

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

CIVIL JURISDICTION

Civil Action: HBC 22 OF 2018

BETWEEN : LAL MOHAMMED father's name Aladin Hazamulla of Nawaka,
Nadi. **PLAINTIFF**

AND : FIJI NATIONAL PROVIDENT FUND a statutory body established
under the Fiji National Provident Fund Act, having its principal office at
Provident Plaza, Two 33 Ellery, Suva. **DEFENDANT**

Appearances : Mr Janendra Sharma with (Ms) Kartika Kumar for the plaintiff
(Ms) Lieta Bula with (Ms) Anamaria Rogovakalali for the defendant

Date of trial : Monday, 29th April, 2019
Date of judgment : Friday, 26th July, 2019

J U D G M E N T

(A) BACKGROUND FACTS

[01]. The plaintiff Lal, had sought an Order from the Magistrate's Court in Nadi, against FNPF, the defendant to release to him (Lal), all monies that had accrued in the account of his late wife, (Ms) Ashween Lata (Lata). Prior to filing his Magistrate's Court claim, Lal had applied to the FNPF for the release of funds. The FNPF had declined Lal's application primarily because its records showed that Lata had nominated her parents and brother to be recipients of her funds in the event of her demise. It is not in dispute that Lata did indeed fill and complete a form in which she had nominated her parents and brother as her FNPF beneficiaries. What the parties dispute however, is whether or not the said nominations were valid at the time of Lata's death.

[02]. When Lal could not get the FNPF to release the funds to him, he filed a claim at the Magistrate's Court in Nadi seeking inter-alia the payment of \$6000.00 in 'Special Death Benefit' and the entire sum standing in Lata's FNPF Account, plus interest.

[03]. The FNPF did file a defence. At paragraph 6.0 of the Statement of defence, the FNPF pleads;

“As to paragraph 6 of the statement of Claim, Defendant says that Defendant's Officers/employees had time and again informed the Plaintiff that he has not been nominated as a beneficiary by the Deceased and therefore is not entitled to any monies held on account of the deceased with the Defendant”.

[04]. The statement of defence of the FNPF was struck out by the Learned Magistrate on Trial date on account of FNPF's failure to appear to defend the claim. The Learned Magistrate gave judgment in favour of Lal on 17th of January, 2012. The defendant filed a Notice of Motion on 17th of October, 2012 in Nadi Magistrate's Court seeking to set aside the Judgment of the 17th January, 2012. Upon hearing the application for setting aside, the Nadi Magistrate's Court on 7th May, 2013 dismissed the application to set aside the Judgment. After expiration of some 80 days from the date of the Ruling, the defendant then filed Motion and Affidavit in the Nadi Magistrate's Court for leave to file Notice of Intention to Appeal (Out of Time) and Stay of Execution on 26th July, 2013. This application (for leave to file Notice of Intention to Appeal out of Time) was heard by the Nadi Magistrate's Court and a ruling delivered on the 20th of May, 2014 whereby the application was dismissed. The defendant then filed an application for Leave to Appeal in the High Court on 22nd September, 2014. The High Court granted Leave to Appeal to the defendant on 16th September, 2015. In the Magistrate's Court, Lal consented to set aside the default judgment of the Learned Magistrate and the case was transferred to High Court for trial.

[05]. The case was heard in the High Court on 29th April, 2019. At the trial, the plaintiff gave evidence and the defendant called on witness, Mr. Setareki Nuku, Team Leader, FNPF.

(B) PRE-TRIAL CONFERENCE MINUTES

(a) AGREED FACTS

1. *That on 23rd November, 2000 Ashween Lata (father's name Suresh Chand) completed Fiji National Provident Fund Registration of Employees form and the Nomination Form.*
2. *That pursuant to the nomination form Ashween Lata nominated the following persons as beneficiaries:-*
 - (i) *Suresh Chand (father) 20%;*
 - (ii) *Reshma Devi (mother) 30%;*

