

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

**PROBATE JURISDICTION**

**CASE NUMBER:** HPP 68 Of 2024

**BETWEEN:** **BASANT KAUR** as Executrix and Trustee in the Estate of **SOHAN SINGH**

**PLAINTIFF**

**AND:** **JAGJEET KAUR** as Executrix and Trustee in the Estate of **SOHAN SINGH**

**1<sup>ST</sup> DEFENDANT**

**SARJEET KAUR** as Executrix and Trustee in the Estate of **SOHAN SINGH**

**2<sup>ND</sup> DEFENDANT**

**Appearances:** *Mr. V. Kumar for the Plaintiff.*

*Mr. A. Pal and Ms. A. Kumar for the Defendants.*

**Date/Place of Judgment:** *Friday 11 July 2025 at Suva.*

**Coram:** *Hon. Madam Justice Anjala Wati.*

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**JUDGMENT**

***Cause and Background***

1. The plaintiff is seeking against the defendants the following orders:

- (a) That they execute the terms of the will by transferring CL 50817 to her within 3 months of the date of the order;*
- (b) That they immediately handover to her the original Crown Lease No. 50817, Consent to Transfer, Transfer, and username and password for FRCS portal in respect of the Estate TIN and CGT; and*
- (c) That they be removed as the executrixes and trustees and that she remains the sole executrix and trustee in the Estate of Sohan Singh.*

2. The plaintiffs are sisters and joint executrixes and trustees in their father's estate. Their father Sohan Singh, died on 5 April 2021. On 22 July 2021, Probate No. 67586 was granted to the 3 sisters.
3. The estate comprises of 3 properties described as *LD 4/9/5025, Lot 4 Naocovonu Subdivision in the District of Labasa containing an area of 27.5p; Crown Lease No. 3596, LD 4/9/1854, Lot 8 Section 12 Labasa Township on Plan No. M1964 containing an area of 25.5p; and Crown Lease No. 50817, LD 4/9/1654, Lot 25 Section 1 Labasa Township DP No. 1189 containing an area of 27.3p.*
4. Under the will, the property LD 4/9/5025 was given to Jagjeet Kaur, Crown Lease No. 3596 was given to Sarjeet Kaur and Crown Lease No. 50817 was given to Basant Kaur. The Estate has not been administered yet. The properties have not been transferred in the names of any beneficiaries. This has aggrieved the plaintiff and she has thus filed an action seeking the said orders.

***The Plaintiff's Position***

5. The plaintiff says that pursuant to the will, the transfer documents had been completed by Maqbool & Company for transfer of the subject property. The parties had executed the consent to transfer and the transfer documents too.
6. According to the plaintiff, she checked with Maqbool & Company in November 2022 on the progress of the transfer and she was advised that the defendants had written a letter to their solicitor Mr. Sen asking him to put the transfer on hold.
7. The plaintiff says that she kept following up with Maqbool & Company but did not get any feedback. She thus engaged the services of her solicitor. Her solicitor then sent a letter to Maqbool & Company dated 14 February 2023 asking for the defendants to proceed with the transfer.
8. Her solicitors again wrote on 21 April 2023 requesting Maqbool & Company that if they are not able to attend to the transfer then the file be referred to her solicitors.
9. The plaintiff says that her current solicitors kept calling Maqbool & Company but to no avail.
10. On 28 August 2023, her solicitors prepared a demand to the defendants directly. The demand was served on the 1<sup>st</sup> defendant on 18<sup>th</sup> September 2023 and on the 2<sup>nd</sup> defendant on 14 September 2023.

11. The plaintiff says that the executed transfer document, original Crown Lease No, 50817, and original Probate No, 67586 are all in possession of the defendants solicitors. The plaintiff says that the lease for her property is expiring in 2027 and if she does not get the property transferred in her name, she will not be able to apply for a renewal of the same. She will lose the property.
12. It is the plaintiff's contention that the defendants have breached their fiduciary duties and are not fit and proper persons to continue as executrices and trustees in her father's Estate. They have failed to administer the Estate and as such they should be ordered to do so in absence of which they ought to be removed as executrices and trustees and that she be the sole executrix and trustee.
13. She says that if she is the sole executrix and trustee, she will distribute the Estate within 3 months from the date of her appointment and everyone will be free to deal with their individual shares.

