

**IN THE HIGH COURT OF FIJI AT SUVA**

**IN THE CENTRAL DIVISION**

**CIVIL JURISDICTION**

**Civil Action No. HPP 56 OF 2022**

**BETWEEN:**                    **SRI SANJAY MANI**

**PLAINTIFF**

**AND:**                         **LAJENDRA MANI**

**FIRST DEFENDANT**

**AND:**                         **VIJENDRA MANI**

**SECOND DEFENDANT**

**AND:**                         **LATCHMI MANI**

**THIRD DEFENDANT**

**Date of Hearing                    :**     **16 December 2024**

**For the Plaintiff                    :**     **Mr Mani S. (In Person)**

**Counsel For Defendants        :**     **Mr Gosai S.P and Mr Prasad R.**

**Date of Decision                    :**     **18 July 2025**

**Before                                    :**     **Waqainabete - Levaci, S.L.T.T, Puisne Judge**

**J U D G E M E N T**

***(CLAIM FOR FRAUD IN CONSTRUCTION OF WILL)***

## **PART A – INTRODUCTION AND FACTS**

### ***Plaintiffs Claim***

1. The Plaintiff and all Defendants are the children of one late Masla Mani who died on 1<sup>st</sup> May 2017 leaving behind a Deed on the cultivation and harvesting of the cane farm dated 21 December 2005 and two Wills.
2. A probate for the Estate of the late Masla Mani was lodged on 16 June 2017 by his wife, Ms Amra Wati seeking that she be the Administrator of his Estate. She later passed away on 12 August 2018. No Will was made by the late Amra Wati nor was the probate application concluded.
3. The Plaintiff therefore claims that an alleged Will, executed on 14 January 2015, was constructed by the Defendants and that the signatures were forged and not by the late Masla Mani which appointed the Defendants as Executors.
4. This application for probate no. 60935 was granted based on the said will enabling two of the Defendants to become Executors and Trustees of the Estate of Masla Mani in accordance with the Will.
5. Part of the Estate of Masla Mani is the sugar cane farm which is cultivated by the Plaintiff.
6. The Plaintiff seeks orders that the alleged Will is proven to have been constructed fraudulently, that the Will be rendered null and void and that the Probate No 60935 be revoked and the Plaintiff be granted leave to apply for probate intestate of the Estate of Masla Mani.

### ***Statement of Defence by Defendants and Counterclaim***

7. The Defendants deny the allegations and argue that the Will was voluntarily prepared by their father, the late Masla Wati as both the first and second Defendants were resident overseas and the third defendant did not accompany the late Masla Mani when he executed the Will.
8. The Defendants deny that the Plaintiff is cultivating the land. It is being cultivated by one Latchmi, through his agents and servants. The Plaintiff is now claiming harvest funds from the cane proceeds for which the Defendants deny owing.
9. The Defendants have also counterclaimed for \$15,000 liquidated costs for incurring labour expenses; general damages, pain and suffering and mental stress and

interest rate of 5% from date of damages until judgment and interest at 5% at post judgment.

### **Reply to Defense and Defence to Counterclaim**

10. The Plaintiff denies the Statement of Defence and argues that the siblings residing on the property are illegally benefiting from the proceeds from the cane farm.

## **PART B: EVIDENCES AT TRIAL**

### ***Plaintiff's Evidence***

11. The Plaintiff gave his testimony on oath. He gave evidence that the late Masla Mani made a Will dated 14 January 2015. The witness contests the Will as it was not registered, the name is incorrect, the lease number is not stated in the Will and the signature is not of the late Masla Mani. The late Masla Mani made a Deed on 21 December 2015. Another Will was made by the same late Masla Mani on 7<sup>th</sup> August 2013. He stated that there was no TIN No. listed in the Will for the late Masla Mani. On 9<sup>th</sup> May 2012 a caveat was entered against the land by the Defendant Vijendra Mani on 19 December 2009 which was later withdrawn in 2012 by his father. The letter was written by the said Masla Mani on 14 January 2010 and reference is made to the letter of Gordon and Co P Exh 1. A search was conducted at the High Court on 6 June 2017 and receipt given for the Will. He denied the deceased made the Will as he was residing with the Plaintiff in the family home and he was looking after them and cultivating and harvesting their land until 2023. The copies of the Wills were tendered into Court as neither the Defendants Counsel or the Plaintiff has the original Will of 7 August 2013. On 3 September 2019 another search at High Court registry revealed probate was applied for the late Masla Mani by Legal Aid Commission and tendered as the search receipts. He referred to his earlier affidavit which contained the Deed which is in paragraphs 5 to 22 and sort for it to be tendered as part of his evidence. He also indicated that on 24 January 2024 he was stopped from drinking Water from the Estate nor cultivating or harvesting from the land.

Tendered were the following documents:

PEXh 1 – Letter from Gordon and Co dated 9 May 2012;

PEXh 2 – Crown Lease letter;

PEXh 3 – Deed 21 December 2005;

PEXh 4 – Will Search 6/6/07;

PEXh 4 – Will dated 7 August 2013;

PEXh 5 – Probate Search 3/9/09;

PEXh 6 – Probate Search 3/09/19;

PEXh 7 – CTC Probate No 60935.

