

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

Probate Action No. HPP 80 of 2022

**BETWEEN:**                    **HAMID KHAN** of Natua, Seaqaqa, Farmer, as one of the executor and trustee in the estate of Sohrab Khan.

**APPLICANT**

**AND:**                            **SAHEED KHAN** of Koronivia Mosque Compound, Nausori, Priest (Molvi) as one of the executor and trustee in the Estate of Sohrab Khan.

**RESPONDENT**

**Counsel**                        : **Applicant: Ms. Singh. A**

   : **Respondent: Mr. Singh. S**

**Date of Hearing**                : **21.6.2022**

**Date of Judgment**            : **28.6.2022**

**Catch words**

*Institution of Actions – High Court Rules 1988- O.2. r.2 , O.5 r.1 , O.5. r.3, O.5 r.5, O.7. r.2, O.85 – Trustee Act 1966 Section 73- Succession Probate and Administration Act 1970, Section 35- removal of trustee- welfare – undue influence-depriving of income- acting for his benefit -*

**JUDGMENT**

**INTRODUCTION**

1. Plaintiff (referred to as Applicant in Notice of Motion), filed this action by way of Notice of Motion. This action is filed in terms of Sections 73 and 4(d) of Trustee Act 1966, Section 35 of Succession Probate and Administration Act 1970 and Order 85 Rule 4 of High Court Rules 1988. Orders sought from this court are to remove Defendant (referred to as Respondent in the Notice of Motion), as the trustee and executor of the estate of late Soharab Khan (the Estate), and to appoint another person by the name Mohammed Yakub Khan, as trustee and executor of the Estate. In terms of the last will of late Soharab Khan, both parties to this action were named as executors and trustees of the Estate. The Estate comprised of a land with an area over hundred Acres of Agricultural Lease. All the beneficiaries under the last will had *inter alia* cultivated sugar cane and proceeds from that were distributed among themselves by the two trustees since 1996, till 2021 March.

Lessor had carried out two subdivisions according to the possession of the land by respective beneficiaries. Second subdivision, consented by parties, was later objected by Defendant. Due to this Lessor had indicated it will not subdivide and requested to engage a registered surveyor. Defendant wants Plaintiff to consent to subdivision only the area he is in possession and this was not consented by Plaintiff. This was, considering his welfare as opposes to other beneficiaries. Apart from this, he is refusing to sign document required to withdraw proceeds of the sugar cane from a joint trust account created for remittances of sugar cane farming. These were distributed among the beneficiaries prior to 2021. This refusal had resulted Plaintiff filing this action for removal of Defendant as a trustee. He was alleged of abusing the power of trustee and disregarding welfare of all beneficiaries by refusing to allow distribution of proceeds of sugar farming. Defendant had not acted considering welfare of the beneficiaries and had abused his power as trustee in breach of trust placed upon him by refusing or delaying distribution of proceeds of sugar cane farming which was the main income and livelihood of the beneficiaries for one year. Accordingly, Defendant is removed as trustee and executor of the Estate, forthwith.

## **FACTS**

2. Plaintiff, filed an application by way of Notice of Motion on 17.11.2021, seeking orders for the removal of the Defendant as one of the executor and trustees in the Estate of Sohrab Khan and the appointment of Yakub Khan aka Mohammed Sohrab Khan of Natua, Seaqaqa, Farmer be appointed as the Trustees in the Estate.
3. Respondent filed his Affidavit in Opposition on 3.3.2022.
4. The Applicant then filed his Affidavit in Reply on 23 .3. 2022.
5. On 30.5.2022 the matter had been fixed for hearing, however parties sought an adjournment, stating that there can be a settlement of the dispute. The court granted adjournment, conditionally. As there were two issues namely subdivision of land, and distribution of proceeds accumulated over a year in bank.
6. The condition was that proceeds of money held in trust account for over a year to be distributed among the beneficiaries without inordinate delay as it was done prior to 2021 for over 25 years.
7. The distribution of proceeds from sugar cane farming is not depended on the subdivision of land as each parties do not dispute as to area of forming since 1996 and there were no issue as to the distribution of income among the beneficiaries.
8. Matter was mentioned to monitor progress but there was no progress to be observed hence matter was fixed for hearing on 21.6.2022.
9. Parties to this action, are the children of the Late Mr Shorab Khan also known as Soharab

Khan and the late Ms. Bairun Nisha.

