

IN THE HIGH COURT of FIJI  
AT LABASA  
CIVIL JURISDICTION

Civil Action No: 33/12

BETWEEN : KOMAL KESHNI KUMAR of Bulileka,  
Labasa, School Teacher

PLAINTIFF

AND : ASHOK KUMAR of Naodamu, Labasa,  
Businessman.

DEFENDANT

Appearances: Mr. Prasad of Sarju Prasad Esq. for the Plaintiff  
No appearance for the Defendant

ASSESSMENT of DAMAGES

Introduction

This is a father and daughter matter in which the Plaintiff/daughter claims from her Defendant/father her entitlement from the Estate of her late mother Mrs. Seema Devi who died intestate.

Both the Plaintiff's parents were proprietors as tenants in common of a property situated at Naodamu in Labasa. The Defendant as the Administrator of the Estate of his late wife sold the property for \$60,000:00 on the 9 March 2007. The Plaintiff in her claim states that she has made numerous requests to her father for her share in her mother's estate but her father has refused to pay her. She states in her claim that she believes that she is entitled to two thirds share in her mother's estate.

The Defendant did not file a defence and default judgement was granted to her on the 8<sup>th</sup> January 2013 with damages to be assessed.

The Evidence

At the conclusion of the hearing of the assessment of damages on the 4<sup>th</sup> of April the Plaintiff's Counsel sought and was granted twenty one days to file written submissions addressing in particular the type of proprietorship of

the property held by her parents prior to her mother's death and any law which gave rise to her rights to the claim. The submission was received later than the twenty one days given.

In her uncontested evidence she tended the following documents:-

1. A certified true copy of her birth certificate showing that she was the daughter of the defendant and her later mother Seema Devi and that she was born on the 11 January 1989;
2. A true copy of the Certificate of death of her mother the late Mrs. Seema Devi which showed her to be the only surviving issue;
3. A copy of the Letters of Administration number 45479 granted on the 1<sup>st</sup> November 2006 to her father Mr. Ashok Kumar of Naodamu Housing, Labasa, Businessman;
4. A copy of a *Transfer* document of the property situated at Naodamu, Labasa executed by her father in his personal capacity and as the Administrator of the estate of the late Seema Devi on the 28 December 2006, which showed that the consideration was \$60,000:0; and
5. A copy of the original Housing Authority Lease number 309920 which shows that the defendant and her late mother as the lessee which expression where the context admits shall include the lessee's successors. That is that the property was held by the lessee (s) as tenants in common.

Her claim was based thereafter on the application of the law of succession as it applies on the facts. Her Counsel referred to and relied wholly on Part III of the *Succession, Probate and Administration Act. Cap. 60*. And more particularly section 6 thereof.

Her claim as calculated by her Counsel under the above section 6 of the *Succession Probate and Administration Act Cap. 60* were submitted to be as follows:-

A. Sale price of the property	\$60,000:00
B. Defendant's share as per section 6(1)(a) (ii)	\$20,000:0
C. Balance	\$40,000:0

D. Under section 6(1)(c) the Defendant takes a further on third of the balance of \$40,00:00 which is \$13,333:00.

E. The Balance of two thirds of \$40,000:00 goes to the Plaintiff which amounts to **\$26,66:00**

The Plaintiff further claims the sum of \$5000:0 for aggravated and pecuniary damages and interest of 6% per year for five years on the two thirds payable to her which amounts to \$7,999:00. She further claims for loss and damages of \$5000:00 together with costs of \$1000:00.

The total amount claimed inclusive of costs is **\$45,665:00**

### The Assessment

The distribution of the estate of the late Mrs. Seema Devi who died intestate as rightly stated by the Plaintiff's Counsel should be distributed in accordance with the *Succession, Probate and Administration Act. Cap. 60*. What differs however from that which was submitted is that Section 6 was amended by Section 3 of the *Succession, Probate and Administration (Amendment) Act 2004*. The amendment states as follows:-

#### **3. Section 6(1) of the principal Act is amended-**

*(a) by repealing paragraph (a) and substituting the following paragraphs-*

*"(a) if the intestate leaves a wife or husband, without issue, the surviving wife or husband shall take the whole of the estate absolutely;"*

*(b) by repealing paragraphs (b) and (c) and substituting the following paragraph-*

*"(c) if the intestate leaves issue, the surviving wife or husband shall take the prescribed amount and the personal chattels and one third only of the residuary estate absolutely, and the issue shall take per stirpes and not per capita the remaining two-thirds of the residuary estate absolutely;"* and

*(c) in subsection (3), by inserting the following definition-*

*"prescribed amount' means \$20,000 or any other prescribed amount."*

Therefore the assessment should be in accordance with the above amendment.

