

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

Civil Case No HBC 270 of 2024

IN THE MATTER of an application under
the Mental Health Act

AND

IN THE MATTER of an application for a
Management Order by Eliki
Baleimualevu Kaumaitotoya

BETWEEN: **ELIKI BALEIMUALEVU KAUMAITOTOYA**, of Barrack 14/4
Valelevu Police Quarters, Davina Road, Nasinu, Fiji, Police Officer
and **AKUILA BALEIWAI GAUNAVOU KAUMAITOTOYA** of
20 Highwood Ct Flagstone, Queensland 4280, Australia.

Plaintiffs

AND: **MELIKI LIKU** of Lot 10, Kula Place, Nasoso Nadi, Fiji, retiree.

First Defendant

AND: **VINIT SINGH** of Level 2 Mid-City Place, Nasoso, Nadi, Fiji,
Legal Practitioner.

Second Defendant

JUDGMENT

Plaintiffs: *Mr. S. Fatiaki*

1st Defendant: *Ms. Ulamila Fa & Mr. R. Doidoi*

2nd Defendant *Ms. S. Devi*

Date of Hearing: *14th August 2025*

Date of Ruling: *2nd September 2025*

Introduction

1. The Plaintiffs applied to the court via an expedited originating summons on 4th October 2025 seeking the following orders: -
 - a. That there be an enquiry into the mental capacity of the First Defendant to determine whether she suffers a mental incapacity and if found to be such, the First Defendant be declared incapable of managing and administering her estate and affairs;
 - b. That the Second Defendant be appointed as Manager of the affairs and estate of the First Defendant;
 - c. That the Second Defendant be at liberty to administer the First Defendant's estate and affairs in Fiji; and
 - d. For such further and or any other management orders as the Court may deem just.
2. The application was supported by an affidavit of Elik Baleimualevu Kaumaitotoya, the first named First Plaintiff. There were other affidavits filed as discussed later herein and the hearing was held on 14th August 2025. I thank all parties for the submissions filed and I have taken these into account in this ruling.

THE LAW

3. Section 108 of the Mental Health Act states: -

Management orders

108. - (1) *The criteria for a management order in respect of a person are that -*

(a) the person has a mental incapacity;

(b) as a result of the mental incapacity the person is unable to make reasonable judgments in respect to all or any part of the person's estate or affairs by reason of the incapacity; and

(c) the person is in need of a manager to administer the whole or part of the person's estate or affairs.

(2) If on the application to the Court by an authorised health care professional, or any other person who appears to the Court to have a proper interest in the matter, the Court considers that the person who is the subject of the application meets the criteria in subsection (1), the Court may make a management order in respect of the person in accordance with this Part.

(3) Before making a management order, the Court must inquire, or direct enquiries to be made, into -

(a) the mental capacity of the person who is the subject of the application;

(b) the nature of the estate of the person; and

(c) any other relevant matter the Court thinks fit.

(4) Reasonable notice of the time and place appointed for an inquiry must be given to the person who is the subject of the application and to any other person the Court considers should be notified. (emphasis mine)

THE EVIDENCE

The Affidavit of Elik Baleimualevu Kaumaitotoya

4. The Expedited originating summons was supported by the affidavit of Elik Baleimualevu Kaumaitotoya, the first named Plaintiff, duly authorized his brother, the second named Plaintiff. In the affidavit, Elik explains that he and his brother are nephews of Elik Baleimualevu Kaumaitotoya senior (referred hereto as “the Deceased,” who was married to Meliki Liku, the First Defendant; that the Deceased died on 30th July 2024; that the Deceased and Meliki did not have any children and treated him and his brother as their own children when the Deceased was alive; that the deceased is the biological brother of the father of the Plaintiffs; that when the deceased was alive, he told the Plaintiffs of his Will where he made his wife the executrix of his estate and that he left his estate to his wife, the First Defendant, provided she survived him by more than 1 month; that if she did not survive him by 1 month, the Second Defendant would be appointed executor of his estate which was to be shared as directed in the Will between the Plaintiffs; and that the deceased had told him that there were mirror/mutual provisions in his aunty, the First Defendant’s Will.
5. At the hearing, the Second Defendant said that since the Deceased had told the Plaintiff’s about the provisions of his Will, he was no longer bound by the Solicitor-Client privilege and could divulge that the Deceased and the First Defendant had made mirror Wills.
6. Elik continued in his affidavit that before his death, the deceased and the First Defendant had acquired substantial assets throughout their marriage and that this application was also to safeguard both their respective interests and wishes.
7. Elik said in his affidavit that whilst he was alive, the deceased had told him and other family members that he was worried about Meliki’s mental state as she was prone to memory loss; that this was common knowledge amongst the extended family; that at the funeral of her husband on 3rd August 2024, Meliki seemed out of place and could not recognize anyone; that when conversing with other family members, Meliki behaved as if her husband was still at work and would refer to him as if he were still alive.

