

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

**Civil Action No: HPP 45 of 2022**

**BETWEEN** : **VED LATA** of Kasavu, Nausori, Domestic Duties as Administratrix and Trustee of the Estate of Tasreef Ali late of Kasavu, Nausori, Unemployed, Deceased. Intestate.

**PLAINTIFF**

**AND** : **ASHIK ALI** of 554 Shepherd Avenue, Hayward, California 94544, USA, Retired as Executor and Trustee of the Estate of Hussein Ali aka Hussein Ali late of Drekenikelo, Nausori, Retired Businessman

**DEFENDANT**

**Coram** : **Banuve, J**

**Counsels** : **M.A. Khan Esq for the Plaintiff**  
**No Appearance for the Defendant**

**Date of Hearing** : **1 September 2025**

**Date of Ruling** : **9 October 2025**

# RULING

## A. Introduction

1. The Plaintiff seeks that the Grant of Probate to the Defendant over a Will dated 7 March 2016 be revoked and that Letters of Administration, with the Will dated 9 May 2016 (annexed), over the Estate of Hussein Ali aka Hussain Ali, be granted to her instead.
2. Pursuant to Order 76, r.2(2) a probate action<sup>1</sup> must be initiated by writ issued out of the Probate Registry.
3. A Writ of Summons was issued and filed on 29 April 2022 in which the Plaintiff pleads;
  - (i) The Plaintiff is the Administratrix of her late husband, Tasreef Ali of Kasavu, Nausori by Grant of Letters of Administration dated 1 October 2020.
  - (ii) The Plaintiff's husband was the Executor and Trustee of the Will dated 9 May 2016 of Hussein Ali aka Hussain Ali (the Testator) , his father, who died on 10 October 2016.
  - (iii) The Defendant had obtained probate of the Testator's Estate based on a Will dated 7 March 2016, notwithstanding, that the deceased had made a Will duly executed and witnessed on 9 May 2016.

---

<sup>1</sup>O.76.r.1(2) –“probate action” means an action for the grant of probate of the will, or letters of administration of the estate of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will , not being an action which is non-contentious or common form probate business

- (iv) Both the Plaintiff's late husband and the Defendant were sons of the Testator, and were parties to an earlier proceeding (HPP 78 of 2017), in which the grant of probate in the earlier Will was contested. It was terminated in 2020, after the Plaintiff's husband had died.
  - (v) The Plaintiff's late husband had a discretionary interest under both Wills, however, the main difference between the 2 wills is that a life interest was given to one Farina Nigar under the Will dated 9 May 2016, which was not contained in the Will of 7 March 2016.
  - (vi) The Plaintiff now seeks that the grant of Letters of Administration No. P 60958, in favor of the Defendant, be revoked and substituted by a Grant of Letters of Administration, with the Will dated 9 May 2016 annexed, to the Plaintiff, as the person next in line to administer the Estate of Hussein Ali aka Hussain Ali, and in the interest of the beneficiaries of that Will.
4. The Testator had bequeathed fifty (50) per cent of his Estate to the Plaintiff's late son, Tasleem Ali, who had passed away on 29 April 2022.
  5. The Plaintiff is also the Administrator of the Estate of Tasleem Ali, her late son, by grant of Letters of Administration dated 14 August 2020.

## **B. The Defendant**

6. The Plaintiff sought and obtained leave to serve the Writ of Summons and Statement of Claim out of the jurisdiction, on the Defendant who resides in Hayward, California, USA.
7. The Writ of Summons and Statement of Claim were duly served on the Defendant on 25 May 2022 and an Affidavit of Service was filed on 27 June 2022.
8. Despite service being made on the Defendant, no Acknowledgment of Service or a Statement of Defence has been filed by the Defendant.

