

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

**CIVIL JURISDICTION**

**CIVIL ACTION NO. HBP 175 OF 2023**

**BETWEEN:**                    **SAROJNI DEVI aka SAROJNI DEVI LINGAM** of Nakasi, Retired.

**Plaintiff**

**AND:**                            **JYOTI VANDHANA SINGH**, address unknown, phone contact 8315136

**Defendant**

**JUDGMENT**

*Coram:*                            *Mr. Penijamini R. Lomaloma Acting Puisne Judge*

*For the Plaintiff:*            *Mr. M. A. Chand*

*Defendant:*                      *Not Present*

*Date of Hearing:*              *28<sup>th</sup> August 2025*

*Date of Ruling:*               *17<sup>th</sup> October 2025*

**Introduction**

1. The Plaintiff initiated these proceedings via an Originating Summons supported by her affidavit and filed on 38<sup>th</sup> January 2025 seeking the following orders:

- 1, An order that the FNPF funds held in the High Court Registry in the name of the late RAVIKESH RONEEL LINGAM being FNPF No. MN12410874A to be released to the Plaintiff, namely SAROJNI DEVI aka SAROJNI DEVI LINGAM in full;
2. That a Declaration that the defendant is not entitled to the deceased's FNPF due to the separation for more than 2 ½ years prior to the deceased's death;

**ALTERNATIVE ORDER**

3. That the Plaintiff shall be given the monies as calculated in the Affidavit in Support of this Application and the balance shall be released to the Defendant if the Court deems fair and just;
4. Any other Orders this Court deems fair and just.

2. The Affidavit in support was sworn by the Plaintiff who is the mother of the deceased and she stated that her son the late Ravikesh Roneel Lingam was born on 2<sup>nd</sup> February 1982 and passed away on 30<sup>th</sup> January 2024 at her home at Manuka Street, Nakasi; that at the time of his death, her son was legally married to the Defendant but that he had no issues, either with the Defendant or anyone else; that her late son and his wife had been separated for over 2 ½ years at the time of his death; that her late son resided with her after he separated from his wife; that he was very sick after he left his employment and was staying with her for more than 2 ½ years till his death.
3. The Plaintiff continued that in about November 2022, her son became very sick and was admitted to Oceania Hospital where she paid medical bills totalling \$4,278.00; that she also spent a total of about \$3,500 on her late son's other medical bills.
4. The Plaintiff said that she paid for repairs to her son's car which the Defendant sold after his death.

#### **Funeral Expenses**

5. The Plaintiff said that she paid funeral expenses for her late son which totalled about \$12,000; for cremation costs of \$700; Ash \$800; Morgue \$239 and provided receipts for the last items but could not provide receipts for the \$12,000 from the funeral expenses which included the mourning period after the funeral. The Plaintiff said in her affidavit that the Defendant did not come to the funeral so she called her and Defendant came but stayed only for a short while. The total funeral expenses claimed was \$13,759.00.
6. The Defendant was personally served at her workplace at Courts Fiji Head Office at Vivras Plaza, Nasinu on 26<sup>th</sup> February 2025 and an affidavit of service was filed on 3<sup>rd</sup> April 2025.
7. The matter was set for mention on 5<sup>th</sup> of May 2025 but the Defendant never turned up in court then. The court adjourned the matter to find out if the moneys deposited in court included the Death Benefits and the amount of death benefits.
8. The matter was set for the hearing on 28<sup>th</sup> August. The Defendant did not turn up in Court.
9. The Legal Officer for the FNPF had been summoned by the Plaintiffs solicitor and having been sworn, testified that the deceased, RAVIKESH RONIL LINGAM was a member of the FNPF with membership No. MN12410874A and that his total FNPF funds sent to the Court on 25<sup>th</sup> March 2023 was **\$42,264.20**; that included in that amount is the deceased's death benefits of **\$8,500.00** and that these funds were transferred to court because the deceased did not have a valid nomination even though he was married; that the member did not change his nomination after he got married as was required by law; and that he should have

made a new nomination after he got married as his old nomination became invalid after his got married.

### The Law

10. Section 56 of the FNPF Act deals with nominations. S 56(5) deals with revocation of nominations and states:

5) *An FNPF member's nomination is revoked only as follows -*

(a) *by giving the Board written notice of the revocation;*

(b) *by a later nomination; or*

(c) *on the member's marriage.*

11. From the evidence of Mr. Pita Senituraga, the deceased did not change his nomination after his marriage and so his nomination was revoked and the funds sent to the High Court. Section 57 of the Act states: -

*Payment on FNPF member's death*

57. - (1) *In paying an FNPF member's preserved and general entitlements on his or her death, the Board must comply with any current nomination by the member. However, the Board may only pay a nominee who was, at the time of the member's death -*

(a) *the spouse of the member;*

(b) *a parent or child of the member;*

(c) *an individual who was financially dependent on the member; or*

(d) *a person specified in rules made by the Board for this section.*

(2) *If a nominee of an FNPF member (not the surviving spouse of the member) is under 18 on the date of determination of the application for withdrawal, the Board must pay the amount for that nominee to the High Court.*

