

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

Civil Action No. HBC 347 of 2019

**IN THE MATTER** of an Application pursuant  
to the provisions of the Probate, Succession  
and Administration (Amendment) Act 2018

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**BETWEEN** : LIKU LITEA of Villa 110 Belo Circle, Pacific Harbor, Deuba, Domestic Duties.

**PLAINTIFF**

**AND** : LINDA PAMELA OUAKNINE of 13928 Chandler Boulevard, Sherman Oaks,  
California 91401, USA Care of Vijay Maharaj Lawyers, Marks Street, Suva.

**DEFENDANT**

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

**COUNSEL:** Ms. Ulamila F. - for the Plaintiff  
Mr. Maharaj V. - for the Defendant

**DATE OF DECISION:** 07<sup>th</sup> August, 2024 @ 9.30 am.

**DECISION**

*[Defendants Summons seeking orders pursuant to Order 33 Rule 7 and Order 18 Rule 18 of the High Court Rules, 1988]*

## INTRODUCTION

1. The Defendant filed a summons on 14<sup>th</sup> June 2024 and sought for the following orders:
  - (1) An Order that Section 6 of the Succession, Probate and Administration Act 1970 clearly stipulates that the Plaintiff could only bring the proceedings if the deceased had died intestate.
  - (2) An Order that the Plaintiff lacks capacity to bring an action against the Defendant as it has no locus standi with the Statement of Claim filed on 4 October 2019.
  - (3) An Order that the remedy sought by the Plaintiff in its claim is untenable.
  - (4) An Order that the Writ of Summons and Statement of Claim filed on 4 October 2019 is an abuse of the process of the court by failing to appeal the decision of Justice Deepthi Amaratunga date 29 January 2020.
  - (5) An Order that the Plaintiff's claim is scandalous, frivolous or vexatious and should be dismissed with costs on indemnity basis to the Defendant.
  - (6) Any further orders this honourable court deems fair and just.
2. The application is made pursuant to Order 33 Rule 7 and Order 18 Rule 18 of the High Court Rules, 1988 and the inherent Jurisdiction of this Court.
3. Both parties to the proceedings furnished court with their written submissions asking Court to hear the oral arguments and determine the issues therein accordingly.

### **Plaintiff's Contention**

4. The Plaintiff objects to the Defendants summons wherein the Defendant submitted that the issues raised in the pleadings had been dealt with by Hon. Justice Amaratunga in **HPP Action No. 64 of 2019** and that the Plaintiff's application was an abuse of the Court process.
5. The Plaintiff submitted that it is incorrect as the Judgment in HPP Action No. 64 of 2019 instituted by the Defendant was in relation to the issuance of the Grant of Letters of Administration under the non-contentious probate rules.

6. The Defendant's contends that the current substantive Action No. HBC 347 of 2019 is not **resjudicata**.
7. There are triable issues that warrant a trial. The Defendants application to strike out the Plaintiff's substantive action is based on the premise that the existence of the deceased's will superceded all claims of the Plaintiff.
8. The Defendant contends that *Section 6 of the Succession, Probate and Administration Act 1970* stipulates that the Plaintiff can only bring the proceedings if the Deceased died *intestate*.
9. The Plaintiff submitted that the **Deceased died intestate in Fiji** and that the **Will made by the deceased in 2001 in favour of the Defendant and the her children in the United States of America is invalid in Fiji** as that Will had been **revoked by her De-facto relationship with the deceased**.
10. *Section 13 of the Wills Act* states that:

**13.** A Will is revoked by the subsequent marriage of the testator except a will made in exercise of a power of appointment when the property thereby appointed would not, in default of such appointment, pass to his executor, administrator or the person entitled in case of intestacy:

Provided that a will expressed to be made in contemplation of a marriage is not revoked by the solemnisation of the marriage contemplated.

11. The De-facto relationship of the Plaintiff with the Deceased from 2010 until the date of death of the deceased, Alain Albert Ouaknine revoked the 2001 Will of the Deceased and therefore has **no legal effect in Fiji**.

#### **Defendants Contention**

12. The Plaintiff admits that the existence of a Will but erroneously asserts that she, as a de-facto partner, is entitled to be the first person to obtain the Letters of Administration for the Deceased's Estate, and that her status as a Defacto partner is recognized in law.
13. *Section 6 of the Succession, Probate and Administration Act 1970* stipulates that a Defacto partner is recognized only in cases where the Estate is intestate.

14. The Plaintiff seeks revocation of the Deceased's Last Will dated 12<sup>th</sup> March 2001 based on her Defacto relationship with the Deceased.
15. *Section 15 of the Wills Act 1972* is also relevant whereby a Will or codicial or any part thereof is not revoked other than the Exceptions stipulated at (a) to (d) inclusive.
16. Therefore, a revocation of the Will due to a Defacto relationship is not recognized under the laws of Fiji.
17. At the time of the Deceased's death, the Deceased was still married to the Defendant and cohabited in the United States of America as husband and wife.
18. Whilst the Family Law (Amendment) Decree 2012 defines "a party to a marriage" to include a party to a defacto relationship, the law prohibits a person who is already married from entering into another marriage without dissolving the First marriage. Hence, commits an offence of **Bigamy** under the *Crimes Act in Fiji*.
19. However, considering the inheritance (Family Provision) Act 2004, a defacto partner cannot be considered as 'dependent' to qualify to exercise discretion of the Court to make an order for a share from the Estate of the Deceased. This was affirmed in case of *Devi v Lal* [2023] FJHC 351; HPP 36.2000 (24 May 2023).
20. The current cause of Action No. HBC 347 of 2019 is a re-litigation of *Ouaknine v Litea* [2020] FJHC 14; HPP 64.2019 (29 January 2020).
21. The Plaintiff's claim constitutes an abuse of the Court's process by failing to appeal the Decision of Justice Amaratunga dated 29 January 2020.
22. The Defendant substituted that this Court is empowered under Order 33 Rule 7 of the High Court Rules 1988 to dismiss the current matter.
23. Therefore, the Plaintiff has no *locus standi* to bring an action against the Defendant in light of her pleadings and doctrine of *res-judicata* applies since a claim has been previously adjudicated upon and a final judgment rendered. Probate was granted to the Defendant on 02<sup>nd</sup> March 2020. Accordingly, seek for orders as per summons filed in 14<sup>th</sup> June 2024.

