

**IN THE HIGH COURT AT LABASA**  
**CIVIL JURISDICTION**

**CIVIL ACTION No. 68 of 2014**

**BETWEEN:** **KRISHNA SAMI** of Labasa, Business

**APPLICANT**

**AND:**

**DEOKI NAIDU** of Vulovi, Labasa, Domestic Duties.

**1<sup>st</sup> RESPONDENT**

**AND:**

**DEOKI NAIDU** of Vulovi, Labasa, Domestic Duties as the  
Administratrix of the estate of Shiu Sami Naidu.

**2<sup>nd</sup> RESPONDENT**

**BEFORE:** Hon. Justice K. Kumar

**COUNSEL:** Mr M Sadiq for the Plaintiff

No Appearance for the Defendants

**DATE:** 05 December 2014.

**EXTEMPORE RULING**

This file was referred to me by the Learned Master. Upon perusal of this file it appeared to me that the Motion is an attempt to deprive the other beneficiaries of the Estate of Shiu Sami Naidu (2<sup>nd</sup> defendant). I then called for file in respect of Civil Action No. 46 of 2012 (related action) and noted that Judgement by Default was entered and damage assessed in the sum of \$480,516.00 and \$500.00 cost. I also caused search to be conducted at Probate Registry and found out that in addition to Plaintiff and 1st Defendant there are 4 other beneficiaries in the Estate of Shiu Sami Naidu.

I have had a relook at the evidence and claim in Action No. 46 of 2012 and noticed the following in respect to the Statement of Claim:-



Paragraph 5(a): Claim of \$139,835.00 from 1995 to 2002.

- Shiu Sami Naidu died in 1996. Question that needs to be answered is how come Plaintiff can claim for repayments made from 1995 when he was 18 years old and Shiu Sami Naidu was alive to 2002 when plaintiff was only 23 years old?

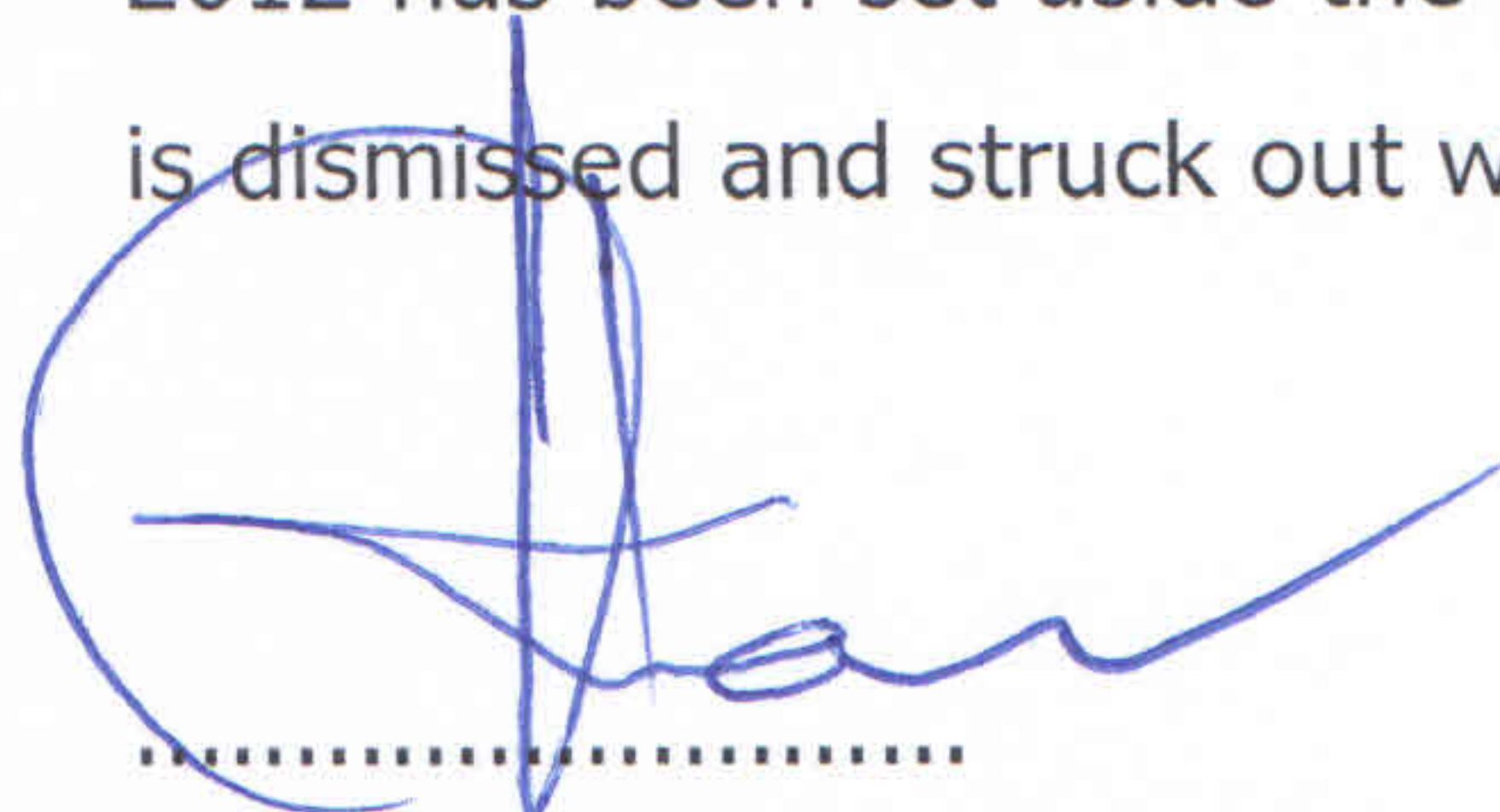
Paragraph 5(b) - \$204,051.08 - Colonial National Bank from 2002 to 2007.

- This Bank account is in the name of the plaintiff as appears from the Account prepared by Sheik and Company and submitted to Court.
- How can plaintiff claim for his debt from the Defendants?
- If CNB debt was used to pay Defendants debt at Home Finance Company Ltd then why is Home Finance Debt added to Colonial National Bank debt?
- There was also no evidence to substantiate claim in paragraphs 5(c) to (e), of the Statement of claim.

It appears that the Assessment of Damages was obtained by dubious and fraudulent means as such in exercise of this Courts inherent jurisdiction I set aside the order made on 22 November 2013 and sealed on 11 June 2014 whereby the Learned Master assessed damages in Civil Action No 46 of 2012 and direct that the said action be called before the Master of the High Court to allocate it to a Judge for Assessment of Damages.

In this matter any order made may deprive the beneficiaries of the Estate for Shiu Sami Naidu and may affect rights of secured and unsecured creditors.

Accordingly and in view of the fact that damages assessed in Civil Action No. 46 of 2012 has been set aside the Originating Motion dated and filed on 6 November 2014 is dismissed and struck out with no order as to costs.



K. Kumar.

Judge.