10. They are the two appointed Trustees and Executors in the will of late Soharab Khan who died on 26.3.1996. The aforementioned last will was then proved and on 30.5. 1996, and Probate No. 32917 was granted to the parties to this action as executors and trustees of the Estate.
11. The Estate of the Deceased consisted of Agricultural Lease , comprised in the instrument of Native Lease Number 16631 for land known as "NATUA SUBDIVISION LOTS 34 AND 34A AS SHOWN LOTS 7 AND 8 ON M. 2513" in the Tikina of "Macuata", the Province of "Macuata" having an area of "105" acres. "3" roots and "00" perches (hereinafter referred to as the Land).
12. According to the last will dated 21 June 1994, the land was to be distributed as follows
  - (a) 12 acres to Sahadatt Khan
  - (b) 12 acres to Hamid Khan
  - (c) 12 acres to Yakub Khan; and
  - (d) Remainder estate (the Land remaining being 69 acres) to Shaheed Khan, Mohammed Yasim Khan, Mohammed Nazim Khan in equal shares (each receiving around or about 23 acres).
13. After several transfers to the entitlements of the beneficiaries, the share of each beneficiaries as to the land in the Estate are as follows:
  - (a) 12 acres to Sahadatt Khan;
  - (b) 30 acres to Hamid Khan;
  - (c) 12 acres to Yakub Khan;
  - (d) 10 acres to Ahmad Khan;
  - (e) 41 acres to Mohammed Shaheed Khan.
14. In accordance with the entitlements above the proceeds of sugar cane plantation were divided and distributed.(see paragraph 14 and 15 of the affidavit in opposition).
15. After unsuccessful attempts in 2015 the parties to this action made a request to the Sugar Tribunal to obtain separate contracts for each subdivision in accordance with possession. This was completion of administration of the Estate and to grant individual ownership to the Land belonging to the Estate.
16. This distribution was delayed mainly due to policy of Sugar Industry Policy that was conveyed even as late as 2014, which prevented subdivision as required by beneficiaries of the Estate.
17. The request to split the sugarcane contract was approved by Sugar Cane Tribunal but was on hold from being implemented until the land could be surveyed and subdivided accordingly to all the beneficiaries.

18. The Applicant and the Respondent then agreed to convene attempts to survey the land in order to have each of the beneficiaries allotted their share and then to have the sugarcane contract split accordingly.
19. In 2017 attempts were made to the Itaukei Lands Trust Board who is the lessor, to assist with the survey and subdivision of the land according to the application received by them.
20. According to "Annexed H" to the affidavit in reply of Plaintiff ITaukei Land Trust Board had stated.

‘Ground navigation was done twice, due tho the non-satisfaction by some applicants in regards to the area shown by the GPS devise. **In or last meeting at Mohammed Sheed Khan’s shop, all had agreed** with the areas shown by the last navigation and for Sahadat Khan to surrender 4 acres to Mohammed Saheed Khan.

**Trustee, Mohammed Saheed Khan visited our office to show his disappointment** against the result shown by the last navigation...’

21. Hence, it was requested to obtain subdivision by registered surveyor.
22. Defendant had obtained a quotation of a registered surveyor and requested Plaintiff to consent to the subdivision of the area where Defendant possessed, but Plaintiff had not consented allegedly due to concern of other beneficiaries.
23. The Respondent is employment as a Movli (a priest) at the Koronivia Mosque, Nausori and has since then been resident at the Koronivia Mosque compound while his two sons looked after the land at Vanua Levu.

