

IN THE HIGH COURT OF FIJI

AT SUVA

PROBATE JURISDICTION

Civil Action No. **HPP 85** of **2022**

IN THE MATTER of the Estate of Akash Shanil Sharma late of Koronivia, Nausori, Principal Accounts Officer, Deceased, intestate.

AND

IN THE MATTER of an application under Order 29 Rule 2(3).

BETWEEN : **AARADHYA KASHVI SHARMA** an infant by her next friend and mother
VINESHNI MANI DASS of Olosara, Sigatoka, Administrative Clerk.
FIRST PLAINTIFF

AND : **VINESHNI MANI DASS** of Olosara, Sigatoka, Administrative Clerk.
SECOND PLAINTIFF

AND : **ALPNA DARSHIKA KUMAR** of 16 RL Sharma Road, Nadera, Court Officer.
THIRD PLAINTIFF

AND : **SASHI PRASAD** of Vuci Road, Nausori, Fiji, Retired as the previous Administrator in the Estate of **AKASH SHANIL SHARMA** of Koronivia, Nausori, Principal Accounts Officer, Deceased, Intestate.
FIRST DEFENDANT

AND : **BAADAL PRASAD SHARMA** of Vuci Road, Nausori, Fiji, Legal Practitioner as the Administrator in the Estate of **AKASH SHANIL SHARMA** of Koronivia, Nausori, Principal Accounts Officer, Deceased, Intestate.
SECOND DEFENDANT

AND : **THE REGISTRAR OF TITLES.**
THIRD DEFENDANT

**AND : THE ATTORNEY-GENERAL OF FIJI.
FOURTH DEFENDANT**

BEFORE : Hon. Justice Vishwa Datt Sharma

COUNSEL: Mr. Henau G. with Ms Tavaqia L. for the 1st, 2nd & 3rd Plaintiff

Mr. Sashi Prasad as the previous administrator (Deceased 1st Defendant)

Mr. Baadal Prasad Sharma (In person) for the 2nd Defendant

Mr Ram V. for the 3rd & 4th Defendants

DATE OF DECISION: 13th February, 2024

DECISION

[Summons to vary interim Injunctive Orders and setting aside of Interim Injunctive orders]

A. Introduction

(1) There are two (2) Interlocutory Summons for this Court to Determine:

(i) Legal Aid Commission's Summons representing the Plaintiff's seeking for the following orders:

1. That the Interim Injunction granted on 29th July 2022 in particular Order 2 be varied as follows:
 - a. The settlement amount in the sum of FJD328,427.10 payable by Fourth Defendant to the Second Defendant in the High Court of Fiji Civil Action No. HBC 43 of 2021 be deposited into the Judicial Trust Account pending the determination of this matter;
 - b. The sum of FJD32,842.71 be paid to Lajendra Lawyers for the purpose of legal fees in respect of High Court of Fiji Civil Action No. HBC 43 of 2021 from the above sum;
 - c. Lajendra Lawyers to pay the sum of FJD600.00 to Dr Sanjivan Padarath from the sum of FJD2,000.00 currently held in Trust for the Estate of Akash Shanil Sharma; and
 - d. Lajendra Lawyers deposit the remaining FJD 1,400.00 held in Trust for the Estate of Akash Shanil Sharma into the Judicial Trust Account pending the determination of this matter.
2. Any other Orders that this Honorable Court deems just and expedient.

(2) The **Second Summons** filed by the 2nd Defendant, Baadal Prasad Sharma as the Administrator in the **Estate of Akash Shanil Sharma** seeking for the following orders:

- (a) That the Interim Injunction granted on 29th July 2022 be set aside; and
- (b) That the matter be set for Mention as early as practicably possible for parties to clarify their positions or for directives.

- (3) Affidavits Filed:
- (i) Affidavits deposed and filed by Alpna Darshika Kumar
 - (ii) Affidavits deposed and filed by Baadal Prasad Sharma.
- (4) Simultaneous Written Submissions were filed by both parties to the proceedings and both Summons were argued orally.