12. In cross-examination he admitted he had referred to the Deed and two Wills. He understood about the Deed. It allowed him to cultivate 4.5 acres of cane land from Crown Lease No 13230. He admitted it did not allow him full ownership of the property. He admitted the Deed was made on 21 December 2005. He admitted the will of 14 January 2015 was made but denied it was made by his father because he had withdrawn the caveat. He admitted the will was registered in court but denied that the will was properly witnessed by the officers of the law firm of Gordon and Co. He admitted there was no officer from the law firm of Gordon and Co who attested to the Will, being subpoenaed into Court. He admitted the letter of 14 January 2010 was from the deceased about removal of caveat affixed by his sibling, the defendant Vijendra Mani. When he read the letter, it was requesting Ministry of Lands not to subdivide the residential lots on the property as there was a family dispute. He admitted it did not discuss about the Caveat nor did he at any time seek removal of the caveat. The next letter on 9<sup>th</sup> May 2012 was written by Gordon and Co on behalf of Vijendra Mani which was awaiting a consent for caveat which was not granted by the lands department and requesting the lands department to urgently consent. He admitted there was no dealing regarding Masla Mani. He admitted it was not written by Masla Mani to remove caveat. He was not aware whether the caveat on the property was removed or not. He saw a Certificate of Land Title was shown to him. He admitted that the caveat was placed by Masla Mani. Reference was made to the letter of 19 December 2009 in which was written by lawyers for Vijendra Mani forbidding any dealings on the and until there is a peaceful resolution including legal action if Sanjay Mani attempts to transfer or sell the Crown Lease. He admitted the probate was applied by the Defendants including Rajendra Mani. It was granted on 3 September 2019. The probate No 60935 No 36 of 2017 was restricted by Plaintiff's caveat was dealt with by a decision on 30 January 2019 which allowed the three applications to proceed with the probate. He denied that his father made the 2015 will. However he required Court to prove the Will was fraudulent.
13. PW-2 was Jaya Mani Devi who is the wife of the first witness and Plaintiff. She admitted the late Masla Mani made the Deed on 31 December 2005 when the

Plaintiff was residing with his parents. The Will of 2015 was contested by the Plaintiff and requested court to compare the Will a copy which was provided by Growers Council and another will on 8<sup>th</sup> August 2013. She admitted the Plaintiff was cultivating and harvesting on the land. She requested Court to compare the 2015 will with that made on 7 August 2013. She admitted she got married with the Plaintiff and resided in the family home in 2008 together with the late Masla Mani and his wife. The Plaintiff was looking after them. All the rest of siblings were not there – Rajendra in New Zealand and Vijendra in Australia. Ashok is in Canada. They were not farmers and did not cultivate or harvest the land. The late Masla Mani was at home when the will was made in 2015.

14. In cross-examination she admitted the 2015 will was forged because when compared to the 2013 will, the late Masla Mani and Amra Wati names were not there, late Masla Mani's tin was not there too as well as his signature. She was not aware that prior to TINs, TIN was not necessary for identification purposes. She admitted when seeing both the copies of the wills that the name of the late Amara Wati is not on the will. The name of Masla Mani is joined (Masalamani) as well as Masala Mani. She admitted Masalamani and Masla Mani were the same person from Revi, Ba. The Will was not registered when they initially checked at the High Court registry. However when the registration stamp was shown to her, she admitted when they initially asked at high court, they were not informed about registration. She admitted that the signature to the 2015 Will was fraudulently obtained and was different from the 2013 will. She admitted she was not an expert in handwriting nor sort advise from a handwriting expert. She admitted the probate referred to Maslamani also referred to him as Masla Mani, the same person. She could not admit 2015 will was invalid or fraudulent.
15. PW-3 is the Sardar, Ambika Chand who stated that cheques of \$699 made to Taverau and Raviravi gang (No 86) presented by the Present of Sarkar King Ranga was not released till date which was made on 13 September 2023. No payments were ever made thereafter and awaits these payments.
16. In cross-examination he admitted there was a cheque made on 13 September 2023 for the Estate of Masla Mani. The monies were held in interest by the Sardar and paid out once the Estate was sorted.
17. In re-examination the witness admitted the monies should have been paid to the Plaintiff for harvesting the cane.

18. Defendant called the first witness, Mr Lajendra Mani, a brother for the Plaintiff. He admitted that he moved to Auckland in 2017 and prior to that was working in the bus company in Suva. His parents, Masla Mani was the owner of land in Raviravi Ba. He passed the land to no one else since death 7 years ago. He was aware of the two Wills and the Deed. He was in Fiji at that time but was not with his father. He was only aware of the 2015 will when the Plaintiff started legal proceedings. However he has never cited the Will. He admitted he was a beneficiary together with Vijendra and Laxshmi. The Plaintiff and Sri Nivassan Mani are not beneficiaries to the Will. Nivassan was staying on the same compound as their father and his father gave him a piece of land to make a house. The land was further away. The Plaintiff was staying in the same house as his father. The two would have some moments of altercation. At the time of death, their father was residing with his sister who was a divorcee and resided in the family home. He did not think the 2015 Will as forged as his father would have made the will by himself. The will was registered. Whilst residing with his sister, he fully supported his parents and made two trips to Fiji to see them. The farm has dwelling and residential houses. The cane field is 16 acres and is cultivated by Nivasan Mani. The Plaintiff has not been cultivating on the land. He did not contribute to the upkeep of the land. He admitted siblings kept in contact after their parents died but for the Plaintiff.
  