The Affidavit of the Second Defendant, Vinit Singh

8. The Second Defendant, Vinit Singh filed an affidavit in response in which he stated that he had known the Defendant and her late husband for over 30 years since he was a child; that the couple were close friends with his parents while they resided in Nadi; that their families remained in contact throughout the span of 30 years and that he referred to them as Uncle Eliko and Aunt Meliki.
9. Mr. Singh continued that he was admitted to the Bar in 2011; that he had been instructed in several matters including his property and his estate by the late Mr. Kaumaitotoya; that the late Mr. Kaumaitotoya's Will had been made in his office in 2023.
10. Mr. Singh continued that at the late Mr. Kaumaitotoya's funeral, which he attended with his younger brother, a doctor at Colonial War Memorial Hospital, he had noticed that Meliki did not seem to recognize him and several other people; that his brother the doctor also saw Meliki and observed that she may have mental health issues and would need to be properly evaluated and diagnosed.

The Affidavit of Meliki Liku

11. The first defendant filed an affidavit in opposition to the application and it was sworn on 20th May 2025. The affidavit that is 49 paragraphs long and very detailed and I have serious doubts she could recall some of the things she states in view of the psychiatrist's report about Ms Meliki Liku's mental capacity and her memory lapses. In paragraph 15 for example, she states that Eliko Baleimualevu Kaumaitotoya stayed with her and her late husband for about 18 months whilst attending school in Nadi and was later removed by his parents for some reason not known to her. In paragraph 20, she refers to a property that she and her late husband own in Nadi and refers to the Crown Lease No, its location at Lot 7 Kula Road and the fact that they purchased it on 21st December 2007. In paragraph 20 she states that the property earns monthly rental of \$3,900 which is paid direct to her late husband's house account with BSP Bank. In paragraph 23, she refers to another property that she and her husband own at Lot 10 Kula Road and she refers to the Crown Lease Number; and that both properties are unencumbered.
12. The application was filed on 4th October 2024, and the psychiatrists at St. Giles Hospital had examined Meliki in October 2024. Meliki's affidavit was sworn on 20th May 2025, at the time the psychiatrists had noted the following about her mental capacity and her memory:¹

¹ Paragraph 1.03 of the Psychiatric report on Meliki Liku

Miss Meliki Liku has been diagnosed with mental illness called Dementia with comorbid medical condition known to be hypertension. However, there is no records of her attending mental health clinics or any medication till her first encounter with St. Giles Hospital on **3rd October 2024**. Dr. Singh interviewed Meliki on 9th October, Dr. Balaram, the Medical Superintendent interviewed her on 17th October and Dr. Kiran Gaikwad interviewed her on 24th October. There were several other consultations prior to this report formulations. Miss Meliki Liku did not appear to understand the purpose of the interview.

During the interview, she could not be engaged into lengthy meaningful conversations relevantly. It was difficult to assess her understanding as she could not reply relevantly to questions due to being unable to register new information and recall both short- and long-term memory. She could not elaborate in detail the purpose of her visit to St. Giles Hospital in each consultation as she could not remember it.

