

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Probate Action No. HPP 16 of 2024

BETWEEN : **MARIE YVONNE KEMPTHORNE** of 15 Tenerife Boulevard, Hillarys, WA 6025, Australia, Sales Agent and **ANNA DENIS BEGGS** of Jl Manuggai Juang 11 Cipete, Cilandak, Kota Jakarta Selatan 12410, Indonesia, Teacher.

PLAINTIFFS

AND : **ALOESI BEGGS aka ALOESI TAGIVERATA BEGGS** as Executor of the **ESTATE OF CASPAR DENIS BEGGS** of Lot 1 Viseisei Village , Vuda, Lautoka, Businesswoman.

1st DEFENDANT

AND : **ESTATE OF ALOESI BEGGS aka ALOESI TAGIVERATA BEGGS** of Lot 1 Viseisei Village, Vuda, Lautoka, Businesswoman.

2nd DEFENDANT

Coram : **Banuve, J**

Counsels : **Shekinah Law for the Plaintiffs**

Date of Hearing and Submissions: **14 April 2025 and 2 May 2025.**

Date of Ruling : **19 May 2025**

JUDGMENT

A. INTRODUCTION

1. A Writ of Summons with an indorsed Statement, certified by the Chief Registrar pursuant to Order 76 Rule 2 of the *High Court Rules* 1988, and a Statement of Claim were filed on 29th February 2024, seeking that;
 - (i) The Court do pronounce against the validity of the alleged Will of the late Caspar Dennis Beggs, dated 18th March 2021.
 - (ii) An Order for the Revocation of Probate No. 71947 issued on or about 7th July 2023, in the Estate of Caspar Dennis Beggs.
 - (iii) An injunction restraining the First Defendant whether by herself or by her servants or agents from dealing with any property of the late Caspar Dennis Beggs.
 - (iv) An injunction restraining the Second Defendants whether by herself or by her servant from dealing with Native Lease No 427650.
 - (v) An injunction restraining the Second Defendant whether by herself or by her servant or agent from dealing with any property that belonged to the late Caspar Dennis Beggs, that she had transferred to herself.
 - (vi) An Order that the distribution of the Estate of the late Caspar Dennis Beggs be frozen until the determination of this action.
 - (vii) The First Defendant be removed as the executor/trustee of the estate of Caspar Dennis Beggs.
 - (viii) That any property of the late Caspar Dennis Beggs be distributed under the rules of intestacy pursuant to the Succession, Probate and Administration Act.
2. The Plaintiff are the daughters of the late Caspar Dennis Beggs of Vuda, Fiji, Businessman, who died testate on 21st of October 2022.
3. The Defendants are sued in the following capacities;
 - (i) Aloesi Tagiverata Beggs, the First Defendant, as the Executrix and Trustee of the Estate of Caspar Dennis Beggs, (the Estate), by virtue of Grant of Probate No 71947, by the Probate Jurisdiction of the High Court at Suva.

- (ii) Aloesi Tagiverata Beggs, the Second Defendant, as beneficiary, that transferred the property of the deceased to herself, replaced with the Estate of Aloesi Tagiverata Beggs, as ordered by the Court on 25th March 2025, subsequent to the demise of the First Defendant, on 24th August 2024.
4. The Writ of Summons and Statement of Claim were served personally on the Defendant on 27th March 2024, and an Affidavit of Service was filed on 10th April 2024.
5. No Acknowledgment of Service or a Defence was filed by the Defendants.
6. Further orders obtained by the Plaintiffs and served on the Defendants included an injunctive order sealed on 10th May 2024, and an order requiring that Probate be returned by the Defendant, sealed on 16th July 2024.

B. BACKGROUND

7. The late Caspar Beggs (deceased), was married to Aloesi Beggs on 3rd October 1998, and died at the Lautoka Hospital on 8th April 2022 from severe sepsis, septic shock, acute/chronic renal failure, and infected bedsores.
8. The deceased had 3 issues from his first two marriages namely, Marie Kempthorne, Lisa Beggs and Anna Beggs. He did not have any issue with Aloesi Beggs.
9. Aloesi Beggs had obtained probate in the Estate of the Deceased, on 7th July 2023 premised on her claim as the Executor and Trustee of the Will of the deceased.
10. The deceased was born on 21st May 1934, and was 87, years old when he executed the Will on 18th March 2021.
11. The deceased was 88 years old in 2022, when he passed away.