The Defendant's Entitlement.

Perhaps the best way to calculate the Plaintiff's entitlement to her late mother's estate is to calculate the Defendant's entitlement to the estate as the surviving husband. The Defendant firstly holds half share of the property as tenant in common with his late wife, so his initial share from the sale is \$30,000:00. This was not taken into account in the submission and subsequent calculations. This leaves the balance of \$30,000:00 as his late wife's share and is indeed the value of estate of his late wife.

The Plaintiff's mother's estate now stands at \$30,000:0 which is now to be distributed in accordance with the amended provision under section 6(1)(c).

First the surviving husband shall take the prescribed amount from the estate which means that he is entitled to \$20,000:0 (the prescribed amount) and the personal chattels from the estates of his late wife. This leaves the residual of the estate as amounting to \$10,000:0. Of this amount however the Defendant further takes one third, *and one third only of the residual estate absolutely*, and the issue shall take the remaining two thirds of the residuary estate absolutely.

Using the same format as submitted by the Plaintiff, the calculation should now be:-

A. Sale price of the Property	\$60,000:00
B. Defendants half share as tenants in common	\$30,000:00
C. The late Mrs. Seema Devi's Estate's value	\$30,000:00
D. The surviving husband's (defendant's) share in accordance to Section 6(1)(c) as amended i.e. the prescribed amount of the estate is calculated to be	\$20,000:00.
E. The residual amount of the estate after the prescribed amount is deducted is	\$10,000:00

F. The surviving husband's share of the residual amount in accordance with section 6(1)(c) as amended is one third of the residual amount calculated as **\$3,333:33.**

G. The issue i.e. the Plaintiff shall now take two third of the residuary estate absolutely in accordance with section 6(1)(c) as amended amounts to **\$6,666:67**

H. The surviving husbands share of the estate in accordance with the amendment of section 6(1)(c) **\$23,333:33**

In my view the correct amount the Plaintiff is entitled to from the estate of her late mother as calculated under section 6 (1) (c) of the under the *Succession, Probate and Administration Act. Cap 60* as amended by the *Succession, Probate and Administration (Amendment) Act 2004* is two thirds of the residuary of the estate after deductions which amounts to **\$6,666:67**

I. The Plaintiff is entitled to interest at the rate of 5% from the date of the writ that is from the 1<sup>st</sup> of June 2012 and not for 5 years as claimed. I am not certain where the 5 year period is calculated neither did the Counsel indicate how this period is arrived at. The interest at 5% from the 1<sup>st</sup> June 2012 is calculated as **\$416:67.**

### Other Heads of Damages

#### 1. *Aggravated and Pecuniary Damages.*

The Plaintiff claims the sum of \$5000:00 under this head but provides no authority which can substantiate the claim under this head and how the figure was arrived at. Pecuniary damages or loss should be proved and the Plaintiff has not provided any proof that there are losses under this head. In relation to aggravated damages the only question that was asked of the Plaintiff during the hearing was whether she is also claiming for aggravated damages to which she replied "yes". How she was aggravated was unclear. Aggravated damages is often used to describe the compensation for the insult or loss of dignity suffered by a plaintiff that may be awarded where the cause of action, such as trespass to the person or defamation is concerned among other objects to protect these interest. It is said that the claim must be based on a cause of action that protects the dignity interest worthy of protection by this I am not saying that the dignity of the Plaintiff was not worth protecting only that it appears from the lack of evidence that it was tested in any way. For this reason I am of the view that the claim under this head does not apply and is therefore refused.

## 2. Loss and Damages

It is clear that the Plaintiff was withheld her entitlement to her late mother's estate by her father and from which damages may arise. The Plaintiff again in its submission claimed for the sum of \$5000:00 as damages under this head but gave no authority as to how this figure was arrived at or the basis upon which it was made. The claim under this head must be proved and this it has not done and in the absence of any proof of damage under this head I am unable to award it.

## 3. Costs

The Plaintiff claims costs of this action to the sum of \$1000:00. I am of the view that the Plaintiff is entitled to costs and I award the costs claimed accordingly.

### TOTAL DAMAGES

1 Entitlement under the <i>Succession, Probate and Administration (Amendment) Act 2004</i>	\$6666:67
2. Interest	\$416:67
3. Costs.	\$1000:00
TOTAL DAMAGES ASSESSED	<b><u>\$8,083:34</u></b>

24 September 2013

H ROBINSON

MASTER, LABASA