

IN THE HIGH COURT OF FIJI
APPELLATE JURISDICTION
AT LAUTOKA

HBM 23 of 2014

BETWEEN : **THE FIJI NATIONAL PROVIDENT FUND** a statutory body established under the Fiji National Provident Fund Act, having its principal office at Provident Plaza, Level Two, 33 Ellery Street, Suva.

APPLICANT

AND : **LAL MOHAMMED** of Nawaka, Nadi.

RESPONDENT

Counsel : Ms. Macedru for the Applicant
Mr. Janend Sharma for the Respondent

R U L I N G

BACKGROUND

1. The Fiji National Provident Fund's Notice of Motion for Leave to Appeal Out of Time is before me. The decision for which the FNPF is seeking to appeal was one of the Magistrates Court in Nadi delivered on 07 May 2013. In the decision, the Learned Magistrate had refused to set aside a default judgement that he had entered on 17 January 2012 in favour of one Lal Mohammed ("**Lal**") against the FNPF.
2. The default judgement was entered when the FNPF did not appear in Court on the trial date. On that day, the learned Magistrate had had been dissatisfied with FNPF's counsel's conduct. Counsel had merely written a letter requesting an adjournment, but had failed to appear in Court to formally seek the indulgence of the Court. On the application of Lal's counsel, the Learned Magistrate did strike out FNPF's statement of defence and then allowed Lal to formally prove his claim.
3. Mr. Peni Gonelevu, the Manager Employers of the Fiji National Provident Fund in Suva, has sworn an affidavit in support of the FNPF's application that is before me at this time.
4. The facts are not in contention. The issue is primarily a legal one. At the Magistrates Court, Lal had sought an Order against FNPF to release to him (Lal) all monies that had accrued in the account of his late wife, Ms. Ashween Lata ("**Lata**"). Prior to filing his Magistrates Court claim, Lal had applied to the FNPF for the release of the funds. The FNPF however had declined Lal's application primarily because its records showed that Lata had nominated her parents and brother to be recipients of her funds in the event of her demise. It is not in dispute that Lata did indeed fill and complete a Form in which she had nominated her parents and brother as her "FNPF beneficiaries". What the parties dispute however is whether or not the said nominations were valid at the time of Lata's death.

5. Lata was born on 10 May 1980. She completed her formal training in the year 2000 and actually began employment as a Primary School Teacher on 22 January 2001. On 13 January 2001, just a little over a week prior to her commencing work as a Teacher, Lata had married Lal. Together, they would go on to have two children. The elder of the two was born in 2002 and the younger one, in 2004. On 13 August 2004, some four months or so after the birth of their second child, Lata passed away at the tender age of 24.
6. As stated, Lal applied to FNPF for the funds and benefits that had accrued in Lata's account following her death. The FNPF declined Lal's application. The reason why the FNPF is refusing to release the funds to Lal is because, according to its records, Lata's nominations were received at FNPF on 22 February 2001 i.e. about a month or so after she married Lal.
7. It is common ground between counsel that the Form was actually received at FNPF on 22 February 2001 i.e. after Lata's and Lal's marriage. It is also common ground between counsel that the Form was dated 23 November 2000. This suggests that Lata did fill and complete the Form while she was yet-unmarried.
8. Hence, the main legal issue that would have confronted the Learned Magistrate was whether or not the nominations were valid.
9. It is yet unclear why Lata's FNPF Form was received at FNPF some three months or so after she had filled it. Did she personally deliver the Form at the Fiji National Provident Fund OR was it lodged there together with her other FNPF Registration Form by her employer, the Ministry for Education? This, potentially, could have been a valid issue of fact had the FNPF been allowed to defend its case.
10. In Fiji, it is not unusual for employers to take on the responsibility of lodging the FNPF-registration-documentation of new employees with the FNPF. It is not hard to imagine that the documentation may include the duly completed nomination form.