- (iii) *Rajnesh Kumar (brother) 50%.*
3. *The Registration of Employees Form and the Nomination form was received at the Fiji National Provident Fund on 22nd February, 2001.*
 4. *That on 13th January, 2001 Ashween Lata was legally married to Lal Mohammed, the Plaintiff.*
 5. *Ashween Lata (Fiji National Provident Fund No. 2215742) passed away on 13th August, 2004.*
 6. *That the Plaintiff Lal Mohammed claimed for the amount held on account of Ashween Lata with the Defendant (FNPF) and the death benefit payable to her.*
 7. *That the defendant (FNPF) refused to pay the monies held on account of said Ashween Lata to the Plaintiff, Lal Mohammed on the following grounds:-*
 - (i) *Ashween Lata was married on 13th January, 2001;*
 - (ii) *Nomination Form which was completed by Ashween Lata was received by the Defendant on 22nd February, 2001 which was after the date of marriage.*
 8. *That on 15th February, 2005 the Plaintiff's Solicitors wrote to the Defendants (FNPF) seeking release of the monies held on account of Ashween Lata with the Defendant in favour of the Plaintiff.*
 9. *The Defendant has refused to make payment to the Plaintiff;*
 10. *The Defendant has not paid the money into the High Court for distribution either.*

(b) **THE ISSUES TO BE DETERMINED ARE:**

1. *When did the Nomination Form dated 22nd November, 2000 take effect?*
2. *Whether the Defendant FNPF delayed in registering Ashween Lata's membership and Nomination?*
3. *Whether the Nomination Form dated 22nd November, 2000 became invalid due to the marriage of Ashween Lata to the Plaintiff on the 13th January, 2001?*
4. *Whether the Nomination held with the Defendant is a valid nomination?*
5. *Whether the funds in the account of Ashween Lata should be distributed as per Law?*

(C) **CONSIDERATION AND THE DETERMINATION**

- [1]. Counsel for the plaintiff and the defendant have tendered extensive written submissions in support of their respective cases.

I am grateful to Counsel for the lucid and relevant submissions which have made my task less difficult than it otherwise might have been.

If I do not refer to any particular submission that has been made, it is not that I have not noted that submissions or that that submission is not relevant, it is simply that, in the time available, I am not able to cover in this decision every point that has been made before me.

When did the Nomination Form dated 23rd November 2000 take effect?

- [2]. The defendant submits that the nomination form dated 22nd November, 2000 will take effect on the date it is submitted and acknowledged by the FNPF. The defendant cited Section 54 of the FNPF Regulations which was amended by Legal Notice No. 08 of 1987, which stipulates as follows;

Nominations to be submitted during life time of Member

54. *A nomination shall be of no effect unless it is submitted to, and acknowledged by the General Manager during the life time of the member.*

- [3]. Lata was born on 10th May, 1980. She began employment as a primary school teacher on 22nd January, 2001. On 13th January, 2001, just a little over a week prior to her commencing work as a teacher, Lata married Lal. They have two children. The elder of the two was born in 2002 and the younger one in 2004. On 13th August, 2004, some four months after the birth of the second child, Lata passed away by committing suicide at the age of 24. It is common ground between Counsel that the nomination form (PEX-12) was dated 23rd November, 2000. This suggests that Lata did fill and complete the nomination form while she was unmarried. The following facts were agreed at the Pre-Trial Conference.

1. *That on 23rd November, 2000 Ashween Lata (father's name Suresh Chand) completed Fiji National Provident Fund Registration of Employees form and the Nomination Form.*
2. *That pursuant to the nomination form Ashween Lata nominated the following persons as beneficiaries:-*
 - (i) *Suresh Chand (father) 20%;*
 - (ii) *Reshma Devi (mother) 30%;*
 - (iii) *Rajnesh Kumar (brother) 50%.*

