

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

Probate File No.: HPP 37 of 2019

IN THE ESTATE of **Ali Mahommed aka Ali Mohammed** late of Raiwai, Suva, Retired, Deceased, Intestate.

APPEARANCES/REPRESENTATION

APPLICANT : Mr. Khan [Messrs Khan & Co]
RESPONDENT : Ex-parte
JUDGMENT OF : Acting Master Ms Vandhana Lal
DELIVERED ON : 29 May 2019

JUDGMENT

[Dispensation of Sureties for an application of grant]

1. The applicant Salmaan Khan aka Salmaan Shah one of the issues of the deceased Ali Mahommed aka Ali Mohammed wishes to apply for a grant of the letters of administration of the estate of the deceased.
2. According to him, the entire estate of the deceased comprises only one property comprised in Lease No. 145582 being Lot 39 on D.P. 3876 and located at 39 Cheng Place, Raiwai, Suva. Said property is said to be valued at \$320,000.

According to Salmaan, he does not name any friends or relatives in Fiji who can or are willing to be sureties to the administration of the above estate.

3. As per the death certificate, the deceased at the time of his death is said to have following issues of marriage:

Hakim Shah (Male) (Living);
Shaiban Shah (Male) (Living);
Yasin Shah (Male) (Living);
Salmaan Shah (Male) (Living);
Maimum Nisha (Female) (Living);
Mairul Nisha (Female) (Living);
Maibul Nisha (Female) (Living).

[order of priority is not known as there are no birth certificates annexed]

The spouse of the deceased is said to be deceased at the time of the Death of the deceased.

4. The applicant is requesting the Court to exercise its jurisdiction and dispense with the need of sureties.
5. Pursuant to section 20 of the Succession, Probate and Administration Act:
every person to whom administration is granted shall, previous to the issue of such administration, execute in the form prescribed by the rules, a bond, with one or 2 sureties conditioned for duly collecting, getting in, administering and distributing the real and personal estate of the deceased.

Under section 21 *"the court may dispense with one or both sureties to any bond or reduce the amount of such penalty, or limit the liability of any surety to such amount as the court thinks reasonable; or, in place of any such bond, the court may accept the security of any incorporated company or guarantee society approved of by the court"*.

6. Hodges J. in **In The Estate of Johnston Storey [1902] 28 V.L.R. 336** had cited the case of **In The Goods of Richardson L.R. 2 p. & D. 244** which stated the principles for dealing with application for an order to dispense with sureties, which principle is said to have influenced Hodges J. in declining to grant these application.

In Richardson's Lord Penzance at page 246 of the report is quoted to have said:

"But the Court cannot make the grant which is now asked for under that section without materially laying down the rule that whenever the parties interested like to consent that some person nominated by them shall take the grant, it will make the grant to such nominee. If all suitors in this court, and persons entitled to grant, were persons of intelligence and knowledge of business matters, such a rule might be unobjectable. Persons of intelligence and education, knowing their own rights, may be allowed without objection to transfer to third persons, their right dealing with property in which they alone are concerned. But the court must bear in mind that suitors and persons entitled to grants in this court are many of them persons who have no opportunity of knowing their own right and are not aware of the dangers that may beset them if they transfer those rights to other persons".

Hodges J. did not grant the application on the information before him. He stated that:

"It is the court who ought to protect these persons – it is its special function. When beneficiaries give money to their trustees, the court ought to protect them".

7. Justice Hood on 27 September 1912 made announcement in regard to the evidence to be given in cases of applications for dispensation of sureties to administration bonds.

He stated that the Affidavits must show that the persons who consent are fully aware of their rights and of the danger of entrusting the whole management of the estate to an administrator who is giving no security for the due performance of his duties (reported in the Victoria Law Reports [1913 at page 13).

8. *"The consent should contain a statement by the beneficiaries to the effect that they are aware that sureties are required by law, and that, in signing such consent, they are giving up the protection which sureties would have afforded them, and are relying solely upon the integrity of the administrator for the due administrations of the estate"*- Mc. Arthur J. In The Estate of Ross [1926] V.L.R 568 at 569.

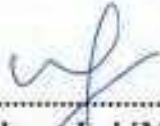
In the said case in respect of each consent an affidavit by an independent solicitor was filed, verifying the signature of the consenting party, and stating that, before the consent was signed, he read it over to her and explained to her the full legal significance thereof, and that she seemed perfectly to understand the same.

9. The court must be satisfied that all the persons who so consent are fully aware of their rights and of the danger of entrusting the whole management of the estate to an administrator who is giving no security for the due performance of his duties.
10. The applicant has failed to annex consent by the beneficiaries of the estate to the effect that they are aware that sureties are requested by law, and that, in signing the consent, they are giving up the protection which sureties could have afforded them, and that they are relying solely upon the integrity of the administrator for the due administration of the estate.
11. I find that the application by applicant is incomplete and hence would adjourn the matter to allow the applicant to file a supplementary affidavit containing consent by all the beneficiaries of the estate to the fact that they were aware that sureties are required by law and that in signing such consent they are giving up the protection which sureties would have afforded them and are relying solely upon the integrity of the administrator for the due administration of the estate.
12. The applicant is who asking for a grant to be made to him.
13. Pursuant to section 7 of the Succession Probate and Administration Act Court would grant administration of the estate of a person dying intestate to following persons (separately or conjointly):
- a) *wife or husband or de-facto partner of deceased;*
 - b) *If there is no wife, husband or de-facto partner to one of the next of the 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 in there is no person entitled to a grant under paragraph (a) or (b).*
14. Section 6 (1) (d) of the Act states:

"if the intestate leaves issues, but no wife or husband or de-facto partner, the issues of the intestate shall take the stripes and not her capital the whole estate of the intestate absolutely."

15. There are no deed of renunciation by other issues in order of priority renouncing their rights and title to letter of administration of the estate of the deceased.
16. The applicant can in his Supplementary Affidavit annex the deed of renunciation before Court marks any orders as sought under prayer 3.
17. The Applicant is granted 21 days to file his supplementary Affidavit with the registry.
18. Once done I shall proceed to make my final determination on the application.




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Vandhana Lal [Ms]
Acting Master
At Suva.