

IN THE HIGH COURT OF FIJI

AT SUVA

PROBATE JURISDICTION

Probate Action No. HPP 25 of 2025

IN THE MATTER of the Estate of MUTHUSSAMY IYER of Penang, Rakiraki, in the Republic of Fiji, Retired Grader Operator, Deceased, Testate.

AND

AND IN THE MATTER of an application by the applicants **VENU GOPAL IYER** and **ARUNA GIRI SWAMY IYER** both of #512-9983 Barnston Drive East, Surrey BC, V4N 6T3, Canada, Mechanic and Engineer respectively.

Counsel : **Ms M Rakai & Ms N Lal for the Applicants**

Hearing : **7 July 2025**

Judgment : **9 July 2025**

EX TEMPORE JUDGMENT

[1] This is an application by the applicants for orders to admit and use a copy of a will in place of the original. The original will cannot be located.

Background

- [2] The late Mr. Muthussamy Iyer (the deceased) prepared a will on 19 March 1981. According to the will, the sole beneficiaries were the applicants, being the deceased's son, Venu Gopal Iyer, and his grandson, Aruna Giri Swami Iyer. The deceased directed that the applicants pay the sum of \$100 to each of his other children – the deceased had six daughters and another son.
- [3] The deceased passed away on 26 October 1983, aged 65. He was by that time a widow.
- [4] Some 42 years later, on 10 March 2025, the applicants filed the present proceedings seeking the said orders. In the supporting affidavit executed by the two applicants on 15 November 2024, a copy of the 1981 will was annexed along with the deceased's Death Certificate and the birth certificates for the two applicants.
- [5] At my direction, a supplementary affidavit was filed by the applicants on 14 May 2025, explaining the delay for seeking probate. The applicants explained that at the time of the deceased's passing, in 1983, the family were in the process of migrating overseas. They prioritized the migration process over probate. The family initially moved to New Zealand but subsequently, in or about 1994, moved to Canada. Over that time, they kept a copy of the 1981 will in an envelope. The applicants believed that the document they had was the original copy.
- [6] In about 2023, the applicants returned to Fiji to organize their affairs. They discovered that Crown Lease 7389, which the deceased owned at the time of his death and thus formed part of his estate, had expired. In order to renew the lease, the applicants were required to obtain probate over the deceased's estate. By this time, there were only three living siblings from those mentioned in the 1981 will, the four others having passed away.
- [7] Again, at my direction, a further affidavit was filed by one of the living siblings, Kaliamma, who also happened to be residing on the land which is the subject of Crown Lease 7389. The affidavit was filed on 2 July 2025. Kaliamma is a daughter

of the deceased. She has lived on the property in question for the last few decades and is aware not only of this application but that Crown Lease 7389 has expired and that these probate matters have been actioned in order to renew the lease. Kaliaamma understands that she will only receive \$100 from the estate but is satisfied with the arrangement as the applicants have promised to allow her to remain on the property until she passes away. She is currently 83 years old.

Relevant legislation and legal principles

[8] Pursuant to section 3(1) of the Succession, Probate and Administration Act 1970, the court has jurisdiction in contentious and non-contentious probate matters.

[9] Pursuant to Rule 54 of the Non-Contentious Probate Rules 1987, the court has power to admit and use a copy of a will in place and in substitution of the original will. Pursuant to these rules, there must first be an application for such an order, supported by an affidavit setting out the grounds for the application and deposing, in this particular instance, as to the will's existence after the death of the testator. The court may require any additional evidence as it sees fit as to the due execution of the will or as to the accuracy of the copy of the will.

[10] In the *Estate of Kanil Singh* [2022] FJHC 222, (27 April 2022) Amaratunga J noted:¹

...when there is no original last will or evidence of existence of such cannot be found there is a presumption that it had been destroyed or revoked. Destruction of last will by testator can also be considered as revocation of it. This is an evidential presumption that can be rebutted with sufficient evidence.

[11] I have power to make the orders sought in the present matter. The applicants must, however, establish to the Court's satisfaction that the 1981 will was the last will of the deceased and is a true copy of the original. Also, that the original has either been lost, cannot be located, or the like. The onus is on the applicants to establish this on the balance of probabilities.

¹ At paragraph 31.

[12] Having considered the affidavits filed, I am satisfied that the applicants have established that the requirements are met. The reasons for this are as follows:

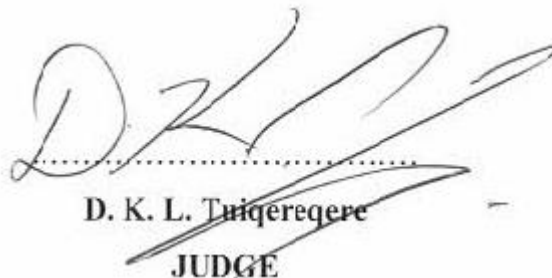
- i. The 1981 will was prepared only two years before the deceased's passing, making it highly likely that it was his last will at the time of death.
- ii. I accept that the will, having been found in an envelope by the family and safeguarded for what appears to be four decades, was considered by the deceased's family to have been the original.
- iii. The applicants have explained the delay for filing of probate.
- iv. There has been no other application filed for probate. No other will has been produced for the deceased over the lengthy period since his death.
- v. The only other sibling affected by the present application, who is living on the property owned by the estate, consents to the orders being made.

Orders

[13] For the reasons stated above, the application is granted.

[14] The copy will of the late Muthu Sami Iyer also known as Muthussamy Iyer dated 19 March 1981, at annexure 'D' to the affidavit of the applicants sworn on 15 November 2024, is to be admitted and used in place of the original for the grant of Probate.




D. K. L. Tuiqereqere
JUDGE

Solicitors:

Sherani & Co for the Applicants