3. *The Registration of Employees Form and the Nomination form was received at the Fiji National Provident Fund on 22nd February, 2001.*
4. *That on 13th January, 2001 Ashween Lata was legally married to Lal Mohammed, the Plaintiff.*
5. *Ashween Lata (Fiji National Provident Fund No. 2215742) passed away on 13th August, 2004.*
6. *That the Plaintiff Lal Mohammed claimed for the amount held on account of Ashween Lata with the Defendant (FNPF) and the death benefit payable to her.*
7. *That the defendant (FNPF) refused to pay the monies held on account of said Ashween Lata to the Plaintiff, Lal Mohammed on the following grounds:-*
 - (i) *Ashween Lata was married on 13th January, 2001;*
 - (ii) *Nomination Form which was completed by Ashween Lata was received by the Defendant on 22nd February, 2001 which was after the date of marriage.*
8. *That on 15th February, 2005 the Plaintiff's Solicitors wrote to the Defendants (FNPF) seeking release of the monies held on account of Ashween Lata with the Defendant in favour of the Plaintiff.*
9. *The Defendant has refused to make payment to the Plaintiff;*
10. *The Defendant has not paid the money into the High Court for distribution either.*

[4]. What is clear to me is that Lata did fill and complete the form while she was unmarried and the form was delivered at the FNPF about a month or so after she married Lal.

It is the Plaintiff's contention that; (reference is made to paragraph 3.8, 3.9, 3.10 and 3.25 to 3.29 of the closing submissions filed by the plaintiff).

- 3.8 *Fiji National Provident Fund Regulations ("the Regulation") have been made pursuant to Section 63 of the Act.*
- 3.9 *It is hereby submitted that the Nomination Form that was filled in by the deceased on 23rd November, 2000 did not comply with the Fiji National Provident Fund Regulations.*

- 3.10 *A person must firstly become a Member of the Defendant to make a Nomination pursuant to the Act and the Regulations.*
- 3.25 *It is submitted that by operation of Regulation 54, the Nomination is again of no effect as there is no evidence that the General Manager acknowledged the Nomination during the lifetime of the Deceased.*
- 3.26 *DW1 gave evidence that the Defendant has a practice of acknowledging receipt of nominations in writing. However, no such written acknowledgment was disclosed to the Plaintiff or tendered into evidence at the Trial.*
- 3.27 *The Defendant is claiming that the nomination was a valid and binding nomination and they have to prove this to the Court.*
- 3.28 *Since the Defendant is the author and custodian of the alleged written acknowledgment of nomination, they were the ones who could have tendered the written acknowledgment but they did not do so. The only conclusion that can be drawn here is that there is no such written acknowledgment and that by operation of Regulation 54 the nomination is of no effect.*
- 3.29 *The Defendant speaks of a practice which they have in place. However, there is no written Practice Direction or Notes to this effect and none have been produced in Court. If there is a Practice, then such practice is contrary to Law.*

(Emphasis added)

[5]. Let me now pause here to consider the plaintiff's claim. It should be noted that the proposition advanced by the plaintiff in his statement of claim is that;

- The nomination form was filled and completed prior to Lata's marriage.
- Lata did not make any changes to the nomination form after her marriage.
- By operation of Section 34 of the FNPF Act, Cap 219 and regulation 55(d) FNPF, subsequent marriage of Lata shall render her nomination null and void.
- Thus, the amount standing to Lata's credit at the time of her death should be paid out to the surviving spouse, ie, the plaintiff.

[6]. Suffice to say that the proposition advanced in the statement of claim is further clarified in their written communication dated 15/02/2005 (PEX-5). The plaintiff's Solicitor wrote to FNPF as follows;

15th February 2005

The General Manager
Fiji National Provident Fund
Private Mail Bag
Suva.

Dear Sir,

**Re: ASHWEEN LATA (f/n Suresh Chand)
FNPF No. 2215742**

We act for Lal Mohammed father's name Aladin Hazamulla the husband of Ashween Lata the abovenamed member deceased who died on the 13th day of August, 2004.

We have been advised that our client has notified your office of his wife's death and has also forwarded to you an application for the withdrawal of the fund held to the credit of the deceased. To date no action has been taken by your office on the basis that a nomination form with FNPF has different beneficiaries.

We are instructed that the nomination form sought to be relied upon was dated prior to the deceased's marriage to our client and there being no further changes made by her after the marriage to our client and since the deceased was legally married to our client he should be rightfully entitled to the contributions.

Our client is concerned at the unnecessary delay caused by your department in dealing with the matter and we shall appreciate your immediate response.

Yours faithfully,
JANEND SHARMA LAWYERS

Per:.....

