

IN THE HIGH COURT OF FIJI
AT SUVA
PROBATE JURISDICTION

Civil Action No. HPP 20 of 2024

IN THE MATTER of **THE ESTATE** of
SAILOSI BOLAVUCU late of Savu
Village, Tailevu, Driver, Deceased,
Intestate.

BETWEEN : **RUSIATE BOLAVUCU**
Plaintiff

AND : **NEMANI KOBAKOBAU**
Defendant

Counsel : **Plaintiff in person**
Mr E Meru for the Defendant
Ms L Tavaiqia as friend of the Court

Hearing : **24 June & 18 July 2024**

Judgment : **19 July 2024**

EX TEMPORE JUDGMENT

[1] The late Sailosi Bolavucu passed away on the 19th of August, 2021 (I will refer to Mr Bolavucu as the Deceased). He left no will. The Defendant filed an application with the High Court Registry, Probate Division, for the grant of letters of administration over the estate of the Deceased. The Plaintiff filed a separate application for letters of administration over the same estate and was informed that there was an existing application by the Defendant. The Plaintiff has, accordingly, brought these proceedings in order to obtain an order from the Court granting him leave to apply for the grant of letters of administration over the estate.

- [2] The three grounds upon which the Plaintiff's claim is brought is, firstly, that the Plaintiff is the biological son of the Deceased. Secondly, the Plaintiff's mother has since passed and he is next in line to apply for letters of administration. Thirdly, that the Defendant does not have any beneficial interest in the estate and neither does the Defendant have any authority to apply for the grant in the Deceased's estate.
- [3] There are, then, two competing applications for a grant of letters of administration over the estate of the Deceased who died intestate. The question for the Court to consider is whether to grant letters to the Plaintiff or the Defendant.

Background

- [4] The Plaintiff has brought this proceeding by way of an Originating Summons and a supporting affidavit. These documents were filed on 5 March 2024. The Defendant filed an affidavit in opposition on 6 June 2024. The material facts are, briefly, as follows:
- i. The late Mr. Bolavucu had two marriages and eight children.¹
 - ii. The deceased had six children in his first marriage with Amelia Talekicakau. They married in 1957. Their six children were born between 1959 and 1969. The Defendant is the second oldest of their children.
 - iii. The deceased married his second wife, Mereani Naivaluwaqa, in 1996. Their two sons were born in 1971 and 1973. The Plaintiff was the eldest of the two.
 - iv. Both wives passed away before the deceased. It appears that the deceased had no living spouse or de facto partner when he passed away on 19 August 2021.

Relevant legislation and issue

- [5] The laws regulating the grant of probate are contained in the Succession, Probate and Administration Act 1970. Pursuant to s 3(1), the court has jurisdiction in contentious and

¹ The birth certificates for the eight children are annexed to the parties affidavits along with the marriage certificates.

non-contentious probate matters. Subsection (1A) provides that the court may grant probate or letters of administration.

- [6] Section 7 sets out who may be granted administration of an intestate estate by the court. The provision prioritises the rights of certain family members. Spouses and de facto partners have first priority. Where there are no spouses or de facto partners then priority is given to *'one or more of the next of kin in order of priority of entitlement under this Act in the distribution of the estate of the deceased'*.²
- [7] The rights of distribution are contained at s 6 of the 1970 Act. Section 6(1)(d) provides that if there is no spouse or de facto, then the distribution is to the issue (children) of the deceased per stirpes. Accordingly, a deceased's children who are over 18 years are entitled to apply for a grant of letters of administration where there is no living spouse or de facto. The court may grant letters of administration to one or more children.
- [8] The Plaintiff seeks letters of administration on three grounds. There seems to be no dispute that the first two grounds are made out. The Plaintiff is the biological son of the late Sailosi Bolavucu, and the Plaintiff's mother, the Deceased's second wife, had already passed away, so there is no living spouse that takes priority. On this basis, the Plaintiff is entitled under the Succession, Probate and Administration Act to apply for the grant of letters of administration.
- [9] However, there are two competing applications for the grant of letters of administration, the Defendant being the other applicant. Which brings me to the Plaintiff's third ground in his Originating Summons. The Plaintiff states that the Defendant has no beneficial interest in the estate and no authority to apply for letters of administration. The Plaintiff is clearly wrong. The Defendant is also a biological child of the Deceased and is entitled to apply for letters of administration. As the Court is permitted to appoint more than one administrator, I asked the Defendant on 18 July 2024 whether he would be able to administer the estate with the Plaintiff. He stated that he could not. As such, I will decide who is to be granted letters of administration.