12. The deceased has been suffering with various medical conditions, and by 2022 had deteriorated, and was presenting with symptoms of delusion, abnormal behavior, confusion and acute psychosis.
13. The deceased had been heavily dependent on the Defendant, Aloesi Beggs, for his care, food, medication, hygiene and basic needs.
14. The Plaintiffs allege that the Will of the deceased was obtained and executed through undue influence, by the Defendant Aloesi Beggs, as the deceased over the last years of his life, had been almost wholly dependent on the Defendant, for his daily upkeep and needs. The Plaintiffs allege that this dependency caused undue influence over the deceased leading to his appointing the Defendant, as the executrix/ trustee and beneficiary of the Will, as the Plaintiffs allege that at the time the will was executed, the deceased was not of sound mind, memory or understanding.
15. The allegations of undue influence and lack of testamentary capacity are particularized in the Statement of Claim.
16. The trial of the matter proceeded on an uncontested basis on 14th April 2025, with the Plaintiffs evidence being provided by;
 - (i) Marie Yvonne Kempthorne (“PW1”)
 - (ii) Dr Sefanaia Qaloewai (“PW2”)
 - (iii) Anna Dennis Beggs (“PW3”)
17. Documentary evidence tendered were as follows;
 - (a) Death Certificate of Caspar Dennis Beggs (**Exhibit P1**)
 - (b) Email correspondence between the first named Plaintiff, and the Defendant, dated February 2023 (**Exhibit P2**)
 - (c) Will of Caspar Dennis Beggs (**Exhibit P3**)
 - (d) Affidavit in Opposition-Civil Action HBC 257 of 2021 (**Exhibit P4**)
 - (e) Death Certificate of Aloesi Beggs (**Exhibit 5**)
 - (f) Crown Lease Title No 11594 (**Exhibit 6**)
 - (g) Injunction Order dated 25th April 2024 (**Exhibit 7**)
 - (h) Medical Folder (**Exhibit 8**)

- (i) Medical Report (**Exhibit 9**)
- (j)
- (k) Death Certificate of Caspar Dennis Beggs with children save Anna Beggs, the Second Plaintiff. (**Exhibit 10**)

C. PLAINTIFF'S CASE

18. The Plaintiffs position is that the deceased did not have testamentary capacity and was subjected to undue influence when he signed the will of 18th March 2021.
19. On scrutiny of the Will (**Exhibit P3**), the following features are noted;
 - (i) Execution of the Will is by way of signature, stated to be that of the testator, Caspar Denis Biggs, made in the presence of 2 lawyers.
 - (ii) The 2 witnesses attest that the testator understood the terms of the Will, when imparted to him.
 - (iii) No statement as to what language was used.
20. The Plaintiffs rely on an Affidavit in Opposition, filed by Aloesi Tagiverata Beggs, on 13th April 2022, in Civil Action No HBC 257 of 2021, a mortgagee proceeding involving Bank of the South Pacific, as the Plaintiff, and Caspar Dennis Beggs, as the Defendant (**Exhibit P7**), in which Mrs Beggs had deposed that Caspar Dennis Beggs due to his long standing medical condition, which deteriorated from 2018, leading to his authorizing her to depose the affidavit of opposition, on his behalf, and to obtain leave from the Court to depose affidavits and to defend him in the proceedings.
21. There are three documents proffered to the Court which the Plaintiffs assert confirms that at the time of the signing of the Will , Mr Beggs was both physically and mentally ill;
 - (i) **Exhibit P7**

The Plaintiff relies on the Defendant Aloesi Beggs deposition in the Affidavit in Opposition filed on 13th April 2022, as discussed, as affirming that the testator, Mr Beggs, had a long standing health condition

stemming from 2018, rendering him unable to understand his execution of a Will in March 2021.