(3) *If -*

(a) *a nomination by an FNPF member does not cover all of the amount payable in respect of the member on his or her death; or*

(b) *because of subsection (1), the Board cannot pay some or all of the amount payable in respect of an FNPF member on his or her death; (the amount not covered, or that cannot be paid, is the "unallocated amount"), the*

*Board must pay the unallocated amount into the High Court for disposition according to law.*

- (4) *The High Court may, on application, make such orders as are just for the disposition of an amount paid in under subsection (1) or (2).*
- (5) *If -*
  - (a) *the High Court makes an order in favour of a person under subsection (4); and*
  - (b) *the person is under 18; then, the High Court shall hold the amount to be paid in trust for the benefit of the person.*
- (6) *Subsection (5) does not apply if the person is the spouse of the deceased FNPF member.*
- (7) *Where no application is made in respect of an amount paid into the High Court under subsection (1) or (2) within one year after it is so paid, the amount is to be repaid to the Board, and credited to the FNPF.*
- (8) *If a person is found to be entitled to some or all of an amount credited to the FNPF under subsection (7), the Board must pay the person the amount to which he or she is entitled, together with an amount equal to the amount that would have been credited under section 48 if the amount credited to the FNPF under subsection (7) had been credited to an account in the FNPF for the person paid.*

12. Section 57 (4) therefore requires that the moneys paid into Court by the FNPF can only be assessed if someone makes an application for it. If there is no application made at the end of one year, Section 57(7) requires that the funds be sent back to the FNPF for them to distribute according to section 57 (8) of the Act. I will have more to say about this later herein.

### **Issue— Does the fund form part of the Estate of the Deceased?**

13. Section 43(2) of the old FNPF Act Cap 219 was repealed by the Fiji National Provident Fund Act of 2011 via the Fiji National Provident Fund (Amendment) Decree No. 12 of 2012. The old section 43(2) had provided that all moneys paid out of the fund on the death of the member were **not** to form part of the deceased's estate.

- a. *Notwithstanding the provisions of any other written law, all moneys paid out by the Fund on the death of a member **are not part of the deceased's estate.***

14. With the repeal of section 43 of Cap 219, all moneys paid out of the fund are part of the estate of the deceased. However, section 57 of the old Act was not repealed or amended by the new Act and continues in force so **the intention of the Act is that section 57 must**

**determine how funds paid into Court at the death of a member shall be distributed.** The distribution of the Estate of the deceased according to the Will of *Succession, Probate and Administration Act* is a general provision whilst **section 57 of the Fiji National Provident Fund Act is specific on how the moneys paid into court by the FNPF are to be distributed by the court.** Section 57 of the FNPF Act is a later Act with specific provisions on how FNPF funds paid into court are to be distributed and the operation of the principle of “*generalia specialibus non derogant*” means that section 57 prevails over the general law regarding estates.

### **Conclusions on the First Issue**

15. From the analysis above, the following conclusions are reached:

- a. The funds paid into court by the FNPF are part of the Estate of the Deceased because the old section 43(2) in Cap 219 has been revoked;
- b. It follows from a. above that the prayers 1 & 2 sought by the Plaintiff cannot be granted and must be dismissed.
- c. The court has jurisdiction to deal with the alternative claim by the Plaintiff as authorised by section 57 of the FNPF Act but any residue must be kept for the Estate of the Deceased to be applied according to his Will, if any, or by the rules of intestacy.

### **ANALYSIS OF THE ALTERNATE CLAIM**

16. I now turn to analyse the law in relation to the alternate claim. The key factor in determining whether the claim is to be allowed or which parts should be allowed is to look at the purpose behind the FNPF Act in general and any specific purposes behind the provisions of the Act relied on. The claim can be divided into the following parts:

- a. The claim for funeral expenses;
- b. The claim for medical treatment of the deceased;
- c. The claim for repairs to the deceased’s vehicle which is part of the Estate of the deceased.

### **The Claim for Funeral Expenses**

17. The starting point is to look at the object or purpose of the Act. This is stated in section 2 of the Act as:

*2.The principal objects of this Decree are to -*

*(a) ensure that workers will accumulate savings throughout their working lives to provide income after they cease working; and*

*(b) improve the operation and governance of the Fiji National Provident Fund*

18. The discretion of the court as to which payments can be allowed is very wide and so great care must be taken to decide which must be allowed and which must be refused. Guidance can be taken from the provision of the Act as to what withdrawals are allowed to the member whilst he was alive and these are set out in section 59 of the Act:

***Early withdrawals***

59. - (1) *The Board may make rules making provision for the withdrawal of amounts of FNPF members' general entitlement by w assistance -*

*(a) for any of the following -*

*(i) medical expenses;*

*(ii) education expenses;*

*(iii) funeral expenses; and*

*(iv) other matters prescribed in regulations;*

*in respect of the FNPF member concerned or in respect of any of the member's parents, spouse or children;*

