

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

**Civil Action No. HPP 34 of 2013**

**BETWEEN** : **LINET NEEL KUMAR** of Lautoka Domestic Duties and  
**ANITA KRISHNA KUMARI** of Suva as the next friend  
of **ASHLEY ASHNEETA KUMAR** (a minor) of Suva

**PLAINTIFFS/APPLICANTS**

**AND** : **JEETENDRA KUMAR** of Samabula, Suva in Fiji,  
Businessman

**DEFENDANT/RESPONDENT**

**BEFORE** : **Hon. Justice Kamal Kumar**

**COUNSEL** : **Mr A. Singh for the Plaintiffs/Applicants**

: **Ms M. Rakai for the Defendant/Respondent**

**DATE OF HEARING** : **8 May 2014 (Before Hon. Justice Kotigalage)**

**DATE OF JUDGMENT** : **28 June 2016**

---

**RULING**

---

## 1.0 Introduction

- 1.1 On 12 November 2013, Plaintiffs filed Inter-parte Application for Injunction and Other Ancillary Orders by Summons which was returnable on 19 November 2013.
- 1.2 On the same day Messrs. Kohli & Singh filed Notice of Change of Solicitors on behalf of the Applicants.
- 1.3 On 19 November 2013, the Summons was dismissed and struck out by his Lordship Justice Kotigalage (as he then was) due to non-appearance of any of the parties.
- 1.4 On 3 December 2013, Plaintiffs filed fresh Application seeking Injunction and Other Ancillary Orders in following terms:-
1. *An Order for the appointment until further order of the court of the 1<sup>st</sup> named Plaintiff LINET NEEL KUMAR as an Administratrix pendent lite of the Estate of Vijendra Kumar deceased on such terms and condition as the Court may deem just.*
  2. *An Order that the 1<sup>st</sup> Plaintiff is authorized by the Court inter alia to bring about prosecute and or sue the Defendant and any other persons or person for the unlawful acquisition and use and detention of the assets of the Estate of Vijendra Kumar deceased including the business assets of Warehouse Printery.*
  3. *An injunction against the Defendant restraining the Defendant from carrying on the business of Warehouse Printery formerly of 56 Grantham Rd, Suva in the name and style of Eagle Printery and the Defendant to account to the former printing press including an inventory of the electronic and other machinery, printing equipment, all other sundry equipment, motor vehicles and other tools of trade, bank accounts and the moneys in the account or with BSP Bank or any other bank or financial institution.*

4. *An Order directing the Defendant for an account of all profits, dividends and financial benefits and other fringe benefit obtained by the Defendant or either by any other persons or person by the order of or for the use of the Defendant from the property and printing business owned and operated by the deceased Vijendra Kumar.*
5. *An Order that pending the determination of the proceedings herein, the 1<sup>st</sup> named Plaintiff Linet Neel Kumar be appointed as a manager under the supervision of the Court of the printing business previously owned by the deceased Vijendra Kumar currently operated by the Defendant as Eagle Printery; the appointment of the Manager be in such terms and conditions as the Court appoint the Chief Registrar as an interim Manager on such terms and conditions as the Court deems just.*
6. *All ancillary and subsidiary orders that may be necessary to carry out the aforesaid function and for the preservation of the income and estate of Vijendra Kumar deceased including an order for costs and expenses for the Administratrix.*
7. *An Order for the costs against the Defendant."*

**("the Application")**

- 1.5 On 12 December 2013, being the returnable date of the Application, parties were directed to file Affidavits and the Application was adjourned to 11 February 2014 for hearing before his Lordship Justice Kotigalage.
- 1.6 On 20 January 2014, Messrs. Singh & Singh Lawyers filed Notice of Change of Solicitors on behalf of the Plaintiffs.
- 1.7 On 11 February 2014, the Court, on Defendant's (hereinafter referred to as "**the Respondent**") application enlarged time for filing of Affidavit by Respondent and Affidavit in Reply by Plaintiffs (hereinafter referred to as "**the Applicants**") and made following Orders:-

***“(a) The Defendant undertakes to provide the accounts of the Deceased’s business from the date of the death of deceased to the Plaintiff within 21 days. Accordingly Order is made.***

***(b) The status quo of the Property (Printing Machinery) should remain and the Defendant undertakes not to dispose or change the place of business or to do any act deteriorating the condition of the printing machinery. Accordingly Order is made.”***