- Encl: 1. Copy of Birth Certificate
2. Copy of Marriage Certificate
3. Copy of the Death Certificate
4. Copy of FNPF Card

(Emphasis added)

- [7]. As I see it, the proposition advanced by the plaintiff in paragraphs 3.8 to 3.10 and 3.25 to 3.29 in the closing submissions filed by the plaintiff on 27/05/2019 is contrary to the proposition advanced by him in his Statement of claim and in the written communication dated 15/02/2005. The plaintiff has pleaded; (Reference is made to paragraph 01 to 05 of the plaintiff's statement of claim filed in the Magistrate's Court in Nadi on 03/05/2006).

- “1. *The Plaintiff is the husband of Ashween Lata father’s name Suresh Chand, FNPF Number 2215742 who died on the 13th August, 2004 (hereinafter called the “Deceased”).*
2. *The Deceased was a member of the Defendant and her membership No. was FNPF 2215742.*
3. *That the Plaintiff and the Deceased were married on the 13th day of January, 2001.*
4. *That as at 31/01/04 the Deceased had \$5,066.64 to her account plus \$6,000.00 Special Death Benefit. She and her employer continued making contribution to the Fund until she died.*
5. *That upon the Deceased’s death the Plaintiff being entitled to apply for withdrawal on or about the 26th day of August, 2004 applied to withdraw the Deceased’s funds held with the Defendant.”*

[8]. Thus, it is of no use to the plaintiff to contend in closing submissions that Lata’s nomination is of no effect;

- *A person must firstly become a member of the defendant to make a nomination.*
- *The General Manager has not acknowledged the nomination.*

The above point is not pleaded in the Statement of Claim. The function of pleadings is to give fair notice of the case which has to be met so that the opposing party may direct his evidence to the issue disclosed by them. The Court cannot travel beyond the proposition advanced in the statement of claim, ie, subsequent marriage of Lata shall render her nomination null and void.

[9]. As previously mentioned, Lata began employment as a primary school teacher on 22nd January, 2001. Prior to 22nd January 2001, she was not an employee of Ministry of Education. Then, prior to 22nd January, 2001 she was not an FNPF member. Thus, the Registration of Employee Form and the Nomination Form cannot be submitted to FNPF prior to 22nd January, 2001. The nomination form which was completed by Lata was received by the FNPF on 22nd February, 2001. **The nomination form was submitted. Her FNPF contributions has been paid by her employer.**

[10]. I observe that regulation 54 of the FNPF Regulation says;

Nomination to be sent during life time of member

54 *A nomination shall be of no effect unless it is submitted to, and acknowledged by, the General Manager during the life time of the member.*

[11]. The defendant's witness Mr. Setareki Nuku during examination in chief had explained to the Court the procedure that is being followed when nomination forms are being received at FNPF. I quote the following portion of his evidence given in his evidence in chief; [page 11 to 13 of the Transcript of evidence]

Examination in chief of the Defence Witness by the Defence Counsel

Q: *Mr Nuku, you stated that you are a Team Leader, Records with FNPF?*

A: *Correct.*

Q: *Can you please state your responsibility as the Team Leader, Records?*

A: *Team Leader, Records, we receive and assess all applications especially for member registration, nomination and also what we call MOA, Memorandum of Administration. With that position, while assessing we look at everything according to policies and received according to our criteria before its assistance updated and approved and filed away.*

Q: *Thank you Mr Nuku. You stated that you are, your responsibilities to look after Nomination form, can you please explain to the Court the procedure that your Team follows when it receives Nomination form for members?*

A: *Right. The Nomination forms are usually received by our front line officers or also by mail. And at the front line office, the Staff will need to check that the member number matches the name that's on the Nomination form and also the signature. And we'll also see that the Nominations is evenly distributed then they update the system and forward it to my Team. My job is to then re-check on the Nomination Forms that shares are evenly distributed and the signature matches again before it's updated to the system. It's updated correctly, and it's uploaded. Then we'll approve on system. And that's filed away.*

Q: *When everything is in order, then you stated it is filed away? Where is it filed away?*

