

IN THE HIGH COURT OF FIJI

AT SUVA

PROBATE JURISDICTION

Probate Action No. HPP 40 of 2012

IN THE ESTATE of MUNI CHAND son of Kinj
Behari late of 77 Ratu Mara Road, Samabula, Suva, Fiji,
Businessman, Deceased (Testate)

BETWEEN : ASHOK CHAND of 77 Ratu Mara Road, Suva, Fiji, Company Director.

PLAINTIFF

AND : URMILA VERMA of Lot 13, Nasosa, Nadi.

DEFENDANT

AND : NAND KISHORE CHAND of Brisbane, Queensland, Australia, Pharmacist, AVINESH
CHAND of Surrey, British Columbia, Canada, Accountant, SUNEELA DEVI SINGH of
Manurewa, Auckland, New Zealand, School Teacher and SASHIMILA SINGH of New South
Wales, Australia, Businesswoman.

FIRST INTERESTED PARTIES

AND : SHERIANI & CO a firm of legal practitioners with their offices at 2nd Floor Harifam Center,
Greig Street, Suva.

SECOND INTERESTED PARTY

BEFORE: Hon. Justice Vishwa Datt Sharma

COUNSEL: No Appearance - Neel Shivam Lawyers for the Plaintiff.

Mr. Knight P. for the Defendant

Mr. Singh V. for the 1st Interested Party

Mr Nagin for the 2nd Interested Party.

DATE OF DECISION: 7th December, 2023

DECISION

*[Bill of Costs for Taxation pursuant to Order 62 of the High Court Rules
1988, Rule 4 of Legal Practitioners (Remuneration for Non-Contentious
Business) Rules 2004 and the inherent jurisdiction of this Honourable
Court]*

Introduction

(1) This is a joint Summons and an Affidavit in Support by the Plaintiff, the Defendant and the First Interested Parties for an Order that:

- A. All monies held in the trust account of Sherani & Co to the credit of the Estate of Muni Chand be transferred to the trust account of Parshotam Lawyers forthwith.
- B. Within 14 days of service of this Summons, Sherani & Co render to the Court and to the parties a detailed and itemized bill of costs for its attendances in relation to monies received and paid out of its trust account in relation to the Estate of Muni Chand Pursuant to an order of the Court herein.
- C. Sherani & Co's bill of costs be taxed by the Court and all parties including Sherani & Co. be bound to accept the sum determined by the Court after taxation as Sherani's costs for its attendances.
- D. Within 14 days of service of this Summons, Sherani & Co. render to the Court and to the parties its trust account ledger for the Estate of Muni Chand detailing all monies received and all payments done on behalf of the Estate of Muni Chand
- E. All tenants of the property at 77 Ratu Mara Road, Samabula comprised in Crown Lease No. 3402 be notified to make all future rental payments into the trust account of Parshotam Lawyers forthwith.
- F. Parshotam Lawyers shall hold all funds paid into its trust account by Sherani & Co., tenants of 77 Ratu Mara Road and any other source in relation to the Estate of Muni Chand, for the credit of the Estate of Muni Chand, intact unless any payments are agreed to jointly by the Plaintiff, The First Interested Parties and the Defendant.
- G. The Original Grant of Probate No. 52917 be released to the Defendant or her solicitors forthwith by the High Court registry.
- H. Parties shall be at liberty to apply to the Court for further directions if necessary.
- I. There be no order as to costs.

(2) Orders were already made herein above in terms of Order sought at A, E, F and G on 25th July 2022.

(3) This Court in particular only needs to hear and determine the remaining two (2) essential orders sought at C and D hereinabove and enumerated hereunder:

C. Sherani & Co's bill of costs be taxed by the Court and all parties including Sherani & Co. be bound to accept the sum determined by the Court after taxation as Sherani's costs for its attendances.

D. Within 14 days of service of this Summons, Sherani & Co. render to the Court and to the parties its trust account ledger for the Estate of Muni Chand detailing all monies received and all payments done on behalf of the Estate of Muni Chand.'

(4) Above Order in the Summons at prayers C and D are sought for on the basis of the material facts deposed by the Defendant, Urmila Verma in her capacity as the Executrix of the Estate of Muni Chand via Probate Grant No. 52917, now surrendered to the Court pursuant to a Court Order of 07th June 2013.

