

IN THE HIGH COURT OF FIJI AT SUVA

PROBATE JURISDICTION

Civil Action No. HPP 101 of 2024

**IN THE MATTER OF THE ESTATE OF
SALOTE SUKA TUIVAGA** also known as
SALOTE SUKAMAITAMAVUA late of
Waqadra, Nadi, Retired, Testate

BETWEEN: **ARIETA VAKACEGU VARO** of 48 Dratabu, Nadi the sole
Executrix and Trustee of the Estate of **SALOTE SUKA
TUIVAGA** also known as **SALOTE SUKAMAITAMAVUA**
late of Waqadra, Nadi, in the Republic of Fiji, Deceased,
Testate.

Applicant

AND: **TARAIVINI SERU LALA** OF 3944 Mayette Avenue,
Apartment 2 Santa Rosa California, 9545 as the Administratrix
of the Estate of **SALOTE SUKAMAITAMAVUA** late of
Waqadra, Nadi in the Republic of Fiji, Deceased

Respondent

RULING

For the Applicant: Ms. L Lazel

For the Respondent: Ms S. Prasad

Date of Ruling: 16th June 2025

Introduction

1. This is an application by the Respondent to have this matter struck out on the grounds that it should have been begun as a Writ pursuant to Order 76 Rule 2(1) and 2 (2) of the High Court Rules.

Background

2. The deceased, **SALOTE SUKA TUIVAGA** also known as **SALOTE SUKAMAITAMAVUA** died testate on the 24th of February 2013 at Matavolivoli Village, Nadi in the Western Division. In her Will, made on 13th March 2012, **ARIETA VAKACEGU VARO** is named as the sole Executrix and Administrator of the Estate.
3. Ten years after the Deceased passed away, **TARAIVINI SERU LALA** applied on 28th April 2023 for Letters of Administration, believing that the deceased had died intestate. Her application was vetted by the High Court Registry and the file does not disclose any letter from her solicitors or any reply from the High Court that a search had been made in the Probate Registry for a Will of the Deceased as required by the Chief Justice's Practice Direction No. 2 of 2012 which states at paragraph 4:

It shall be mandatory for a Request for Will Search to be conducted by an applicant at the Registry prior to the filing of any application for grant.
4. As a result of that oversight, Taraivini Lala of Santa Rosa, California, USA applied for and was granted Letters of Administration No. 71609 on 13th June 2023 for the Estate of the Deceased.
5. Taraivini Seru Lala, Arieta Vakacegu Varo and the Deceased are sisters.

HPP 101 OF 2024

6. On 30 August 2024, the Applicant in this matter, **ARIETA VAKACEGU VARO** applied via an Inter-Partes Originating Summons for;
 - a. the revocation of Letters of Administration No. 71609 issued to the Respondent, **TARAIVINI SERU LALA** on 13th June 2023; and
 - b. Probate No 72183 for "grant on Will dated 13th March 2012.
7. On 17th September, the Court ordered the Respondent to file their affidavit in opposition by 15th October 2024, and for the affidavit in reply to be filed by 22nd October 2024 and set the matter for hearing on 13th November 2024.
8. The affidavit in opposition was filed on 8th of November 2024 and the affidavit in reply was filed on 20th February 2025.

9. On 16th May 2025, the matter was called before me for the first time. Plaintiff's counsel said he had not been served yet with the response. Defendant counsel applied for the matter to be struck out on the grounds that the application should have been filed by way of writ as required by Order 76 rule 2 (1) & (2) of the High Court Rules.

The first issue—Compliance with Order 76 Rules 2 & 4

10. Oder 76 Rule 2 (1) states:

2(1) a probate action must be begun by writ and the writ must be issued out of the Registry.

(2) Before a writ beginning a probate action is issued, it must be indorsed with:

-

(a) a statement of the nature of the interest of the plaintiff and of the defendant in the estate of the deceased to which the action relates; and

(b) a memorandum signed by the Registrar showing that the writ has been produced to him for examination

11. The Plaintiff did not comply with this rule and in *Brij Ram v Michael Ban Deo*¹, Thompson JA said that the failing to comply with Order 76 rule 2 is a mere irregularity and can be cured by regularising the proceedings. In *Kumar v Lata*² the High court applied the ratio in *Brij Ram v Michael Ban* (supra) and refused to strike out the action but ordered the Plaintiff to rectify the problem by filing a Writ of Summons using the Order 2 Rule 1. Order 2 rules 1 sates:

*Order 2 Rule 1 (1) – Where, in beginning or purporting to begin any proceedings, or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, Whether in respect of time, place, manner, **form** or content or in any other respect, **the failure shall be treated as an irregularity** and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order made therein.*

Order 2 Rule 1 (2)- subject to paragraph 3, the Court may, on the ground that there has been such a failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in

¹ FCA Repos 94/552 ABU 49/94

² 2010] FJHC 461; HPP49332 (14 October 2010)

part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercises its powers under these Rules to allow such amendments(if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

Order 2 Rule 1 (3)-The court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these Rules to be begun by an originating process other than the one employed.

12. Order 76 (1) of the High Court Rules states:

(1) This order applies to Probate causes and matters, and the other provisions of these rules apply to those causes and matters including application for the rectifications of a will subject to the provisions of this Order.

13. The application of Order 2 Rules (1)(3) to Order 76 rule 2 means that there is no need to strike out for non-compliance if the matter can be regularised.

Result

14. The Application should be dismissed, and the Plaintiff is to file a Writ of Summons and comply with the other provisions of Order 76.

Should the Letters of Administration be revoked?

15. The Defendant was issued Letters of Administration No. 71609 on 13th of June 2023 on the basis that the deceased died intestate. Now that a Will has been discovered, the basis for the grant no longer exists. The estate of the deceased should be protected, and the Respondent should therefore comply with Order 76 Rule 4 (1)(b) and lodge the Letters of Administration No. 71609 at the Probate Registry in Suva High Court.

Result

16. The Respondent is to lodge the Letters of Administration No.71609 at the Probate Registry within 14 days.

Orders

The Court makes the following Orders: -

1. The application to strike out the Originating Summons is dismissed.
2. The Plaintiff is to file a Writ of Summons as required under Order 76 Rule 1 within 14 days and comply with other orders of Order 76 of the High Court Rules.
3. The Respondent is to comply with Order 76 rule 4 (1) (b) and lodge Letters of Administration No. 71609 issued to her on 13th of June 2023 at the Probate Registry in the High Court in Suva within 14 days.
4. Costs in the cause.


.....
Penijamini R Lomaloma
Acting Puisne Judge