A: *This is going to a strong room. We have a strong room where only certain personnel allowed to have access to that room and that is where all our Nomination forms are filed away.*

Q: *Who has access to those rooms?*

A: *This is done in Suva office. And that is just the Team Leader Records and the Manager concerned, have access.*

Q: *Thank you. You mentioned that the Nomination form is checked, is received by a front line Officer, and they ensure that all the requirements are met. What happens if the requirements are not met?*

A: *If the requirements are not met, then they will not or part of the process is to date stamp the form if not then they won't stamp the form there, the form is returned to whoever whose lodge. If it's the third party or the members itself.*

Q: *Thank you. Witness, I'll show you this Memorandum of Nomination Form. Can you read out the name of the member?*

A: *Ashween Lata.*

Q: *Whose signature is on the Form?*

A: *That's the signature of the member, Ashween Lata.*

Q: *Ad what is the date on the letter, on the Form?*

A: *23rd November, 2000. This is the date that it was witnessed.*

Q: *On the 2nd page of the Nomination Form, can you read out the name of the people who are listed on the Form, the beneficiary?*

A: *Suresh Chand, whose relationship to the member is Father; Reshma Devi, relationship the Mother; and Rajnesh Kumar relationship is the Brother.*

Q: Mr Nuku, when did FNPF receive this Nomination Form?

A: This is received in February, 22nd

Q: In what year?

A: This is 2001

(Emphasis added)

[12]. I couple with that evidence, the evidence given at the cross-examination; (page 16 of the transcript of evidence)

Q: *Let's talk about Employees not Voluntary Employers.*

A: *Okay, we have a Form, we call it FNPF 3, it's a registration of a new employee. And this filled out by the member and witnessed by the employer and also with that Form comes a Nomination Form. So, these two forms will need to come together. Once we received that, then we register with our required documents.*

Q: *And witness, when did Ashween Lata become a member of FNPF?*

A: *On the records, it's 2001.*

Q: I want the date Witness?

A: Well in this case, date that we received it was February, 2001 this Form. This had come in with the Registration of Employee Form, then that would have been the date.

Q: Witness, take a look at this Form. What is that Form?

A: This is the Registration of Employee Form for new members.

[13]. Further down at page 17

Q: Now, from that particular Form, are you able to tell when the employment commenced?

A: The employment commenced?

Q: Yes.

A: 22nd of January, 2001.

Q: And was the Form received within one month?

A: Received, well it doesn't state here on the registration of employer when it was received.

Q: Shouldn't that Form say when it was received by FNPF?

A: It should, yes. It's on the Nomination Form that come together, it's got stamp date there.

Q: But the Form, the actual registration form does not say that?

A: But our copy that you have given me, no the stamps not there but on

Q: That is part of your records, it's not my record. So, are you able to produce a copy which has a date stamp on when it was received by FNPF?

A: It should. These two Forms had come together, because it's always compulsory that the registration of employee and the Nomination Form come together. So, if it wasn't stamped on the first instance the Officer would have stamped it on the Memorandum of Nomination. So, in this case it's February.

(Emphasis added)

[14]. I observe that Section 13(1) of the FNPF Act provides;

Part 4 – Contributions to the Fund

Payment of contributions

13. (1) *Every employer shall pay to the Fund in respect of each of his employees, in every month during which such employee is employed by him and in the month following the termination of such employment, a contribution calculated upon the amount of wages payable to such employee by such employer for the preceding month at the appropriate rates set out in the Second Schedule:*

Provided that-

(a) if, in any month of his employment by an employer, an employee is employed by that employer for a period of less than 12 days excluding Sundays and public holidays, that employer may, at his option, contribute in respect of that employee in the following month until such time as the Minister shall, by notice in the Gazette, declare that such contribution shall be mandatory;

(b) in respect of an employee engaged in any prescribed employment, the Board may direct that payment of contributions in respect of him shall be made at intervals other than a month and, notwithstanding any other provisions of this Act, may direct the manner in which such contributions shall be calculated and paid, whereupon paragraph (a) shall be deemed to be of no effect, and the Board may further direct that payment shall be made by some other person on behalf of and to the exclusion of the employer as defined in Section 2, whereupon such other person shall be deemed to be the employer for the purposes of subsection (2);

(Amended by Act 1 of 1970, s.5.)

