

IN THE HIGH COURT OF FIJI AT LABASA
CIVIL JURISDICTION

Action No. HBC 06 of 2018

BETWEEN

MANSOOR ALI of 11 Harwell Place, Cilyton, Australia, Teacher.

1ST PLAINTIFF

AND

KAMRUL NISHA of Wailevu, Labasa, **SAIFUL NISHA** of Wailevu, Labasa,

GULSHAN NISHA of Naduna, Labasa, **SAMRUL NISHA** of Suva,

AMIRAN NISHA of Naduna, Labasa, **SAKIMUL NISHA** of

Daku, Labasa.

2ND PLAINTIFFS

AND

SHAMIMA of Soasoa, Labasa and **SAMNA BANO** of Suva.

3RD PLAINTIFFS

AND

AZAM ALI of Raviravi, Macuata, retired as the surviving executor and trustee in the estate of Mohammed Ali and in purpura persona.

1ST DEFENDANT

AND

ATONIO LAVEKAU aka ANTONIO LAVEKAU Station Officer at Labasa Police Station.

2ND DEFENDANT

Counsel	:	Mr. A. Sen for the Plaintiffs Mr. E. Radio for the First Defendant
Date of hearing	:	13 th November, 2018
Date of Ruling	:	05 th December, 2018

RULING

[1] The solicitors of the plaintiffs on 20th September, 2018, filed summons for directions before the Master of the High Court. The learned Master granted orders in terms of 1, 2, 3, and 5 of the summons for directions and decided to refer the matter to a judge to

consider whether the other orders sought in the said summons, in particular orders 9 and 10 which are as follows:

9. That this matter be consolidated with Labasa High Court Civil Action No. 01 of 2018.
10. That this matter be referred to Honourable Justice Brito and be determined in accordance with Labasa High Court Civil Action No. 38 and 43 of 2012.

[2] Issues for determination in both these matters arise out of the estate of late Mohammed Ali. First and second plaintiffs in HBC 01 of 2018 and second and third plaintiffs in HBC 06 of 2018 are the same. The first defendant in HBC 06 of 2018 and the only defendant in HBC 01 of 2018 is the same person. It appears from the pleadings that if these matters are taken up for trial separately same evidence will have to be adduced over again. Therefore, it is convenient for both parties and for the court to try both these matters together.

[3] The other order sought by the plaintiffs in their summons for directions is that these matters be heard by Honourable Justice Mutunayagam who heard the other two connected matters. The learned counsel submitted that Justice Mutunayagam is familiar with the facts of these matters and therefore it would be easier for the court and to the parties to conduct the trial. Part of the order sought is to determine these matters in accordance with civil actions No. 38 and 43 of 2012. Once a matter is allocated to a judge he should adjudicate the rights of the parties on the evidence placed before him. The evidence adduced and the decisions of the earlier two actions may be relevant to the present actions but it does not mean that the decision in these two matters should be the same as in the earlier two matters. It is also important to note that one cannot expect the judge who heard the earlier matter to remember the facts and evidence and if the plaintiffs intend to rely on the decision of the earlier matters they can always tender it in evidence at the hearing of these matters.

[4] The parties have no right to select the judge or judges before whom their matters to be heard.

[5] For the above reasons I make the following orders.

ORDERS

1. I order that the actions No. HBC 01 of 2018 and HBC 06 of 2018 be consolidated.
2. The order sought by the plaintiffs that these matters be heard and determined by Honourable Justice Mutunayagam is refused.
3. Costs in the cause.



05th December, 2018

A handwritten signature in blue ink, which appears to read "Lyone Seneviratne", is written over a horizontal line.

Lyone Seneviratne

JUDGE