

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

PROBATE ACTION NO.: HPP 33 of 2022

**IN THE ESTATE of SESHA REDDY late of
Lawai, Sigatoka in the Republic of Fiji,
Property Manager, Deceased, Intestate.**

AND

**IN THE MATTER of an application pursuant
to Section 28 of the Succession, Probate and
Administration.**

APPEARANCES/REPRESENTATION

APPLICANT : Ms. L Prasad [Sherani & Co]
RESPONDENT : Ex-Parte
RULING BY : Acting Master Ms Vandhana Lal
**ORAL RULING
DELIVERED ON** : 04 April 2022

RULING

1. This is an application by the intended administrator through his/her lawful power of attorney seeking orders for dispensation of sureties for applying for a grant of letters of administration for the Estate of Sessa Reddy.
2. No authority is annexed by intended administrators, for attorney to apply and no reason is given why they cannot apply/depose affidavit themselves.

3. The gross value of the estate is said to be around \$3million hence they cannot find suitable sureties locally who are worth the gross value of the estate.

4. Pursuant to section 20 of the Succession Probate Administration Act:

“Every person to whom administration is granted shall, previous to the issue of such administration, execute in the form prescribed by the rules, a bond, with one or 2 sureties conditioned for duly collecting, getting in, administering and distributing the real and personal estate of the deceased”

5. Under section 21 *“the court may dispense with one or both sureties to any bond or reduce the amount of such penalty, or limit the liability of any surety to such amount as the court thinks reasonable; or in place of any such bond, the court may accept the security of any incorporated company or guarantee society approved of by the court”*.

6. Hodges J. in **In the Estate of Johnston Storey [1902] 28 V.L.R. 336** had cited the case of **In the Goods of Richardson L.R 2 P & D 244** which stated the principles for dealing with application for an order to dispense with sureties, which principles is said to have influenced Hodges J. in declining to grant these applications.

7. In Richardson’s Lord Penzance at page 246 of the report is quoted to have said:

But the court cannot make the grant which is now asked for under that section without materially laying down the rules that whenever the parties interested like to consent that some person nominated by them shall take the grant it will make the grant to such nominee. If all suitors in this court, and persons entitled to grant, were persons of intelligence and knowledge of business matters, such a rule might be unobjectionable. Persons of intelligence and education, knowing their own rights, may be allowed without objection to transfer to third persons, their right dealing with property in which they alone are concerned. But the court must bear in mind that suitors and persons entitled to grants in this court are

many of them persons who have no opportunity of knowing their own rights and are not aware of the dangers that may beset them if they transfer those rights to other person”.

8. Hodges J. whilst refusing the application stated:

“It is the court who ought to protect these persons. It is its special function. When beneficiaries give money to their trustees, the court ought to protect them”.

9. Justice Hood on 27 September 1912 (reported in Victorian Law Reports [1913] at page 13) made announcement in regard to the evidence to be given in cases of application for dispensation of sureties to administration bonds.

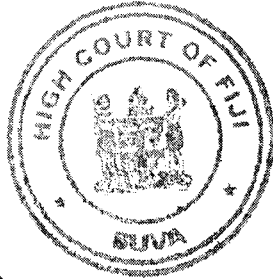
He stated that affidavit must show that the persons who consents are, fully aware of their rights and if the danger of entrusting the whole management of the estate to an administrator who is giving no security for the due performance of his duties.


10. *“The consent should contain a statement by the beneficiaries to the effect that they are aware that sureties are required by law, and that in signing such consent, they are giving up the protection which sureties would have afforded them, and are relying solely upon the integrity of the administrator for the due administration of the estate”.* – McArthur J in *The Estate of Ross* [1926] V.L.R. 568 at 569.

In the said case, each consent was by way of an affidavit where an independent solicitor verified the signatures of the consenting party and stated that prior to the consent being signed, the solicitor read and explained over to the consenting party the full legal significance thereof and the party perfectly understood the same.

11. With no such consent provided in the current case I refuse to make orders on the application as sought by the Applicant.

12. Application is dismissed.




Vandhana Lal [Ms]
Acting Master
At Suva.

04 April 2022

TO:

1. Suva High Court Probate Action No. HPP 33 of 2022;
2. Sherani & Co, Solicitors for the Applicant.