

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

HPP No.: 32 of 2010

BETWEEN : 1) **MEREANI CAMAIBATI** of Lot 4, Flat 34, Viria West, Waqatabu Street, Vatuwaqa, Suva, Domestic Duties
2) **SALOME TALEACAGI**, late of Lot 4, Flat 34 Viria West, Waqatabu Street, Vatuwaqa, Suva, Deceased

PLAINTIFFS

AND : **THE PUBLIC TRUSTEE CORPORATION LIMITED**

DEFENDANT

Counsel : **Mr. Tuberi for the Plaintiff**
Ms. May R. J for the Defendant

Date of Hearing : **22nd June, 2015**

Date of Judgment : **30th June, 2015**

JUDGMENT

INTRODUCTION

1. This is an Originating Summons seeking removal of Public Trustee Corporation Ltd (The Defendant) as the administrator (sic) of the Estate of Inia Raiyawa and appointment of the Plaintiffs as the executrixes and trustees of the said estate. Late Inia Raiyawa made a last will and in that will he had named the Defendant as the executor and the only beneficiary according to the said will was a daughter of the deceased named Sulita Maramaitukana. The Plaintiffs are not challenging the will of the deceased but had filed this application seeking removal of the executor named in the will as well as the production of the accounts of the estate. The Plaintiffs make this application as the daughters of late Inia Raiyawa.

FACTS

2. The Plaintiffs are two daughters of late Inia Raiyawa. He had a last will where, the Defendant was appointed as the sole executor of his estate. The said last will also named Sulita Maramaitukana as the sole beneficiary of his estate. Late Inia Raiyawa died on 5th October, 2007. At the time of death of her father, said Sulita was alive but before the full administration of the estate by the Defendant she died on 25th July, 2009.
3. Late Sulita Maramaitukana died interstate and at the time of demise she was married to Michael Jack Chang, who is not a party to this action.
4. The Plaintiffs are two daughters of the late Inia Raiyawa who were left out from the will of their father either as trustees or as beneficiaries, but now seek removal of Defendant as the executor and also seeking an order of the court to appoint them as trustees of the estate of their father.

ANALYSIS

5. Late Inia Raiyawa had appointed the Defendant as the sole executor of his last will and the sole beneficiary of the estate was his daughter Sulita Maramaitukana and she inherited the residue of the estate after settlement of debts.
6. Before the full administration of the estate of Inia Raiyawa by the Defendant the sole beneficiary of the said estate, namely Sulita Maramaitukana, died intestate on 25th July, 2009.
7. At the time of death late Sulita Maramaitukana was married to Michael Jack Chang and he is the sole administrator as well as the beneficiary of the estate of his late wife Sulita, in terms of the law.
8. In the affidavit in reply filed by 1st named Plaintiff at paragraphs 7 and 12 state failure to perform the duties by the Defendant resulted in late Sulita dying intestate. This is an

inaccurate contention as there was nothing preventing late Sulita to make a last will if she desired, irrespective of the status of her inheritance from the estate of her father. At paragraphs 9 & 12 of the same affidavit accused the Defendant for the failure to properly advise late Sulita to execute her last will. This again cannot be accepted. There was no such obligation vested with the Defendant as the executor of the estate of her father.

9. The contention that inheritance from a last will cannot be distributed beyond the lifetime of the beneficiary is also wrong in law. If the beneficiary under the will had died before the full distribution the share should devolve to the estate of the deceased beneficiary.
10. The law relating the grant of letters of administration relating to intestacy is contained in the Part IV. of Succession, Probate and Administration Act (Cap 60), and Section 7(a) applies in this instance. Section 7 of Succession, Probate and Administration Act (Cap 60) states as follow:

‘GRANTS OF LETTERS OF ADMINISTRATION

Persons entitled to grant

7. The court may grant administration of the estate of a person dying intestate to the following persons (separately or conjointly) being not less than 21 years of age-

(a) the husband or wife of the deceased; or

(b) if there is no husband or wife, to one or more of the next of kin in order of priority of entitlement under this Act in the distribution of the estate of the deceased; or

(c) any other person, whether a creditor or not, if there is no person entitled to a grant under paragraphs (a) and (b) resident within the jurisdiction and fit to be so entrusted, or if the person entitled as aforesaid fails, when duly cited, to appear and apply for administration.(emphasis added)

11. So the contention on behalf of the Plaintiffs fails and the person who should get the priority in the administration of late Sulita’s estate in terms of the Succession, Probate

and Administration Act (Cap 60) is her husband and not the Plaintiffs. The deceased sister of the Plaintiffs did not have a last will at the time of death hence the distribution of her estate is also according to the law.

