

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION No. HBC 180 OF 2019

BETWEEN : **RANJANI KAVITA REDDY** previously of Yalalevu, Ba, Fiji but presently of 6 Rishworth Avenue, Stanmore Bay, Whangaparaoa, Auckland, New Zealand, Insurance Representative and **NEELIMA PREETI SUDHAKAR** of 7 Aviano Close, Flat Bush, Manukau, Auckland, New Zealand engaged in domestic duties; both Trustees of the Estate of Vinod Datt Sharma previously of Yalalevu, Ba, Fiji

PLAINTIFFS

AND : **VINESH DATT SHARMA** a Businessman of Yalalevu, Ba, Fiji and **VIKESH DATT SHARMA**, a Retired Health Inspector previously of Yalalevu, Ba, Fiji but now of Manukau, Auckland, New Zealand and the Trustees of the estate of Bhagwan Datt Sharma

DEFENDANTS

Appearances : Mr Mishra for the Plaintiff
Defendants appearing in Person

Date of Hearing : 13 March 2020

Date of Ruling: 8 May 2020

RULING

1. These proceedings concern three estates:
 - of Vedi Mati (who died intestate in 1989),
 - of her husband Bhagwan Datt Sharma (who died in 1995 leaving a will in favour of his and his wife's ten children equally), and
 - of Vinod Datt Sharma – one of the 10 children of the Vedi Mati and Bhagwan Datt Sharma (who died in 2009).
2. The plaintiffs are the daughters, executrices and beneficiaries of the last named. To complete the administration of their father's estate they need the estates of his parents (in both of which he is a beneficiary) to be distributed, and that is what these proceedings essentially seek. Although it is not clear exactly what is comprised in the estates, they include at least interests in two properties in Ba, part of which are rented out (presumably resulting in some income for the estates).
3. This matter was last called before me on 13 March 2020 for mention. There was no appearance on that date by (or for) the second-named defendant Vikesh Datt Sharma,

who is one of the executors in the estate of his father Bhagwan Datt Sharma (and therefore an administrator of the mother's estate), and who has applied to strike out the plaintiffs' claim. Vikesh is representing himself, and seems to be the person who is principally in control of the administration of the estates. He lives in New Zealand. Apparently he had written to the court asking – for health reasons - to be excused from attending on 13 March. I do not recall seeing that request at the time of the last mention, but – for the purposes of this minute – I accept that it was made.

4. At the mention on 13 March there were also appearances by a number of members of the family of the deceased parents (Vedi Mati and Bhagwan Datt Sharma), whom I had directed should be served with the plaintiffs' claim so that they could express their views to the court – if they wished to do so - about how the claim should be dealt with. I directed the plaintiff to file affidavits of service, so that there is a record of who was served and when. I encouraged those present to instruct a solicitor to represent them, as their views may be an important factor in the outcome of the case. Those that spoke at the hearing on 13 March (including Vinesh Sharma, the first-named defendant, and co-executor/administrator with Vikesh) generally seemed frustrated at the delays in the administration of the estates, and the lack of communication from the executors about what is happening.
5. I also made orders as follows:
 - i. The matter is adjourned for further mention at 10.30 am on 30 April 2020 to monitor progress.
 - ii. In the interim the defendant executors/administrators (Vinesh & Vikesh Datt Sharma) are to file by 20 April 2020 affidavits providing full accounts for the estates for which they are responsible (Vedi Mati and Bhagwan Datt Sharma). I would expect these affidavits to show the steps taken by them to date in the administration of the estates, and providing full details of the assets and liabilities of the estates, and what has happened to them, so that the court and the beneficiaries have a clear picture of what has happened with the estates, and why their administration is not yet complete.
 - iii. An order that the plaintiffs were to file within 21 days an affidavit in reply to the defendant executors' (Vikesh Datt Sharma's) affidavit, and his application to strike out the plaintiffs' claim.
6. Shortly after these orders were made, the lockdown of the greater Lautoka area was imposed by the Government in response to the Covid-19 pandemic, and activities at the High Court at Lautoka were suspended with effect from 20 March 2020. That suspension has now been lifted, but the Acting Chief Justice has directed that all time limits for compliance with Court orders are to be extended to the effect that the period from 20 March to 17 April (27 days) is not to be counted in the computation of time for

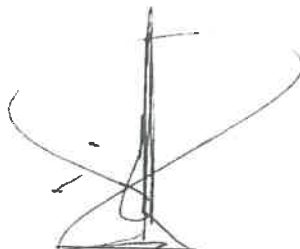
complying with any order of the Court, or time limit prescribed by the High Court Rules. This means that the time for filing the affidavit of defendant executors (originally to be filed by 20 April 2020) referred to in paragraph 5 above, is extended to 17 May 2020, and the time for the plaintiffs to file a response to the defendants' striking out applications (originally 21 days expiring on 3 April) should be taken to be extended to 30 April (3 April + 27 days).

