

**IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA.
EXERCISING CIVIL JURISDICTION.**

CIVIL ACTION No. HBC 72 of 2024

BETWEEN : **NILESH SAMI** of B.S. Charan Road, Lovu, Lautoka
Currently residing in New Zealand.

PLAINTIFF

AND

: **MADHUI** of Lauwaki Settlement, Saweni, Lautoka
as the Administratrix of the ESTATE of NARAYAN
SWAMY.

DEFENDANT

BEFORE : A.M. Mohamed Mackie-J.

COUNSEL : Mr. A. Ram, for the Plaintiff.

: Ms. Ravai S. For the Defendant.

HEARING : By way of written submissions.

WRITTEN SUBMISSIONS: Filed by the Defendant on 2nd June 2025.

: Not filed by the Plaintiff.

RULING : Delivered on 04th June 2025.

RULING

A. INTRODUCTION:

1. Before me is a Summons filed by the Defendant on 05th December 2024, pursuant to Order 15 Rule 6 (2) (b) of the High Court Rules 1988, seeking the following orders;

1. That **Salochana Devi** and **Rovina Rashni Chandra** be joined to these proceedings as Defendants and/ or interested parties.
 2. That the intituling be amended to include the above named as Defendants and/ interested parties;
 3. That notice be served on these parties to attend to Court.
 4. Such further or other directions the Court deems just.
 5. Costs to be in the cause.
2. The Summons is supported by Affidavit sworn by the Defendant MADHUI on 5th December 2024.

B. FACTS:

3. The Plaintiff who is, admittedly, a beneficiary of the Estate of his deceased Father **NARAYAN SWAMY aka NARAYAN SAMI**, had on 10th April 2024, instituted this action by way of an Originating Summons against the Defendant , who is the executor and / or the Trustee of the said Estate, seeking for the following **RELIEFS**;
 - A. **AN ORDER** that the Defendant transfer the property located in S/D Lot 5 on Vitogo Ba to the Plaintiff.
 - B. **AN ORDER** that the Defendant transfer the vehicle registration DB 053 to the Plaintiff.
 - C. **AN ORDER** that the Defendant provide details of all incomes and expenditure of the Estate to the other beneficiaries;
 - D. **ALTERNATIVELY**, an order that the Defendant distribute the Estate of **NARAYAN SWAMY aka NARAYAN SAMI** to all the beneficiaries as per section 6 of the Succession, Probate and Administration Act 1970;
 - E. The Court grant such other orders.
4. The Plaintiff, by his originating Summons, is seeking the transfer of a land and the Motor Vehicle bearing No DB -053 both belonging to the said Estate of his deceased Father. He is also moving for the defendant to provide details of all income and expenditures of the estate to the other beneficiaries.
5. **Alternatively**, the Plaintiff moves for an order that the Defendant Administratrix, distribute the Estate of **NARAYAN SWAMY aka NARAYAN SAMI** to all the beneficiaries as per section 6 of the Succession, Probate and Administration Act 1970.

6. The Plaintiff is a biological Son of the deceased NARAYAN SWAMY aka NARAYAN SAMI, and the Defendant MADHUI, who has obtained the Letters of Administration of the Estate of the deceased.
7. As revealed by the Defendant, the Deceased NARAYAN SWAMY and the Defendant had 2 children, namely NILESH SAMI (the Plaintiff) and his brother NITESH NARAYAN, who is also now deceased. The Deceased NARAYAN SWAMY also left behind his Daughter SALOCHNA DEVI, who is also said to be a beneficiary of the Estate and sought to be added as a party.
8. There are two houses in the subject land, out of which, one is, admittedly, occupied by the Plaintiff NILESH SAMI and the other one by late NITESH'S wife ROVINA RASHNI CHANDRA and their children. The said ROVINA RASHINI CHANDRA ("ROVINA"), is also sought to be added as a party by the Defendant, stating that she (ROVINA) also is a beneficiary to the Estate.
9. The Defendant (Administratrix) moves that the presence of said SALOCHNA DEVI and ROVINA RASHNI CHANDRA will assist the Court to effectively deal with the matter and for the distribution of the Estate.

