

IN THE HIGH COURT OF FIJI
AT SUVA
PROBATE JURISDICTION

Probate Action No. HPP 37 of 2013

IN THE ESTATE of **SUERSH** late of Narain Heights, Savusavu in the Republic of Fiji Islands, Police Officer, Deceased, Testate.

BETWEEN : **SHRI RAMAN NAIR** of Narain Heights, Savusavu in the Republic of Fiji Islands, Driver.

CITOR

AND : **UMA LACHMI NAIDU** of 7 Rainwood Street, Bracken Bridge, Brisbane, Australia, Civil Servant.

CITEE

BEFORE : **Master Thushara Rajasinghe**

COUNSEL : **Mr. Raman Singh o.i. Samusamuvodre Sharma Lawyers** for the Citor
Mr. Singh R for the Citee

Date of Hearing : 26th May, 2014

Date of Ruling : 22nd October, 2014

RULING

A. INTRODUCTION

1. This is an interlocutory summons filed by the Citee seeking following orders inter alia that;
 - i. That the action against the Citee be dismissed;
 - a. As it discloses no reasonable cause of action against the Citee,
 - b. It is otherwise an abuse of the process of the court,
 - ii. Costs on a solicitor indemnity basis,
 - iii. Any further or other order or relief as this Honourable court may deem fit in the circumstances,

2. This Summons was set down for hearing on 26th of May 2014, where the learned counsel for the Citor and Citee made their respective arguments and submissions. The learned counsel for the Citee tendered his written submissions at the conclusion of the hearing. Having considered the respective submissions of the parties, I now proceed to pronounce my ruling as follows.

B. BACKGROUND,

3. The Citor instituted this action pursuant to rules 45 and 46 of the Non-Contentious Probate rules (actually it should be rules 46 and 47 of the Non-Contentious Probate rules 1987) to bring the grant of letters of administration issued on the Citee by the Supreme Court of Queensland which has been resealed in Fiji on 24th of July 2012 in respect of the estate of Suresh. The Citor alleges that late Suresh has executed his last will and testament on 20th of July 2010 and he is the appointed executor and trustee of the estate. While stating his ground for this application, the Citor sought an order against the Citee to bring into and leave in the high court registry in the Probate jurisdiction the letters of administration issued by the Supreme Court of Queensland which has subsequently been resealed in Fiji on 24th of July 2012 in respect of the estate of Suresh.
4. The Citee filed his appearance of citation on 9th of December 2013. In his appearance of citation, the Citee alleges that the purported last will of the late Suresh is a forgery. The Citor filed his response to appearance of citation on 8th of February 2014.

C. THE LAW,

5. The Citor instituted this action pursuant to rules 45 and 46 of the Non-Contentious Probate Rules 1954, (Herein after referred as rules) (Rules 46 and 47 of the 1987 rules).
6. Rule 45 has provided the general requirement for the citation proceedings, where it states that;

- i. *Any citation may issue from the principal registry or a district probate registry and shall be settled by a registrar before being issued.*
- ii. *Every averment in a citation, and such other information as the registrar may require, shall be verified by an affidavit sworn by the person issuing the citation (in these Rules called "the citor") or, if there are two or more citors, by one of them:*

Provided that the registrar may in special circumstances accept an affidavit sworn by the citor's solicitor.

- iii. *The citor shall enter a caveat before issuing a citation.*
- iv. *Every citation shall be served personally on the person cited unless the registrar, on cause shown by affidavit, directs some other mode of service, which may include notice by advertisement.*
- v. *Every will referred to in a citation shall be lodged in a registry before the citation is issued, except where the will is not in the citor's possession and the registrar is satisfied that it is impracticable to require it to be lodged.*
- vi. *A person who has been cited to appear may, within eight days of service of the citation upon him inclusive of the day of such service, or at any time thereafter if no application has been made by the citor under paragraph (5) of rule 46 or paragraph (2) of rule 47, enter an appearance in the registry from which the citation issued by filing form 6, and shall forthwith thereafter serve on the citor a copy of form 6 sealed with the seal of the registry.*

7. Rule 46 has provided the procedure for citation to accept or refuse or to take a grant, where it states that;

- i. *A citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.*
- ii. *Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved.*

- iii. *A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of six months from the death of the deceased:*

Provided that no citation to take a grant shall issue while proceeding as to the validity of the will are pending.

