

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

**CIVIL JURISDICTION**

**CASE NUMBER:** HBM 3 OF 2025

**BETWEEN:** **INISE VATUKARAWA**  
**APPLICANT**

**AND:** **MEREONI SERU**  
**RESPONDENT**

*Appearances:* Ms. M. Hussain for the Applicant.

Mr. P. Suguturaga for FNPF.

*Date/Place of Judgment:* Monday 11 August 2025 at Suva.

*Coram:* Hon. Madam Justice Anjala Wati.

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**JUDGMENT**

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*Cause*

1. This is an application under ss.108 and 109 of the Mental Health Act 2010. The applicant is the daughter of the respondent. She is applying to be appointed as the Manager of the respondent on the grounds that her mother is mentally incapable to be able to deal with her personal, physical and financial affairs.
2. It is also sought that a management order be granted to the applicant to manage the whole of the affairs of the respondent.
3. When the application was initially filed, FNPF was not served with any application. Since the application largely concentrated on the FNPF monies to the extent of approximately \$80,000, I ordered the FNPF to be served with the application in this case.

4. The application was served on FNPF and Mr. Suguturaga appeared in court and assisted the court with relevant legal submissions.
5. The applicant wants that the monies that her mother is entitled to receive from the FNPF as a nominee of her deceased son Biu Katonivuli [D.O.B. 13/11/1974] who died on 26 December 2023 be deposited in the applicant's Westpac Account Number 9807538013 for her to look after her mother with those funds.

*Issues/Law and Analysis*

6. Pursuant to s.108(1) of the Mental Health Act, I need to be satisfied of the following before appointing a manager and making a management order:

- (a) *That the respondent has a mental incapacity;*
- (b) *As a result of the mental incapacity, the respondent is unable to make reasonable judgments in respect of all or any part of her estate or affairs; and*
- (c) *The respondent is in need of a manager to administer the whole or part of her estate or affairs. Following from this issue arises the most important question as to who should be appointed the manager of the respondent.*

7. It is essential that I outline ss.108 and 109 of the Mental Health Act at this stage.

8. S. 108 reads:

*"Management orders*

- (1) *The criteria for a management order in respect of a person are that-*
  - (a) *the person has a mental incapacity;*
  - (b) *as a result of the mental incapacity the person is unable to make reasonable judgments in respect of all or any part of the person's estate or affairs by reason of the incapacity; and*
  - (c) *the person is in need of a manager to administer the whole or part of the person's estate or affairs.*
- (2) *If on the application to the court by an authorized health care professional, or any other person who appears to the court to have a proper interest in the matter, the court considers that the person who is the subject of the application meets the criteria in subsection (1), the court may make a management order in respect of the person in accordance with this Part.*
- (3) *Before making a management order, the court must inquire, or direct enquiries to be made, into-*
  - (a) *the mental capacity of the person who is the subject of the application;*

- (b) *the nature of the estate of the person; and*
  - (c) *any other relevant matter the court thinks fit.*
- (4) *Reasonable notice of the time and place appointed for an inquiry must be given to the person who is the subject of the application and to any other person the court considers should be notified.*
- (5) *A management order-*
  - (a) *is an order made by the court appointing a person or persons to manage either the whole or a part of the estate or affairs of a person with a mental incapacity;*
  - (b) *may be made for a period not exceeding 12 months unless the court is of the opinion that a longer period should be specified in the order;*
  - (c) *may be made subject to terms and conditions as the court thinks fit;*
  - (d) *must include reporting and accountability requirements for the appointed manager as the court imposes in the order;*
  - (e) *may be the subject of an appeal to the Court of Appeal in accordance with rules of court."*