19. In cross-examination he admitted the Plaintiff together with other siblings resided in the family home during school time and moved out when married. When Plaintiff got married he resided on the farm, his parents went to Canada to reside with one of the siblings and they returned when the Plaintiff had health problems. They resided together before the parents went and resided with their sister. He admitted Nivasan Mani was looking after the farm when his parents went to Canada. He also admitted the farm was not given to the Plaintiff to own. He admitted he left the farm when he left school and had no knowledge of the farm. He admitted it was 16 acres. When his father was cultivating, he hired labourers to work on the farm and the Plaintiff was a carrier driver and ran such a business. He admitted the Plaintiff was paid for work, although he was not supposed to be paid. His father informed him the Plaintiff demanded to be paid when he worked on the farm. He left the farm in 1985 and it is 49 years now. He cultivated the land during school days to help his father. He was aware that the father had made a new will after the 2013 will. He was not aware of the date of the new will. He was aware of the 2005 Deed made by his father. He stated that the name Masla Mani and Maslamani were the same name. He was aware Masla Mani made a will but was not aware of the number. He was not aware the 2015 Will had no Tin number. He was aware the Will was a legal document but was not aware whether it was registered or not. He was not aware of the signature. He was not present when 2015 will was made.

20. The Second witness was Vijendra Mani, the brother for the Plaintiff. He admitted the Plaintiff was protesting the Will made in 2015 by their father Masla Mani. He was not living in Fiji when his father made the will. He moved to Australia in 1989. The land remained with his father. He assisted his dad when in school and then moved to Australia. He was supporting his father financially by sending monies for labourers and for groceries and bills every month. Before his father's death, his father mentioned about the Plaintiff threatening to sell the farm and get the money. His sister rang him again one day to tell him about Plaintiff threatening his dad. He then returned to Fiji he talked to his dad. Gordon and Co applied for a caveat on the land on his behalf. He has not been informed whether the caveat has been removed or withdrawn. The caveat was made on 19 December 2009 by Gordon and Co. He identified the document. They were acting for him. The caveat forbade any dealings by the father Masla Mani or his brother, the Plaintiff. He stopped the Plaintiff from selling the land. The Caveat was directed to his father, Maslamani. The Plaintiff had never contributed to the upkeep of the land. He agreed the land could be tendered as Defendants Exh 1.
21. Defendant tendered:
- DExh 1 – The Caveat;  
D Exh 2 – Certificate of Title.  
D Exh 3 – Will dated 2015;
22. In cross-examination he admitted he made a caveat as the Plaintiff was threatening to sell the land from his dad. He was informed by his Dad. He admitted the Plaintiff was born in the family home but his sister looked after his parents and resided there with them. The youngest, Ashok Mani was authorized by his parents, when they migrated to Canada, to cultivate the farm. He was not in Fiji when a joint account with the father, late Masla Mani was made at Bank of Baroda giving him authority over the farm. He only sent monies to pay the labourers on the farm. He admitted the late Masla Mani made two Wills. He was not in Fiji when a copy of the first Will made on 7<sup>th</sup> August 2013 was made by Growers Council. He left 35 years ago to migrate overseas. A Deed was made with their father and the Plaintiff on 21 December 2005. He was not aware of it.
23. In re-examination he admitted their parents migrated to Canada to reside with one of the siblings. The Plaintiff burned vehicle in Velovelo, Lautoka.

24. DW-3 was Ms Latchmi she admitted the Plaintiff was her fourth youngest brother and she was the youngest. She resided at her father's place in Raviravi, Ba. She resided on the property since birth. She resided away from home during marriage and returned after 1 year when the marriage brokeup. She then resided with her parents and looked after them until their death. Her brother the Plaintiff was challenging her father's will made in 2015. She went to Gordon and Co with him. She was outside of the room when the will was made. She was not present but aware her father was discussing and executing the Will with his lawyers. There was a statutory declaration also made by her father. It was regarding the Deed made in 2005. He admitted he was forced to make the Deed. The statutory declaration was signed by her father. It was made at Mr Samuel Ram's office. The copy of the Deed was given by her father to her. The declaration stated that the Deed did not contain all the consents voluntarily given. He admitted to the witness he made the Deed and statutory declaration. He did not complain to police. He declared the Deed was void as the Plaintiff was a mental patient. The Declaration was made on 25<sup>th</sup> October 2007. Tendered as MFI -3. The Plaintiff is residing on the land in one of the houses, she resides in the family home. The borehole is in her boundary and the water pump previously was not working, a new water pump was installed. There is an existing DVRO by Laxmi against the Plaintiff.
25. In cross-examination she admitted that there was may be 2 or 3 wills. The last Will was on January 16 2015. She was aware the Deed was made in 2005. She was not aware if it was registered. She was not aware if Deed was cancelled. The Declaration attested that the Deed was not made voluntarily. The Statutory Declaration was recently found in their house. She got it from their father before his death. She did not bring it to the other court cases. The Will was made and signed by Mr Masla Mani. She did not see him execute the Will but she took him to the lawyer's office. Their father appointed Lajendra and herself as Ececutors and Trustees of his will. She took out a loan of \$53,662 as sole trustee. She got the authority from the two others. She refused to allow him to obtain water.
26. The Defendants then closed their case.

### **PART C: SUBMISSIONS BY PARTIES**

27. In its written submissions, the Plaintiff argued that the 2015 Will did not meet the legal requirements outlined un the Wills act Cap 78 and lacked the necessary signature, the name and taxation identification number was missing or different. These irregularities should render the Will as void. Therefore in accordance with Re:

Estate of Tui [2012] should be rendered as invalid. The Plaintiff argued that from the evidences, there was potential fraud.

