

**IN THE HIGH COURT OF FIJI  
AT SUVA  
PROBATE JURISDICTION**

PROBATE ACTION NO.: HPP 54 of 2019

**IN THE MATTER** of Section 35 of the  
Succession, Probate and Administration Act  
1970

**AND**

**IN THE ESTATE** of **LUM WAI** also  
known as **LUM BING WAI** late of Coogee  
in the State of New South Wales, Merchant.

**BETWEEN** : **ROSALINE LUM**  
**PLAINTIFF**

**AND** : **THOMAS LOUEY JOHNSUN**  
**FIRST RESPONDENT**

**AND** : **KATHERINE LUM also known as KATHERINE LAI NEE  
YAP**  
**SECOND RESPONDENT**

**AND** : **PETER LUM also known as PETER LAI KEONG LUM**  
**THIRD RESPONDENT**

**AND** : **LYNETTE CHIEW LAN LUM also known as LYNETTE  
CHIEW LAN CHOONG**  
**FOURTH RESPONDENT**

**AND** : **ROBERT LUM also known as ROBERT JOHN LUM**  
**FIFTH RESPONDENT**

**AND** : **JOHN LUM also known as JOHN LAI PING LUM**  
**SIXTH RESPONDENT**

**AND** : **ROSALINE LUM also known as ROSALINE LAI MEE LUM**  
**SEVENTH RESPONDENT**

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**APPEARANCES/REPRESENTATION**

**PLAINTIFF** : Mr R Singh [Munro Leys]  
**DEFENDANTS** : Ms A Vuki [Law Solutions]  
**JUDGMENT OF** : Acting Master Ms Vandhana Lal  
**DELIVERED ON** : 03 October 2019

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**JUDGMENT**

**[Removal Of Executor & Trustee/Revocation Of Grant; Appointment Of Administratrix (With Will Attached)]**

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1. This is an application pursuant to Section 35 of the Succession, Probate and Administration Act and Order 85 rule 2 (2) (a) of the High Court Rules whereby the Plaintiff seeks orders that:

- i. *Lui Fung Chan Lum also known as Lui Fung Chan be removed as Executor and Trustee of the Estate of Lum Wai also known as Lum Bing Wai; and*
- ii. *The Plaintiff be appointed as administrator with the Will annexed in the Estate of Lum Wai also known as Lum Bing Wai.*

Grounds for making the application are that:

- a) *The executor and trustee appointed by the High Court (Probate Division) is deceased and unable to administer the Estate;*
  - b) *The Plaintiff as the daughter of the late Mr. Lum Wai and a beneficiary of the Estate of Mr. Lum Wai is eligible to apply.*
2. The Defendants Counsel informed the Court that the Defendants are not contesting the application.

An acknowledgment of service has been filed to that effect.

3. This Court had called for a submission by the Plaintiff's Counsel on the issue whether this court has jurisdiction to remove the executor appointed via a grant by the Supreme Court of New South Wales, Probate Division.

4. In his submission filed on 26 July 2019, Counsel for the Plaintiff referred to Section 45 (1) and (2) of the Succession, Probate and Administration which reads:

*i. When any probate or administration heretofore or hereafter granted by any court of competent jurisdiction, in any country or territory of the Commonwealth, is produced to and a copy thereof deposited with the Registrar by any person being the executor or administrator, whether original or by representation or by any person duly authorised by power of attorney in that behalf, duly executed by such executor or administration, such probate or administration may be sealed with the seal of the court.*

*ii. When so sealed, such probate or administration shall have the like force, effect and operation in Fiji and every executor and administrator thereunder shall perform the same duties and be subject to the same liabilities, as if such probate or administration had been originally granted by the court.*

5. According to the Plaintiffs' Counsel, the effect of resealing is that the grant is deemed a Fijian grant. Hence Section 35 of the Act applies which allows parties to make the said application.

The Probate was resealed on 23 February 1984. Parties are not contesting the Will.

Neither do they contest that the Plaintiff is entitled to administer the Estate.

The executor and trustee appointed under the Probate is deceased. The properties in Fiji are yet to be distributed.

6. I cannot accept the Plaintiff's counsel's submission that the Fijian Court can remove the executor and Trustee.


What the Fijian Court can do is to cancel a resealed grant.

Section 45 effect is that once resealed in Fiji, Court has power to enforce the grant but does not give power to remove the executors and trustees appointed by another jurisdiction probate registry.

Hence I find the Fijian Court does not have jurisdiction to remove the executor and trustee appointed by the New South Wales, Supreme Court.

7. For this reason the application shall fail and is dismissed parties to bear own costs.



  
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Vandhana Lal [Ms]  
Acting Master  
At Suva.