

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

Probate Action No. HPP 21 of 2017

IN THE MATTER of the ESTATE of LIKU VACISEVA AKA VACISEVA LIKU late of Kapadia Place, Raiwai, Suva, Data Entry Clerk, Deceased, Intestate.

AND

IN THE MATTER of an Application by JIUTA VATEITEI VIDREYAKI AKA JIUTA VATEITEI VEIDREYAKI AKA JIUTA VEIDREYAKI as the Administrator of the ESTATE of LIKU VACISEVA AKA VACISEVA LIKU.

Representation:

Mr P. Niubalavu for the Applicant (Oceanica IP).

Date of Hearing: 10th August 2023

JUDGMENT

- [1] The Applicant/Administrator filed an Ex-Parte Notice of Motion pursuant to Section 6 and 41 of the Succession, Probate and Administration Act 1970 and Order 8 and 32 of the High Court Rules seeking the following orders:

“(a) That Niumaia Rokociri Vitinavulagi, male, born on the 23 May 1999, being an issue of the late Liku Vaciseva aka Vaciseva Liku, is a beneficiary of the Estate of Liku Vaciseva aka Vaciseva Liku.

(b) That Niumaia Rokociri Vitinavulagi is entitled to one third share of the sum of \$101, 334.00 plus interest, held in the High Court or Bank interest bearing account under the name of the Applicant as Trustee for Verenaisi Lewaniqqa Vidreyaki and Inia Vosaicake Veidreyaki.

(c) That the one third share of the beneficiary who has attained the age of majority, be released, and distributed according to law after payments of any administration and legal costs.

(d) That the other two third share be kept in the High Court or Bank interest bearing account under the name of the Applicant as Trustee for Verenaisi Lewaniqaqa Vidreyaki and Inia Vosaicake Veidreyaki and to be released to the beneficiaries upon the beneficiaries attaining the age of majority.

(e) No order as to costs”.

The Ex-Parte Motion was filed with two affidavits in support. One was of Niumaia Rokociri Vitinavulagi and the other by Jiuta Vateitei Vidreyaki aka Jiuta Vateitei Veidreyaki aka Jiiuta Veidreyaki.

- [2] Section 6 of the Succession, Probate and Administration Act 1970 sets out the succession and distribution of property on intestacy. Section 41 of the Succession, Probate and Administration Act 1970 gives the High Court powers to determine all questions and issues relating to the administration of an estate. This application is based on these provisions of the Succession, Probate and Administration Act 1970.
- [3] Mr Niubalavu informed the Court that he was acting for the Applicant (Jiuta Vateitei Vidreyaki aka Jiuta Vateitei Veidreyaki aka Jiiuta Veidreyaki) and the beneficiary (Niumaia Rokociri Vitinavulagi). That the parties came up to a mutual agreement. That orders were made by the High Court in respect of the Estate on 18th May 2017 as a result of the sale of the estate property. The administrator and the deceased were the co-owners of the property. Niumaia is the child of the deceased and that the Administrator (Jiuta Vateitei Vidreyaki aka Jiuta Vateitei Veidreyaki aka Jiiuta Veidreyaki) all along did not recognise Niumaia Rokociri Vitinavulagi as the deceased's son. Niumaia Rokociri Vitinavulagi was brought up by an uncle. The administrator realises that Niumaia Rokociri Vitinavulagi is a beneficiary of the mother's estate.
- [4] This Court notes that in April 2017 the Administrator/Applicant filed an Ex-Parte Notice of Motion with his affidavit. In that application the Administrator/Applicant sought to sell the Deceased's property comprised in HA Sub-Lease No. 182100 being Lot 27 on DP 3927, Kapadia Place, off Nairai Road, Raiwai, Suva and from the sale retain a sum of \$101,334 in the name of the Applicant as Trustee for Verenaisi Lewaniqaqa Vidreyaki and Inia Vosaicake Veidreyaki, the beneficiaries, being minors. These orders were granted by the Court. The Court also ordered that the Property be sold at \$248,000.00.