28. The Plaintiff also submitted that there was evidence of lack of proper administration of the Estate. The Plaintiff therefore prayed that the Court declare the will as forged and therefore a fraud thereby revoking the Probate that was granted.
29. The Defendants submitted three issues to be considered by the Court. The first and second issue is whether the Deed had a weight over the Will of 2015 and whether the Will of 2015 was valid. The plaintiff failed to prove any evidence that the Will was invalid despite his argument that it was forged. The Plaintiff raised evidentiary differences which were unable to invalidate the Will of 2015. He argued that the name and signature were different, but failed to persuade the Court on whether the differences invalidated the will. Relying on Tamata -v- Paul [2016] FJHC the Plaintiff was unable to prove fraud/negligence to prove that the Defendant was fraudulent and negligent. The Defendants sort for the Claim to be dismissed and that costs be awarded to the Defendants against the Plaintiff.

#### **PART D: LAW AND ANALYSIS**

30. When the Court received the Writ filed, it was obvious that it was filed by a lay person, the Plaintiff himself. The Plaintiff opted to represent himself in person and so the Court had examined the Writ taking into consideration that it was prepared and filed by the Plaintiff himself. The Writ contained particulars of allegation of 'fraud'. Some of the particulars clearly articulated the elements of fraud as a cause of action, whilst others did not.
31. The Defendants could have argued on form and contested the Writ. However they filed their Statement of Defence and Counterclaim straight after being served which to the Court indicated their acceptance of the Writ as it was.
32. The Court thus will accept the Writ and work with claim accordingly.
33. The allegations of fraud particularizes that the late Masla Mani did not execute the 2015 Will, that the signature was forged, his name was incorrectly written and his TIN was not written down next to the name.
34. The Plaintiff seeks reliefs as follows:
  - (i) revoke the Probate No 60935 which was granted as a result of the alleged forged 2015 forged Will;

- (ii) the Applicant be appointed as the sole administrator of the Estate of Masla Mani;
- (iii) The grant of probate be issued for the Plaintiff in accordance with the Deed of 21 December 2005 and the statutory declaration of their late mother, Amra Wati.

35. In Sharma -v- Sharma [2018] FJCA 62; ABU 0080.15 (1 June 2018) the Court of Appeal defined forgery as:

What then was required to constitute a plea of forgery?

[12] Forgery is an act of making a “false statement” in order that it may be accepted as genuine...” (vide: Oxford Dictionary of Law- 8<sup>th</sup> edition (2015); page 270).

“It is the (act) of making an illegal copy of a document as if it was a real one”. (vide: Law Dictionary, 2<sup>nd</sup> Edition (1997), page 101).

“It is the fraudulent making or alteration of writing with the intent to prejudice the rights of another.” (Salwan and Norong – Academics Legal Dictionary (11<sup>th</sup> Ed., 1996).”

36. In order to consider whether the allegation of forgery has been proven, the Court must consider the particulars as well as the facts and evidence put before it. When considering the definition of forgery in this case, the Courts mind is drawn to the last definition i.e alteration of a writing.

37. The Plaintiff has invited the Court to look at the signatures on the 2013 Will with the Will made in 2015 and the Deed that was entered in 2005. Their evidence is that the signatures are not the same because the name is incorrect and the tax identification number was not included with the name.

38. Section 6 of the Wills Act prescribes how a Will can be deemed valid when executed:

**6.** Subject to the provisions of Part V, a will is not valid unless it is in writing and executed in the following manner:

(a) it is signed by the testator or by some person in his presence and by his direction in such place on the document as to be apparent on the face of the will that the testator intended by such signature to give effect to the writing as his will;

(b) such signature is made or acknowledged by the testator in the presence of at least two witnesses present at the same time; and

(c) the witnesses attest and subscribe the will in the presence of the testator,

but no form of attestation is necessary.

39. There is an additional section 6A of the Wills Act which stipulates that even in non-compliance with section 6, a document can still be considered a valid will if it contains the purposes and intentions of the Testator. Section 6A stipulates:

(1) A document purporting to embody the testamentary intentions of a deceased person, though it has not been executed in accordance with the formal requirements under section 6, constitutes a will of the deceased person if the court is satisfied that the deceased person intended to document to constitute his or her last will.

(2) The Court may, in forming its view, have regard, in addition to the document, to any other evidences relating to the manner of execution or testamentary intentions of the deceased person, including evidence, whether admissible before or after the commencement of the section, of statements made by the deceased person.

(3) A party that seeks a declaration under this section has the onus of proof.

40. In the evidences before the Court, there was no signature expert called forward by either of the parties to assess and report on whether or not the signature was of the late Masla Mani. The parties had not called up an expert. In any event, the expert's evidence which the Court would determine is whether it brought consistency and relevancy to the facts and evidence of the Plaintiff on the allegations of forgery. This was discussed in great length in the case of Sharma -v- Sharma (Supra).

