

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Action No. HBP 246 of 2021

IN THE MATTER of the deceased **TREVOR WILLIAM SEETO** late of 1 Makita Street, Suva, Retired Legal Practitioner. Deceased, Intestate.

AND IN THE MATTER of Section 35 of Fiji National Provident Fund Act (Cap. 219)

PATRIC TED SEETO

Applicant

JENNIFER MARINA SEETO

Respondent

Counsel : Applicant: Mr. Prakash. R

: Respondent: Mr. Knight. P

Date of Hearing : 21.4.2022

Date of Judgment : 14.6.2022

Catch words

Adoption of Infants Act 1944 – Section 11(1), 11(2)- intestacy- Succession Probate and Administration Act 1970 - Section 6 (1) (h), 6(1)(i) – Fiji National Provident Fund Act 2011-Section 57- brother of Whole Blood- child of adopter born in lawful wedlock. Adoption Act 2020¹-Sections 1(2), 30(1)(a),60

JUDGMENT

INTRODUCTION

1. Applicant is seeking distribution of money remitted, by Fiji National Provident Fund (FNPF). The money belonged to deceased member of FNPF, and remitted to this

¹ Yet to be commenced through a Gazette in terms of Section 1(2)

court to be distributed in terms of Section 57(3) of FNPF Act 2011 as there was no nominee by the deceased. Such sums are distributed in accordance with law. Section 6 of Succession Probate and Administration Act is applied for the distribution of money remitted by FNPF. Deceased was not married and had no *de facto* relationship or issues. His parents preceded, him. Applicant is an adopted child hence not a brother of 'whole blood' or 'half-blood' of the deceased. There is no category of adopted person to inherit property from and issue of adopted parents in terms of Section 6 of Succession Probate and Administration Act 2011. Said provision of law is required to be read along with Section 11 of Adoption of Infants Act 1944 (Adoption Act). Accordingly, '**adopter or the adopted person or any other person dies intestate** in respect of any real or personal property that property **shall devolve in all respects as if the adopted person were the child of the adopter born in lawful wedlock.**' So 'any person', in section 11(2) of Adoption Act, included any brother or sister of the adopted family, hence Applicant is entitled to inherit the estate of the deceased. He 'deemed' brother of 'whole blood' for the purpose of Section 6(1)(h) of Succession Probate and Administration Act 1970 read with Section 11(2) of Adoption Act. Applicant must be considered as child 'born in lawful wedlock' of adopted parents and needs to be *on par* with issues of adopted parents, for intestacy.

FACTS AND ANALYSIS

2. Facts of this action is not disputed. Applicant and Respondent admit that Applicant was legally adopted by the parents of deceased.
3. The Applicant has filed this application on 24.12.2021. The application is supported by the Affidavit of the applicant, sworn on 20.12.2021. A further supplementary Affidavit of Applicant, sworn on 19.01.2022 has been filed on 21.01.2022 in support of the application.
4. This supplementary affidavit relates to a person called Dudley Patrick stated the death certificate of Respondent's father. There is no dispute that person was not legally adopted. According to Respondent he was a half-brother, but this issue is irrelevant and dealt later.
5. In this application the applicant is seeking that:

"a. **THAT** the amount standing to the credit of Trevor William Seeto late of 1 Makita Street, Suva, Retired Legal Practitioner, Deceased, Intestate as his Fiji National Provident Funds contribution under FNPF Membership Card No. MN11110384C be paid out to the Applicant. Patrick Ted Seeto of 1 Makita Street, Suva, Fiji, Businessman or;

b. **ALTERNATIVELY**, that the amount standing to the credit of Trevor William Seeto late of 1 Makita Street, Suva,

Retired Legal Practitioner, Deceased, Intestate as his Fiji National Provident Funds contribution under FNPF Membership Card No MN11110384C be distributed