- [5] The current application before this Court by the Applicant is seeking the release of the monies held in the High Court or Bank Interest Bearing account for Verenaisi Lewaniqaqa Vidreyaki and Inia Vosaicake Veidreyaki. The Applicant states in his affidavit in support dated 17th May 2023 that over the years he discovered that Niumaia Rokociri Vitinavulagi was born out of wedlock and was the deceased's son. This Court finds from an affidavit in support filed in April 2017 on behalf of the Applicant that the Applicant acknowledged that the deceased had three children. He also acknowledged that all the 3 children were entitled to shares in the estate of the deceased. This Court refers to Paragraph 6 and 7 of the Affidavit of the Applicant/Administrator filed in court on 20th April 2017.
- [6] In fact, when the April 2017 application was lodged with the High Court in Para 12 of the Affidavit sworn by the Applicant (filed on 20th April 2017) he states *"that I am advised and believe that as per the rules of intestacy I as the surviving spouse is entitled to take \$20,000.00 plus one third of the residuary estate absolutely and my three children are entitled to two thirds of the residuary estate absolutely."* And in Para 13 he states *"that I am further advised and believe that after distribution of my share, the amount that would be payable to my children would be \$50,667.00 each and I seek an Order that this Court allow the amount payable to my minor children to be deposited into an account in their name at the High Court or alternatively ..."*
- [7] This court has also noted that in September 2019 the Applicant/Administrator filed a Notice of Motion and his Affidavit seeking a sum of \$80,000.00 out of the shares of Verenaisi and Inia to carry out necessary settlement with one Asena Sasavuka Dame, discharge of mortgage with the bank, obtain consent from Housing Authority and transfer of one undivided half share of Asena Sasavuka Dame in HA Sublease No. 182100 to Verenaisi and Inia. The Applicant also sought \$4,900.00 be released to Veiuto Primary School to cater for Inia's educational Australian tour. This application was declined by Justice Mutunagyam on 29th October 2019.
- [8] The monies deposited in the High Court or the Bank Interest Bearing Account were for the benefit of two children, Verenaisi and Inia. It was not for Niumaia Rokociri Vitinavulagi. The Applicant himself acknowledged this in an earlier affidavit (April 2017). The monies were not kept aside for Niumaia Rokociri Vitinavulagi. The Applicant acknowledged that each child was entitled to \$50,667.00 and he put aside \$101,334.00 for the two minors. The Applicant when he made the application in April 2017 clearly acknowledged that he had three children. He also acknowledged that each child was entitled to shares in the Estate. He was putting aside monies for two children (Verenaisi and Inia).
- [9] This application is for the third child (Niumaia). His share of monies were not ordered by the High Court to be paid into the High Court Registry in an interest-bearing account. The Applicant/Administrator in 2017 acknowledged that Niumaia Rokociri Vitinavulagi was entitled to share in the estate. The Applicant/Administrator acknowledged that each child was entitled to

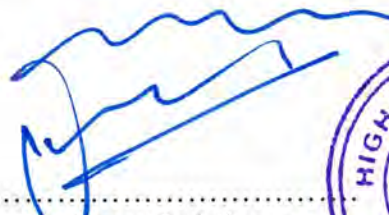
\$50,667.00. Which means that Niumaia Rokociri Vitinavulagi was entitled to \$50,667.00 in 2017. Shares for the minor children (Verenaisi and Inia) were paid into Court in 2017. The Applicant/Administrator needs to explain what happened to the share of money for Niumaia Rokociri Vitinavulagi? It is not held by the High Court or in the Bank Interest bearing account.

[10] For the reasons given herein the application is declined.

[11] **The Court Orders** as follows:

(a) The Application for orders seeking that Niumaia Rokociri Vitinavulagi be entitled to one third share of the sum of \$101,334 plus interest, held in the High Court or Bank Interest bearing account under the name of the Applicant as Trustee for Verenaisi Lewaniqaqa Vedreyaki and Inia Vosaicake Veidreyaki is declined.

(b) No orders as to costs.



Chaitanya Lakshman

Acting Puisne Judge

27th September 2023