41. Therefore in considering the allegations of forgery, the Court is mindful however, and cautions itself on the weight to be given to the evidence. The standard of proof for fraud is on a high degree of probability. In Wati -v- Chand [2022] FJCA 55; ABUo073.2018 (27 May 2022) the Court of Appeal held that the judge drew wrong inferences that forgery had been proven from looking at the signature and stated:

Re: Reason (d)

*“Chandu Lal was sickly and was hospitalized almost every day. DW3 was fully aware of his (Chandu Lal's) sickness and his health condition. Chandu*

*Lal died on 26 February 2008 (PEX6) some 7 weeks after the second Will was executed on 3 January 2008. The first defendant did not lead evidence to prove that the late Chandu Lal was capable of fully understanding of the contents of the second Will and understood what he was signing for.*

[23] This reason, in my view, stands as a shifting of the burden of proof devolving on a party whose burden was to prove or disprove a document (the plaintiffs in this case) which is trite law ever since the English **House of Lords** decision in **Lee v. Johnstone** (1869) LR1

[24] Accordingly, I have no hesitation in reversing the learned Judge's findings on the central issue of alleged fraud and consequently the final transfer that stood in the Appellant's hands as being a valid transfer

[25] I add here that, the learned Judge's finding that, "*on the evidence, it is possible to infer that the DWI's signature has been forged on the SPA*" (paragraph 62 of the High Court Judgment).

[26] With respect, a finding of forgery cannot in my view be drawn as a matter of inference.

[27] That I lay down as a proposition of law.

#### Extended Discussion on the applicable legal principle

[28] Taking from where I left off at paragraph [24] above, apart from the issue of burden of proof which I reflected therein, there is the adjunct principle of evidence as to the standard of proof required in law to prove fraud.

[29] It is true that fraud vitiates all acts and instruments however solemn, in the present instance, the second last Will where the declarations of intention by the testator are evidence to prove the fraud. If so, declarations of intention by a testator must be taken into consideration as evidence to show absence of fraud. That declaration of intention of the testator in the said second last Will is clear (which I have already addressed in paragraph [21] above)

[30] It is also true that, fraud may be inferred from surrounding circumstances (vide: **R v. Cohen** [1951] 1 KB 505.

[31] But, in the instant case, the learned judge determined fraud by inference on an ocular inspection of the signatures on the two Wills in question, which in his own words had cast doubt in his mind as to whether the signature of the testator was forged. If so, that doubt should not have

been resolved against the Appellants (re: the authenticity of the testator's signature).

[32] In my view, merely being cast in doubt and treating the matter as one of inference is not sufficient in law to prove fraud on the basis of a forgery in as much as, the burden of proof to prove the same on the requisite standard of proof was on the plaintiffs-respondents.

[33] The finding on that issue becomes an essential part of the circumstances which the Court had to take into consideration in deciding whether the requisite burden of proof was discharged. For after all, the testator could not have been summoned from his grave to speak to the authenticity of his signature.

[34] The more serious the allegation the more cogent is the evidence required to prove it. (vide: **Phipson on Evidence** 13<sup>th</sup> ed., at p.67)

The Test as laid down by Denning L.J.

[35] His Lordship said:

*"The degree depends on the subject matter. A civil Court when considering a charge of fraud will naturally require for itself a higher degree of probability than that which it would require when asking itself if negligence is established (In the instant case when fraud in relation to a last Will being sought to be established)."*

[36] Lord Denning proceeded to say

*"If (the Civil Court) does not accept so high a degree as a criminal court even when considering a charge of a criminal nature; but it still does require a degree of probability which is commensurate with the occasion."*

(vide: **Bater v. Bater** [1951] P.35 at p.37.

42. In the case before this Court, the Plaintiff has given evidences that the signature on the Will was forged and that his father could not have signed the Will as his father's Tax Identification Number was not written on the Will, the name on the Will was incorrect. He invited the Court to consider the signature on the 2015 Will as compared to the 2013 Will with the signature of the late Masla Mani placed on the Deed in 2005.
43. The Plaintiff had submitted evidences by tendering the copy Will of 2013, the 2015 Will and the Deed.

44. The Defendant's evidence sort to rebut this allegation. The Third Witness gave evidence she had accompanied her father to the lawyers office. Her father had entered into the office and she had remained outside the office. She was later informed by her father that he had signed a Will.
45. Both other witnesses for the Defendant resided overseas when their deceased father prepared the Will. They confirmed that their late father resided with their sister after he had moved from residing with the Plaintiff and was residing with their sister in 2013 when the Will was constructed and executed.
46. The Defendant witnesses also gave evidence that the Deed was signed by their late father as he was forced to do so by the Plaintiff given that the Plaintiff was caretaking for the farm. The witness had to return to Fiji in order to obtain a Caveat against the father and the Plaintiff from sell or transferring the property.
47. The testimonies both of the Defendants was that the Will was prepared in the lawyer's office. The Will of 2015, when tendered into court, revealed two witnesses that signed and witnessed the Testator's signature.
48. The signature of the testator, when the Court views it in comparison to the other documents he had signed, were the same or similar. Even when I say this, I am mindful that he had also signed a Deed for which the signatures are the same.
49. The Plaintiffs contention is that because the tax identity number was missing and the name were incorrect, the will of 2015 was not executed by Masla Mani.
50. The Court is also cautious that to draw conclusion from citing the signatures without the benefit of a handwriting expert by inferences would be an error. The Court must therefore consider other circumstantial evidences, and when taken into totality, would assist the Court to arrive at its own conclusions.
51. These conclusions that the execution of the testator is not forged is consistent with the Defendants third witness who admitted she took her father to the lawyers office to prepare the Will. Although she was not present inside the chambers of the lawyer, but waiting at the reception, she was aware he had drafted a Will that day. The Court finds there is sufficient evidence that their late father, the law Masla Mani was preparing a Will on that day in 2015.
52. The Court finds that the testimonies of the Plaintiffs witnesses were unable to prove that the Will was forged after balancing the evidences on a higher probability. The

two witnesses, the Plaintiff and his wife, were only present when their father had executed the Deed in 2005 and were unaware of the Will in 2015 nor residing with the late Masla Mani to establish whether or not the Will was drafted.

