

IN THE HIGH COURT OF FIJI
AT SUVA
PROBATE JURISDICTION

HPP No: 69 of 2023

IN THE MATTER of the **ESTATE OF THE LATE MANGURU aka CHANGAIYA** late of Calia, Navua, Fiji, Cultivator, Deceased, Testate.

AND

IN THE MATTER of an Application under section 35 of the Succession & Probate Act Cap. 60 & Section 73 of the Trustees Act by **HEMANT KUMAR** of Calia, Navua, Farm Worker.

BETWEEN: **HEMANT KUMAR** of Calia, Navua, Farm Worker.

PLAINTIFF

AND: **ASHOK KUMAR** of 46 Lavenia Crescent, Mangere Estate, Auckland, New Zealand, Executor, Administrator of the Estate of the Late Manguru;

FIRST DEFENDANT

AND: **SHAKUNTLA DEVI** of 161 Waimumu Road, Auckland, New Zealand as the Executrix of the late Manguru also known as Changaiya.

SECOND DEFENDANT

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

COUNSELS: **Mr Nand P.** as the consultant of the Plaintiff
Mr. Jiten Reddy for the Defendants

DATE OF DECISION: Thursday 17th April 2025 @ 9.30 am.

DECISION

[Summons seeking extension of time to file Affidavit in Opposition]

A. Introduction

- [1] The Summons was filed as an Interlocutory application by Jiten Reddy Lawyers representing the Defendants and sought for the following orders:
- (i) **An order that** Leave be granted to the Defendants to file and serve their affidavit in opposition out of time.
- [2] The application is made pursuant to Order 3 Rule 4 of the High Court Rules 1988
- [3] The Plaintiff was initially represented by Messrs. Mathews Law who had commenced proceedings via Originating Summons pursuant to *Section 35 of the Succession, Probate and Administration Act 60*.
- [4] Orders sought were to remove the Defendants as Trustee/Administrator pursuant to Probate Grant No. 38672 and to accordingly provide for Estate Accounts and revoke the current Administrator (ix) from the grant and the Plaintiff to be appointed in lieu of the Defendant.
- [5] Upon the perusal of the Court Record, it revealed that on 31st January 2024 the presiding Judge was informed that the Defendants were served out of the Jurisdiction of this Court and that no opposition and/or affidavit response was filed by the Defendant to challenge the orders sought.
- [6] The presiding Judge proceeded to grant the Orders sought therein as enumerated in the Plaintiff's Originating Summons. The file was closed with those orders granted to remain intact.
- [7] On 06th February 2024, Jiten Reddy Lawyers filed Notice of appointment of Solicitors to Act and represent the Defendants.
- [8] When the hearing date was fixed on 04th April 2024, one of the Counsels informed Court that the substantive Originating Summons has been dealt with and granted with the orders sought by another presiding Judge on 31st January 2024 instead, and hence, there were no further applications substantive and/or otherwise for Court to determine.
- [9] This Interlocutory application was heard on 20th March 2025 together with the Defendants/Applicant's written submissions. No written submissions was filed by the Plaintiff and/or his change of Counsel, Kaushik Kumar Lawyers.

- [10] Matter was adjourned for a Decision to be delivered on the **Defendant's Summons seeking for an extension of time to file his Affidavit in Opposition** on a short notice.
- [11] **The Question then arises is that when the Court had already determined the substantive originating summons of the Plaintiff on 31st January 2024, and that the matter had come to an end, was there any need for Jiten Reddy Lawyers to file this interlocutory summons and seek an order for a extension of time to file and serve the Defendants affidavit in opposition?**
- [12] Before Jiten Reddy Lawyers file its notice of appointment of solicitors on 05th February 2024, just one (1) week after the Decision was made to the substantive action, did he peruse the Court file to find out the current status of this action then?
- [13] The Answer is in negative because of he had perused the Court file, then he would have discovered that the substantive Action has been disposed off and orders granted accordingly by the presiding Judge on 31 January 2024.
- [14] It would have avoided him from filing the current interlocutory summons seeking for the Extension of time to file/serve the Defendants affidavits instead file some other application and seek for the necessary orders relevant at that time then.
- [15] However, since the orders on the substantive originating summons was already granted on 31st January 2024 that was the end of the matter, unless he would have then decided to tackle the orders already made and granted by the court by exhausting some other avenues that would have necessitated in the circumstances .
- [16] There is no basis for me to accede to the Defendants interlocutory summons when the substantive matter has already been dealt with and orders accordingly determined therein.
- [17] I have no alternative but proceed to strike out and completely dismiss the defendant's interlocutory summons with no orders as to costs.

B. Orders

- (i) The Defendants Interlocutory Summons filed on 28th November 2024 is struck out and consequently dismissed in its entirety.

(ii) There will be no order as to costs.

(iii) File closed with orders of 31st January 2024 intact accordingly.

Dated at **Suva** this **17th** day of **April, 2025**.



cc. Jiten Reddy Lawyers, Nakasi.
Kaushik Kumar Lawyers, Labasa