

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

**CIVIL ACTION NO. HBC 154 OF 2017**

**IN THE MATTER** of section 11(4) of the trustees Act Capt. 65.

**AND**

**IN THE MATTER** of **ESTATE OF RAVINESH ROHIT PRASAD** late of Meigunyah, Nadi, Internal Auditor, Intestate

**BETWEEN**

**KAVITA ROHINI DEVI LAL** of Meiguniya, Nadi, Domestic Duties as the widow and Administratrix of Estate of Ravinesh Rohit Prasad, deceased internal Auditor, Intestate.

**PLAINTIFF**

**AND**

**VIKASH ROHIT PRASAD** of Meiguniya, Nadi, Police Officer Executor and Trustee of **Estate of Hari Prasad** late of Meigunyah, Nadi, farmer, Deceased, Testate.

**DEFENDANT**

**DATE OF HEARING**

18<sup>th</sup> October, 2022 & 21<sup>st</sup> August 2023.

**APPEARANCES**

Ms. Sadrata, for the Plaintiff.  
Mr. R. Prasad, for the Defendant.

**SUBMISSIONS**

By the Plaintiff- filed on 4<sup>th</sup> September, 2023  
No written submissions filed by the Defendant.

**RULING**

On 25<sup>th</sup> October, 2023

**RULING**

**A. INTRODUCTION:**

1. Before me is an application preferred by the defendant hereof by way of his Inter -Parte Notice of Motion filed on 21<sup>st</sup> September 2017, seeking the following reliefs;
  - a) The action be struck out as the issues have been dealt with by another court of competent jurisdiction and it is otherwise an abuse of the process of court.
  - b) The action be struck out on the grounds that it is frivolous and vexatious and does not disclose a reasonable cause of action.
  - c) The costs of this application be paid by the plaintiff.

2. The application is made pursuant to Order 18 Rule 18 (1) (a), & (d), and under Order 29 of the High Court Rules 1988. It is supported by an affidavit sworn and filed by the defendant on 21<sup>st</sup> September 2017, together with annexures marked as “VRP-1” to “VRP-4”.
3. The plaintiff filed his affidavit in opposition on 17<sup>th</sup> January 2018, and the defendant did not file affidavit in reply.

**B. THE SUBSTANTIVE MATTER:**

4. The plaintiff, on 24<sup>th</sup> July 2017, by her Originating summons filed action before this court against the defendant seeking the following reliefs;
  - (i) *That the Plaintiff be granted entitled to the Estate of Hari Prasad; that she be granted access to collect, get in and administer according to the law the real and personal estate of the said deceased in that possession by the Defendant;*
  - (ii) *That the Defendant as the Executor and of the Estate of Hari Prasad late of Meigunyah, Nadi, Deceased, Testate, by virtue of Letters of Administration (Will Annexed) De Bonis Non No. 43440, to subdivide the estate property being Crown Lease No. 6472 being Lot 20 Plan ND 5130 & Lot 1 Plan ND5118 pt's of Nasau & Nabuyagiyagi, formerly CT's 10665 & 2438 (Farm 2136) among the beneficiaries as specified in the Last Will and Testament of Hari Prasad, Deceased, to be distributed equally amongst the Plaintiff and the Defendant; and*
  - (iii) *That the Defendant and/or his servant/agents be restrained from occupying the Plaintiff's three (4) bedroom concrete residential dwelling situated herein on the Estate property of the late Hari Prasad; and.*
  - (iv) *That the Deputy Registrar of the High Court, Lautoka be directed to sign the Transfer documents on behalf of the Trustee in the event the Defendant refuses and/or neglects to execute the transfer documents within one (1) months period; and.*
  - (v) *That the Defendant to release motor vehicle registration number EL027 to the Plaintiff;*
  - (vi) *An injunction restraining the Defendant and/or his servant/agents be restrained from taking possession, selling, transferring, assigning and/or disposing the property comprised in Crown Lease No. 6472 being Lot 20 Plan ND 5130 & Lot 1 Plan ND5118 pt's of Nasau & Nabuyagiyagi, formerly CT's 10665 & 2438 (Farm 2136) until further order of this Honorable Court and/or this Honorable Court may deem fit, just and expedite.*
  - (vii) *Costs of this application to be borne by the Defendant.*
  - (viii) *Any other order or orders this Honourable Court may deem just and equitable.*
5. The Originating Summons was supported by an affidavit sworn by the Plaintiff and filed along with annexures marked as “KRDL-1” to “KRDL-6”.
6. The defendant, having filed his acknowledgment of service on 10<sup>th</sup> August 2017, chose to file his aforesaid application for striking out the Originating summons. The defendant who had not initially filed his affidavit in opposition to the Originating summons, later filed the same on

24<sup>th</sup> February 2021 as my predecessor judge had decided to take up the substantive matter and the striking out application together.

