

THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 227 of 2012

BETWEEN : CHAND KUMARI

PLAINTIFF

AND : SUBRAIL REDDY, as the Administrator of the Estate of
ANIL KUMAR, deceased, intestate.

DEFENDANT

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr R. A. Singh for the Applicant
Mr A. Nand for the Defendant.

Date of Hearing : 8 October 2018
Date of Decision : 19 October 2018

DECISION

1. This the Summons of one, Sarita Sanjani Lal Kashyap (Applicant) for the following Orders:
 - (1) That the Applicant be granted leave to join this proceedings as an interested party.
 - (2) That the time to file and serve this application for leave to appeal be enlarged.
 - (3) That the Applicant be granted leave to appeal my interlocutory Ruling delivered on 1 May 2018.

2. The grounds for this application are as follows:
 - (i) The Applicant is one of the persons seeking to be appointed the personal representative of the estate of the Plaintiff (estate) (subject to determination of Probate Action No.22 of 2016 and any appeals therefrom) and a beneficiary of the estate.
 - (ii) The Applicant contends that I erred, inter alia, in failing to consider that the probate was contested and thus a personal representative could not be appointed until that action had been completed.
 - (iii) The delay in making this application is not inordinate.

3. The Applicant in her affidavit in support deposes as follows:
 - (1) She is a daughter of the Plaintiff.
 - (2) Her mother died on 15 April 2016 leaving her will dated 20 October 2011 in which she had appointed her as her sole executrix and trustee.
 - (3) She made an application for a grant of probate on 31 May 2016 but the Probate Registry by a letter dated 9 June 2016 informed her solicitors that a caveat against a grant of Probate in her mother's estate had been lodged by her siblings.

- (4) A Probate Action was filed by her said siblings against her as Defendant seeking an order pronouncing against the validity of her mother's will dated 20 October 2011 and an order that a grant be issued on a will dated 16 March 2016. Seneviratne J heard the matter and struck out the writ of summons and the appeal against that is pending in the Court of Appeal.
- (5) The estate of the Plaintiff would be prejudiced if this action were to remain struck out as any personal representative of the estate of the Plaintiff when appointed would not be able to file fresh proceedings on behalf of the Plaintiff's estate as any action would be barred by section 4 of the Limitation Act.
- (6) She is informed by the Plaintiff's solicitors that the trial date in August 2016 was set on 19 April 2016, four days after the death of the Plaintiff

4. The Defendant in his affidavit in opposition deposes as follows:

- (1) The Applicant is the executor and trustee of the Plaintiff by a will dated 20 October 2011 (earlier will), while Rita Singh is the executor and trustee of the Plaintiff by the latest will dated 16 March 2016 (latest will).
- (2) The Applicant does not have any locus to make an application in this action to be joined as an interested party to represent the estate as she is the executor and trustee of the earlier will and the latest will has not been declared null and void by the Court.
- (3) The Applicant cannot make an application in her personal capacity and is required to make it in her capacity as executor and trustee of the Plaintiff but she has not been appointed the executor and trustee of the Plaintiff.
- (4) The solicitors for the Plaintiff, Messrs Neel Shivan Lawyers had by their letter dated 8 May 2017 informed the Applicant that the Plaintiff's administrator or executor needs to obtain an order to carry on the legal proceedings and if this was not done, then the Defendant is at liberty to apply for an order to strike out the action.

