

In the High Court of Fiji

At Suva

Probate Jurisdiction

No: HPP 57 of 2019

Daiana Saumoi

Plaintiff

Vs

Soroqali Talai a.k.a Talai Soroqali

Defendant

Counsel : Ms E. Wakowako for the plaintiff

: The defendant in person

Date of hearing : 8<sup>th</sup> June, 2020

Date of Judgment: 28<sup>th</sup> September, 2020

### **Judgment**

1. In these proceedings, the plaintiff seeks to revoke the letters of administration granted to the defendant. The plaintiff is the wife of Mikaele Gauna a.k.a. Mika Gauna, who died on 25<sup>th</sup> July, 2013. The plaintiff and Mikaele Gauna were legally married on 24<sup>th</sup> February, 1975. The defendant is the eldest of the five children of Mikaele Gauna by his earlier marriage. The statement of claim states that after his death, the plaintiff, at a meeting, informed all his children that her father made a Will on 12<sup>th</sup> October, 2011, making her the sole executrix and trustee of his estate. The Will was shown to the defendant. It was agreed that the defendant, as the eldest would make arrangements for the plaintiff to carry out her duties as trustee and executrix.

2. The statement of claim continues to state that the defendant sought assistance from the Legal Aid Commission to apply for letters of administration without informing the plaintiff. Letters of administration were granted to the defendant on 29<sup>th</sup> November, 2017. The defendant did not disclose the existence of his father's surviving lawful wife and mislead the Probate Registry.
3. The defendant acknowledged service of the amended writ of summons, but did not file statement of defence.
4. At the hearing, the plaintiff produced her marriage certificate, the death certificate of Mikaele Gauna, his Will and the letters of administration granted to the defendant. She said that the defendant mislead the Probate Registry and did not disclose that she was his father's surviving lawful wife.
5. PW2, (*Satini Wati, daughter and only child of the plaintiff and Mikaele Gauna*) and PW3, (*Ilaitia Valelotu, a son of Mikaele Gauna*) testified that the plaintiff showed the Will to the defendant. The defendant was entrusted to make arrangements to obtain the required documents to enable the plaintiff to apply for probate. The family trusted the defendant, as he was the eldest of the siblings. The defendant mislead the Probate Registry and did not disclose that the plaintiff was his father's surviving lawful wife.

#### ***The determination***

6. The defendant does not dispute the validity of the Will of the late Mikaele Gauna of 12<sup>th</sup> October, 2011. He did not cross examine the plaintiff nor the other two witnesses for the plaintiff. Accordingly, it was not necessary for the plaintiff to call the Solicitor or the attesting witness to establish the due execution of the Will.
7. It is undisputed the plaintiff showed the Will to all the children of the deceased, including the defendant and that the defendant obtained letters of administration by misleading the Probate Registry.
8. In the result, I revoke the letters of administration granted to the defendant.

9. The plaintiff's claim for mental stress and anxiety was not established. In any event, that claim cannot be determined in a probate action.

10. **Orders**

- a. I revoke letters of administration no 61148 granted to the defendant.
- b. The defendant is ordered to deposit letters of administration no 61148 in Court.
- c. The claim for general damages is declined.
- d. The defendant shall pay the plaintiff costs summarily assessed in a sum of \$1000.00.



*A.L.B. Brito-Mutunayagam*

A.L.B. Brito-Mutunayagam  
JUDGE  
28<sup>th</sup> September, 2020