- 1.8 On 18 February 2014, Respondent filed Affidavit in Response to Applicants’ Affidavit in Support.
- 1.9 On 12 March 2014, Applicants filed Affidavit in Reply.
- 1.10 On 24 March 2014, Respondent was present in Court without his Solicitor and he informed the Court that:-
- (i) His Solicitor has withdrawn acting for him and tendered letter from his Solicitor to the Court;
  - (ii) He was not informed about the Orders made by the Court on 11 February 2014;
  - (iii) He did not read the documents and his Solicitor informed him that he will handle it;
  - (iv) He was not aware of the contents of his Affidavit filed on 18 February 2014.
- 1.11 The Court then granted him time to read his Affidavit and after reading the Affidavit he informed the Court that he did not know about the contents of the Affidavit.
- 1.12 The Court then gave and made following directions and orders:-

- (i) Respondent's Affidavit filed on 18 February 2014, be rejected and not be taken into consideration for this action;
- (ii) This matter be referred to Chief Registrar to take appropriate action against the Respondent's Counsel for failure to appear in Court on 24 March 2014, and for failing to inform Respondent about the Orders made on 11 February 2014;
- (iii) Registry do inform Respondent's Counsel to appear in Court on the next day;
- (iv) Orders in respect to Orders made on 11 February 2014 be served on the Respondent personally within two (2) days;
- (v) Orders made on 11 February 2014, be extended until the next day;
- (vi) The Application be adjourned to 7 April 2014, for enquiry.

1.13 On 1 April 2014, Messrs. Sherani & Co. filed Notice of Appointment to act as Solicitors for the Respondent.

1.14 On 11 April 2014, his Lordship Justice Kotigalage (as he then was) rescinded the direction given to the Registry on 24 March 2014, and ordered that all orders made on 21 March 2014 (it appears that date should read 24 March 2014 as this matter was not called on 21 March 2014) is to remain unchanged.

Respondent was given Leave to file Supplementary Affidavit with liberty for Applicants to file Affidavit in Reply and the Application was adjourned to 8 May 2014, for hearing.

1.15 On 8 May 2014, parties made Oral Submissions after which his Lordship Justice Kotigalage (as he then was) directed parties to file Submissions by 16 May 2014, and adjourned the Application for Ruling on Notice.

- 1.16 The Applicants and the Respondent file their Submissions on 16 May 2014, and 21 May 2014, respectively.
- 1.17 No ruling having been delivered this matter was referred to this Court and was called on 10 September 2015.
- 1.18 On 10 September 2015, Counsel for the parties agreed for me to deliver the Ruling on the basis of documents filed and Oral Submissions made before his Lordship Justice Kotigalage (as he then was). The Application was then adjourned for Ruling on Notice.
- 1.19 Following Affidavits were filed by the parties:-

**For Applicant**

- i. Affidavit of Linet Neel Kumar in Support of Applicant sworn and filed on 12 November 2014 ("**Linet's 1<sup>st</sup> Affidavit**").
- ii. Affidavit of Linet Neel Kumar in Reply in reply sworn on 11 March 2014, and filed on 12 March 2014, ("**Linet's 2<sup>nd</sup> Affidavit**").
- iii. Affidavit of Linet Neel Kumar filed on 8 May 2014, ("**Linet's 3<sup>rd</sup> Affidavit**").

**For Respondent**

Supplementary Affidavit in Opposition of Respondent sworn and filed on 28 April 2014 ("**Respondent's Affidavit**");

**2.0 Application for Injunction and Ancillary Orders**

- 2.1 I think it is appropriate to deal with prayer 2 of the Application first.

- 2.2 This Court cannot understand as to how any person can ask this Court or any Court for an Order authorising any person to sue any other person.
- 2.3 It is the prerogative of the any person to sue any other person for any claim which they have against the other person and if any person needs any legal advise on that then he/she should seek such advise from a legal practitioner.
- 2.4 As such prayer 2 of the Application is dismissed and struck out.
- 2.5 It is undisputed that:-
- (i) Vijendra Kumar, late of Kai Place, Nadawa, Fiji, Businessman (hereinafter referred as **"the Deceased"**), was the sole proprietor of Warehouse Printery;
  - (ii) Deceased was initially married to Manjula Lata on 19 May 1981 (**"Deceased's 1<sup>st</sup> Marriage"**), which marriage was dissolved on 19 June 1996;
  - (iii) On 9 January 1997, the Deceased married Anita Krishna Kumari (**"Deceased's 2<sup>nd</sup> Marriage"**), which marriage was dissolved on 4 August 2005;
  - (iv) Firstnamed Plaintiff is Deceased's lawful daughter from Deceased's 1<sup>st</sup> Marriage whereas the Secondnamed Plaintiff (a minor) is Deceased's lawful daughter from Deceased's 2<sup>nd</sup> Marriage;
  - (v) Respondent is Deceased's brother.
- 2.6 I am of the view that whether or not the Court should grant injunctive Orders against the Respondent be dealt now.
- 2.7 It is well established that the principle in respect to grant of interlocutory injunction is whether there is serious question to be tried and whether the balance of convenience favours granting of interlocutory injunction.

