

IN THE HIGH COURT OF FIJI  
AT SUVA  
PROBATE JURISDICTION

Probate Action No. HPP 50 of 2018

In the Estate of ERONI BALEIWAI  
MAVOA of Lot 2 Toninaiwai, Coloi I  
Suva, Deceased, Testate.

EMMALINE BUI MAVOA of Lot 2 Toninaiwai, Colo I Suva, Suva.

APPLICANT

BEFORE: Hon. Justice V D Sharma

COUNSEL: Ms. S. Nayacalevu - for the Applicant

Date of Hearing: 12<sup>th</sup> September, 2018

Date of Ruling: 05<sup>th</sup> October, 2018 @ 9.30 am

JUDGMENT

*[Applicant's Originating Summons seeking an order to renounce her right  
as the Executor/Trustee to administer the Deceased Estate]*

INTRODUCTION

1. This is the Applicant's Originating Summons filed together with an Affidavit in Support seeking for the following relief-
  - (a) An order that the Applicant Emmaline Bui Mavoia to renounce her right as Executor/Trustee to administer in the Estate of Eroni Baleiwai Mavoia of Lot 2 Toninaiwau, Colo 1 Suva, Deceased as stipulated in the Will of the Deceased dated 16<sup>th</sup> August 2010, on the grounds stated in the Affidavit of the applicant sworn and filed herein.
  - (b) Any other orders that the Court deems just and necessary in the circumstances.
2. The application is made pursuant to *section 3 of the Succession Probate and Administration Act 60* and the *inherent jurisdiction of this Honourable court*.
3. *Section 3(1)* deals with the Jurisdiction of Court and provides as follows-

*3.-(1) Subject to the provisions of this Act, and to any rules made hereunder the court shall have jurisdiction in contentious and non-contentious probate matters and proceedings and in the granting or revoking of probate of wills and administration of estates of persons dying leaving property in Fiji.*
4. The Applicant's Counsel in her written submissions also apprised court with *Order 37(1) of the Non-Contentious Probate Rules* which deals with Renunciation of Probate and administration and states as follows-

*"37.-(1) Renunciation of probate by an executor shall not operate as renunciation of any right which he may have to a grant of administration in some other capacity unless he expressly renounces such right.*

BACKGROUND

5. The Deceased Eroni Baleiwai Mavoia, took demise on 13<sup>th</sup> September 2016 and left behind a Will appointing his wife (Applicant herein) as the Executor/Trustee of his Will.
6. The Applicant only attained knowledge in 2018 that her late husband had left behind a Will.
7. She instructed her counsel and informed her Counsel that she did not have any intention of assuming the role of the Executor/Trustee.
8. The Applicant's contention was that she was elderly and did not have the financial capacity to assume this role of the Executor and Trustee in the late husband's Estate. She was also aware that the late husband did not have any assets as the property mentioned at paragraph 4 of the Will (Lot 2, Toninaiwau, subdivision Colo-i-Suva) had already been transferred and no longer in the deceased's name.
9. Hence, no application for a Grant of Probate was sought by her in the deceased's Estate.

10. Thus, the Applicant's Originating Summons seeking an order for her to renounce her rights as the Executor/Trustee in the deceased's Estate.

**ANALYSIS AND DETERMINATION**

11. The only issue for Court's deliberation and determination is "whether an order should be granted to the Applicant Emmaline Bui Mavoia to renounce her right as Executor/Trustee to administer in the Estate of Eroni Baleiwai Mavoia as stipulated in the Will of the Deceased dated 16<sup>th</sup> August 2010, on the grounds stated in the Affidavit of the applicant sworn and filed herein."
12. The application for renunciation is made pursuant to *section 3 of the succession Probate and Administration Act* which deals with the Jurisdiction of Court to deal with contentious and non-contentious matters. This particular Section of the Law does not deal directly with the **Renunciation of Executors/Trustees and/or Beneficiaries rights to administration and interest in the Deceased's Will.**
13. However, the application could have been brought in terms of *Order 37 (1) of the Non-Contentious Probate Rules* which deals with **Renunciation of Probate and administration.**
14. At the hearing, the Applicant's Counsel chose not to call the Applicant and/or any witnesses rather relied on the affidavit deposed and filed by the Applicant coupled with the Oral and Written Submissions furnished to Court.
15. It cannot be denied by the Applicant that her late husband Eroni Baleiwai Mavoia left behind a Will dated 16<sup>th</sup> August 2010, appointing the Applicant herein as the **Executor and Trustee** of his said Will.
16. The Applicant's appointment as the **Executor and Trustee of the Deceased's Will** meant that the role of an Executor in the administration of an estate carries with it serious responsibilities and the person or organisation appointed is responsible for ensuring that all assets are accounted for, all debts are paid, and that the beneficiaries receive their inheritance in accordance with the terms of the Will.
17. It is evident and can be ascertained from the Applicant's Affidavit in Support that the Applicant made a decision not to lodge any application with the Principal Probate Registry in order to seek a grant of probate and administer the late husband's Estate. The reason for making this decision not to seek a Probate Grant in the late husband's Estate is only well known to the Applicant (Wife) herein.
18. It can also be ascertained from the Deceased's Will at Paragraph 4 that the Deceased had a property at Lot 2 Toninaiwau, Subdivision, Colo-i-Suva which the late husband devised and bequeathed the same onto his wife, the Applicant.
19. According to the Applicant's Affidavit and the Counsels submissions, the property within the Deceased's Estate and /or Will was already transferred and no longer in the Deceased's name.



