

In the High Court of Fiji
at Suva
Probate Action no. 37 of 2012

Salome Samou

Plaintiff

v

Estate of Leslie Allinson

First defendant

And

Williams & Gosling Limited

Second defendant

And

Graeme Frost

Third defendant

Counsel: Mr Pravesh Sharma for the plaintiff
Mr T. Tuitoga with Mr C. Yee and Mr V. Rokodreu
for the first defendant
Mr Nilesch Prasad for the second defendant

Dates of hearing: 22nd and 23rd May, 2018

Date of Judgment: 25th January, 2019

Judgment

1. In these proceedings, the plaintiff seeks a declaration that she is entitled to the "*whole of the Estate of Leslie Allinson*", (Mr A) as his de facto wife and an order that all his assets be transferred to her. The estate of Mr A is the first defendant. The first defendant is represented by Penny Allison, (Penny A) the only surviving daughter and executrix of his estate. The second defendant is a company that ships items overseas. The third defendant was a friend of Mr A. The plaintiff, in her statement of claim states that her de facto relationship with Mr A started in 1992. She was a citizen of Solomon Islands. She lived in Fiji from 1992 to 2005 under Mr A's work permit and from 2005 to-date, under a visitor's permit. Mr A and she operated a joint bank account and purchased two properties in Mr A's name in 1993. The plaintiff and Mr A stayed at the Vatuvia property in Lami.

2. The statement of claim continues to state that that in September and October,2006, April to May,2008, and December,2009, to January,2010, she worked in London and the Solomon Islands. During this time, Mr A became ill and went to Thailand and Australia for treatment. In 2007, she was with her family in Honiara, as Mr A was in Samoa. In February,2012, the plaintiff and Mr A decided to move to Australia.
3. The plaintiff hired the second defendant, to transport their belongings and her personal items to Australia. On 19th July, 2012, she received an email from Mr A advising her to remove her two artefacts from the container, as they may be seized by Customs. The second defendant allowed the third defendant to remove an esky containing diving gear and her two heirlooms from the container, without notifying her and kept them in his possession. The second defendant did not permit her to ascertain the condition of her personal items and advised her that they intended to proceed to ship it to Australia. On 3rd August, 2012, she obtained an order from the Magistrates' Court restraining Mr A and his agents from removing their matrimonial property. The plaintiff also seeks the following orders that: (1) the second defendant releases to her, the items it holds on behalf of Mr A, being matrimonial property, which belong to her, and her personal items, (2) the third defendant releases to her, the two heirlooms and esky of the diving gear and pay damages for the spoilage and deterioration of the heirlooms.
4. The first defendant's statement of defence reiterates averments contained in affidavits filed in interlocutory applications filed in these proceedings. The first defendant, in its counterclaim seeks several orders, which I will deal with later in my judgment.
5. The second defendant, in its statement of defence denies liability, and states it followed the instructions of Mr A. He hired them. The personal items of the plaintiff and Mr A were separated with the assistance of the third defendant and separate inventories were prepared for items of each party. The plaintiff duly signed her inventory on 25 July,2012. The second defendant states it will release the items, provided its storage charges are paid.

6. The third defendant, in its statement of defence states that he was given consent by Mr A to remove the esky containing the diving gear from Mr A's container. The two artefacts did not get damaged or wet and were released into the custody of the Fiji Museum, by Order of Court.
7. The plaintiff joins issue with the first, second and third defendant, in her replies to the statements of defence. The plaintiff, in her reply to the second defendant states that Tim Fong of the second defendant advised her that the heirlooms were to be shipped in the container shipped to Australia. In her reply to the third defendant, the plaintiff states that it has not been proved that the heirlooms were not damaged.

