

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**PROBATE JURISDICTION (APPELLANT JURISDICTION)**

High Court HPP Appeal Number 67 of 2021

**AN APPEAL** from the Decision of the Master to the Judge of the High Court in the High Court HPP Action Number: 67 of 2022

**IN THE MATTER** of the **ESTATE OF JAGDISHWARA DATT SHARMA aka JAGDISHWAR DUTT SHARMA aka JAGDISHWAR DUTT aka JAGDISHWAR DATT SHARMA** late of Caubati, Nasinu, Machine Operator, Deceased, Intestate (ESTATE)

**AND**

**AVINESHWAR DUTT SHARMA** of Tokotoko, Navua, Fiji, Religious Leader

(APPELLANT/APPLICANT/INTENDED ADMINISTRATOR)

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

**COUNSELS:** Mr Chand A. for the Applicant

**DATE OF JUDGMENT:** Thursday 17<sup>th</sup> April, 2025 @ 9.30 am.

**JUDGMENT**

[Appointment of Administrator of Deceased's Estate]

On the outset, Leave to Appeal out of time was granted against the Decision of the Learned Master of 21<sup>st</sup> January 2022 on 25<sup>th</sup> January 2023 by this court.

**A. Introduction**

[1] The applicant filed an Ex Parte Originating Summons on 06<sup>th</sup> October 2021 and sought for the following orders:

1. **An order** to appoint Avineshwar Dutt Sharma of Tokotoko, Navua, Fiji, Religious Leader, as the administrator for the Estate of Jagdishwara Datt Sharma aka Jagdishwar Dutt Sharma aka Jagdishwar Dutt aka Jagdishwar Datt Sharma.
2. Cost of this Action.
3. Such further relief as seems just and equitable to this Honourable Court.

[2] The Plaintiff relied on his affidavit in support.

[3] The application was heard and determine by the Master of High Court on 21<sup>st</sup> January 2022 and dismissed the Plaintiff's application.

[4] The Plaintiff was dissatisfied by the judgment of the Learned Master and filed an appeal against the Judgment of the Learned Master.

[5] The Plaintiff Appellants Ground of Appeal were as follows:

1. That the Learned Master erred in law and in fact by failing to consider that the Appellant is the only legitimate child of late Jagdishwara Datt Sharma aka Jagdishwar Dutt Sharma aka Jagdishwar Dutt aka Jagdishwar Datt Sharma for whom the deceased was paying maintenance .
2. That the Learned Master erred in fact by failing to properly consider all evidences provided to the court especially that Appellant's father's name appears on the Appellant's FNPF membership card and also on Appellant's Certificate of Title and Primary and High School records as Jagdishwar Dutt Sharma and Jagdishwar Dutt respectively.
3. That the Learned Master also failed to consider that the Family Court Registry has the records in its log book that the deceased was paying maintenance for the Appellant.
4. That the Learned Master also erred to consider that the Family Court Registry is unable to locate the Affiliation file number 132/79 to confirm the Paternity however, the Family court has advised that Appellant's father was paying child maintenance to Appellant through Appellant's mother.

5. The Appellant wishes to introduce new evidences at Appeal stage.

[6] That the Appellant/Applicant was granted Leave to introduce new evidence at the Appeal Hearing in terms of documentary evidence to establish that the Appellant/Applicant was the child of the deceased, Jagdishwar Datt Sharma.

## B. Determination

[7] There are altogether four (4) grounds of Appeal.

[8] Each of the Grounds ties up and has Nexus with each other and is not Independent. Therefore, is determined altogether.

[9] **1<sup>st</sup> Ground** - states that the Master failed to consider that the Appellant is the only legitimate child of the Deceased, Jagdishwar Datt Sharma.

**2<sup>nd</sup> Ground** - Failing to properly consider all evidences provided to the court,

**3<sup>rd</sup> Ground** - failing to consider that the Family Court Registry has the records that the deceased was paying maintenance, and

**4<sup>th</sup> Ground** - Failing to consider that the Family Court Registry is unable to locate the Affiliation Court file number 132 of 1979 to confirm Paternity.

