

IN THE HIGH COURT OF FIJI
CENTRAL DIVISION
PROBATE JURISDICTION

Probate Action No. **HPP 63 of 2023**

IN THE ESTATE OF VIJAY CHAND
f/n Ram Sami of Lot 37, Rovadrau
Road, Nakaulevu, Navua, Fiji, Retired,
Deceased, Testate

BETWEEN : **ASHNEEL DIPAK CHAND** and **ANITRA CHAND** both
of 104 Nailuva Road, Suva, Fiji.

PLAINTIFFS

AND : **ASHISH PRANEEL CHAND** of Lot 37, Rovadrau Rd,
Nakaulevu, Navua, Fiji, Mechanic, as the Executor and
Trustee granted by the High Court pursuant to Probate
No. 71775

1st DEFENDANT

AND : **REGISTRAR OF TITLES** of Civic Towers, Suva

2nd DEFENDANT

AND : **THE OFFICE OF THE ATTORNEY-GENERAL**

3rd DEFENDANT

Coram : **Banuve, J**

Counsels : **Sunil Kumar Esq for the Plaintiffs**
Anil J Singh Lawyers for the First Defendant
Attorney-General’s Chambers for the Second and Third
Defendants.

Date of Hearing : **5 August 2025**

Date of Ruling : **26 September 2025**

RULING

A. Introduction

1. On 13 June 2025, the First Defendant filed an interlocutory application, a Summons seeking a declaration that a mistrial be ordered due to serious procedural unfairness caused by Ashneel Chand’s improper conduct. The Summons was supported by an affidavit deposed by Ashish Praneel Chand.
2. The current application is the latest in a plethora of interlocutory applications which has bedeviled this proceeding, a contentious probate proceeding initiated pursuant to O.76, r.2 of the *High Court Rules* 1988.
3. In an interlocutory ruling delivered on 16 April 2024 this Court had set out an extensive chronology of pleadings and orders filed then. This was done out of necessity because the Court was dealing then with a *Summons for Urgent Injunction and Further Directions*, filed on 4 August 2023 filed by the Plaintiffs on 4 August 2023, and a *Summons (Extension of Time to file a Statement of Defence)*, filed on 1 March 2024, by the First Defendant. The chronology is recited;

[Description]

[Date of Filing]

- | | |
|--|----------------|
| (i) Writ of Summons. | 2 August 2023. |
| (ii) Summons (For Urgent Injunction and Further Directions). | 4 August 2023 |
| (iii) Acknowledgment of Service by | 10 August 2023 |

	Counsels for the First Defendant.	
(iv)	Order of the Court	6 September 2023
(v)	Summons for Urgent Extension Of Caveat	7 October 2023
(vi)	Summons to Enter Action for Trial	17 October 2023
(vii)	Inter Parte Summons (For Leave to Issue contempt proceedings)	7 November 2023
(viii)	Affidavit in Opposition (For Urgent and further directions).	29 January 2024
(ix)	Summons (Extension of Time to file a Statement of Defence).	1 March 2024
(x)	Notice of Change of Solicitors.	21 March 2024.
(xi)	Supplementary Affidavit of First Defendant.	21 March 2024.

4. The Court had noted in that earlier ruling the plethora of interlocutory applications filed by the Plaintiffs was necessitated by their intention to progress the matter to hearing and caused by the tardiness of the First Defendant (and his counsel then), in filing a Defence, and for delaying due process.
5. Despite its concern about delay, the Court, allowed the First Defendant, further time to file a Statement of Defence, after a consideration of all factors¹, particularly, facilitation of access to the Court, the opposing parties being siblings, and the existence of 2 wills whose terms appear diametrically opposed with allegations of fraud and undue influence surrounding the second version
6. Despite its concern, the Court notes no Defence was filed until 13 September 2024, after further leave was sought,² This in turn delayed the commencement of the trial
7. The matter proceeded to hearing on 29 October 2024, and was adjourned for continuation for 3 days from 10 March 2025.

¹ Paragraph 21 of interlocutory ruling in this matter delivered on 16 April 2024.

² On 12th September 2024

8. This hearing dates could only have been indicative as no Court Diary for 2025 was available to the Court in October 2024, and the Registry could not have confirmed new hearing dates in 2025. No hearing took place in March 2025
9. The Plaintiff filed a *Summons for Directions (For affixing continuation of trial and for further orders)* on 15 April 2025. The orders sought were;
 1. *A continuation of trial to be affixed in the within action.*
 2. *Transcripts of the trial occasioned on the 29th day of October 2024 be made available to all parties and the Honorable Court for ease of convenience and preparation of further continuation of the said trial to be affixed.*
 3. *That the Honorable Court appoint on Administrator Pendente Lite pursuant to Order 76 of the High Court Rules 1988 to manage the affairs of the ESTATE OF VIJAY CHAND f/n Ram Sami of Lot 37 Rovadrau Road, Nakaulevu, Navua, Fiji Islands, Retired, Testate until the determination of this proceeding.*
 4. *The Administrator Pendente Lite will be required to investigate into the existing accounts provided by the 1st Defendant to further maintain full and just accounts and make the same available upon demand at the same time deposit the estate funds in the High Court Trust Account as and when required do so and to ensure full compliance with the ruling of the 16th day of April 2024 and such appointment will cease to exist upon the determination of this action.*
 5. *Any irregularity arising out of this application be cured and/or set aside pursuant to Order 2 of the High Court Rules 1988.*
 6. *That the time for service of this Summons be abridged*
 7. *Such further and other orders as this Honorable Court deems just and expedient under the circumstances*
10. The Summons was heard on 9 July 2025, wherein the Court granted Order 3 sought that the Registrar of the High Court be appointed as the *Administrator Pendente Lite* pursuant to Order 76, Rule 14 of the *High Court Rules 1988* to manage the affairs of the Estate of Vijay Chand f/n Ram Sammy of Lot 37 Rovadrau Rd, Nakaulevu, Navua, Fiji Islands, until the determination of this proceeding.
11. The Court deemed it appropriate to appoint an *Administrator Pendente Lite* because of the protracted nature of the proceeding. The interest of both parties were served by this appointment, pending the determination of the substantive matter