6. Having made such an application, at the hearing, the Applicant was not seeking the payment out to him solely. Why Applicant made such a request is best known to him.
7. At the hearing Applicant, acknowledged that Respondent and one other person, named Edward Ronald Seeto, as brother and sister of deceased member of FNPF.
8. Applicant acknowledged that his entitlement should be in terms of Section 6 of Succession Probate and Administration Act 1970. So Respondent and her brother's entitlement as 'full blood' siblings needs to be considered along with Applicant's entitlement, if any.
9. The Applicant is legally adopted by parents of late Trevor William Seeto (The Deceased). His birth certificate is exhibit A to the Applicant's Affidavit. It indicated parents of the Deceased, as Edward Seeto alias Dick Ming Chu and, Albertina Seeto.
10. Above mentioned, Edward Seeto and Albertina Seeto had four children including the adopted child, who is the Applicant. They were the Deceased, Respondent, Edward Ronald Seeto and Applicant.
11. The Applicant was legally adopted by Edward Seeto a.k.a Dick Ming Chu and Albertina Seeto a.k.a Albertina Petersen and this was registered by the Registrar of Births, Deaths and Marriages on 14.4.1989.
12. The birth certificate of the Applicant states that the information for the registration of the Applicant has been provided by the Magistrates' Court Suva.
13. The Deceased died on the 25.4.2021, and a copy of his Death Certificate is annexed as B to the Applicant's Affidavit. The parents of the Deceased noted on the death certificate are Albertina Petersen and Edward Seeto.
14. At the time of his death the Deceased was not married and had no *de facto* relationship and there are no issues.
15. The father of the Deceased died on 13.4.2020 and the mother of the Deceased died on 8.2.2012 both parents preceded the Deceased. Copies of the death certificates of the parents are annexed E and F to the Applicant's Affidavit.
16. The issues of marriage listed on the death certificate of the late Edward

Seeto a.k.a Dick Ming Chu were Dudley Patrick Seeto. Trevor William Seeto. Edward Ronald Seeto, Jennifer Marina Seeto and Patrick Ted Seeto.

17. The Birth Certificate of Dudley Patrick Jennings is exhibit B to the Supplementary Affidavit and shows that the parent registered on his birth certificate is Rita Ah Ben and no name of his father is registered. This person was a half-brother according to Respondent.
18. In terms of Section 6(1)(i) of Succession Probate and Administration Act 1970, the entitlement of half-brother is relevant only if there are no brothers or sisters of full blood or their children . Respondent is a full blood sister in terms of Section 6(1)(h) of Succession Probate and Administration Act 1970. So half-brother's entitlement is irrelevant in this action.
19. The Deceased was a member of FNPF. He was contributing to the Fiji National Provident Fund under Membership No. MN11110384C and he had not nominated any person to be entitled to his funds in the event of a death.
20. The amount standing to the credit of the deceased as Fiji National Provident Fund contributions has in the absence of a legal nomination, been paid to the High Court to be distributed in accordance with the law. This is in accordance with Section 57 (3) of FNPF Act 2011. Accordingly, the funds were remitted to this court to be distributed in terms of law.
21. Deceased members' funds were received by this court to be distributed according to law and the relevant law is found in Section 6 of Succession Probate and Administration Act 1970 and it reads,

“(1) Subject to the provisions of Part 2, the administrator on intestacy or, in the case of partial intestacy, the executor or administrator with the will annexed, shall hold the property as to which a person dies intestate on or after the date of commencement of this Act on trust to distribute the same as follows-

(a) if the intestate leaves a wife or husband or de facto partner but not both a wife or husband and a de facto partner, without issue, the surviving wife or husband or de facto partner shall take the whole of the estate absolutely;

(b) if the intestate leaves both a wife or husband and a de facto partner, without issue, the surviving wife or husband and the de facto partner shall take the whole of the estate in accordance with subsection (1A) absolutely;

(c) if the intestate leaves issue and-

(i) a wife or husband or de facto partner but not both a wife or husband and a de facto partner, the surviving wife or husband or de facto partner shall take the prescribed amount and the personal chattels and one-third only of the residuary estate absolutely; or