The determination

8. The agreed facts provide that the de facto relationship between the plaintiff and Mr A commenced in August, 1992. The plaintiff and the first defendant are at variance as to when the relationship ceased. The plaintiff contends that the relationship continued till Mr A's death on 18th August, 2012, while the defence states it ceased in 2001.
9. The plaintiff, in evidence in chief said that she was in the Solomon Islands from February, 2007, to October, 2008. In answer to the question if "*whenever (she) came back from overseas (she) and Mr Allinson would continue*", she replied that she "*always came back to Mr (A) and our home*".
10. She produced the following email of 27 June, 2008, sent to her by Mr A, stating that he needs to move her items from the annex to the garage:

Am allowing Gerhard to reside in annex from 1 Aug after he vacates the downstairs flat .. Expect that will need the garage for storage of his stuff that won't fit in the annex ..

The bottom line is that I will consolidate your possessions in this property and arrange shipment by a reputable agent such as W&G paying particular attention to any items that may be valuable.

Please advise the following;

1. *Shipping destination?*
2. *What items can you recollect are yours?*
3. *Will you fund the shipment assuming you have a position that compensate you adequately?(emphasis added)*

11. On 29 June, 2008, she replied as follows:

Allow Gerhard into the annex, but please do not pack my stuff or ship it here. I do not have anywhere that you can send the stuff to. You can leave them in the garage sealed properly in boxes like a civilized person. I will be there in three weeks to see to that. There was never any reason to have my books moved out into the garage in the first place.

In my possessions in the annex cupboards are two rolls of feather money which as you know are precious, valuable. .. Please keep them in the locked-up room upstairs, the garage is too cold and damp. ... (emphasis added)

12. The plaintiff, in her evidence said that :

.. the annex held books that belong to both my son and myself. ... They didn't have anything of any value except for the feather monies...

In 2007 before I left for the Solomons, I packed my clothes, not all, and anything that was valuable I packed them in card boxes, sealed them and left them in the locked up room, some were downstairs under the stairway not in the garage.... (emphasis added)

13. In my judgment, the evidence clearly establishes that the plaintiff had left the Vanuvia home and returned to Solomon Islands. She had packed and sealed her belongings in boxes. She requested Mr A to keep her things for three weeks, until she “get(s) them back them here safely and in good condition”, as stated in her email of 30 June, 2008.

14. The plaintiff, in her email of 22 February, 2007, informed her colleague “Ted” that their relationship had come to an end. The email reads as follows:

... I return to Fiji to do and a garage sale as I need to go to Santa Cruz in June ...

Have been in Fiji on visitor's visa the past 3 years. Les finished up with SOPAC, now doing own consultancy and got Fiji citizenship. Sort of moved back to Honiara but it was terrible there, expensive und etc. So been back and forth. I do not want to be here forever as in my short my relationship with Les was always insecure and died long ago. We are 2 individuals living under one roof separately. And I am and have been a guest in his home I need to move out and on, and I guess this is where I am now.. (emphasis added, underlining mine)

15. The plaintiff, in cross-examination said that she confided in Theodore Pierce, (“Ted”) as he was a very close personal friend of hers.

16. In re-examination, the plaintiff explained the background to her email. After years of verbal abuse and threats by DW2, (*Rani Ravudi*) she was afraid. He was a very strong big boy and in a sexual relationship with Mr A. She "*felt like somebody else had taken over and I was a guest intimidated in my own house*" and told Mr A that she would go.
17. In my judgment, the plaintiff's email conclusively provides that the relationship had come to an end, prior to her departure to the Solomon Islands. There was no "*common residence*" after 2007, as envisaged in section 154 A(b) of the Family Law Act.
18. I find that the evidence of the witnesses of the plaintiff in support of her case was contrary to the plaintiff's testimony that she had moved to the Solomon Islands, the relationship "*died long ago*" and Mr A was in Australia from 2010 to 2012, as discussed below.
19. PW2, (*Rosalia Lusiana Chute*) PW3, (*Peter Savona*) and PW6, (*Melania Cagi Bolutini, a former domestic helper and friend of the plaintiff*) said that the plaintiff and Mr A were in a de facto relationship until he died in August, 2012.
20. PW5, (*Olive Alanka Kotoisuva*) also a former domestic helper and friend of the plaintiff said that she has never known the plaintiff to have moved out of their home, until it was sold in June, 2012. The plaintiff and Mr A shared the bedroom on the top floor of the Vatuvia property. In cross examination, she said she did not know that there was a flat downstairs and an annex, but the plaintiff and the other witnesses testified as to these features of the Vatuvia property.

