

IN THE HIGH COURT OF FIJI
AT SUVA
PROBATE JURISDICTION

HPP Action No. 73 of 2022

BETWEEN: **FAIYAZ ALI** of Lawaki, Saweni, Lautoka, Retired.
1st Plaintiff

AND: **ROZINA KHATOON ALI** of Lawaki, Saweni, Lautoka, Teacher.
2nd Plaintiff

AND: **MAHABUB MASHUK ALI** of 21 Vitogo Parade, Lautoka, Retired.
1st Defendant

AND: **RIAZ ALI** of Mate Road, Korovuto, Nadi, Bailiff.
2nd Defendant

AND: **HASINA BANO ALI** of Nawai, Nadi, Self-Employed.
3rd Defendant

AND: **WAHAB ALI** of Lautoka, Businessman, **FAZAL KHAN** of Nadi,
Businessman and **MOHAMMED HAROON ALI** of Lot 14, Marau
Place, Drasa, Vitogo, Lautoka, Businessman as Executors and Trustees for
the Estate of Aminabi aka Amina Khan aka Amina Bibi.
4th Defendant

Representation:

Plaintiff: Mr. V. Pillai (Gordon & Co.)

1st, 2nd & 3rd Defendant: Ms. T. Draunidalo.

4th Defendant: Ms. A. Swamy (Patel & Sharma)

Date of Hearing: 26th June 2025

Ruling

A. Introduction

[1] There are two applications before me. The first application was filed on behalf of the 4th Defendant on 4th October 2024. This application sought the appointment of Mohammed Haroon Ali, Administrator *pendent lite* in the Estate of Hassan Ali and to act as Administrator until determination of the matter. The alternative order that is sought is that the Plaintiff and 1st Defendant pay the two-third share of all dues with Lautoka City Council, Director of Lands, Sun Insurance and pay all expenses relating to maintenance,

repairs, renovating and managing of the commensurate to the interest of the Estate of Hassan Ali until further orders of the Court.

- [2] The application also sought that the Plaintiffs provide accounts/records of all rental uplifted from the tenants of the property comprised in State Lease Number 829889 prior to six months of the death of Hassan Ali till today. It also seeks that the Plaintiffs provide accounts/records of all monies withdrawn from the deceased's bank account prior to six months of the death of Hassan Ali till today. The first application is filed with an affidavit of Mohammed Haroon Khan. An affidavit of Faiyaz Ali (1st Plaintiff) in reply was filed on 13th December 2024.
- [3] The second application was filed on behalf of the Plaintiffs on 13th December 2024 seeking that the grant of Administration No. 73706 to Mahabub Mashuk Ali be revoked pending this matter. The other order that is being sought is pending the determination of the matter the court grant the administration of the estate to the plaintiffs. They also seek that the 1st Defendant deposit the grant of Administration No. 73706 into court and that grant of Administration No. 73706 be held in court pending the determination of this matter or until further orders of the court. An injunction is also sought against the 1st Defendant from using Administration No. 73706 for the administration and/or distribution of the assets and properties of the Estate. The affidavits of Faiyaz Ali that were filed in this matter were relied upon in this application.
- [4] An affidavit in response of Mohammed Haroon Khan was filed on 28th February 2025. Faiyaz Ali's affidavit in reply was filed on 11th April 2025.

B. Background

- [5] The substantive action is by way of writ where the Plaintiff is seeking a declaration that documents that recorded the instructions given to Gordon & Co by Late Hassan Ali dated 8th February 2022 regarding his last will and testament embodies his testamentary intentions and constitutes his last will and testament.
- [6] Hassan Ali passed away with his wife and children predeceasing him. His parents had also predeceased him. He did not have siblings of whole blood. The 1st Defendant, Mahabub Mashuk Ali is a sibling of half-blood. Mahabub Mashuk Ali has three children, namely; Faiyaz Ali (Plaintiff), Riyaz Ali (2nd Defendant), and Hasina Bano Ali (3rd Defendant). The other half-blood sibling of Hassan Ali was Amina Bibi. She passed away. Her son, Mohammed Haroon Ali (one of the 4th Defendants) is one of the beneficiaries and Executor and Trustees of Amina Bibi's Estate.
- [7] On 15th July 2024, the 1st Defendant, Mahabub Mashuk Ali obtained Letters of Administration in the Estate of Hassan Ali. This was following an ex-parte application before the Acting Master.

C. **Determination**

- [8] The application on behalf of the 4th Defendant, Mohammed Haroon Ali sought his appointment as Administrator *pendent lite* in the Estate of Hassan Ali and to act as Administrator until determination of the matter. Mahabub Mashuk Ali had already obtained Letters of Administration. Therefore, Mohammed Haroon Ali's application seeking his appointment is misplaced. The application is not one seeking revocation of the grant. The other orders sought in the first application are not supported by any affidavit evidence. The orders sought are not backed by any evidence. For these reasons the first application is dismissed.
- [9] **Section 41 of the Succession, Probate and Administration Act 1970** gives this Court wide powers to deal with issues arising out of administration. It states that *"(1) The court may make such order with reference to any question arising in respect of any will or administration, or with reference to the distribution or application of any real or personal estate which an executor or administrator may have in hand, or as to the residue of the estate, as the circumstances of the case may require.*
(2) Such order shall bind all persons whether sui juris or not.
(3) No final order for distribution shall be made except upon notice to all the parties interested, or as the court may direct."
- [10] Under **Section 23 of the Succession, Probate and Administration Act 1970** a court may revoke the appointment of an administrator. It provides that *"the court may, at any time, upon the application of any person interested in the estate or of its own motion on the report of the Registrar-*
(a) revoke the administration already granted; or
(b) order the administrator to execute a further or additional bond in such sum, with or without sureties, as the court may direct; and upon default may remove the administrator and appoint another in his place, with power to sue or be sued upon any contract made by the removed administrator; or
(c) order that the liability of any surety to any administration bond be reduced to such amount as the court in the circumstances of the case thinks reasonable."
- [11] An Administrator is a Personal Representative: **Section 2 of the Succession, Probate and Administration Act 1970**. In relation to removal of a personal representative, Mr Richard Snowden sitting as Deputy Judge of the High Court in **Re Steel (deceased); Angus v Emmott [2010] EWHC 154 (Ch)** at Para 108 stated *"I take from this passage that the Court's power to remove and replace a personal representative is in no way limited to cases of misconduct. That is also the view taken by the editors of Williams, Mortimer and Sunnucks on Executors, Administrators and Probate (19th ed) who refer to the power under section 50 of the 1985 Act at paragraph 60-14 and comment,*

