

In the High Court of Fiji  
At Suva  
Probate Jurisdiction

Civil Action No. HPP 09 of 2020

In the matter of the estate of Ali Hussein

Maharulnisha

Plaintiff

v

Mohammed Rafiq

Gafur Hussain

Ali Hassan

Mohammed Hussain

Defendants

Counsel: Mr E. Vula for the plaintiff  
Mr V. Kumar for the defendants

Date of hearing: 18<sup>th</sup> January 2021

Date of Judgment: 1<sup>st</sup> February 2023

**Judgment**

1. The plaintiff, in her originating summons seeks that the Caveat No. 47/2019 lodged by the defendants be removed and Letters of Administration be granted to her. The application is made in terms of section 47 of the Succession, Probate and Administration Act.

2. The plaintiff in her affidavit in support that she is the wife of late Ali Hussain,(deceased). In October 2019, she made an application for Letters of Administration. In December, 2019, a Caveat was filed by the defendants. The Caveators do not disclose their interest in the estate. The death certificate of the deceased shows her as spouse and Subhan Ali, Mansoor Ali and Nausad Ali as issues of their marriage. Her late husband was the registered proprietor of CL no 7055, (the property) occupied by her and her sons. She and her sons are entitled to the estate of the deceased under the Succession, Probate and Administration Act.
3. The first defendant in his affidavit in reply states that he filed Caveat as their mother Mustari Begum in her Will bequeathed the property to her five sons in equal shares. Due to old age and sickness, she transferred the property to their eldest brother, (the deceased) to distribute the property in terms of clause 3(c) of her Will. The deceased was trustee of her Will. He promised that the land will be subdivided and given to them. The duplicate Lease has been held by the Department of Lands, due to rental arrears. The first defendant states that the Lease was renewed by his son Mohamed Safik on authority from the deceased. The deceased did not have the resources to carry out the subdivision, transfer and pay the Department of Lands to receive the original lease. The plaintiff has threatened to evict them from the property.
4. The plaintiff, in her reply states that the property was given only to the deceased. The purported Will of Mustari Begum is a forgery and the matter reported to the Police.
5. Mohammed Safik, in a supplementary affidavit states that he is a son of the first defendant. The deceased sought his assistance to pay Surveyors and the renewal fee. The Lease has been renewed. His Uncle,(the deceased) also informed him that in terms of his mother Mustari Begum's Will, the land was to be shared.
6. The plaintiff, in her reply to the supplementary affidavit states that Mohammed Safik is not a party to the proceedings and not entitled to be file a supplementary affidavit.

***The determination***

7. The plaintiff seeks removal of the Caveat lodged by the defendants and that Letters of Administration be granted to her.
8. Section 47(1) of the Succession, Probate and Administration Act provides that “*the court may, upon application by the person applying for probate or administration, or for the sealing of any probate or letters of administration, as the case may be, remove*” a caveat lodged. Subsection (3) provides that the “*application may be heard and order made upon affidavit or oral evidence, or as the court may direct*”.
9. In ***Reddy v Webb***, [1994] FJCA 36; Abu 0014.94s (11 November 1994) the Court of Appeal stated:

*The application before the trial judge was to remove the caveat under s 47 (1) of the Act. On what grounds should a caveat be removed? The section does not give any indication. It simply says "**Such application may be heard and order made upon affidavit or oral evidence**". This gives the court a discretion.*

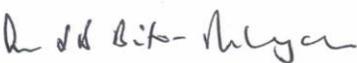
*In formulating the discretion of the court in such an application, we are of the opinion that the Court may have regard to the practice set out in the Rules as a guide. This is not the same as applying the Rules. The relevant rule for consideration in this regard is r 44 (7). For the purposes of a warning, a caveator is required to give particulars of a contrary interest. We would adopt this and formulate that a caveator should establish a contrary interest to the person applying for the removal of a caveat.*

*.. Again in determining this issue, the Court may have regard to the nature of the contrary interest that is required to be particularised by the caveator under the Rules. Again the relevant rule in this regard is r 44 (7) which specifies that nature of the interest is to be "**any contrary interest in the estate**". We would adopt this and formulate that for the purposes of removing a caveat under s 47 of the Act, the caveator is required to establish a contrary interest in the estate of the deceased.*

10. In the present case, the contrary interest alleged is a share in the property of the deceased. It is contended that the late mother of the defendants bequeathed the property to the deceased to be subdivided between her five sons, the deceased and the defendants.

11. CL 7055 attached to the plaintiff's affidavit provides that the deceased was the sole lessee of the property. The Will of the mother of the defendants and the deceased makes no reference to the property.
12. In my view, the first defendant has not established a contrary interest in the estate of the deceased.
13. The deceased died intestate on 21<sup>st</sup> August, 2019, leaving the plaintiff and three sons. The plaintiff, as wife of the deceased is entitled to a grant of letters of administration of his estate.
14. Accordingly, the Caveat lodged by the defendants is removed and letters of administration granted to the plaintiff.
15. **Orders.**
  - a. Caveat 47/2019 lodged by the first defendant is removed and the plaintiff is granted letters of administration to be sealed by the Registry.
  - b. The defendants shall pay the plaintiff costs summarily assessed in a sum of \$ 1000.00.



  
**A.L.B. Brito-Mutunayagam**  
**JUDGE**  
**1<sup>st</sup> February, 2023**