

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

**HBM 61 of 2013**

**BETWEEN** : **THE REPUBLIC OF FIJI MILITARY FORCES** as established pursuant to the Constitution of The Republic of Fiji and the Republic of Fiji Military Forces Act, Cap 81 of the Laws of Fiji

**APPLICANT**

**AND** : **LITIA VAKAYAVU DAULAKO** of Mokani Village, Tailevu, Secretary.

**1<sup>ST</sup> RESPONDENT**

**AND** : **LORAINI LALATIA** of Lot 5B, Waisali Road, Colo-i-Suva

**2<sup>ND</sup> RESPONDENT**

**BEFORE** : **Justice Deepthi Amaratunga**

**COUNSEL** : **Mr. Sharma M. for the Applicant**  
**Respondents in Person**

**Date of Judgment** : **31 March 2014**

**JUDGMENT**

**INTRODUCTION**

1. The Plaintiff filed this action by way of ex parte originating summons seeking a declaration as to the nomination of a life insurance policy. The deceased had nominated ex-wife as the beneficiary of the life insurance policy as the 'wife' of the deceased, but subsequently failed to change it despite obtaining a divorce and also re-marrying. Since

the ex-wife and the widow of the deceased were affected parties from this action the court directed to make them parties to this action and through mediation by the Plaintiff both had consented to share the insurance proceeds between them. Despite this the Plaintiff sought a legal interpretation to the issue and orders 1 and 2 needed to be determined as order 3, namely the issue regarding the beneficiary of the proceeds of the cover now resolved.

## ANALYSIS

2. The Originating Summons sought inter alia sought following orders

- ‘1. *That a declaration be made as to the validity of any previous nomination at the point of remarriage in respect of the Republic of Fiji Military Force Group Life Plan Death Benefit Cover.*
2. *That a declaration be made as to the proper beneficiary of beneficiaries of the Republic of Fiji Military Forces Group Life Plan Death Benefit Cover in accordance with relevant provisions of the law.’*

3. The Group Life Plan according to the attached documents to the affidavit in support is an insurance cover obtained in 1996. This was a group life insurance cover for the military personnel. The documents show that the deceased member had nominated Litia Vakayavu Daulako (1<sup>st</sup> Respondent) as the sole beneficiary of the death benefit under the said plan. At the time of nomination the deceased was married to her, the relationship was mentioned as ‘wife’.

4. In 2012 the deceased divorced and remarried one Loraini Lalatia in the same year, but failed to make any changes to the nomination of the death benefit under the life insurance cover and in 2013 he died. At the time of the death his lawful wife was Mrs. Loraini Lalatia.

5. Section 83 of Insurance Act (Cap217) deals with the nominations and states as follows

*'83(1) The holder of policy of ordinary life insurance may, when effecting the policy or at any time before the money secured thereby become payable, nominate a person or persons whom it shall be paid in the event of his death;*

*Provided that, where any nominee is a minor, it shall be lawful for the policy holder to appoint in the prescribed manner any person to receive the money in the event of his death during the minority of the nominee.*

*(2) A nomination under subsection (1) shall-*

*(a) be incorporated into the text of the policy; or*

*(b) be made by an endorsement on the policy, in which case written notice thereof shall be communicated to the insurer who shall record it in the register maintained under section 49(1)(a).*

*Before the money secured by the policy becomes payable a nomination may be cancelled or changed at any time by another endorsement or by a will of the policy holder; and, unless written notice of cancellation or change has been given by the policy holder to the insurer, the insurer shall not be liable for any payment under the policy made to a nominee mentioned in the text of the policy or in the register of the insurer.*

*(3) The insurer shall acknowledge in writing to the policy holder that it has registered a nomination or a cancellation or change thereof, and may charge a fee .....*

6. According to the Section 83(1) of the Insurance Act (Cap217), a nomination made in an 'ordinary life insurance' can be cancelled or changed by a subsequent endorsement or through a will of policy holder. The definition of 'ordinary life business' is contained in the Section 2 of the Insurance Act (Cap 217) and the group life insurance policy can be considered as 'ordinary life insurance' in terms of the said provision.
7. The legally accepted methods of change or cancellation of the nominee are
  - a. Written notice of change or cancellation by the policy holder.
  - b. The last will of the policy holder.
8. If there is no change or cancellation by any of the abovementioned methods, the death benefit under the life insurance policy can be paid to the person nominated. The

nomination made previously by the deceased to ex wife or any other person will not be affected unless there is a change or cancellation by written notice, or by will of the policy holder and in the absence of any money can be paid to the nominated person irrespective of the change of relationship mentioned in the form of nomination.

9. In **Colonial Mutual Life Assurance Society Ltd v Shandil** ABU0056u.96 (decided on 27<sup>th</sup> August, 1997) (unreported) Fiji Court of Appeal decided that notice given by the executor to the insurer after the death of the policy holder is sufficient notice in terms of the Section 83 in regard to any appointment contained in a last will of the deceased policy holder.

## CONCLUSION

10. The deceased had not changed or cancelled the nomination made in 1996 in his life insurance and had not nominated a beneficiary for the death benefit in a last will. There is no notification from an executor regarding an appointment of beneficiary in a last will. The person nominated in the life insurance will be valid despite the relationship change due to the divorce. Accordingly, the previous nomination is valid despite remarriage and the person nominated is the beneficiary, though the relationship changed due to divorce.

Dated at **Suva** this **31<sup>st</sup>** day of March, **2014**.

.....  
**Justice Deepthi Amaratunga**  
**High Court, Suva**