

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CIVIL JURISDICTION**

Civil Action No. HPP 34 of 2020

**BETWEEN** : **LINDA ULAMILA EDWARDS** as the Administratrix in the Estate of  
**MERESEINI UCA aka MERESEINI UCA TAGICAKIBAU** late of 38 Viria  
East, Vatuwaqa, Suva, Deceased, Intestate.

**PLAINTIFF**

**AND** : **MANOA MASI RAVUTIA** of 53 Kaunitoni Street, Vatuwaqa, Suva.

**DEFENDANT**

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

**COUNSEL:** **Mr. Faktaufon V.** for the Plaintiff

**N/A** of the Defendant [Mr. Rabuku not Present]

**DATE OF JUDGMENT:** 27<sup>th</sup> March, 2025

## **JUDGMENT**

*[Sale of Property, Vacant Possession]*

On the outset, Mr. Rabuku represented the Defendant. However, at the Hearing, has failed to appear to defend the proceedings. The matter was then stood down for Mr. Faktaufon to contact Mr. Rabuku, but to no avail.

### **Introduction**

- (1) The Plaintiff filed a Writ of Summons on 28 May 2020 and sought for the following orders:
  - A. That the Court Orders for the immediate sale of the Property;
  - B. That the Plaintiff be paid the full proceeds of sale for the Estate;
  - C. That the occupants of the Property vacate the premises immediate;
  - D. Costs of this action;
  - E. Costs on indemnity basis; and
  - F. Such further relief as this Honourable Court deems just.
- (2) The Defendant filed its Statement of Defence on 23 June 2020.
- (3) A reply to Statement of Defence was filed on 30 June 2020.
- (4) The Plaintiff filed and furnished his written submissions to this Court.
- (5) The Defendant and/or his Counsel has failed appear and make any enquiries on the status of this proceedings nor did it filed any written submissions.
- (6) The matter proceeded to Hearing in the absence of the Defendant and his Counsel.

### **Plaintiff's Contention**

- (7) As the appointed Administratrix of her late mother Mereseini Uca aka Mereseini Uca Tagicakibau's Estate, she has an indefeasible title over one undivided half share of the freehold property CT 11512, being Lot 21 on DP 2412, located at 52 Kaunitoni Street, Suva.
- (8) In 2008, Onesimo Tagicakibau (Step father) acquired one undivided half share of the property via a transfer by love and affection from his cousin, Manoa Ravutia (Defendant) in 2008, who prior to this, was the sole owner of the property.

- (9) Subsequent to Onisimo's death in 2009, his one undivided half share was transferred by way of administration to his wife, Mereseini Uca Tagicakibau in 2012.
- (10) In 2020 via Letters of Administration Grant, following Mereseini's demise in 2019, Linda (Plaintiff) became the administratrix of her mother, Mereseini's Estate, and eventually by way of transfer, acquired the one undivided half share that was initially owned by her step-father, Onisimo.

#### **Defendant's Contention**

- (11) The Plaintiff is his step niece.
- (12) That the property was owned by his father the late Peni Bogi Ravutia. It was on Mortgage to the Bank and solely paid off by his father with the help of a sister. The property was solely transferred to his name before his father's demise.
- (13) He was asked to transfer half share of the property to Onisimo Tagicakibau. The title was held on a 'Joint Tenancy' basis with him - going to the surviving title holder in the event of death of the other.
- (14) The deceased Mereseini Uca has never lived on and/or contributed to the cost or upkeep of the property, neither has the Plaintiff.
- (15) Plaintiff's statement of claim is denied and seeking for dismissal.

#### **Evidence, Analysis and Determination**

- (16) At the Hearing, the Plaintiff [PW1] Linda Ulamila Edwards was the only witness who gave evidence.
- (17) There was no further witnesses called by the Plaintiff to establish her claim and allow this Court to accede to the relief sought within her Statement of Claim.

