

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HPP 44 of 2014

BETWEEN : ABDUL SAMAD of San Francisco, California, USA, Retired.
1ST PLAINTIFF

AND : FARUQ AHMED of San Francisco, California, USA, Retired.
2ND PLAINTIFF

AND : SADRUD AHMED of San Francisco, California, USA, Retired.
3RD PLAINTIFF

AND : TAIMUD AHMED of San Francisco, California, USA, Retired.
4TH PLAINTIFF

AND : MAFIDA BEGUM GEORGE of Palos Vedes, Los Angeles, USA, and Airline
Worker.
1ST DEFENDANT

AND : ZAFIRA BEGUM GEORGE of Lautoka, Fiji, Housewife.
2ND DEFENDANT

AND : THE REGISTRAR OF TITLES Ground Floor, Civic Tower, Suva.
3RD DEFENDANT

AND : ATTORNEY GENERAL'S OFFICE Level 7, Suvavou House, Victoria
Parade, Suva.
4TH DEFENDANT

AND : DIRECTOR OF LANDS Government Building, Suva.
5TH DEFENDANT

BEFORE: Master Vishwa Datt Sharma

COUNSEL: Mr. Devanesh Sharma for the Plaintiffs
Mr. Nandan o/i Pillai Naidu & Associates for 1st & 2nd Defendants

Date of Hearing: 30th September, 2015
Date of Ruling: 14th September, 2016

RULING

[Transfer of case to High Court Lautoka pursuant to Order 33 Rule 4 of the High Court Rules, 1988 and Inherent Jurisdiction of the Hon. Court and Chief Registrar's practice direction No. 02 of 1994]

A. APPLICATION

1. This is an amended application filed by the 1st and 2nd Defendants seeking the following orders-
 - (i) That since all parties, their Counsels and the subject Estate property is in the Western Division, this matter be transferred to the Lautoka High Court being the nearest Court in order to save costs.
2. The application is made pursuant to *Order 33 Rule 4 of the High Court Rules, 1988, the Inherent Jurisdiction of this Honourable Court and the Chief Registrars Practice Direction No. 02 of 1994.*
3. The Plaintiffs are opposing this application.

B. BACKGROUND

4. This is a Contentious probate action wherein the 'WILL' of the deceased is being challenged.

5. It is alleged that the 1st Defendant coerced Zura Bi to fly to Fiji and thereby fraudulently and in suspicious circumstances and despite her dementia, got her to execute a "WILL" dated 28th May, 1994 (the challenged WILL).

C. THE LAW

6. *Order 33 Rule 4 of the High Court Rules, 1988* deals with determining the place and mode of trial and provides as follows-

4.-(1) In every action begun by writ, an order made on the summons for directions shall determine the place and mode of the trial; and any such order may be varied by a subsequent order of the Court made at or before the trial.

(2) In any such action different questions or issues may be ordered to be tried at different places or by different modes of trial and one or more questions or issues may be ordered to be tried before the others.

7. Chief Registrars Practice Direction No. 02 of 1994 deals with 'Problems experienced by the Principal Probate Registry and the Court on issue of Grant in Estate Administration Applications.'

D. PLAINTIFFS' CASE

8. The Plaintiff relies on the amended affidavit in support deposed by Zafira Begum Khan together with written and oral submissions.

E. DEFENDANTS' CASE

9. The Defendant relies on the oral and written submissions.

F. ANALYSIS and DETERMINATION

10. The issue for this Court to determine is whether this pending case should be transferred to High Court, Lautoka?

11. In terms of item 1.2 of the *Chief Registrar's Practice Direction No. 02 of 1994* it states as follows-

'Transfer of Probate cases to High Court Lautoka/Labasa would be subject to proper application by Counsel for order of Transfer. A proper order of Transfer obtained enables the Registry concerned to create a Duplicate file with photocopies of documents, as their copy records.'
12. The Practice Direction hereinabove makes a provision and gives the High Courts discretion to determine appropriate applications seeking orders for Transfer of Probate cases to either Lautoka or Labasa High Court. It is entirely left with the Presiding Judicial Officer to make a decision whether a Probate case should be transferred to High Court Lautoka and Labasa.
13. Further, the provisions of *Order 33 Rules 4 (1) and (2) of the High Court Rules, 1988* also empowers the High Court's discretion to determine the place of trial in every action begun by Writ.
14. In the current case before me, the Probate Action was begun or commenced by a Writ action and given the case code as HPP, meaning 'High Court Probate Proceedings.'
15. The Principal High Court Probate Registry in Suva, deals with all Probate business, contentious and non-contentious pursuant to an order made by the Chief Justice.
16. The current action has been commenced within the Principal Probate Registry High Court Suva.
17. The 1st and 2nd Defendants have filed an application for transfer of this case to High Court Lautoka.
18. I have perused the application for transfer coupled with the Plaintiff's objections and both parties' oral and written submissions.
19. I find that all the Plaintiffs and the First Defendant are resident overseas. Remaining 2nd, 3rd and 4th Defendants are resident or have their Offices located in Lautoka.

20. Further as per the deceased "WILL" the properties are all located in the Western Division, within Lautoka and or RakiRaki.
21. The current action has become contentious because the deceased's 'WILL' is now being challenged by the parties to the proceedings.
22. Bearing in mind the residency of the parties to the proceedings, location of the deceased properties as per the 'WILL', this is an appropriate case which should be transferred to the High Court at Lautoka for hearing and determination of the pending issues accordingly.
23. For the aforesaid rational, I make the following Orders-

6. ORDERS

- (i) This action is transferred to the High Court at Lautoka with immediate effect.
- (ii) The matter to be heard and determined by the High Court at Lautoka.
- (iii) Upon the final determination of the matter, the original file together with all documents intact to be remitted to the Senior Court Officer, High Court Civil Registry Suva for safe keeping and records accordingly.

Dated at Suva this 14th Day of September, 2016



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VISHWA DATT SHARMA
Master of the High Court
Suva

cc: R. Patel Lawyers, Suva.
M.s Pillai, Naidu & Associates, Nadi.