7. The Court has now received a letter from Vikesh Datt Sharma (a copy of which is attached to this ruling in case it has not already been provided to the plaintiffs' solicitors) asking for an adjournment of these proceedings of 10-12 weeks because he is unable to come to Fiji because of the travel restrictions that have been imposed in response to the Covid-19 pandemic. As he also points out – and I accept - with the restrictions currently in place, he would, if he was able to get to Fiji in the first place, be obliged to stay in quarantine in Fiji for 28 days before he could come to Court, and then on his return to New Zealand he would face a further stay in quarantine of 14 days. He says, and I agree, that it is impracticable to expect him to come to Fiji while these restrictions are in place.
8. However, I do not accept that the conduct of these proceedings should be delayed because Mr Sharma cannot come to Fiji. The directions that the Court has made are to ensure that the proceedings continue without the delays that appear to have characterised the administration of these estates up to now. The affidavit that the defendant executors have been directed to file does not require Mr Sharma to return to Fiji. It can be prepared by him in New Zealand (just as he prepared the affidavit in support of his striking out application). In reality, there is nothing about the restrictions imposed as a result of the Covid emergency in Fiji or in New Zealand, or the suspension of Court proceedings, that should have impeded in any way Mr Sharma's preparation of the affidavit he was directed to file by the 20th April. I would expect all the information required to complete that affidavit to be readily to hand, in keeping with the executors' fiduciary responsibility to administer the estate. If it is not readily to hand, the Court and the beneficiaries are entitled to know why.
9. If Mr Sharma is not personally able to appear in Court, there is no reason why he cannot instruct a solicitor in Fiji to appear on the executors' behalf (I have some reservations about whether in a matter such as this an executor is entitled to choose to represent himself if that choice becomes, as it threatens to do here, something that impedes the court in the exercise of its supervisory jurisdiction over the administration of estates – but that is not a matter I am obliged to make a ruling on today).
10. I also make the point that the beneficiaries are entitled to have the estate properly and promptly administered. If Mr Sharma's residence in New Zealand is something that will or might prevent or impede him in performing this duty (whether related to the Court proceedings or otherwise), he needs to consider whether he can continue in his role as

executor, or should give it up in favour of someone who does not face the same difficulties.

11. In the circumstances I extend to Friday 29 May 2020 the time both for the defendant executors and the plaintiff to file the affidavits and reply referred to in paragraph 3(ii) & (iii) above. I expect both of these time limits to be complied with. After that a decision will need to be made about how the matter progresses. In particular I would expect the parties, through counsel if anyone cannot appear in person, to address the Court on whether and why it is necessary to hear the defendants' striking out application separately and in advance of any hearing on the plaintiff's substantive claim. I am not at all attracted to the idea that a person is precluded by the Limitation Act or any other principle of law from complaining about delay in the administration of an estate in which he is a beneficiary, and even if there was such a principle, I would expect it would only be applied with a full understanding of all relevant factors. Such an understanding would usually only be obtained through a trial of the plaintiff's claim, rather than in the course of an interlocutory application to strike out the claim before trial.
12. The matter is adjourned for mention to Monday 29 June 2020 at 10.30am. I have chosen this date partly because I am facing the same difficulties as Mr Sharma in returning to Fiji from New Zealand, but also to provide the parties with plenty of time to examine the material provided by the executors explaining their administration of the estate up to now. The delay will also give all parties the opportunity to explore whether the matter can be resolved without the need for the Court to intervene. It also happens that the adjournment to 29 June gives Mr Sharma close to the 10-12 weeks that he seeks.




A.G. Stuart
Judge

At Lautoka this 8th day of May, 2020

SOLICITORS:

Mishra Prakash & Associates for the Plaintiff