

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

**Civil Action No. 66 of 2021**

**IN THE MATTER** of an application made pursuant to Order 85 Rule 2(3) (d) of the High Court Rules of Fiji, 1988.

**IN THE MATTER** of the **ESTATE** of **UNAISI KASAOA VONOTAGUA** aka **UNAISI VONOTAGUA DIGITAKI** of Lot 40 Borete Road, Nadawa, Nasinu, Fiji, Nurse, Deceased, Intestate.

**BETWEEN:** **NEMAIA DIGITAKI** of Lot 40 Borete Road, Nadawa, Nasinu, Fiji, Unemployed.

**APPLICANT**

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

**COUNSEL:** **Mr Nadan A. for the Applicant**

**Date of Decision:** **07<sup>th</sup> July 2022 at 9.30am**

**DECISION**

*[Sale of Estate Property pursuant to Order 85 Rule 2 (3) (d) of the High Court Rules 1988]*

**Introduction**

1. The Application before Court by an **Amended Ex-parte Originating Summons** is seeking for the following Orders:-
  - (i) An Order for the sale of a property legal description of which is Housing Authority Sub Lease No. 442241, Lot No. 40 on Deposited Plan No. 7695 and situated at Borete Road, Nadawa, having area of 268 meter squared.
  - (ii) An Order that the share of the monies from the sale (after deduction of Taxes and ancillary expenses) for Eroni Molaucake Digitaki be deposited into a commercial bank in Fiji in his name in a fixed deposit until such time that he attains the age of majority or as directed by Court.
  - (iii) Alternatively an Order that the share of the monies from the sale (after deduction of Taxes and ancillary expenses) for Eroni Molaucake Digitaki be deposited into the Chief Registrar's interest bearing account till such time that he attains the age of majority or as directed by court.
  - (iv) Such other relief as the Honourable Court may deem just and expedient.
  
2. The Application is made in support of an **Affidavit together with a supplementary Affidavit** and pursuant to **Order 85 Rule 2(3) of the High Court Rules and the Inherent Jurisdiction of this honourable court.**

**Background**

3. The Applicant Nemaia Digitaki was granted Letters of Administration on 12 November 2020 vide Letter of Administration No. 66643. Unaisi Kasaqa Vonotagua [wife of the Applicant] took demise on 05<sup>th</sup> January 2019.
4. The Deceased had only one son namely Eroni Molaucake Digitaki (minor) born on 28<sup>th</sup> November 2010.
5. The Applicant and the son are the only beneficiaries of the Deceased's estate.
6. The Deceased's estate comprises only of a real property, Housing Authority sub-lease No. 442241 Lot No. 40 on Deposit Plan No. 7695 and situated at 30 Borete Road, Nadawa.
7. The Applicant entered into and executed a Sale and Purchase Agreement with Avinesh Dutt to sell the said property in the sum of \$150,000.00.
8. The Applicant's intention is to sell the state property and buy another TLTB property in the province of Tailevu for the purchase price of \$25,000 from the sale proceeds.
9. The Applicant is willing to invest the surplus sale proceeds for the benefit of the son at Court's direction and/or deposit the sum of money into Chief Registrar's Interest bearing Account until the child attains the age of majority.

### Determination

10. The issue before Court is '**Whether an Order for the sale of the Estate property, Housing Authority Sub-lease No. 442241 should be granted?**'.
11. It must be noted that the Applicant (husband of deceased) and the only son Eroni Molaucake Digitaki are the beneficiaries of the Deceased's estate.
12. The Applicant was granted a Letters of Administration vide Application No. 66642 on 12<sup>th</sup> November, 2020 in the Estate of Unaisi Vonotagua.
13. The Applicant together with the only child, Eroni Molaucake Digitaki, born on 28<sup>th</sup> November, 2010 were the beneficiaries of the Deceased's Estate. It will be noted that the child herein was a minor and had not attained the age of the majority.
14. The purpose of the Letters of Administration Grant was to allow the Applicant (Administrator) to administer the Deceased's Estate in accordance with the relevant Laws. The Applicant had a duty and responsibility to ensure and protect his entitlement and share in the Estate.
15. However, the Applicant in his capacity as an Administrator of the Deceased's Estate without obtaining a prior Court Order for the sale of the Estate property , had proceeded to enter into and **execute a Sale and Purchase Agreement** for the Sale of the Deceased's Estate Property in the sum of \$150,000.
16. The failure of the Applicant (Administrator) to enter into and execute the sale and Purchase Agreement without the prior approval of the court order to do so invalidates and makes the Sale and Purchase Agreement void accordingly.
17. Secondly, there is no concrete evidence of the market Sale price of the said property since there is no valuation carried out and annexed to the Application to allow this Court to peruse and be satisfied with the Application. The property is intended to be sold on" as is where basis is."
18. It seems that the Applicant in his capacity as an Administrator of the Deceased's Estate has entered into a private arrangement with the Purchaser when he could have advertised the Estate property located in a somewhat prime area at Borete Road, Nadawa, Nasinu.
19. The interest and entitlement of the minor child, Eroni Molaucake Digitaki in his mother's Estate must be dealt with in the child's best interest.
20. Further, the Court is duty bound and will always ensure that the interests and entitlements of minors in a Deceased's Estate are protected and deal with the applications of this nature seeking orders in a just and fair manner accordingly.
21. For the aforesaid rationale, I have no alternative but to dismiss the Applicant's application.

### Orders

22. An Order for the sale of Housing Authority sub-lease No. 442241, Lot No. 40 on Deposit Plan No. 7695 and situated at Borete Road, Nadawa, is dismissed.

Dated at Suva this 07<sup>th</sup> day of July 2022.



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**VISHWA DATT SHARMA**  
**JUDGE**

cc: *Messrs Neel Shivam Lawyers, Suva.*