

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

**Probate Action No. HPP 63 of 2014**

**IN THE ESTATE of ADIKRISHNA REDDY a.k.a ADI KRISHNA REDDY** late of Vitogo/Drasa in the District of Lautoka in the Republic of Fiji, Retired, deceased, Testate.

**BETWEEN:**

**SAMILA DEVI** of Lekutu Street, Samabula Suva,  
Domestic Duties.

**PLAINTIFF**

**AND:**

**RAMENDRA REDDY** of Christchurch, New Zealand as the sole Executor and Trustee of the Estate of ADIKRISHNA REDDY a.k.a ADI KRISHNA REDDY late of Vitogo/Drasa in the District of Lautoka in the Republic of Fiji, Retired, deceased, Testate.

**DEFENDANT**

**COUNSEL:**

**Mr. N. Nand** for the Plaintiff

**BEFORE:**

**Acting Master S. F. Bull**

**Ruling:**

**15 April 2015**

# Interlocutory Judgment

## Introduction

1. On 01 December 2014, the Plaintiff filed an originating summons and supporting affidavit seeking, amongst other things, the following orders:
  - i. That the Defendant deliver accounts of the Estate, beginning from the date of the testator's death, showing rental income received and expenses incurred from the Estate property described at Lease No. 199625 being Lot 1 on DP 5320.
  - ii. That the Defendant release to the Plaintiff and or his agents, in accordance with the provisions of the Will dated 7 March 2013, all rental income received from the Estate by the Defendant and or his agents;
  - iii. That the Plaintiff be allowed to use the property for her own use and benefit absolutely without interference by the Defendant and or his agents;
2. Unable to serve the summons and affidavit on the Defendant, the Plaintiff filed this ex-parte motion and supporting affidavit on 10 March 2015, seeking leave to serve the said summons and affidavit in support by substituted service:
  - (i) Either by affixing and or leaving copies of the said documents at the registered property of the deceased at Lot 1 on DP 5320 as described in Lease No. 199625, or;

- (ii) for service out of the jurisdiction by advertisement in one of the newspapers in circulation in Christchurch, New Zealand.

### The affidavit in support

3. In support of the application, the Plaintiff deposes that when the Originating Summons was filed, she had advised her lawyers that she would obtain the residential address of the Defendant for service. She made numerous attempts to do so by contacting the Defendant's relatives in Fiji and also by enquiring at the deceased's registered property, being Lease No. 199625 at Balawa Road, Lautoka, without success.
4. She and the Defendant had had contact with each other from the time of the deceased's death until the Defendant was appointed Executor/Trustee on 26 May 2014. Since then, the Defendant stopped contacting her and to date, has neither advised her nor given an account of the estate despite knowing that the deceased had devised and bequeathed to her the property for her lifetime. The Defendant's tenant who is occupying the property refuses to hand over to her the rent monies though she is entitled to all income generated from the property.
5. She has lost contact with the Defendant and only knows that he now resides in Christchurch, New Zealand.

### The law

6. Order 11 rules 1 and 2, and Order 65 rule 4 of the High Court Rules (the HCR) are relevant.

### Service out of jurisdiction

7. Order 11 rule 1 permits service out of jurisdiction. Leave of the Court is required for actions identified in O.11 r 1 (a) – (m). I consider that this action falls under (h) and (k) and leave of the Court is therefore required.
8. Order 11 rule 2 (1) requires the application for leave to be supported by affidavit stating the grounds of the application, the deponent's belief that the plaintiff has a good cause of action, the place or country where the defendant is or may be found.
9. Order 11 rule 2 (2) prohibits leave unless the party satisfied the Court that the case is a proper one for service out of jurisdiction.
10. Where leave is granted, Order 11 rule 2 (3) requires an order to be made limiting the time within which the defendant who is to be served must enter an appearance.
11. In this case, the plaintiff has sworn an affidavit in support of the application, deposing that she had assured her counsel she would obtain the address for service of the defendant. Her attempts to obtain this information from the defendant's family and the defendant's tenant residing at the deceased's registered property were unsuccessful. She has lost contact with the defendant since the latter's appointment as executor and trustee and all she knows is that he is somewhere in Christchurch, New Zealand. Though the deponent does not say she has a good cause of action, the orders sought in the summons would suggest that she does.
12. I consider that the affidavit in support satisfies the requirements of Order 11 rule 2 and I therefore grant leave for the originating summons and affidavit in support to be served out of jurisdiction.

13. Order 11 rule 2 (3) requires a limitation of time within which the defendant to be served must enter an appearance. I order that that time be limited to 42 days.

#### Substituted Service

14. Order 65 rule 4 of the HCR provides that in the case of any document which is, by virtue of any of the provisions of the rules is required to be served personally,

it appears to the Court that it is impracticable for any reason to serve that document in the manner prescribed on that person, the Court may make an order for substituted service of that document.

15. Having read and considered the affidavit in support, I am satisfied that it is not practicable for the Plaintiff to serve the Defendant personally, his whereabouts being unknown to her, and given the reluctance of his family and tenant to disclose this to the Plaintiff.
16. Accordingly, I grant leave for the Plaintiff to serve the Defendant through substituted service.
17. Orders:

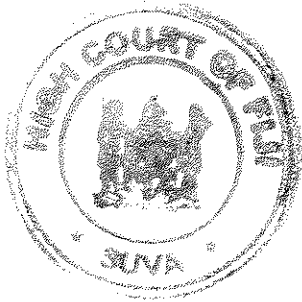
(i) Leave is granted for the Plaintiff to serve out of jurisdiction the originating summons and affidavit in support;

(ii) Service may be effected by way of substituted service and to ensure the documents are brought to the notice of the defendant to be served, I order that

(a) the Plaintiff affixes and leaves copies of the said documents at the registered property of the deceased, with the Defendant's tenants at Lot 1 on DP 5320 as described in Lease No. 199625, and;

(b) the Plaintiff effects substituted service through advertisement of the said documents in one of the daily newspapers with a large circulation in Christchurch, New Zealand.

(iii) The defendant is to enter an appearance within 42 days.



  
S.F. Bull  
**Acting Master**