21. In my view, the following evidence given for the first defendant reinforces the testimony of the plaintiff that her relationship with Mr A had "*died long ago*",
22. DW1, (*Sullana, domestic helper to Mr A*) said that the plaintiff was not residing at the Vatuva property in January, 2005. When she returned later in 2005, she removed her personal effects to the garage and to two small rooms. The plaintiff and Mr A were not in a relationship in 2005. At least on two occasions between 2005 and 2010, when Mr A was not in, she saw the plaintiff sleeping in the sitting room with another gentleman, sharing a blanket. Mr A told her that his relationship with the plaintiff ended in 2001. He was in a romantic relationship with DW2. He slept with Mr A in his bedroom, while the plaintiff slept in the flat downstairs.
23. DW2 said that he was transgendered and in a sexual relationship with Mr A from 2001, until he passed on in 2012. He lived with Mr A at the Vatuva property. He confirmed DW1's evidence that he always slept with Mr A in his bedroom, while the plaintiff slept in the flat downstairs. Mr A told him that his relationship with the plaintiff ended in 2001 and she was taking time transporting her personal effects to the Solomon Islands.
24. In evidence in chief, DW3, (*Wolf Forstreuter, a colleague of Mr A*) said that Mr A and the plaintiff had been separated since late 2004. The plaintiff had moved to Solomon Islands. The plaintiff visited Mr A several times, but stayed in a small separate unit at the Vatuva property. Mr A had different partners. In cross-examination, DW3 said that he was often in the Vatuva property, as Mr A was his closest friend.
25. DW4, (*Dr Stephen Dalziel Angus, Principal Veterinary Officer*) said that he had rented the downstairs apartment at the Vatuva property in January, 2001. During the period February, 2001 to July, 2004, the plaintiff was living there. She told him that she had not slept with Mr A for four years. He did not see any intimacy between them. It was clear that they were no longer in a relationship. In 2001, he became aware that Mr A was in a romantic relationship with DW2. DW2 was constantly at the Vatuva property. Mr A made it clear that he was a practicing homosexual with a liking for transvestites. In May, 2010, the plaintiff was not at the Vatuva property. Mr A informed him that she had returned to the Solomon Islands.

26. DW5, (*Peter John Byasser of Butmaroo Station, Australia, Partner of Penny A*) said that he had stayed with Mr A on 5 occasions. From early 2000, he observed that Mr A was socializing with transvestites. In April 2010, Penny A and he travelled with the children to Fiji, to assist Mr A in packing up, preparing the Vatuvia house for sale and making arrangements for his return to Australia. The plaintiff was not present. Mr A consistently inferred that she was not his partner. DW5 said that when he informed Mr A that the boxes in the garage were getting wet due to a leak, Mr A said that he does not care about the boxes, as they belong to the plaintiff and she was not removing them.
27. The plaintiff had also told DW6, (*Graeme Frost, the third defendant*) in 2000 that she had not had sexual relations with Mr A for several years. DW6 further stated that the plaintiff told him that Mr A was sleeping with men. Mr A had introduced DW2 to the witness around 2004. In 2005, the plaintiff was no longer residing permanently in that property.
28. DW7, (*Penny Allinson*) in evidence in chief said that she first met the plaintiff in 1992. She was staying with Mr A in Lami. In 1999, they were not cohabiting. She was not "*part of the picture*" since 2001. In 2003, the plaintiff travelled with Mr A and the witness to England. The plaintiff was in a separate room.
29. The existence of "*a sexual relationship*" is a factor to be considered, in determining whether a de facto relationship exists, in terms of section 154 A(c).
30. It was not disputed that Mr A had started a sexual relationship with DW2. The plaintiff said that she accepted that Mr A preferred to have relations with men, who were transgendered. He had sex with a lover, in front of her. He had many transgender friends. DW2 claimed exclusivity. She said that Mr A had spent a substantial amount of money on DW2, for breast augmentation surgery in Thailand and a hair dressing course. The plaintiff said that she requested Mr A, to "*invest in some skill for Rani, instead of being just a sex worker*".