9. S.109 reads:

***"Powers and duties of manager***

- (1) *Subject to the terms of the management order, a manager must-*
  - (a) *act in the best interests of the person who is the subject of the order;*
  - (b) *take into account as far as is possible the wishes of the person who is the subject or the order, if such wishes were made known by the person before he or she suffered the mental incapacity;*
  - (c) *take possession and care of, recover, collect, preserve and administer the property and other estate of the person and generally manage the affairs of the person (including but not limited to financial and legal affairs) and exercise all rights (statutory or otherwise) that the person might exercise if the person had legal capacity; and*
  - (d) *in the name and on behalf of the person, generally do all acts and exercise all powers with respect to the estate and affairs of the person as effectually and in the same manner as the person could have done if the person were not under a legal disability.*
- (2) *A manager has such additional powers and duties over the person's estate and affairs as the court may give the manager from time to time.*
- (3) *This Act does not confer on a manager-*
  - (a) *the power to execute a will in the name of the person who is the subject of a management order;*
  - (b) *the power to legally bind a person to an agreement relating to the marriage or divorce of a person who is the subject of a management order without a specific order of the court to do so;*
  - (c) *The power to consent to the adoption of a person who is the subject of a management order by another person without a specific order of the court to do so; or*

*(d) the power to consent to the adoption of any children of a person who is subject to a management order by another person without a specific order of the court to do so.*

*(4) A manager must not receive any fee, remuneration or other reward from the estate of a person who is subject to a management order, or from any other person, for acting as manager, unless the court otherwise specifies in the management order.”*

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10. Before I attend to the issues in s. 108(1) of the Mental Health Act, I must reflect what the applicant has identified in her affidavit. She says that:

*(a) The respondent Meroni Seru is 74 years of age.*

*(b) The respondent has 4 sons and 1 daughter. However she has only named 3 sons and 1 daughter as follows:*

- (i) Cama Gade - D.O.B - 12/02/1978*
- (ii) Tevita Malewa - D.O.B - 20/05/1971*
- (iii) Biu Katonivuli - D.O.B - 13/11/1974 [Deceased]*
- (iv) Inise Karawa - D.O.B - 22/05/1983 [Applicant]*

*(c) Biu Katonivuli died on 26 December 2023, whilst serving with the United Nations Disengagement Observer Force in the Golan Heights, Israel. He was a serving member of the Regular Force (RF) of the Republic of Fiji Military Forces and was based with the Third Battalion Fiji Infantry Regiment at Queen Elizabeth Barracks, Nabua.*

*(d) The deceased Biu Katonivuli had nominated the respondent, his mother, as his beneficiary of the Fiji National Provident Fund monies.*

*(e) He also made a will on 15 September 2022 appointing his mother as the Trustee of his estate. The will appoints his mother as the sole beneficiary of his estate.*

*(f) On 25 November 2024, FNPF wrote to the respondent and advised that she was nominated by her son and therefore she is entitled to all the monies in his account.*

11. When the letter was issued by the FNPF, the applicant then filed this application for management order.

I will now address the issues. Does the Respondent have a mental incapacity?

12. The medical report of Dr. Kiran Gaikwad of 19 April 2024 establishes that the respondent has mental incapacity as a result of which she is not able to make reasonable judgments in respect of her affairs.

It is important that I outline the medical report in full.

“Dear Sir/Madam,

**Re: Mereoni Seru NHN: 9907620290**

*This medical report has been prepared with written informed consent of the above-named person and her son Mr. Cama Gade who is her Primary carer at present.*

*Mrs. Mereoni Seru was seen in St. Giles hospital on 11/04/2024 for the purpose of assessment of her mental health condition and capacity to make decisions.*

*Mrs. Mereoni Seru was accompanied by her son Mr. Cama. According to him, FNPF officers has referred her for psychiatric assessment to verify if she is capable of giving consent and execute legal documents.*

*Mrs. Seru has no history of any previous contact with mental health facility. According to son she was well until 3 years ago when she was noted to have decreased sleep, walking around aimlessly inside the house, would be seen talking to self at times, wanting to clean in rain, would weed around the house at night, had disorganized behavior like walking naked around the house, verbally aggressive and does not remember her way to house.*

