

IN THE HIGH COURT OF FIJI AT SUVA
PROBATE JURISDICTION

HPP Action No. 64 of 2019

IN THE MATTER of the Estate of **ALAIN**
ALBERT OUAKNINE late of Los Angeles,
California, deceased, Testate

And

IN THE MATTER of an application by **LINDA**
PAMELA OUAKNINE of 12345 Ventura
Boulevard, #A Studio City, California, USA
under the provisions of the Trustee Act Cap 65
Laws of Fiji

BETWEEN: **LINDA PAMELA OUAKNINE** of 12345 Ventura Boulevard, #A Studio
City, California, USA.

PLAINTIFF

AND: **LIKU LITEA** of Bello Circle, Villa 110, Pacific Harbour, Fiji, Domestic
Duties

DEFENDANT

Counsel: Plaintiff: Mr Chandra S
Defendant: Mr. Rabuku J

Date of Hearing: 17.01.2020

Date of Judgment: 29.01.2020

Catch Words

*Non Contentious Probate Rules 1987 (UK), Order 1 rule 11 of High Court Rules of 1988,
Sections 23,6 Succession Probate and Administration Act 1970- grant of Letters of
Administration to de facto partner in terms of non contentious probate rules 1987- Section 13 of
Will Act 1972- Revocation of a last will –*

JUDGMENT

INTRODUCTION

1. This matter had commenced by way of citation to bring in grant issued by Deputy Registrar. It was issued to the Defendant. It was issued on 21.8.2019. This citation compelled Defendant to bring in to court Letters of Administration No 63979 to court so that Plaintiff may proceed in due course of law for revocation of the same. There is an affidavit in support filed along with the said citation where facts surrounding purported grant of Letters of Administration were deposed by the Plaintiff. There was a Notice of Appointment of Solicitors filed on 5.9.2019 on behalf of the Defendant and there was an affidavit in opposition filed on 27.9.2019. Plaintiff filed summons on 27.9.2019 seeking for an order, that Defendant to lodge Letters of Administration No 63979 in the estate of Alert Alain Ouaknine within seven days for revocation. This summons was listed before Master and subsequently listed before me. In terms of the summons the application was made in pursuant to '*Order 76 Rule 4(4) (b) of the High Court Rules*'. There are two supplementary affidavits filed by the Plaintiff alleging some facts relating to alleged *de facto* relationship and connected matters. It is to be noted that Defendant had obtained purported grant No63979 to an application filed by way of an affidavit dated 20.6.2019 and in that affidavit she had admitted Defendant as the legal wife of deceased and her residence in USA and also two issues from that marriage and their ages. This affidavit was filed by then solicitors for the Defendant and had also sworn that she would provide the grant to court whenever required to do so.

FACTS

2. Plaintiff is the alleged widow of late Alain Albert Ouaknine, and both were citizens of USA. There are two adult issues from that marriage. Defendant had denied these facts in the affidavit in opposition filed on 27.9.2019
3. Late Alain Albert Ouaknine, met with an accident in Fiji and subsequently, and died on 4.2.2019 and his body was taken to USA for final rites by Plaintiff and her children. Defendant did not participate in said funeral nor had stated any facts last rites, while denying their existence in her affidavit filed on 27.9.2019
4. At the time of his death deceased held Immigration Permit to work as Director and Shareholder of a resort and condominium from 30.7.2018 to 30.7.2019.
5. Defendant alleges that late Alain Albert Ouaknine had a *de facto* relationship for more than ten years. When he visited Fiji for business and children were born from that relationship.

6. Late Alain Albert Ouaknine had properties in Fiji as well as in other countries including USA.
7. Defendant had obtained letters of administration on the basis of alleged *de facto* relationship.
8. According to the affidavit in support filed on 21.8.2019 deceased died testate and Plaintiff was the sole executrix of the said last will.
9. Apart from the said last will Plaintiff claims priority, over all others as the legally married wife.
10. Plaintiff is seeking revocation of Letters of Administration granted to Defendant.
11. Both parties filed written submissions and affidavits.

