

**IN THE HIGH COURT OF FIJI**  
**SITTING IN LAUTOKA.**  
**EXERCISING CIVIL JURISDICTION.**

**CIVIL ACTION NO. HBC 13 OF 2023**

**BETWEEN** : **ABDUL HABIB aka HABIB ALI**, of Olosara, Sigatoka.  
Farmer.

**PLAINTIFF**

**AND** : **MOHAMMED ISHAK aka MOHAMMED ISAKH**, the  
sole EXECUTOR AND TRUSTEE OF THE ESTATE  
OF RAMZAN ALI of Olosara Sigatoka, Businessman

**DEFENDANT**

**BEFORE** : Hon. A.M. Mohamed Mackie-J

**COUNSEL** : Ms. Koroitamudu – For the Plaintiff.

: Mr. J. K. Singh, with Ms. Kumar K. - For the Defendant.

**DATE OF HEARING** : 26<sup>th</sup> February 2025.

**WRITTEN SUBMISSIONS:** No written submission filed by both parties.

**DATE OF JUDGMENT** : 09<sup>th</sup> June 2025.

**JUDGMENT**

1. Before me is an **Amended Originating Summons** filed by the Plaintiff on 28<sup>th</sup> February 2023, subsequent to his Originating Summons filed on 31st January 2023 supported by his Affidavit sworn on 20<sup>th</sup> January 2023 and filed along with annexures marked as “AH-1” to “AH-7”.

2. By the said Amended Originating Summons, the Plaintiff seeks the following Orders against the Defendant.
  - a. *THAT the Defendant by virtue of the will dated 17th November, 2005 and grant of Probate No. 48712 to proceed with the execution of LOT 1 SO 8981 – Tavanasaisai & Muasara (Pt Of) Formerly Bal Lot 4 SO 1453 (LD Reference NO: 4/11/2646) and transfer the same to the Plaintiff;*
  - b. *THAT should the Defendant failed to Execute and Transfer LOT 1 SO 8981 – Tavanasaisai & Muasara (Pt Of) Formerly Bal Lot 4 SO 1453 (LD Reference NO: 4/11/2646) and transfer the same to the Plaintiff, the Deputy Registrar of the High Court be appointed to execute the same forthwith.*
  - c. *THAT all costs incurred by the Plaintiff to be paid by the Defendant.*
  - d. *SUCH further Orders and/relief as to this Honorable Court deems just and expedient.*
3. The Amended Originating Summons states that it is made pursuant to Order 7 Rule 2 of the High Court Rules 1988 and section 38 of Succession, Probate and Administration Act 1970 and inherent jurisdiction of this Court.
4. After filing of Affidavits in opposition and reply , number of adjournments being granted to consider settlement between the parties, when the matter came up for hearing of the Amended Originating Summons on 18<sup>th</sup> September 2024 , Counsel for the Defendant raised 2, purported, preliminary objections and the Court, having heard both Counsel on the same , by its Ruling dated 11<sup>th</sup> November 2024 overruled the said objections and refixed the matter for hearing, with an Order for cost in a sum of \$400.00 payable by the Defendant unto the Plaintiff. (Vide Ruling dated 11<sup>th</sup> November 2024.)
5. Though, the hearing was taken up on 26<sup>th</sup> February 2025, as Counsel for both parties agreed to have this matter sorted out amicably through the intervention of Court, a further mention date was granted for both parties to personally appear before me on 18<sup>th</sup> March 2025, which fell in the Holy Month of Ramadhan, with the hope that both parties, being the followers of Islam and close relatives, would probably settle the matter by way of mutual understanding.
6. Accordingly, when the matter came up before me on 18<sup>th</sup> March 2025, though the Defendant was represented by his Counsel, he did not appear before me. Hence the opportunity of the intervention of the Court to arrive at a settlement was averted. However, the Plaintiff, who was represented before me by his son, was agreeable to have the half (1/2) share of the subject Land in dispute in terms of the Will left by the deceased and as per the Deed of Family arrangement dated 15<sup>th</sup> December 1976.

