

IN THE HIGH COURT OF FIJI AT SUVA
CENTRAL DIVISION
CIVIL JURISDICTION

Civil Action No. HPP 16 OF 2025

IN THE MATTER OF an application for leave to prove the Will in accordance with Section 3 of the Succession, Probate and Administration Act 1970 and section 18 (1) of the High Court Act 1875 and Orders 1 Rule (11) of the High Court Rules and Rule 14 (2) of the Non-Contentious Probate Rules 1987 in Her Majesty's High Court of Justice in England.

AND

IN THE MATTER OF Estate of Paul Hector Kid, late of Lot 17, Mala Place, Nawanawa, Nadera, Businessman

AND

IN THE MATTER OF an application by **ERONI NOKONOKO GADEYABAKIDUA TULELE** and **MELANIA MAIKASAVU TULELE** also known as **MELANIA TULELE** as Executors and Trustees name under the original instrument dated 5 June 2007 containing the last Will and Testament of **PAUL HECTOR KID** late of Lot 17, Mala Place, Nawanawa Road, Nadera.

BETWEEN: **ERONI NOKONOKO GADEYABAKIDUA TULELE**

PLAINTIFF/APPLICANT

AND: **MELANIA MAIKASAVU TULELE** also known as **MELANIA TULELE**

PLAINTIFF/APPLICANT

For the Plaintiff : **Ms Tuitoga T.**
Date of Hearing : **3 July 2025**
Before : **Waqainabete-Levaci, S.L.T.T, Puisne Judge**
Date of Judgement : **2nd October 2025**

J U D G E M E N T

(APPLICATION TO ADMIT FOR PROOF OF WILL AND ITS ISSUANCE)

PART A - BACKGROUND

1. The Applicants has applied to the High Court for the admission of proof of an unregistered Will by the late Paul Hector Kid, in its current form.
2. Together with the application is an Affidavit deposed by the Applicants explaining the reasons why they seek for the Court to admit the Will as proof in its current form.

PART B - AFFIDAVITS

3. The Applicants depose that the late Paul Hector Kid passed away 7th December 2021 in the Colonial War Memorial Hospital. His daughter, Diana Magdalene Sisilia Hector Kid informed the Applicants that the deceased had made a Will on 5th June 2007 and appointed the Applicants as the Executors and Trustees of his Estate.
4. The Applicants appended the last Will and Testament of the late Paul Hector Kid.
5. The appended last Will and Testament dated 5th June 2007 contained hand written alterations by the Deceased which they deposed was from the late Paul Hector Kid, the testator.
6. They depose that the alterations were not in compliance with the requirements under the Will Act and hence should not be taken into consideration when interpreting the Will.
7. The Applicants also depose that the alterations should not render the Will defective.
8. The daughter of the late Paul Hector Kid, Diane Magadalene Sisilia Kid, deposed the second Affidavit appending her birth Certificate to confirm her relationship to the Testator.

9. She deposed that she had worked for her father, the late Paul Kid and was familiar with his handwriting.
10. She admitted finding the unregistered Will and Testament of her late father and admitted to the alterations and markings on the Will handwritten by pen and confirmed that they were the handwritings of her late father, Paul Hector Kid.
11. The daughter deposed that the alterations and markings were made subsequent to his death and execution of the Will made on 5th June 2007. She admitted they were not of significant value on the basis that the Colonial Life Insurance policies had been paid out, the Testator had withdrawn all his FNP Superannuation funds, he had sold all his vehicles DN 528 and EJ 162 and had sold and transferred the motor vehicle Toyota Prius registered as IT 288.
12. She and her sister, Marie Natasha Kid have both consented to the appointments of the Trustees and Executors by their father, the late Paul Hector Kid, and is unaware of the 'x' marks noted on the Will against their names. An appended consent by Marie Natasha Kid was attached.
13. Finally, a third Affidavit in support of the Application by the Applicants was filed by the witness to the execution of the Will. This Affidavit was deposed by Mosese Waqavonovono who admitted witnessing the last Will and Testament of the late Paul Hector Kid on 5th June 2007.
14. Mr Waqavonovono deposed that at the time of witnessing the signature of the Testator, there was no alterations or marks on the Will. He admitted he was familiar with the late Paul Hector Kids handwriting and admitted the alterations were made by the said Testator.
15. The deponent denied that he was asked to witness the alterations and marks on the Will by the Testator at any time.
16. The deponent also admitted that the second Witness, Mr Sam Lee had passed away after the Will was made.

LAW AND ANALYSIS

17. Section 22 and 24 of the High Court Act recognizes that practices, common law and equity of the English Courts in existence, which applied in Fiji Courts from 1875

continued to apply in Fiji unless they were inconsistent with the laws and Rules of the High Court of Fiji.

