

IN THE HIGH COURT OF FIJI
PROBATE JURISDICTION

Probate Action No. HPP 96 of 2022

IN THE ESTATE OF JAGDISH
PRASAD late of 6 Kumars Road,
Koronivia, Nausori in the Republic of
Fiji, Businessman, Deceased, Testate.

BETWEEN : **DHARMENDRA PRASAD** of Lot 12, Lal Singh Road,
Waila, Nausori in the Republic of Fiji, Driver

APPLICANT

AND : **SUNILA WATI** also known as **SANILA WATI** of Lot 10,
Lal Singh Road, Waila, Nausori in the Republic of Fiji
Islands, Domestic Duties.

RESPONDENT

Coram : Banuve, J

Counsels : KS Law for the Applicant
Legal Aid Commission for the Respondent

Date of Hearing : 14 November 2024

Date of Ruling : 21 November 2025

RULING

A. Introduction

1. The testator, Jagdish Prasad of Lot 6, Kumars Rd, Koronivia, Nausori passed away on 8 April 2022.
2. The Applicant, the son of Jagdish Prasad, initiated probate proceedings on 15 June 2022, as the nominated Executor and Trustee of the Estate of Jagdish Prasad in accordance with the terms of the registered Will and Testament dated 22 November 2018
3. The Respondent, Sunila Wati known as Sanila Wati of Lot 10, Lal Singh Road, Waila, Nausori, Domestic Duties, lodged a caveat on 2 June 2022, (Caveat No.18 of 2022) to prohibit the sealing of a grant of probate/letter of administration over the Estate of Jagdish Prasad.
4. The Applicant, through his solicitors filed an Originating Summons on 25 August 2022, for the removal of caveat.
5. An Affidavit in Opposition was filed by the Respondent on 7 December 2022 and an Affidavit in Reply was filed by the Applicant on 15 December 2022.

B. Discussion

6. The Applicant had lodged Probate Application No. 69560 on 9 June 2022.
7. On 15 June 2022 the Probate Registry notified the Applicant that a caveat had been placed on the Estate of Jagdish Prasad by the Respondent, Sanila Wati.
8. The Amended Summons filed by the Applicant on 14 November 2024 was necessitated by the lodgment of the caveat and the need to progress the probate application.
9. The relief sought in the Amended Summons were;

- (a) *That any appearance filed by SUNILA WATI the caveator be struck out;*
- (b) *That Caveat No. 18 of 2022 entered in the Estate of JAGDISH PRASAD late of Lot 6, Kumars Road, Koronivia, Nausori in the Republic of Fiji, Businessman, Deceased be removed.*
- (c) *That Probate in the Estate of JAGDISH PRASAD be granted to DHARMENDRA PRASAD of Lot 12, Lal Singh Road, Waila, Nausori, in the Republic of Fiji, Driver*
- (d) *That SUNILA WATI, the Caveator be ordered to pay costs of this application; and*
- (e) *Any other orders the Court deems just.*

10. The Applicant states that it had filed a Warning to Caveat on 19 July 2022, and served it on the Respondent on 26 July 2022. The terms of the warning are standard;

You are hereby warned within eight days after service hereof upon you, inclusive of the day of such service:-

- (i) *to enter an appearance either in person or by your Solicitor at the High Court Registry, Government Buildings, Suva setting what interest you have in the Estate of the above named in the Estate of **JAGDISH PRASAD** late of Lot 10, Lal Singh Road, Waila, Nausori in the Republic of Fiji Islands, Businessman, deceased, contrary to that of the party at whose instance this warning is issued;*
- (ii) *if you have no contrary interest but wish to show cause against the sealing of a grant to such party to issue and serve a summons for directions by a registrar of the said Registry.*

And take notice that in default of your doing so the Court may proceed to issue a grant of Probate in the said estate notwithstanding your caveat.

11. The Applicant maintains that the Respondent had neither served any appearance as notified on 19 July 2022 or a Summons for Directions, though filed. The caveat

is still in place, and the Respondent has not taken any steps to challenge the Will. The Applicant is keen to proceed with the Probate Application.