### C. Analysis

9. A *Summons (To Enter Action for Trial pursuant to Order 76 Rule 10 of the High Court Rules 1988)* was filed on 14 February 2024, seeking an order to enter the action for trial in default of pleadings by the Defendant.
10. Order 76, rules 10(1) and (2) state;
  - (1) *Order 19<sup>2</sup> shall not apply to a probate action*
  - (2) *Where any party to a probate fails to serve on any other party a pleading which he is required by these rules to serve on that other party a pleading which he is required by these rules to serve on that other party, then unless the Court orders the action to be discontinued or dismissed, that other party may after the expiration of the period fixed by or under these Rules for service of the pleading in question, apply to the Court for an order for trial of the action, and if an order is made the Court may direct that the action be tried on affidavit evidence.*
11. The matter proceeded to trial on 1 September 2025.
12. The central issue concerns the disposition of the Estate of Hussein Ali aka Hussain Ali, the Testator, leaving two Wills, both purportedly expressing his testamentary intention, one dated 7 March 2016 (the earlier Will), and the other, dated 9 May 2016 (the later Will). Ashik Ali, the Defendant had obtained probate over the earlier Will (Probate No. P 60958). Probate was purportedly granted by way of a Consent Order entered on March 2020. The Plaintiff had earlier sought to set aside the Consent Order on the basis that her counsel had not been instructed to enter into the Consent Order, and further, a later Will, duly executed and witnessed pursuant to the *Wills Act* [Cap 59], existed, which revoked the earlier Will.
13. The Plaintiff had to proceed by way of probate action, in order to set aside the consent order entered into in HPP 78 of 2017. This led to the filing of the Writ of Summons with a Statement of Claim indorsed, on 29 April 2022.

---

<sup>2</sup> Default of Pleadings

14. As the Defendant had neither filed an Intention to Defend, nor a Statement of Defence, despite being duly served, the Plaintiff now seeks default judgement pursuant to O.76, r.10 of the *High Court Rules* 1988.
15. The Court considered the evidence deposed in the Plaintiff's affidavits<sup>3</sup> and documents annexed. The following annexures were considered;
- (i) Marriage Certificate
  - (ii) Birth and Death Certificates of Plaintiff's son
  - (iii) Grant of Letters of Administration for son's Estate
  - (iv) Death Certificate of Plaintiff's husband
  - (v) Grant of Letters of Administration for husband's Estate
  - (vi) Copy of Will dated 9 May 2016
  - (vii) Writ of Summons and Statement of Claim
  - (viii) Court Order granting leave to file out of jurisdiction
  - (ix) Affidavit of Service
16. Section 15 (b) of the *Wills Act* [Cap 59] states;
- Subject to the provisions of Part V, a will or codicil or any part thereof is not revoked otherwise than-*
- (a).....
  - (b) *by another will or codicil executed in a manner provided by this Act;*
  - (c).....
17. The provision affirms that a later dated Will, duly executed as required by the *Wills Act*, may revoke an earlier Will. The Court finds that the Will dated 9 May 2016, as duly executed and compliant with the requirement of the *Wills Act*.<sup>4</sup>
18. The Defendant has neither filed an Intention to Defend or a Statement of Defence, despite being duly served with all documents.
19. After considering the evidence and relevant law on testamentary disposition, the Court revokes Grant of Probate No P 60958 held by the Defendant, and appoints

---

<sup>3</sup> Affidavits of 4 August 2022 and 2 September 2022

<sup>4</sup> Testamentary Capacity , Due Execution , Absence of Undue Influence

the Plaintiff as Administrator with Will (dated 9 May 2016), annexed, pursuant to sections 35 of the *Wills Act* [Cap 60]

**ORDERS:**

1. Grant of Probate No. P 60958 to the Defendant is revoked; and
2. Grant of a Letters of Administration with Will dated 9 May 2016 annexed, to the Plaintiff.
3. Costs summarily assessed at FJD \$2,000 to be payable to the Plaintiff within 28 days.



*Savenaca Banuve*  
Savenaca Banuve  
Judge

Dated this 09<sup>th</sup> day of October 2025