31. In this context, I would note that PW1, (*Fillipe Levai, Police Officer*) in evidence in chief said that when he went to the Vatuva property in October, 2008, after the plaintiff complained that Rani had pulled her out of her bed, he saw Mr A kneeling and begging the plaintiff to forgive him. The plaintiff agreed to give him another chance, provided that he ended his affair with Rani. This evidence is not credible, as the plaintiff testified that she was neither embarrassed nor angry over Mr A's relationship with Rani. DW1, (*Saliana Tinai Gukirewa, a house girl employed by Mr A*) recalled the assault, but had not seen Mr A apologizing to the plaintiff.

32. Mahoney JA differentiated a marriage and a de facto relationship in *Hibberson v George*, (1989) NSWCA 100 as follows:

.. But there is, I think, a significant distinction between the relationship of marriage and the instant relationship. The relationship of marriage, being based in law, continues notwithstanding that all of the things for which it was created have ceased.. The essence of the present relationship lies, not in law, but in a de facto situation. I do not mean by this that cohabitation is essential to its continuance: holidays and the like show this. But where one party determines not to "live together" with the other and in that sense keeps apart, the relationship ceases... (emphasis added).

33. In *Scragg v Scott*, [2006] NZFLR 1076 at para 31 the High Court of New Zealand said that *"For there to be a relationship there must be an emotional association between two persons"*, (emphasis added)

34. In *Public Trust v C [Relationship property]*, [2009] NZFLR 514 (HC) the parties shared a common residence for approximately 20 years and had a daughter from the relationship in 1985. They had not had a sexual relationship since 1990. The respondent had a contemporaneous association with another woman with whom he had a son. The appellant and the respondent continued to reside in the same house, cooperated in relation to the upbringing of their daughter and entered into a business relationship. The High Court held that they were not living together as a couple. There was insufficient commitment to conclude that a de facto relationship existed.

35. I adopt and apply the reasoning in the above cases cited by Mr Tuitoga, counsel for the first defendant, in his closing submissions, to the present case.

36. In my judgment, the emotional association had come to an end when Mr A commenced his relationship with DW2 in 2001. In my judgment, there was no “*mutual commitment to a shared life*”, in terms of section 154 A(f).
37. Clearly, Mr A and DW2 were not in a clandestine relationship. The plaintiff, in cross examination, admitted that Mr A and DW2 socialised at the Suva Yacht Club. PW6 said that the plaintiff told her of that relationship. PW3 and the witnesses for the defence were all in the know.
38. In my view, clearly the plaintiff and Mr A did not have a “*reputation*” as a de facto couple. There was no “*public aspects of the(ir) relationship*”. I conclude that the de facto relationship had ceased in 2001.
39. The plaintiff contended that only the sexual relations had ceased in 2001, but in every other aspect, she cared for him. She shopped, cooked and washed his clothes. She created a home for him. The evidence reveals that the plaintiff did not perform the “*household duties*”, as provided in section 154 A(h). The plaintiff, in cross examination admitted that DW1 was Mr A’s full time domestic helper.
40. PW5 and PW6 said that they occasionally assisted the plaintiff when her regular domestic helper was away. PW5 said that DW1 was the full time domestic helper.
41. DW1 said that between 2005 and 2010, she looked after Mr A when the plaintiff returned to the Solomon Islands. She did almost everything for him. She cooked, cleaned and shopped for him. He had a gardener twice a week. She looked after the house, when he went abroad. When Mr A was diagnosed with liver cancer in 2009, she looked after him until July, 2010. DW2 said that Mr A always had house girls, who did all his cleaning, cooking, shopping and handling all his personal and business mail.
42. DW6, (*Graeme Frost, the third defendant*) confirmed that in 2005, Mr A employed DW1 as a housegirl to look after Vatuva property. She managed the day to day running of Vatuva on her own and the mail for Mr A’s company.

