

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HPP 30 of 2023

IN THE MATTER of the **ESTATE OF NUR MOHAMMED**
a.k.a NOOR MOHAMMED late of Lot 3, V. M. Pillay Road,
Rifle Range Lautoka, Retired, Deceased, Intestate

AND

IN THE MATTER of Probate No. 61136 granted on 21
November 2017.

AND

IN THE MATTER of an application for partition proceedings
under Section 119 (2) of the Property Law Act 1971.

BETWEEN: **MOHAMMED FAIZ** of 2053 Bidwell Bar Dr, Plumas Lake, California 95961, United States of
America as beneficiary in the Estate of Nur Mohammed a.k.a Noor Mohammed.

1ST PLAINTIFF

AND: **SABNAM NUR NISHA** of as beneficiary in the Estate of Nur Mohammed a.k.a Noor Mohammed
of Sydney Street, Verata, Nausori.

2ND PLAINTIFF

AND: **NAZMIN NUR NISHA** as beneficiary in the Estate of Nur Mohammed a.k.a Noor Mohammed of
Sydney Street, Verata, Nausori.

3RD PLAINTIFF

AND: **NASEEM BEGUM** as sole Executrix and Trustee in the Estate of Nur Mohammed a.k.a Noor
Mohammed and in propria personam of Ballarat Streetm Verata Wailevu, Nausori.

DEFENDANT

BEFORE: **Justice Vishwa Datt Sharma**

COUNSEL: **Mr Sharma N.** for the Plaintiffs
Mr Niubalavu P. for the Defendant

DATE OF DECISION: 24th January, 2025 @ 9.30am

DECISION

[Originating Summons seeking for Audited Accounts, Removal of
Executor/Trustee and Surrender Letters of Administrator No. 61136 and
Appointment of Administratrix in the Estate of the Nur Mohammed].

Introduction

- (1) The Plaintiff's as beneficiaries in the Estate of Nur Mohammed aka Noor Mohammed sought for a wide range of fifteen (15) orders against the Defendant. However, on 03rd September 2024, orders sought at items No. 1 and Nos. 05 to 14 inclusive were granted by consent of the parties to the proceedings. The orders of 03 September 2024 were sealed on 27 September 2024.
- (2) Order sought at items Nos. 02, 03 and 04 as appears hereunder remained pending for this Court to deliberate upon and determine on 03 September 2024 accordingly:

Item No. 2 - the executrix and trustee appointed pursuant to the Letters of Administration No. 61136 be removed.

Item No. 3 - The Defendant Naseem Begum surrender the Original Letters of Administration No. 61136 to the Probate Registry, High Court, Suva.

Item No. 4 - Letters of Administration in the Estate of Nur Mohammed a.k.a be granted to Nazmin Nur Nisha.

- (3) The Plaintiff furnished this Court with written submissions whilst the Defendant relied on its Affidavit and oral evidence.

Background to Case

- (4) The Plaintiff's and the Defendant are siblings. The late Nur Mohammed, took demise on 20 September 2008.
- (5) The Defendant being the eldest child of deceased was granted with letters of administration on 21 November 2017, some 09 years thereafter.
- (6) The Defendant was required to undertake the duties of Administration and Disposition of the Deceased's estate.
- (7) The Deceased's estate comprises of Housing Authority sub lease no. 294027.
- (8) The Defendant carried out the transmission by death in her capacity as the administratrix of the deceased's estate on 24 May 2018.
- (9) The plaintiffs have requested the Defendants as the Administratrix to administer and dispose off the estate, however, she had neglected to do so and the estate remains impending for a long period of time until to the current.
- (10) The Plaintiff's wrote to the Defendant and sought for Accounts of the Estate, Alternatively, removal of the Administratrix and appointment of one of the beneficiaries

as the Administrator(ix), However, the Administratrix failed to undertake her duties as was required of her to carry out in terms of the law to ensure the full administration of the deceased estate.

- (11) The Deceased's Estate remains impending administration and disposition to the current accordingly.

(i) Plaintiff's Contention Estate

- (12) The Defendant as the administrator since 21 November 2017 has failed to provide the Accounts of the estate and is aware that the estate having the Housing Authority's property (sublease) earned an income of \$600 monthly.
- (13) Defendant has failed to discharge its duties as the administration.
- (14) The beneficiaries have not been provided with the Accounts and expenses incurred. The first Plaintiff has advance monies to pay the Housing Authority Sublease and other expenses on behalf of the estate. This is not disputed by the Defendant.
- (15) The Defendant should provide and disclose an Estate Account from 21 November 2017 to 31 March 2023 to the beneficiaries which she has failed to do so.