B. Determination

- (5) On 29th July 2022, this Court granted Ex-Parte Interim Injunctive Orders on the 1st, 2nd and 3rd Plaintiff's Ex-Parte Summons as sought for therein.
- (6) Subsequently, the Plaintiff's made an application by Summons on 25th August 2022 and sought for the interim injunctive Orders granted on 29th July 2022 in particular Order 2 be varied as enumerated and reproduced at paragraphs [1] (a), (b), (c) and (d) of my Decision and the Summons respectively.
- (7) Subsequently, the 2nd Defendant, Baadal Prasad Sharma made an application on 16th September 2022 seeking to set aside the Interim Injunctive Orders granted by the Court on 29th July 2022.
- (8) Initially, Lajendra Lawyers had been engaged by the **Second Defendant, Baadal Prasad Sharma** in his capacity as the Administrator of the **Estate of Akash Shanil Sharma** to pursue a claim in **Medical Negligence** against the Permanent Secretary for Health and the Attorney General of Fiji vide Writ of Summons Civil Action HBC No.43 of 2021 filed on 16th February 2021. This Action was allocated before another High Court Civil Judge.
- (9) The Action was initially defended by the Defendants. All Pre-Trial steps were complied with and Trial date set for hearing and determination accordingly.
- (10) Parties eventually reached a **Resolution** and a **Deed of settlement** and mutual release of payment of a settlement sum of \$328,427.12 within 21 days on 08th July 2022 to be paid to the Plaintiff, Baadal Prasad Sharma by the Defendants in his capacity as the Administrator

of the Deceased **Estate of Akash Shanil Sharma**, together with other orders enumerated therein.

- (11) Before the parties in Civil Action HBC No. 43 of 2021 could act in accordance with the Consent Orders made therein, Legal Aid Commission representing the Plaintiffs, Aaradhya Kashvi Sharma (an infant), Vineshni Mani Dass and Alpna Darshika Kumar filed the current Civil Action HPP No. 85 of 2022. The Plaintiff's made an Ex-Parte application and sought for certain orders which were accordingly granted on 29th July 2022.
- (12) The effect of this Ex-Parte orders of 29th July 2022 somewhat acted as an estoppel, and could not let parties to deal and process payouts as per the Terms of the Settlement reached in Civil Action HBC No: 43 of 2021.
- (13) It was also noted that on 12th December 2023, Lajendra Lawyers had filed a Summons seeking for an Order for joinder as interested party and payout of Legal fees of \$32,842.71 owed by the First and Second Plaintiff in his capacity as the Administrator of the **Deceased's Estate of Akash Shanil Sharma**.
- (14) Both the Legal Aid Commission representing the Plaintiff's and the First and Second Defendants had agreed to the payout of Legal fees of \$32,842.71 owed to Lajendra Lawyers by the **Estate of Akash Shanil Sharma**.
- (15) Since there was no objection to Lajendra Lawyers Summons for orders sought therein, this Court therefore on 24th January 2024 only thought fit and proper to grant Lajendra Law with the First order sought by him '**That Lajendra Lawyer is joined as an intended party to the within proceedings HBC Civil Action HPP No. 85 of 2022 only for the purpose of hearing and determination of the Summons filed by it on 12th December 2023.**'
- (16) This Court upon further perusal of all impending substantive applications and the interlocutory applications and summons coupled with affidavits filed herein was revealed of the fact that the **Deceased Akash Shanil Sharma's Estate** had an infant child namely **Aaradhya Kashvi Sharma and Alpna Darshika Kumar** (as the legal wife) of the Deceased, Akash Shanil Sharma married on 12th July 2016 and Vineshni Mani Dass as the Defacto wife of the deceased. Their Relationship began in 2013 and the Relationship progressed into their

marriage. In 2016, the Third Plaintiff discovered that the Deceased Akash Shanil Sharma despite being legally married to Alpna Darshika Kumar, was additionally in the Defacto relationship with the second Plaintiff, Ms. Vineshni Mani Dass. The deceased then took demise on 17th April 2018.