- (18) The *viva voce* evidence given by [PW1] Linda Ulamila Edwards is not detailed and clear in terms of the transfer of one divided half share.
- (19) The Folio of the Certificate of Title 11512, being Lot 21 on DP 2412 was initially owned by the Defendant's father the late Peni Bogi Ravutia [transfer no. 376332 refers].
- (20) Half the share of Peni Bogi Ravutia's share was transferred to his cousin, Onisimo Tagicakibau, This he then held the entire property under his name. The title was not held on a 'Joint Tenancy' rather on Tenancy in Common. [Transfer no 711204 refers].
- (21) On 04 July 2012, after the demise of Onisimo Tagicakibau, Fiji Public Trustee Corporation Limited was appointed and given a Probate Grant as an executor and Trustee of his Estate.
- (22) On 04<sup>th</sup> July 2012, the Title was transferred to Mereseini Uca Tagicakibau as to one undivided half share in the estate of Onisimo Tagicakibau.
- (23) Subsequently, on 5 August 2000, the Plaintiff Linda Ulamila Edwards was appointed and given a Grant as the Administratrix in the Estate of Mereseini Uca Tagicakibau as to one undivided half share.
- (24) Finally on 5<sup>th</sup> August 2020, the title was transferred to the Plaintiff, Linda Ulamila Edwards as to undivided half share. As per transfer folio no. 893767.
- (25) It is on this basis of above mentioned transfer 893767 that the Plaintiff is seeking for
- (i) the immediate sale of the said property as per certificate of title 11512 being Lot 21 on deposited plan no. 2412,
  - (ii) to be paid the full proceeds of sale for the estate,
  - (iii) Occupants of the property to immediately vacate the premises and
  - (iv) Costs.
- (26) The transfer document nowhere shows that the title held in Joint Tenancy, rather is evident of the fact that the Plaintiff and the Defendant hold an undivided half share each in the property.

- (27) The Plaintiff in her capacity as the Administratrix of the deceased's Estate had issued a notice on 30 March 2020 to the Defendant for the transfer of the Defendant's half share in order to wrap of and/or carry out the disposition of the Deceased's Estate. However, the Defendant failed to register the transfer of his half share in property to the deceased's estate.
- (28) There is no evidence before this court between the Plaintiff and the Defendant of any agreement that prior to the death of the Plaintiff, Deceased, and the Plaintiff paid the Defendant directly \$50,000 for the intended transfer of his half share in the subject property.
- (29) In absence of any evidence, or written agreement between the Plaintiff and the Defendant of payment of \$50,000 to effect Defendant's transfer of half-share, the Plaintiff is not entitled to the transfer of the half share from the Defendant.

#### **In Conclusion**

- (30) The title is evident of the fact it been a 'tenancy in common' and not a joint tenancy.
- (31) One half undivided share is acquired by the Plaintiff whilst the other half share is acquired by the Defendant.
- (32) There is absence of any agreement, written or otherwise between the Plaintiff and the Defendant that the Plaintiff paid the Defendant \$50,000 in order for the Defendant to transfer his half share to the Plaintiff.
- (33) On the balance of probability, the Plaintiff is not entitled to the transfer of half-share from the Defendant. The folio in the Title CT 11512, Lot 21 on DP No. 2412 is evident of the fact that by transfer No. 893757 of 5 August 2020, the Plaintiff, Linda Ulamila Edwards is only entitled to half-share of the title acquired from the Deceased, Mereseini Uca Tagicakibau Estate whilst the other undivided half share entitlement is acquired by the Defendant.
- (34) On the balance of probability, and in absence of non-appearance of the Defendant and his counsel representing **at the hearing** that I have no alternative but proceed to grant an order

to the Plaintiff for the immediate sale of the property on CT No. 11512, Lot 21 on DP No. 2412 only as to undivided half share entitlement of the Plaintiff and not the other half-share of the Defendant.

- (35) The Plaintiff be paid the full proceeds of the half-share sale of the Plaintiff only.
- (36) Unless other party decides and agrees to purchase the other half-share entitlement of either party to the proceeds, the party interested in holding to half-undivided share is at liberty to purchase the other party half share. This will be affected by consent.
- (37) There is relief seeking for the occupants to vacate the said property immediately. However, the cause of vacant possession is not pleaded within the Statement of Claim, neither there is an affidavit to clarify who these occupants are against whom the order for immediate vacant possession is sought.
- (38) Therefore, this Court cannot accede to the relief sought for immediate vacant possession.

#### **Costs**

- (39) The matter proceeded rather to a formal proof in terms of a Hearing, since the Defendant nor his Legal counsel representing was present at the hearing.
- (40) The Plaintiff is granted summarily assessed costs of \$1,000 to be paid by the Defendant within 14 days timeframe.

#### **Orders**

- (i) An order for immediate sale of the property of CT No. 11512, being Lot 21 on Deposit Plan No. 2412 as to half undivided share of the Plaintiff only.
- (ii) The Plaintiff be paid full proceeds of the sale of the half-undivided share of the property only.

- (iii) Both parties in the mutual understanding is at liberty to purchase either party's half undivided share by consent and proceeds to be paid accordingly.
- (iv) There will be no order as to the relief seeking immediate vacant possession order of occupants since the occupants have either not been named or the Plaintiff unaware who they are.
- (v) There will be a summarily assessed costs of \$1,000 to be paid to the Plaintiff by the Defendant within 14 days timeframe.

Dated at **Suva** this **27<sup>th</sup>** day of **March** , **2025**.



VISHWA DATT SHARMA  
PUISNE JUDGE

CC: **Vama Law, Suva**  
**John Rabuku Lawyers, Suva**