53. The provisions under the Wills Act does not require a Tax Identification Number to be included as part of the Will. It only requires the name of the testator. The Testator's name on the Will is Maslamani. The Defendant argues that the name is incorrect. However when considering the name and the signature as well as his other documents, the Court finds that the name differences did not invalidate the Will as the signature in the Will and the name of the Executors identified in the Will clearly reflected the intentions of their late father, Masla Mani.
54. Furthermore their argument that the 2015 Will was forged as there was no TIN could not hold any ground the reasons for which I had stated earlier.
55. Having held that the 2015 Will was valid, the probate No 60935 thereafter granted intestate is therefore valid. There is no need to go further to probe this.

## **COUNTERCLAIM**

### ***Deed and the Will***

56. In Counterclaim, the Defendant have challenged the validity of the Deed made on 21 December 2005, a copy tendered into Court.
57. The Defendant has claimed that the Plaintiff was not given any rights to cultivate the land through the 2005 Deed and that the farm was solely registered under the late Masla Mani, their father. The Defendants have continued to look after the farm since the death of their father in 2017 to the sum of \$15,000 for 6 years.
58. The Defendants have also asked the Court for specific and general expenses.
59. The Deed that was entered on 12 December 2005 was between the Plaintiff, Sri Nivassan Mani and the late Masla Mani and the late Amra Wati. The agreement between the parties was that:
  1. The beneficiaries have agreed that the owner that the Crown Lease Number 13230 shall remain in the name of the owner for the benefit of the family.

2. The owner is the registered proprietor of the Crown Lease Number 13230 and the beneficiaries are cultivating their respective shares.
3. The Owner and the beneficiaries have agreed that the shares in the said lease shall be as follows:
  - (i) *Shri Nissan Mani shall cultivate four and half (4.5) acres of cane land which is being presently cultivated by him together with the half acre of land for residential purposes delineated in red and marked "A" on the annexed plan.*
  - (ii) *Shir Sanjay Mani shall cultivate four and half (4.5) acres of cane land which is being cultivated by him from Crown Lease Number 13230.*
  - (iii) *Amra Wait shall cultivate the balance of the acre of the land upon death of Masla Mani, which is being cultivated by Masla Mani;*
  - (iv) *The residential dwelling which is being occupied by Masla Mani shall belong to Amra Wati upon the death of Masla Mani*
  - (v) *The owner had agreed with the Beneficiaries that all harvested sugar cane shall be delivered to the Mill on his Farm Number 8067 Drasa Sector and the net proceeds derived shall be distributed upon the tonnage supplied to the Mill by each of the parties.*
  - (vi) *The Owner shall not have any right to sell, transfer, assign, sub-let, mortgage, bind or encumber the land in any manner whatsoever without the prior consent of each and every member of the family.*
  - (vii) *Every member of the family shall be responsible for carrying out their share of the work on the land, which shall be done by themselves or laborers employed at his own costs.*
  - (viii) *The land rental shall be paid by the Owner and the beneficiaries in equal shares;*
  - (ix) *Upon receiving payment each Beneficiary shall be entitled to his share of the net cane proceeds derived from the said Farm Number 8067 Drasa Sector.*
  - (x) *If any member of the said family wishes to sell his share he shall be free to do so but he shall sell his share to a member or members of the family only but he cannot sell his shares outside of the family.*
  - (xi) *The owner shall be responsible for all dealings with Fiji Sugar Corporation Limited and Crown Land.*
  - (xii) *Upon the death of Masla Mani, the trustee shall comply with terms and conditions of the Deed.*
  - (xiii) *Any dispute amongst the members of the family regarding the land, their rights and responsibilities, and liabilities arising out of the said land shall*

*be referred to the Local Advisory Committee or a group of Arbitrators comprising of three persons agreed upon by the family AND the decision of the Local Advisory Committee or the Arbitrators shall be final and binding on all members of the family and no member shall ever take any matter concerning the said land to any Court or Tribunal whatsoever.*

60. The Deed was later executed by the Plaintiff, Shri Nivassan Mani, the late Masla Mani and the late Amra Mati before a Witness, a lawyer.
61. The Deed was also registered in the Registrar of Deed on 25 January 2006.
62. In the Defendants evidence by their third witness, a photocopy of the Statutory Declaration was tendered into Court entered in October of 2007 declaring that the Deed of 2005 was null and void, as the deponent, the late Masla Mani was unduly influenced and threatened to execute the Deed and the contents thereof from Sri Nivassan Mani.
63. Sections 4 to 12 of the Property Law Act discusses about what a Deed is. Section 4 (1) and (5) of the Property Law Act stipulates:
  - (1) Every deed, whether or not affecting property, shall be signed by the party to be bound thereby, and shall be attested to by at least one witness not being a party to the deed, but no particular form of words shall be requisite for the attestation.
  - (5) Every instrument registered or capable of being registered under the provisions of the Land Transfer Act 1971, shall upon execution have the effect of a deed made between the parties executing the same.'
64. Section 16 also of the Property Law Act recognizes that an Estate or interest in any chattel real created by Will can also be created by Deed.
65. Considering the requirements for the construction of the Deed, the Court views the Deed and finds that all statutory requirements for the Deed was met.
66. As opposed to a Will which takes effect after death, A will is the agreed intentions and purpose by the Testator for transfer of properties and interests at Death.
67. The Defendants argue that the Deed of 2005 was void as the late Masla Mani, their father and owner of the sugar cane farm, was influenced unduly and forced to sign the Deed.