(c) *the General Manager may, by notice in writing-*

(i) *direct any employer to pay contributions during every month on a date or dates or at periodic intervals or both as specified in the notice;*

(ii) *authorize any employer to pay contributions by a particular method, including direct electronic transfer from the employer's bank account.*

(Inserted by Act No. 10 of 2005s. 5(a)(i)(ii))

(Emphasis added)

[15]. Mr Setareki during cross-examination said that the registration of an employee form and the nomination form come together. If Lata's nomination is not submitted or not acknowledged by the FNPF, how could a sum of \$5,066.64 stand to the credit of her account at her death?

Thus, it is reasonable to infer that the FNPF has acknowledged her nomination form. I am satisfied on balance of probabilities that Lata's nomination form has been submitted and acknowledged by the F.N.P.F. I conclude that Lata's nomination form dated 23rd November, 2000 took effect on 22nd February, 2001.

Whether Ashween Lata's nomination form dated 23rd November, 2000 became invalid due to the marriage of Ashween Lata to the plaintiff on the 13th January, 2001?

- [16]. At the Magistrate's Court, Lal had sought an Order against F.N.P.F. to release to him all monies that had accrued in the account of his late wife, Ashween Lata. The plaintiff contends that "*the deceased declared her nomination on the 23rd of November, 2000. She got married to the plaintiff on 13th January, 2001. Therefore by operation of Regulation 55(d) and Section 34 of the Act subsequent marriage of Lata shall render her nomination null and void*".

With respect to the views of Mr. Sharma, I do not agree with that interpretation of the relevant sections of the law.

- [17]. In reply, the defendant submits; (reference is made to paragraph 4.1 and 4.2 of the defendants closing submissions filed on 27.05.2019)

4.1 *The defendant respectfully submits that the Nomination Form dated 22nd November 2000 was a valid nomination since it was filed by Ms. Lata after the date of her marriage to the Plaintiff. Section 34 of the FNPF Act, Cap 219 stipulates as follows:*

Nomination

34. Any employee or member of the Fund may, by a memorandum executed in the prescribed manner, nominate a person or persons to receive in his or their own right such portions of the amount payable out of the Fund under the provisions of Section 32 on his death as such memorandum shall indicate, and any employee who does not nominate such a person may be required by the Board to declare, in writing, that he does not desire to do so.

Provided that the subsequent marriage of a nominator shall render any nomination made by him null and void.

4.2 *Ms. Lata married the Plaintiff on 13th of January, 2001, the nomination and registration of employees form was lodged and received at FNPF on 22nd February, 2001 which makes the nomination filed by Ms. Lata nominating her parents and her brother a valid nomination.*

[18]. To answer this question, I consider the provisions of Section 34, 54 of the FNPF Act and regulation 55 of FNPF Act.

Section 34 of the **Fiji National Provident Fund Act, Cap 219**, provides;

“Any employee or member of the Fund may, by a memorandum executed in the prescribed manner, nominate a person or persons to receive in his or their own right such portions of the amount payable out of the Fund under the provisions of Section 32 on his death as such memorandum shall indicate, and any employee who does not nominate such a person may be required by the Board to declare, in writing, that he does not desire to do so:

Provided that the subsequent marriage of a nominator shall render any nomination made by him null and void.”

(Emphasis added)

Section 54 of the FNPF Act provides;

Nomination to be submitted during lifetime of member

54 *A nomination shall be of no effect unless it is submitted to, and acknowledged by the General Manager during the lifetime of the member.*

The regulation 55 of the FNPF Act provides;

55. A nomination shall be revoked –

- (a) *by the death of the nominee or, where there is more than 1 nominee, by the death of all the nominees in the lifetime of the nominator;*
- (b) *so far as relates to the interest thereunder of any nominee, being 1 of 2, or more nominees, by the death of that nominee in the lifetime of the nominator, unless the interest of the nominee is disposed of by the nomination;*

Provided that, in the event of any such revocation, the amount which would have been payable to such deceased nominee shall be paid to the surviving nominees in equal shares;

- (c) *by a subsequent nomination duly made in accordance with the provisions of these Regulations by the same nominator;*

- (d) *by the marriage of the nominator as provided in Section 34 of the Act, but a nomination shall not be revoked by any will or by any other act, or means whatsoever.*

(Amended by Legal Notice 83 of 1969).