12. The First Defendant had filed the current Summons before the Court, seeking a declaration that a mistrial be ordered, on 13 June 2025. It was set for hearing also on 9 July 2025. On that date, the Plaintiff did not pursue the application because senior counsel, representing him, was away in Australia.
13. The Summons seeking mistrial was set for 5 August 2025 to facilitate counsel's attendance
14. Both parties have filed written submissions to clarify their respective positions.
15. The First Defendant's primary concern were that certain matters raised in the *Affidavit of Ashneel Dipak Chand (In Support of Summons for Directions for affixing continuation of trial and for further orders)* exceeded the ambit of a summons to fix a date for the continuation of trial, as the basis for his seeking a mistrial.
16. In response the Court highlights certain issues;
 - (i) The prayers sought in the *Summons (For Affixing continuation of Trial and for other orders)* which are cited in full in paragraph 9 herein, clearly illustrate that *other* orders were sought by the Plaintiff, rather than just an order for the continuation of trial.
 - (ii) The additional orders sought by the Plaintiff in the *Summons (For Affixing continuation of Trial and for other orders)*, with the exception of Order 3, (the appointment of an *Administrator Pendente Lite*) , were not granted by the Court on 9 July 2025.
17. In short, the broader allegations made by the Plaintiff were not determined by the Court, under the narrow ambit of the *Summons (For Affixing continuation of trial and for other orders)*. These matters were for trial
18. The concerns raised by the First Defendant on the ambit of the *Summons (For Affixing continuation of Trial and for other orders)* and issues raised in the supporting affidavit of the Plaintiff, in a sense, are addressed by the limited orders granted by the Court, on 9 July 2025.

19. A date for the continuation of the hearing could not be assigned because of the First Defendant's insistence on the determination.
20. In summary, the First Defendant raises certain allegations as the premise for seeking a mistrial;
 - (i) Police harassment of witnesses;
 - (ii) Plaintiff discussing evidence with third parties and with counsel
21. The Court had taken notice in the interlocutory ruling delivered on 16 April 2024 that the primary grievance of the Plaintiff, pleaded in its Statement of Claim, is that a will of the Testator be invalidated on the grounds of fraud, deceit, forgery and lack of testamentary capacity, and that the Defendant took advantage of the testator's mental and physical incapacity to have the will drafted. The Defendant denies this allegation in its Statement of Defence. Pleadings are therefore joined on this issue, and is a matter for trial.
22. The Court is unaware of the nature of concurrent Police investigation, if any, that may have arisen around the issue in dispute in the civil proceeding, and it would be leery of the introduction of any evidence of continuing Police investigation into this civil proceeding, without proper basis for its admission.
23. The Court, however finds the general allegation on the contamination of evidence as difficult to comprehend not only because of its lack of specificity but also because much of the allegations are unsubstantiated , and at best are joined in pleadings, and yet to be tested at trial.
24. The First Defendant would do well to bear in mind that the Court has granted it considerable latitude to defend this matter, and ward off applications for committal for contempt due to his tardiness in complying with Court procedure, and the focus must now move to the conclusion of the hearing of this matter.

B. The Law

25. The First Defendant relies on the authority of *Prasad v Singh* [2011] FJHC 274 for the proposition that the principle of mistrial, be applicable in civil cases, affirming that serious procedural errors render a civil trial void in law.

26. Without pronouncing on its efficacy, at law, the Court finds the facts of this case distinguishable on several grounds;
1. The proceedings constituted to be a mistrial before the Tavua Magistrates Court had been completed on 15 November 2007 (Civil Action No 17 of 2005). In fact, the finding of a mistrial was made on appeal by the High Court at Lautoka on 19 May 2011 (Civil Appeal No 011 of 2008)
 2. The issue that the High Court found inimical, rendering the decision of the Magistrates Court devoid of legal force and resulting in a mistrial was the lower Court's refusal to deal with an application for adjournment on principle,³ and consider whether
 - (i) The refusal of the application would amount to a denial of fair hearing;
 - (ii) Such refusal would affect the effective observance of the rules of natural justice;
 - (iii) The opposite party could suffer irreparable loss or damage by granting the application; and
 - (iv) Such loss or damage could be adequately compensated by pecuniary awards such as cost or damage.
27. The Court finds this case distinguishable in that it is part heard, indeed evidence has just commenced and the Court has not made a determination on any issue in dispute or contention, therefore the concern raised by the First Defendant are speculative and lack specificity and are at best premature.

ORDERS:

1. **The Order sought in the Summons filed by the First Defendant that a mistrial be ordered due to serious procedural unfairness is refused and dismissed.**

³ *Goldenwest Enterprises Ltd v Pautogo* [2008] FJCA 3

2. Matter to be set for mention within 14 days to settle directions for continuation of hearing.
3. Parties to bear their own costs.



Savenaca Banuve
Savenaca Banuve
Judge

Dated at Suva this 26th day of September, 2025.