

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

**Civil Action No. HBC 271 of 2020**

**BETWEEN**

**SOPHIA KHAN** of 84 Ragg Avenue, Suva, Businesswoman.

**PLAINTIFF**

**AND**

**VIJAI WATI** as administratrix of the Estate of Gopal aka Gopal Pillay  
34 Matanitobua Street, Suva, Domestic Duties.

**DEFENDANT**

**Counsel** : Mr. Savou J. for the Plaintiff  
Ms. Prasad L. for the Defendant

**Date of Hearing** : 15<sup>th</sup> March 2021

**Date of Ruling** : 25<sup>th</sup> March 2021

# RULING

*(On the application for joinder)*

[1] The plaintiff in this matter filed the Originating Summons seeking the following orders against the defendant:

1. That the defendant perform her obligations under clause 4.9.2 of the Terms of Distribution dated 19<sup>th</sup> July 2018 and Transfer Housing Authority Sublease 333236 to Krishna Pillai.
2. That the defendant pay costs.

[2] The summons filed on 18<sup>th</sup> January 2021, Krishna Pillai sought to intervene in these proceedings. The orders sought in the said summons are as follows:

- a) Krishna Pillai be joined as a co-plaintiff in this matter pursuant to Order 15 rule 6(2)(b)(i) and (ii) of the High Court rules on the grounds that he has a direct interest and claim upon the asset which is the subject of the relief and remedy being sought by the plaintiff in these proceedings and that his joining these proceedings is necessary to ensure that all the matters in dispute in the cause may be effectually and completely determined and adjudicated upon.
- b) That the costs of this application be in the cause.

[3] The Terms of Distribution referred to above is in respect of the estate of Gopal Pillay and signatories to the Terms of Distribution re the beneficiaries of the estate of Gopal Pillay. It is common ground that Krishna Pillai is not a beneficiary of the estate of Gopal Pillay.

[4] Order 15 Rule 6(2) of the High Court rules 1988 provides:

Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application-

- (a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;
- (b) order any of the following persons to be added as a party, namely-
  - (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or
  - (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

[5] Clause 4.9.2 of the Terms of Distribution executed by the beneficiaries of the estate of Gopal Pillay reads as follows:

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Beneficiary relinquish and forever renounce all their interest in Housing Authority Sub-Lease No. 333236 for the sole and absolute benefit of KRISHNA PILLAI, a cousin brother of the late Gopal.

[6] The plaintiff's action is entirely based on the Terms of Distribution to which Krishna Pillai is not a signatory. Although the parties to the Terms of Distribution has agreed to transfer the property in question to Krishna Pillai, if the defendant fails and/or neglects to transfer the property to Krishna Pillai, he will not have a cause of action to sue the defendant on the undertaking given in the Terms of Distribution. An oral promise to transfer a property does not create an equitable interest in the property in favour of Krishna Pillai.

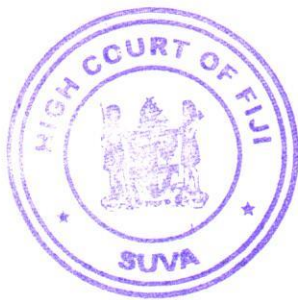
[7] The learned counsel for the defendant submits that Krishna Pillai has no *locus standi* to be a part of these proceedings. I am inclined to accept this position for the reason that the third party, although the parties to the Terms of Distribution have agreed to transfer the property in question to him, cannot sue the defendant on that agreement since he is not a


party to it. Therefore, his presence is not necessary for the effectual and complete determination of all the issues between the parties.

[8] For the above reasons the court makes the following orders.

### ORDERS

1. The summons Filed by Krishna Pillai seeking to intervene is struck out.
2. There will be no order for costs.



  
Lyone Seneviratne

JUDGE

25<sup>th</sup> March 2021