

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 320 of 2023

BETWEEN:

YOGESH CHAND
PLAINTIFF

AND:

SUBASH CHANDRA
DEFENDANT

BEFORE:

Acting Master L. K. Wickramasekara

COUNSELS:

Sunil Kumar Esquire for the Plaintiff

No Appearance for the Defendant

Shelvin Singh Lawyers for the Intended Representative of the Defendant

Date of Hearing:

By way of Written Submissions

Date of Ruling:

05th March 2025

RULING

01. The Plaintiff in this matter has filed a Writ of Summons and Statement of Claim on 18/10/2023. The claim of the Plaintiff is for specific performance of a Sales and Purchase Agreement entered into between the parties and for damages.
02. Pursuant to the Affidavit of Service filed on 30/10/2023, the Writ of Summons and the Statement of Claim along with the Acknowledgment of Service have been served on the Defendant on 20/10/2023.
03. As the Defendant failed to file the Acknowledgement of Service and an Intention to Defend the Writ of Summons within the prescribed period, the Plaintiff filed a Summons for Summary Judgment supported by Affidavit on 16/01/2024.
04. Pursuant to the Affidavit of Service filed on 20/02/2024, this Summons and the supporting Affidavit had been served on the wife of the Defendant on 16/01/2024, which is contrary to the requirement of personal service on the Defendant.
05. When this Summons came before the Court on 14/03/2024 for the first call, the wife of the Defendant appeared and claimed that the Defendant had passed away on 30/12/2023 and submitted the copy of a Death Certificate bearing No. 340921, which confirmed the same. Counsel for the Plaintiff thereupon moved for the Summons for Summary Judgment to be put hold till the wife of Defendant to take steps to obtain a grant on the Estate of the Defendant.
06. The Plaintiff on 18/06/2024 then filed an *ex parte* summons seeking various orders supported with an Affidavit from Yogesh Chand. The orders sort in this summons are as follows,
 - a. *The Summons to Enter Default Judgment and Supporting Affidavit of Yogesh Chand filed on the 16th day of January 2024 be stayed pending determination of this application.*
 - b. *The Fiji Public Trustee Corporation be appointed as the Administrator and Trustee of the ESTATE OF SUBHAS CHANDRA aka SUBHASH CHANDRA, who died on the 30th day of December 2023 at his Residence at Sawani, Nausori, the Defendant in the within action.*
 - c. *A Substitution of parties be allowed in line with prayer (b) above with necessary amendments should the Court require.*

- d. Alternatively, that the Plaintiff be recognized by virtue of his “Statement of Claim filed herein and Summons to Enter Default Judgment and Supporting Affidavit of Yogesh Chand filed on the 16th day of January 2024” as a creditor to the **ESTATE OF SUBHAS CHANDRA aka SUBHASH CHANDRA**, who died on the 30th day of December 2023 at his Residence at Sawani, Nausori upon reading the entirety of the application to the satisfaction of the Honorable Court.
- e. Upon such recognition of a Creditor, the Plaintiff be appointed as a Trustee and/or an Administration pendent lite of the **ESTATE OF SUBHAS CHANDRA aka SUBHASH CHANDRA**, who died on the 30th day of December 2023 at his Residence at Sawani, Nausori in absence if any application for administration being made to the probate registry.
- f. Upon such appointment regarding Administration of the **ESTATE OF SUBHAS CHANDRA aka SUBHASH CHANDRA**, who died on the 30th day of December 2023 at his Residence at Sawani, Nausori, the application stayed as per prayer (a) be heard and determined and upon compliance of the orders therein, the Plaintiff’s Administration pendent lite role ceases.
- g. Given the unforeseen circumstances and the demise of the Defendant; the cost of this application be cost in cause.
- h. Such further and other orders this Honorable Court deems just and expedient.
07. On 22/07/2024, the returnable day of this summons, the Court ordered the summons to be heard *inter partes* and ordered the Plaintiff to serve the said summons on the Public Trustee and any other known beneficiaries to the Estate of the Defendant. The summons was then adjourned to the 05/09/2024.
08. Further, on the above date, the Plaintiff withdrew the Summons for Summary Judgment filed on 16/01/2024 and it was accordingly struck out and dismissed.
09. On the 29/08/2024, Shelvin Singh Lawyers had filed an Acknowledgement of Service of the Writ giving notice of intention to defend the action **on behalf of the Defendant**.
10. When the matter was called before the Court on 05/09/2024, a solicitor from Shelvin Singh Lawyers appeared on behalf of the wife of the Defendant on the footing that the wife is the personal representative of the Defendant. However, the counsel for the Plaintiff objected to the same and submitted that no personal representative has been duly appointed in this matter and that for the Estate of the Defendant to be duly represented in this matter, an **Administrator/Trustee** should be first appointed to the Estate of the Defendant. The counsel for the Plaintiff further objected to the

'Acknowledgment of Service' filed by Shelvin Singh Lawyers on behalf of the Defendant.

