

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION AT LAUTOKA**  
**CIVIL JURISDICTION**

CIVIL ACTION NO. HBC 162 OF 2007

**In the matter of the Estate of Phul Kumari** of Martintar, Nadi, Domestic Duties, Deceased, Testate.

**In the matter of Ravindra Kumar** of Martintar, Nadi, a Disabled Person.

**BETWEEN** : **VED KUMARI SHANKAR** formerly of Martintar, Nadi, now residing at Vancouver, Canada, Retired and **SHALENDRA KUMAR** of Nasau both as guardian-ad-litem of **Ravindra Kumar**, Disabled.

**PLAINTIFFS**

**AND** : **PUBLIC TRUSTEE OF FIJI** as Trustee in the **ESTATE OF PHUL KUMARI**, Deceased.

**FIRST DEFENDANT**

**AND** : **PREM WATI** of Martintar, Nadi.

**SECOND DEFENDANT**

**AND** : **SUMAN LATA** of Martintar, Nadi.

**THIRD DEFENDANT**

**Appearances** : Ms A.B. Swamy for the plaintiff/applicant

**Date of Hearing** : 17 October 2019

**Date of Ruling** : 17 October 2019

**R U L I N G**

[on enforcement of judgment]

[01] This is an application made *ex parte* in terms of O 45, R 7 of the High Court Rules 1988, as amended ('HCR'). It is supported by an affidavit sworn by the first named plaintiff, Ved Kumari Shankar. The application seeks the following orders:

A. *An order that the plaintiff be now appointed as Administratrix in the Estate of Phul Kumari.*

IN THE ALTERNATIVE

B. *That the 1<sup>st</sup> defendant, within 3 days of there being an order, provide to the first plaintiff all statutory fee and costs due [and] payable to the Corporation in connection to the Administration of the Estate, failing which the plaintiff be appointed as Administratrix forthwith.*

C. *Any further or other orders of this Honourable Court may deem just in the circumstances.*

D. *Cost of this application.*

[02] Rule 7 provides:

*"Court may order act to be done at expense of disobedient party (O 45, R7)*

*7 If an order of mandamus, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the Court, at the cost of the disobedient party, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs". [Emphasis provided]*

- [03] The plaintiff complains that the first defendant has failed to comply with clause 9 of the Judgment made by consent on 1 May 2019, despite several requests.
- [04] Clause 9 of the sealed judgment reads:
- “9.        *THAT the 1<sup>st</sup> defendant shall release the Administrator and Trustee of the said Estate to the 1<sup>st</sup> Plaintiff provided that she shall pay the Corporation all statutory fee and costs due payable to the Corporation in connection to the Administration of the estate and legal proceedings attended to in this estate.”*
- [05] The affidavit evidence demonstrates the first defendant has failed to act accordingly to clause 9 of the judgment although the plaintiff was ready and willing to pay the statutory fee, costs and legal charges payable to the first defendant in respect of the administration of the estate of Phul Kumari.
- [06] Nearly 6 months had passed since the judgment was delivered. Still, the first defendant has not complied with the judgment, especially cl. 9 of the judgment.
- [07] The first defendant appears to be the disobedient party as they failed to comply with the judgment made in the nature of specific performance of a contract.
- [08] Rule 7 empowers the court to direct that the act required to be done should be done by the party by whom the judgment was obtained.
- [09] In this case, the judgment was obtained by the plaintiffs.
- [10] I would, therefore, having satisfied with the application, affidavit and submissions advanced by counsel appearing for the plaintiff, direct that the

plaintiff (Ved Kumari Shankar) should act as administratrix in the Estate of Phul Kumari.

**The result**

1. Plaintiff (Ved Kumari Shankar) shall act as administratrix in the Estate of Phul Kumari.
2. There shall be no order as to costs.

*M.H. Mohamed Ajmeer*  
27/10/19  
.....  
**M.H. Mohamed Ajmeer**  
**JUDGE**



**At Lautoka**  
**17 October 2019**

Solicitors:

For plaintiffs: Patel & Sharma, Barristers & Solicitors