

IN THE HIGH COURT OF FIJI
AT SUVA
PROBATE JURISDICTION

Probate Action No. HPP 99 of 2023

BETWEEN : **SOFIA SARINA BEGUM KHAN**
Applicant

AND : **AHMAD AIYUB KHAN**
Respondent

Counsel : Ms. M Narisia for Applicant
Ms. S Prasad for Respondent

Hearing : 27 January 2025

Judgment : 29 January 2025

JUDGMENT

- [1] The parties are siblings. They are executors and trustees of the estate of their late father. The applicant seeks an order from this Court removing her brother, the respondent, as trustee and replacing him with their younger sister, Sabana Halima Begum Khan.
- [2] The basis for the application is that there has allegedly been misconduct by the respondent in the administration of the estate.

Background

- [3] The parties late father passed away in 2017. The main asset of his estate is an agricultural lease from which an income is derived from a sugarcane farm. The beneficiaries of the estate are the two parties and their younger sister.
- [4] The parties have been managing the estate. The income from the farm is deposited in a bank account of which the parties are co-signatories. It appears that each reside in Fiji as well as overseas – their younger sister appears to reside full time in Fiji. There have been some frustrations between the parties over the administration of the estate. The applicant says that her brother is making the decisions on the running of the farm and the expenditure. She is critical of the fact that there has been no distribution of income from the estate to the beneficiaries. She says there is a gross absence of communication and transparency from the respondent. She has therefore filed the present originating summons of 2 November 2023 seeking orders to remove the respondent as trustee and replace him with their younger sister, Ms Sabana Khan.
- [5] Both parties have filed affidavits deposing to their respective positions. As stated, the applicant deposes as to the respondent's deficiencies in his administration of the estate. Ms Sabana Khan has filed a supporting affidavit corroborating the applicant's allegations. For his part, the respondent deposes that he has had to carry the load managing the farm and has paid some expenses from his own pocket. He is disappointed that his sister is not grateful. Of interest, both parties mention that there was, at some point, agreement to sell the farm and divide the proceeds – each blames the other for the sale not occurring.

Decision

- [6] The applicant relies on s 73 of the Trustee Act 1966 for the Court's power to remove the respondent as trustee. The provision reads:

(1) The court may, whenever it is expedient to appoint a new trustee or new trustees, and it is inexpedient, difficult or impracticable so to do without the assistance of the court, make an order for the appointment of a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.

*(2) In particular, and without limiting the generality of the provisions of subsection (1), **the court may make an order appointing a new trustee in substitution for a trustee who -***

(a) desires to be discharged;

(b) has been held by the court to have misconducted himself in the administration of the trust;

(c) is convicted of any misdemeanour involving dishonesty, or of any felony;

(d) is of unsound mind;

(e) is bankrupt; or

(f) is a corporation that has ceased to carry on business, or is in liquidation, or has been dissolved.¹

[7] The applicant argues that the respondent has misconducted himself and points to the following:

- i. The respondent has become more demanding of her to sign for the estate's monies. He is no longer cooperative. He is disrespectful to her and their younger sister.
- ii. The applicant and her sister have received no payments from the income of the farm. The applicant believes that the payments by the respondent from the farm's income has not been spent appropriately. The respondent has

¹ My emphasis.

not been making decisions or spending the estates income in the best interests of the beneficiaries.


- iii. The applicant contends that the estate cannot thrive under the respondent's leadership and believes that the respondent desires to keep the whole estate for himself.

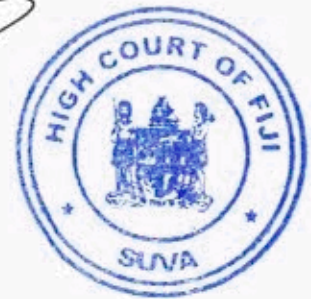
[8] The respondent denies the allegations and makes his own allegations against the applicant – that she is rarely in Fiji and that the burden for managing the estate rests on his shoulders. He deposes that he has had to pay for some estate expenses from his own pocket and is willing to cooperate and work with his older sister with respect to the successful management of the estate.

[9] Having carefully read the evidence produced by the applicant I am not satisfied that she has demonstrated any misconduct on the part of the respondent. Certainly, the applicant has expressed her misgivings but the allegations regarding mismanagement and failure to provide proper distribution to the beneficiaries is founded on assumptions. There is no evidence provided on the expenditure of the estate or the decisions of the respondent. The applicant would be better placed seeking orders from the court compelling the respondent to provide disclosure of the estate's books (assuming he has refused to provide the same). In short, the applicant's allegations lack the evidential foundation required to establish wrongdoing on the part of the respondent.

[10] Given the breakdown in the relationship between the two trustees, and the fact that they both reside, in part, overseas their earlier decision to sell the farm and divide the proceeds seems sensible going forward. Counsel for the respondent advised the court at the hearing that the respondent no longer wishes to sell the property. The applicant and her sister may, however, consider applying for orders selling the property under s 119 of the Property Law Act 1971. That issue is not before the Court.

- [11] In terms of the present proceeding, there is no evidential provided by the applicant to permit the Court to make an order removing the respondent as trustee and the application is, therefore, dismissed.
- [12] The respondent is successful and, therefore, entitled to costs which are summarily assessed in the amount of \$1,500 to be paid by the applicant within 21 days.


.....
D. K. L. Tuiqereqere
JUDGE



Solicitors:

Narisia & Associates for the Applicant

M.A. Khan for the Respondent