**C. BACKGROUND HISTORY:**

7. The plaintiff is the lawful widow and Administratrix of the Estate of RAVINESH ROHIT PRASAD ("Ravinesh"), who died on 19<sup>th</sup> July 2013 and her said deceased husband was a son of one HARI PRASAD. As per Hari Prasad's Last Will marked as "KRDL-3", the Plaintiff's late Husband "Ravinesh" is one of the two beneficiaries. The other beneficiary thereof is the defendant hereof VIKASH ROHIT PRASAD ("VIKASH"), also being a Son of Hari Prasad. The defendant "Vikash" is the elder brother of the plaintiff's deceased husband "Ravinesh".
8. Accordingly, the plaintiff claims that her deceased husband Ravinesh is entitled to half share in the Estate of Hari Prasad, while the other half belongs to the defendant "Vikash" as per the Last Will of the late "Hai Prasad".
9. The original Trustee of Hari Prasad's Estate was his wife "NIRMALA" and after her death leaving the Estate un-administered, the defendant "Vikash" applied for Letters of Administration of Hari Prasad's Estate and same was granted to him with the Will annexed thereto.
10. The plaintiff alleges that the defendant, being the Administrator of the Estate of Hari Prasad, has denied the plaintiff to have and enjoy her due share that derives to her through her deceased husband from his deceased Father Hari Prasad's Estate.

**Suva Probate Action No: HPP-60 of 2014.**

11. It was under the above circumstances, the Plaintiff hereof filed the Probate action HPP-60 of 2014 at the Suva High Court by way of her Originating Summons on 21<sup>st</sup> November 2014, which was subsequently amended by the Amended Originating Summons dated 10<sup>th</sup> March 2015, seeking, *inter alia*, the following reliefs:
  1. **THAT** the Defendant be removed as the administrator of the Estate of Hari Prasad.
  2. **THAT** leave be granted to the plaintiff to take out letters of Administration (with will annexed) De Bonis Non in the Estate of Hari Prasad.
  3. **THAT** KAVITA ROHINI DEVI LAL be appointed as the Administratrix of the Estate of Hari Prasad.
  4. **THAT** the costs of this action be cost in cause.
12. Both the parties to the said Probate action No- HPP-60 of 2014 entered into the following Terms of settlement dated 13<sup>th</sup> July 2016 and filed on 18<sup>th</sup> July 2016, which reads as follows:
  1. **THAT** the plaintiff is at liberty to apply to become an Administratrix of the Estate jointly with the defendant.

2. ***THAT*** the leave be granted by the Court to the plaintiff to be jointly added as an Administratrix of the Estate with the defendant.
  3. ***THAT*** the plaintiff to make the appropriate application to the probate registry for the grant as stated in clause (2).
  4. ***THAT*** each party to bear their own costs of this action.
  5. ***THAT*** these Terms of Settlement shall become Orders of this Honourable Court.
13. Subsequently, on 19<sup>th</sup> July 2016, the Orders as per the aforesaid Terms of Settlement filed on 18<sup>th</sup> July 2016 were made as the Order of the court, by which the matter appears to have come to an end.
14. Instead of proceedings to act as per the Terms of Settlement above, the Plaintiff has filed this action before this court seeking the reliefs as per her originating summons, and the defendant has in turn filed his application for striking out, which this court has now been called up on to deal with.

**D. ISSUES:**

15. The issues that beg adjudication in this matter for the time being are as follows;
- a. *Whether the plaintiff's claim against the defendant is an abuse of process of court pursuant to Order 18 rule 18 of the High court Rule?*
  - b. *Whether the plaintiff can bring this action before this court in view of the Terms of Settlement entered into in probate action No; HPP 60 of 2014?*

**E. LAW ON STRIKING OUT:**

16. The law on striking out pleadings and endorsements is stipulated under Order 18 Rule 18 of the High Court Rules 1988, which states as follows-

*18.-(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-*

*(a) it discloses no reasonable cause of action or defence, as the case may be; or*

*(b) it is scandalous, frivolous or vexatious; or*

*(c) it may prejudice, embarrass or delay the fair trial of the action; or*

*(d) it is otherwise an abuse of the process of the court;*

*and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.*

*(2) No evidence shall be admissible on an application under paragraph (1) (a).*

17. In **Paulo Malo Radrodro vs Sione Hatu Tiakia & Others, HBS 204 of 2005**, the Court stated that:

*"The principles applicable to applications of this type have been considered by the Court on many occasions. Those principles include:*