12. The Applicant states that the Will dated 22 November 2018 was made after his father and the Respondent were married and is valid and should be construed as representing his last wishes.
13. The Respondent, in the Affidavit in Opposition, filed on 7 December 2022 challenges the Will dated 22 November 2018, and states that she is the lawful spouse of the late Jagdish Prasad, and asserts, rather, that a different Will dated 12 January 2017 is the valid testament of the late Jagdish Prasad, under which she was to inherit a piece of land on Lot 12, Lal Singh Rd, Waila, Nausori.
14. The Respondent states that she has not failed in her duties as an Executor and Trustee to warrant her removal by the Court and there is enough property in the Estate to be shared between the parties.

C. Analysis

15. Both parties have filed written submissions, which the Court has found of considerable assistance in narrowing the issues which the Court has to determine.
16. The Applicant maintains that Caveat No 18 of 2022, lodged by the Respondent on 1 June 2022, expired on 2 December 2022 with the Respondent showing little interest in the Estate, nor take any steps to seek orders for the extension of the caveat, and identifies 2 issues therefore for the determination of the Court;
 - (i) *Whether Caveat No. 18 of 2022 lodged by the Respondent should be removed for showing no cause and due to non-compliance with the non-contentious probate rules?*
 - (ii) *Whether the Respondent should pay the costs of this Application to the Applicant?*

The Applicant cites section 47 of the *Succession, Probate and Administration Act* [Cap 60]¹ and Rule 44 of the *Non-Contentious Probate Rules 1987*,² and relies on a series of cases; *Rosy Reddy v Manchama Webb & Lawrence Webb*- Civil Appeal No. 14 of 1994; *Amos v Fiji Public Trustee Corporation Ltd* [2010] FJHC 617; *Roshni Lata v Krishen Prakash* – FJHC No 35 of 2011 and *Mani v Mani* [2019] FJHC 22 for the following propositions;

- (1) Under the r. 44(3) of the *Non-Contentious Probate Rules 1987*, a caveat shall remain in force for six months and may cease to have any effect, if the Caveator does not file an appearance, or take out a summons for directions, or cease to have any effect in this way without resort to court proceedings. Section 47 of the *Succession, Probate and Administration Act* [Cap 60] provides, however, that in every case where a caveat is lodged an application may be made to the Court to remove the caveat.
- (2) Section 47 does not offer any guidance as to the grounds on which a caveat should be removed, rather this is a matter for the Court's discretion and in such an application the Court may have regard to the practice set out in the Rules as a guide. The relevant rule is r.44 (7).
- (3) A caveator has not complied with the non-contentious probate rules and failed to file an affidavit in response to the affidavit of the applicant and thus the application should be considered as an uncontested one for the removal of a caveat.

17. The Applicant asserts that it is unaware if an appearance has been filed, however, if it has been filed in response to the 'Warning to Caveat' of 19 July 2022, it is still

¹ (1) In every case in which a caveat is lodged, the court may, upon application by the person applying for probate or administration, or for the sealing of nay probate or letters of administration as the case may be, removed the same.

(2) Every such application shall be served on the caveator by delivering a copy of the same at the address mentioned in his caveat

(3) Such application may be heard and order made upon affidavit or oral evidence as the Court may direct

² (1) Any person who wishes to show cause against the sealing of a grant may enter a caveat in any registry or sub-registry and the district judge or registrar shall not allow any grant to be sealed (other than a grant ad colligenda bona or a grant under section 117 of the Act, if he has knowledge of an effective caveat proved that no caveat shall prevent the sealing of a grant on the day on which the caveat is entered.

non-compliant with the non-contentious probate rules by failing to take out Summons for Directions.-*Mani v Mani* [2019] FJHC 22 . Consequently, the Respondent has failed to extend the caveat beyond the 6 months period mandated under r. 44(3) of the *Non-Contentious Probate Rules* 1987, nor established a contrary interest in the Estate of Jagdish Prasad.

18. The Applicant, asserts rather, that he has complied with the requirements of the Probate Rules in ensuring that the caveat is removed and he exercise his rights as the Executor and Trustee of the Estate of Jagdish Prasad, pursuant to the Will dated 22 November 2018.
19. The Respondent opposes the orders sought in the Amended Originating Summons filed by the Applicant on 14 November 2024.
20. On the material before the Court, the Respondent asserts a contrary interest in the Estate of Jagdish Prasad, not by entering an appearance against the 'Warning to Caveat' of 19 July 2022, as required under Rule 44 (5) of the *Non-Contentious Probate Rules* 1987,³but by filing an Affidavit in Opposition on 7 December 2022.
21. In the Affidavit in Opposition certain matters are deposed;
 - (i) The Respondent is the lawful spouse of the deceased, Jagdish Prasad who died on 8 April 2022.⁴
 - (ii) Under a Will made by Jagdish Prasad, dated 17 January 2017, the Respondent was bequeathed Lots 10 and 11 on DP10032 on CT 40105 being Lot 11 on DP 10032, a piece of land at Waila, Nausori.⁵
 - (iii) The Respondent is the Executor and Trustee of the Estate of Jagdish Prasad under the Will dated 17 January 2017.⁶
 - (iv) The Applicant was not in the right frame of mind and suffered from the effects of a stroke in 2018.⁷