(ii) Administratrix to be removed

- (16) Section 35 (a) (c) empowers Court to remove the appointed administrator.
- (17) The Defendant to be removed as the Administrator.

(iii) - (iv) Appointment of Nazmin Nur Nisha as Administratrix in place of Naseem Begum.

- (18) Court has powers to remove and appoint Administratrix and order Defendant to surrender the original Letters of Administration grant and appoint Nazmin Nur Nisha (3rd Plaintiff) accordingly.

Property to be sold

- (19) The Plaintiffs are asking Court to make an order for the sale of the property in the event if neither party to the proceedings is in a position to purchase the said property. [Section 119 (1) (2) and (3) of the Property Law Act 1971 refers].

Defendants Contention

- (20) Three (3) remaining issues to be dealt with by Court.

- (21) Entered into Consent Orders
- (22) Duty towards Estate and beneficiaries by the appointed Administratrix.
- (23) Relies on Affidavit in Support and evidence filed herein.
- (24) Property in arrears with Housing Authority. The Defendant did some work on property and put it on rent.
- (25) Current administrator [the Defendant] familiar with collecting rent.
- (26) Relies on the affidavit filed herein.

Determination

- (27) The Plaintiff's and the Defendant are siblings.
- (28) The late Nur Mohammed aka Noor Mohammed died on 20 September 2008 at Rifle Range in Lautoka, Intestate.
- (29) The Defendant being the eldest of the siblings, 09 years after Nur Mohammed's demise, made every effort to seek a Letters of Administration grant when he realized that other siblings were not incorporating and assisting him with the administration and disposition of the Deceased's estate property with 3 flats at Lot 3 Viam Pillay Road, Rifle Range, Lautoka. He was finally granted with a Letters of Administration grant on 21 November 2017.
- (30) On 24th May 2018, the Defendant was registered as the Administrator of the property belonging to the Estate of his Deceased, Nur Mohammed.
- (31) At the time of the Defendant's taking over of the Deceased's property the property required a lot of clearing and renovation work, utility Bills and town rates were due and in arrears.
- (32) According to the Defendant's affidavit evidence filed on 27 November 2023, he gives a breakdown particulars of expenses incurred by him on the deceased's property.
- (33) Further, the Defendant in his affidavit evidence stated that from January 2019 to October 2023 the Defendant had collected a total of \$15,000 as rentals from the property and out of the same, the Defendant shows a breakdown of total expenses which adds up to \$56,373.27. The defendant has incurred personal expenses and spent his own funds of \$41,373.27 on the Estate property which has a sentimental value to him.
- (34) He stated in his affidavit at paragraphs 17 and 18 that the other siblings as beneficiaries

to the Deceased's estate have not been cooperating and if the court is adamant to put the property on sale, then the Defendant be given the 1st opportunity to purchase the same.

- (35) He is claiming in his affidavit a sum of \$41,373.27 from the Estate. However, this is not pleaded in his affidavit in opposition and only appears in his affidavit evidence which this Court cannot grant.
- (36) The Court has noted that the Defendant was given the grant on 21 November 2017 and should have by now accounted for it, administered and carried out the disposition of the Deceased's Estate. However, there was no corporation from the other beneficiaries as is evident herein. It is only appropriate that the Defendant should not be removed as the administrative but must complete the accounting and administration of the deceased's Estate expeditiously in the interest of the other beneficiaries, rather than leaving the estate in abeyance without its disposition.
- (37) However after consideration of the submissions both oral and written together with the Defendant's affidavit evidence, I proceed to make the following orders apart from the orders by Consent already granted by the Court on 03 September 2020.
- (38) Accordingly, I refuse to grant the three(3) remaining orders as appears hereunder:
1. The Defendant as the Administrator of the Estate of Nur Mohammed aka Noor Mohammed pursuant to Letters of Administration No. 61136 to be removed;
 2. The Defendant, Naseem Begum to surrender the Original Letters of Administration No. 61136 to the Principle Probate Registry, Suva, and
 3. Letters of Administration in the Estate of Nur Mohammed aka Noor Mohammed be granted to Nazmin Nur Nisha.

Costs

- (39) Each party to bear their own costs of the proceedings at the discretion of this Court.
- (40) Following are the Final Orders of this Court on the three (3) remaining orders that were sought at items: 2, 3 and 4 of the Originating Summons respectively.

Orders

- (i) Orders sought at items nos. 2, 3 and 4 are accordingly dismissed in its entirety.

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

Dated at **Suva** this **24th** day of **January, 2025**.



VISHWA DATT SHARMA
PUISNE JUDGE

cc: **Oceanica IP, Suva**
Kumar Legal, Suva.