13. In view of the above, I can put little faith in the affidavit of Meliki Liku. This is the Jurat of Meliki Liku states:

“Sworn by the said Meliki Kaumaitotoya before me on this 20th day of May 2025, after the contents hereof were read over, explained and interpreted to her in the English language and she appeared to understand the meaning and effect of the same and thereto made her signature in my presence.”

14. Mr. Fatiaki questioned the credibility of this statement in view of the psychiatrists’ observations and diagnosis.
15. From the discussions above, I conclude that I cannot give any weight to the affidavit of Meliki Liku Kaumaitotoya, the First Defendant.

The Affidavit of Loata Lewamalai

16. Loata Lewamalai is a niece of Meliki and she has been looking after the First Defendant. She would not let the Plaintiffs or any of their relatives see the first defendant. The Plaintiffs had to get a court order to allow a relative to go and visit the First Defendant.
17. Loata Lewamalai filed an affidavit in this matter. She is not a party and she did not seek leave of the court to file an affidavit. She did not seek to be joined and there is no provision in the Mental Health Act that allows her to join as a party. Order 28 of the High Court Rules deal with Originating Summons procedure. Order 28 r.2(5) provides for the Plaintiff to file any affidavit in reply once a defendant has filed his affidavit in response, Order 28 r. 2 (6) states that *“no other affidavit shall be received in evidence*

without leave of the Court.” Loata Lewamalai did not obtain leave of the Court before she filed her affidavit, and her affidavit is hereby struck out.

The Ruling

18. On 2nd April 2025, in the presence of all Counsels, Judge Deepthi Amaratunga ordered the person in charge of St Giles Mental Hospital to inquire into the mental status of the First Defendant and to submit the same to the Court.

The Psychiatrist’s Report

19. Dr. Sheetal Swashitika Singh, MBBS, PGDMH, the Acting Principal Medical Officer at St. Giles Hospital Suva examined the First Defendant and compiled a report dated 23/07/2025. Dr Singh graduated with a Bachelor of Medicine and Bachelor of Surgery (MBBS) at the Fiji School of Medicine in 2015, which was then under the University of the South Pacific. He obtained a Post Graduate Diploma in Mental Health at the Fiji School of Medicine, Fiji National University in 2022. He is currently pursuing his Masters in Psychiatry from the University of Melbourne and a Masters in Business Administration from the University of Singapore. He is the Senior Registrar and currently the Acting Senior Medical Officer. The Senior Registrars are authorized medical practitioners under the Mental Health Act. Dr. Singh has worked at St. Giles Hospital for more than 8 years and had written more than 200 reports for the Magistrates Courts and over 20 for the High Court.
20. I accept Dr. Sheetal Swashitika Singh, MBBS, PGDMH as an expert with the necessary qualifications and experience and qualified to give an opinion for the purpose of the Mental Health Act, 2010.
21. Dr. Singh examined the First Defendant and noted that she is a 72-year-old I Taukei female; that she was not able to give any history about her family and her personal life as she could not recall; that the history he compiled came from one Loata Qumivutia (a niece of the Third Defendant).
22. Dr. Singh said that Meliki *“was not able to give the roles of a lawyer or a judge. She was not able to give the plans for her estate and Will. She could not reply relevantly to the questions on power of attorney or regarding any other matter of “the estate of her assets.”*

The Diagnosis

23. The diagnosis of the team is that the Third Defendant, Meliki Liku, suffers from a mental illness called Dementia with co-morbid medical conditions known to be hypertension.

24. Dr. Singh said that he could comfortably conclude that Meliki Liku does have cognitive impairment secondary to Dementia.

25. I am satisfied that Meliki Liku is suffering from a mental incapacity known as Dementia with secondary cognitive impairment secondary to Dementia. She also suffers from a comorbid condition known as hypertension which in layman's terms is high blood pressure.

First Issue: As a result of the mental incapacity, is Meliki able to make reasonable judgments in respect to all or any part of her estate or affairs by reason of the incapacity?