[10] The Learned Master in her Judgment has stated-

- 'that the Appellant/ Applicant informed Court that he is the only biological child of the deceased and thus entitled to claim interest in the Deceased's Estate.
- During his birth, his parents were not married and were in a de-facto relationship, and due to the instability in their relationship, the Appellant/ Applicant's mother did not register the father's name on the Applicant/Appellant's birth certificate.
- He had a father and son relationship
- He used the deceased's name as his father since primary school and registered his father's name on his TIN registration;
- His mother had applied for child maintenance from his father,
- His mother Satya Kaur passed away on 30<sup>th</sup> January 2020.
- His uncle, Prem Chand Sharma told him that his father had monies in the Bank and 19 years has passed by with no Grant issued to Administer his

Deceased father's Estate of Jagdishwar Datt Sharma.

- Deceased's Death Certificate reveals that he took demise on 02<sup>nd</sup> December 2002, no spouse or issues of the marriage are recorded on the Death Certificate.'

[11] A statutory declaration has been made by Prem Chand Sharma stating that the Applicant/Appellant is the deceased, Jagdishwar Dutt Sharma's son.

[12] No doubt the Appellant/ Applicants birth Certificate tendered in to evidence as Exhibit AP3 does not have the father, Jagdishwar Datt Sharma registered as his father. The mother's name is recorded as Satya Kaur and not Satya Wati.

[13] The Death Certificate of Satya Kaur does not have the Appellant/Applicant's name as the child.

[14] A letter from the Family Court Registry confirms that Satya Wati and not Satya Kuar was the Applicant claiming for maintenance in Affiliation Case No. 132 of 1979 against Jagdishwar Datt Sharma.

[15] The Letter does not indicate the child's name in whose favour the Court made the maintenance order.

[16] The presiding master at paragraph 15 of her Judgment stated that 'the Applicant has failed to establish that the paternity of the father was admitted by the Deceased or established against the Deceased by the Court whilst the deceased was living.

[17] However, the correspondence from the Family Court dated 12<sup>th</sup> November 2021 annexed within at the supplementary affidavit of Appellant/Applicant confirms that 'on 06<sup>th</sup> November 1979, the Court ordered that maintenance of \$40 per month till the child attains the age of 16 years or until further orders of the Court. On 25<sup>th</sup> September 1981, maintenance order was varied to \$43 per month - the information provided from the case register and not the Court file which could not be located.

[18] The Appellant/ Applicant has tendered into evidence the following:

- A reference from Vashist Muni Memorial primary School dated 17th August 2022 that Avineshwar Dutt Sharma attended his primary education at that school and his father's name was Jagdishwar Dutt Sharma and mother Satya Kuar.
- Fiji Junior Certificate and Fiji School Leaving Certificate's confirming Avineshwar Dutt Sharma as the son of Jagdishwar D Sharma.
- Navua High School, school record and reference also confirms Avineshwar Dutt Sharma as son of Jagdishwar Dutt Sharma.

[19] Given the evidence before me and the date of birth of the Appellant/Applicant, born on 26<sup>th</sup>

May 1976 and the Affiliation case No. 132 of 1979 between Satya Wati and Jagdishwar Datt Sharma, it is not possible then not that the maintenance order of \$40 varied to \$43 per month is in reference to the Appellant/Applicant as the child of the Deceased, Jagdishwar Dutt Sharma.

[20] Consequently, I find on balance of probability together with the documentary evidence tendered into Court that the Appellant/Applicant is the child (son) of the Deceased, Jagdishwar Dutt Sharma and only remaining person entitled to seek a grant of letters of administration pursuant to *Succession Probate and administration Act* [SP] in the deceased's estate of Jagdishwar Dutt Sharma.

[21] There is no other findings that I could have and/or have prompted me to make in terms of the evidence before this Court in the current matter.

[22] I proceed to make the following orders:

**C. Orders**

- (i) The Grounds of Appeal as enumerated herein succeeds.
- (ii) The Appellant/Applicant is appointed now as the administrator of the deceased's Estate of Jagdishwar Dutt Sharma's and carry out the administration of the estate according to the applicable law.
- (iii) The Appellant/Applicant to advertise the Deceased's estate of Jagdishwar Dutt Sharma and lodge an application for a letters of administration grant with the Principal Probate Registry at Suva accordingly.
- (iv) File Closed.

Dated at Suva this 17<sup>th</sup> day of April ,2025.



  
VISHWA DATT SHARMA  
PUISNE JUDGE

cc. Amrit Chand Lawyers, Suva.