ANALYSIS

12. For this decision apart from the affidavits filed I have examined the manner in which purported Letters of Administration No 63979 (The Grant) was issued.
13. The Grant was issued by the Probate Registry on 24.7.2019 to Defendant.
14. Order 1 rule 11 of the High Court Rules of 1988 states as follows
“The rules for the time being in force in Her Majesty’s High Court of Justice in England, and the practice and procedure of that Court with respect of non – contentious probate business shall apply so far as they are applicable, with such modifications as may be necessary, to grants of probate and administration issued in common form the Registry of the High Court”
15. High Court Rules of 1988 commenced on 31.3.1988 (LN 37 of 1988)¹. So, the law that was in force in UK High Court regarding non contentious probate business should be applied to Fiji with any modifications if necessary.
16. In UK “The Non –Contentious Probate Rules 1987 (1987 No. 2024(L.10)” was made on 24.11.1987 and it was laid before UK Parliament on 10.12.1987 and it had come in to effect from 1.1.1988².

¹ “The Laws of Fiji “ [https://laws.gov.fj/Acts/DisplayAct/87#\(28.01,2020\)](https://laws.gov.fj/Acts/DisplayAct/87#(28.01,2020))

² Non Contentious Probate Rules 1987 UK Original Queens Printer version on legislation.gov.uk (28.1.2020)http://www.legislation.gov.uk/ukSI/1987/2024/pdfs/uksi_19872024_en.pdf

17. When High Court Rules of 1988 commenced on 31.3.1988, in UK Non Contentious Probate Rules of 1987 had commenced in UK and it should accordingly be applied to Fiji in terms of Order 1 rule 11 of the High Court Rules of 1988.
18. Defendant had applied to probate registry in Suva for a letters of administration of estate of late Alain Albert Ouaknine under non contentious probate rules. She had made this application as the *de facto* partner of the deceased and had dealt accordingly.
19. Rule 22 of Non Contentious Probate Rules 1987(UK) deals with the order of priority for grant in case of intestacy. And it states;

“Order of priority for grant in case of intestacy

22.—(1) Where the deceased died on or after 1st January 1926, wholly intestate, the person or persons having a beneficial interest in the estate shall be entitled to a grant of administration in the following classes in order of priority, namely—

- (a) the surviving husband or wife;*
 - (b) the children of the deceased and the issue of any deceased child who died before the deceased;*
 - (c) the father and mother of the deceased;*
 - (d) brothers and sisters of the whole blood and the issue of any deceased brother or sister of the whole blood who died before the deceased;*
 - (e) brothers and sisters of the half blood and the issue of any deceased brother or sister of the half blood who died before the deceased;*
 - (f) grandparents;*
 - (g) uncles and aunts of the whole blood and the issue of any deceased uncle or aunt of the whole blood who died before the deceased;*
 - (h) uncles and aunts of the half blood and the issue of any deceased uncle or aunt of the half blood who died before the deceased.*
- (2) In default of any person having a beneficial interest in the estate, the Treasury Solicitor shall be entitled to a grant if he claims bona vacantia on behalf of the*

Crown.

(3) *If all persons entitled to a grant under the foregoing provisions of this rule have been cleared off, a grant may be made to a creditor of the deceased or to any person who, notwithstanding that he has no immediate beneficial interest in the estate, may have a beneficial interest in the event of an accretion thereto.*

(4) *Subject to paragraph (5) of rule 27, the personal representative of a person in any of the classes mentioned in paragraph (1) of this rule or the personal representative of a creditor of the deceased shall have the same right to a grant as the person whom he represents provided that the persons mentioned in sub-paragraphs (b) to (h) of paragraph (1) above shall be preferred to the personal representative of a spouse who has died without taking a beneficial interest in the whole estate of the deceased as ascertained at the time of the application for the grant."*

