

IN THE HIGH COURT OF FIJI

AT SUVA

PROBATE JURISDICTION

Probate Action No. **HPP 79 of 2022**

IN THE MATTER of the Estate of **ISIMELI TAUKEI aka SIMELI TAUKEI** late of Banaras, Lautoka, Fiji, Retired Dock Worker, Deceased, Testate.

AND

IN THE MATTER of an Application by **ULAMILA MUASARA TAUKEI aka ULAMILA MUASARA TUILAU** for the Revocation of Letters of Administration No. 68667 granted to **TEMALESI WAWA** pursuant to Section 23 (a) of the Succession, Probate and Administration Act 1970, Order 1 Rule 11 of the High Court Rules and Section 41 (1) of the Non Contentious Probate Rules 1987 (UK) **AND** that leave be granted to Probate the Will of **ISIMELI TAUKEI aka SIMELI TAUKEI** dated 7th day of January 2019.

BETWEEN: **ULAMILA MUASARA TAUKEI aka ULAMILA MUASARA TUILAU** of 14 Bamfield Avenue, Yagoona West 2199, NSW, Australia, Nursing Assistant.

PLAINTIFF

AND: **TEMALESI WAWA** of Banaras, Lautoka, Domestic Duties.

RESPONDENT

BEFORE: **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Mr Naivalu M.** for the Applicant/Plaintiff.

Ms. Tavaiqia L for the Respondent/Defendant

DATE OF DECISION: **18th January, 2024**

DECISION

[Revocation of Letters of Administration]

Introduction

- (1) The Applicant, Ulamila Muasara Taukei aka Ulamila Muasara Tuilau filed an Originating Summons on 19th July, 2022 and sought for the following orders:
 1. That the Letters of Administration No. 68667 dated 26th day of January 2022 granted to the Respondent be revoked forthwith.
 2. That leave be granted for the Applicant to apply to Probate the Will of Isimeli Taukei aka Simeli Taukei dated 7th day of January 2019 in her favour.
 3. Any other orders the Court deems just and equitable in the circumstances.
- (2) The Respondent, Temalesi Wawa filed her affidavit in opposition on 09th September 2022.

Applicants Case

- (3) That she is the daughter of the Deceased, Isimeli Taukei.
- (4) The Respondent is the Legal wife of the Deceased, Isimeli Taukei.
- (5) The Deceased left behind a will dated 07th January 2019 appointing the Applicant as the Executrix/Trustee.
- (6) Only asset is a property in Tokovuci which she and her husband Joeli Tuilau were currently building.
- (7) Letters of administration grant was given to the Respondent on 26th January 2022 vide file no. Letters of Administration No. 68667.
- (8) Conducted a Will search at the Registry. However, Will was in possession of her lawyer, Naivalu Law Solicitors.
- (9) Her father [Deceased] and she had signed a General Agreement gifting the Applicant the property during her lifetime.

- (10) The property sits on Native Reserve and therefore cannot be transferred to her. However, she needs to protect her interest in the property.
- (11) Seek revocation of Letters of Administration and grant of Probate to the Applicant.

1st Respondent's Case

- (12) She is the Legal wife of the deceased.
- (13) The late husband had three (3) children.
- (14) Letters of Administration application was published in the Fiji Sun on 10th November 2021 and the Letters of Administration grant given to her on 26th January 2022 vide Application no. Letters of Administration No. 68667.
- (15) The deceased's children including the Applicant did not inform her of any Will.
- (16) She is now challenging the Will at hand, since she believed that her late husband would not have left a Will without telling her.
- (17) Her late husband told her that the property at Tokovuci is for him and her (Respondent) as they built it together.
- (18) Do not agree with the General Agreement since her late husband would have disclosed it to her if he had entered into this Agreement.

Determination

- (19) The issue for this Court to determine are:
 - (i) Whether the Letters of Administration granted to the Respondent, Temalesi Wawa on 26th January 2022 vide Letters of Administration No. 68667 be revoked and/or cancelled; and

(ii) Whether leave be granted to the Applicant to apply for a Grant of Probate on the Deceased's Will dated 07th January, 2019?"

- (20) The Respondent as her capacity as the Legal wife of the Deceased, Isimeli Taukei, advertised the Intestate Estate of the deceased in the Fiji Sun on 10th November 2021 giving 21 days' notice to the creditors and debtors of her intentions to seek a Letters of Administration Grant in the said Estate and Administratrix Deceased Estate accordingly.
- (21) In absence of any Will, then the Respondent as the wife was the first person in priority to apply for a Letters of Administration Grant in the deceased estate in terms of Section 7 (a) of the succession, probate and administration act 1970.
- (22) At the time of the Deceased's demise on 17th October 2020 and the subsequent lodgment of the Application and the Letters of Administration Grant, there was no evidence and/or existence of any Deceased's Will.
- (23) The existence of the Deceased's Will only came to light and/or was disclosed in the course of the Domestic Violence Restraining Order proceedings instituted by the Respondent.
- (24) The Respondent in her Affidavit in Opposition has stated that she is challenging the purported Will. Now that the alleged Deceased's Will and the General undated Agreement is at hand of the Applicant according to the Applicant, which has been brought to this Courts' attention, there are procedural aspects, Rules, Special provisions in Law and Applications akin to Probate proceedings which the Applicant should now pay attention to and proceed with and seek an order of the Court for a decree pronouncing for the validity of the alleged deceased's Will accordingly.
- (25) Since the issue of the existence of the deceased's Will has come about, it becomes a triable issue for this court to determine by *viva voce* evidence.
- (26) This Court therefore needs to hear *viva voce* evidence and the parties to the proceedings in order to make a just and fair decision **"Whether the Respondent is entitled to the Letters of Administration Grant given to her vide Letters of Administration No. 68667 on 26th January 2022 and/or whether the Letters of Administration Grant should be revoked**

and/or whether the Applicant has proved the validity of the Deceased's Will and the General Agreement filed herein accordingly?"

- (27) This Court cannot make the above mentioned decision in the current Originating Summons filed by the Applicant since it is only a Summary Proceedings decided on the affidavit evidences filed herein.
- (28) The applicant needs to carry out the necessities in terms of the procedures and the laws in order to allow Court to Rule and determine the issue of the validity of the Deceased's Will and General Agreement filed herein for a Probate Grant accordingly.
- (29) In the interim, I have no alternative but proceed to dismiss the applicants Originating Summons in its Entirety.

Costs

- (30) Each party to the proceedings to bear their own costs of the proceedings at the discretion of this Court.

Orders

- (i) The Applicants Originating Summons filed on 19th July, 2022 is dismissed in its entirety.
- (ii) Each party to the proceedings to bear their own costs at the Discretion of this Court.
- (iii) File Closed.

Dated at Suva this 18th day of January ,2024.



A handwritten signature in blue ink, appearing to be "Vishwa Datt Sharma", written over a dotted line.

Vishwa Datt Sharma

JUDGE

CC: LAW NAIVALU, LAUTOKA
LEGAL AID COMMISSION, SUVA