(5) There were two (2) actions (HBC 36/2013S and HPP 40/2012) that were initiated by the respective Plaintiffs in those proceedings challenging the last Will of the late Muni Chand.

(6) Parties to both proceedings have entered into a Deed of Estate Settlement dated 6 May 2022 to settle all matters in relation to the Estate of Muni Chand involving:

- (a) Distribution of the Estate of Muni Chand.
- (b) Discontinuation of both actions.

(7) Part of the Estate of Muni Chand includes \$966,408.90 (as at 11 April 2022) in Sherani & Co's Trust Account being rental payments collected from tenants of the property located at 77

Ratu Mara Road comprised in Crown Lease No. 3402 pursuant to an order of the Court in these proceedings.

- (8) Mr. Hamendra Nagin of Sherani & Co. had sent an email on 20 April 2022 to solicitors acting for the Plaintiffs stating that Sherani & Co.'s costs for collecting rent for the Estate of Muni Chand would be 10% of the rent collected. This would amount to approximately \$100,000.00.
- (9) Mr. Parshotam had on 24 April 2022 sent an email to Mr. Nagin asking several questions as laid out below in relation to attendances of Sherani & Co.
- (10) Mr. Nagin and Sherani & Co. have not provided a complete answer to the questions but did respond with their emails on 24 April 2022.
- (11) The Plaintiff, First Interested Parties and Defendant reasonably believe that Sherani & Co.'s attendances were not substantial as tenants would show up at their offices and make payment of rent which would then be receipted. These attendances were clerical and administrative in nature and do not justify the exorbitant fee of about \$100,000.00 that is being claimed.
- (12) Pending the distribution of the Estate it is intended that the monies held at Sherani & Co.'s trust account and any other monies receivable by the Estate of Muni Chand be paid into the trust account of Parshotam Lawyers. These monies will be held intact, except in the case of payment for necessary expenses that are agreed to by the parties, until distribution of the Estate.
- (13) Second Interested Party, Sherani & Co. had previously acted for the Defendant in this matter.
- (14) On 29th July 2022, Sherani & Co. paid out a sum of \$990,008.53 to Parshotam Lawyers Trust Account as per the Court Order of 26th July 2022.
- (15) The Will that was being challenged in HBC 36/2013S and HPP 40/2012 were also made and witnessed by Hamendra Kumar Nagin [Second Interested Party].
- (16) That Sherani & Co. have collected rent and managed the property from September 2013 to July 2022 for a total of 108 months and stated the costs at \$27,000 + \$54,000 = \$81,000.

(17) The 2nd Interested Party's Bill of Costs for Taxation was filed by Sherani & Co on 18th July 2023 and shows method 1 forRent Collection fees of \$103,050.05, total Disbursements at \$123.50, and total Amount to be taxed (plus vat) at \$103,173.55.

And Method 2 on time basis: at \$27,000 + \$54,000

Total = \$81,000

Plus Disbursement @ \$123.50

Total Amount to be taxed = \$81,123.50 (Plus vat)

(18) On 06th July 2023, the Court ordered Sherani & Co. lawyers to adhere to the following:

1. Within 14 days, Sherani & Co. render to the Court and to the parties a detailed and itemized bill of costs for its attendance in relation to monies received and paid out of its trust account in relation to the Estate of Muni Chand.
2. Within 14 days, Sherani & Co. render to the Court and to the parties its trust account ledger for the Estate of Muni Chand detailing all monies received and all payments done on behalf of the Estate of Muni Chand.
3. If in the interim any settlement reached between parties; then a deed of settlement to be executed and filed accordingly within 14 days.

(19) It is only evident upon the perusal of the file record that

- (a) at Sherani & Co.'s Trust Account Ledger details is attached and filed; and
- (b) Detailed itemized Bill of Costs for its attendance in relation to monies received and paid out of its Trust Account in relation to the Estate of Muni Chand has not yet been filed.

(20) In absence of and due to non-compliance of the First Court Order seeking from Sherani & Co a **detailed and itemized Bill of Costs for its attendance** rather just furnishing a summarized Bill, this Court then will only proceed to determine and finalise the 2nd Interested Party

[Sherani & Co.] Bill of costs for Taxation filed in its present form pursuant to Order 62 of the High Court Rules 1998.