LAL APPLIES TO FNPF

11. When Lal could not get the FNPF to release the funds to him, he filed a claim at the Magistrates Court in Nadi wherein he would seek *inter-alia* the payment of \$6,000 in Special Death Benefit and the entire sum standing in Lata's FNPF Account, plus interest.
12. The FNPF did file a defence, a copy of which is annexed to the affidavit of Gonelevu filed herein. At paragraph 6.0 of the said statement of defence, the FNPF pleads:

As to paragraph 6 of the Statement of Claim, Defendant says that Defendant's officers/employees had time and again informed the Plaintiff that he has not been nominated as a beneficiary by the Deceased and therefore is not entitled to any monies held on Account of the Deceased with the Defendant.
13. This defence, as stated, was struck out by the Learned Magistrate on the trial date on account of FNPF's failure to appear to defend the claim. The Ruling of the Magistrates Court reads:

After several adjournments the matter was set for hearing on 15 November 2011. On 15 November 2011 being the hearing date the Defendant failed to appear in Court. Hence on the application of the Plaintiff's counsel, the Statement of Defence filed by the Defendant was struck out and the matter was formally proved.

14. In the event, the Learned Magistrate would give judgment in favour of Lal and grant the following Orders:

- (i) payment of the sum of \$6,000-00 being Special Death Benefit.
- (ii) payment of the entire sum standing to the deceased Ashween Lata with interest.
- (iii) the sum of \$787-50 as per paragraph 6.
- (iv) \$1,500 costs.

FNPF'S INITIAL ATTEMPT TO SET ASIDE DEFAULT JUDGEMENT

15. Some nine months or so after the above ruling, the FNPF filed a Motion at the Magistrates Court to set aside the default judgment. On 07 May 2013, the Magistrates Court dismissed the FNPF's Motion.

16. The decision of the Magistrate refusing to set aside the default judgment was based on the following reasons:

- (i) firstly, the Learned Magistrate held that the default judgment entered was a regular one as it was entered after hearing oral and documentary evidence of the plaintiff and legal submissions. He also observed that the FNPF counsel had not submitted that the judgment was irregularly obtained.
- (ii) as such, the Learned Magistrate then stated that he, therefore, has a discretion to set aside the default judgement if sufficient cause is shown to the satisfaction of the court pursuant to Order XXX Rule 5 of the Magistrates Court Rules.
- (iii) the Learned Magistrate then observed that there was undue delay on the part of FNPF in applying to set aside the default judgment (i.e. some 10 months after the event) and for which no explanation has been offered, nor has the FNPF given any reason for its absence in Court on the trial date¹.
- (iv) the Learned Magistrate then reviewed the relevant provisions of the FNPF Act and concluded that on the facts, Lata had left no valid nomination and

¹ The Learned Magistrate noted as follows in his reasoning:

[24] In para 15 of the Affidavit in support the Defendant deposed that the Applicant in filing this application out of time recognizes of (sic) the grave miscarriage of justice which may apply in the event a valid nomination is nullified by the court...

[25] It is noteworthy that the undue delay in making this application is recognized by the Defendant, but the Defendant did not offer any explanation for the delay. This shows the Defendant did not have real intention to contest this cause. This cause has been instituted in 2006. The impugned (sic) default judgment has been made on 17 January 2012. The application for setting aside has been on 17 October 2012 some 10 months after the default judgment was delivered. This is, in my opinion, an inordinate delay on the part of the Defendant which has not been satisfactorily explained by the Defendant.

[26] The Defendant has also failed to give reasons as to why they could not appear in court on 15 November 2011, being the hearing date. In the supplementary affidavit the Defendant states that they had written letters seeking adjournment. It is to be noted no party is entitled to seek adjournment by sending letters to court. The application for any adjournment should have been made by proper application with notice to other party. The Defendant did not do so. Hence there was no proper application for adjournment on 15 November 2011.

thereafter, concluded that the FNPF has shown no cause for an Order to Set Aside the Default Judgment².

