

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

**Civil Action No. HBC 113 of 2020**

In the matter of an Application under Order 85 of the High Court Rules 1988, s 89 of the Trustees Act, s 35, 38, 41 of the Succession Probate and Administration Act, Cap 60 and under the inherent jurisdiction of the Court.

In the matter of an application by **ASNEEM ASHIL AMIN** as Administrator of the **ESTATE OF MOHAMMED YASIN**.

**BETWEEN:** **ASNEEM ASHIL AMIN** as Administrator of the **ESTATE OF MOHAMMED YASIN** (late of Navusa, Bua, Deceased, Intestate) of Lot 1 Malo Road, Davuilevu Housing, Nausori, Accountant.

**PLAINTIFF**

**AND:** **MOHAMMED SAFAYAT HUSSAIN** as the surviving Trustee of the **ESTATE OF SUBRATAN BI** late of Luvuluvu, Bua, Fiji, Deceased, Testate.

**DEFENDANT**

**BEFORE:** **Hon. Mr. Justice Vishwa Datt Sharma**

**COUNSELS:** **Mr. Niubalavu P.** - for the Plaintiff  
**No Appearance** - for the Defendant

**DATE OF DECISION:** **05<sup>th</sup> of October 2021 @ 10.00 am.**

**DECISION**

## INTRODUCTION

1. The Plaintiff filed the Originating Summons coupled with an Affidavit in Support and sought for the following orders against the Defendant -
  - (a) That the Defendant to register the interest of the Estate of Mohammed Yasin, by registering the Plaintiff as the Administrator of the Estate of Mohammed Yasin and transfer one undivided half share in Certificate of the Title No. 44139 to the Estate of Mohammed Yasin.
  - (b) That the Defendant and the Plaintiff to carry out the necessary subdivision of CT 44139 into 2 equal shares and obtain 2 separate Certificate of Titles for Mohammed Safayat Hussain and Estate of Mohammed Yasin respectively.

## ALTERNATIVELY

- (c) That the Defendant's appointment as the Trustee of the Estate of Subratan Bi in Probate No. 30500 be discharged, the Defendant to deliver the original grant of Probate to the High Court registry within 7 days and the Plaintiff be appointed as the Administrator of the Estate of Subratan Bi to carry out the necessary transfer and subdivision of CT 44139 into 2 equal shares and obtain 2 separate Certificate of Titles for Mohammed Safayat Hussain an Estate of Mohammed Yasin respectively.
  - (d) Costs on full indemnity basis.
  - (e) Such further/ or relief as this Honourable Court may deem just.
2. This application is made pursuant of **Order 85 of the High Court Rules, 1988, Section 89 of the Trustees Act, Sections 35, 38 and 41 of the Succession Probate and Administration Act respectively.**
3. The Defendant was served with the substantive Originating Summons on 21<sup>st</sup> May, 2020. Subsequently, the Defendant was also served with a Notice of Appointment to hear the Originating Summons on 21<sup>st</sup> July, 2020 respectively returnable before the Master of the High Court on 20<sup>th</sup> August, 2020 at 9 am.
4. On 20<sup>th</sup> of August, 2020, the Master of the High Court made a decision that the matter be remitted to the Senior Court Officer for allocation to a Judge of the High Court for Hearing and determination.
5. This matter was allocated and scheduled before me for the 19<sup>th</sup> of October, 2020, subsequently, 1<sup>st</sup> of December, 2020 was assigned as the Hearing date.
6. Accordingly, the matter was heard for determination of the orders sought therein and the decision was adjourned to be delivered on Notice. Written submission was furnished to the court by the Plaintiff's counsel.
7. However, upon the perusal of the Court file, it was discovered that because there was no service of Notice of Adjourned Hearing effected onto the Defendant, the Court directed that the service of the

Notice of Adjourned Hearing be effected onto the Defendant for the next returnable date of the case. Service has now been effected onto the Defendant by a Court's Notice of Adjourned Hearing and an Affidavit of Service has been filed to that effect. Still the Defendant neither appeared nor filed any response to the Plaintiff's application. Further adjournments were granted but the Defendant did not take any steps whatsoever to enquire into this matter.