11. Considering the above objections raised, the Court directed both the parties to file written submissions over the same and the parties have accordingly complied with this direction and have filed helpful written submissions. The Court shall now move to rule on the matter as follows.
12. Pursuant to the submissions filed by Shelvin Singh Lawyers, it is highlighted that they have been instructed by the wife of the Defendant, as a 'personal representative' of the Defendant, to attend to this matter. They have relied on Order 15 Rule 7 and 8 of the High Court Rules to support this contention.
13. I shall reproduce these rules in this ruling for clarity. Order 15 Rule 7 of the High Court Rules reads as follows,

Proceedings against estates (O.15, r.7)

- 7.-(1) *Where any person against whom an action would have lain has died but the cause of action survives, the action may, if no grant of probate or administration has been made, be brought against the estate of the deceased.*
 - (2) *Without prejudice to the generality of paragraph (1), an action brought against "the personal representatives of A.B. deceased" shall be treated, for the purposes of that paragraph, as having been brought against his estate.*
 - (3) *An action purporting to have been commenced against a person shall be treated, if he was dead at its commencement, as having been commenced against his estate in accordance with paragraph (1), whether or not a grant of probate or administration was made before its commencement.*
 - (4) *In any such action as is referred to in paragraph (1) or (3)-*
 - (a) *the plaintiff shall, during the period of validity for service of the writ or originating summons, apply to the Court for an order appointing a person to represent the deceased's estate for the purpose of the proceedings or, if a grant of probate or administration has been made for an order that the personal representative of the deceased be made a party to the proceedings, and in either case for an order that the proceedings be carried on against the person appointed or, as the case may be, against the personal representative, as if he had been substituted for the estate;*
 - (b) *the court may, at any stage of the proceedings and on such terms as it thinks just and either of its own motion or on application, make any such order as is mentioned in subparagraph (a) and allow such amendments (if any) to be made and make such other order as the Court thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.*
 - (5) *Before making an order under paragraph (4) the Court may require notice to be given to any insurer of the deceased who has an interest in the proceedings and to such (if any) of the persons having an interest in the estate as it thinks fit.*

- (6) *Where an order is made under paragraph (4) appointing the [Fiji Public Trustee Corporation Limited] to represent the deceased's estate, the appointment shall be limited to his accepting service of the writ or originating summons by which the action was begun unless, either on making such an order or on a subsequent application, the court, with the consent of the [Fiji Public Trustee Corporation Limited], directs that the appointment shall extend to taking further steps in the proceedings.*
- (7) *Where an order is made under paragraph (4), rules 8(4) and 9(3) and (4) shall apply as if the order had been made under rules 8 on the application of the plaintiff.*
- (8) *Where no grant of probate or administration has been made, any judgment or order given or made in the proceedings shall bind the estate to the same extent as it would have been bound if a grant had been made and a personal representative of the deceased had been a party to the proceedings.*

14. Order 15 Rule 8 reads as follows,

Change of parties by reason of death, etc. (O.15, r.8)