43. It is an agreed fact, that in July, 2009, the plaintiff accompanied Mr A to England for his mother's funeral. Between December, 2009, and January, 2010, Mr A was diagnosed with liver cancer. After medical treatment in Thailand in March, 2010, he was in Australia from May to July, 2010, for further treatment. In November, 2010, he underwent treatment in Canberra. It was also agreed that he became critically ill on 17th May, 2012, and flew to Canberra on 29th June, 2012, with DW5. He died on 18th August, 2012.
44. The plaintiff said that Mr A went to Australia in October, 2010, for treatment. She went two months later. She admitted that he had a full time professional nurse in Australia.
45. At this point, I would note the evidence of PW4, (*Eleni Kit, a Nurse at Lami Medical Centre*) that the plaintiff took care of Mr A from 2010 to 2012, when he was ill, is inconsistent with the agreed facts and the plaintiff's evidence.
46. The plaintiff, in evidence in chief said that in "*Christmas 2010 (she) was invited by Mr Allinson to join Ms Allinson and her family for a holiday in Cairns and onto their home at Canberra*" for five to six weeks. She went again to visit the family in Butamaroo Station in December, 2011.
47. DW5 and DW7 said that that there was no intimacy between Mr A and the plaintiff when she visited the family in December of 2010 and 2011. She had come as an old friend to say goodbye. They were like friends.
48. I accept the evidence of DW5 and DW7 on this point. Their evidence was consistent with the plaintiff's evidence that she went on a holiday and a visit to the family and Mr A's letters to the Director of Immigration and Visas of the Australian High Commission in October, 2010, and November, 2011, in support of the plaintiff's application for a "*Visitor's Visa*".

49. The plaintiff, in evidence in chief stated that in May, 2012, Mr A came to Fiji, to sell their Vatuva home. Their intention was to sell it and for both of them to go to Australia. She looked after him. He was going to die and she wanted to take care of him. On 24th June, 2012, he vomited blood. On 29th June, 2012, he was taken to Australia for treatment with DW5. He died on 18th August, 2012. She went with them to Nadi. She could not attend his funeral, as her passport was with the Fiji Immigration Dept.
50. The plaintiff, in cross examination admitted that Mr A had not informed her that he was diagnosed with terminal liver cancer. He was diagnosed in November, 2009, but she did not hear about it until April, 2010, from a friend. In re-examination, she said that he could not contact her, due to the bad weather in Santa Cruz. She also said that her email was hacked and communications between Mr A and herself were deleted.
51. DW5 stated that the plaintiff refused to give him blood. Due to Mr A's condition, he was taken to the Intensive Care at Lautoka Hospital. Mr A said that he was given broth by the plaintiff. The witness said that it appeared to him that he had been without proper food or medical care, since returning to the Vatuva property, for the property sale. On 27 June 2012, the plaintiff left by bus to go back to Lami.
52. DW7 said that her father was staying with her prior to and at the time of his demise. He planned to come to Australia. She denied that the plaintiff was going to reside in Australia. Her father had not said anything about her joining him in Australia.
53. On the plaintiff's contention as to her emails, I note that "Google Accounts Team", in their letter to her of 4th September, 2012, stated that her account "*might have been hijacked*", if she had not changed her password.
54. I find the plaintiff's evidence on the weather in Santa Cruz, her email account and reason she could attend his funeral, unconvincing.
55. On a review of the evidence as a whole and the conduct of the parties, I am fortified in reaching the conclusion that the *de facto* relationship had come to an end in 2001.

