

IN THE HIGH COURT OF FIJI AT SUVA

PROBATE JURISDICTION

CASE NUMBER: HPP 7 Of 2025

BETWEEN: **SAROJINI PRASAD a.k.a. SAROJINI LATA**

PLAINTIFF

AND: **MOHINI LATA**

DEFENDANT

Appearances: Ms. A. Singh for the Plaintiff.

No Appearance for the Defendant.

Date/Place of Judgment: Thursday 2 October 2025 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

JUDGMENT

Cause and Background

1. The plaintiff is the mother of the defendant, Mohini Lata. In a will dated 9 October 1996, the testator Sundar Prasad, the plaintiff's husband and the defendant's father, appointed the defendant as the sole executrix and trustee in his estate.
2. The testator Sundar Prasad died on 31 August 2021. The plaintiff has a lifetime interest in the deceased's estate, after whom, all his children have equal shares.
3. The plaintiff has made an application that she be granted permission to apply for the grant as the defendant has failed in her duty to do so since the death of the deceased.
4. According to the plaintiff, she and all other beneficiaries had asked the defendant on numerous instances to obtain a probate in the estate but she failed or neglected to do the same.

5. The plaintiff says that on 20 May 2024, the defendant had agreed to apply for probate in the estate. They therefore engaged their solicitors, Kohli & Singh Suva, to advertise the estate in the local daily at her costs. When 21 days expired, her solicitors couriered the probate application documents to the defendant for signatures but she refused to sign the same and have the documents returned to her solicitors in Fiji.
6. According to the plaintiff, the defendant is aware that she and her other children will bear the costs of administration of the estate but the defendant has still failed to act under the will.
7. The plaintiff's solicitors had written to the defendant asking her to act under the will or an action will follow but there has been no initiative by the plaintiff to discuss anything with the beneficiaries.
8. The plaintiff says that she resides in America. The deceased has properties in Fiji and America. It is costly to maintain these properties. The plaintiff says she cannot access the deceased person's funds in the Westpac Bank Account in Fiji without a probate. The property in America also needs to be administered.
9. The parties are not in communication for many years and the plaintiff says that she finds it impossible to discuss any of the matters with the defendant to amicably resolve the situation. The other beneficiaries have had a meeting with her, says the plaintiff, and all of them are in agreement that the estate be administered at the earliest.

The Defendant's Position

10. The defendant has filed an affidavit in reply. She says that she is appointed under the will to be the sole executrix and trustee. She too is one of the beneficiaries. She also wants the estate to be fairly and equally distributed among the beneficiaries.
11. According to the defendant, the plaintiff tried to obtain a grant in her favour. The plaintiff therefore, with other beneficiaries, tried to uplift the last will and testament of the deceased from Suva High Court Probate Registry. They failed as they were denied. The defendant says that she was then informed to uplift the will.

12. The defendant says that on 7 May 2024, she uplifted the will of the deceased together with 3 other beneficiaries namely Shalend Prasad, Shailesh Prasad and Shaileshni Lata. She gave a copy of the will to the plaintiff and the beneficiaries.
13. The defendant refutes that she was given any documents by the plaintiff's solicitors to sign. She demands for the address on which the documents were sent and for a postal tracking number to be provided to the court. She says that her correct and valid mailing address is Mohini Lata of 11816 se 265th ct, Kent Wa 98030, USA.
14. The defendant says that she has always been co-operative with the plaintiff.
15. It is deposed by the defendant in her affidavit that when she uplifted the original will, she was informed that the two beneficiaries namely Shalend Prasad and Shailesh Prasad will take over from there and do the rest, so they went and appointed Ms. A. Singh of Kohli & Singh Suva to be their solicitors. Upon the request of their solicitors, she handed the original will to Ms. Singh in the presence of Shailesh Prasad, Suman Prasad and Shaileshni Narayan.
16. The defendant says that she asked the plaintiff's solicitors if there were any other documents which needed her authority or signature. There were none. The Plaintiff then left the country as she did not want any kind of dispute amongst the family members.
17. It is contended by the defendant that the plaintiff was not happy with the deceased appointing her as the trustee in his estate. The defendant alleges that due to this, the plaintiff always fights and argues with her. The defendant says that she has been pressured and asked to change the will of the deceased and give the sole authority to the plaintiff and the estate to the 2 sons. The defendant says that she told all of them that she does not have a right to change anything in the will and to follow the will as it is.
18. There is a residential property in America. The defendant says that she has been residing in that property for 18 years. She says that she has been helping the deceased and the plaintiff with payment of loans and bills. The deceased was sickly and unable to take care of all the bills. At no point in time did other beneficiaries try to financially assist her.