- (17) The question then arises **'whether the Plaintiff and Administration of Deceased Estate of Akash Shanil Sharma, in HBC No. 43 of 2021 and the First and Second Defendant's in the impending current Civil Action No. HPP 85 of 2022 had informed the Honourable Judge presiding in Civil Action No. 43 of 2021, 'that the First Plaintiff - Aaradhya Kashvi Sharma, Vineshni Mani Dass and Alpna Darshika Kumar were and had beneficial interest in the deceased's Estate of Akash Shanil Sharma?'**
- (18) This Court has already questioned the parties to the proceedings in the current case along the lines of **'Beneficial Interest of the First, Second and Third Plaintiff's** in the Deceased's Estate of Akash Shanil Sharma.
- (19) However, the substantive Writ Action HPP 85 of 2022 is impending completion of the cause of action and assignment of the Trial and/or a hearing date in the matter to make a formal determination in terms of the Deed of Settlement and mutual release by consent already entered into on 08th July 2022 and the payment of the settlement sum of \$328,427.12. **That is whether the First and Second Defendant is the only person(s) entitled to receive the entire settlement sum and/or whether other beneficiaries, First, Second and third Plaintiffs are also entitled to a share of the settlement sum from \$328,427.12?**
- (20) Further, **whether Lajendra Lawyers are also entitled and an Order to be made for the payment of \$32,842.71 as legal fees, if owed by First and Second Defendants, Baadal Prasad Sharma as Legal Fees in representations made for Baadal Prasad Sharma as legal fees owed to Lajendra Lawyers?**
- (21) After giving a due consideration of all above, it is only fair at this stage of the proceedings, that until I hear and determine the Substantive Writ Action in Action No. HPP 85 of 2022, the two (2) Summons which are interlocutory in nature filed by the Legal Aid Commission and the First and Second Defendants, Baadal Prasad Sharma cannot be acceded to the variation

of the orders nor the pending interim injunctive Orders can be set aside until the finalization of the substantive matter accordingly.

- (22) The two (2) summons filed by Legal Aid Commission and the First and Second Defendants is hereby dismissed in its entirety without disturbing the pending Interim Injunctive Orders already made on 29th July 2022 by this Honourable Court.
- (23) The Interim Injunction Orders are further extended until the final hearing and disposition of the substantive matter in HPP Action No. 85 of 2022.
- (24) Lajendra Lawyers also to take note that this Court has further adjourned his impending Summons with the remaining two (2) orders at prayer 2 and 3 sought therein to be determined, that will also be determined within the substantive hearing accordingly.

C. In Conclusion

- (25) The Summons [Interlocutory] filed by Legal Aid Commission on 25th August 2022 and summons filed by the second Defendant Baadal Prasad Sharma on 30th September 2022 are both in its entirety accordingly dismissed.

D. Costs

- (26) Although both interlocutory Summons proceeded to full hearing and determination together with written submissions furnished to Court and the matter argued orally, it is only appropriate that each party to the proceedings bear their own costs at the discretion of this Honourable Court.

E. Orders

- (i) The Summons [Interlocutory] filed by Legal Aid Commission on 25th August 2022 is in its entirety accordingly dismissed.
- (ii) The Summons [Interlocutory] filed by the second Defendant Baadal Prasad Sharma on 30th September 2022 is also accordingly dismissed in its entirety.

- (iii) Each party to bear their own costs of the proceedings at the discretion of this Honourable Court.
- (iv) The parties to complete the cause of action in terms of the High Court Rules 1988 to allow the substantive matter to be ready for Hearing/ Trial accordingly.
- (v) A Hearing/Trial date to be assigned after delivery of this decision on Tuesday 13th February, 2024.

Dated at Suva this 13th day of February , 2024.




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Vishwa Datt Sharma
JUDGE

CC: Lajendra Lawyer, Suva
Legal Aid Commission, Suva
Baadal Prasad Sharma, Suva