(ii) **Exhibit P8** (Medical Folder with Discharge Sheet)

The Medical Folder records the following on presentation of Mr Beggs at Lautoka Hospital around midnight on 27th -28th March 2021, which was 7 days after signing the said Will;

Admitting this 80 years male presenting:

- (i) *Delusions*
- (ii) *Hallucination*
- (iii) *Abnormal Behavior*
- (iv) *Insomnia*

Acc to Wife

Pt had been behaving abnormally for the past one month as he had seen him talk to himself. He claims to be seeing people and talking to them. He also said someone is trying to kill him. His wife also said he had difficulty sleeping.

(iii) **Exhibit P9** (Psychiatrist Report)

A Psychiatry Report was compiled by Dr Sefanaia Qaloewai, a Consultant Psychiatrist at the Ministry of Health, a Lecturer in Psychiatry at the Fiji National University and a Director of Mindful Medical Center. His primary specialist qualification was a Masters in Psychiatry. Caspar Denis Beggs was not his patient, rather he provided a Report dated 11th March 2025 for the Plaintiffs, based on a review of the medical notes provided during Mr Beggs admission at the Aspen Hospital on 27th-28th March 2021. The Consultant also reviewed a copy of the Affidavit in Opposition deposed by Aloesi Beggs and filed in Civil Action No HBC 257 of 2021.

His findings are summarized;

Medical Notes

Mr Beggs an 80 year old man presented to Aspen Emergency Department at 11.29 pm on 28 March 2021 with his wife Mrs Aloesi Beggs, who acted as his primary carer. He was noted to be slightly tachycardic but with otherwise stable vital signs. His chief complaints, reported to the doctor on shift, include delusion, hallucinations, abnormal behavior and insomnia. He had been suffering from these symptoms for one month. The doctor noted in this one month, Mr Beggs had been talking to himself, having hallucinatory experiences-seeing people and talking to them, and claims that someone wants to hurt him. Mr Beggs is also noted to have difficulty sleeping, as he is normally talking to himself. He is also noted to have difficulty hearing.

On mental state exam, conducted on 28th March 2021 by the doctor on duty, Mr Beggs was noted to be suffering from hallucination, with decreased concentration and short-term memory loss.

On physical exam, Mr Beggs was noted to have scratch marks on his forehead and multiple small wounds on his arms and legs but reported to be comfortable and conversant, his vital signs within normal range, except for his heart rate which was slightly elevated (120b/min).

Blood investigation during admission showed evidence of some kidney failure, but other blood tests (haemoglobin and white blood cells count) were normal. A CT scan was done on 31st March 2021 showed evidence of cerebral atrophy, to be expected given his old age.

The doctor's assessment at the time of admission was that Mr Beggs was suffering from a mental disorder and was admitted as an in-patient in the Stress Management Ward, for further assessment to rule out potential underlying medical causes and treated with anti-psychotic medicine.

Analysis of Affidavit in Opposition

It is clear from the affidavit that Mr Begg's health condition had been deteriorating from 2018. This is due to his "long medical conditions". It is unclear where Mr Beggs was being treated and followed up for his medical conditions but clear from his medical discharge summary at Aspen Hospital "showing or presenting symptoms of delusion, abnormal behavior, acute confusion, diagnosed with Acute Psychosis"

The Will

The Will execution was done on 18th March 2021, 10 days before being presented to the emergency department at Aspen. The date of signing falls within the 1 month period of his active symptoms of psychosis and acute confusion. This would have been the time Mr Beggs had loid symptoms of hallucination and delusions, and he would not have been able to comprehend or capable of understanding instructions but may be able to follow simple commands

Psychiatrist Opinion

The Consultant addressed 4 questions in his Report.

In relation to question 1-Did the testator (Mr Beggs) not know or approve of the contents of the Will?

It is highly likely Mr Beggs did not comprehend and did not know the contents of the Will at the time of execution. This is largely due to his impaired mental state and together with impaired hearing, he would have been distracted by his hallucinations and delusions and would have lacked attention and testamentary capacity to understand instructions to make informed decision about executing the Will.

In relation to question 2-Did the Testator lack testamentary capacity?

It is highly likely Mr Beggs lacked testamentary capacity for reasons highlighted in question 1.

In relation to question 3-Did the Testator execute his Will because of undue influence being brought to bear on him by the Defendant, Mrs Aloesi Beggs?

