

IN THE HIGH COURT OF FIJI AT LAUTOKA

CIVIL JURISDICTION

Civil Action No. HBC 158 of 2021

BETWEEN

KYRA MARGRET PETERSEN formerly Lot 5 Bovo Road, Nasini and presently at
2910 Webb Str; Vallejo CA 94591, USA.

PLAINTIFF

AND

HIRAM JOSEPH PETERSEN of Naselesele, Matei as Trustee and Executor
of the **Estate of Duncan Petersen** late of Matei, Taveuni.

FIRST DEFENDANT

AND

HIRAM JOSEPH PETERSEN of Matei, Taveuni.

SECOND DEFENDANT

AND

SALOTE PEREZ aka **SALOTE TAUFUSI** of Naselesele, Matei, Taveuni
as the **Administratrix of the Estate of Ray Duncan Petersen**
late of Naselesele, Matei, Taveuni.

THIRD DEFENDANT

AND

SALOTE PEREZ aka **SALOTE TAUFUSI** of Naselesele, Matei, Taveuni.

FOURTH DEFENDANT

AND

REGISTRAR OF TITLES

NOMINAL DEFENDANT

Counsel : Mr. Saneem M. for the Plaintiff
Mr. Cabemaiwai T. for the 3rd & 4th Defendants
Mr. Kant S. for the Nominal Defendant

Date of Hearing : 26th February 2024

Date of Judgment : 27th March 2024

JUDGMENT

(On Contempt Proceedings)

[1] The plaintiff filed this action seeking the following declaration and orders:

- a) A declaration that the last will and testament of Duncan Petersen dated 25th June 2009 is null and void with no legal effect.
- b) An order that the grant of probate No.50368 with the will annexed is here by cancelled and revoked.
- c) An order that the last will and testament of Duncan Petersen executed on 18th January 2006 is the valid and genuine will.
- d) An order that the transfer of the estate properties being CT 14164 registered on 10.08.2011., CT 14165 registered on 03.03.2014 and CT14711 registered on 10.08.2012 to Ray Petersen is hereby cancelled forthwith.
- e) An order that the transmission by death endorsed on those certificates of title named above in the name of the third defendant is hereby cancelled.
- f) An order that the nominal defendant do comply and act in accordance with the orders (d) and (e) above.
- g) An order that the 1st defendant is removed as trustee and executor of the estate of Duncan Petersen.
- h) An order that the plaintiff is appointed as the trustee and executor of the estate of Duncan Petersen pursuant to the last will and testament

dated 18th January 2006 and to distribute the estate to the beneficiaries accordingly.

- i) An injunction against the first, second, third and fourth defendants, their agents or their servants from interfering, dealing, assigning, transferring any estate or properties forming part of the estate of Duncan Petersen.
- j) An injunction against the first, second, third and fourth defendants, their agents or their servants from interfering and obstructing the plaintiff to view and inspect the properties named in paragraph 8(i) and (iii) above.
- k) The third and fourth defendants are to provide full and detail financial accounts on the proceeds of sale / rental income and other income from the estate properties. Costs on indemnity basis
- l) Interest [Law Reform (Miscellaneous Provisions)(Death and Interest Act)].
- m) Further or any other order this Honourable Court deems just.

[2] The plaintiff filed an ex-parte notice of motion on 16th July 2021 seeking the following orders:

1. An injunction that the first, second, third and fourth defendants, their agents, servants and whosoever are prevented and/or stopped from dealing, assigning, transferring, developing / constructing and/or selling or whatsoever the properties described in:
 - (i) Certificate of Title No.14164 land known as Matei (part of) having an area of 11 acres and 10 perches and 7/10th of a perch being Lot 2 on DP3549 and Lots 1 and 2 on DP 3317 and Lot 1 on DP 3413 situate on the island of Taveuni;
 - (ii) Certificate of Title No.14165 land known as Matei (part of) having an area of 9 acres 1 rood 8 perches and 6/10th of a

perch being Lot 2 on DP3549 and Lots 1 on DP 3267 and Lot 1 on DP 3547 situate on the island of Taveuni;

- (iii) Certificate of Title No.14711 land known as Matei (part of) having an area of 12 acres 2 roods and 6 perches being Lot 1 on DP386 situates on the island of Taveuni;

until further order of the court.

2. An injunction that the defendants and their servants or agents are restrained prevented and or stopped from interfering and or obstructing whatsoever with the plaintiff whenever she visits the above properties for the purpose of inspection.
3. That the first and third defendants are to return and deposit with the Registrar of
4. For substitute service by way of registered post to the defendants' last known address and/or by way of email address to the defendants due to containment lockdown (Covid 19).
5. Costs to be paid by the defendants. the High Court, the original grant of probates in respect of the Estate of Duncan Petersen and the Estate of Ray Joseph Petersen within 14 days after the service of this order.
6. The first, second, third and fourth defendants are to provide proper and detail accounts on the respective estates Duncan Petersen and the estate of Ray Joseph Petersen within 14 days of this order.

[3] The learned Master on 21st July 2021 made ex-parte the following interim orders:

1. That 1st, 2nd, 3rd and 4th defendants and their agents, servants whosoever is stopped from transferring, selling and or alienating all three properties described in Certificate of Title No. 14164, Certificate of Title No. 14165 and Certificate of Title No. 14711 situate on the island of Taveuni.

2. That the plaintiff should immediately file the Certificate by the Chief Registrar in the Registry with the original writ.
3. The original writ to be served by way of registered post to the defendants on last address due to Covid 19 containment.
4. That the matter is returnable on September 2021 for mention.