#### *Defendants Position*

14. The defendants say that the Estate of Sohan Singh cannot be administered because the plaintiff acts and omissions is a hurdle in the administration. It is alleged that the plaintiff has failed to provide accounts of the estate. It is alleged that she has not disclosed the cash held by the Estate, its debtors and creditors. It is contended that these accounts are in her control and possession.
15. In the absence of proper accounts of the Estate being prepared, the administration and distribution of the Estate is not lawfully possible.
16. The defendants also say that the Estate of Sohan Singh has to be administered in accordance with the Will of the deceased. The directions, instructions and wishes of the deceased are clearly expressed in Will and what the plaintiff seeks are in direct conflict with the directions, instructions and wishes of the deceased.
17. The defendants also say that the plaintiff is in occupation and full control of Crown Lease No. 50817. All income obtained and accrued on the said property is received by the plaintiff personally. The other two properties that have been bequeathed to them under the will also remain part of the Estate and has not been distributed. There is no disadvantage or differential treatment to the plaintiff contrary to what the plaintiff is attempting to imply.

18. It is the defendants' position that the distribution of an Estate is the secondary element in the administration. The establishment of debts and liabilities (for and against the Estate), settlement of debts and liabilities of the Estate, and recovery of debts owed to the Estate are all primary stages. The plaintiff by her acts and omissions has actually been a hindrance to this process.
19. Another reason why the defendants say that the Estate also cannot be administered is due to clauses 8 and 9 of the will which states:

"[8] *It is my desire and intention that the beneficiaries should not sell the property until such time they have children or until after 21 years after my death;*

[9] *It is my expressed desire that application for grant of probate and/or administration of my estate be done through my solicitor namely Amrit Sen".*

***Determination***

20. The probate in this case was issued to the parties as joint executrixes and trustees in their father's estate on 22 July 2021. The estate has not been administered ever since.
21. The defendants are raising certain reasons why the administration has been delayed for years.
22. The first reason is that the plaintiff has failed to provide accounts of the Estate when she should have done so as she is in control and possession of the accounts.
23. I find the defendants position on this issue to be frivolous. First of all, if there was cash held by the Estate, the will would have made provision for distribution of the same. In a similar vein, if the Estate had debtors and creditors, it would be known to the trustees and some particulars would have been provided. The defendants have not been able to establish with any precision that the Estate has cash, creditors and debtors. They are just presuming this. If there was any creditor, they would have come forward in the last 4 years and made a claim against the Estate. This issue of the plaintiff not providing accounts is an afterthought to justify the lack of administration of the Estate.
24. The plaintiff and her counsel have been pushing for the transfer of the property that she was given under the will. The transfer documents were signed and kept in the defendant's solicitor's office namely Maqbool & Company.

25. The plaintiff's counsel raised concerns from 2023 on lack of action in completing the transfer. Maqbool & Company has not responded on why the transfer was put on hold by the defendants. If there was any issue regarding the accounts, it should have been clearly addressed by the defendants for the plaintiff to take action and comply with the demands. There is not a single request by the defendants for accounts to be provided to them. They have just sat idly without administering the Estate and when the plaintiff has called for action, they are just frivolously raising lack of accounts.
26. Further, if the defendants were willing to administer the Estate and the plaintiff's inaction was stalling it, there was nothing to stop the defendants from applying to court and making an application for full accounts of the Estate. No such application was filed. This indicates that there were no issues about the accounts and the defendants have merely sat on their obligation to administer the Estate. They have failed to fulfill their duties under the will without any reasonable excuse.
27. The lease of the property given to the plaintiff will expire in 2027. If it is not transferred to the plaintiff, she will not be able to make an application for renewal of the same. There is likelihood of her losing her interest in the Estate whilst the defendants will be able to enjoy their benefits. This will prejudice the plaintiff irreparably.
28. There is no likelihood of the defendants acting in the interest of the plaintiff, even if it is for applying for a renewal of the lease. The plaintiff raised the concern of the lease expiring in 2027 and her fear that she will lose the property. The defendants did not address her concerns in their affidavits. It is only in their submissions that they say that the Estate can apply for the renewal of the lease. They have failed to give that undertaking in the affidavit to escape liability if they fail to do so. How can they expect the court to accept their submission without a proper undertaking in their affidavits?
29. They have not been responding to the plaintiffs concern and have sat quietly when it came to distribution of the Estate. There is a very high chance that this stubbornness will continue and the plaintiff will lose her property.
30. The defendants' assertion that the plaintiff is in full occupation and control of the property given to her under the will and that she derives all income from it, is not a sufficient reason to delay the transfer of the property in her name. She is entitled to the property in her name under the will for her own use and benefit instead of it being under the Estate. A property under the Estate cannot be fully utilized by the

beneficiary to its maximum potential for example borrowing on the property and renovating it for further income and use.