"...if the administration has come to a standstill because relations between the personal representatives have broken down, or relations between the representatives and the beneficiaries have broken down, the court will ordinarily remove the personal representatives and appoint new ones to enable the administration to be completed. It is not necessary to establish wrongdoing or

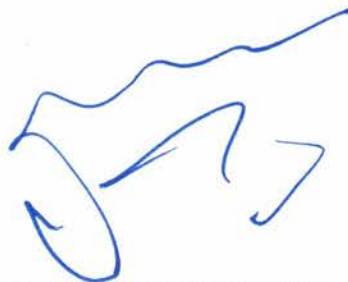
fault by the personal representative to obtain his removal. If, for whatever reason, (such as clash of personalities, or the lack of confidence in the personal representative by the beneficiaries, even if unjustified) it has become impossible or difficult for the administration to be completed by an existing personal representative, then an order for his removal will usually be made."

- [12] The overriding consideration is 'the welfare of the beneficiaries and the due administration of the estate'. The application by the Plaintiff is not opposed by Mahabub Mashuk Ali, the current Administrator. I am required to be satisfied that the proposed order is in the interests of the estate as a whole. The affidavit evidence of the Plaintiff is that the 4th Defendant who is his father on or about 22nd April 2023 through legal aid obtained letters of administration, while he was aware of the pendency of HPP Action No. 73 of 2022 and did not disclose in the ex-parte application being HPP Action No 89 of 2023 where he sought to be appointed the Administrator. The ex-parte application was made on 27th September 2023 (HPP 89 of 2023). The writ action (HPP 73 of 2022) commenced on 14th July 2022. The 4th Defendant was personally served the writ on 25th August 2022.
- [13] I note from the affidavit in support of the ex-parte summons filed on behalf of Mahabub Mashuk Ali (1st Defendant) that he did not mention anything about HPP 73 of 2022 (which is this Action) where the Plaintiff were seeking a declaration that documents that recorded the instructions given to Gordon & Co by Late Hassan Ali dated 8th February 2022 regarding his last will and testament embodies his testamentary intentions and constitutes his last will and testament. This information should have been disclosed to the Master. The application that was made by Mahabub Mashuk Ali (1st Defendant) was put in such a way to show that the deceased had no will and he died without a will. Mahabub Mashuk Ali (1st Defendant) misled the Learned Master. He knew about this action. He did not notify the Master about it. He withhold information from the Master. Had the Master known he would have sought that all the parties be served. The matter would not have been determined ex-parte. The application by the Plaintiffs is not opposed by Mahabub Mashuk Ali (1st Defendant). Mahabub Mashuk Ali (1st Defendant) has not challenged the contents of the affidavit of Faiyaz Ali (1st Plaintiff).
- [14] I find that Mahabub Mashuk Ali (1st Defendant) misled the Master which led to the grant of letters of administration appointing him the administrator. His appointment is revoked. Mahabub Mashuk Ali (1st Defendant) is to deposit/deliver the Letters of Administration No. 73706 into Court/Probate Registry, within 7 days of this Ruling. He is to provide an account of the estate for the period he administered it. This should be provided to all the parties within a month.
- [15] The Estate of Hassan Ali in the interim needs to be administered. On the information before me I appoint the Plaintiffs to be general administrator of the Estate of Hassan Ali pending the finalization of this matter.

[16] Mahabub Mashuk Ali (1st Defendant) is enjoined from using the Letters of Administration No. 73706 and/or distribution of the properties and/or assets forming part of the estate of Hassan Ali.

Court Orders

- (a) The grant of Letters of Administration No. 73706 to Mahabub Mashuk Ali (1st Defendant) is revoked.
- (b) Mahabub Mashuk Ali (1st Defendant) is to deposit/deliver the Letters of Administration No. 73706 into Court/ Probate Registry within 7 days of this Ruling.
- (c) Mahabub Mashuk Ali (1st Defendant) is to provide an account (income and expenditure) of the estate for the period he administered it. This should be provided to all the parties within a month.
- (d) Faiyaz Ali and Rozina Khatoon Ali are appointed Administrators of the Estate of Hassan Ali pending the finalization of this matter.
- (e) Mahabub Mashuk Ali (1st Defendant) is enjoined from using the grant of Administration No. 73706 and/or distribution of the properties and/or assets forming part of the estate of Hassan Ali.



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Chaitanya S.C.A. Lakshman
Puisne Judge



22nd August 2025