7. The only issues that the Defendant had raised against the grant of the reliefs sought by the Plaintiff in his Amended Originating Summons had come up in the form of purported, preliminary objections by the defendant's Counsel, which are reproduced below for the sake of easy reference.
  - a. *That the Plaintiff could not have commenced this action by way of Originating Summons as the Plaintiff is seeking the interpretation of the Will, thus this becomes a triable issue. As such, this action has to be converted as a writ action.*
  - b. *The Plaintiff is relying up on a Deed of family arrangement which has not been consented to by the Director of Lands. Thus, the Deed amounts to dealing with the land pursuant to Section 12 of the Land Transfer Act.*
8. With the disposal of the aforesaid preliminary objections in favor of the Plaintiff, as stated in paragraph 4 above, I don't find any other issues here that would preclude the grant of reliefs sought by the Plaintiff.
9. What the Plaintiff seeks is nothing but his entitlement in terms of the Last Will and the Deed of Family Settlement. The Defendant has not advanced any argument that would justify the refusal of the Plaintiff's claim. The Defendant appears to be trying to avoid the Plaintiff getting his due share, and to confine the Plaintiff's area of cultivation only to the extent of 3.36 acres.
10. The Defendant's so-called preliminary objections have been overruled as they were found to be frivolous and raised with the intention of delaying the process and/or frustrating the Plaintiff. In his Affidavit in opposition the Defendant has admitted that he is the Executor & Trustee of his Father's Will, the Plaintiff was given 5 ½ Acres out of the Subject land and the **Plaintiff is now cultivating only 3.36 acres out of it.**
11. It is on record, that the parties were attempting a settlement in terms of the Will and the Deed of Family arrangement dated 15<sup>th</sup> December 1976. On careful reading of the contents of the Will and those of the Deed of Family arrangement, the intention of the Testator and that of the parties for the Deed of Family Arrangement is very clear. The Defendant has not convinced this Court with any sound legal or factual arguments to disallow the reliefs sought by the Plaintiff as per his amended Originating summons.
12. As to the extent of the land to be distributed, I don't see any ambiguity. At the end of the day, when the presently available total extent is ascertained by a Survey, with the consent of the Director of Lands, it is nothing but the physically available current extent that will be shared between the Plaintiff and the Defendant equally. The terms "*More or less*" found in the Will need not create any confusion or ambiguity. Whatever the extent physically available will have to be shared between the parties in terms of the Will and the Deed Family arrangement.

13. I don't find any further need for the interpretation of the term "*more or less*" in the last Will and the Deed of Family arrangement. The contents therein are clear and unambiguous. The Defendant cannot be allowed any further to delay and shy-away from his duty of distribution in terms of the Last Will and the Deed of Family arrangement, as he is duty-bound to do so as the Probate- Holder and the Trustee of the Estate.

14. Considering the circumstances and the previous ordering of costs in a sum of \$400.00 on account of the said preliminary objections, the Court decides to impose a further sum of \$1,600.00 (One Thousand Six Hundred Fijian Dollars) being the summarily assessed costs on account of this substantive Application by the Plaintiff.

**FINAL ORDERS:**

1. The Plaintiff's Amended Originating Summons filed on 28 the February 2023 succeeds.
2. The Orders sought in paragraphs **(a)** and **(b)** of the aforesaid Originating Summons are hereby granted.
3. The Defendant shall pay the Plaintiff a sum of \$1,600.00 (One Thousand Six Hundred Dollars), being the Summarily assessed costs of this Application, within 21 days from the date of this Judgment.

**On this 09<sup>th</sup> day of June 2025 at the High Court of Lautoka.**



  
**A.M. Mohamed Mackie**  
 Judge  
 High Court (Civil Division)  
Lautoka

**SOLICITORS:**

**Messrs. KOROITAMUDU LAWYERS- Barristers & Solicitors- For the Plaintiff.**

**Messrs. J.K. SINGH LAWYERS- Barristers & Solicitors- For the Defendant.**