## ANALYSIS

24. Plaintiff had instituted this action, in terms of provisions contained in two Acts and also High Court Rules 1988. This matter was initially dealt by Master and directions were given without any procedural objections being raised by Defendant and when the matter was referred to me both parties had filed their affidavits.
25. Defendant did not raise any procedural objections before me. The parties requested for settlement on the first day of hearing on 30.5.2021 and it was allowed with some limited time considering the alleged conduct of Defendant. As there was no settlement matter was heard without delay.

### Procedure for Institution of Action

26. The mode of institution of an action under High Court Rules are contained in Order 5

and Order 5 rule 1 states,

“Mode of beginning civil proceedings (O.5, r.1)

1. Subject to the provisions of any Act and of these Rules, **civil proceedings in the High Court may be begun by writ, originating summons, originating motion or petition**”.(emphasis added)

27. So there is no procedure to institute an action by way of Notice of Motion and the mode of institution of this action was irregular, but I am not inclined to dismiss on technical issue when the merits of the action required urgent determination by court.

28. Order 5 Rule 3 of High Court Rules states

*“Proceedings which must be begun by originating summons (O.5, r.3)*

3. Proceedings by which an application is to be made to the High Court or a judge thereof under **any Act** must be begun by originating summons except where by these Rules or by or under any Act the application in question is expressly required or authorised to be made **by some other means**”(emphasis added)

29. There are no special proceedings recommended in Section 66 of Trustee Act 1966 or Section 35 of Succession Probate and Administration Act 1970 hence the procedure to begin this action is through an originating summons.

30. Similarly, Order 85 rule 4 of High Court Rules 1988, allows an ‘Administration Action’ being instituted by way of originating summons.

31. Accordingly, all the provisions relied by Plaintiff for the orders sought in the application, can be instituted by way of originating summons. Considering the nature and urgency in the relief sought, originating summons was a suitable mode to begin this action, but the failure to do so had not prejudiced any party.

32. Order 5 rule 5 specifically states instances where actions can be instituted by Originating Motion or Petition and states,

‘5. Proceedings may be begun by originating motion or petition if, but only if, by these rules or by or under any Act the proceedings in question are required or authorised to be so begun.’

33. So the institution of action by way of Originating Motion or Petition is limited to when such procedure is recommended, and not otherwise and there was no procedure to institute an action by way of ‘Notice of Motion’.

34. Order 7 rule 2 of High Court Rules 1988 states

‘(2) The party taking out an originating summons (other than an ex parte summons) shall be described as a **plaintiff**, and the other parties shall be described as **defendants**’(emphasis added)

35. Accordingly I have considered this application as originating summons and named the parties as Plaintiff and Defendant respectively, in the judgment.
36. Parties had come before the court due to a deadlock between two trustees of the Estate seeking a relief. If I dismiss this action, on preliminary issues of non-compliance of abovementioned provisions that will only add cost and delay to parties and further abuse of power by Defendant in his capacity as trustee of the Estate.
37. The testator of the last will of late father of the parties had preferred two children over others to execute the last will. Other than legal obligation, which is discussed later, trustees were morally obliged to act in welfare of other beneficiaries who are siblings of the trustees.
38. Considering the circumstances of the case, I am not inclined to dismiss this action for non-compliance of technical requirements, adopting a method of least resistance. It would be unjust to do so. There was no objection raised by Defendant regarding the manner of institution of this action, hence had waived it. There was no prejudice to parties to this action due to this procedural irregularity of not institution this action by way of originating summons by Plaintiff. (See Order 2 rule 2 read with of High Court Rules of 1988).
39. Parties were granted a limited time to settle the matter considering the nature and circumstances, but they had not settled and matter proceeded to hearing. Defendant had filed written submissions.
40. Order 85 rule 4 of High Court Rules 1988, deals with Administration Actions and it is defined in exclusive manner in Order 85 rule 1 of High Court Rules 1988. This is an action that is most commonly, instituted by originating summons. (see Order 85 rule 4 of High Court Rules 1988).
41. The relief sought by the Applicant are;
  - a. Removal of Defendant as trustee and executor.
  - b. Appointment of Mohammed Yakub Khan as trustee
42. Plaintiff had relied on two statutory provisions in Acts and also as ‘Administrative Action’.
43. Halsbury's Laws of England<sup>1</sup> “1166. *Power of the High Court to substitute or remove*