It is highly likely Mr Beggs execution of the Will may be influenced by his wife, Mrs Aloesi Biggs, by following her commands. It is likely that Mr Beggs is dependent on his wife for his daily living activities due to his ill health. The mental state upon presenting to the emergency department of 28th March 2021, reflected acute psychosis, and this would have been a similar picture on 18th March 2021 [date of Will execution], which is within the month of his active symptoms of psychosis.

In relation to question 4-Is there a possibility that Mr Beggs was suffering from unsound mind before the execution of the alleged Will?

Yes. The attending doctor's notes confirm that Mr Beggs suffered from hallucinations and delusions for 1 month prior to 28th March 2021-the date of his admission to Aspen. It is likely Mr Beggs was suffering from unsound mind before and during the execution of the Will.

D. ANALYSIS

The Evidence

22. Both oral and written evidence, were provided at trial by the Plaintiffs. Much of it was circumstantial in nature, given that none of the witnesses had direct knowledge of the circumstance surrounding the execution of the Will dated 18th March 2021, by Caspar Denis Beggs, nor that surrounding his admission at the Aspen Hospital, Lautoka on 27th-28th March 2021, or his passing away on 21st October 2022.
23. The evidence of Marie Yvonne Kempthorne (**PW 1**), and Anna Denis Beggs (**PW 3**) established that they were daughters of Caspar Dennis Beggs, and severally, that Aloesi Beggs, (coupled with her alleged overbearing behavior in isolating their father from them), had fraudulently caused the deceased to execute his last Will and testament, despite suffering from acute psychosis.
24. The Court understands the trauma that besets the passing of a parent, particularly in a strange land, however the tendency in these cases to prove one's case by casting aspersion about character, for example, of Aloesi Beggs in this instance, did not assist the Court. Whilst the latter, did not give evidence, the Court notes certain undisputed facts; (i) Mrs Beggs was the lawful wife of Caspar Dennis Beggs, having married him on 3rd October 1998, (ii) she was the Executrix and Trustee of a Will dated 18th March 2021, and (iii) Crown Lease No 11594 Lot 1 SO 2779, on which the Residential Property which she occupied, was located was subject to a substantial mortgage, held in the name of Caspar Denis Beggs, with the Bank of South Pacific, which remains unredeemed, on his demise. The Bank seeks to realize its mortgage security, to recover monies it lent to the late Mr Beggs.

25. The evidence rather, which was critical to the Court's finding on testamentary capacity and, on undue influence over the testator, arose from the evidence of the Consultant Psychiatrist, Dr Sefanaia Qaloewai (PW 2).

Testamentary Capacity

26. The legal principles governing the test for testamentary capacity are settled and derived from *Banks v Goodfellow* (1870) LR 5 QB 549. The testator must be able to;
- (i) Understand the nature of his act, i.e making a will, and its effects;
 - (ii) Understand the extent of the property of which he is disposing;
 - (iii) Comprehend and appreciate the claims to which he ought to give effect.
27. The Court, has borne in mind, that the issue of testamentary capacity is for the decision of the Court and not to be delegated to experts, albeit that their knowledge, skill and experience maybe an invaluable tool in the analysis, affording insight into the workings of the mind, otherwise entirely beyond the grasp of laymen, including for that purpose, lawyers and in particular judges-*Key & Others v Key & Others* [2010] EWHC 408.¹
28. There was no evidence given by the Defendant(s) to establish capacity; that the Will was duly executed, however section 6 of the *Wills Act* [Cap 59], does establish that a will is not valid, unless it is in writing, and executed in the following manner:-
- (a) *It is signed by the testator or by some person in his presence and by his direction in such place on the document, as to be apparent on the face of the will, that the testator intended by such signature to give effect to the writing as his will;*
 - (b) *Such signature is made or acknowledged by the testator in the presence of at least two witnesses present at the same time; and*
 - (c) *The witnesses attest and subscribe the will in the presence of the testator, but no form is attestation is necessary.*

¹ Per Briggs, J at paragraph 98.

