

**IN THE HIGH COURT OF FIJI  
AT SUVA  
APPELLATE JURISDICTION**

**Civil Appeal No. 21 of 2024**

**Magistrates Court Case No. 1 of 23  
SCT Claim No. 508 of 2022**

**BETWEEN:            PETER SAVONA**

**Applicant**

**AND:                 SERUPEPELI SERUVATU**

**Respondent**

**Representation:**

**Applicant:** Present - In Person

**Respondent:** Not Present

**Date of Hearing:** 18<sup>th</sup> February 2025

**Ruling**

**A.    Introduction**

[1]    The Applicant has filed a notice of motion for enlargement of time and that the execution of the Ruling dated 17<sup>th</sup> January 2024 be stayed pending the determination of the appeal out of time, that leave be granted to file a notice of appeal and grounds of appeal out of time and any other orders this court deems just and proper.

[2]    The motion is accompanied by an affidavit of the Applicant. The Respondent was served the motion. He appeared in Court on 11<sup>th</sup> December 2024. He sought time to seek legal advice. He wished to represent himself. I gave him 2 weeks to get legal advice and file response. He has not appeared in Court after that date. Neither has he filed a response.

**B.    History of the Matter**

[3]    The matter commenced in the Small Claims Tribunal (SCT) in February 2022. Where the Applicant was the Respondent and the current Respondent was the Claimant. On 6<sup>th</sup> April 2022, the Tribunal ordered in favour of the Claimant.

[4]    On 31<sup>st</sup> August 2023 a motion was filed on behalf of the Applicant in the Magistrates' Court seeking leave to appeal the SCT Ruling out of time and stay the JDS and other proceedings. On 17<sup>th</sup> January 2024 the Learned Magistrate delivered a Ruling and dismissed the application and ordered no costs.

C. **Determination**

[5] In **Katafono v. Brown unreported Civil Action No. HBC 135 of 2014** and **Jans Rental Cars (Fiji) Limited v. Nand and Lutz, unreported Civil Action No. HBM 147 of 2014**, His Lordship Justice Kamal Kumar (as he then was) looked at the issues of leave to appeal out of time. Justice Kumar opined that under Order 3 Rule 9 of the Magistrates Court Rules, the High Court and the Magistrates' Court has jurisdiction and discretion to extend time for filing notice of intention to appeal and grounds of appeal.

[6] **Nand v. Famous Pacific Shopping (NZ) Limited (2010) FJHC 619; Civil Appeal No. 6 of 2009** and **Loks Crane and Contractors Limited –v- Clutch Systems (Fiji) Limited unreported Civil Appeal 31 of 1999 Lautoka** delivered 17 July 2002 per Gates J (as he then was)) set out the four issues the Court must deal with when it is exercising its discretion in dealing with the issue of enlargement or leave to appeal out of time. These are:

- (a) the length of the delay,
- (b) the reasons for the delay,
- (c) the merits of the proposed defence, and
- (d) any prejudice likely to result to the Respondent.

[7] The length of the delay is about 11 months. The reasons for the delay is mainly the Applicant relying on the advice he received from the court personnel. He has been self-represented. The time lines have not been adhered to. No emphasis has been placed on the timelines and as a result the timelines were not followed. I have perused the Applicant's grounds of appeal. Without dwelling deeper into it I find that the grounds have merit. I find that there will be no prejudice to the Respondent if the Applicant is granted leave and time for appeal is extended. The matter is stayed pending the hearing of the appeal. I give the Applicant 7 days from today to file the grounds of appeal. The Applicant is to serve the Respondent the grounds of appeal. There will be no orders as to costs.

D. I **Order** as follows:

- (a) That the time for appeal be extended.
- (b) The Applicant is given 7 days from today to file the Grounds of appeal. He is to serve the Respondent the grounds of appeal.
- (c) The matter is stayed pending the determination of the appeal.
- (d) There will be no orders as to costs.

.....  
Chaitanya S.C.A Lakshman  
Puisne Judge



27<sup>th</sup> February 2025

IN THE HIGH COURT OF FIJI  
AT SUVA  
PROBATE JURISDICTION

HBC Action No. 30 of 2024

IN THE ESTATE of ACHANDER NAIR  
also known as ACHUDAN NAIR also  
known as ACHAUDAN NAIR also known  
as ACHANDU NAIR also known as  
AJUDHAN NAIR also known as  
AJUNDAN NAIR late of Basoga, Labasa,  
Fiji cultivator, Deceased Intestate.

BETWEEN: NARENDRA NAIR of Valebasoga, Labasa, Digger operator as the  
beneficiary in the Estate of ACHANDER NAIR also known as  
ACHUDAN NAIR also known as ACHAUDAN NAIR also known as  
ACHANDU NAIR also known as AJUDHAN NAIR also known as  
AJUNDAN NAIR.

