

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBP No. 30 of 2024

**IN THE MATTER OF THOMAS FREDRICK:
DECEASED**

AND

**IN THE MATTER OF SECTION 57 OF THE
FNPF ACT & SECTION 6 OF THE
SUCCESSION, PROBATE &
ADMINISTRATION ACT 1970.**

AND

**IN THE MATTER of an application filed by
MILLIE ARIANA HAZELMAN**

BETWEEN: **TORIKA TINAIKORO LOTU** of Wairiki Settlement, Wainadoi, Navua in the
Republic of Fiji, Self-employed.

APPLICANT

AND: **MILLIE ARIANA HAZELMAN** of Rava Settlement, Savusavu in the Republic of
Fiji.

RESPONDENT

BEFORE : **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Navunisaravi M. for the Plaintiff**

Ms. Boseiwaqa R. for the Defendant

DATE OF JUDGMENT: 1st August, 2025

JUDGMENT

[Entitlement of Fiji National Provident Fund]

Introduction

1. The Applicant, Torika Tinaikoro Lotu filed this Ex-Parte Originating Summons [later made Inter-Partes], and sought for the following orders:
 - (i) That Torika Tinaikoro Lotu should be granted the sum payable of \$24,316.06 pursuant to the orders delivered on 22nd February 2024 by the Honourable Mr. Justice Amaratunga.
 - (ii) Any other orders the Court may deem fit, just and equitable.
2. This application is made under Order 7 Rule 4 of the High Court Rules, 1988 and Section 6 of the Succession, Probate and Administration Act 1970.

Applicant's case

3. She was married to the late Thomas Fredrick on 18th December 1997 and had two (2) children:
 - Fredrick Hazelman and
 - Millie Ariana Hazelman.
4. There was a marriage dispute in which the Applicant found that the husband was having an extra marital affair resulting in the Applicant leaving and abandoning the husband and had two (2) children behind.
5. The two (2) children were born within the Wedlock and the applicant took care of them.
6. In 2005, the Applicant and the deceased separated but were never divorced from each other. However, both were still legally married till the date of the husband's demise on 10th December 2023.
7. Thomas Fredrick took demise on 10th December 2023.
8. On 12 January 2024, Millie Ariana Hazelman [daughter of deceased] made an application by filing an affidavit to this Court for the distribution of the Fiji National Provident Funds impeding with the Court since there was no nominations made by the deceased of his Fiji National Provident Fund.
9. Honourable Justice Amaratunga granted the order on 22nd February 2024 that the total amount of \$32,948.78 Fund standing to the credit of the late member [Thomas Fredrick] and currently retained by the Chief Registrar under Section 57 of the FNPEF Decree 2011 be forthwith paid out by the Chief Registrar to the following persons(s):

1. Torika Tinaikoro Lotu - wife -	\$24,316.06
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2. Fredrick Hazelman - son -	\$ 4,316.06
3. Millie Ariana Hazelman - daughter -	\$ 4,316.06
Bank fees	\$ 0.60
Total	<u>\$32,948.78</u>

10. She is entitled to her share of the FNPF Funds at \$24,316.06.

Respondent's Contention

11. Filed an affidavit in opposition to Applicant's application.
12. There was no nomination to deceased's FNPF Funds of \$32,948.78 and this court granted an order for payment out to the wife and two (2) children.
13. Sought for the payment to be held and filed the current application.
14. The Applicant abandoned them when they were two and three years old respectively.
15. Aunt, Linda Simpson found the two (2) children on the roadside, 200 meters from their home.
16. The applicant after separation with the deceased never maintained the two (2) children nor left any contact.
17. The Applicant is living in a de-facto relationship and has a 13 years old son from that relationship.
18. The applicant did not fulfill her duties and responsibilities as a wife nor as a mother of two (2) children. However, still wants the deceased's FNPF funds share and entitlement.
19. Although the parents did not file any dissolution of marriage proceedings, still their marriage was very much intact. However in accordance with **section 30 of the Family Law Act 2003**, the parties' marriage is deemed to have been broken down irretrievably.
20. The Respondent opposes the Applicant's application and seeks her entitlement and payment of FNPF funds. FNPF does not form part and partial of the deceased's estate. If there are nominations made, then upon the demise of a member, funds will be paid out accordingly. However, if no nomination but does not form part of the deceased's estate.

Determination


21. In absence of any nomination made by the deceased, Thomas Fredrick, the FNPF funds totaling \$32,948.78 was remitted to the High Court in terms of *Section 57(3)* of the FNPF Act 2011 for disposition in accordance to law.

22. The issues for the Court to determine are:
- (a) **Whether the wife of the deceased, Torika Tinaikoro Lotu, should be granted the payment of the sum of \$24,316.06 FNPF funds as the entitlement and share? And**
 - (b) **Is Fiji National Provident Act 1970 is independent of the Succession, Probate and Administration (SPA) Act 60 and/or has nexus with the Fiji National Provident Fund Act 1970? And**
 - (c) **Whether FNPF Funds form part and partial of the deceased's Thomas Fredrick's estate?'**
23. The Fiji National Provident Fund (FNPF) Act is not entirely independent of the Succession, Probate and Administration Act. While the FNPF Act governs the distribution of FNPF funds upon a member's death, it often relies on the Succession, Probate and Administration Act in order to determine the legal beneficiaries and entitlements in cases where a member has not made a valid nomination.
24. On the other hand, Succession, Probate and Administration Act governs the administration of Estates of deceased persons, including the distribution of assets, when there is no valid Will (intestacy) or when a will is contested (testate).
25. Therefore, I find that there is a nexus between the Fiji National Provision Fund Act 1970 and Succession, Probate and Administration Act 60 in order to determine the legal beneficiaries and entitlements accordingly.
26. Further, I have noted the following:
- That the deceased, Thomas Fredrick and Torika Tinaikoro Lotu were still married to each other until Thomas's death on 10th December 2023. They were never divorced, although under the Family Law Act 18 of 2003, in terms of Section 30, their marriage was irretrievably broken down.
 - The two children, Fredrick Hazelman and Millie Ariana Hazelman, were 2 to 3 years old, of very tender age when their mother, Torika Tinaikoro Lotu, abandoned them.
 - That the children, in absence of their mother, were nurtured by their father and may be aunt who found them near the road when the mother abandoned them.
 - The mother never contacted the two (2) children or maintained them from the time of abandonment.
 - Although there is no evidence before this court, but the Respondent's affidavit deposes that the mother was living in a defacto relationship.
 - The marriage still subsisted until 2023 and the husband is a deceased now.

27. Bearing all above in mind, coupled with the laws at hand, the Fiji National Provident Act 1970 and Succession, Probate and Administration Act 60, I have no alternative but proceed to accede to the Applicant, Torika Tinaikoro Lotu's application and reactivate the initial order granted by the Honourable Mr. Justice Amaratunga on 22nd February 2024.
28. To be more precise, I proceed to make the following orders:
- (i) That Torika Tinaikoro Lotu is granted the payment of a sum of \$24,316.06 Fiji National Provident Fund monies out of her husband's intestacy as a beneficiary and her legal entitlement of the funds.
 - (ii) The order granted by Honourable Mr. Justice Amaratunga on 22nd February 2024 is reactivated accordingly.
 - (iii) The Registry to carry out the necessities and ensure that the payment as ordered herein be paid out to Torika Tinaikoro Lotu.

Dated at **Suva** this **01st** day of **August** , **2025**.




VISHWA DATT SHARMA
PUISNE JUDGE

CC: Legal Aid Commission, Suva
Messrs. Khan & Co, Suva