*Her condition has gradually deteriorated over last three years and currently she has been on wheel chair with a full time nanny to look after her as she cannot attend to her personal hygiene and activities of daily living.*

*On the day of examination she was brought on the wheel chair and was not able to engage in conversation at all. She was not oriented to her surroundings and does not seem to understand the purpose of her interview. When asked about the reason for the report requested she kept smiling inappropriately and does not respond. Also when asked about the authority given to another person she was unable to comprehend the question and kept smiling irrelevantly. She was not able to concentrate or engage in conversation at all as she was not aware of her surroundings, people around her and even not able to name her son. No rapport could be established. She was not able to follow simple commands like wipe your eyes. When given tissue to wipe her eyes she just unfold it, fold it and kept it back without using it. Upon mental status examination it is evident that she has grossly impaired mental functions namely Attention and calculation, Registration orientation and recall.*

*Her brain CT scan report dated 15/04/2024, shows periventricular and few subcortical white matter ischemic changes, mild Fronto parietal atrophy and slightly prominent lateral ventricles. These changes are consistent with her clinical presentation of cognitive impairment.*

*She has significantly impaired ability to remember, think, or make decisions that interferes with doing everyday activities. She is detected to be suffering from Dementia and needs assistance for the activities of daily living and mobilization.*

*Thus I can comfortable conclude that at present she does not have capacity to follow the instructions, cannot express herself, understand the possible consequences of her decisions and is not aware of the legal accounts.*

*At present I am of the opinion that Mrs. Mereoni Seru is not fully capable of making informed decisions regarding her FNPF funds and/or execute legal documents.*

*Signed  
Dr. Kiran Gaikwad*

*MBBS, PGDMH  
Int.Dip.in Mental Health, Human Right & Law  
Principal Medical Officer  
St. Giles Hospital  
Ph: 679 9924103*

13. The next aspect is to decide whether there is a need for a manager to be appointed. I am of the view that given the respondent's physical and mental situation, there is a need for someone to be appointed as the manager for her to be looked after physically and financially. The respondent will need monies for her benefit every month for her survival and the intended manager ought to be able to manage the funds properly in her interest.
14. The most important question therefore now is to determine whether the applicant is the person who can act in the best interest of her mother in managing her estate of affairs. The applicant asserts that she is the primary caregiver of her mother. She has not brought her mother to court to verify this.
15. In fact the applicant has not complied with the mandatory provisions of s. 108(4) in serving her mother with the application. She also ought to have served her brother Cama Gade with the application. In addition to that I find that she also ought to have taken consent of the other siblings to bring this application.
16. If the mother was served with the application, I would have at least been able to see her in court and decide whether I need to make enquiries from her about who is her primary caregiver and how she wishes to deal with her monies and/or whether she needs some legal assistance for herself. I may not have been able to discuss anything sensible with the respondent, but she still needed to be served with the application.
17. Any determination as to who is the primary caregiver and who ought to be properly appointed as the manager of the respondent cannot be made in absence of service on the mother.
18. I also find that the application ought to have been served on Cama Gade. The doctor's report in no uncertain terms notes that Cama Gade had taken his mother to the St. Giles hospital on 11 April 2024 for her psychiatric assessment. The medical report also notes that Cama Gade is the primary caregiver of the mother.

