

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

FNPF No. MN11216226X

Civil Action No. HBP 405 of 2018

IN THE MATTER of SUNIA LOMANI VAKACEGU, DECEASED.

AND

IN THE MATTER OF DECREE NO. 52 OF THE NATIONAL PROVIDENT
FUND DECREE 2011.

Counsel : Ms. Mataika P. for the Applicant
Ms. Rogers A. for the respondents

Date of Hearing : 23rd October 2020

Date of Ruling : 23rd November 2020

JUDGMENT

- [1] **Semi Petero Tagivetaua** of Lot 27, Tamauva Road, Nadera, Student who will be referred to as the applicant in these proceedings, filed this summons made pursuant to section 35 of the Fiji National provident Fund Act 2011, sections 3(2), 6, 7 and 23 of the Succession,

Probate & Administration Act 1970 and Order 15 rule 4 of the High Court Rules 1988 seeking the following orders:

1. That Semi Petero Tagivetaua of Lot 27, Tamauva Road, Nadera, Student be joined as a party to the proceedings.
2. That the orders dated 20th day of November 2018 be set aside.
3. That all FNPf monies of the deceased amounting to \$125,293.93 be paid back in to court until this matter has been resolved.
4. Costs.

[2] Semi Petero Tagivetaua also filed an ex-parte notice of motion which was converted to a inter parte notice of motion by the court, seeking the following orders:

1. That Semi Petero Tagivetaua of Lot 27, Tamauva Road, Nadera, Student be joined as a party to the proceedings.
2. That Soko Loma Vakacegu, and the following persons (the respondents) named in the following as per the order dated 20th day of November 2018 be restrained from selling or removing any assets from their jurisdiction or otherwise any dealing with their assets in any way to frustrate any judgment which might be made in these proceedings till the matter is dealt with:
 - a) Ana Rosimeri - Sister to the deceased
 - b) Sereana Vakacequ - Sister to the deceased
 - c) Jone Vakacequ - Brother to the deceased
 - d) Uate Vakacequ - Nephew to the deceased
 - e) Apenisa Vakacequ - Nephew to the deceased
 - f) Selai Vakacequ - Niece to the deceased
 - g) Aisake Vakacequ - Nephew to the deceased
 - h) Semiti Vakacequ - Nephew to the deceased
3. That the costs be in the cause.

[3] The court on 03rd August 2020 made order that Semi Petero Tagivetaua be added as a party to these proceedings.

[4] The plaintiff in his affidavit in support states that the he is the only issue from the testator Sunia Lomani Vakacegu (respondent) who was in a de-facto relationship with his mother.

[5] From the statutory declaration attached to the application made by Soko Loma Vakacegu she has stated in paragraph 7 as follows:

That to my knowledge he had a son named Semi who at all timed lived with his mother and that Semi never registered at the Registry of Birth or VKB (Vola ni Lawa Bula) as my deceased brother's son.

[6] This statement shows that the respondent knew very well that her brother had a son at the time she made the application for the distribution of FNPF funds but for reasons best known to her she did not state this in her application. In Part A of the application she was required to state the details of the children of the deceased including the children born in de facto relationships. The respondent has left that part of the application empty. Even in the declaration in terms of Act 6 of 2018 regarding de facto relationships the respondent has stated "Not Applicable". The respondent denies that the deceased had a de facto relationship with the applicant's mother and the deceased lived with her during lifetime but no evidence before this court that the deceased lived with her.

[7] If the respondent was genuinely interested in giving the applicant his share she could have given all these details in her application and let the court decide whether the applicant was entitled to a share of the deceased's estate. It is to be noted that after obtaining the money the respondent and others invited the applicant join them for a family vacation and during that time only he was informed by his cousins that this vacation was paid out of his father's money.

[8] Section 6(3) of the Succession, Probate and Administration Act provides:

In this section-

"child"-

(a) in relation to an intestate, means any child, whether legitimate or illegitimate of the intestate;

(b) in relation to any person entitled under the provisions of this Act to share in the property of an intestate, means any child legitimate or illegitimate of that person;

"issue" includes a child or any other issue whether legitimate or illegitimate, in any generation, of an intestate.

[9] In view of the above provisions the respondent cannot or is not entitled to deny the applicant's rights to inheritance even if he was born out of wedlock.

[10] On 03rd September 2007 the Family Magistrate's Court in Family case No. 07/SUV/0626 has declared that Sunia Vakacegu as the plaintiff's father. The learned Magistrate made the following orders:

1. **THAT** the **Respondent/Man** is adjudged as the father of the child namely **SEMI PETERO TAGIVETAUA**, a male born on **27th June, 2001**. The **Respondent/Man's** name to be inserted in child's birth certificate.
2. **THAT** the **Respondent/Man** to pay **\$50.00 per week** maintenance and all educational costs of the child until he reaches 18 years or leaves school.
3. **THAT** Maintenance to be deducted directly from source. Attachment of Earning Order to be prepared.

[11] He respondent in her affidavit in opposition states that she has been advised that the order of the Family Court dated 17th September 2007 is regular and defective in law since the parties were not represented by counsel. There is no decision made by the Family Magistrate's Court on 17th September 2007. The orders were made on 03rd September 2007 and sealed on 17th October 2018. Whether the decision of the Family Magistrate's Court correct or not this is not the forum to challenge it. Once an order is made it is valid in law unless and until it is set aside or varied by an appellate court. The deceased passed away in 2018 almost eleven year from the date of the above order. He had not sought to challenge this decision before a higher forum and there is no evidence that he refused to

comply with the decision of the court. On the other hand she does not deny that the applicant is her brother's son.

[12] The counsel for the respondent submitted that the respondent had provided the court with necessary information about the son of the deceased. As I stated earlier in her application she had kept the relevant area blank and in the statutory declaration she has created a doubt as to the paternity of the applicant. She cannot therefore, say that she provided the court with all information relevant to the matter. It is now absolutely clear that if she provided all necessary information the respondent would not have been deprived of his right over his father's estate. Whoever who is at fault it has to be corrected otherwise the applicant will be deprived of his rights of the father's estate for no fault of his.

[13] For the above reasons the court makes the following orders.

ORDERS

1. The orders made on 20th November 2018 are set aside.
2. It is ordered that all FNPF monies of the deceased amounting to \$125,293.93 be paid back into court within 30 day from today and kept in court until the matter is finally resolved.
3. Parties will bear their own costs of this matter.



23rd November 2020


Lyone Seneviratne

JUDGE