

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

Probate File No.: HPP 84 of 2018

IN THE ESTATE of NITYA NAND lately of
Visama Feeder Road, Visama, Nausori, Farmer,
Deceased, Intestate

APPEARANCES/REPRESENTATION

APPLICANT : Mr. S Parshotam [Parshotam Lawyers]
RESPONDENT : Ex-parte
JUDGMENT OF : Acting Master Ms Vandhana Lal
DELIVERED ON : 22 March 2019

JUDGMENT

[Dispensation of Sureties for an application of grant]

1. The applicant is Hashil Nand son of the deceased Nitya Nand who wishes to apply for a grant of the letters of administration of the estate of the deceased.

According to him, the entire estate of the deceased comprises of a lease valued at approximately \$150,000 and some cash at Bank of Baroda (\$13,000) giving a total value of the estate at approximately \$163,000. He further states that the deceased did not have any liability.

2. The deceased at the time of his death is said to have two issues from his marriage – Dipika Nand a female living (D.O.B.: 21 March 1992) and Hashil Nand a male living (D.O.B.: 23 March 1994).

The deceased was married to one Lina Savita Singh and their marriage was dissolved on 8 December 2005.

3. The applicant is requesting the Honourable Court to exercise its jurisdiction and dispense with the need for sureties.

To his affidavit in support of the application he has annexed (annexure G) consent by his sister Dipika Nand to dispense with sureties.

4. 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"*.

5. 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".

6. 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]).

7. *"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.

8. Above case laws suggest that the court found mere consent of all persons interested is not a sufficient ground for dispensing with sureties to the bond executed by an administrator for the due administration of the estate of a deceased person.

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.

9. There is no precedent in place in Fiji for the particulars that are to be stated on the consent.
10. In the application before this Court, the Applicant in his affidavit has stated that his *“sister Dipika Nand has agreed that he applies for letters of administration of the estate of the said deceased”*.

Annexure G the consent reads as follows:

“I undersigned, state:

A. I am a lawful child of the said Deceased and the only sister to the Administrator;

B. I am aware that the Administrator proposes to make an application to the High Court of Fiji for Letters of Administrations of the estate of the said Deceased;

C. To the best of my knowledge and belief, I do not have any other brothers or sisters

and hereby grant my consent to the Administrator to apply for Letters of Administration of the estate of the said Deceased without providing any sureties.”


The signature to the consent is witnessed by Mr Subhas Parshotam counsel for the applicant.

11. With no set precedent regarding what should be evidenced in an application for dispensation for surety, I find that it is proper to adopt the pronouncement made in case laws discussed above.

12. Hence I ask the applicant to file consent containing statement by the beneficiaries to the effect 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.

Said consent is to be witnessed by an independent lawyer also containing statement to the effect that the consent was read and explained fully of the legal significance to the deponent.




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Vandhana Bal [Ms]
Acting Master
At Suva.