19. If the medical report names Cama Gade as the primary caregiver, then this application ought to have been served on Cama Gade as well. It was the applicant's duty to do that as she is the one who produced the medical report to this court.
20. There is no mention in the affidavit as to why Cama Gade can no longer look after his mother or any information on whether the medical report has wrongly noted him as the primary caregiver.
21. I also note that none of the siblings were informed about this application. It would be proper if all of them know about this matter and be informed about how the applicant wishes to spend the money in a very short time. The siblings would have been in a better position to address me on whether such expenditures every month are necessary.
22. Before the hearing of the application, I was not satisfied with the applicant wanting to deposit all the monies in her account and to use it the way she saw fit. I therefore wanted her to inform me how she was going to spend the monies on the mother. She therefore filed a supplementary affidavit stating that she needs \$9,850 per month to maintain her mother.
23. I find this amount exorbitant and to a large extent not true. This reflects on the applicant's unsuitability to be able to manage the mother's funds.
24. When I was testing the truthfulness of the pledged expenses, the applicant informed me that she has a brother in UK named Waisale Nawagatobu. She testified that he is the one who has been financially looking after the mother whilst she took care of her physically.
25. The applicant testified that she wants the FNPF monies to be deposited in her this brother's account so that he can give an appropriate amount to her monthly to manage her mother.
26. Let me first of all determine whether the applicant can solely fulfil the duties of a manager under the Act. Given her evidence, I do not find that she can be a prudent manager alone. Her evidence that she needs \$9,850 monthly for her mother, casts doubts on her credibility as a person who can look after her mother's finance for the mother's benefit. The evidence reveals that the applicants wants the money for herself and her family and not her mother.
27. I examined the applicant on each and every expense identified by her as needed for her mother. The first expense she said was \$3,000 per month for a full time caregiver. The applicant testified that she needs this money to pay a caregiver. The caregiver charges \$400 per week.

28. I enquired whether there was any receipt or evidence of such wages being paid to the caregiver, none was provided to the court.
29. First of all, if the applicant is paying \$400 per week, then the monthly cost would be about \$1600 and not \$3000.
30. Secondly, in this country, one can get a caregiver for between \$35- \$40 per day. The applicant could have also attempted to engage some family members who are not working to look after the mother at \$40 per day. I am sure that there are so many people out there wanting to be employed. No effort seems to have been made to look for someone who could assist at a cheaper rate. I find that payment of \$80 per day to a caregiver to be exorbitant.
31. The next expense was stated to be \$500 per week for medication. The applicant was not able to provide any names of the medication her mother is on. She dishonestly stated that due to financial constraints, they could not purchase any medication. The applicant is on social welfare benefit. I am wondering why her monies were not used to buy her medication, if there is a dire need.
32. The applicant was not able to assist the court with any prescription for the medication. How does she expect the court to endorse her claim that \$500 is needed for the medication?
33. The applicant also claims \$300 per week for visits to the doctor and health monitoring. The frequency of visit to the Health Centre is once a month for general checks. When I enquired from her which doctor her mother sees, the answer was Makoi Health Centre. The \$300 includes taxi fare of \$60 to and from Nepani to Makoi Health Centre. Instead of claiming \$60 a month, the applicant is claiming \$300 a month.
34. She also claims \$800 per month for outdoor programs and activities planned by the caregiver. No specific details of what outdoor activities the mother attends for her mental and physical health was given. I enquired into this and it was testified that she is given a car ride. I am alarmed that a car ride for the mother would cost that much for a month.
35. My concern was that this expense was exaggerated and exorbitant. The applicant then responded that she can reduce that, as if, that is her money to spend the way she likes.
36. A sum of \$600 per month is claimed for nutrition and meals. I did not find this to be unnecessary as the respondent needs food for survival.

