

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

Civil Action No. HPP 03 of 2015

IN THE ESTATE of MUKESH KUMAR of  
7 Ravouvou Street, Lautoka, Businessman, Testate.

COUNSEL: Ms. Devan for the Applicant  
BEFORE: Master Vishwa Datt Sharma

Date of Hearing: 18<sup>th</sup> August, 2015

Date of Ruling : 22<sup>nd</sup> April, 2016

DECISION

*(Citation to Accept or Refuse Probate of the Will or show cause why Letters of Administration in the Deceased Estate of Mukesh Kumar should not be granted to the daughter of the deceased Moushami Madhur Kumar)*

A. INTRODUCTION

1. This is an application made by **Moushami Madhur Kumar** for grant of **Letters of Administration** in the deceased's **Estate of Mukesh Kumar** filed at the Principal Probate Registry on 04<sup>th</sup> February, 2015.
2. A further Affidavit within this application has been filed by the applicant's mother Vijantimala on 04<sup>th</sup> February, 2015.
3. A grant of Letters of Administration could not be issued by the Principal Probate Registry since there were three (3) pending caveats; **HPC 16/2009, 17/2009** and **23/2000**, on the Deceased's Estate stopping issuance of any grant in the Deceased Estate without giving prior notice to the caveators.

4. Subsequently two of the three caveats **HPP 17/2009 and 23/2000** were withdrawn by the Caveators leaving caveat No.16/2009 filed by Applicant's mother, Vijantimala pending.

**B. BACKGROUND**

5. **Applicant** is the daughter of the deceased, **Mukesh Kumar** who was married to the Applicant's mother, **Vijayantimala**.  
  
Subsequently, the marriage of the Applicant's parents was dissolved on 16<sup>th</sup> November, 1999. **Mukesh Kumar** had died on 10<sup>th</sup> July, 2009.
6. The Lautoka Magistrates Court whilst dissolving the marriage of the parties between Mukesh Kumar and Vijayantimala, also dealt with maintenance Residence and Contact Orders in respective of their child, Moushami Madhur Kumar including an order on the matrimonial property located at 8 Cumpoy Place on Native Lease No. 21213 to Vijayantimala.
7. Subsequently, **Mukesh Kumar**, appealed the decision of the court to the High Court and the court ordered that this Appeal should stand for judgment. The court further ordered Mukesh Kumar to attend to the Magistrate's court orders within the Decree Nisi in respect of the transfer of Title to Vijayantimala and the settlement of the Mortgage debt owing on that property at 8 Cumpoy Place on Native Lease No. 21213 forthwith.
8. The brother of the deceased **Satendra Kumar** lodged an application seeking a grant of Letter of Administration in the **Estate of Mukesh Kumar** on 01<sup>st</sup> September, 2009.
9. Subsequently, **Sangeeta Devi** in her capacity as the appointed Executrix and Trustee of the Deceased Will also applied for a grant of Probate in the Deceased Estate on 27<sup>th</sup> November, 2009.
10. However, none of the Applicants thereafter had proceeded with their respective applications to obtain either a grant of Probate or Letters of Administration.
11. **Citation to Accept or Refuse Probate** was issued on 12<sup>th</sup> February, 2015, and served on **Sangeeta Devi** and **Satendra Kumar** commanding their appearance to warning to citation to be entered and to accept or refuse Probate of the Will, or

show cause why Letters of Administration of all the Estate which by law devolves to and vests in the personal representative of the Deceased, Mukesh Kumar, or show cause why the same should not be granted to **Moushami Madhur Kumar**. This citation is also supported by an affidavit of Vijayantimala.

C. ANALYSIS and DETERMINATION

12. It appears from the affidavits of the Applicant **Moushami Madhur Kumar** and **Vijayantimala** that **Mukesh Kumar** (Her father and former husband of Vijantimala), died on 10<sup>th</sup> day of July, 2009 at the Lautoka hospital having made and duly executed his last Will and Testament dated 24<sup>th</sup> June, 2009 and named **Sangita Devi a.k.a Sangeeta Devi** as the sole Executrix and Trustee.
13. The affidavits further depose that **Satendra Kumar**, the brother of the deceased Mukesh Kumar and **Sangita Devi a.k.a Sangeeta Devi** who was the Defacto wife of the Deceased, Mukesh Kumar also made applications in the Deceased's Estate seeking grants of Letters of Administration and Probate respectively. Both applications are still pending issuance of grants in the Deceased Estate at the High Court Probate Registry.
14. **Citation to accept or refuse probate** was issued to the two applicants, Satendra Kumar and Sangita Devi a.k.a Sangeete Devi who had impending applications seeking a grant in the Deceased Estate.
15. Subsequently, **citation** was served on both applicants by way of an advertisement in the Fiji Sun Newspaper of 03<sup>rd</sup> May, 2015. An affidavit of service has been filed by one Jope Tikoisuva deposing that he caused the Notice of Advertisement to be advertised in the Fiji Sun accordingly.
16. There had been no response by either of the Applicants to the citation to accept or refuse probate.
17. The Applicant through her Solicitors then moved this court by a **Notice of Motion** and sought for an Order that the **Letters of Administration** be granted to the **Moushami Madhur Kumar** on the following grounds-
  - (i) *Citation to Accept or Refuse Probate issued on the 12<sup>th</sup> day of February 2015 and Affidavit in Support of Moushami Madhur Kumar sworn on the 02<sup>nd</sup> day of February 2015 and the affidavit in support by Applicant's mother, Vijayantimala sworn on 02<sup>nd</sup> day of February, 2015 being served on Satendra Kumar and Sangeeta Devi by way of a Newspaper advertisement in the Fiji Sun, and there being no appearance to the Citation by either Satendra Kumar and Sangeeta Devi.*

18. Taking into considering all the above, this court finds that Satendra Kumar and Sangita Devi a.k.a Sangeeta Devi being the two Applicants interested in obtaining a grant in the Deceased Estate have failed to make any court appearance or filed and served any appearance to warning to citation and accept or refuse probate of the Will or show cause why Letters of Administration of all the Estate which by Law devolves to and vets in the personal representative of the Deceased, **Mukesh Kumar** or show cause why the same should not be granted to the Applicant in this action to Moshami Madhur Kumar.
19. The **citation** states that in the event of failure to accept or refuse Probate the Letters of Administration will be given to the daughter as pleaded in the notice of motion filed herein.
20. Accordingly, I grant the orders sought for in terms of the application.

#### ORDERS

- A. That Letters of Administration in the Estate of Mukesh Kumar is hereby granted to the Applicant, Moushami Madhur Kumar.
- B. That Vijayantimala is at liberty to withdraw her Caveat No. 16 of 2009 in order to allow the Applicant to make a formal application for a Grant.
- C. There will be no order as to costs.

Dated at Suva this 22<sup>nd</sup> day of April, 2016



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MR VISHWA DATT SHARMA  
Master of High Court, Suva

cc: Ms. Devan for the Applicant.