17. Following the refusal of the Learned Magistrate to set aside the default judgement, the FNPF did file a Notice to Appeal Out of Time and a Motion for Stay of Execution. This was filed at the Magistrates Court. However, this too was refused by the Magistrates Court on 20 May 2014. It was then that the FNPF filed the application now before me seeking leave to appeal out of time.

PRINCIPLES

18. The Court has a discretion to enlarge time for filing an appeal. The Chief Justice in **McCaig v Manu** (unreported CBV 2 of 2012 delivered 27 August 2012) sets out the following factors to ensure a principled approach to the exercise of the discretion:

- (a) length of delay
- (b) reason for delay
- (c) whether there is a ground of merit justifying the appellants court consideration.
- (d) where there has been substantial delay, nonetheless, is there a ground of appeal that will probably succeed.
- (e) if time is enlarged, will the respondent be unfairly prejudiced.

Length & Reasons of/for Delay

19. I accept that the conduct of Fiji National Provident Fund has been anything but exemplary in terms of the way it had delayed from the time it applied to set aside the ruling of the Magistrates Court to the current application.
20. The reason for the FNPF's delay was all explained by Mr. Gonelevu in his affidavit sworn on 18 September 2014. It appears that the reasons were not adequately canvassed before the Learned Magistrate.

Any Ground of Merit Justifying the Appellants Court Consideration?

21. Mr. Gonelevu, in his affidavit in support, deposes at paragraphs 4.1 to 7.9 that:
- (i) following the Ruling of the Learned Magistrate, there were discussions held internally at the FNPF regarding the implications of the Ruling³.

² The Learned Magistrate had observed as follows:

[27] It appears to me that Defendant is doubtful of the Nomination made by the Plaintiff's late spouse. The Plaintiff's late wife filled in a Nomination Form dated 23 November 2000. The Plaintiff and the deceased were married on 13 January 2001. Any Nomination will be revoked by the marriage of the nominator a (sic) provided in section 34 of the Act (FNPF) pursuant to Regulation 55(d) of the Act.

[28] If there is any dispute regarding Nomination the Defendant could have sought recourse to the provisions of section 35(1) of the Act which provides that:

Procedure where there is no nominee or a minor nominee

35.-(1) If, at the time of the death of any member of the Fund, there is no person nominated under the provisions of section 34, the amount standing to the member's credit in the Fund shall be paid into Court for disposal in accordance with the law for the time being in force.

[29] The defendant did not act under section 35(1) of the Act if there were no Nomination.

[30] For the foregoing reasons, I am not satisfied that the Defendant has shown sufficient cause to set aside the default judgment entered on 17 January 2012. I am not satisfied that the Defendant has any meritorious defence/arguable issues.

³ Gonelevu deposes:

- (ii) as far as FNPf is concerned, Lata's nominations were valid, hence, it was extremely important in the administration of the FNPf Act that the Ruling be appealed.
- (iii) the reason for the delay in the filing of the application was because the FNPf Legal Section had to await instructions from another Department within the FNPf. By the time