29. The Court notes that the Plaintiffs do not dispute the fact that the Will was duly executed on 18th March 2021, in accordance with section 6 of the Act. This is apparent in the Plaintiffs not calling the witnesses to the Will to give evidence.
30. Rather, the Plaintiffs position is that the presumption that the will was duly executed, was rebutted by the evidence of the Consultant Psychiatrist, Dr Sefanaia Qaloewai (**PW 2**), that there was real doubt as to capacity,² and that the testator was suffering from mental illness and did not have testamentary capacity when he executed the will.
31. In such an instance where real doubt is created the burden of proof would normally shift back to the propounder of the will to establish capacity.
32. As stated by Briggs, J in *Key v Key*³;
- “The burden of proof in relation to testamentary capacity is subject to the following rules:*
- i) While the burden starts with the propounder of the will to establish capacity, where the will is duly executed and appears rational on its face, then the Court will presume capacity .*
 - ii) In such a case the evidential burden then shifts to the objector to raise a real doubt about capacity.*
 - iii) If a real doubt is raised, the evidential burden shifts back to the propounder to establish capacity nonetheless.*
33. In such an instance, where the Defendants have not participated in Court proceedings, the evidential burden establishing capacity cannot be discharged
34. The Court holds, on the balance of probabilities, that the Plaintiffs have rebutted the presumption that Caspar Denis Beggs, had testamentary capacity when executing the will of 18th March 2021, primarily based on the evidence adduced

² *Key v Key* [2010] EWHC 408.

³ At paragraph 97

by its expert witness Dr Sefanaia Qaloewai, and rather, that the testator did not have testamentary capacity when he executed the Will dated 18th March 2021.

35. The factors the Court noted as weighing against the conclusion that Mr Beggs had testamentary capacity and rather that his will was overborne by his wife, include;
- (i) Mrs Beggs had deposed an Affidavit in Opposition in a mortgage redemption action -*BSP v Caspar Denis Beggs* –Civil Action No HBC 257 of 2021, filed on 13th April 2022, that she had to depose the affidavit, because her husband ‘*due to long standing medical conditions which continue to deteriorate since 2018 till to date*’, could not do so and despite the fact that he was the sole Defendant and the likelihood that he would lose the mortgaged property, due to substantial loan arrears. In short, Mr Beggs’s lack of capacity stemmed from a deteriorating mental condition stemming from 2018 on the evidence provided by his wife.
 - (ii) Dr Sefanaia Qaloewai, Consultant Psychiatrist outlined in his Report that the Will was executed on 18th March 2021, 10 days before he was admitted to the Acute Stress Ward at the Aspen Hospital in Lautoka, for active symptoms of acute psychosis and confusion, which had developed from within a 1 month period prior to the date of admission, thus covering the time when the will was executed. According to Dr Qaloewai, it was highly likely given the acute mental condition Mr Beggs was in when he was admitted on 27th -28th March 2021, that he would not have known or approved the contents of the will and unlikely to have testamentary capacity when he executed it.
36. In relation to undue influence, the burden of proving it lies on the person who asserts it and in this context influence, means influence exercised either by coercion, in the sense that the testator’s will must be overborne or by fraud-*Schrader v Schrader* [2013] EWHC 466 (Ch).
37. In this regard, the Court accepts the finding of Dr Qaloewai that the execution by Mr Beggs of the Will may have been influenced by his wife, by following her commands, and given that he was dependent on her due to his ill health and that the acute psychotic state he presented on admission to the Hospital on 27-28th

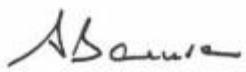
March 2021, was long standing and would have covered the period when the Will was executed. The Court notes that Dr Qaloewai's finding stops short of a finding of fraud and limiting himself to a finding that the will of the testator was overborne by his wife, which amounts to undue influence, in law.

ORDERS

1. The Will of the late Caspar Denis Beggs dated 18th March 2022 is pronounced invalid.
2. Probate Order No. 71947 issued on or about 7th July 2023 is revoked.
3. Marie Yvonne Kempthorne and Anna Denis Beggs be appointed as the executors/trustees of the Estate of Caspar Denis Beggs.
4. That any property of the late Caspar Denis Beggs be distributed under the rules of intestacy pursuant to the *Succession, Probate and Administration Act* [Cap 60]
5. No order as to costs.

Dated at Suva this 19th day of May, 2025.




Savenaca Banuve
Judge