8. That being the case, this Court after a lapse of sometime has now decided to deliver its decision accordingly.

#### **Background to Case**

9. The Defendant is the Trustee of the Estate of Subratan Bi late of Luvuluvu, Bua, Estate by virtue of a Grant of Probate No. 30500.
10. The late Subratan Bi left a Will dated 19<sup>th</sup> July 1983, naming his 2 sons, Mohammed Safayat Hussain (Defendant) and Mohammed Yasin as the beneficiaries in equal shares of her property, a freehold land described as Certificate of Title No. 44139 in which the Estate of Subratan Bi aka Subratan is the Registered Proprietor.

That the Estate of Mohammed Yasin is one of the beneficiaries in the Estate of Subratan Bi and holds one undivided half share in Certificate of Title No 44139. The Plaintiff is the Administrator of the Estate of Mohammed Yasin by virtue of Letters of Administration Grant No. 63373.

11. That the Defendant as the Trustee of the Estate of Subratan Bi aka Subratan is required to act on the Will of the late Subratan Bi aka Subratan and register the interest and transfer one undivided half share of Certificate of Title No 44139 to the Estate of Mohammed Yasin.

That despite numerous requests, the Defendant had refused and/or neglected the call to complete the Administration of the Estate of Subratan Bi in registering the interest of the Estate of Mohammed Yasin by transferring one undivided half share in CT 44139 to the Estate of Mohammed Yasin.

12. Thus, the application by the Plaintiff

#### **DETERMINATION**

13. This is an Estate matter whereby the Deceased Subratan Bi left behind a Will dated 9<sup>th</sup> of July 1983 appointing his two sons Mohammed Safayat Hussain and Mohammed Yasin as the two Executors/Trustees of her Estate.
14. Both Executors were granted with a Probate Grant vide No. HPA 30500 on 23<sup>rd</sup> May 1994.
15. On 21<sup>st</sup> October 2000, Mohammed Yasin as one of the Executor Trustee of the Deceased's Estate of Subratan Bi took demise.
16. The Letters of Administration Grant upon the application by the Administrator was granted to the lawful Attorney, Asneem Ashil Amin in the Estate of Mohammed Yasin on 26<sup>th</sup> February 2019 vide Letters of Administration Grant No. 63373 accordingly.

17. Upon Mohammed Yasin's demise, the Estate of Subratan Bi remained administered fully.
18. It will be noted that Subratan Bi took demise on 19<sup>th</sup> July 1983, the Executors/Trustees in terms of the Deceased's Will made an application for a Probate Grant on 8<sup>th</sup> April 1994, after a lapse of eleven years and thereafter Subratan Bi's Estate still remained administered fully until the death of the second Executor/Trustee, Mohammed Yasin's demise on 21<sup>st</sup> October 2000. Thus, tantamounted to a considerable delay in rightfully and lawfully administering and distributing the Deceased's Estate assets of Subratan Bi in terms of her Will accordingly.
19. I find that it is the Executor/Trustee Mohammed Safayat Hussain who is delaying and not cooperating and/or ensuring that he carries out his responsible duties that of an appointed Executor/Trustee in terms of the Succession, Probate and Administration Act, to fully administer and distribute Deceased's Estate fully in terms of the Deceased's Will.
20. Further, it is to be noted that the Defendant even being served with the Plaintiff's original application together with the Court's Notice of Adjourned Hearing, he failed to file any appearance and/or response Affidavits to the Plaintiff's application and has shown no interest whatsoever to ensure that the administration and distribution of the Deceased's Estate assets as he was supposed to carry out in terms of the Will.
21. I will not order any costs against the Defendant in his capacity as an appointed Executor/Trustee and Grant of Probate No. HPA 30500, since I do not want to see any wastage of Deceased's Estate funds of Subratan Bi.
22. I now proceed to make the following Orders.

#### ORDERS

- i. That the Defendant to register the interest of the Estate of Mohammed Yasin, by registering the Plaintiff as the Administrator of the Estate of Mohammed Yasin and transfer one undivided half share in Certificate of the Title No. 44139 to the Estate of Mohammed Yasin.
- ii. That the Defendant and the Plaintiff to carry out the necessary subdivision of CT 44139 into 2 equal shares and obtain 2 separate Certificate of Titles for Mohammed Safayat Hussain and Estate of Mohammed Yasin respectively and with immediate effect.
- iii. There will be no Order as to cost against the Defendant at the discretion of this Court.

DATED at SUVA this 05<sup>th</sup> day of October, 2021.

VISHWA DATT SHARMA  
JUDGE

cc. Oceania IP, Suva.  
Mohammed Safayat Hussain, Labasa.