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<sup>1</sup> Wills and Intestacy (Volume 102 (2021), paras 1–566; Volume 103 (2021), paras 567–1304) (14. The Role of the Court (1) Administration and other Remedies

*personal representatives.* “states

“When exercising its discretion the court is governed by the same principles that govern the removal of trustees<sup>2</sup>. The overriding considerations are whether the trusts are being properly executed and the **welfare of the beneficiaries**<sup>3</sup>”

44. Trusteeship under a last will is not to be taken lightly and abused at the hands of power entrusted upon. It must be exercised with due consideration for the ‘welfare of the beneficiaries’. This is an altruistic act, as deceased parent of parties to this action had entrusted the Estate under their administration. Powers conferred upon an executor and trustee, should not be abused at any cost.
45. Even a slightest indication of abuse and or misconduct on the part of trustee should not be allowed to continue, with impunity. Order 85 rule 2 of High Court Rules 1988, allows a court to grant any relief when there are evidence of oppression and or misconduct and or abuse of authority by a trustee of an estate.
46. Order 85 rule 2 of High Court Rules 1988, is broad enough to cover the orders sought by Plaintiff. It reads,

“2.-(1) An action may be brought for the determination of **any question or for any relief which could be determined or granted, as the case may be**, in an administration action and a claim need not be made in the action for the administration or execution under the direction of the Court of the estate or trust in connection with which the question arises or the relief is sought.

- (2) Without prejudice to the generality of paragraph (1), an action may be brought for the determination of any of the following questions:-
  - (a) any question arising in the administration of the estate of a deceased person or in the execution of a trust;
  - (b) any question as to the composition of any class of persons having a claim against the estate of a deceased person or a beneficial interest in the estate of such a person or in any property subject to a trust;
  - (c) any question as to the rights or interests of a person claiming to be a

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<sup>2</sup> *Thomas and Agnes Carvel Foundation v Carvel* [2007] EWHC 1314 (Ch), [2008] Ch 395, [2007] 4 All ER 81, [2007] WTLR 1297.

<sup>3</sup> *Letterstedt v Broers* (1884) 9 App Cas 371 (friction or hostility between trustees and beneficiaries is not of itself a reason for the removal of the trustees, but where the hostility is grounded on the mode in which the trust has been administered, it is not to be disregarded). See *Thomas and Agnes Carvel Foundation v Carvel* [2007] EWHC 1314 (Ch), [2008] Ch 395, [2007] 4 All ER 81, [2007] WTLR 1297; *Re Loftus*, *Green v Gaul* [2006] EWCA Civ 1124, [2006] 4 All ER 1110, [2007] 1 WLR 591; *Heyman v Dobson* [2007] EWHC 3503 (Ch), [2007] All ER (D) 275 (Dec); *Alkin v Raymond* [2010] WTLR 1117, Ch; *Brudenell-Bruce v Moore* [2014] EWHC 3679 (Ch), [2014] WTLR 559, [2015] WTLR 373. The power to remove and replace personal representatives is not limited to cases of misconduct: see *Angus v Emmott* [2010] EWHC 154 (Ch), [2010] WTLR 531 (application to remove executors based on their hostile relationship). As to guidance on what the court would view as serious enough to justify the removal of personal representatives under the Administration of Justice Act 1985 s 50 see *Harris v Earwicker* [2015] EWHC 1915 (Ch). See also *National Westminster Bank plc v Lucas; Re Estate of Jimmy Savile* [2014] EWHC 653 (Ch), [2014] BPIR 551, [2015] WTLR 635; and PARA 985 (insolvency)

creditor of the estate of a deceased person or to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust.