68. In proving undue influence, the fact that there are familial relationships does not of itself automatically prove undue influence. There must be some relation of confidence which caused the Plaintiffs to have some form of dominance over the Defendants.
69. In Lochan -v- Maharaj [1978] FJSC 72, CA 2 of 1974 (26 October 1978) in which William JA stated:

“The law appertaining to **undue influence** was considered by Ungood-Thomas J. *In Re Graig deceased*, 1970, 2 W.L.R. 1219. He referred to instances where **undue influence** may be presumed as arising where the donee has been in a position to exert **undue influence** over the donor although there has been no actual proof of its exercise. In such cases the courts require proof of its non-exercise. In *Blomby v. Ryan* [1956] HCA 81; (1956) 99 C.L.R. 362 at 405 Fullager J. observed in relation to the probable existence of **undue influence** that the circumstances which may induce a court of equity to set a transaction aside are of great variety and they include a need of any kind on the part of the donor such as sickness, age, infirmity. The common characteristic being that they set one party at a serious disadvantage vis a vis the other.”

In the instant case at the times of the 1973 wills the testator was in my view, absolutely dependent on those around him. It would be a simple matter for his wife and two daughters to remind him of their existence and to omit any reference to his adopted son. In my view it is significant that this bedridden, partly paralyzed elderly man made three wills in 3 months and that the second of those was handwritten by a solicitor and later typed as a third will and that the testator signed them all. His hand was very shaky indeed. Such behaviour implies a considerable degree of urgency on the testator's part to put his affairs in order at a stage when his mental capacity was such that he would scarcely be fully alive to such an emergency. I think that the motivation probably came from some other source such as those in regular contact with him, namely his wife, daughters and Rajendra. I am satisfied that the nephew had at this stage been prevented from seeing the testator.’

70. In Kumari -v- Ammai [1978] FJCA 1; Civil Appeal 19 of 1978 (30 November 1978) before Justice Gould, Vice President of FCA, found that on appeal, the Judge, when considering the evidences, was correct in determining that there was undue influence and fraud when the Plaintiff/Respondent moved in and resided with her relatives, where she was physically and mentally ill, the two relatives then withdrew from her bank account approximately \$5000 and took her Certificates of Title and

sold the property. Citing Lord Chemsworth in the case of Tate -v- Williamson [1866] UKLawRpCh 107; 2 ChApp 55 it was held that:

"Wherever two persons stand in such a relation that, while it continues, confidence is necessarily reposed by one, and the influence which naturally grows out of that confidence is possessed by the other, and this confidence is abused, or the influence is exerted to obtain an advantage at the expense of the confiding party, the person so availing himself of his position will not be permitted to retain the advantage, although the transaction could not have been impeached if no such confidential relation had existed."

71. According to the Deed, the Plaintiff and his brother, Sri Nivassan Mani were divided 4.5 acres of farm land for cane cultivation and harvesting, the rest of the acreage went to the late Masla Mani and in residue to the late Amra Wati.
72. Since 2005 after the Deed was entered into, the parties to the Deed were responsible for their piece of the farmland.
73. The Counterclaim against the Plaintiff was that since the late Masla Mani made a Statutory Declaration of 2007, he had deemed the 2005 Deed was null and void. He thereafter made two Wills, 2013 Will and then the 2015 Will which revoked the earlier Will.
74. In his Will of 2015, the late Masla Mani had appointed the Executors and Trustees who are the Defendants, to determine how the property would be distributed.
75. The Statutory Declaration came to the attention of the Court on the day of Trial when the third witness, his daughter gave evidence that his father had left behind some documents, including the Statutory Declaration.
76. When cross-examined why it was not brought it to the attention of the Plaintiff earlier, she admitted she was unaware of the document until she found it at her residence recently.
77. The Plaintiff alleges that the Deed is valid and enforceable. He gave evidences that as a result of the Deed, the cane farm cultivation and proceeds were apportioned according to the Deed to the two brothers and the late Masla Mani, which was later taken over by their mother, the late Amra Wati.
78. Their sister was now residing in his father's portion of the land and had cut the water access to his residence which he requested the Court to allow them access.

79. The Defendants evidences was that the Plaintiff and Sri Nivassan Mani were not included as Trustees and Executors in the Will as they were residing with their late father on lands distributed to them by their late father.
80. This was consistent with all of Defendants evidences and that of the Plaintiff. The Court therefore accept that the Plaintiff was residing together with his brother Sri Niwassan Mani on the farmland in different houses, cultivating the sugar cane farm.
81. In the Statutory Declaration of 2007 which was signed before a legal practitioner, the late Masla Mani stated that :

“7. I was not agreeable to the contents of the Deed when it was made.

8. Sri Nivasan Mani approached me and said that he felt he would not be able to live with me. He was feeling emotionally down and he said that he would like some papers signed that shows he can stay on the land.

9. I did make it clear to him that I will not transfer the land to Sri Nivasan Mani or Sri Sanjay Mani.

10. Sri Sanjay Mani made threats to me and said that I had to go with him to Sugar Cane Growers Council to sign a Deed. He said that if I did not do it he would leave me and never talk to me again.

11. I went to Sugar Cane Growers Council and signed the Deed dated 21 November 2005. The contents of the Deed was never explained to me and I was not given an opportunity to see my lawyers.

12. I did not want to be bound to the Deed and hereby declare that the Deed was made without my consent and I was not given a proper explanation of its contents.

