

**IN THE HIGH COURT OF FIJI AT SUVA**  
**IN THE CENTRAL DIVISION**  
**PROBATE DIVISION**

**Civil Action No. HBP 191 OF 2022**

**BETWEEN:**

**IN THE MATTER** of an Application under provisions of Section 57 (3) (b) and 57 (4) of the Fiji National Fund Act 2011 and Section 6 (c) (i) of the Succession, Probate and Administration Act 1970.

**AND**

**IN THE MATTER** of **ANIL CHAND** late of Lot 13, Ibo Road, Nadawa, Nasinu, Taxi Driver, Deceased, Intestate.

**Date of Hearing** : **10 June 2024**  
**For the Applicant** : **Ms. Narayan S.**  
**Date of Decision** : **2<sup>nd</sup> July 2024**  
**Before** : **Waqainabete-Levaci, SLTT, Puisne Judge**

**JUDGMENT**

**(APPLICATION FOR REMITTANCE OF FNPF FUNDS UNALLOCATED)**

**PART A – BACKGROUND AND AFFIDAVIT**

1. By way of an ex-parte Summons together with an Affidavit, the Applicant seeks orders from the Court for the following:

1. The unallocated amount from the preserved and general entitlements of **ANIL CHAND** as paid by Fiji National Provident Fund to the High Court at Suva to be released into the Applicant's Bank of South Pacific account No. 82973053; and
  2. Any other Orders that this Honorable court deems just and expedient.
2. The Applicant deposes that she is the defacto partner of the deceased Anil Chand who passed away on 1 March 2022.
  3. That they have resided continuously since 1996 as husband and wife for 28 years until his death.
  4. They had purchased a property registered as Housing Authority Sub-Lease No 439943 situated at Lot 13 on DP No. 7622 in the Province of Viti Levu and Town of Naitasiri having an area of 219 square meters (hereinafter referred to as the property).
  5. The Deceased did not have any children nor was he married to another.
  6. This application is seeking an order of the Court to release unallocated funds standing to the deceased that had already been remitted into High Court.

## **PART B: LAW AND ANALYSIS**

7. Section 57 (3) of the Fiji National Provident Funds Act provides that :

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.

(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).

8. In accordance with section 57 (3) of the FNPF Act, the law requires that non-nominated superannuation funds be paid to the High Court as they are deemed ‘unallocated’.
9. Non-nomination arises where the deceased superannuation scheme fund account holder does not nominate a beneficiary for his monies on his death.
10. It is on this basis, that the Applicant must then seek to move the Court to order for the release of the funds.
11. To exercise this discretion, the Court must be satisfied that the Applicant is entitled to receive the funds in accordance with the distribution under Section 6 (1) as amended of the Succession, Probate and Administration Act. In accordance with Mohammed Hassan [1989] 35 FLR 107, where Fatiaki J held that a sum standing to the credit of a deceased member of the FNPF does not form part of his Estate in an application for Letters of Administration.
12. Such monies cannot be deposited or assigned by way of a Will or by probate or used for the purposes of a pledge, charge, security or for an attachment, sequestration or levy for a debt as stipulated under section 94 (1) of the Fiji National Provident Fund Act.
13. I find from the application before the Court, that the Deceased does not have any children nor was married or in any another defacto relationship but for his relationship with the Applicant.
14. I accept that at the time of death, the Applicant was the caregiver and partner to the Deceased and therefore is entitled to the unallocated funds.
15. I am satisfied that the application is within the provisions of section 57 (3) of FNPF Act and thereafter grant the application.

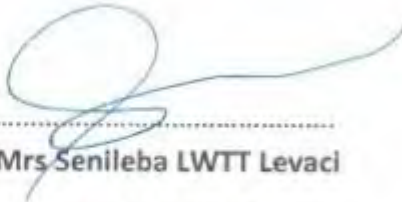
**Orders of the Court**

16. **The Court orders as follows:**

*(a) That Court Grants the application for payment of all the unallocated FNPF Funds held against the Account of the Deceased Anil Chand be released to the Applicant;*

*(b) The Applicant bear her own costs.*



  
Mrs. Senileba LWTT Levaci  
Puisne Judge