

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 17 of 2023

BETWEEN

SHARANJIT KAUR SINDHU also known as **SHARAN SINDHU** also known as **SHARAN LATEEF** also known as **SHARANJIT KAUR LATEEF** of 19 Sheoak Street, Middle Park QLD 4074, Australia, Accountant, as Administratrix and Trustee of the Estate of **REXINA SHIREEN LATEEF**.

PLAINTIFF

AND

SHAZRAN ABDUL LATEEF also known as **CAESAR LATEEF** of Lot 5 Albert Lee Place, Suva, Legal Practitioner.

DEFENDANT

Counsel : Mr. R. Singh for Plaintiff
Mr. G. O'Driscoll for Defendant

Date of Hearing : 09th June 2023

Date of Ruling : 14th July 2023

RULING

[1] The Court upon hearing Plaintiff's *ex- parte* Originating Summons granted an interim charging order on 02.03.2023 for the following properties,

I. the land contained in Certificate of Title No.23458 being Lot 3 on the Deposited Plan No.57774 in the city of Suva in the island of Viti Levu having an area of 1032 square metres (Albert Lee Property)

II. one undivided half share in Certificate of Title No.7121 being Lot 7 on the Deposited Plan No.1482 in the city of Suva in the island of Viti Levu having an area of 27.3 perches (Denison road Property)

III. one undivided half share in State sublease No.606654 being Unit 1S on SLP 30, Denarau Island in the Tikina of Nadi in the province of Ba having an area of 87 square metres (Port Denarau Office)

IV. two fully paid Class A ordinary shares in Rankam Holdings Pte Limited (company registration number 13734) (Rankam Shares)

[2] Briefly I would like to revisit the facts provided by the Plaintiff. She is the current administratrix of the Estate of late Rexina Shireen Lateef. Rexina was the sister of the Defendant who died testate on 10th February 2016. The Defendant, Mr. Lateef was the former executor and trustee of the Estate. He obtained the probate in April 2016. Plaintiff states that he failed to administer the Estate according to the Will and used Estate's money for his personal benefit. The amount was approximately FJ\$2.6 million. Later he consented for an order removing him from the responsibilities and substituting the Plaintiff. Plaintiff states that in the said removal proceedings parties resolved it by having a Deed of Settlement dated 11th September 2019.

- [3] Plaintiff alleges that the repayments were not made by the Defendant as per the Deed of Settlement. On 01st November 2021 the Plaintiff filed Writ of Summons against the Defendant. The Defendant failed to file his Statement of Defence and a judgment was entered against the Defendant on 05th January 2022. An application to set aside the judgment was filed and later the same was dismissed by the Court.
- [4] The Court proceeded to hear the application to decide whether it should make interim orders absolute.
- [5] The Defendant deposed an affidavit opposing the interim charge granted by this Court. In that he denies that the monies of the Estate were used for his personal benefit. The Defendant states that he had wide discretionary powers as it was his sister's intention especially on the matters relating to bequest of his three children. He states that the Plaintiff left Fiji with his children without his consent and later turned three children against him to remove him from the position of executor and trustee of his sister's estate.
- [6] The Defendant alleges that the Plaintiff filed divorce and matrimonial property proceedings against him in Australia. Mr. Lateef had several challenges during this period of his life. He had to go through criminal proceedings against him and was in remand. He lost his practicing certificate as a Legal Practitioner. He states that while he was under great personal stress the civil matter which resolved with a deed of settlement was called in Court. That was the same day where he was produced in Court from Remand to attend the criminal matter. He states that he consented to the deed of settlement without checking the figures of the application.
- [7] The Defendant further states that the Default Judgment was obtained despite his application to seek further time. The setting aside application was refused by the Court in an ex-tempore ruling. The Defendant expressed his intention to file an appeal against this decision.

[8] Order 50 Rule 6 of the **High Court Rules 1988** is relevant in making a charging order absolute.

6.-(1) On the further consideration of the matter the Court shall, unless it appears that there is sufficient cause to the contrary, make the order absolute with or without modifications.

(2) Where, on the further consideration of the matter, it appears to the Court that the order should not be made absolute it shall discharge the order.

(3) A charge imposed by an order under rule 2 made absolute under this rule shall have the same effect, and the judgment creditor in whose favour it is made shall, subject to paragraph (4), have the same remedies for enforcing it, as if it were a valid charge effectively made by the judgment debtor.

(4) No proceedings to enforce a charge imposed by an order made absolute under this rule shall be taken until after the expiration of 6 months from the date of the order to show cause

[9] Lord Brandon in **Roberts Petroleum Ltd v. Bernard Kenny Ltd** [1982] 1 W.L.R. 301,307 summarised the general principles governing the exercise of the discretion of the Court.

1. The question whether a charging order *nisi* should be made absolute is one for the discretion of the Court.
2. The burden of showing cause why a charging order *nisi* should not be made absolute is on the judgment debtor.
3. For the purpose of the exercise of the Court's discretion here is, in general, no material difference between the making absolute of a charging order *nisi* on the one hand and a garnishee order *nisi* on the other.
4. In exercising its discretion the Court has both the right and the duty to take into account all the circumstances of a particular case, whether such circumstances arose before or after the making of the order *nisi*.
5. The Court should so exercise its discretion as to do equity, so far as possible, to all the various parties involved, that is to say, the judgment creditor, the judgment debtor and all other unsecured creditors.