- a. A reasonable cause of action means a cause of action with some chance of success when only the allegations and pleadings are considered – Lord Pearson in Drummond Jackson v British Medical Association [1970] WLR 688.*
- b. Frivolous and vexation is said to mean cases which are obviously frivolous or vexations or obviously unsustainable – Lindley LJ in Attorney General of Duchy of Lancaster v L.N.W Ry [1892] UKLawRp Ch 134; [1892] 3 Ch 274 at 277.*
- c. It is only in plain and obvious cases that recourse would be had to the summary process under this rule – Lindley MR in Hubbuck v Wilkinson [1898] UK Law RpKQB 176; [1899] Q.B. 86.*
- d. The purpose of the Courts jurisdiction to strike out pleading is twofold. Firstly is to protect its own processes and scarce resources from being abused by hopeless cases. Second and equally importantly, it is to ensure that it is a matter of justice; defendants are permitted to defend the claim fairly and not subjected to the expense inconvenience in defending an unclear or hopeless case.*
- e. "The first object of pleadings is to define and clarify with position the issues and questions which are in dispute between the parties and for determination by the Court. Fair and proper notice of the case an opponent is required to meet must be properly stated in the pleadings so that the opposing parties can bring evidence on the issues disclosed – ESSO Petroleum Company Limited v Southport Corporation [1956] A.C at 238" – James M Ah Koy v Native Land Trust Board & Others – Civil Action No. HBC 0546 of 2004.*
- f. A dismissal of proceedings "often be required by the very essence of justice to be done"..... – Lord Blackburn in Metropolitan – Pooley [1885] 10 OPP Case 210 at 221- so as to prevent parties being harassed and put to expense by frivolous, vexations or hopeless allegation – Lorton LJ in Riches v Director of Public Prosecutions (1973) 1 WLR 1019 at 1027"*

18. His Lordship Mr. Justice Kirby in **Len Lindon –v- The Commonwealth of Australia (No. 2) S.96/005** summarized the applicable principles as follows:-

*"It is a serious matter to deprive a person of access to the courts of law for it is there that the rule of law is upheld, including against Government and other powerful interests. This is why relief, whether under O 26 r 18 or in the inherent jurisdiction of the court, is rarely and sparingly provided.*

*To secure such relief, the party seeking it must show that it is clear, on the face of the opponent's documents, that the opponent lacks a reasonable cause of action ... or is advancing a claim that is clearly frivolous or vexatious...*

*An opinion of the Court that a case appears weak and such that is unlikely to succeed is not, alone, sufficient to warrant summary termination... even a weak case is entitled to the time of a court. Experience teaches that the concentration of attention, elaborated evidence and arguments and extended time for reflection will sometimes turn an apparently unpromising cause into a successful judgment.*

*Summary relief of the kind provided for by O.26 r 18, for absence of a reasonable cause of action, is not a substitute for proceeding by way of demurrer.... If there is a serious legal question to be determined, it should ordinarily be determined at a trial for the proof of facts may sometimes assist the judicial mind to understand and apply the law that is invoked and to do in circumstances more conducive to deciding a real case involving actual litigants rather than one determined on imagined or assumed facts.*

*If, notwithstanding the defects of pleadings, it appears that a party may have a reasonable cause of action which it has failed to put in proper form, a Court will ordinarily allow that party to reframe its pleading.*

*The guiding principle is, as stated in O 26 r 18(2), doing what is just. If it is clear that proceedings within the concept of the pleading under scrutiny are doomed to fail, the Court should dismiss the action to protect the defendant from being further troubled, to save the plaintiff from further costs and disappointment and to relieve the Court of the burden of further wasted time which could be devoted to the determination of claims which have legal merit.”*

#### **F. DISCUSSION:**

19. When the matter was taken up for hearing before me on 18<sup>th</sup> October 2022, after the counsel for both the parties were heard, as it was intimated by the counsel that there could be a settlement, a mention date was given to inform the settlement, if any, on the next date. Accordingly, matter was fixed for mention 25<sup>th</sup> November 2022 leaving the parties at liberty to file written submissions, if no settlement was arrived at.
20. Subsequently, the matter was again mentioned on 25<sup>th</sup> November 2022, 27<sup>th</sup> January 2023, 20<sup>th</sup> February 2023, 28<sup>th</sup> March 2023 and 21<sup>st</sup> April 2023 granting time for the parties to settle the matter, but, no settlement arrived at. Thus, the matter was once again fixed for hearing on 18<sup>th</sup> May 2023 as the parties opted to go for a fresh hearing limited to the striking out application.
21. Accordingly on 14<sup>th</sup> June 2023 the striking out application was fixed for hearing on 21<sup>st</sup> August 2023 while granting the defendant time to file his reply Affidavit, which was not filed.
22. When the matter came up for hearing on 21<sup>st</sup> August 2023, counsel for both parties agreed to obtain a ruling based on the hearing held on 18<sup>th</sup> October 2022 and on the written submissions to be filed by them. Only the plaintiff's written submissions has been filed and no written submissions has so far been filed by the defendant. Thus, this Ruling is pronounced limiting to the strike out application based on the hearing held on 18<sup>th</sup> October 2022 and the written submission filed on behalf of the plaintiff.