20. It is clear from the above Rule 22 which I quoted in full does not recognize *de facto* partner as a party to obtain priority for a grant in terms of the said rules.
21. So, irrespective of *de facto* relationship, which is disputed, the Grant, was not made in accordance with Non Contentious Probate Rules of 1987 hence it was irregular. Said application was made by Defendant through an affidavit which had disclosed Plaintiff as the legal wife of the deceased, but the decision to issue the Grant was made without hearing Plaintiff.
22. Section 23 of Succession Probate and Administration Act 1970 states
"The court may at any time upon the application of any person interested in the estate or of its own motion on the report of the Registrar-
(a) Revoke the administration already granted; or....."
23. The Grant was issued irregularly on an *ex parte* application where Defendant had sworn that she would produce the Grant at any time if so ordered. In contrary to that sworn affidavit dated 20.6.2019, Defendant is refusing to bring the Grant.
24. Irrespective of said citation to bring the grant said grant was void *ab initio*, due to irregularity, as *de facto* partner could not make an application under non contentious probate rules.
25. Defendant in the affidavit in reply stated that last will of the deceased was revoked, in terms of the law in Fiji. This contention in the written submissions of the Defendant was

taken but I do not have to deal with the validity of last will at this moment. Defendant did not produce any case law or submission to that effect.

26. Contention of the Defendant is that any last will prior to commencement of *de facto* relations is revoked as the amendment to Section 6 of Succession Probate and Administration Act 1970 recognize *de facto* partner as a party for succession in intestacy. This is farfetched, to say the least.
27. Every last will made is revoked by subsequent marriage in terms of Section 13(1) of Wills Act 1972. There is no provision in o Wills Act 1972 to revoke last will pursuant to each and every *de facto* relationship, held subsequent to such a last will.
28. Recognition of a *de facto* partner for intestate succession in terms of Section 6 of Succession Probate Administration Act, 1970 *ipso facto* does not revoke a last will made prior to *de facto* partnership. In any event *de facto* partnership is denied hence one cannot be in the driving seat to make an order relating to the Grant.
29. Plaintiff deny *de facto* relationship of the Defendant with the deceased. Defendant do not accept the Plaintiff as the wife of the deceased in the affidavit in opposition and state that she was not aware of Plaintiff, but had already disclosed Plaintiff's name and also resident as the legal wife of the deceased in her affidavit filed to obtain the Grant.
30. In the circumstances it is clear that, Defendant under oath denying the facts already admitted, in her pervious affidavit of 20.6.2019.
31. Defendant in the written submission state that Plaintiff had adopted wrong procedure for revocation of grant. I agree that Plaintiff in the summons had indicated that it was made in terms of "Order 76 Rule 4(4) (b) of the High Court Rules", and there was no such provision in the High Court Rules of 1988. Nevertheless, I am not inclined to strike out this summons, due to patent irregularity.
32. Order 76 rule 4(1) (b) of the High Court Rules of 1988, relates to an action begun by way of writ in terms of Order 76 rule 2 of the High Court Rules of 1988. So Order 76 rule 4 cannot be relied without such an action begun by way of writ of summons.
33. Though I could dismiss this summons for said irregularity, this is not preferred under the present circumstances. The Grant was irregular and needs to be rectified promptly once it is brought to the notice of the court, and I am empowered to do so after *inter partes* hearing of the summons in terms Section 23 of Succession Probate and Administration Act,1970.

CONCLUSION

34. In my judgment *de facto* partner is not recognized under non contentious probate rules for priority. Hence the Grant was irregular. Whether a *de facto* partner could made an application in terms of Succession Probate and Administration Act 1970 for letters of administration as a contentious probate action in a suitable manner, is not before me in this action and I do not wish to make any determination on that issue. Considering the circumstances of the case I do not award any cost.

FINAL ORDERS

- a. The Defendant is ordered to lodge purported Letters of Administration No 63979 forthwith.
- b. Said Grant No 63979 is irregular hence revoked.
- c. Each party to bear their own cost.

Dated at Suva this 29th day of January, 2020.



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Justice Deepthi Amaratunga
High Court, Suva