C. SEQUENCE OF EVENTS:

10. On the 10th April 2024 the Plaintiffs filed an Originating Summons and an Affidavit in Support seeking certain orders to transfer the properties unto his name as stated above.
11. On the 30th April 2024, the Plaintiff also filed an Ex-parte Notice of Motion seeking Orders to restrain the Defendant from selling and disposing the Motor Vehicle bearing Registration No- DBo53, and for the Defendant to park the said Vehicle at the Court premises until the final determination of the matter. The Court has on 8th May 2024 granted the Order 1 above ex-parte.
12. The Defendant, having filed her acknowledgment of service on 9th October 2024, filed her Summons on 05th December 2024 for the joinder of the aforesaid SALOCHNA DEVI and ROVINA RASHNI CHANDRA.
13. In the meantime, the Defendant on 24th October 2024 filed her Affidavit in opposition to the substantive Application by the Plaintiff, along with annexures marked from "M-1" to "M-11".
14. The Plaintiff on 10th February 2025 filed his Affidavit in reply along with annexures marked as "NS-1" to "NS-4" seeking to strike out the Defendant's Affidavit in opposition.

15. The Application for joinder being served on the parties sought to be joined, both of them appeared in person on 12th March 2025 and neither of them objected for the joinder. Accordingly, both of them were directed to retain their lawyers or to seek legal aid, if they wish to.
16. The Plaintiff on 19th March 2025 filed his Affidavit in opposition for the intended joinder, supported by some further documents marked as “NS-1”.
17. When the matter was mentioned on 25th April 2025, the Court, with the consent of the parties, decided to dispose the hearing in to the Application for joinder by way of written submissions and placed both the parties at liberty to file their respective written submissions in 28 days and fixed the matter for ruling for today 4th June 2025. The Plaintiff did not file any written submissions till this morning. Only the Defendant filed her written submissions as stated above. Accordingly, I proceed to pronounce the ruling by considering the pleadings, the law that governs and the contents of the written submissions filed by the Defendant.

D. ANALYSIS:

18. Order 15 Rule 6 (2) (b) states that at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just, and either of its own motion or on application, order any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon or any person between whom and any party to the cause or matter there may be exist a question or issue arising out of or relating to or connected with any relief or remedy which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter. The rule clearly vests the Court with the discretion to add a party if such addition was considered necessary to deal with any issue or in connection with any relief in a cause or matter.
19. Supreme Court in **Land Transport Authority v Begg [2019] FJSC 7; CBV0004.2018 (decided on 26. 4. 2019)** (unreported) discussed, *inter alia*, the relevant law regarding addition of a party and power of the court to add a party ex moro motu, held,

Order 15 rule 6 (2)(b), upon which this argument depends states as follows:

“Subject to the provisions of this Rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application –

(a)...

(b) Order any of the following persons to be added as a party, namely –

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the

cause or matter may be effectually and completely determined and adjudicated upon; or

- (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy which in the opinion of the Court it would be just and convenient to determine as between him or her and that party as well as between the parties to the cause or matter.”

The correct approach to rule 6(2)(b)(i) was succinctly articulated – albeit in relation to a slightly differently worded rule where the difference is not material for present purposes [2] - by Devlin J (as he then was) in *Amon v Raphael Tuck & Sons Ltd* [1956] 1 QB 357 at 368-369:

“The beginning and end of the matter is that the court has jurisdiction to join a person whose presence is necessary for the prescribed purpose and has no jurisdiction under the rule to join a person whose presence is not necessary for that purpose.

It is not I think disputed that “the cause or matter” is the action as it stands between the existing parties. ...

The intervener [who seeks to be joined] must be a party whose presence is necessary to enable all questions involved to be adjudicated upon and settled, but the question must be one which has to be addressed upon in the issue between the existing parties and not in any new issue raised by an intervener. (Emphasis added).

20. In **Prasad v Saheed Civil Action No. HBC 50 of 2003 at [26]**, the Master stated:

“The intent and purpose behind Order 15, Rule 6 is to give a very wide power to the court to allow joinder of a party to ensure the determination of all the issues in a proceeding pending before it. **In Lucy –v- W.T. Henleys Telegraph Works Co. Ltd Imperial Chemical Industries Ltd [1970] 1 QB393 at 404p** Lord Denning said; “It gives the court power to add a person as a defendant if his presence is necessary to ensure all matters in dispute are effectively and completely determined;”. This rule operates in congeniality with the general proposition of law that multiplicity of actions arising out of the same fact amounts to abuse of the process of the Court.