13. One of my sons Sri Sanjay Mani was in mental hospital (St. Giles) but is now at home. He is mentally ill.

14. I hereby declare the Deed is null and void.”

82. In order for the Court to set aside the Deed based on undue influence, there must be probable evidences of **undue influence, there must be some confidence arising from the familial relations for which the alleged party abused.**

83. According to the Statutory Declaration of 2007, the late Masla Mani deposed that he was requested by Sri Nivassan Mani to distribute the cane farm land amongst the two brothers as Sri Nivassan Mani was feeling down. He was threatened that if the Deed was not signed, Sri Nivassan Mani would not talk to him.
84. Late Masla Mani deposed that since Sri Sanjay Mani was in mental institution, he had to sign the document for the benefit of Sri Nivassan Mani.
85. He also deposed that when he signed the document, he was not aware of the contents as he was only shown where to sign without anyone explaining to him what it was.
86. In the Defendants evidences, the two older brothers were residing overseas and the eldest had travelled to Fiji and filed a Caveat, which was granted, against the property in order to ensure that the Plaintiff and Sri Nivassan Mani did not transfer, sell or assign the property.
87. Having considered the basis for which the late Masla Mani deposed that he was influenced, the Court finds that there was proximity in their relationship for a given period of time, that Sri Nivassan Mani took advantage of that relationship to abuse the late Masla Mani by threatening him to sign the Deed.
88. Given that the late Masla Mani was old, he was affected by his sons health condition and the threats from Sri Nivassan Mani, he was influenced to sign involuntarily.
89. He further deposes that the Plaintiff was suffering from a mental condition at the time he signed the documents. The documents were signed by all four deponents on the 12 of December 2005 and witnessed as well. Therefore if the Plaintiff was in a mental hospital or a patient of the mental hospital at that time, he thus did not have the mental intellect to know what he was signing.
90. Furthermore, since the late Masla Mani was not aware of what he was signing and the implications of it, he was therefore forced to sign a document he had no knowledge or intention of entering into.
91. The Court therefore finds that in accepting the evidence by way of Statutory Declaration of the late Masla Mani, the Court holds that the Deed is null and void.
92. Given that the 2005 Deed is null and void, the Will of 2015 takes precedence and the appointed Trustees and Executors have the discretion to distribute the properties of the late Masla Mani accordingly.

93. Given that the Defendants have proven undue influence for which the Court has declared the 2005 Deed as null and void, the Defendants have now claimed for specific damages by way of the FSC cane proceeds which are held in the trust account of FSC pending the judgment, \$15,000 as labour costs for cleaning and cultivating the farm, General damages and interests.

## **DAMAGES AND AWARDS**

### **FSC CANE PROCEEDS AND LABOUR COSTS**

94. The Defendants gave their testimony that monies were sent for cane labour to cultivate and harvest the cane farms. The Defendant had incurred \$15,000 labour costs to cultivate and look after the land including cane cutting.
95. For the purposes of labour costs, there was no documentation to prove the claim specifically. Although it is unusual for labourers to provide receipts, certain costs for purchases of fertilizer, weedicides, transportation, meals provides for documentations. This was not given to court at all. The Court will therefore award the Defendants \$5000 generally for labour costs.
96. There are cane proceeds which has been held in the trust accounts of FSC or Sugar Cane Growers Council, for the purposes of releasing to the Estate of Masla Mani. The Cane Growers Council or Fiji Sugar Corporation where the monies are held in trust are ordered to release the total monies to the Trustees and Executors of Masla Mani in order to off- set by paying the labourers who were not paid but had been hired over the years during the dispute to harvest the cane.

### **PAIN AND SUFFERING**

97. The Defendants had suffered some form of pain and suffering. They admitted that since 2009 Vijendra had been supporting his father and also looking after the farm financially. He also had to impose a caveat. Since 2009 he had to obtain a caveat as well as obtain letters of probate for his father. There was obviously pain and suffering from the manner in which the Plaintiffs had treated the Defendants causing ill-will between the siblings. The siblings relationships have been fractured over the years and no amount of money can heal this rift. The parties however must forge to forgive and move on. However given the pain, suffering and mental trauma, the Court will grant general damages at \$5000.

## **POST AND PRE-JUDGEMENT INTEREST**

98. The court will also impose interest at 5% of damages from the date of the counterclaim until judgment as pre-judgement interest and interest at 5% of damages for post-judgment.

## **COSTS**

99. This trial was conducted for 2 days, there were a limited number of documents filed over the course of 2 years. The Court finds that it will summarily assess costs awarded to the Defendant for the sum of \$2000.

## **PART D: ORDERS**


100. The Court orders as follows:

- (a) The Writ of Summons and Statement of Claim is hereby dismissed;**
- (b) That the Counterclaim of the Defendants is upheld;**
  - (i) That the Deed of 2005 is rendered null and void;**
  - (ii) That the Will of 2015 is valid;**
  - (iii) That the Probate No 60935 granted remains intact;**
  - (iv) That labour costs of \$5000 is awarded to the Defendants;**
  - (v) Cane proceeds held in the trust account be released to the Executors and Trustees of the Estate of Masla Mani;**
  - (vi) General Damages of \$5000 is awarded to the Defendants;**

(vii) Pre-judgment of 5% until the date of judgment and post judgment of 5% is awarded to the Defendants;

(viii) Costs of \$2000 is awarded to the Defendants.



  
Justice Senileba Waqainabete-Levaci  
Puisne Judge

18 July 2025