**Medical Expenses**

19. The medical expenses claimed by his mother is to reimburse money she spent on the deceased to get medical treatment when he was alive. It was spent to preserve his life. His mother is retired and she spent her own money to keep him alive.
20. I see no logic in why a member of the FNPF is allowed under section 59 of the Act quoted above to withdraw funds for the medical or funeral or education expenses for his parents or spouse or children when he was alive yet deny a claim for the refund of the same to his elderly, retired and single mother who put her own retirement at peril by paying for the medical expenses and funeral expenses of her son.
21. Justice requires that she be refunded the moneys she spent on medical expenses for her late son from the FNPF funds that he accumulated in his life. These are covered by receipts for \$4,278.42 paid to Ocean Hospital for his admission on 23<sup>rd</sup> November 2022.

22. The Plaintiff also claims the sum of \$3,500.00 in other medical expenses and the care she provided for him when he was sick and unemployed. These are not supported by receipts and the duration of the time he was bedridden was not provided. This could assist the court in determining how much it would cost if someone was paid to provide that care in a paying facility. I would allow the claim in full, i.e. \$3,500 in addition to the \$4,278.42 as they are in line with the principal object of the FNPF Act set out in section 2 of the Act. He can only accumulate funds for his retirement if he is medically treated and cared for at home properly with the purchase of the proper medications so that he can return to work and accumulate his FNPF for his retirement.

### **Funeral Expenses**

23. Part VII of the Act, comprising sections 77 to 80 deal with death benefits to which the deceased contributed. The object of Part VII is for the members to pay an annual premium calculated by the Board which is to be paid out at the death of the member for his funeral expenses.

24. In Regulation 4 of the Fiji National Provident Fund (Special Death Benefit) Regulations 2022, the Board determined the amount at \$8,500.00. Mr. Pita Senituraga, the Manager Legal of the FNPF testified that part of the funds paid into Court by the FNPF is the \$8,500 in death benefits. The purpose of that money is to pay for the deceased member's funeral expenses. It is a determination by the Board based on what should be paid but not for each specific member. It gives to the court some guidance on the amount to be paid when exercising its discretion under section 57(4) of the Act.

25. One consideration for funerals is the cultural factor. It is not the same in all cultures and the court must take this into account in assessing the amount to be deducted on an individual basis. The amount of \$8,500.00 is the average that the Board has determined for everyone who has to pay a fixed premium each year. The Plaintiff said in her affidavit that she had spent well over \$12,000 for his funeral, and other expenses which the Plaintiff said in her affidavit to include:

*a. Sixteen days rituals, food, shed, kava, alms/honorium (Daan), six months rituals and yearly rituals. I do not have the expenses which I have spent to carry out the rituals. I am confident that I have spent even more than \$12,000 as the rituals were for my late son.*

26. The amount if not contested. The Defendant in this action is the deceased's wife and she was served at her workplace but she chose not to attend.

27. The total of the funeral ceremony expenses claimed is \$12,000.00. This is separate from the following which were supported by receipts:

- a. \$800—ash;
- b. \$239—morgue; and
- c. \$700—cremation.
- d. Total: \$1739.00

28. I have taken into account all the factors discussed above and conclude that this head of claim must be allowed to be paid from the FNPf Funds paid into court for the deceased.

### Car Repairs

29. The car is part of the estate of the deceased. It is not an essential item for which section 59 would allow the Deceased to make a withdrawal in life. Claims against the estate should be made against the estate when the probate of the estate is advertised in the newspaper(s). I therefore reject this claim.

### Findings

30. I find on the balance of probabilities and for the reasons set out above that the Plaintiff should be paid the following moneys out of the funds deposited in court by the FNPf: -

1. The sum of \$4, 278.42 for hospitalisation of the deceased;
2. The sum of \$3,500 for other medical expenses;
- 3 The sum of \$1,739 for the morgue, cremation and ash;
4. The sum of \$12,000 for Funeral rites.

**Total        \$21,517.42**

31. The balance of the funds paid into Court by the FNPf of the Deceased, RAVIKESH RONEEL LINGAM with FNPf No. MN12410874A are to remain in the Chief Registrar's Trust Account as part of the Estate of Deceased.

### Orders

1. **The Orders sought by the Plaintiff in prayers 1 and 2 are not allowed and dismissed.**
2. **The sum of \$21,517. 42 as detailed in the Findings above are allowed and are to be paid to the Plaintiff out of the funds paid by the FNPf belonging to the deceased, the late RAVIKESH RONEEL LINGAM.**

3. The balance of the funds after the payment authorized in 2 above are to be paid into the Trust Account of the Estate of the late RAVIKESH RONEEL LINGAM after.
4. No order as to costs



.....  
Penijamini R Lomaloma  
Acting Puisne Judge



AT SUVA this <sup>17<sup>th</sup></sup>..... day of October 2025