

IN THE HIGH COURT OF FIJI AT SUVA
PROBATE JURISDICTION

CASE NUMBER: HPP 05 OF 2025

BETWEEN: **WILLIAM YARAGAMUDU**
PLAINTIFF

AND: **AMELIA DUBUNA**
DEFENDANT

Appearances: Mr. V.Faktaufon and Mr.J. Vatubua for the Plaintiff.

Ms. S. W. Nagonevulavula for the Defendant.

Date/Place of Judgment: Wednesday 2 April 2025 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

RULING

(Injunctive Reliefs)

Catchwords:

Injunctive reliefs: potential beneficiary in the estate seeks to exclude others (the wife and child of the deceased) from living in the family home and from use of income from estate property – no exclusive right exists to seek exclusion of others from continued living in family home and using income from estate – parties extent of entitlements from estate is a matter for substantive cause and an interim relief injuncting other beneficiaries is going to cause inconvenience to them especially the child of the deceased who is also a beneficiary in the estate- injunction refused.

Cause and Background

1. The plaintiff is seeking injunctive reliefs against the defendant in respect of the properties of his deceased father. The plaintiff is the son of Leone Yaragamudu from his first marriage. Leone Yaragamudu died on 30 January 2024.

2. In 2019 the deceased married the defendant. The defendant and the deceased have a child born in 2012.
3. The plaintiff seeks that the defendant be restrained, whether by herself, or her servants and agents from:
 - (i) *Obstructing the plaintiff's full and free access to his deceased father's property located at Nakuru Settlement, Waidova, Navua (the family home); and*
 - (ii) *Interfering with the plaintiff's peaceful use and enjoyment of his deceased father's property, assets and belongings located at Nakuru Settlement, Waidova, Navua.*

Plaintiff's Position

4. The plaintiff's position is that his father has died intestate. His father's estate includes a family home at Nakuru Settlement, 3 bank accounts, vehicles, a taxi, and the income from the dairy farm. The plaintiff has accused the defendant of meddling with his father's estate.
5. Since 2016, the plaintiff has been working in Australia as a support worker. He says that he was supporting his father by sending him financial help through MPAISA. His assistance increased in quantity and frequency towards his father's final months.
6. The plaintiff says that since his father's death, the defendant has:
 - (i) *actively casted doubt over his entitlement as a beneficiary in the estate despite being a bonafide member of the Mataqali;*
 - (ii) *blocked him on viber on the 70th night after the deceased person's passing away;*
 - (iii) *spread and continues to spread lies about the plaintiff to his family and friends, and trying to turn them against him and gain their sympathy and support for her illegal actions regarding the estate, and*
 - (iv) *informed and expressed her intention to do whatever it takes to prevent his return to his peaceful use and enjoyment of the family home.*

7. The plaintiff says that the defendant's actions are without any legal entitlement or his consent as legitimate second priority candidate to administer the estate of the deceased.
8. It is said that due to the meddling of the estate, he has filed a caveat over the deceased's estate to prevent her from legitimizing her illegal activities.
9. The plaintiff says that a notice was served on the defendant. The notice required her to furnish an up to date account of the estate. The defendant then filed a domestic violence restraining order against him and his uncle.

Analysis

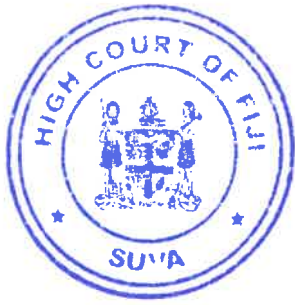
10. Although the application for an injunction was served on the defendant on 13 February 2025, no affidavit in reply was filed. When the matter was called for hearing on 17 March, the defendant's counsel sought time to file an affidavit in reply which I declined as the matter was set down for hearing.
11. Injunction applications are urgent, and if the party (s) to the proceedings wish to oppose the application, they must immediately file an affidavit in opposition setting out the grounds on which the application is opposed. They cannot wait for the court to give directions before they start the process of preparing and filing an affidavit in reply.
12. The defendant has had a month to file an affidavit in reply but no such affidavit was filed. The request for time to file the same at the hearing date was unjustified as it was going to affect an urgent hearing of the application.
13. Be that as it may, let me concentrate on the reliefs sought. The plaintiff wants to live in the family home in Navua without being restrained or harassed by the defendant.
14. The defendant was married to the deceased in 2019 and has a daughter from that relationship. The defendant has been residing in this family home since her marriage. The child has also been living with her parents (*as per paragraphs 6 and 7 of the plaintiff's substantive affidavit filed on 20 January 2025*).
15. The plaintiff has lived and worked in Australia since 2016. He has not been living in the family home since then.

16. I am not aware of any will that excludes the plaintiff's interest in the family home. Nevertheless, he does not have a sole right and interest in the family home. The defendant and her daughter, in absence of any will excluding their interest, too, have a right in the family home. They have been occupying that place for the last 7 or so years.
17. It is inequitable to exclude the defendant and the child of the deceased from continued occupation of the house. They have lived in it until the deceased died.
18. The plaintiff has a right to claim his share in the estate property (s) but in the interim basis he has not been able to satisfy me that the balance of convenience lies in his favour to exclude the existing occupants from living in the house and allowing him to take over the family home.
19. As far as the other assets are concerned, such as the vehicle, taxi and income from dairy farm, the plaintiff's right lies in seeking a full disclosure of the accounts and for his share from the personal representative. However, that is a matter for the substantive action. In the substantive action, he can ask the defendant to show the expenditures made from the estate income.
20. I recognize that all parties have a right to claim the income received by the estate. The extent of each party's entitlement is a matter for the substantive action. I cannot stop the wife and the child from reasonably using any available income from the estate for their day to day living expenses. They need to be maintained until the estate is distributed. They are entitled to provide to the beneficiaries full accounts of how the expenditures are made. That is for the substantive cause.
21. I cannot decide on an interim application the extent of the plaintiff's entitlement in the estate to give him any injunctive relief to enjoy his right. There may not be any income left for sharing and any orders at this stage may be unenforceable and premature. How can any cogent order be made for the plaintiff's right to use and enjoy the income exclusively or to any extent? The request is flawed.
22. In respect of the bank accounts, the proper course of action for the plaintiff is to inform the bank of his father's death. His account will be ceased until a grant is issued.

Orders

23. In the final analysis, I dismiss the plaintiff's claim for injunctive reliefs and order him to pay costs to the defendant in the sum of \$1,500 within 21 days.

24. I will appoint a date for the hearing of the originating summons upon consultation with both the counsel.



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Hon. Madam Justice Anjala Wati

Judge

02.04.2025

To:

1. *Vama Law for the Plaintiff.*
2. *Vosarogo Lawyers for the Defendant.*
3. *File: Suva HPP 05 of 2025.*

