

IN THE HIGH COURT OF FIJI AT SUVA
PROBATE JURISDICTION

CIVIL ACTION NO. HPP 49438 of 2009

IN THE ESTATE of **MUKESH KUMAR** of
7 Ravouvou Street, Lautoka in the Republic
of Fiji, Businessman, Deceased, Interstate.

BEFORE : Hon. Justice Mayadunne Corea
COUNSEL : Ms. S. Devan for the Plaintiff
Date of Hearing : 19th June, 2014
Date of Order : 25th November, 2014

DECISION

[1]. Applicant has filed an ex parte notice of motion stating, for an Order that the Letters of Administration be granted to the Applicant Vijayantimala upon the following grounds:-

1. *Citation to Accept or Refuse Probate issued on the 19th day of February 2013 and Affidavit of Vijayantimala filed on the 19th day of February 2013 being served on Sangeeta Devi and there being no appearance to the Citation by Sangeeta Devi.*
2. *Citation to Accept or Refuse Probate issued on the 19th day of February 2013 and Affidavit of Vijayantimala filed on the 19th day of February 2013 being served on Satendra Kumar and there being no appearance to the citation by Sangeeta Devi Satendra Kumar.*

3. *Alternatively if the Court feels it is necessary there be an order for substituted service on Satendra Kumar by advertisement in Fiji Sun.*

- [2]. Thereafter interpartes notice of motion dated 23.9.13 has been filed seeking the same reliefs. At the hearing the counsel submitted that they are pursuing only the said interpartes notice of motion and are not perusing the first filed exparte notice of motion.

Background

- [3]. Applicant had been married to the deceased Mukesh Kumar. Subsequently a divorce had been granted on 5.11.03. Out of this marriage the applicant has a daughter, by the name of Moushami Madhur Kumar. Mukesh Kumar had died on 10.7.09.
- [4]. One Satendra Kumar had applied for Letter of Administration of the estate of Mukesh Kumar on the basis of being the brother of the deceased. Subsequently one Sangeeta Devi had applied for Probate on the basis of a Will. It was submitted that both incidents had occurred in 2009. However none of the parties thereafter had proceeded with their applications to obtain Probate or Letters of Administration.
- [5]. A citation has been served on Sangeeta Devi and Satendra Kumar stating that if they don't accept or refuse Probate or show cause why Letters of Administration should not be granted to Moushami Madhur Kumar. The citation is dated 25.2.2013. It is supported by an affidavit of one Vijayantimala.
- [6]. Thereafter the applicant has filed this exparte notice of motion and the interpartes notice of motion.

Determination

- [7]. Mrs Vijayantimala had filed an affidavit in support of the citation sworn on 18.2.13. As per the affidavit the said Vijayantimala had annexed, the Death Certificate of Mukesh Kumar as "A". Deponent's Marriage Certificate as "B" and Decree Nisi and Absolute as "C1" and "C2".
- [8]. The deponent has further deposed that she and her daughter are beneficiaries of the estate of Mukesh Kumar. The daughter's birth certificate had been annexed as "D".
- [9]. The applicant Vijayantimala has filed an affidavit of service stating that she has personally served the copy of the citation to Satendra Kumar and had annexed the postal article to Tonga.
- [10]. One Samu Tuitoga had filed an affidavit of service stating the citation has been personally served on Sangeeta Devi.
- [11]. Mr Satendra Kumar and Sangeeta Devi were the two interested parties in the estate of late Mukesh Kumar. Sangeeta Devi has sought Probate on the last Will and Satendra Kumar had applied for the Letters of Administration through his Solicitor Haroon Ali Shah Esq. This had not proceeded as the applicant had filed a caveat.
- [12]. As there had been no response by either of the parties to this citation the applicant Vijayantimala had filed the ex parte notice of motion dated 5.4.13 with the supporting affidavit sworn on 5.4.13.
- [13]. In the said affidavit the deponent had deposed that Satendra Kumar's address had been obtained from one Mr. Umesh Narayan.

- [14]. It was further deposed that Mr. Shah Esq had gone on to receivership. At the hearing counsel informed that the notice had been issued on the receiver of Mr Shah Esq and also a paper notice had been published. However, the said paper notice had not been produced in Court.
- [15]. As submitted by counsel the citation to accept or refuse Probate had been served on the two interested parties to the estate of late Mukesh Kumar. However, none of the parties had filed any papers opposing the application nor had they appeared before the court.
- [16]. Interpartes notice of motion has been filed dated 23.9.13 stating the same contents as contained in the exparte notice of motion and seeking the same reliefs as per the exparte notice of motion.
- [17]. One Krishna Sami Gounder has filed the affidavit of service deposing the interpartes notice of motion had been served on Krishna & Company, solicitor for Satendra Kumar and personally served on Sangeeta Devi.
- [18]. At the hearing counsel for the applicant submitted that they are making submissions on the interpartes notice of motion dated 23.9.13, and will not be proceeding with the exparte notice of motion.
- [19]. The said motion seeks that the Letters of Administration be granted to applicant Vijayantimala among other things on the grounds that Sangeeta Devi and Satendra Kumar have failed to make an appearance on the citation served on them.
- [20]. The court observes that as per the citation it says that in the event of failure to make an appearance on the citation the Letters of Administration should be granted to one Moushami Madhur Kumar. As per the documents submitted to

court, annexure marked D with the affidavit of Vijayantimala, Moushami Madhur Kumar is the daughter of the deceased.

[21]. As per the Birth Certificate the daughter has been born in 1992 February. The application has been filed in 2013 which makes the daughter's age 21. However I find there is no document filed in court by Moushami Madhur Kumar authorising Vijayantimala to file this application. It is also pertinent to note that the applicant in her affidavit had deposed that she is divorced from the late husband and the divorce has been granted in 1999.

Conclusion

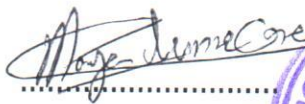
[22]. Considering all the facts submitted to this court I find the interpartes notice of motion has been filed seeking Letters of Administration be granted to Vijayantimala, as the two other interested persons namely Sangeeta Devi and Satendra Kumar have not made an appearance as per the citation. However the citation says in the event of failure to act Letters of Administration should be granted to the daughter who is above 21 years namely Moushami Madhur Kumar.

[23]. The court finds that the interested parties had not made an appearance to this citation. It is pertinent to note that even though the citation states that in the event of failure to accept or refuse Probate the Letters of Administration will be given to the daughter, what is pleaded in the notice of motion is different. It states as the interested parties had failed to act on the citation, Letters of Administration should be given to the applicant who was the divorced wife of the deceased.

[24]. I find that even though the notice of motion is based on the citation the person who is claiming Letters of Administration in the notice of motion differs from the person named in the citation. I find this is a material discrepancy that is fatal to this application. For the reasons stated above. I

find the plaintiff has failed to satisfy court to obtain the orders sought on the grounds stipulated in the notice of motion and reliefs cannot be granted as presently constituted.

[25]. Accordingly I dismiss the interpartes notice of motion dated 19.9.13 and the exparte notice of motion dated 8.4.13.



Mayadunne Corea

JUDGE



25. 11.2014