- [10] Mr. Singh argues that the Plaintiff should not be denied the fruits of her judgment. The Court of Appeal has affirmed this view in the recent case of **Nath v. Narayan** [2020] ABU 0040 of 2018.
- [11] Obtaining a charging order is one of the ways available to a judgment creditor in enforcement. It is an indirect way to enforce a judgment. Granting of a charging order will only provide a security to a creditor. Mere grant of an order will not resolve everything for the creditor. He or she must take necessary subsequent steps according to the nature of the property under the charge to finally ascertain the fruits of the judgment.
- [12] According to Order 50 Rule 6(1) it would be necessary for a Defendant to show 'sufficient cause' in order to discharge an interim charging order granted against him by the Court. Order 50 Rule 1(7) allows the evidence on sufficient cause to arrive either on the representation of the judgment debtor or otherwise.
- [13] Mr. O'Driscoll informed Court that his client has lodged papers awaiting further directions from registry on the application seeking leave to appeal the decision of High Court Civil Action HBC 222 of 2021. The learned counsel is on firm belief that the Defendant has reasonable grounds to argue in setting aside the orders of the learned Master.
- [14] Can this Court consider those grounds as 'sufficient cause' to find in favour of the Defendant?
- [15] The Plaintiff has not applied for a charging order merely on a default judgment. In other words a matter went uncontested. The Defendant has made representations for a setting aside application. The Court has considered Mr. Lateef's affidavit evidence in support of his application and his counsel's submissions to rule. The Defendant's reasons given against the Writ action should have been raised in HBC 222 of 2021 proceedings, and not in this present application. I am of the view that a party should not be allowed to re-litigate the action which led the other party to seek a charging order by way of show cause procedure.
- [16] In the event if that is allowed, it would go against the concept of *res judicata*. In a recent Supreme Court case **Varani v Native Lands Commission** [2022] CBV0014 of 2018 Hon. Justice Marsoof stated "*The concept of res judicata is well known in both common Law and civil law jurisdictions, though in certain legal systems it is more popularly known as "claim preclusion". Under Roman law, the principle was embodied in two legal maxims, interest rei publicae ut sit*

finis litium, meaning "it concerns the State that there be an end to law suits" and nemo debet bis vexari pro una et eadem causa, meaning "no man should be vexed twice over for the same cause". As Halsbury's Lawes of England explains, "the doctrine of res judicata is not a technical doctrine applicable only to records; it is a fundamental doctrine of all courts that there must be an end of litigation.

Spencer Bower and Handley have defined res judicata as a "decision pronounced by a judicial or other tribunal with jurisdiction over the cause of action and the parties, which disposes once and for all of the fundamental matters decided, so that, except on appeal, they cannot be re-litigated between persons bound by the judgment. A plea of res judicata can consist of a cause of action estoppel or an issue estoppel. A cause of action estoppel is concisely defined by Spencer Bower and Handley in this way: "If the earlier action fails on the merits a cause of action estoppel will bar another." By way of contrast, an issue estoppel applies to "a state of fact or law which is necessarily decided by the prior judgment, decree or order."

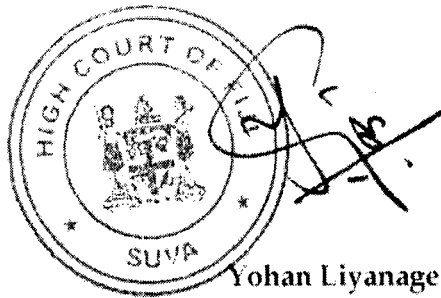
- [17] Similar to the setting aside application, Defendant's allegations against the Plaintiff to remove him from the position of Executor and Trustee of his late sister's estate, holds no merit. The Defendant had the opportunity to contest the removal proceedings. However he decided not to do so. The decision to enter into a Deed of Settlement has renounced Defendant's appointment and his right to further contest the removal proceedings.
- [18] In the absence of any sufficient cause I proceed to grant following orders.

ORDERS

1. The interim charging order of this Court dated 02.03.2023 placed on the properties below made absolute.
 - a. the land contained in Certificate of Title No.23458 being Lot 3 on the Deposited Plan No.57774 in the city of Suva in the island of Viti Levu having an area of 1032 square metres (Albert Lee Property)

- b. one undivided half share in Certificate of Title No.7121 being Lot 7 on the Deposited Plan No.1482 in the city of Suva in the island of Viti Levu having an area of 27.3 perches (Denison road Property)
- c. one undivided half share in State sublease No.606654 being Unit 1S on SLP 30, Denarau Island in the Tikina of Nadi in the province of Ba having an area of 87 square metres (Port Denarau Office)
- d. two fully paid Class A ordinary shares in Rankam Holdings Pte Limited (company registration number 13734) (Rankam Shares)

II. Parties to bear cost.



Yohan Liyanage

JUDGE

At Suva on 14th July 2023