56. The plaintiff said that on 17th October, 2010, she saw Mr A's will on the table. DW1 was bequeathed \$5000 and Rotary Club \$5000. The remainder of his estate was bequeathed to Penny A, who was appointed as executrix and trustee. She said that it was not fair that she was excluded.
57. The plaintiff has not challenged Mr A's will. In my interlocutory ruling, I held that I would hear this case under the civil jurisdiction, rather than strike it out on the objection taken by the first defendant that it was irregularly filed in the probate jurisdiction.
58. Section 3(1) of the Inheritance (Family Provision) Act, 2004, provides that "a spouse, child, or dependant" may make a claim to the estate of a deceased person. The Act does not make provision for a de facto wife to make a claim.
59. In any event, in my view, Mr A had made adequate provision for the plaintiff. He transferred half the Vatuvia property to her in 2009. On 29th June, 2012, the Vatuvia property was sold for \$665,000. Fifty per cent of the sale proceeds were paid to the plaintiff. She admittedly, received approximately FJ\$312,000.00 from the sale. She also received approximately a further FJ \$60-70,000.00 by way of loans from Mr A, which he asked her to keep, as stated in his email of 1st July, 2008. She had purchased a property in Solomon Islands with that money.
60. In my view, the loans depict that the financial dependence and support had ended by 2008. I would also note that the parties did not acquire nor use any property jointly after 1993, as stated in the statement of claim.
61. For the aforesaid reasons, I decline to grant the plaintiff a declaration that she is entitled to the estate of Mr A and an order that all his assets be transferred to her.
62. In my judgment, it follows that Penny A, as executrix is entitled to probate of the last will of Mr A of 28 July, 2010, and caveat No. 44 of 2012 lodged by the plaintiff against the grant of probate be removed.

63. The first defendant, in its counterclaim seeks the removal of caveat no 762532 lodged by the plaintiff on CT 8436. The agreed facts provide that on 13th January, 2012, Mr A and "*Rajnish Dhirendra Singh*" purchased CT 8436, produced by the plaintiff.

64. The plaintiff has not established her interest in this property. In the light of my findings, there is no basis for caveat 762532 on CT 8436. I make order that caveat no 762532 on CT 8436 be removed.

65. The first defendant also seeks a discharge of the restraining order granted by the Magistrates Court in File no 12/SUV/0397 and for that action to be struck out. File no 12/SUV/0397 is not before me. I decline to discharge the restraining order granted by the Magistrates Court in File no 12/SUV/0397 and for that action to be struck out.

The claim against the second defendant

66. The plaintiff seeks orders that the second defendant releases to her (a) the items it holds on behalf of Mr A, being matrimonial property, which belong to her,(b) and her personal items..

67. PW 7,(*Bill Lockwood,Credit Controller of the second defendant company*) said that in June, 2012, Mr A commissioned the second defendant to ship various personal and household items and a motor vehicle to Australia. Mr A advised that the plaintiff was to join him in Australia. "*Immediately prior to his passing away Mr Allinson contacted us to advise*" that the plaintiff will not join him and that she could remove her personal and household effects and the third defendant,(DW5) was to supervise this process. PW7 said that as a result, a separate inventory was prepared for Mr A's items to be shipped to Australia.

68. In cross-examination by Mr Tuitoga, it transpired that PW7 was not involved in the shipping transaction and his evidence was not based on his personal information. He said that he came into the picture, when the account fell into arrears. Mr A had not said anything to him. Tim Fong was the "*contact*" person.

69. In cross-examination by Mr Prasad, counsel for the second defendant, PW7 said that initially one container was going to Australia.