³ (5) Any person claiming to have an interest in the estate may cause to be issued from [nominated registry] a warning in Form 4 against the caveat, and the person warning shall state his interest in the estate of the deceased and shall state his interest in the estate of the deceased and shall require the caveator to give particulars of any contrary interest in the estate, and the warning or a copy thereof shall be served on the caveator thereof

⁴ paragraph13

⁵ Paragraph 13 and Annexure 'SW 1' –Affidavit in Opposition of Sunila Wati filed on 7 December 2022

⁶ Paragraph 3

⁷ Paragraph 19

- (v) The Applicant had been the sole carer of the Applicant since marriage as his biological children did not take any interest or care for him.⁸
22. The Respondent relies on the ruling of this Court –*In the Estate of Sakina* – [1994] FJHC 143; HPC 29 of 2023 to affirm a contrary interest in the Estate of Jagdish Prasad.
23. The facts of *Sakina* are relevant. The Plaintiff had made an application for a grant of Probate in the High Court, against which the Defendants lodged a caveat. A ‘Warning to Caveator’ was issued and served on the Defendants, on 15 December 1993, requiring them to enter an appearance and set out the contrary interest they claimed in the estate of the deceased.
- A Summons for the removal of caveat and grant of Probate was filed, after which the Defendants then filed an Appearance in response , without declaring the contrary interest they had in the estate of the deceased. Later, the Defendants filed an Affidavit in Reply setting out the grounds for contesting the Will.
24. No appearance had been filed in *Sakina*, as prescribed under rule 44(5) of the *Non-Contentious Probate Rules 1987*, however the Court accepted that the Defendants had disclosed their contrary interest in the Estate by way of ‘affidavit evidence’ and therefore contentious proceedings had begun. The finding of the Court in *Sakina* were premised on the following propositions;
- (i) The Court has a wide discretion to extend time, and in the exercise of that discretion, a contrary interest required to be shown pursuant to a Warning to Caveat, although filed out of time, will be accepted, and allow the caveat to remain. This is done to avoid injustice.
- (ii) In the exercise of proper judicial discretion, no judge would make such an order as would defeat the rights of a party, unless it is satisfied that the defendant has been guilty of such conduct, that justice can only be properly be done to the other party, by coming to that conclusion.
25. In accord, with the reasoning in *Sakina*, this Court, in the exercise of its discretion, and to avoid injustice, accepts the Affidavit in Opposition filed by the Respondent

⁸ Paragraph 20

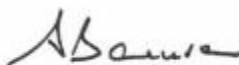
on 7 December 2022 in this matter, as disclosing a contrary interest in the Estate of Jagdishwar Prasad, and will allow Caveat No 18 of 2022 to remain, until further orders of the Court, otherwise.

26. In addition, there is an issue which the Court notes in the Respondent's submissions, that pursuant to rule 44(5) of the *Non-Contentious Probate Rules 1987* the Respondent had actually filed an 'Appearance to Warning' on 28 July 2022, which complied with the '8 day rule' for filing an Appearance, after service. The Respondent has not disclosed this 'Appearance' in affidavit evidence. Whilst the Court cannot accord any probative value to this submission, it is an issue which it bore in mind on the exercise of its discretion, to ensure justice is done. It will require the Respondent to adduce this evidence properly at the hearing.

FINDINGS:

1. **The orders sought in the Amended Originating Summons filed on 14 November 2024 are refused and dismissed;**
2. **Caveat No 18 of 2022 to remain until further order of the Court.**
3. **The Affidavits filed by the parties shall stand as pleadings with liberty to the parties to add thereto and/or to apply for particulars and adduce oral evidence at a trial of this action on a date to be set by the Court.**
4. **Costs to be borne by the parties.**




Savenaca Banuve
Judge

Dated at Suva this 21st day of November, 2025.