- (3) Without prejudice to the generality of paragraph (1), an action may be brought for any of the following reliefs:-
- (a) an order requiring an executor, administrator or trustee to furnish and, if necessary, verify accounts;
  - (b) an order requiring the payment into court of money held by a person in his capacity as executor, administrator or trustee;
  - (c) an order directing a person to do or abstain from doing a particular act in his capacity as executor, administrator or trustee;
  - (d) an order approving any sale, purchase, compromise or other transaction by a person in his capacity as executor, administrator or trustee;
  - (e) an order directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust.”
47. The scope of ‘Administration Action’ is wide and not confined to the removal of a trustee and executor, and or appointment of a suitable person as trustee, as sought by Plaintiff. Welfare of beneficiaries is paramount.
48. Apart from this, Plaintiff had also relied on Section 73 of Trustee Act 1966 and Section 35 of Succession Probate and Administration Act 1970.
49. “Section 73 of Trustee Act 1966 states

“Power of Court to appoint new trustees

73.-(1) The Court **may, whenever it is expedient to appoint a new trustee** or new trustees, and it is inexpedient, difficult or **impracticable so to do without the assistance of the Court, make an order for the appointment of a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees**, or although there is no existing trustee.

(2) In particular, and without limiting the generality of the provisions of subsection (1), the Court may make an order appointing a new trustee in substitution for a trustee who-

- (a) desires to be discharged;
- (b) **has been held by the Court to have misconducted himself in the administration of the trust;**
- (c) is convicted of any misdemeanour involving dishonesty, or of any felony;
- (d) is a person of unsound mind;
- (e) is bankrupt; or
- (f) is a corporation that has ceased to carry on business, or is in liquidation, or has been dissolved.

(3) An order under the provisions of this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any



discharged, former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(4) Nothing in this section contained shall confer power to appoint an executor or administrator.

(5) Every trustee appointed by the Court shall have, before as well as after the trust property becomes by law or by assurance or otherwise vested in him, the same powers, authorities and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument (if any) creating the trust.”  
(emphasis added)

50. According to the above provision, existing trustee can be removed where there is ‘misconduct himself in the administration of trust’. In this action Defendant had not conducted himself in the best interest or welfare of all the beneficiaries, by unreasonably refusing to release proceeds of sugar cane farming from the bank account.
51. He had also objected to the subdivision done by lessor for which all have allegedly consented but later Defendant had objected to it. This had resulted in lessor refusing to continue with, the subdivision, and requesting parties to conduct subdivision through a registered surveyor.
52. Defendant requested his portion being subdivided leaving other beneficiaries high and dry. Having objected to earlier consensus among all the parties regarding second GPS survey, Defendant had made a liability of substantial cost for the Estate to engage a registered surveyor, but had disregarded interest of other beneficiaries.
53. Defendant is only interested about obtaining a separate title to his occupation in the Estate, in order to obtain separate contract to farm sugar cane.
54. Plaintiff had not consented to such subdivision of only one trustee’s area when others were not treated equally. This had resulted Defendant not allowing proceeds of sugar cane being withdrawn from bank account.
55. It may not be a pragmatic thing to subdivide only one person’s entitlement out of over 100 acres, when beneficiaries are farming as a ‘tenancy in common’ under the lease through mutual understanding since 1996. So, it was abuse of trustee’s obligation to refuse distribution of income to the Estate from sugar cane farming, by the beneficiaries.
56. It was also clear that lessor had attempted to subdivide using GPS mapping twice and in the second attempt all parties had agreed to subdivision in accordance with the consensus among the beneficiaries. but this was later objected by Defendant as one of the two trustees. (see annexed H to affidavit in reply). This can also be considered as additional ground for not considering welfare of all the beneficiaries, and acting in selfish and oppressive manner, to obtain consent of Plaintiff as co-trustee of the Estate.