(ii) both a wife or husband and a de facto partner, the surviving wife or husband and the de facto partner shall take the prescribed amount and the personal chattels and one-third only of the residuary estate in accordance with subsection (1A) absolutely,

and the issue shall take per stirpes and not per capita the remaining two-thirds of the residuary estate absolutely;

(d) if the intestate leaves issue, but no wife or husband or de facto partner, the issue of the intestate shall take per stirpes and not per capita the whole estate of the intestate absolutely;

(e) if the intestate leaves no issue but both parents, then, subject to the interests of a surviving wife or husband or de facto partner, the father and mother of the intestate shall take the residuary estate of the intestate absolutely in equal shares;

(f) if the intestate leaves no issue, but one parent only then, subject to the interests of a surviving wife or husband or de facto partner, the surviving father or mother shall take the residuary estate of the intestate absolutely;

(g) [Repealed]

(h) if the intestate leaves no wife or husband or de facto partner and no issue or parents, then the brothers and sisters of the whole blood, and the children of deceased brothers and sisters of the whole blood, of the intestate shall take the whole estate of the intestate absolutely in equal shares, such children taking per stirpes and not per capita;

(i) if the intestate leaves no wife or husband or de facto partner and no issue or parents or brothers or sisters of the whole blood or children of deceased brothers or sisters of the whole blood, **then the brothers and sisters of the half blood** and children of deceased brothers and sisters of the half blood shall take the whole estate of the intestate absolutely in equal shares, such children taking per stirpes and not per capita;

(j) if the intestate leaves no wife or husband or de facto partner and no issue or parents or brothers or sisters of the whole blood or of the half blood, or children of deceased brothers or sisters of the whole blood or of the half blood, then the grandparents of the intestate shall take the whole estate of the intestate absolutely, and if more than one survives the intestate they shall take absolutely in equal shares, but if there is no grandparent, then the uncles and aunts of the whole blood, and children of deceased uncles and aunts of the whole blood, of the intestate, being brothers and sisters of the whole blood of children of deceased brothers and sisters of the whole blood, of a parent of the intestate, shall take the whole estate of the intestate absolutely in equal shares, such children taking per stirpes and not per capita;

(k) if the intestate leaves no wife or husband or de facto partner and no issue or parents or brothers or sisters of the whole blood or of the half blood or children of deceased brothers or sisters of the whole blood or of the half blood and no grandparents or uncles or aunts of the whole blood or children of deceased uncles or aunts of the whole blood of the intestate being brothers and sisters of the whole blood of children of deceased brothers and sisters of the whole blood, of a parent of the intestate, then the uncles and aunts of the half blood and children of deceased uncles and aunts of the half blood of the intestate shall take the whole estate of the intestate absolutely in equal shares, such children taking per stirpes and not per capita;

(l) in default of any person taking an absolute interest under any of the foregoing provisions of this section the residuary estate of the intestate shall belong to the State as bona vacantia, and in lieu of any right to escheat, and the State may, out of the whole or any part of the property devolving on it, provide for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision “²(emphasis added)

22. Under the provisions of the Section 6 (1)(h) of Succession Probate and Administration Act 1970 When there are no parents or wife or de facto partner/s or issues the property devolved to “brothers and sister of whole blood”. There are brother and a sister of the deceased who are whole blood. The issue is whether Applicant who was an adopted child can also be considered as “whole blood” in relation to intestacy.
23. Applicant was adopted by parents of the Respondent who is one of the sisters of “whole blood’ to the Deceased.