26. To better understand the situation, I have used the court's powers under section 113(1)(e) of the Act which states:

27. Section 113 (1) (e) of the Mental Health Act states that the Court: -

(e) is not bound by rules or practice as to evidence and may inform itself in relation to any matter in such manner as the Court thinks fit;

28. In exercise of s. 113(1)(e), I have included here some symptoms of Dementia to be able to understand the problem better. The *UK National Health Service*, the official website of the UK Governments National Health Service, describes Dementia thus²:

Symptoms of dementia

Dementia is not a disease itself. It's a collection of symptoms that result from damage to the brain caused by different diseases, such as Alzheimer's. These symptoms vary according to the part of the brain that is damaged.

Common early symptoms of dementia

Different types of dementia can affect people differently, and everyone will experience symptoms in their own way.

However, there are some common early symptoms that may appear some time before a diagnosis of dementia. These include:

- a. *memory loss*
- b. *difficulty concentrating*
- c. *finding it hard to carry out familiar daily tasks, such as getting confused over the correct change when shopping*
- d. *struggling to follow a conversation or find the right word*
- e. *being confused about time and place*

² <https://www.nhs.uk/conditions/dementia/symptoms-and-diagnosis/symptoms/>

f. *mood changes*

The most common cause of dementia is Alzheimer's disease. Common symptoms of Alzheimer's disease include:

- a. memory problems, such as regularly forgetting recent events, names and faces*
- b. asking questions repetitively*
- c. increasing difficulties with tasks and activities that require organisation and planning*
- d. becoming confused in unfamiliar environments*
- e. difficulty finding the right words*
- f. difficulty with numbers and/or handling money in shops*
- g. becoming more withdrawn or anxious*

29. Some of the symptoms of dementia listed above are already present in the First Defendant and it is clear that she is in a vulnerable situation now. There is no known cure for the disease and the situation could get worse with age.

Conclusion on First Issue

30. I am satisfied on the evidence before the Court that:-

- a. due to her mental incapacity, Meliki is unable to make reasonable judgments in respect to all or any part of the estate or affairs by reason of the incapacity; and
- b. Meliki Liku is in need of a manager to administer the whole or part of the person's estate or affairs.

The Management Order

31. Before a manager is appointed, the court needs to consider the requirements under the law for a manager. Section 108 (5) of the Mental Health Act states: -

(5) A management order -

- (a) is an order made by the court appointing a person or persons to manage either the whole or a part of the estate or affairs of a person with a mental incapacity;*
- (b) may be made for a period not exceeding 12 months unless the Court is of the opinion that a longer period should be specified in the order;*
- (c) may be made subject to terms and conditions as the Court thinks fit;*
- (d) must include reporting and accountability requirements for the appointed manager as the Court imposes in the order;*
- (e) may be the subject of an appeal to the Court of Appeal in accordance with rules of court.*

32. The powers and duties of a manager appointed are set out in section 109 of the Act:

Powers and duties of manager

109. - (1) Subject to the terms of the management order, a manager must -

- (a) act in the best interests of the person who is the subject of the order;*

(b) take into account as far as is possible the wishes of the person who is the subject of the order, if such wishes were made known by the person before he or she suffered the mental incapacity;

(c) take possession and care of, recover, collect, preserve and administer the property and other estate of the person and generally manage the affairs of the person (including but not limited to financial and legal affairs) and exercise all rights (statutory or otherwise) that the person might exercise if the person had legal capacity; and

(d) in the name and on behalf of the person, generally do all acts and exercise all powers with respect to the estate and affairs of the person as effectually and in the same manner as the person could have done if the person were not under a legal disability.

(2) A manager has such additional powers and duties over the person's estate and affairs as the court may give the manager from time to time.

(3) This Act does not confer on a manager -

(a) the power to execute a will in the name of the person who is the subject of a management order;

(b) the power to legally bind a person to an agreement relating to the marriage or divorce of a person who is the subject of a management order without a specific order of the Court to do so;

(c) the power to consent to the adoption of a person who is the subject of a management order by another person without a specific order of the court to do so; or

(d) the power to consent to the adoption of any children of a person who is subject to a management order by another person without a specific order of the court to do so.

