

IN THE HIGH COURT OF FIJI AT SUVA

PROBATE JURISDICTION

HPP Action No. HPP 35 OF 2013

IN THE MATTER of the estate of
MICHAEL RAJALINGAM late of 22
Johnson Street, Suva in the republic of
Fiji, Retired, deceased, Testate

AND

IN THE MATTER of Probate No. 33200
granted on the 19th day of August, 1996

BETWEEN : **VINCENT THOMAS RAJALINGAM**

Plaintiff

A N D : **EDMOND CLARENCE RAJALINGAM**

Defendant

COUNSEL : Ms. R. Naidu for the Plaintiff

Mr. N. Lajendra for the Defendant

Date of Hearing : 01st March,, 2017

Date of Decision : 15th March, 2017

RULING

(Summons to strike out)

[1] The plaintiff filed summons for quantification of accounts on 22nd September, 2016 and the defendant filed summons on 26th November, 2016 to have the said summons struck out under Order 18 rule 18 of the High Court Rules on the basis that the summons of the defendant is an abuse of the process of the court.

[2] Order 18 rule 18 of the High Court Rules provides as follows:

The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-

- (a) it discloses no reasonable cause of action or defence, as the case may be; or
- (b) it is scandalous, frivolous or vexatious; or
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the process of the court;

[3] The learned counsel for the plaintiff based the application for striking out the summons for quantification account on the ground that it is an abuse of the process of the court.

[4] The plaintiff and the defendant were appointed as trustees of the estate of their father Michael Rajalingam and the plaintiff instituted this action by way of originating summons to have the defendant removed from the trusteeship. The court delivered the judgment on 30th April, 2015 ordering the defendant be removed from the trusteeship.

[5] The defendant filed summons on 20th November, 2015 seeking the following reliefs:

1. That the plaintiff renders a proper account of the expenses for the estate of Michael Rajalingam with supporting documents verifying the said expenses and file the same into Court by affidavit within 14 days.
2. That the caveat No. 817076 lodged against Certificate of title No. 8909 being lot 3 on Deposited Plan No. 2118 be extended pursuant to section 110(3) of the Land Transfer Act (Cap 131) until further order of the Court;

- [6] After inquiry by its order dated 04th February, 2016 the court struck out the said summons with costs.
- [7] The defendant filed the said summons seeking an order compelling the plaintiff to submit proper account on expenses incurred by him on the basis that intending purchasers was not in a position to quote a price for the house without knowing exactly how much money the plaintiff has spent on the property. The court refused the application on the ground that there was no merit in it for the reason that for anyone to quote a price for the building there was no necessity to know how much money the plaintiff had spent on it for the maintenance. The present application for quantification of accounts is for, completely, a different purpose. This is for the purpose of administration of the estate in question. Without ascertaining the exact amount spent by the plaintiff on the building in question the defendant who is the present administrator of the estate will not be able to distribute the proceeds of the sale amongst the beneficiaries of the estate. This application and the earlier one were filed for two completely difference purposes and therefore the decision on the earlier application will not operate a bar to the present application.
- [8] The learned counsel for the plaintiff submitted that the defendant should have filed a separate action for quantification of accounts. I do not see why the defendant cannot have the quantified in the same proceedings in which he sought to have his co-trustee removed. This is part of the same dispute between the parties.
- [9] It is the position of the plaintiff that this application is frivolous. Section 39(2)(b)(ii) of the Succession, Probate and Administration Act as amended by Succession, Probate and Administration (Amendment) Act 1985 provides that a personal representative shall be under a duty to disclose to the court an account of administration within such time, and from time to time, and in such manner as may be prescribed or as the court may order.
- [10] Order 85 rule 3(2)(a) provides that without prejudice to the generality of paragraph (1), an action may be brought for any of the following reliefs:-
- an order requiring an executor, administrator or trustee to furnish and, if necessary, verify accounts.
- [11] Abuse of the process of the court is the use of legal process to accomplish an unlawful purpose; causing a summons, writ, warrant, mandate, or any other process to issue from a court in order to accomplish some purpose not intended by the law.

[12] The defendant as a co-executor or as a beneficiary of the estate of his deceased father is entitled in law to know the expenses incurred by the other co-executor in the administration of the estate before the distribution of the proceeds of the sale of the property.

[13] The summons for quantification of accounts therefore, cannot by any means be termed as an abuse of the process of the court.

[14] For these reasons the court makes the following orders;

1. The summons to strike out the summons for quantification of accounts is struck out.
2. The plaintiff is ordered to pay \$1000.00 as costs of this application within fourteen (14) days from today.




Lyone Seneviratne

JUDGE

15th March, 2017