57. After deciding to object to the second subdivision using GPS, Defendant had obtained a quotation for subdivision which was over \$10,000 and wanted only his entitlement to be subdivided. This again shows that Respondent had not considered welfare of the beneficiaries as well other factors such as cot etc to beneficiaries or to the Estate.
58. Not stopping from there, he had used his trusteeship to obtain some leverage to release of funds that require distribution among the beneficiaries. This distribution was done since 1996 till the issue of subdivision of his portion arose in 2021. There was a legitimate expectation of all the adult beneficiaries and their families for quick disposal of such funds as done for a long time.
59. Defendant had used his trusteeship to coerce or insert undue influence to obtain consent to partition of his entitlement and refusing to sign the release of sugar cane proceedings.
60. Defendant stated that without each party's contribution to the harvest money cannot be distributed. This is accepted, but where is his request for such an information from any party for over a year? As a co-trustee he should ensure such records are being kept and obtained for timely distribution of money.
61. This was an obligation on both trustees and Defendant cannot relieve that obligation to any other party. Defendant had also relied on movement restrictions due to pandemic, but more than six months have lapsed since the removal of movement restrictions. When the hearing was adjourned in last month to allow parties to specifically deal with the distribution of money that had not happened. This shows that Defendant's reasons for non-distribution of money are not genuine.
62. Plaintiff also relied on Section 35 of Succession Probate and Administration Act 1970, and it states,

“Court may remove executor

**35. The court may for any reason which appears to it to be sufficient,** either upon the application of any person interested in the estate of any deceased person or of its motion on the report of the Registrar and either before or after a grant of probate has been made-

(a) make an order removing any executor of the will of such deceased person from office as, such executor and revoking any grant of probate already made to him; and

(b) by the same or any subsequent order appoint an administrator with the will annexed of such estate; and

(c) make such other orders as it thinks fit for vesting the real and personal property of such estate in the administrator and for enabling the administrator to obtain possession or control thereof; and

(d) make such further or consequential orders as it may consider necessary in the circumstances.”

63. Section 73 of Trustee Act 1966 and Section 35 of Succession Probate and Administration Act 1970, gives a discretion to court to appoint a trustee, when the assistance of court is required in an 'inexpedient, impractical, or difficult' or 'any reason appear to be sufficient' respectively. So the burden is with the Plaintiff to prove such facts necessary in order to obtain orders sought in this action.
64. This is an action seeking removal of Defendant as the executor or trustee. He is refusing to allow sugar cane proceeds to be distributed among the beneficiaries of the Estate. There was no issue as to the distribution of sugar cane proceeds since the death of late Soharab Khan in 1996.
65. Plaintiff in the affidavit in support stated that sugar cane proceeds since 2021, March were not distributed as signature of both trustees were required to disperse funds from trust account. The paragraphs 9, 10, and 11 of the affidavit in support were admitted.
66. Paragraph 44 of the affidavit in opposition Defendant stated that when sugar cane proceeds from the land belonging to the Estate were received, he had requested his son to deliver "survey plans". Why such survey plan is needed for the distribution of cane proceeds not explained. There was no need to deliver consent form to partition his possession along with documents to withdraw money from bank account.
67. Subdivision of the Land and distribution of proceeds of sugar cane are two mutually exclusive issues, hence they should be treated separately.
68. What can be deduced from, the conduct of Defendant, is that Defendant wanted Plaintiff to consent to partition the area where Defendant is in possession and, failure to do so had resulted Defendant not consenting to release of sugar cane proceeds from the bank account.
69. It was clear that this 'survey papers' was not in existence since 1996, but trustees had no issue in the distribution of proceeds and or possession and or cultivation of the land belonging to the Estate of over hundred Acres. (see paragraph 44 of Affidavit in opposition)
70. If Plaintiff had unreasonably refused to sign 'survey papers' as trustee holding other beneficiaries, at ransom by not releasing proceeds of sugar cane plantation, that would constitute a breach of trust entrusted upon him. There is no such allegation against Plaintiff.
71. There is no dispute that major part of the land belonging to the Estate is under sugar cane cultivation, and there is substantial money accrued in the trust account due to refusal of Defendant to sign documents to withdraw money from it. This is not his personal account and he cannot avoid his duties as trustee and hold other beneficiaries at ransom to agree to something they do not want. This is duress or undue influence to say the least.