**The defendant's position:**

23. The contention on behalf of the defendant is that the issues in the High court matter in Suva in probate action 60 of 2014, and the issues in the current proceedings are of similar in nature with similar facts deposed in the plaintiff's originating summons and affidavits.
24. That the said action HPP-60 of 2014 in Suva was disposed on the terms embodied in the Terms of Settlement filed after numerous discussions between the parties and solicitors, according to which the plaintiff was to be joined as an Administratrix of the Estate of Hari Prasad to administer the Estate equally on account of his half share and that of the plaintiff.
25. That the said settlement was entered between the parties to resolve the claim made by the plaintiff, but the plaintiff has failed to comply with the Terms of Settlement entered in the said action No. HPP 60 of 2014, and has now filed this application against him on the same issue.
26. That this is clearly an abuse of court process and the application is frivolous and vexatious.

**My Decision:**


27. I have carefully perused the contents of the, purported, Terms of Settlement that has been entered at the Suva High Court Action No- HPP 60 of 2014.
28. It is obvious that by the said Terms of Settlement, the disputes between the parties have not been finally adjudicated and brought to an end, except for placing the plaintiff at liberty to apply to become a joint Administratrix with the defendant to administer the Estate of late Hari Prasad.
29. Clause 2 of the said Terms of settlement grants the plaintiff the leave to be jointly added as an Administratrix of the said Estate with the defendant, however subject to making an application to the Probate registry for the grant as per clause 3 of the said Terms of settlement.
30. As per the above terms, it is not mandatory on the part of the Plaintiff to become a joint Administratrix, but only a liberty given to her if she wishes to become a joint Administratrix.
31. The Plaintiff instead of becoming an Administratrix or a joint Administratrix, can always come before the court as a beneficiary to have the administration of the Estate of Hari Prasad duly attended by the defendant, who is bound by his fiduciary duties as the Administrator of the Estate of late Hari Prasad. The Settlement order does not compel the plaintiff to become a joint Administratrix nor can the defendant compel the plaintiff to become a joint Administratrix.
32. The said Terms of Settlement appears to have been, calculatedly, prepared and imposed on the plaintiff in order to buy time and delay the fiduciary duty imposed on the defendant toward the plaintiff as the Administrator of Hari Prasad's Estate.

33. The existence of the said Terms of Settlement in the former action need not necessarily be a hurdle for the plaintiff to have this Application filed and proceeded with before this Court. The said Terms of Settlement has granted the plaintiff only the liberty to become a joint Administratrix with the defendant, if she wished to, and not getting herself appointed as a joint Administratrix, as per the settlement is not a violation of court order or will not disentitle her to seek orders against the defendant for the fulfillment of his fiduciary duties.
34. However, perusal of the reliefs prayed for in the Originating summons shows that she may not be entitled to obtain certain reliefs as prayed for therein. But she can be at liberty to have her reliefs therein amended, however subject to objection by the defendant.
35. In view of the above, this Court decide to dismiss the Striking out application preferred by the defendant, and allow the plaintiff to proceed with her originating summons, with liberty to amend it.
36. As far as the issue of costs is concerned, considering the circumstances, this court decides not to order any costs, and order the parties to bear their own costs.

**G. FINAL ORDERS:**

- a. The striking out Application preferred by the defendant fails.
- b. The inter-parte Notice of Motion filed by the defendant on 21<sup>st</sup> September 2017 is hereby dismissed.
- c. The plaintiff is at liberty to proceed with her Originating Summons.
- d. The plaintiff is also at liberty to amend the reliefs in the originating Summons, subject to objection, if any, by the defendant.
- e. Considering the circumstances, no costs ordered and the parties shall bear their own costs.
- f. The matter shall be mentioned to fix a date for hearing of the substantial Application.



  
**A.M. Mohamed Mackie**  
Judge

At High Court Lautoka this 25<sup>th</sup> day of October, 2023.

**SOLICITORS:**

**For the Plaintiff: Iqbal Kahn & Associates, Barrister & Solicitor**

**For the Defendant: Messrs. Robinson R. Prasad Lawyers, Barristers & Solicitors**