**Serious Question to be Tried**

- 2.8 The Applicants challenge the purported last Will and Testament of Deceased dated 6 March 2012, on the ground that the said Will is “fraudulent and forged or alternatively, has been obtained under circumstances of undue influence.”
- 2.9 The Deceased under the purported Will allegedly appointed the Respondent, his brother as sole executor and trustee and bequeathed his real and personal properties as follows:-
- “(a) A sum of \$3000.00 cash to each of my siblings, Satendra Kumar, Jeetendra Kumar, Sunila Devi, Shakuntla Devi, and Anita Devi and my Nephew, Tarun Kumar and the balance and/or remainder of all my monies to Lalini Kumar, absolutely.*
- (b) My business interest and shares and residuary estate to my brother Jeetendra Kumar of Bau Road, Nausori, Fiji Islands, Printer absolutely.”*
- 2.10 Applicants also allege that the Respondent took control of Deceased’s business Warehouse Printery (now known as Eagle Printery) as a result of undue influence.
- 2.11 Applicants in Linet’s 1<sup>st</sup> Affidavit states that the Applicants have obtained opinion from an expert that the Deceased’s purported Will is forged.
- 2.12 Even though the Applicants have not disclosed the expert opinion, I find that the Applicants have provided enough evidence to establish that there is some serious questions in respect to the purported Will, the transfer of Deceased’s business to the Respondent, and the matters relating to Deceased’s estate that needs to be tried by this Court.
- 2.13 The reason why probate action is required to be begun by Writ is that the issues in probate action require detailed examination by the Courts and in most



cases depend on the demeanour of witnesses. This is more so when the validity of any persons Will is challenged.

### **Balance of Convenience**

- 2.14 Under usual circumstances, Court needs to determine whether damages would be adequate remedy to the Applicants and if so, then in most circumstances interlocutory injunction will not be granted.
- 2.15 When the Court is required to determine if any instrument such as Will, Transfer of Land or Transfer of Business was executed because of the fraudulent conduct on the part of the person who benefitted from such transaction, either directly or indirectly and Court finds that any such instrument was forged or executed because of fraudulent conduct or undue influence then Courts should not hesitate to set-aside such transaction even if damages would be adequate remedy.
- 2.16 The Respondent alleges that the Applicants had very little contact with the Deceased and the Deceased provided for Applicants by nominating them as beneficiaries to Deceased's Fiji National Provident Fund contribution and Secondnamed Applicant was appointed as beneficiary in respect to Deceased's Life Insurance Policy.
- 2.17 Respondent denied Applicants allegation that Deceased's purported Will was forged or executed by him because of Respondent's fraudulent conduct.
- 2.18 I also note that Respondent has provided Bank Statement of Warehouse Printery (Annexure "LNK1" of Linet's 3<sup>rd</sup> Affidavit) which shows transaction from 19 October 2012.
- 2.19 No evidence has been provided by the Respondent as to whether any monies were held on account of Warehouse Printery (now Eagle Printery) prior to 17 October 2012 and if so, then what happened to those monies.

2.20 After analyzing the Affidavit evidence of the Applicants and the Respondent and reading the Submissions filed and Oral Submissions I find that interlocutory injunction should be granted to protect Deceased's estate until such time this action is fully determined at trial proper.

### **Administrator Pendente Lite**

2.21 Applicants submit that Firstnamed Applicant be appointed Administrator Pendente Lite until this action is finally determined.