12. The law relating to the distribution of the intestacy is contained in the Part III of the Succession, Probate and Administration Act (Cap 60).

13. Section 5 of the Succession, Probate and Administration Act (Cap 60) states as follows

*'5. Notwithstanding anything to the contrary contained in any laws in force in Fiji at the date of commencement of this Act, **the property of an intestate dying on or after the date of commencement of this Act shall be distributed in accordance with the provision of this Act, and no person shall have any right, title, share, estate or interest in such property except as provided in this Act.***

14. So the distribution of any right, title, share or estate or interest therein should be in accordance with the Succession, Probate and Administration Act (Cap 60) and the succession to property on intestacy is contained in the Section 6 of the said Act as amended.

15. The Section 6(1)(2) as amended by Act No 11 of 2004 states as follows

'(a) if the intestate leaves a wife or husband, without issue, the surviving wife or husband shall take the whole of the estate absolutely'

16. There is no evidence of any issue from late Sulita Maramaitukana and it is admitted fact that she died interstate, hence the entire estate belonging to the deceased late Sulita will devolve to her husband. This will include any residue of the estate of Raiyawa, and the Plaintiffs cannot claim property of their father that devolved under his will.

17. The Plaintiffs cannot seek any interest from her estate in terms of the law. The Plaintiffs cannot inherit their late father's estate as he had a last will where the sole beneficiary was late Sulita and she had died intestate leaving her husband as the sole beneficiary

according to the law on intestacy contained in Succession, Probate and Administration Act (Cap 60).

18. In the paragraph 3 of the written submissions of the Plaintiffs state that since they are the elder siblings and have an interest of their father's estate. The Plaintiffs' father had not bequeathed the residue of the estate to late Sulita, so they were not beneficiaries of the estate of their father. In my judgment, they cannot be considered as 'beneficially interested' in the estate property of their father in terms of Section 89(1) of the Trustee Act (Cap 65).
19. The Plaintiffs' counsel had also relied on the case of Arvind Patel & Ors v. Nodhana Ltd & Ors (1994) 40 FLR 118, (decided on 26 August 1994) but again in that case, the issue was the duty of the trustee towards beneficiaries and the parties in that case had established they were beneficiaries under a trust . In contrast, the Plaintiffs are not beneficiaries of the estate of their father, according to the last will. They would not become beneficiaries of the estate of her sister according to the law.
20. In Arvind Patel (supra) it was further emphasized the duties of a trustee towards beneficiaries or to residuary legatees as follows;

'That a trustee has a duty to provide beneficiaries with accounts there can be no doubting. In Re Watson (1904) 49 Sol. Jo. 54 Kekewich J. speaking of the duty said:

"The duty of a trustee is three-fold: there is a duty to keep accounts, the duty to deliver accounts and the duty to vouch accounts ... The duty to keep accounts is an essential duty, he must keep such accounts so as to be able to deliver a proper account within a reasonable time showing what he has received and paid."

In similar vein and a good deal earlier Stuart V.C. said in Kemp v. Burn (1863) 141 R.R. 225, 226:

*"... where an account is demanded of trustees ... **by a residuary legatee**, there seems no doubt what the duty of the (trustee) is. Their duty is to keep proper accounts, and to have them always ready when called upon to render them."(emphasis added)*

21. The Plaintiffs had also relied on Order 85 rule 5(2) of the High Court Rules of 1988, but again this provision refers to a person 'beneficially entitled to the trust' and Plaintiffs failed to establish that they are beneficiaries to the estates of their father or their sister.
22. Even if I am wrong, the Plaintiffs were unable to indicate any income generated from the estates of their father. They had failed to establish any act or omission of the Defendant that 'aggrieved them' in terms of Section 90(1) of the Trustee Act (Cap. 65). So, on that basis this originating summons can be dismissed.
23. The Plaintiffs have also raised an issue of distribution of late Sulita's contributions with FNPF. These amounts in credit to a deceased member were expressly excluded from the estate of the deceased in terms of Section 43(2) of the FNPF Act (Cap 219) which was applicable law at the time of the distribution of such funds.
24. In the circumstances the originating summons is dismissed. The cost is summarily assessed at \$1,500.

FINAL ORDERS

- a. The Originating summons application is dismissed.
- b. The cost is summarily assessed at \$1,500.

Dated at **Suva** this **30th** day of **June, 2015**



Amulya
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Justice Deepthi Amaratunga
High Court, Suva