31. The defendants are also raising that the Estate cannot be administered due to paragraphs 8 and 9 of the will which I have identified earlier in the judgment.
32. Paragraphs 8 and 9 does not require that the property continue to be under the Estate. It can be transferred under the will and the beneficiaries have to meet the testator's wishes not to sell it unless one of the conditions set out is met. If there is failure to observe the conditions, the beneficiaries can then take action against the person defaulting under the will.
33. Further, pursuant to paragraph 9 of the will, Mr. Sen has partly taken action for the administration of the Estate by getting a Probate issued. He is yet to transfer the property(s) as required under the will which is not being done on the instructions of the defendants. Mr. Sen is therefore not able to carry out the functions under the will, fully.
34. In their written submissions, the defendant's counsel has raised issues on irregularity in the proceedings and asked for the application to be struck out. The first issue raised on irregularity is that the plaintiff has not identified the relevant provisions of the law under which the application is brought.
35. The plaintiff has already pleaded that this is an administration action. I can clearly discern that from the pleadings. I cannot assist the defendants if they choose to ignore what is clear from the pleadings.
36. The second objection is that the affidavit in support of the application does not comply with Order 41 Rule 9 (2) of The High Court Rule which reads:

*" [2] Every affidavit must be indorsed with a note showing on whose behalf it is filed and the dates of swearing and filing, and an affidavit which is not so indorsed may not be filed or used without the leave of the court."*

37. I have seen the affidavit in support. It has an endorsement at the back. All that is missing is that the date of swearing and filing of the affidavit has not been filled in. That information can however be derived from the affidavit and it being missing is not fatal to the proceedings. I give the plaintiff leave to use the affidavit. The non-compliance is a mere irregularity and the proceedings are not nullified.

38. The plaintiff also says that the orders sought by the plaintiff amounts to a dealing in the land and under s.13 of the State Lands Act, the plaintiff ought to have taken consent of the Director of Lands to initiate the proceedings.
39. The plaintiff's claims is an action for administration of the Estate. The consent of the Director of Lands is not required to bring an action for administration of the Estate. The Estate has lands which are to be dealt with. If it is to be dealt with under the will, then the consent of the Director of Lands will be needed to carry out the transactions.
40. Further, as asserted by the defendants, I find no conflict of facts that needs resolution via oral evidence. In fact, the defendants have not raised any issue that needs investigation. The assertions lack authenticity and is an afterthought to prevent administration of the Estate.
41. I find that the Estate should be administered and stalling that process for years is misconduct on the part of the defendants.
42. I therefore am of the view that the defendants should be given a chance to comply with the testator's intention failing which they ought to be removed as executrixes and trustees. Non-compliance with the orders will constitute further misconduct on the part of the defendants as executrixes and trustees.

***Final Orders***

43. In the final analysis, I make the following orders;
- a. *The defendants are granted 3 months' time to carry out all tasks necessary to transfer CL 50817 to the plaintiff.*
  - b. *If the property is not transferred to the plaintiff within 3 months, the defendants will then cease to act as executrixes and trustees.*
  - c. *Once the defendants' appointment as executrixes and trustees cease, they are to handover the original Probate to the Suva High Court Civil Registry ("Registry") within 7 days.*
  - d. *Whether or not the original grant is handed over to the Registry, it will be revoked after 3 months of the date of the judgment, if the defendants have not transferred the property in the name of the plaintiff. The plaintiff and/or her counsel is to advise the Registry whether a transfer has been effected within the stipulated time, and if it has not been done, to request for a revocation of the original grant.*

- e. *The Registry must write a letter to the trustees informing them of the date on which the grant has been revoked. A copy of the letter is to be emailed to Sen Lawyers.*
- f. *When the letter of revocation of the grant is emailed to Sen Lawyers, the defendants are from then onwards not to hold themselves out as executrixes and trustees or act as such.*
- g. *After issuance of the letter of revocation, a fresh probate is to be issued by the Registry appointing the plaintiff as the sole executrix and trustee in the Estate of Sohan Singh.*
- h. *Once a fresh probate is granted, the defendants must hand over all original documents in possession of Mr. Sen being Original CL 50817 and the username and password for FRCS portal in respect of Estate Tin and CGT to the plaintiff or her solicitors.*
- i. *The plaintiff shall then proceed to carry out her duties as the sole executrix and trustee under the will with the assistance of a solicitor of her choice.*
- j. *The defendants are to pay costs of the proceedings to the plaintiff in the sum of \$5,000 within 14 days. The costs are not to be borne by the Estate or paid to the Estate. It is to be paid by the defendants personally to the plaintiff.*

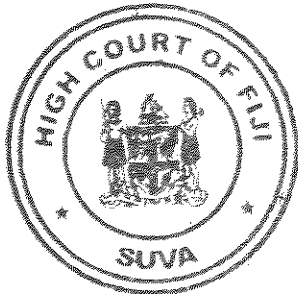


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**Hon. Madam Justice Anjala Wati**

**Judge**

**11.07.2025**

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**To:**

1. *Moharsh Pillai Lawyers for the Plaintiff.*
2. *Sen Lawyers for the Defendant.*
3. *File: Suva HPP 68 of 2024.*