-
- 4.1upon receipt of the Ruling dismissing the setting aside application, there were internal discussions held on the consequence of he said Ruling.
 - 4.2whilst it was clear that the Fund had a valid Statement of Defence stating that there was an existing valid nomination in the matter, it was prudent that the Ruling be appealed.
 - 4.3 nomination cases were handled by another department within the fund, the Legal Services section had to await instructions from the relevant department.
 - 4.4due to the internal processes involved, by the time the Fund's in-house solicitors received instructions to proceed with the Appeal, the requisite time for Appeal had already lapsed.
 - 4.5upon confirmed instructions for the Appeal, immediate steps were taken to file appropriate application seeking leave to appeal out of time.
 - 4.6all related and relevant documents were forwarded to the Fund's Lautoka office with the instructions that the appeal application be expedited on an urgent basis and this was since carried out.
 - 4.7 The Fund humbly submits that the reasons above be taken into consideration as the events were beyond its control.
 - 5.1if it is granted leave to appeal out of time, [the Fund] will be able to address the Court on contentious issues as per its Statement of Defence, and that is, that there is an existing valid nomination in place as opposed to the Respondent's claim of an invalid nomination.
 - 5.2the Applicant will be able to address the Court on the point of law with regards to members' nomination (attached herein and marked Annexure "PG4" is the draft Notice of Appeal). The Fund reserves its right to further amend its grounds of appeal is leave is granted.
 - 5.3 That the Applicant will be able to address the Court on the implications in conceding and complying to the said Ruling dated 7th May 2013.
 - 5.4 The Applicant has a meritorious defence and this will only be appropriately addressed and proved at a proper Trial and/or Hearing of the matter as per the contents of the Statement of Defence.
 - 5.5 The Applicant humbly submits that if the issues as in items 5.1 to 5.4 above are not adequately and appropriately addressed by the Court this will defeat the purposes of the law that governs the operations of the Fund.
 - 5.6 The Fund further submits that from the outset, it had every intention in contesting the Respondent's claims as per its Statement of Defence (Attached herein.....).
 - 6.1 ALTHOUGH the Fund concurs with the statement that a successful litigant must not be deprived of the fruits of its success the Applicant humbly submits that this does not override when there are contentious issues involved in the aspect of the law.
 - 6.2 The Applicant further submits that the Respondent will not be prejudiced as in respect of all the 3 Rulings delivered in the matter, costs awarded in respect of the matter have all been paid by the Applicant to the Respondent.
 - 6.3 That there has been a total payment of costs in the sum of \$3,900-00 which the Applicant has duly complied with as per the individual Rulings, thus, the Applicant humbly submits that costs in terms of legal expenses have not been lost by the Respondent.
 - 6.4 Further the Fund submits that although the matter has been pending for a number of years, it humbly submits that no further prejudice will be caused to the Respondent to await the determination of the High Court.
 - 7.1 The Fund humbly submits that it has been greatly prejudiced by the decision of the lower Court as delivered by Magistrate M Ajmeer dated 17th January 2012 and 7th May 2013 respectively.
 - 7.2 The Fund humbly submits that the Court below in delivering its Ruling in 2012 and 2013 failed to recognize the sensitivity of the matter and the unique characteristics of the case which cannot be addressed and adjudicated upon at the lower Court.
 - 7.3 The Fund as a creature of statute humbly submits that its operations are dictated by the law and/or legislative provisions as per the FNPf Act (Cap 247) and FNPf Decree (2011) and thus any decision that it upholds pertaining to any FNPf related matter will be in compliance to the law.
 - 7.4 It must be emphasized that with the current matter at hand, the Fund cannot overlook the fact that there is a valid nomination in place by the Respondent's deceased spouse and as per the legislative provisions, the Fund is obligated to honour and comply to the validity of the nomination.
 - 7.5 Thus it has been a necessity for the Fund to continuously defend the Respondent's claim over the years to ensure compliance to its legislative requirements.
 - 7.6 Further the Applicant humbly submits that this is a case of nomination whereby the Respondent's late spouse had nominated persons who would inherit her FNPf funds upon her death.
 - 7.7 That as per the wishes of the Respondent's late spouse, she had nominated her parents and her brother to share her FNPf funds upon her death.
 - 7.8 The said nomination is valid as per the laws governed by the Fund and of which the Applicant has continuously contested over the years to uphold.
 - 7.9 The Applicant wishes to emphasize that it is imperative that it upholds the validity of the said nomination as it is obligated to protect the interests of its deceased members' nominations.
 - 8.1 The Applicant humbly submits that it be given its day in Court to defend the Respondent's claim as per its Statement of Defence.
 - 8.2 The Applicant states that it is of utmost importance that the issues as highlighted in its Statement of Defence can only be thoroughly and fairly assessed at the proper Trial/Hearing of the matter.
 - 8.3 That the Applicant has exhausted all avenues at the lower Court and thus seeks the High Court's indulgence for the hearing of its application filed herein.
 - 8.4 That I pray to this Honourable Court that the Fund be granted leave to appeal out of time as per the Notice of Motion filed herein.

the Legal Team received instructions, time for appeal had lapsed. But steps were taken immediately upon receipt of instructions.