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20. There is no evidence before this Court to substantiate and/or establish how and when this property was transferred and who actually owns the property now.
21. Further, the Counsel representing the Applicant apprised Court of the following impending cases before the court against the Deceased's Estate and the Applicant -
- i. High Court Civil Action HBC 296 of 2017 - Sitiveni Ligamamada Rabuka -v- The Estate of the Late Eroni Beleiwai Mavoa -and- Emmaline Bui Mavoa & Others.
- In this case, the Plaintiff has already obtained a Default Judgment on 04<sup>th</sup> April, 2018 against the estate of Eroni Baleiwai Mavoa in the sum of \$187,967-64.
  - Emmaline Bui Mavoa as the 2<sup>nd</sup> Defendant has filed her Statement of Defence in this case denying having any knowledge of the Deceased's debt to the Plaintiff and her intentions as the executor and Trustee of the Deceased's Estate in terms of the Will. The matter is pending before the Court.
  - Emmaline Bui Mavoa has been made the 2<sup>nd</sup> Defendant in her capacity as the Next of Kin and the First person entitled to take out the Letters of Administration Grant in the 1<sup>st</sup> Defendant's Estate of Eroni Baleiwai Mavoa.
- ii. Magistrates Court Bankruptcy Case No. 16 of 2018 - Estate of Late Eroni Baleiwai Mavoa - v- Sitiveni Ligamamada Rabuka.
- The Bankruptcy Notice was filed herein by the Plaintiff (Sitiveni Ligamamada Rabuka) in HBC 296 of 2017 and as the Judgment Creditor in Bankruptcy Case No. 16 of 2018 after he successfully obtained a Default Judgment against the Estate of Late Eroni Baleiwai Mavoa for the sum of \$187,967-64.
  - The Applicant, Emmaline Bui Mavoa has filed an interlocutory application in this matter and a returnable date has been assigned accordingly.
  - This matter is also pending for Court's deliberation and determination.
22. I find that both the abovementioned cases Civil Case No. HBC 296 of 2017 and Bankruptcy Case No. 16 of 2018 have a nexus with the current Application seeking an order to allow the Applicant to renounce her right as the executor and Trustee in the late husband's Estate.
23. The renunciation order sought by the Applicant is made in a vacuum. This means that although the Applicant seeks an order to renounce her right as an Executor and Trustee to administer the late husband's Deceased's Estate, "*the Renunciation of Probate by an executor shall not operate as Renunciation of any right which she may have to a grant of administration in some other capacity unless she expressly renounces such right*". Order 37(1) of the Non-Contentious Rules refers.
24. Further, the applicant has failed to expressly state to whom that Renunciation of such right is being made to or will pass over to in order to allow for the Administration of the Deceased's Estate.

25. I also find and it cannot be denied that the Plaintiff commenced the **Civil proceedings Action No, HBC 296 of 2017** in Court against the Applicant's late husband's Estate, named as the 1<sup>st</sup> Defendant and the applicant as the 2<sup>nd</sup> Defendant claiming a liquidated sum of **\$187,967-64**.
26. The Plaintiff succeeded in obtaining a **Default Judgment** against the Applicant's late husband's Deceased Estate of Eroni Baleiwai Mavo-a-the 1<sup>st</sup> Defendant therein.
27. Subsequently, the Plaintiff has proceeded with a **Bankruptcy Action** in the Magistrate's Court on the basis of obtaining the **Default Judgment** in **HBC 296 of 2017** against the Applicant's late husband's Deceased Estate and hence is seeking the recovery of the **Judgment sum of \$187,967-94** accordingly.
28. Bearing in mind all the above, in particular the two impending cases **HBC 296 of 2017** and **Bankruptcy Case No 16 of 2018** which has **nexus** with the current case coupled with the fact that the **Applicant** is the 2<sup>nd</sup> Defendant named in **HBC 296 of 2017**, that I find that until the final disposition of both the abovementioned matters that it is only proper and appropriate that this Court should refuse the Applicant's application seeking **an order for her to renounce her right as the executor and Trustee in the Administration of the late Husband's Deceased Estate**.
29. I **refuse the Order for Renunciation** sought by the applicant herein and accordingly **dismiss the Application**.
30. There will be no order for costs made against the Plaintiff at the discretion of this Court.

#### FINAL ORDERS

- (i) Application seeking an Order for Renunciation of Right as the Executor and trustee of the Deceased's Estate of Eroni Baleiwai Mavo-a is refused and dismissed accordingly.
- (ii) No order for costs made at the discretion of this Court.
- (iii) Orders accordingly.



VISHWA DATT SHARMA  
JUDGE  
SUVA

05<sup>th</sup> Day of October, 2018