2.22 Section 29 of Succession Probate and Administration Act Cap 60 provides as follows:-

***"29.-(1) Where any legal proceedings touching the validity of the will of a deceased person, or for obtaining, recalling or revoking any grant, are pending, the court may grant administration of the estate of the deceased to an administrator, who shall have all the rights and powers of a general administrator, other than the right of distributing the residue of the estate, and every such administrator shall be subject to the immediate control of the court and act under its direction.***

***(2) The court may, out of the estate of the deceased, assign to an administrator appointed under this section such reasonable remuneration as the court thinks fit."***

2.23 The function of Administrative Pendente Lite was stated by her Lordship Madam Justice Shameem in very clear terms in **Reddy v. Wati** [2000] High Court Probate Action No. HPP 2 of 2000 (15 May 2000) which is as follows:-

***"An administrative pendente lite is therefore not allowed to distribute the residue of the estate but otherwise has the rights and power of a general administrator."***

2.24 I think that it is in the interest of justice, that the Firstnamed Applicant be appointed Administratrix Pendente Lite in respect to Deceased's estate to enable her to liaise with the financial institutions and other organisations to determine the assets and properties owned by the Deceased at the time of his death.

**Business - Eagles Printery (Formerly Warehouse Printery)**

2.25 The Respondent has been engaged in the printery business with the Deceased and continues to do so.

2.26 It is in the interest of justice that the status quo in respect to the management of the business remains to avoid any detrimental effect to its operation subject to condition that Respondent operate the business as he did prior to commencement of this action, provide monthly accounts and do not interfere with the fixed assets of the business in any way.

**3.0 Costs**

3.1 I have taken into consideration the Affidavit and Submissions filed by the parties and the nature of the Application.

**4.0 Orders**

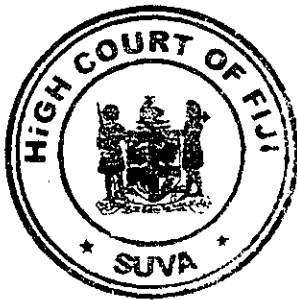
4.1 I make following Orders:-


- (i) The Defendant/Respondent within fourteen (14) days from the date of this Ruling file and serve Affidavit in respect to any monies held by the late Vijendra Kumar of Kai Place, Nadawa or Warehouse Printery or Eagle Printery in any bank or financial institution in Fiji prior to 19 October 2012, in the knowledge of the Defendant/Respondent. **PROVIDED HOWEVER,** if the Defendant/Respondent has no knowledge of any such

monies then he should file and serve Affidavit stating that he has no knowledge of any monies so held.

- (ii) Defendant/Respondent do operate the business under the name Eagle Printery and formerly known as Warehouse Printery until final determination of this action or further Order of this Court on the condition that the Defendant/Respondent operate the business as he did prior to commencement of this action and file and serve Affidavit annexing monthly financial Statements of Eagle Printery (formerly Warehouse Printery) commencing from the month of June 2016, and such Affidavit is to be filed and served on or before the seventh (7<sup>th</sup>) day after the last day of the particular month with first of such Affidavit is to be filed and served by 7<sup>th</sup> day of July 2016;
- (iii) The Defendant/Respondent whether by himself, his agents, servants or howsoever is restrained from dealing with the fixed assets of Eagle Printery (formerly Warehouse Printery) whether by sale, mortgage, bill of sale, charge or any other way whatsoever until final determination of this action or further Order of this Court;
- (iv) The Defendant/Respondent is restrained whether by himself, his agents, servants or howsoever from interfering with both real and personal assets of Vijendra Kumar late of Kai Place, Nadawa until final determination of this action or further Order of this Court;
- (v) Firstnamed Plaintiff/Applicant, Linet Neel Kumar is appointed Administratrix Pendente Lite in respect to Estate of Vijendra Kumar, late of Kai Place, Nadawa until final determination of this action for the purpose of determining the assets and liabilities of the late Vijendra Kumar at the time and prior to his death;
- (vi) The Applicants are at liberty to make application to this Court for appropriate Orders if they find that the financial status of Eagle Printery (formerly Warehouse Printery) is deteriorating;
- (vii) Costs of the Application be costs in the cause;

- (viii) Plaintiffs/Applicants file and serve Reply to Statement of Defence by 14 July 2014;
- (ix) Parties to file and serve Affidavit Verifying List of Documents and exchange documents by 28 July 2016;
- (x) Parties to attend Pre-Trial Conference (“PTC”) and execute Minutes of PTC by 31 August 2016;
- (xi) Plaintiffs/Applicants do file and serve Minutes of PTC by 7 September 2016;
- (xii) Plaintiffs/Applicants do file and serve Copy Pleadings and Summons to enter this action for Trial by 14 September 2016;
- (xiii) The substantive matter be called on 23 September 2016 at 9.30am to fix trial date.



  
**K. Kumar**  
**JUDGE**

At Suva  
28 June 2016

**Singh & Singh Lawyers for the Plaintiffs/Applicants**  
**Sherani & Co. for the Defendant/Respondent**