order 1 Rule 11 of the High Court Rules which applies the practice and procedure for Non-Contentious Probate business from the High Court of England should apply in so far as applicable with necessary modifications to grants of probate and administration.
  
6. Reference was made to the case of Re Estate of Elizabeth Cunningham Sugar [2013] FJHC 515; HPP 41.2013 (4 October 2013) where the applicant sort for the admission of the photocopy of a Will under Rule 54 of the Non-Contentious Probate Rules 1987 as he was the remaining Trustee of the will of Elizabeth Cunningham Sugar whilst the other Trustee had passed away previously. The Master Rajasinghe (as he was then) was '*satisfied that the applicant successfully established the execution of the will of Elizabeth Cunningham Sugar and in existence after the death of the testator*'.
  
7. The Applicant submitted that the two witnesses who had witnessed the execution of the Will in Faiz Khans Law Firm and had entered their signature and names into the Will had confirmed that the copy of the Will is the correct Will of the Testator as they confirmed their signatures.

## LAW AND ANALYSIS ON NON-CONTENTIOUS PROBATE

8. The Plaintiff relies upon the provisions of Rule 53 of the Non-Contentious Probate Rules 1954 and the inherent jurisdiction of the High Court.

9. Order 1 Rule (11) of the High Court Rules ('HCR') provides –

*“11. The Rules for the time being in force in Her Majesty’s High Court of Justice in England and 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.”*

10. Rule 53 of the Non-Contentious High Court Probate Rules 1987 which I find is applicable in Fiji by virtue of Order 1 Rule 11 of the HCR states that:

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 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 evidence 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; and
- (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.

11. The non-contested probate rules in Rule 53 allows for different forms of a Will to be applied for admission.
12. More particularly for Wills made as a draft, or materials or documents etc that are the reconstruction of the contents of the Copy of the Will.
13. The Will that was appended to the Affidavit in Support of the Application does not show whether it was registered with the High Court of Fiji or otherwise. According to the Non-contentious probate rules, registration or otherwise is not a requirement for the application. It is the form and make of the Will that is of essence.
14. The Will has been duly signed by two witnesses, the two that witnessed the signing of the will by the Testator.
15. I find that the two witnesses signature confirm the existence of the Will whether registered or otherwise.
16. The Applicants have deposed that no other Will, codicil or Testamentary disposition was made after the said Will.
17. I therefore find that I am satisfied that the Will existed from the direct evidences of the two witnesses who deposed to the making of the Will by the Testator as well as to witnessing his signature as Testator.
18. The Court is therefore satisfied that the copy of the Will was in existence after the demise of the Testator.
19. The Court is satisfied that the Copy of the Will is a true copy of the original Will of the Testator dated 14<sup>th</sup> June 2011 which could not be located in Faiz Khans Lawyers office.
20. The Court therefore grants that the copy of the Will annexed to the Affidavit of the Applicants as Exhibit D, whether registered or unregistered, be admitted as proof thereof.

### **Costs**

21. That costs be bourne by the Applicants.


**Orders of the Court:**

22. The court orders are as follows;

***(a) That the Court admits the proof of the Copy of the Will;***

***(b) Costs be bourne by parties.***



  
Mrs Senileba LTT Waqainabete-Levaci

Puisne Judge