- 8.-(1) *Where a party to an action dies or becomes bankrupt but the cause of action survives, the action shall not abate by reason of the death or bankruptcy.*
- (2) *Where at any stage of the proceedings in any cause or matter the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the Court may, if it thinks it necessary in order to ensure that all matters in dispute may be effectually and completely determined and adjudicated upon, order that other person to be made a party to the cause or matter and the proceedings to be carried on as if he had been substituted for the first mentioned party. An application for an order under this paragraph may be made ex parte.*
- (3) *An order may be made under this rule for a person to be made a party to a cause or matter notwithstanding that he is already a party to it on the other side of the record; or on the same side but in a different capacity; but—*
 - (a) *if he is already a party on the other side, the order shall be treated as containing a direction that he shall cease to be a party on that other side, and*
 - (b) *if he is already a party on the same side but in another capacity, the order may contain a direction that he shall cease to be a party in that other capacity.*
- (4) *The person on whose application an order is made under this rule must procure the order to be noted in the cause book, and after the order has been so noted that person must, unless the Court otherwise directs, serve the order on every other person who is a party to the cause or matter or who becomes or ceases to be a party by virtue of the order and serve with the order on any person who becomes a defendant a copy of the writ or originating summons by which the cause or matter was begun and form of acknowledgment of service in Form 2 in Appendix [1].*
- (5) *Any application to the Court by a person served with an order made ex parte under this rule for the discharge or variation of the order must be made within 14 days after the service of the order on that person.*

15. Plain reading of the above rules clearly implicates, that the ‘proceedings against Estates and/or change of parties by reason of death’, shall be made by way of a Court order to that effect. These rules clearly set out the manner in which a party may move

for such Court orders. Pursuant to these rules, there was neither an application nor a Court order made for a 'personal representative' of the Defendant to be made a party to these proceedings, giving a legal right to Shelvin Singh Lawyers to appear in these proceedings on behalf of a 'personal representative' of the Defendant.

16. It is therefore obvious that the appearance of Shelvin Singh Lawyers on behalf of a 'personal representative' of the Defendant is neither supported in law nor procedurally accurate. It shall therefore follow, that the appearances in Court and the 'Acknowledgement of Service' filed by Shelvin Singh Lawyers on 29/08/2024 is both illegal and irregular.
17. The summons filed by the Plaintiff on 18/06/2024 is, in fact, the proper application for the appointment of a 'Representative' in these proceedings.
18. However, before moving any further with this summons, it is to be noted that Shelvin Singh Lawyers, by their letter dated 04/02/2025, addressed to the Registry of this Court has submitted a copy of the grant of Letters of Administration in the Estate of Subhash Chandra, the late Defendant, to his wife, Uday Kumari aka Uday Kumari Chandra. This grant has been made on the 27/09/2024.
19. Following the appointment of the 'Administrator' in the Estate of the Defendant, the landscape of the current proceedings clearly changes. By law, the legitimate 'representative' in the Estate of the Defendant is now the legally appointed 'Administrator', Uday Kumari aka Uday Kumari Chandra. For the above reason alone, the current summons filed on 18/06/2024, becomes superfluous and redundant.
20. In the above circumstances the Court finds it is not viable to delve any further into the summons of the Plaintiff filed on 18/06/2024. It is the considered view of this Court that it is just and expedient, in the given circumstances, to order the Plaintiff to substitute the current 'Administrator' in the Estate of Subhash Chandra as the Defendant in these proceedings and thereby amend its Writ and Statement of Claim accordingly, to swiftly proceed with the matter guaranteeing a fair trial to both parties.
21. Accordingly, in the final outcome, the Court makes the following orders,
 - I. The 'Acknowledgement of Service' as filed by Shelvin Singh Lawyers on 29/08/2024 is hereby struck out and expunged from the record.
 - II. The 'Appointment of Solicitors' as filed by Shelvin Singh Lawyers on 07/10/2024 is hereby struck out and expunged from the record.
 - III. Plaintiff shall substitute the 'Administrator', Uday Kumari aka Uday Kumari Chandra, in the Estate of late Subhash Chandra, as the rightful Defendant in these proceedings.

- IV. Accordingly, the Plaintiff shall file and serve an Amended Writ of Summons and Statement of Claim within 07 days from today (That is by 14/03/2025).
- V. Defendant shall, thereupon file and serve a Statement of Defence 14 days after (That is by 28/03/2025).
- VI. Plaintiff shall, thereafter file and serve a Reply to Statement of Defence and/or Summons for Directions 14 days after (That is by 11/04/2025).
- VII. Subject to the above orders, the summons filed by the Plaintiff on 18/06/2024 is hereby struck out and dismissed.
- VIII. In failure to comply with the above orders, the pleadings of the defaulting party shall stand struck out subject to a cost of \$ 2000.00 to be paid to the other party, as summarily assessed by the Court.
- IX. Costs of these proceedings shall be in the cause.

Wednesday, 05th of March 2025

At Suva.



L. K. Wickramasekara,

Acting Master of the High Court.