

IN THE HIGH COURT OF KIRIBATI 2015

CIVIL CASE NO. 114 OF 2011

	[AKINETI AKAMATANG FOR [HERSELF AND FOR BROTHERS AND [SISTER SUING AS BENEFICIARIES [OF THE DECEASED FUNDS	PLAINTIFF
BETWEEN	[[AND [
	[THE KIRIBATI PROVIDENT FUND	1 ST DEFENDANT
	[THE BANK OF KIRIBATI	2 ND DEFENDANT

Before: The Hon Chief Justice Sir John Muria

14 May 2015

Ms Batitea Tekanito for Plaintiff

Ms Taaira Timeon for 1st Defendant

Ms Kiata Kabure for 2nd Defendant

JUDGMENT

Muria, CJ: The plaintiff's claim is for declaration that the first defendant was wrong to make a cheque payable to the Government of Kiribati and drawn on the second defendant in respect of the deceased's KPF contribution in the sum of \$9,570.87. The plaintiff also seeks a declaration that the second defendant was wrong to deduct \$3,347.09 from the deceased's KPF contribution to settle the deceased's outstanding loan with the second defendant.

BRIEF BACKGROUND

In brief, the background to the case is that the deceased died with \$9,570.87 KPF contribution standing to his credit. The plaintiffs are the nominees of the deceased under *KPF Ordinance*. The plaintiffs request the first defendant to pay out to them the deceased's KPF contribution. The first defendant, however, paid the money to the Government for the Lands Court to distribute. The cheque in the sum of \$9,570.87 was drawn on the second defendant Bank.

The plaintiff filed a case in the Magistrates' Court for the distribution of her deceased father's estate. The plaintiff claimed in the Magistrates' Court \$6,223.73 to be distributed among the members of the plaintiffs. The said amount was obtained by the plaintiffs and shared among them equally. The sum of \$3,347.09 was retained by the second defendant to settle the deceased's outstanding loan.

ISSUES

The main issue to be determined is whether the second defendant was entitled to retain the sum of \$3,347.09 from the deceased's KPF contribution of \$9,570.87 to settle the deceased's loan from the second defendant Bank.

SUBMISSION

Ms Tekanito of Counsel for the plaintiffs submitted that it was wrong for the second defendant to deduct the \$3,347.09 from the deceased's KPF

contribution to settle the deceased's loan without a Court order. Counsel relies on section 28 to support her argument. Ms Kabure on the other hand argued that the deceased had pledged his KPF to secure his loan from the second defendant. Also, Counsel submitted that the plaintiff had agreed to have the balance of the deceased's loan paid out from the deceased's KPF contribution.

In my judgment section 28 has no application in this case. That section is concerned with a situation where a member is subjected to an "execution process" following an order of the Court requiring such member to pay money to the Government or any other person. The present case is simply a case where the second defendant was exercising its rights under a pledge given by the deceased as a security for the loan he obtained from the second defendant.

There is no dispute that the deceased gave a pledge as security for the loan he took from the second defendant. The plaintiff, in her affidavit, said that she was not happy that the sum of \$3,347.09 was deducted from the \$9,570.87 to clear off the deceased's loan. In her own evidence in her affidavit, she confirmed that the second defendant showed her the documents on her deceased father's loan. A letter from the first defendant's General Manager dated 11 May 2011 to Counsel for the plaintiff confirms the evidence of a pledge given by the deceased.

Even if, as contended for the plaintiff, that she did not consent to the second defendant to deduct the \$3,347.09, the second defendant was entitled in law to exercise its contractual rights derived from the pledge given by the deceased member of the Fund, to deduct the amount

\$3,347.09 from the deceased's KPF contribution. The second defendant did not need a Court order to exercise its rights under the pledge.

The authority for that proposition of law is laid down in *DBK -v- Bank of Kiribati* (26 August 2009) KICA Civ. App. 8 of 2009 where the Court, dealing with the issue of a pledge given by a member of KPF to secure a loan from the respondent bank, stated:

"The prior charge in favour of ANZ Bank clearly takes priority over attachment order. A Court order cannot defeat a contractual right held by another party".

The pledge which the first defendant's Board clearly approved and which the deceased gave to the second defendant as security for his loan, gave the second defendant in this case priority over any Order which the Court might have made in this case in respect of the deceased's KPF contribution. So that even if the second defendant were made a party to the plaintiff's distribution case in the Magistrates' Court, the second defendant would rely on its contractual rights under the pledge and would be entitled to priority over the nominees' interest in the deceased's KPF contribution of \$9,570.87.

On the evidence and in law, the plaintiff's claim over the sum of \$3,347.09 must be rejected.

The second issue raised by the plaintiff is that the first defendant was wrong to issue the payment of the deceased's KPF contribution to the Court. The plaintiff's argument is that under Section 23, the first

defendant should pay the deceased's KPF contribution directly to the plaintiffs who were the nominees of the deceased and should pay to the Lands Court, only if there were nominees. Attractive though the plaintiff's argument is, the Court cannot overlook the fact that section 23 is made subject to section 28 which permits the member's KPF contribution to be **"attached, sequestrated or levied upon or be the subject of any other execution process"**. In this case, the first defendant's Board, being aware of the deceased's obligation under the loan he obtained from the second defendant and the pledge he gave as security for his loan, was not wrong to draw the cheque, on the second defendant's bank, payable to the Lands Court which has the power under section 26 to dispose of the deceased's KPF contribution. The evidence has shown that the plaintiff applied to the Court for distribution of the deceased's KPF contribution. The evidence has shown that the Court ordered distribution of the deceased's KPF contribution, less the \$3,347.09, equally among the beneficiaries. I do not find any error in the action of the first defendant in drawing the cheque in the sum of \$9,570.87 in the name of the Government for the Lands Court.

There are other matters raised by the plaintiff in support of her case. I do not need to deal with them. The answers to the two issues raised properly determined the plaintiff's claim in this case.

Both issues have been answered in favour of the defendants. The plaintiff's claim is, therefore, dismissed with costs to be taxed, if not agreed.

- ORDER:**
- (1) Plaintiffs' claim dismissed;
 - (2) Costs to the first and second defendants to be taxed if not agreed.

Dated the 10th day of July 2015



SIR JOHN MURIA
Chief Justice