18. Order 1 Rule (11) of the High Court Rules for the non-contentious probate practice and procedure in the Courts of England continue to apply with some modifications to grants of probate and administration in Fiji High Courts.
19. Rule 14 of the Non-Contentious Probate Rules 1987 of UK provides as follows:

14.—(1) Subject to paragraph (2) below, where there appears in a will any obliteration, interlineation, or other alteration which is not authenticated in the manner prescribed by section 21 of the Wills Act 1837(8), or by the re-execution of the will or by the execution of a codicil, the registrar shall require evidence to show whether the alteration was present at the time the will was executed and shall give directions as to the form in which the will is to be proved.

(2) The provisions of paragraph (1) above shall not apply to any alteration which appears to the registrar to be of no practical importance.

(3) If a will contains any reference to another document in such terms as to suggest that it ought to be incorporated in the will, the registrar shall require the document to be produced and may call for such evidence in regard to the incorporation of the document as he may think fit.

(4) Where there is a doubt as to the date on which a will was executed, the registrar may require such evidence as he thinks necessary to establish the date.

20. Section 12 of the Wills Act renders alterations after a Will to be invalid where:

Except so far as the words or effect of a will before an alteration are not apparent, an alteration made in a will after the execution thereof is invalid unless it is duly executed in the manner required by section 6 by the signatures of the testator and witnesses, either in the margin or opposite or near the alteration in such manner as to indicate the intention of the testator that the will as altered was to take effect, or to a memorandum

written on the will and referring to the alteration and in either case the will as so altered shall be deemed to have been duly executed.”

21. Considering the provisions of the non-contentious rules and its requirements’, the Court thereafter perused the appended Will as well as considered the obliterations and alterations on the Will. They were as follows:
 - (i) ‘x’ mark handwritten beside paragraph 2 of the Will where the appointments of Executors and Trustees were made;
 - (ii) ‘x’ letter beside paragraph 3 (a) (i) and encircle for the policy number 3739161 and a hyphen ‘-’ with the words inserted ‘mature Oct 2019’. The alterations and inter-alienations in the Affidavit of Ms Diana Magadalene Kid referred to that policy maturing and him receiving the funds in October of 2019.
 - (iii) The ‘x’ inserted in sub-paragraphs (ii) and (iii) of paragraph 3 of the Will was not relevant at all.
 - (iv) In sub-paragraph (iii) the handwritten deletion in the words DN 528 Mazda Panel Van and handwritten insertion which was also deleted of the words ‘IT 288 Toyota Prius’ referred to the sale of the Panel Van and purchase and sale of the Toyota Prius.
 - (v) In paragraph © in the sub-paragraphs (i), (ii), (iii) and (iv) contained handwritten deletions of the said paragraphs.
 - (vi) Ticks hand written in to paragraphs (3), (4) and (5) and ticks handwritten into the name and signature of the Witness Mosese Waqavonovono;
 - (vii) The ‘x’ mark handwritten with the words ‘passed’ beside the name and signature of the witness Sam Lee;
22. Having perused the Will and the three Affidavits, the Court finds there is evidences that the alterations by way of ‘x’ markings and tick markings which were handwritten by the Testator, as confirmed by Diana Kid, his daughter, in her Affidavit, are of no particular importance and relevance to the interpretation of the Will.
23. The Court further finds that the deletions and handwritings on Will by the Testator in paragraphs 3 (a) and (b), which was not authenticated and witnessed in accordance with the Wills Act nor was it ever inserted during the making of the Will as evidenced by the Affidavit of one of the witnesses, Mr Mosese Waqavonovono, renders these alterations invalid in accordance with section 16 of the Wills Act.
24. In Narayan -v- Narayan [2014] 955; HBC 250.2005 (s) (16 June 2014) Brito J held that:

'the short answer to that contention is contained in the headnote to *Doe v. Palmer*, 16 QB 748:

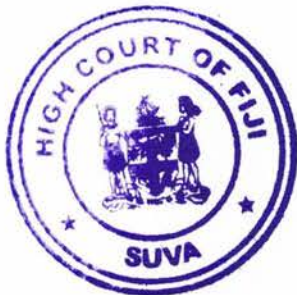
Alterations apparent on the face of a will are presumed to have been made after the will was executed, until evidence to the contrary is adduced. .. Held, that it was necessary for the defendant to rebut the presumption of the alterations having been made after the will was executed by adducing some evidence of their having been made before. Also, that the declarations of the testator made before the execution of the will were admissible evidence from which a jury might draw that inference, since the alteration was made in furtherance of an intention shown to have existed before the execution of the will. (emphasis added)

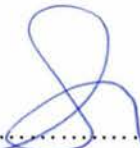
25. Having determined that there was no evidence to rebut the presumption, the alterations are therefore determined as invalid but do not invalidate the contents of the Will that was made and properly executed in accordance with section 6 of the Wills Act.

COURT ORDERS

26. The Court Orders as follows:

- (a) *That the 'x' and tick markings handwritten on the Will are of no importance or relevance to the Will;*
- (b) *The deletions and wordings inserted into the Will in Clause 3 paragraphs (2) and (3) are invalid as they were inserted after the Will was duly executed.*
- (c) *That the Will can be admitted for proof.*
- (d) *Costs borne by the Applicant.*




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Ms Senileba LTT Waqainabete-Levaci
Puisne Judge of the High Court of Fiji