- iv. *A person cited who is willing to accept or take a grant may apply ex parte to a registrar for an order for a grant on filing an affidavit showing that he has entered an appearance and that he has not been served by the citor with notice of any application for a grant to himself.*
- v. *If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may –*
- a. *in the case of a citation under paragraph (1) of this rule apply to a registrar for an order for a grant to himself;*
 - b. *in the case of a citation under paragraph (2) of this rule, apply to a registrar for an order that a note be made on the grant that the executor in respect of whom power was reserved has been duly cited and has not appeared and that all his rights in respect of the executorship have wholly ceased;*
 - c. *in the case of a citation under paragraph (3) of this rule, apply to a registrar by summons (which shall be served on the person cited) for an order requiring such person to take a grant within a specified time or for a grant to himself or to some other person specified in the summons.*
- vi. *An application under the last foregoing paragraph shall be supported by an affidavit showing that the citation was duly served and that the person cited has not enter an appearance.*
- vii. *if the person cited has entered an appearance but has not applied for a grant under paragraph (4) of this rule, or has failed to prosecute his application with paragraph (4) of this rule, or has failed to prosecute his application with reasonable diligence, the citor may –*

- a. *in the case of a citation under paragraph (1) of this rule, apply by summons to a registrar for an order for a grant to himself;*
- b. *in the case of a citation under paragraph (2) of this rule, apply by summons to a registrar for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in subparagraph (b) of paragraph (5) of this rule;*
- c. *in the case of a citation under paragraph (3) of this rule, apply by summons to a registrar for an order requiring the person cited to take a grant within a specified time or for a grant to himself or to some other person specified in the summons; and the summons shall be served on the person cited.*

8. Rule 47 deals with the citation to propound a will, where it states that;

- “(1) A citation to propound a will shall be directed to the executors named in the will and to all persons interested thereunder, and may be issued at the instance of any citor having an interest contrary to that of the executors or such other persons.*
- (2) If the time limited for appearance has expired, the citor may –*
 - (a) in the case where no person cited has entered an appearance, apply to a registrar for an order for a grant as if the will were invalid;*
 - (b) in the case where no person who has entered an appearance proceeds with reasonable diligence to propound the will, apply to a registrar by summons (which shall be served on every person cited who has entered an appearance) for such an order as is mentioned in paragraph (a) above”.*

9. In view of rule 45, 46 and 47, it appears that the citation proceedings could be instituted only on following grounds, that;

- i. A citation can be issued to accept or refuse a grant to any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.
- ii. Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant,

- iii. A citation calling on executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant,
- iv. A citation to propound a will shall be directed to the executors name in the will and to all persons interested thereunder,

10. In this instance case, the citor instituted this proceedings against the citee to bring the letters of administration granted by the Supreme Court of Queensland in respect of the estate of Suresh which was subsequently resealed in Fiji in order to revoke and declaration to null and void the same on the grounds stated in the citation. Apparently the grounds stated in this citation proceedings do not fall within the stipulated grounds stated under rule 45, 46 and 47 of the Rules to institute a citation proceedings. Under such circumstances, it is my conclusion that the citor has no proper ground to institute this action, which in fact amount to a disclose on reasonable cause of action against the cite as well as an abuse of the process of the court. I accordingly make following orders that;

- i. The Citation to bring in grant filed by the Citor on 24th of July 2013 is hereby struck out on the grounds of discloses no reasonable cause of action and an abuse of the process of the court,
- ii. The Citee is awarded with \$1,000 cost assessed summarily,

Dated at Suva this 22nd day of October, 2014.



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R.D.R. Thushara Rajasinghe
Master of High Court, Suva