(Emphasis added)

- [19]. Lata's nomination was lodged and received by the FNPF on 22nd February, 2001 ie, after Lata and Lal's marriage. Therefore, the proviso to Section 34 of the Fiji National Provident Fund Act, Cap 219 and Fiji National Provident Fund Regulation 55(d) does not apply. I hold that there is a valid nomination under the FNPF Act.

Whether the funds in the account of Ashween Lata should be distributed as per law?

- [20]. To answer this question, I consider the provisions of Section 34, 35(1) and regulation 54.

Section 35(1) provides;

Procedure where there is no nominee or a minor nominee

35. (1) If, at the time of the death of any member of the Fund, there is no person nominated under the provisions of section 34, the amount standing to the member's credit in the Fund shall be paid into Court for disposal in accordance with the law for the time being in force.

Further at section 54 of the said Regulation clearly outline that nomination to be sent during lifetime of member expressly worded as follows:

'A nomination shall be of no effect unless the appropriate form duly completed is sent during the lifetime of the nominator to the Manger of the Fund.'

- [21]. In this matter, Lal and Lata got married on 13th January, 2001 and Lata commenced employment on 22nd January, 2001 and subsequently nomination form received by the Fund on 22nd February, 2001.

The nomination form which was filled and completed before the marriage and submitted to FNPF after marriage is valid and is in compliance with Section 34 of the FNPF Act which provides;

'Any employee or member of the Fund may, by a memorandum executed in the prescribed manner, nominate a person or persons to receive in his or their own right such portions of the amount payable out of the Fund under the provisions of Section 32 on his death as such memorandum shall indicate, and any employee who does not nominate such a person, may be required by the Board to declare, in writing, that he does not desire to do:

Provided that the subsequent marriage of a nominator shall render any nomination made by him null and void'.

[22]. Though the nomination form is dated 23rd November, 2000, Lata commenced employment in 22nd January, 2001 (after marriage) and Fund received the said nomination form on 22nd February, 2001 thus reinforcing the provisions of Regulation 54 of the FNPF Act and Section 34 of the Act.

[23]. Lata had every opportunity to change her nomination after her marriage but this was not done to indicate where Lal stood in regards to his wife's contribution to the fund thus leaving her initial choice of nominees as valid to date in compliance with the provisions of the FNPF legislation. This may have raised some question on what may have been a relationship.

Section 35(1) of the FNPF Act, Cap 219 stipulates that when an FNPF member does not nominate a beneficiary then funds are transferred to High Court for distribution according to law. In Fiji's jurisdiction the appropriate law would be the Succession, Probate and Administration Act (Cap 60).

Section 35(1) does not apply in the instant case since Lata has a valid nomination filed with the FNPF and therefore her funds should only be distributed according to her wishes as stipulated in her nomination form and not any other law.

(D) CONCLUSION

It must be understood that as far as the system and procedure for nomination is concerned, it is contained in the FNPF Act and in particular in the sections I have cited hereabove. The Court's function is to interpret these sections.

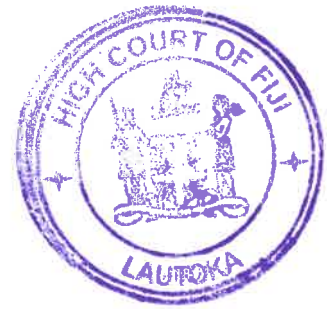
Mr Sharma, Counsel for the plaintiff made a very novel approach to the issues before me. It is indeed a very hollow approach and there is no substance in it whatsoever. I must commend him for his research but I am afraid it is not of any assistance to him or to this Court.

(E) **ORDER**

[1]. The plaintiff's claim is dismissed.

[2]. I make no order as to costs.


..... 26/07/2019
Jude Nanayakkara
Judge



At Lautoka
Friday, 26th July 2019