(4) A manager must not receive any fee, remuneration or other reward from the estate of a person who is subject to a management order, or from any other person, for acting as manager, unless the court otherwise specifies in the management order.

Restrictions on powers of person subject to a management order

110. - (1) If the court has made a management order, the person who is the subject of the order cannot, while subject to the order and to the extent that the person's estate is under the control of the manager -

(a) deal with, transfer, alienate or charge money or property or any part of it;

(b) become liable under any contract, without an order of the Court or the written consent of the manager.

(2) Every dealing, transfer, alienation or charge by any person in respect of any part of an estate that is under the control of a manager is void, and the money or property the subject of the dealing, transfer, alienation or charge is recoverable by the manager in a court of competent jurisdiction.

(3) For the purposes of this section, the acceptance of payment of the whole or any part of a debt or an agreement to forego the recovery of a debt is a dealing with property.

33. An examination of the powers and duties of the manager set out above and the extent of the estate of the late husband of Meliki Liku shows that the best person to manage

her estate and affairs is one who knows the law and the duties of a manager set out above and cares for Meliki.

34. I have read the affidavit in response of the Second Defendant and what he and his brother did at some cost to themselves to help Meliki after the death of her husband. They did this out of care.
35. I have taken into account the requirements of the Mental Health Act for a manager for Meliki Liku and I find the following:
- a. The Second Defendant, Mr. Vinit Singh meets that criteria and has the additional advantage that being a solicitor and officer of the Court, he is bound by the duties of a solicitor including fiduciary duties as it is a position involving the highest levels of trust.
 - b. As a solicitor who has represented the late Mr. Elik Baleimualevu Kaumaitotoya including preparing his will, he should be able to quickly establish the extent of his estate and prepare the necessary applications to have his Will proved so that Meliki Liku can benefit as she is the only beneficiary of Mr. Kaumaitotoya's will.
 - c. The principal of *uberimae fidei*, utmost good faith, applies to his conduct as a manager in this situation and to break that could have serious consequences to him as a solicitor and officer of the Court.
 - d. section 109(4) of the Act is a serious restriction on the manager's position: -
(4) A manager must not receive any fee, remuneration or other reward from the estate of a person who is subject to a management order, or from any other person, for acting as manager, unless the court otherwise specifies in the management order.
36. I have taken into account all the factors set out above and I conclude that Mr. Vinit Prasad, Barrister & Solicitor is the best person to be appointed Manager of Meliki Liku's Estate and to manage her affairs.

Decision

37. For the reasons given, I find that the best person to be appointed manager of Meliki Liku's Estate is the Second Defendant, Mr. Vinit Prasad, Barrister & Solicitor and I appoint him as such.


Orders

38. The orders of the Court are:
- a. **IT IS DECLARED** that **MELIKI LIKU KAUMAITOTOYA** of Lot 10 Kula Place, Nadi is suffering from a mental incapacity as a result of which she is incapable of managing or administering her estate.

b. **MR. VINIT SINGH**, Barrister & Solicitor, is appointed Manager of the Estate and Affairs of the said **MELIKI LIKU KAUMAITOTOYA** for a period of 12 months from the date of this order pursuant to section 109 of the Mental Health Act and with the powers and duties set out in the said Act with the following additional requirements:

- (a) To prepare and file the necessary documents to administer the Estate of Meliki Liku's late husband, Mr. Eliko Baleimualevu Kaumaitotoya as soon as possible;
- (b) To prepare and furnish to the Court by 31st October 2025 a statement of the assets and liabilities of the Estate of Meliki Liku Kaumaitotoya;
- (c) To make rules regarding the access to her residence, provision of the necessities including her security, meals, medical, visitors and who may remain with her at her residence and for that purpose may appoint or employ someone suitably qualified to do so;
- (d) To monitor Meliki Liku's health and to that end may retain the services of a medical professional to do regular visits to her home;
- (e) To prepare and file a progress report on the performance of his duties as manager, to include a financial statement by 10th February 2026.

39. Any reports to be filed is to be sent to the Court via the Chief Registrar.


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Penijamini R Lomaloma
Acting Puisne Judge