- (iv) if leave is granted, the FNPF will be able to address this Court on the contentious issues as per its Statement of Defence and on its argument as to why it is of the view that Lata's nominations are valid. There are serious implications if the Ruling of the Magistrate dated 07 May 2013 were to be complied with. FNPF has a meritorious defence. There are indeed contentious issues of law and fact involved in this case.
- (v) the FNPF has paid Lal a total of \$3,900 in costs to date. On a balance of prejudice, no seriously great prejudice will result to Lal if he has to await a determination of the High Court on this matter compared to the prejudice that will be suffered by the FNPF and the public interest involved. The FNPF is a creature of statute and its decisions and procedures must be strictly in accordance with the statute that created it.
- (vi) there are sensitive issues involved which are beyond the jurisdiction of the Magistrates Court.

OBSERVATIONS

- 22. There is a very good argument that the default judgment entered initially at the Magistrates Court was irregular. I say that because, it is arguable that the Magistrates Court did not have jurisdiction to deal with the matter. Unfortunately, this point was not at all argued before the Magistrate when the FNPF was applying to set aside the default judgement.
- 23. The Magistrates Court is a creature of statute. Even if counsel had conceded to the Magistrates Court dealing with the matter at hand, neither the conduct of counsel nor their acquiescence or submission to jurisdiction can operate to give the Magistrate a jurisdiction that he does not have.
- 24. In **Gaundar v Ravindra** [1998] FJHC 164; Hba0015j.97s (1 December 1998), Mr. Justice Pathik was dealing with an appeal of a decision of the Magistrates Court in Nausori which concerned a claim, the factual matrix of which centered around the refusal of an "old" school committee that had been outvoted at an AGM, to hand over the school keys to the new committee. In dealing with the issue of whether or not the Magistrates Court had jurisdiction, Pathik J observed that the defendant's counsel had more or less "submitted to the jurisdiction" of the Magistrates Court. However, he held that counsel's submission to jurisdiction could not operate to give the Magistrate a jurisdiction he did not have.

It is the fault of the plaintiff in not applying to discontinue the action when once the questions regarding matters which were outside the Court's jurisdiction were raised in the Statement of Defence. Although Mr. Singh submitted to the jurisdiction of the Court and raised objection to this aspect in his submission that does not give jurisdiction to the learned Magistrate which he did not have to decide on matters which he eventually dealt with when he gave his said Ruling.

Under s.32 of the Magistrates' Courts Act the learned Magistrate could have transferred the action to High Court once he found himself without jurisdiction.

The Magistrate's Court is a creature of statute it can have no powers, jurisdictions or authorities other than those authorised by the Act. For the reason given hereabove the Ruling of the learned Magistrate was beyond his powers.

25. Having said that, the question at this time is: how is it arguable that the Magistrates Court does not have jurisdiction to deal with the matter?