Law and Analysis

19. Before I deal with the application, I have to address the inaction on the part of the defendant's counsel in not appearing in court on time. Before I had fixed this matter for hearing, I had clearly informed the parties to attend court on time as there were other matters scheduled.
20. When the matter was called, the defendant's counsel did not appear. She had informed the clerks that she was caught in traffic.
21. I am concerned that such a lethargic excuse was put forward by counsel for the defendant to not attend court on time. Suva Nausori corridor is known for traffic. Given that predicament, counsel who are given a time for hearing, must make sufficient arrangements to leave early to reach court on time. It is not acceptable that traffic issues are raised to delay hearing times. These are frivolous excuses for which I have not and will not make allowances.
22. If a counsel accepts a brief from a client, they must act diligently to be in court on time and not put forward unacceptable excuses. I expect certain conduct from counsel appearing in my court and one of which is to be in court on time. Any failure will not be excusable unless I find that the failure to attend was due to external unforeseen circumstances.
23. It is due to the improper conduct of the defendant's counsel that the matter had to be heard in the absence of the defendant or her counsel. I have nevertheless taken into account the material information deposed by the defendant in her affidavit of 19 May 2025.
24. The deceased in this case died in 2021. It is now over 4 years that the estate has not been administered.
25. The plaintiff's counsel says that she had couriered the probate to the defendant's brother so that it can be signed but the defendant has failed to do.
26. The defendant denies receiving any probate for signing. She says that she is co-operating with the plaintiff and that she did not get a probate to sign.
27. The defendant's conduct is highly questionable. Her denial of getting any probate to sign and that she did not refuse to sign the same is something which I cannot accept.

28. The plaintiff has filed an affidavit in reply to the defendant's affidavit. In that affidavit, email correspondences from the plaintiff's counsel Ms. A. Singh and the defendant is attached. These email correspondences appear at Annexure B.
29. It is clear from the email correspondences that the defendant knew that the plaintiff's counsel has prepared a probate. The defendant wanted to have a copy of it to vet it before taking steps on it. A copy was given to the defendant. The defendant saw the draft and recommended some changes to it. The changes were incorporated.
30. After the change were incorporated, the counsel for the plaintiff asked the defendant if the documents could be couriered for signing. This was on 20 January 2024. After that the defendant did not respond.
31. Ms. A. Singh, solicitor for the plaintiff then again sent two follow up emails on 21 June 2024 and 25 June 2024 asking if the probate could be sent across for execution.
32. Instead of responding to the email about whether the probate should be couriered for signing or not, the defendant started nagging about an irrelevant matter as to why the plaintiff's counsel had said to her brother that the plaintiff was refusing to sign the document.
33. After the plaintiff's counsel clearly explained her position to the defendant and advised her that the defendant was free to change her lawyers, the defendant continued to rattle on. In the email of 26 June 2024 the defendant questions the plaintiff's counsel as follows:
- "...And furthermore you did not clarify to me as to why I have to do the probate as I told you that I need not change anything in the will."*
34. Ms. A. Singh then replied and gave clarification and again said that if the defendant wanted, the paperwork can be released to her lawyers.
35. The defendant replied to that and nowhere in the reply she agrees to sign the probate.
36. It is very clear from the chain of emails that the defendant does not want to apply for the probate. She is even questioning why she has to do it. That is not something she should even ask.

37. It was her duty under the will to apply for a probate. She failed to do so and when contacted by the plaintiff's counsel if the probate could be sent across for signing, the defendant avoids the issue and attacks the plaintiff's counsel.
38. All this conduct establishes the plaintiff's claim that the defendant has not shown any interest to administer the estate and whenever there is a discussion, the defendant becomes hostile and raises irrelevant personal issues.
39. Majority of the beneficiaries say that the defendant is not competent enough for this role. She does not work well with her siblings and brings personal differences in every discussion. I agree that the tone of her email and the manner in which she started attacking the plaintiff's counsel instead of concentrating at the main issue is evident of how difficult she is and that she is deliberately delaying applying for a grant.
40. When Ms. A. Singh asked the defendant if she preferred all the paper work to be given to her lawyers, there was no response from the defendant. This is only because the defendant wishes to continue to blame others for her failure.
41. It was the duty of the defendant to apply for a probate and to follow up on the application. She has not shown me a single email in which she has expressed any interest for a grant to be issued. She has failed to monitor the progress of any paperwork.
42. Her actions are not in the interest of any beneficiary as the properties here and abroad are left un-administered.
43. S.31 of the Succession, Probate and Administration Act 1970 reads:

"Where an executor neglects to apply for or to renounce probate within 6 months from the death of the testator or from the time of such executor attaining the age of 18 years, or where an executor is unknown or cannot be found, the court may, upon the application of any person interested in the estate, or of any creditor of the testator, grant administration with the will annexed to the application, and such administration may be limited as the court thinks fit."

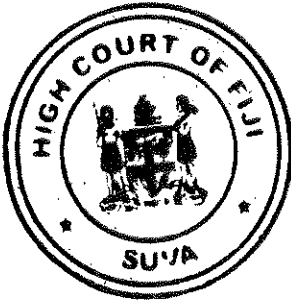
44. There is substantial delay in this case by the defendant to apply for a probate. The defendant has been very difficult to all the beneficiaries and the plaintiff. She has failed in her duty to the estate which is suffering from lack of administration.

45. There is no reason why the estate should continue to suffer. It is desired by the majority of the beneficiaries that their mother, the plaintiff, administers the estate. That is the only rescue.

Final Orders

46. In the final analysis, I grant an order for the plaintiff to apply for probate in the estate of the deceased Sundar Prasad within 3 months. The defendant is removed as the executor and trustee in the estate.

47. The defendant shall pay costs of the proceedings in the sum of \$5,000 to be paid within 7 days.



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Hon. Madam Justice Anjala Wati

Judge

2.10.2025

To:

1. *Kohli & Singh, Suva for the Plaintiff.*
2. *Benjamin Ram Lawyers for the Defendant.*
3. *File: Suva HPP 7 of 2025.*