² subs (1) am Act 12 of 1985 s 4, effective 1 February 1987; Act 11 of 2004 s 3, effective 1 September 2004; Act 6 of 2018 s 3, effective 21 March 2018. (Laws of Fiji Vol 4)

24. Applicant is neither “whole blood” nor “half-blood” sibling. He became a member of Edward Seeto family due to legal adoption by late Edward Seeto and his wife late Albertina.
25. The issue is whether Applicant could be considered as “whole blood” brother of the Deceased for the purpose of Section 6(1)(h) of Succession Probate and Administration Act 1970.
26. Position on intestacy of adopted children in Halsbarys Laws of England states 485. Position on intestacy of adopted children.³

“Where an adoption order was made in England or Wales before 30 December 2005 and the adopter or the adopted person or any other person dies intestate at any time after the making of the order, his property devolves as if, where the adopters are a married couple, the adopted person had been born as a child of the marriage (whether or not he was in fact born after the marriage was solemnised), and, in any other case, as if he had been born to the adopter in wedlock (but not as a child of any actual marriage of the adopter).

Where an adoption order was made in England or Wales on or after 30 December 2005³ the child is to be treated as if born as the legitimate child of the adopters or adopter⁴. Where the adopter or the adopted person or any other person dies intestate at any time after the making of the order, his property devolves as if, where the adopters are a couple or the adopter is a partner of one of his parents, he was a child of the relationship of the couple in question.

Apart from certain statutory exceptions, a person adopted is to be treated as not being the child of any person other than the adopters or adopter. However in the case of a person adopted by one of his natural parents as sole adoptive parent this has no effect as respects entitlement to property depending on relationship to that parent, or as respects anything else depending on that relationship.

Any relative of any degree (other than the adoptive father and adoptive mother) under an adoptive relationship may be referred to as an adoptive of that degree”(foot notes deleted)

³ Halsbury's Laws of England - Wills and Intestacy (Volume 102 (2021), paras 1–566; Volume 103 (2021), paras 567–1304) - 6. Intestate Succession - (2) Capacity to Take under an Intestacy

27. Section 11 of Adoption Act makes specific provisions for the treatment of adopted persons as children of adopters for purposes of intestacy.
28. Adoption of Infants Act 1944, which is in force, will be repealed by Adoption Act 2020 once it commences in terms of Section 1(2) of Adoption Act 2020 read with Section 60 (1) of the same Act.
29. Section 30(1) (a) of Adoption Act 2020 states that adopted child needs to be considered *on par* with a child born to adopted parents. So, no discrimination is allowed in whatever manner. This law has not come into operation yet, but discussed as there will not be change of status of an adopted person even under Adoption Act 2020, after it comes into operation.
30. The relevant provision at the moment of this judgment is found in Section 11 of the Adoption Act which specifically deals with intestacy.

"11.(1) The provisions of this and section 12 shall have effect for securing that **adopted persons are treated as children of the adopters for the purposes of the devolution** or disposal of real and personal property.

(2) Where, at any time after the making of an adoption order, the adopter or the adopted person or **any other person dies intestate** in respect of any real or personal property that property shall devolve in all respects as if the adopted person were the **child of the adopter born in lawful wedlock** and were not the child of any other person.

(Amended by 37 of 1966, s. 16.)

(3) If any disposition of real or personal property made, whether by instrument inter vivos or by will, after the date of an adoption order-

(a) any reference (whether express or implied) to the child or children of the adopter shall be construed as, or as including, a reference to the adopted person;

(b) any reference (whether express or implied) to the child or children of the adopted person's natural parents or either of them shall be construed as not being, or as not including, a reference to the adopted person; and

(c) any reference (whether express or implied) to a person related to the adopted person in any degree shall be construed as a reference to the person who would be related to him in that degree

if he were the child of the adopter born in lawful wedlock and were not the child of any other person,

unless the contrary intention appears.

(4) Where under any disposition any real or personal property or any interest in such property is limited (whether subject to any preceding limitation or charge or not) in such a way that it would, apart from this section, devolve (as nearly as the law permits) along with a dignity or title of honour, then, whether or not the disposition contains an express reference to the dignity or title of honour, and whether or not the property or some interest in the property may in some event become severed therefrom, nothing in this section shall operate to sever the property or any interest therein from the dignity, but the property or interest shall devolve in all respects as if this section had not been enacted.

(5) This section shall be construed as referring to an adoption order whether made before or after the first day of November, 1950, but nothing in this section shall affect the devolution of any property on the intestacy of a person who died before such day aforesaid or any disposition made before such day."