26. There are two main reasons for this:

- (i) firstly, as I have stated above, the Magistrates Court is a creature of statute and, as such, it only has jurisdiction to deal with matters conferred upon it under section 16 of the Magistrates Court Act (see (Dayabhai & Ors v Bhai [1954] FijiLawRp 6; [1946-1955] 4 FLR 127 (7 April 1954); Wati v Vakaraubula [1996] FJHC 135; Hbc0139j.94s (6 August 1996); Khelawan v Ram [1967] FJSC 36; [1967] 13 FLR 196 (8 December 1967); Commissioner of Inland Revenue v Smith [1981] FJCA 13; [1981] 27 FLR 40 (31 July 1981)).
- (ii) secondly, by the operation of the relevant legislative provisions (section 35 of the Fiji National Provident Fund Act, read together with section 6 of the Succession Probate and Administration Act), Courts in Fiji have long held that where a member of the Fiji National Provident Fund has died without any nomination or without a valid nomination, all monies standing in the account of the deceased member must be paid to the High Court for disposal in accordance with the law for the time being in force (see In re Narendra Prasad FNPF (57/1982); In M. v. Attorney-General (1985)).

27. It is clear from the Ruling of the Learned Magistrate that he had reached the conclusion that Lata had left no valid nomination at the time of her death⁴. Having

⁴ As the Learned Magistrate reasoned:

In this case Ashween Lata declared her nomination on 23 November 2000. She got married to the Plaintiff on 13 January 2011. Hence by operation of the proviso to section 34 the nomination made on 23 November 2000 by Ashween Lata has become null and void. The resultant position then would be there has been no nomination to the FNPF of the Ashween Lata.

If there is no nominee then section 35(1) of the FNPF Act becomes applicable. The relevant section postulates (sic) that:

Procedure where there is no nominee or a minor nominee

35.-(1) If, at the time of the death of any member of the Fund, there is no person nominated under the provisions of section 34, the amount standing to the member's credit in the Fund shall be paid into Court for disposal in accordance with the law for the time being in force.

Ashween Lata's nomination has been rendered null and void. In the circumstances the Defendant should have deposited the amount standing to her credit in the Fund into Court for disposal in accordance with the law for the time being in force which the Defendant has failed.

The Plaintiff gave clear and straightforward evidence and also tendered unchallenged documentation in support of his claim which I accept.

The Plaintiff asked the sum of \$787.50 as incurred legal expenses which I allow. The Plaintiff also sought the sum of \$2,500.00 as the cost of the proceedings. The Plaintiff brought this action in 2006. I considering all fix \$1,500 as cost of the proceedings which is summarily assessed.

Therefore there will be judgment in favour of the Plaintiff as prayed for in a, b and c of the claim with the cost of \$1500 which is summarily assessed.

Orders accordingly.

.....
Sgd

Dated 17th day of January 2012

reached that conclusion, he then proceeded to rule in favour of Lal and Order that all funds standing in Lata's account be released to Lal.

28. It is arguable that, as soon as the Learned Magistrate became cognizant of the nature of the issue at hand, and before even making a conclusion on the issue, he should have recognized that he did not have jurisdiction and, then transfer the action to the High Court under section 32 of the Magistrates' Courts Act⁵. Such an argument would have to be premised on supportive case law on the subject.

29. Section 35(1) of the FNPf Act provides:

Procedure where there is no nominee or a minor nominee

35.-(1) If, at the time of the death of any member of the Fund, there is no person nominated under the provisions of section 34, the amount standing to the member's credit in the Fund shall be paid into Court for disposal in accordance with the law for the time being in force (my emphasis).

30. The word "Court" in section 35 as it appears in the phrase "*the amount standing to the member's credit in the Fund shall be paid into Court*" has been interpreted to mean "the High Court". Also, the phrase "*for disposal in accordance with the law for the time being in force*" as it appears in section 35 has long been accepted in Fiji as meaning – disposal in accordance with the testacy or intestacy laws for the time being in force in Fiji.

31. **In re Narendra Prasad** FNPf (57/1982) Mr. Justice Kermode, in discussing section 43(2), said:

By virtue of that subsection on the death of a member the money is deemed to be impressed with a trust in favour of the person nominated or the person whom the Court determines is entitled to it in the absence of any nomination. The fund is deemed also not to form part of the deceased members' estate.