- (5) The Applicant failed to make an application, and so the Defendant's solicitor made an application to strike out the action and it was struck out.
5. The Applicant in her affidavit in reply deposes as follows:
- (1) The proceedings where she seeks to be appointed the executrix and trustee of the estate of the Plaintiff is still on foot in the High Court's Probate Jurisdiction. It was her sister's claim for probate to be granted that was struck out for non-compliance with an order to give security for costs, while her counterclaim for probate to be granted remains to be determined.
- (2) She is making the current application as the executrix and trustee named in the will which she says is the last valid will of the Plaintiff and also as a beneficiary of the Plaintiff's estate.
6. The hearing commenced with Mr Singh submitting. He said the Application is to join the Applicant as the Plaintiff in place of the Plaintiff who is deceased. It is made under Order 15 rule 6(2)(a) of the High Court Rules (HCR). The probate of the Plaintiff's estate matter is before Seneviratne J. The issue of which will is the valid one is still in dispute. The Applicant is a beneficiary in both wills and this is her interest in making this application. Rita is not a beneficiary in the earlier will and therefore cannot have any standing to bring an application for joinder in those proceedings.
7. Mr Nand in his submission said the statement of claim's paras 4 and 5 are time barred and therefore cannot substitute at this stage. The summons for joinder was struck out and so there is nothing to join. The will dated 16 March 2016 is the latest will and based on it, Rita should make the application not the Applicant.

8. At the conclusion of the arguments I said I would take time for consideration. Having done so I now deliver my decision.
9. The sole issue, to my mind, in this Summons is whether the Applicant has the locus standi to bring this application and to be granted leave to appeal my interlocutory Ruling. Leave to appeal and related matters are consequently subordinate to this pivotal issue.
10. The salient facts which must be considered unchallenged by any quarter are the following:
 - (1) The Applicant is only a beneficiary under wills none of which have had probate granted by the Probate Court.
 - (2) She has not been granted probate nor letters of administration of the estate of the Plaintiff, now deceased.
 - (3) She has never applied to be substituted for the Plaintiff in this action.
 - (4) She is only and merely applying for leave to join these proceedings as an interested party.
11. Further, Order 15 rule 10 does not assist the Applicant as she is not the personal representative (executor or administrator) of the deceased Plaintiff, nor an interested person who, in the Court's opinion, should be notified.
12. I am of opinion that the Applicant has no locus standi to bring this summons. This is because I note from the record that Ms S. Devan on the day concerned, 1 May 2018 informed the Court that she was not instructed by anyone to represent the Plaintiff and that the Applicant is not a party to this action. Consequently when the Counsel for the Defendant asked for the matter to be struck out, the Court granted his request with no order as to costs.

13. At this juncture I shall refer to the decision of the Fiji Court of Appeal delivered on 18 July 1995 in *Kelton Investments Ltd v Civil Aviation Authority of Fiji* [1995] FJCA 15. Sir Moti Tikaram P said “I am mindful that Courts have repeatedly emphasized that appeals against interlocutory orders and decisions will only rarely succeed.... In my view the order did not determine substantive rights.....In my view the intended appeal against the interlocutory order of 10 May 1995 does not raise any point of law of any general importance, at least none which should be decided at this state by the Court of Appeal... In my view the intended appeal would have minimal or no prospect of success if leave were granted”.
14. I adopt and apply Sir Moti’s reasoning to this Summons.
15. It will be against the interests of justice to allow any person to intervene in legal proceedings on the flimsy grounds that she is a beneficiary under a will. Her siblings also can make a similar claim. Is the Court to allow everyone to intervene? Would that not breach the maxim of public policy which in Latin is expressed as “*interest reipublicae ut sit finis litium*” and in English as “It concerns the State that lawsuits be not protracted”.
16. At the end of the day when the Court disregards all the red herrings strewn across its path, the Court notes that it is axiomatic that legal proceedings concerning a deceased party are commenced or continued by the executor or the administrator of the estate of the deceased party. Here the Applicant is admittedly neither. Further, she has not applied to be substituted for the Plaintiff, now deceased.

17. In the result the Summons filed on 5 July 2018 is dismissed and I make the following orders:

- (1) Leave to the Applicant to join these proceedings as an interested party is denied.
- (2) The application for time to be enlarged is dismissed.
- (3) Leave for the Applicant to appeal the interlocutory Ruling of 1 May 2018 is refused.
- (4) There is to be no order as to costs of this Summons.

Delivered at Suva this 19th day of October 2018.



David Alfred

JUDGE

High Court of Fiji