

IN THE HIGH COURT OF FIJI
AT SUVA
PROBATE JURISDICTION

Probate Action No. 73 of 2024

BETWEEN : **JUNE PICKERING AND SOLOMON TABAIWALU**
PICKERING
First Plaintiff

BETWEEN : **SOLOMON TABAIWALU PICKERING as Trustee of the**
Estate of Eric Hillman Pickering
Second Plaintiff

AND : **FIJI PUBLIC TRUSTEE CORPORATION PTE LTD**
First Defendant

AND : **JOHN TABAIWALU as Trustee of the Estate of Ernest Vuki**
Pickering
Second Defendant

Counsel : **Ms L Vaurasi for the 1st & 2nd Plaintiffs**
Mr N Tuifagalele for the 2nd Defendant

Hearing : **21 October 2024**
Judgment : **21 October 2024**

EX TEMPORE JUDGMENT

- [1] This is an application by the Plaintiff by way of a Notice of Motion with supporting affidavit filed on 3 October 2024 seeking leave to cross-examine the Second Defendant, Mr. Tabaiwalu, in respect to his Affidavit filed in this proceeding.
- [2] The application is made under O.38, r.2(3) of the High Court Rules 1988. The provision reads:

In any cause or matter begun by originating summons...the Court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit, and where, after such an order has been made, the person in question does not attend, his or her affidavit shall not be used as evidence without the leave of the Court.

- [3] Where an affidavit has been filed on an originating summons and a party applies to cross-examine the deponent, the Court has a wide discretion to order the attendance of the deponent for cross-examination. No parameters are prescribed under O.38, r.2(3), although I expect that the evidence to be tested must be relevant to the issue for determination by the Court and the cross-examination of the deponent will assist the Court to determine the claim.
- [4] In this case, the issue is very narrow. According to the Originating Summons, the Court has to decide the interpretation to be placed on clause 4 of a Will that was executed in June 1958. Is the evidence of Mr. Tabaiwalu relevant in this regard? I am unable to know at this juncture without hearing more from the parties on the substantive case. Mr. Tabaiwalu was a child when the 1958 Will was prepared and on the face of it I do wonder what he is able to offer on the issue. However, there does appear to be a conflict between his evidence and the affidavit of Ms June Pickering for the Plaintiffs.
- [5] Out of caution, I have decided to grant the Plaintiffs' application simply because the evidence may be relevant and that suffices at this point in the proceedings.


Orders

- [6] Accordingly, I make the following orders:
- i. The Second Defendant, Mr Tabaiwalu, is ordered to attend the hearing on 29 October 2024 in order to be available to be cross-examined by the Plaintiffs on his affidavit filed in this proceeding.

- ii. The first named Plaintiff, Ms. June Pickering, is also ordered to attend the hearing on 29 October to be available for cross-examination of her evidence by the Second Defendant.

- iii. Costs to be in the cause.




D. K. L. Tuiqereqere
JUDGE

Solicitors:

Shekinah Law for Plaintiffs

Tuifagalele Legal for Second Defendant