70. In my view, PW7's evidence on the shipping instructions and that the plaintiff was to join Mr A cannot be accepted, as no cogent evidence was provided by him of the alleged instructions given by Mr A "*Immediately prior to his passing away*", which he said was not given to him, but Tim Fong.
71. PW5 said that on 27th June, 2012, the plaintiff went to Lami, to supervise the packing of Mr A's container by the second defendant and to take her few boxes to the storage unit she had rented from the second defendant. She told him that she was staying at the Bidesi apartments, until she decided to return to the Solomon Islands. The next day, Mr A told him to keep her away from him.
72. PW5 further said that when Mr A was recuperating in Australia, he heard him tell the plaintiff on the phone that he is not paying to ship her goods to the Solomon Islands, to take her feather money out of his container and put all his stuff which she has stolen, into his container.
73. In my judgment, Mr A's email of 19th July, 2008, written almost four years before his demise, confirms the evidence of PW5 that there was to be one container for Mr A's goods and another container for the plaintiff. The email, as produced by the plaintiff, reads as follows:

Shipping feather money to AU in my container will raise alarm bells if searched, please remove it as it will get intercepted shipping it back

*I paid \$35k for w & k to pick up my household effects from 11 vatu and store my HE in my container and your HE in your container/storage area.
(emphasis added)*

74. The plaintiff replied on the same day as follows:

The feather money has to be with your shipment as you were the one who told me to and that you would take care of it.

Please allow me to retrieve that as well as check for little things of mine that might have been accidentally packed into yours like my photo albums, maybe jewelry or what was left off my pearls stolen... (emphasis added)

75. I would also note that the second defendant, in its statement of defence stated that the plaintiff "*duly signed her inventory on 25 July, 2012*" (emphasis added)

76. It follows and I hold that the plaintiff contention that she was to join Mr A in Australia is not credible.

77. In my judgment, the plaintiff is not entitled to the property of Mr A, as contained in his container.

78. She is entitled to her personal items in her container. The second defendant has not counterclaimed for its storage charges in its defence. In the circumstances, I make no order as to costs.

The artefacts and esky of the diving gear

79. The plaintiff, in evidence in chief explained how she came into possession of two feather monies. I note that Mr A, in his email of 19th July, 2012, requested the plaintiff to remove her "*feather money*" from his container.

80. I am satisfied that the plaintiff is entitled to the two "*feather money*" artefacts, presently in the custody of the Fiji Museum, by Order of Court.

81. The plaintiff did not provide any evidence that the two artefacts got damaged or wet, as contended. I decline the plaintiff's claim for damages.

82. The plaintiff did not provide any evidence of her entitlement to the esky of the diving gear. I decline the plaintiff's claim to the esky of the diving gear.

83. The first defendant has substantially succeeded in this case and is entitled to costs. I make order that the plaintiff pay the third defendant costs in a sum of \$ 750, as the action against him was withdrawn by the plaintiff before the hearing commenced.

84. *Orders*

- a. I decline to grant the plaintiff a declaration that she is entitled to the estate of Leslie Allinson.
- b. I decline to grant the plaintiff an order that all the assets of Leslie Allinson be transferred to her.
- c. I decline the plaintiff's claim for the release of the items, the second defendant holds on behalf of Leslie Allinson.
- d. I decline the plaintiff's claim for the release of the esky of the diving gear.
- e. The plaintiff's claim for the release of her personal items held by the second defendant is allowed.
- f. The Fiji Museum shall release the two artefact feather monies to the plaintiff.
- g. Caveat No. 44 of 2012 lodged by the plaintiff against the grant of probate to Penny Allinson is removed.
- h. Penny Allinson is granted probate of the estate of Mr Leslie Allinson, as executrix and beneficiary of the last will of Mr A of 28 July, 2010.
- i. I make order that caveat No. 762532 lodged by the plaintiff on CT 8436 be removed.
- j. I decline the plaintiff's claim for damages against the third defendant.
- k. The plaintiff shall pay the first defendant costs in a sum of \$ 6000 summarily assessed.
- l. I make no order as to costs against the second defendant.
- m. The plaintiff shall pay the third defendant costs in a sum of \$ 750 summarily assessed.



A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam
Judge
25th January, 2019