[4] The plaintiff on 13th December 2022 filed an ex-parte notice of motion pursuant to Order 52 rules 2 & 3 of the High Court Rules 1988 seeking leave to issue committal proceedings and the court granted leave and the plaintiff on 20th December 2022 filed a notice of motion seeking the following orders:

1. That SALOTE PEREZ aka SALUTE TAUFUSI as Administratrix of the Estate of Ray Duncan Petersen SALOTE PEREZ aka SALOTE TAUFUSI of Naselesele, Taveuni do stand commit to prison and / or fine for her contempt in disobeying and / or fail to pay obedience to the order of this Honourable Court of which the said SALOTE PEREZ aka SALUTE TAUFUSI as Administratrix of the Estate of Ray Duncan Petersen SALOTE PEREZ aka SALOTE TAUFUSI of Naselesele, Taveuni has noticed and acknowledged of its existence as follows:

(a) That the interim order (No. 1) of the High Court sealed on 12th August 2021 requiring the said SALOTE PEREZ aka SALUTE TAUFUSI as Administratrix of the Estate of Ray Duncan Petersen SALOTE PEREZ aka SALOTE TAUFUSI of Naselesele, Taveuni, not to transfer, sell and alienate all three (3) properties described in Certificate of Title 14164, Certificate of Title 14165 and Certificate of Title 14711 situated in the Island of Taveuni but fail, Ignore and refuse to comply, obey and/or abide with such order specifically.

2. That the said SALOTE PEREZ aka SALUTE TAUFUSI as Administratrix of the Estate of Ray Duncan Petersen SALOTE PEREZ

aka SALOTE TAUFUSI of Naselesele, Taveuni and their agents, servants and whosoever is stopped from transferring, selling and/or alienating all three (3) properties described in Certificate of Title 14164, Certificate of Title 14165 and Certificate of Title 14711 situated in the Island of Taveuni.

3. That the said SALOTE PEREZ aka SALUTE TAUFUSI as Administratrix of the Estate of Ray Duncan Petersen SALOTE PEREZ aka SALOTE TAUFUSI of Naselesele, Taveuni has failed to obey and/or to comply with the sealed interim order (No. 1) as mentioned above.
4. That the said SALOTE PEREZ aka SALUTE TAUFUSI as Administratrix of the Estate of Ray Duncan Petersen SALOTE PEREZ aka SALOTE TAUFUSI of Naselesele, Taveuni has refused, ignored and/or rejected to comply with the said interim order (No. 1).
5. That the said SALOTE PEREZ aka SALUTE TAUFUSI as Administratrix of the Estate of Ray Duncan Petersen SALOTE PEREZ aka SALOTE TAUFUSI of Naselesele, Taveuni has disobeyed and continue to disobey the said interim order (No. 1) despite having notice and knowledge of the existence of such interim order (No. 1).
6. That the said SALOTE PEREZ aka SALUTE TAUFUSI as Administratrix of the Estate of Ray Duncan Petersen SALOTE PEREZ aka SALOTE TAUFUSI of Naselesele, Taveuni do pay the costs incidental to this application and cost of issuing and execution of the orders herein.
7. Such further and/or other orders this Honourable Court deems just and fair.

[5] The 3rd and 4th defendant was not present at the hearing but his counsel made submission on his behalf.

[6] The learned counsel for the 3rd and 4th defendant submitted that the plaintiff had failed to adduce any evidence of the transfer of the subject property by the 3rd and 4th defendant.

[7] In **Ali v Chaudhary** [2004] FJHC 189; HBC0061J.2001L (29 March 2004) it was held;

The onus of proof in such proceedings is on the mover of the motion. Proof is to be established to that standard applying in the criminal courts, namely proof beyond reasonable doubt: Barclays de Zoete Wedd Securities Ltd and Others v Nadir [1992] TLR 141; Dean v Dean [1987] FLR 517 CA; Vijay Kumar v Shiu Ram & Anor. (unreported) Suva High Court Action No. HBM0026.00S, 19 September 2001, Shameem J.

The same principle was followed in **Kumar v Wati** [2022] FJHC 18; LABCA20.2000 (20 January 2022) where it was held;

The proof is to be established to that standard applied in the criminal courts, namely proof beyond reasonable doubt: Barclays de Zoete Wedd Securities Ltd and Others v Nadir [1992] TLR 141; Dean v Dean [1987] FLR 517 CA; Vijay Kumar v Shiu Ram & Anor. (unreported) Suva High Court Action No. HBM0026.00S, 19 September 2001, Shameem J.

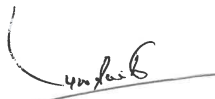
[9] In this matter as submitted by the learned counsel for the plaintiff there is no evidence of transferring of a property as alleged. In her affidavit in support the plaintiff has referred to Certificates of Title Nos. 14164, 14165 and 14711. However, these Certificates of Title do not show any transfers. In those Certificates of Title the last registered owner is still the 1st and 2nd defendant. In the order of the learned Master the 1st to 4th defendants were restrained from transferring, selling or alienating the subject properties. Since the properties have not yet been transferred, although the plaintiff alleges that the 3rd and 4th

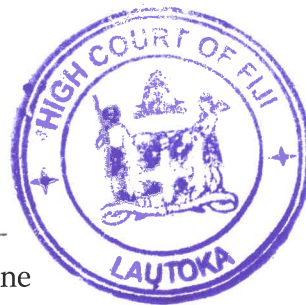
defendants entered into a sale and purchase agreement, it does not breach the order of the learned Master.

[10] For the reasons afore mentioned the makes the following orders.

ORDERS

1. The Notice of Motion filed by the plaintiff on 20th December 2022 is struck out.
2. There will be no order for costs.


Lyone Seneviratne



JUDGE

27th March 2024