31. Applicant must to be treated as a child of 'lawful wedlock' of the adopted parents. In this case the adopted parents were late Edward Seeto a.k.a Dick Ming Chu and Albertina Seeto a.k.a Albertina Petersen. The legal fiction created by Section 11(2) of Adoption Act, is that an adopted child become entitled to intestacy of any person as a child of 'lawful wedlock'. This can mean only one thing and that is Applicant is considered as whole blood child of adopted parents for intestacy of any person.
32. Section 11(1) of Adoption Act, reinforces this position as Applicant by legal fiction is considered as a child of the parents of the Deceased. He belonged to the family through adoption and all rights of a child born to that family is conferred to Applicant by law.
33. In the circumstances Section 11 of the Adoption Act can be applied for intestacy of any person, and not limited to intestacy of adopted parents.
34. Applicant is deemed a child of 'lawful wedlock' of adopted parents. So he is deemed 'full blood' brother of the issues of adopted parents regarding intestacy of any person including adopted parents or their children.
35. Section 11 of the Adoption Act makes it clear and provides for the treatment of adopted persons as children of adopters for purposes of intestacy. Conversely, if an adopted person, dies intestate without any issue or marriage or *de facto*

relationship or parents, the estate will devolved to issues of the adopted parents in equal shares.

36. If the adopted person is excluded from interpretation of 'whole blood' it will not only create a mischief of discrimination to adopted child and conflict with Section 11(1) and or Section 11(2) of Adoption Act, but also exclude members of adopted family from inheriting from an adopted person, in an intestacy. This is clearly not a position that was expected in relation to an adopted child.
37. If 'whole blood' is interpreted restrictively without considering section 11 of Adoption Act, the result will be that there will not be any intestacy provided beyond Section 6(1)(h) of Succession Probate and Administration Act 1970, for an adopted person. This creates a special intestacy for an adopted child.
38. For an example, Respondent and her brother will not be entitled to Applicant's estate in whatever circumstances in the event of intestacy as they were not "whole blood" siblings. This will create a mischief and argument that Applicant is to be treated other than "whole blood" brother is untenable.
39. Section 6 (1)(h) of Succession Probate and Administration Act 1970 must be read with Section 11 of Adoption Act to consider intestacy of adopted person and contextual meaning is required for the word "whole blood" brother. Adopted person is deemed "whole blood" offspring of the adopted parents. This is the meaning that can attribute to a child of 'lawful wedlock' of the adopted parents.

CONCLUSION

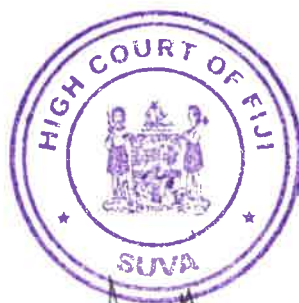
40. Applicant is deemed "whole blood" brother of the Deceased *on par* with Respondent and Trevor William Seeto, as regards to intestacy of 'any person'. Section 6(1)(h) of Succession Probate and Administration Act 1970 must be read with Section 11(2) of Adoption Act. This position will not change when Adoption Act 2020 commences due to Section 30(1)(a) of the said Act. Adopted person is conferred the same rights as a child of adopters. Conversely, upon the death of adopted child, devolvment will be done as a child born to adopters. Considering importance of the legal issues no cost is awarded. Respondent's contention is refused, hence her entitlement is one third of the funds remitted.

FINAL ORDER

- a. Applicant is deemed 'full blood' brother of Deceased for the purpose of Section 6(1)(h), of Succession Probate and Administration Act 1970.
- b. Applicant is entitled to 1/3 of the funds of the Deceased.
- c. Respondent is entitled to 1/3 and;

- d. Remaining 1/3 belongs to Edward Ronald Seeto.
- e. No order as to cost.

Dated at Suva this 14th June, 2022.



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Justice Deepthi Amaratunga
High Court, Suva