² Section 7(b).

Decision

- [10] At the hearing on 24 June 2024, counsel for the Legal Aid Commission advised the Court that it was no longer acting for the Plaintiff but would remain involved in the proceeding as a Friend of the Court. The Plaintiff did not attend the hearing on 24 June but he did appear on 18 July and I had an opportunity to hear from him.
- [11] Both the Plaintiff and the Defendant are biological children of the Deceased. They are both entitled to apply for letters of administration, but they are unable to work together to administer the estate. I must decide who is most suitable for this task.
- [12] I have decided that the Defendant is to be granted letters of administration. The reason, in short, is that the Plaintiff has placed inaccurate information before the Court and, therefore, is unsuitable to be granted letters of administration over the estate of the Deceased. The following are examples of the inaccurate information provided by the Plaintiff:
- i. At paragraph 4 of the Plaintiff's affidavit dated 2 February 2024, the Plaintiff stated that the Deceased, *'at the time of his death had two (2) issues'*, being the Plaintiff and his brother. The Plaintiff did not mention his six other siblings who were also issues of the Deceased.
 - ii. At paragraph 8 of the same affidavit, the Plaintiff referred to the Defendant as *'my stepbrother'*. That, of course, is not correct.
 - iii. At paragraph 9, the Plaintiff stated that *'upon receiving legal advice, I am aware that since both my parents have now passed, the surviving beneficiaries in the Estate of my late father, are his lawful children and as such my brother and I stand to be the **sole** beneficiaries in our father's Estate'*.³ The Defendant and his siblings are also lawful children of the Deceased and, thus, beneficiaries in the estate.
 - iv. At paragraph 11 of the affidavit, the Plaintiff stated that the Defendant does not have any beneficial interest in the estate of the Deceased and nor does he have

³ My emphasis.

the authority to apply for the letters of administration, which of course is not correct.

[13] I have no hesitation in rejecting the above statements from the Plaintiff. I note that the Plaintiff relies on the Deceased's Death Certificate annexed to the Plaintiff's affidavit as support for the contention that only he and his brother are issues of the Deceased. This is stated on the Death Certificate which was extracted on the 15th day of October 2021. There is a second Death Certificate annexed to the affidavit of the Defendant which was extracted more recently on the 15th of May 2024. It lists all eight of the Deceased's issues. Ms Tavaiqia suggested that given the two conflicting death certificates, the court cannot decide which to prefer and should refrain from doing so. I would agree with this argument if the two death certificates were the only evidence before the court. However, I have the benefit of the birth certificates for each of the six children of the first marriage which demonstrate that the second Death Certificate is the correct version.

[14] Finally, I have taken the liberty of arranging for the two files from the Probate Registry to be provided to me in respect to the applications by the Plaintiff and the Defendant for the grant of letters of administration. The file for the Plaintiff is No 71607 and the file for the Defendant is No 71599. I have perused the two files and see that the Plaintiff also provided an inaccurate picture of the beneficiaries, again identifying only the Plaintiff and his younger brother as issues of the Deceased; see paragraph 4 of his Oath of Administrator dated 31 March 2023. This is to be contrasted with the equivalent document on the Defendant's file which shows, at paragraphs 6 and 7, that the Defendant identified all eight issues of the Deceased.

Orders

[15] Accordingly, I make the following orders:

- i. The Plaintiff's application for an order seeking leave to apply for letters of administration in the Estate of the late Sailosi Bolavucu is declined.
- ii. I refer to the Letters of Administration Number 71599. I direct the Registry to issue letters of administration to Nemani Kobakobau in No. 71599.

iii. I make no order on costs.

A handwritten signature in blue ink, appearing to read "D. K. L. Tuigeregere", is written over a horizontal dotted line.

D. K. L. Tuigeregere
JUDGE

Solicitors:

Mathews Law for Defendant

Legal Aid Commission as friend of the Court