21. One of the parties sought to be added in this matter, namely ROVINA RASHINI CHANDRA, is said to be the wife of late NITESH (Son of the Deceased Narayan Swamy and the Defendant). She and her children are said to be residing in one of the houses situated in the subject land, being allowed by the Deceased NARAYAN SWAMY during his lifetime. (Vide paragraph 4 of the Defendant’s Affidavit in support).
22. The response by the Plaintiff to the above averment, in paragraph 5 of his Affidavit in opposition, is that the Defendant has not provided any evidence as to how Rovina Rashni Chandra is related to Nitesh. This is a task to be satisfied by the Defendant or said Rovina Rashni Chandra at the substantive hearing.

23. The Plaintiff in his Affidavit in support has admitted that there are other beneficiaries to the Estate and in his Originating Summons he has sought alternative relief of distribution of the Estate's properties among the beneficiaries as per the law.

In Supreme Court Practice (white book) (1988) p 18415/6/6 states

"Where defendants applied for an order that one D be joined in an action with D's consent, but against the will of the plaintiff, D was joined. The test was held to be: "Would the order for which the plaintiff was asking in the action directly affect the intervener (party sought to be added), not in his commercial interests, but in the enjoyment of his legal rights?" (Amon v Raphael Tuck & Sons [1956] 1 Q.B 357." (Emphasis is mine)

24. The party added or the Intervener is required to establish that he/she is 'directly affected' from the orders sought by Plaintiff. It is clear that Plaintiff and the parties sought to be added, together with the Defendant hereof (all as beneficiaries) may have issue in the manner in which the distribution of shares of the Estate is to be done. There appears to be other contentious issues as well between the Plaintiff, the Defendant and the parties sought to be added.
25. The Application for addition is made by none other than the Defendant, who is the Administratrix of the Deceased's Estate. I am of the view that her Application for addition is with valid reasons.
26. It is desirable and convenient to allow the parties sought to be added as the Added-Defendants to this originating summons, as they ought to have been added from the beginning, considering the circumstances of this case.
27. Lastly, there are case management reasons for allowing the addition (joinder) as multiplicity of actions on the same issue should be avoided as much as possible and this addition will also reduce the costs to the parties.

E. CONCLUSION:

28. Plaintiff in the originating summons is mainly seeking the transfer of the Land and vehicle unto his name. Along with the Plaintiff, there are other beneficiaries as well. One of the parties sought to be added is, admittedly, residing in the subject land. The daughter of the Deceased NARAYAN SWAMI, **Solochana Devi** is also said to be a beneficiary.
29. In terms of Order 15 rule 6 (2) (b) (ii) of High Court Rules 1988, 'any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed.' can be added, if, in the opinion of the court it would be just and convenient' to do so. In my opinion it would be just and convenient to add the parties sought to be added. Trustee should act independently for the benefit of Entire state. Hence, it is my considered view that the proposed addition of the parties would not only be convenient, but also allow her to act independently. Considering circumstances of this case order on costs reserved.

F. FINAL ORDERS:

1. Leave is granted to add **SALOCHANA DEVI** and **ROVINA RASHNI CHANDRA** as Added -Defendants to the Originating Summons.
2. Caption of the Originating summons be amended to include them as the 1st and 2nd Added -Defendants respectively.
3. Defendant shall serve on the Added- Defendants, copy of the Originating Summons with the amended caption, and the sealed order hereof within 14 days from today.
4. The added Defendants can file their Affidavit in response to the Plaintiff's Affidavit in support, within 14 days thereafter.
5. The Plaintiff and the Defendant may file their Affidavits in reply, if needed, within 14 days thereafter.
6. Costs of this Application is in cause.

On this 4th Day of June 2025 at the High Court of Lautoka.




A.M. Mohamed Mackie
JUDGE
HIGH COURT (Civil Division)
LAUTOKA

SOLICITORS:

For the Plaintiff: Messrs. S. NAND LAWYERS- Barristers & Solicitors.

For the Defendant: Messrs. VIJAY NAIDU & ASSOCIATES- Barristers & Solicitors.