PLAINTIFF

AND: RAVIND NAIR of Valebasoga, Labasa, Digger operator as the  
Administrator De Bonis Non in the Estate of ACHANDER NAIR also  
known as ACHUDAN NAIR also known as ACHAUDAN NAIR also  
known as ACHANDU NAIR also known as AJUDHAN NAIR also  
known as AJUNDAN NAIR.

DEFENDANT

Representation:

Plaintiff: Mr A. Prasad (Legal Aid).

Defendant: No Appearance or any Representation.

Date of Hearing: 6<sup>th</sup> February 2025.

Ruling

[1] The Plaintiff's filed originating summons seeking the following orders against the Defendant:

- "1. That the Defendant distributes the estate property being State Lease No. 19745 Sec X111 subdivision of Bulileka settlement, Macuata, Labasa, having an area of 1.080 Hectares being Lot 8 Plan No. M1773 by transferring h[is] entitlement in the Estate of ACHANDER NAIR also known as ACHUDAN NAIR also known as ACHAUDAN NAIR also known as ACHANDU NAIR also known as AJUDHAN NAIR also known as AJUNDAN NAIR as provided under the Succession, Probate and Administration Act;

2. *An order against the Defendant for the administration and distribution of the estate property ACHANDER NAIR also known as ACHUDAN NAIR also known as ACHAUDAN NAIR also known as ACHANDU NAIR also known as AJUDHAN NAIR also known as AJUNDAN NAIR with all necessary and proper accounts.*
3. *The Defendant indemnify the Plaintiff of all costs of this application; and*
4. *Any other Order deemed just and equitable in the circumstance(s)."*

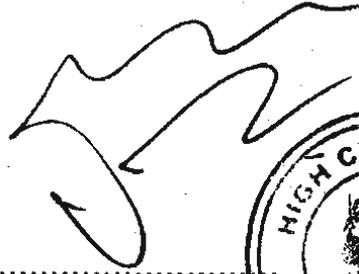
- [2] The summons is accompanied by an affidavit of Narendra Nair. The application is made under Order 85 of the High Court Rules 1988 and Section 6 (1) (c) (i) of the Succession Probate and Administration Act 1970. An affidavit of service has been filed that the Defendant was personally served on 19<sup>th</sup> February 2024. A notice of appointment to hear the summons was served on the Defendant on 22<sup>nd</sup> November 2024.
- [3] The Plaintiff in his affidavit avers that the deceased did not leave a will. Their mother was the Administratrix and then she passed away. There are 10 siblings who are beneficiaries of the estate. They are entitled to shares. On 12<sup>th</sup> May 2015 the Defendant was issued Letters of Administration De BonisNon.
- [4] The Plaintiff as a beneficiary is seeking that the Defendant, Administrator distribute the estate property. He is also seeking that the Defendant disclose the assets and provide the accounts. The Plaintiff is entitled to these. The Defendant has not responded to the Plaintiff's claim. An Administrator of an Estate is accountable to the beneficiaries and accountable for the assets of the Estate.
- [5] The Defendant is to promptly distribute and administer the estate property being State Lease No. 19745 Sec X111 subdivision of Bulileka settlement, Macuata, Labasa, having an area of 1.080 Hectares being Lot 8 Plan No. M1773 by transferring the beneficiaries entitlement in the Estate of ACHANDER NAIR also known as ACHUDAN NAIR also known as ACHAUDAN NAIR also known as ACHANDU NAIR also known as AJUDHAN NAIR also known as AJUNDAN NAIR as provided under the Succession, Probate and Administration Act. The Defendant is to promptly render the accounts of the Estate of ACHANDER NAIR also known as ACHUDAN NAIR also known as ACHAUDAN NAIR also known as ACHANDU NAIR also known as AJUDHAN NAIR also known as AJUNDAN NAIR. Orders in terms of originating summons. No orders as to costs.

### Court Orders

- (a) *That the Defendant promptly distributes the estate property being State Lease No. 19745 Sec X111 subdivision of Bulileka settlement, Macuata, Labasa, having an area of 1.080 Hectares being Lot 8 Plan No. M1773 by transferring the beneficiaries entitlement in the Estate of ACHANDER NAIR also known as ACHUDAN NAIR also known as ACHAUDAN NAIR also known as ACHANDU NAIR also known as*

AJUDHAN NAIR also known as AJUNDAN NAIR as provided under the Succession, Probate and Administration Act

- (b) The Defendant is to promptly render the accounts of the Estate of ACHANDER NAIR also known as ACHUDAN NAIR also known as ACHAUDAN NAIR also known as ACHANDU NAIR also known as AJUDHAN NAIR also known as AJUNDAN NAIR.
- (c) No orders as to costs.



.....  
Chaitanya S.C. A Lakshman  
Puisne Judge



27<sup>th</sup> February 2025