#### **Determination**

24. HPP Action no. 64 of 2019 was filed by the Plaintiff - Linda Pamela Ouaknine on 21<sup>st</sup> August 2019 seeking for **citation to** bring in Letters of Administration of Grant No. 63979 and to be revoked and declared Null and Void in Law.

25. The application was heard and a Judgment delivered on 29<sup>th</sup> January 2020 with the following orders:
- (a) The Defendant is ordered to lodge purported letters of administration no. 63979 forthwith.
  - (b) Said grant no. 63979 is irregular, hence revoked.
  - (c) Each party to bear their own costs.
26. However, the substantive Civil Action Case No. HBC 347 of 2019 was filed and commenced on 04<sup>th</sup> October 2019 '**contesting the validity of the deceased's Will**' and sought for the following declarations and orders:
- (1) A declaration that the purported Will of Alain Albert Ouaknine executed on the 12<sup>th</sup> March 2001 at Glendale California, United States of America is void and of no legal effect in Fiji.
  - (2) A declaration that the deceased Alain Albert Ouaknine upon his death on the 4<sup>th</sup> of February 2019 died intestate whilst domiciled in Fiji.
  - (3) A declaration that the Letters of Administration No. 63979 in favour of the Plaintiff is valid.
  - (4) An Order that the Plaintiff progress to administer the estate of Alain Albert Ouaknine forthwith.
  - (5) Costs against the Defendant and any other costs that the cost deems just.
27. Upon a careful perusal of the Judgment delivered in HPP Action 64 of 2019 dated 29<sup>th</sup> January 2020 and the current substantive writ action Civil Case No. HBC 347 of 2019, it can be clearly ascertained that **the issue in HPP Acton No. 64 of 2019 was in relation to the issuance of the Grant of Letters of Administration under the non-contentious Probate rule**, which the Court found was irregular and proceeded to Revoke the same forthwith. **The issue of the validity of the Deceased's Will was not dealt with by that Court in that Action.**
28. The Court said further in its Judgment '**that whether a Defacto partner could make an application in terms of Succession, Probate and Administration Act 1970 [SPA] for Letters of Administration as a contentious probate action in a suitable manner,**' is not before me [that court] in this action and I **do not wish to make any determination on that issue.**

29. Therefore, I find that the Defendants summons filed on 14<sup>th</sup> June 2024 pursuant to Order 33 rule 7 and order 18 rule 18 of High Court Rules 1988 seeking for:
- (i) An order that Section 6 of Succession, Probate and Administration Act 1970 stipulates that the Plaintiff could bring the proceedings if the deceased had died intestate;
  - (ii) The Plaintiff lacks capacity to bring an action against the Defendant as it has no Locus Standi with the Statement of Claim filed on 4 October 2019.
  - (iii) Remedy sought by the Plaintiff in its claim is untenable;
  - (iv) Writ of Summons and Statement Claim filed on 4<sup>th</sup> October 2019 is an abuse of the process of the Court by failing to appeal the Decision of 29<sup>th</sup> January 2020; and scandalous, frivolous or vexatious and should be dismissed with costs on indemnity basis to the Defendant;  
Could only be determined, once the substantive Civil Action No. HBC 347 of 2019 is heard on a formal, documentary and viva-voce evidence accordingly subjected to cross examination.
30. The Court bears in mind that HPP Action No. 64 of 2019 hinged upon and was dealt with in terms of "citation to bring in grant and that the Letters of Administration No. 63979 to be called in revoked and declared null and void in law"; and

Whereas the current "Civil Action No. HBC No. 347 of 2019 hinges upon determination of challenging the validity of the Deceased's Will seeking for certain declaration and orders as enumerated at paragraph 1 (1) - (6) inclusive."

31. For the aforesaid rational, the Defendants summons filed on 14<sup>th</sup> June 2024 is dismissed in its entirety.

### **Costs**

32. The application proceeded to full hearing with counsels furnishing Court with written submissions and argued the application on affidavit evidence accordingly.
33. It is only just and fair that the Defendant pay the Plaintiff a sum of \$1,000 as summarily assessed costs within 14 days timeframe.

### **Orders**

- (i) The Defendants Summons filed on 14<sup>th</sup> June 2024 is dismissed in its entirety.

- (ii) The substantive Civil Action No. HBC 347 of 2019 stands to be heard and determined upon assignment of a trial date by this Court.

Dated at Suva this 07<sup>th</sup> day of August , 2024.



A handwritten signature in blue ink, appearing to be "Vishwa Datt Sharma".

Vishwa Datt Sharma  
PUISNE JUDGE

CC: VIJAY MAHARAJ LAWYERS, SUVA  
LAW SOLUTIONS, SUVA