37. The applicant says that she needs \$2000 a month to find a home suitable to her mother. As it is, the mother lives with her. The applicant is renting at \$600 per month. The applicant says that she needs to install bars in the restroom to assist the mother when she needs to freshen up. She also needs a separate facility for her mother as the mother is not able to use the facilities properly and this affects her children.
38. I see no reason why the mother's money should be spent to this extent because if the family starts depending on a rented house which is this expensive then the money that is there will be exhausted soon. There will not be any left for the mother's basic needs. The applicant does not seem to think about the mother's future needs. She is finding an excuse to spend the mother's money frivolously.
39. If she is not able to care for her mother in the existing facility, she should ask for assistance from her siblings. She ought to have brought all the siblings to court, especially those who are available in Fiji for me to enquire from them if they are able to look after the mother's affairs and save up money for her lifetime.
40. Given my concerns, I remarked that at that rate the applicant was going to consume all the money in 8 months and enquired whether she had any plans on how she was going to maintain the mother after all the money is exhausted.
41. The answer was that there was an internal arrangement with all the siblings that these monies will be deposited in one of the brother's account and that he will release the money on monthly basis solely for their mother. When asked about the brother whose account the money was to be deposited in, I was told it was this brother Waisale Nawagatobu in UK.
42. This brother's detail is missing in the affidavit. His birth certificate is not attached to verify his details.
43. Further, this arrangement was not even identified in the affidavit. If this was the arrangement, it should have been identified and all siblings ought to have signed their consent.
44. I am also concerned that if such was the arrangement then why was that brother not made the applicant? Why is the current applicant applying to be the manager? She has only provided her bank details and not the brother's as opposed to what was agreed by the siblings.
45. The next expense outlined by the applicant was \$250 per month for transport. When asked what the transport is used for, the applicant said it was for the doctor's visit. I then reflected that this was

duplicated as the transport cost was already included in the claim for “*doctor visits/health monitoring*”. The applicant agreed.

46. An amount of \$100 per month is also claimed for personal hygiene/grooming which is an acceptable expense.
47. The other expense claimed is \$300 per month for emergency needs. This was of concern and I asked the applicant to explain this to me. I was told that the amount is for clothes and beddings for the mother. I then asked why such an amount was needed monthly, the applicant then responded that it was needed twice a year.
48. The last expense claimed is \$2000 per month for legal fees. The total legal fees is \$9,500. There is no bill of costs attached to the application. In addition to that, I find that legal fees ought not to be recovered from the ailing mother’s expenses. The applicant ought to have engaged services of legal aid to avoid these exorbitant costs.
49. I also wish to make some observations about the past conduct of the applicant in respect of the mother’s monies. She attached to her affidavit, the mother’s bank statement of 29 February 2024. The statement shows that a sum of \$9,668.15 was deposited in the mother’s account from her deceased son’s savings.
50. The applicant, if she says that she is managing the mother, should have been careful on how these monies are spent, especially when her mother is sick and needs the funds for her benefit. Large sums of monies were withdrawn from this account as follows:

27 February 2024	-	\$2,000
28 February 2024	-	\$2,000
29 February 2024	-	\$2,000
4 March 2024	-	\$2,000
5 March 2024	-	\$200
11 March 2024	-	\$500
15 March 2024	-	\$700

51. The sum of \$9,668.15, which was meant for the mother, was exhausted in half a month. This is yet another indication of the applicant not being able to take care of her mother’s affairs alone.

52. Given the applicant's conduct in how she wishes to exhaust the mother's money and her lack of transparency in the proceedings, I do not find her to be a person who is suitable to be appointed as the manager of her mentally incapable mother.

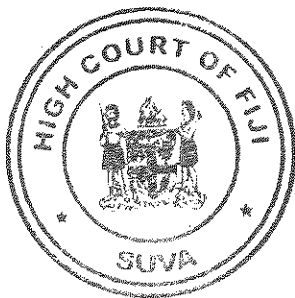
53. I also find her conduct of bringing this application ex-parte as a reflection of her in not being accountable to other siblings of her mother's situation and management.

***Final Orders***

54. Given my concerns, I find that the application to appoint the applicant as sole manager of the mother should be dismissed. I so do.

55. The applicant is at liberty to bring a fresh application jointly with other siblings if she so wishes, in which case, those siblings who are not applicants, should be made parties to the cause.

56. The mother should be served with the proceedings papers too.



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***Hon. Madam Justice Anjala Wati***

**Judge**

**11.08.2025**

**To:**

1. ***Marsh Legal, Barrister & Solicitor for the Applicant.***
2. ***Mr. Suguturaga for FNPF.***
3. ***File: Suva HBM 3 of 2025.***