- (21) In the circumstance, this Court will not waste its valuable time making repeated directions for Senior Counsel to abide by Court Directions and refrain from filing material documentations and evidence coupled with detailed itemized Bill for its Legal services & collection of rent etc to allow the Court to deal and determine the pending issue before this court.
- (22) Accordingly, I proceed to deal with the Summons filed on 18th July 2023 seeking for Bill of Costs for Taxation of Costs and other Orders.
- (23) Therefore, it leaves Court to proceed and determine the final order sought out at item C within the Summons jointly filed by the Plaintiff, Defendant and the First Interested Party to the proceedings on 06th June 2022.
- (24) Order 62 Rule 12, (O.62, R 12) deals with taxation of Costs on standard basis and an allows granting a reasonable amount.
- (25) Scale of costs on standard Basis (O62, R 13) is itemized and reflected in Appendix 4 of the High Court Rules 1988.
- (26) The Second Interested party's bill of costs has two (2) limbs to it for taxation, either -
- i) Method 1 - Collection Fee - on total amount of \$1,030,500.46 @ 10% = \$103,050.00
 - ii) Disbursement @ \$123.50 and
 - iii) Method 2 - On Time basis
Team Cost by Sherani & Co
For collecting, receipting and banking rent from 5 tenants
Updating ledger, from September 2013 - July 2022. 108 months x \$250=\$ 27,000.00
 - iv) Attendance on various matters in relation to rent collection,
Correspondence with Parshotam and Crompton Lawyers, Tenants and
Court Registry, related property matters, 1 hour every month for
108 months x \$500 hourly = \$ 54,000.00
 - v) Disbursements = \$ 123.50
- Total Amount to be taxed = \$81,123.50**

(27) The parties appeared before the Acting Deputy Registrar on 25th July 2023 and confirmed that they would opt to proceed with Method 2.

(28) Taking that into consideration, the Taxation will now be effected as follows -

i)	On Time Basis - September 2013 - July 2022 For 108 months at monthly charge of \$100 and not \$250 On Standard Basis	\$10,800.00
ii)	Attendance by Mr. Nagin on various matters in relation to rent collection correspondence with Parshotam & Crompton Lawyers1 hour every month for 108 months @ hourly rate Of \$250 and not \$500 on Standard Basis.	\$27,000.00
	Sub Total (i)-(ii)	\$37,800.00
	Plus Disbursements	<u>\$ 123.50</u>
	Total Amount to be taxed plus Vat	<u>\$37,923.50</u>

(29) The total amount now taxed (plus vat) stands at **\$37,923.50**.

Costs

(30) Matter proceeded to hearing. Second Interested Party only partly complied with the Court Directions and failed to file a detailed itemized Bill of Costs for its attendance in relation to monies received and paid out of the trust Account of the Estate of Muni Chand.

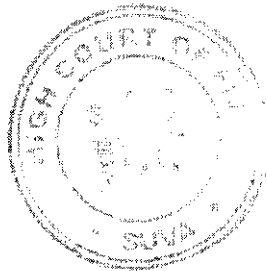
(31) The Second Interested party for its failure is ordered to pay the Plaintiff, Defendant and 1st Interested Party a sum of \$3,000 (\$1,000) as summarily assessed costs within 14 days.

Orders

a) The Summons filed on 06th June 2022 and subsequently on 18th July 2023 seeking for Bill of Costs for Taxation is now taxed at a total sum of \$37,923.50 including the disbursements.

- b) The Second Interested party [Sherani & Co.] to pay a summarily assessed Costs of \$3,000 to the Plaintiff, Defendant and First Interested Party (\$1,000 each) within 14 days timeframe.
- c) Order made for taxation to be filed, sealed and parties to abide by the Order of this Court accordingly.

Dated at Suva this 7th day of December ,2023.



Vishwa Datt Sharma
JUDGE

CC: NEEL SHIVAM LAWYER, SUVA
CROMPTONS, SUVA
PARSHOTAM LAWYERS, SUVA
SHERANI & CO., SUVA