No problems arise where there has been a nomination but who is entitled to the fund by law if there is no nomination if the fund is deemed by law not to be part of the deceased member's estate?

One answer to that query in interpreting the subsection might be to hold that the section is designed to protect the fund from creditors and exempts it from estate and succession duties but that it remains nevertheless in fact, and in law the property of the deceased's estate for any other purpose.

If that is the correct legal position then the person or persons entitled to the fund might be determined by the provisions of the deceased's will or the law of intestacy."

32. Mr. Justice Cullinan in **In M. v. Attorney-General** (1985) had these to say:

.... those words can only refer to distribution in accordance with the law applicable to testacy-or-intestacy as the case maybe.....

Dr. Singh submits that the effect of section 43(2) ... is that where any debt or claim whatsoever is concerned the money paid into Court shall not form part of the estate..... I agree with that submission.....

⁵ Section 32 provides:

Magistrates may report cases for transfer

32. Subject to the provisions of the Criminal Procedure Code, a magistrate may, of his own motion, or on the application of any person concerned, report to the Supreme Court the pendency of any cause or matter which in the opinion of such magistrate ought for any reason to be transferred from his court to any other magistrates' court or to the Supreme Court. The Supreme Court shall direct in what mode and where the cause or matter shall be heard and determined.

I observe also that section 43(2) does not state that the particular monies shall not form part of the deceased member's estate; instead the subsection says that the moneys' shall be deemed not to form part of the deceased member's estate'. The phraseology used indicates, in my view, that it is only' for the purposes of section 43 that the monies paid out of the Fund on the death of a member are not deemed to form part of the deceased member's estate. For any other purposes therefore, they are to be regarded as forming part of the estate, for example for the purposes of distribution under section 35."

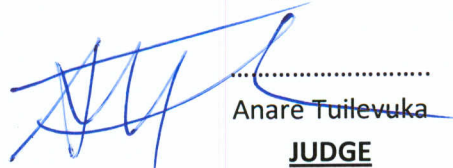
33. The above authorities have been applied consistently in Fiji as authority that, where a member has no nominee under section 35 of the Act, then the testate laws or the laws of intestacy for the time being in force in Fiji shall apply.
34. If, I may assume here for one moment, that Lata had left no Will in which she might have assigned the benefits standing to her FNPf Account, then the intestacy laws set out in section 6 of the Succession, Probate and Administration Act (Cap 60) would apply to determine how funds standing in her FNPf account should be distributed. In that case, section 35 (1) mandates that the FNPf shall pay the monies into the High Court for disposal in accordance with section 6 of the Succession, Probate and Administration Act (Cap 60).

35. Section 2 of the Succession Probate and Administration Act defines "court" as:

"court" means the Supreme Court (now High Court) or a judge thereof

36. Hence, when section 2 of the Succession Probate & Administration Act is read together with section 35 of the FNPf Act, it is arguable that the FNPf is duty bound under the statutes to pay the monies into the High Court of Fiji for disposal in accordance with section 6 of the former Act.
37. As I have stated above, the Learned Magistrate had made a finding that Lata had left no nomination. Whether or not he had jurisdiction to even make that pronouncement is properly a matter of appeal.
38. I have some misgivings that he has. But even then, whether or not he can then validly Order FNPf to then pay the monies directly to Lal rather than to the High Court for disposal in accordance with section 6 of the Succession Probate and Administration Act, I have even a lot more misgivings.
39. For one thing, the effect of ordering that the monies be paid directly to Lal, in a way, potentially leaves the two issues of the marriage unprovided for - and that is assuming that the Learned Magistrates' finding that the nominations were invalid, is correct. Furthermore, I have some doubt as to whether or not a magistrate has jurisdiction to strike out a pleading, but that may be raised on appeal.
40. In the final, I grant leave to the FNPf Appeal Out of Time. No Order as to costs.




Anare Tuilevuka
JUDGE

16 September 2015.