72. Even if such consent was obtained, it can be set aside and not recognized in equity. (see *Dunbar Bank plc v Nadeem* [1998] 3 All ER 876).
73. Such a conduct amounts to misconduct of trustee.
74. Defendant allege that no account of each persons produce was submitted. This cannot be accepted as a valid reason for refusal to release funds. As admitted by Defendant though he had got an employment in a religious body as a priest and had not visited the farm last year, his two sons were farming in the Land. If so, each party should have details of their produce and if that was not produced he as trustee could have requested, for such details from beneficiaries.
75. There was no evidence of him, requesting such details even from Plaintiff. This is an afterthought to justify his misconduct and deprive the other beneficiaries of their livelihood they depended since 1996.
76. In the affidavit in reply Plaintiff as a trustee is considering the wellbeing of all the beneficiaries including Defendant, to release of proceeds that had got accumulated since 2021, March.
77. It is not in dispute that all the beneficiaries of the Estate rely on farming for living. Defendant state that there were various kinds of farming, but the major part of the land was under sugar cane farming.
78. In this instance there is evidence that Defendant and Plaintiff are the joint executors and trustees of the Estate. Defendant is abusing his trusteeship by unreasonably refusing to sign the withdrawal slip of the trust account where sugar cane proceeds were remitted for nearly a year.
79. There are allegations that Defendant had previously resorted to the same tactics and this was not an isolated incident. So may be due to his past success , he had resorted to withhold livelihood of beneficiaries derived from sugar cane farming for his own benefit to get separate title for him by partitioning his area of possession.
80. Defendant was given an opportunity by the court before this hearing to distribute the proceeds but this opportunity was also not used, indicating that Defendant is continuing to abuse his trusteeship.
81. Defendant is removed forthwith for his conduct which was clearly not for the welfare of the beneficiaries of the Estate for the reasons given.
82. Plaintiff had requested another person to be appointed as a trustee. This is allowed considering that the area under the Land is over 100 acres and considering other circumstances such as pending subdivision and also other issues such as expiration of lease in few years.

83. As the majority of beneficiaries had nominated a person to act as trustee of the estate and this person had also consented to act as trustee. It is better to have two trustees considering issues of the Estate. Hence Mohammed Yakub Khan is appointed as trustee to the Estate.

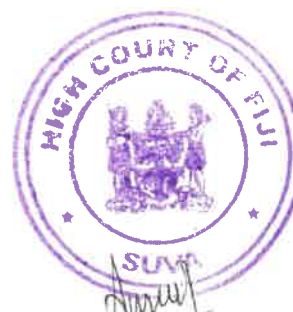
### CONCLUSION

84. Defendant had acted contrary to welfare of the beneficiaries of the Estate. He had unreasonably refused to distribute proceeds of sugar cane accumulated since 2021 Mach for over a year. He knew that this income was a source of income for beneficiaries and they had legitimate expectation of that, since 1996. Defendant had requested, partition of his entitlement to be demarcated for him to obtain separate title from the Land, without consideration of other beneficiaries. Defendant is using consent of Plaintiff, for partition of his passion, as condition precedent to release funds. He was alleged to have resorted to this tactic earlier. Defendant is removed as executor and or trustee, forthwith. Mohammed Yakub Khan is appointed as a trustee of the Estate (along with Plaintiff). Cost of this action is summarily assessed at \$1,000.

### FINAL ORDERS

- a. Saheed Khan (Defendant/Respondent) is removed as trustee of the estate of late Soharab Khan.
- b. Mohammed Yakub Khan (Yakub Khan) is appointed as a trustee of the estate of late Soharab Khan.
- c. Cost of this application is summarily assessed at \$1,000 considering circumstances of the case.

**Dated at Suva this 28<sup>th</sup> day of June, 2022.**



.....  
**Justice Deepthi Amaratunga**  
**High Court, Suva**