

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

CASE NUMBER: HBM 2 OF 2025

BETWEEN: EDLIN MANI
APPLICANT

AND: FIJI NATIONAL PROVIDENT FUND
RESPONDENT

Appearances: Ms. S. Kant for the Applicant.

Mr. Suguturaga for the Respondent.

Date/Place of Judgment: Wednesday 9 April 2025 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

JUDGMENT

A. Catchwords:

FNPF ACT 2011: was there evidence to satisfy the FNPF Board that the applicant is physically incapacitated from ever engaging in employment due to her medical condition to allow full withdrawal of monies from her FNPF account.

B. Legislation:

1. *Fiji National Provident Fund Act 2011 (FNPF Act): ss. 53, 59.*
 2. *Constitution of Fiji s.100(3)*
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Cause

1. The application before me is that the Fiji National Provident Fund [“FNPF”] be ordered to approve the applicant’s application for full withdrawal of her FNPF funds on the grounds that she is physically incapacitated from ever engaging in any employment due to her medical conditions.

2. The application is opposed on the basis that the applicant does not qualify for a full withdrawal under the FNPF Act as she is not physically incapacitated from engaging in any employment.

Applicant's Position

3. The applicant Ms. Mani has filed an affidavit in support of her application. She deposes that she has been unemployed since 18 February 2019 and has no stable source of income since. She was previously employed by the Fiji Police Force for 25 years. She claims to have been unlawfully dismissed by the Fiji Police Force on 18 February 2019.
4. Ms. Mani says that she was involved in an accident on 10 August 2002 in which she suffered serious injuries and was bedridden for 3 months. She flew to India and New Zealand for treatment under the police insurance.
5. According to Ms. Mani, she suffers from serious medical condition, namely kidney stones, which causes her significant pain and discomfort. She says that she has been asked by her doctor to seek medical treatment but she does not have the financial capacity to do so.
6. She further deposes that she is in severe financial hardship. She does not have any employment, savings or other source of income except for funds in her FNPF.
7. She is unable to pay rent and the landlord has issued eviction proceedings against her. Her previous landlord has also obtained orders from the Small Claims Tribunal for payment of rental arrears. Given the circumstances, a Judgment Debtor Summons will soon be issued against her. Since she does not have the means to pay the judgment debt, she may be committed for such default.
8. Ms. Mani says that she does not have alternative housing or family support and if evicted she will have no place to live.
9. On 11 April 2024, she applied to the FNPF for a full withdrawal of her funds on the basis of extreme hardship and urgent medical, financial and housing needs. Her application was declined and she was informed that she does not meet the eligibility criteria for full withdrawal. She says that she is aware that FNPF allows partial withdrawals under specific circumstances, but this is inadequate in her situation as her needs are urgent and covers multiple financial obligations.

10. According to her, her circumstances are exceptional and compelling, warranting the exercise of the court's discretion to grant her access to her FNPF funds in full. She says that under the Constitution she has a right to health, medical treatment, adequate housing, sanitation and social protection and FNPF must honor that right because it is the obligation of the state to ensure that her rights are protected.

Respondent's Position

11. FNPF's position is that it received the plaintiff's application for full withdrawal of funds on grounds of physical incapacitation and it declined the application on the basis that the medical board, after having seen all the medical reports in totality, was not satisfied that the applicant is physically incapacitated from ever engaging in any employment. Under physical incapacitation ground, full withdrawal is solely aligned to the health status of a member and not financial hardship.

12. FNPF says that it does provide pre-retirement benefits however, the plaintiff is not eligible under the said benefit.

13. FNPF says that it was not established to secure a meaningful and sustainable retirement of the members.

14. There are in place policies in relation to partial withdrawals which the applicant had accessed from 2019 to 2021 after her termination from Fiji Police Force and also for Covid-19 Assistance.

15. It is the FNPF's position that if the applicant was not satisfied with the decision, she could have appealed the same but she did not.

16. According to FNPF, the applicant is requesting the court to make orders because she needs finance. She has not established through the evidence that she is physically incapacitated from ever engaging in any employment.

Issues, Law and Analysis

17. The issue before the court is to determine whether the applicant Ms. Mani has established a statutory ground for withdrawal of all her monies from her FNPF account.

18. Ms. Mani had submitted her application for full withdrawal on the grounds that she is physically incapacitated from ever engaging in any further employment. The FNPF required her to submit herself

for medical examination by a doctor nominated by FNPF. She did get examined by the doctor. After that she submitted her application with the medical report from the doctor nominated by FNPF. She also included with the application other medical reports of injuries she sustained in the motor vehicle accident in 2002.

19. The FNPF then constituted a medical board to assess the application on medical grounds. The medical board was not satisfied that the applicant was physically incapacitated from ever engaging in any further employment. It therefore refused the application and advised the applicant as follows:

“Medical Incapacitation Application –Declined”

We refer to your application and advise that it has been declined for the following reason(s):

- *No evidence of permanent incapacity apart from slight reduced range of motion on the left hip.”*

20. S.53 of the FNPF Act allows for withdrawal of whole of the member’s account (*both preserved and general*) on the grounds that a member has become physically or mentally incapacitated from engaging in any further employment.

21. There were several medical reports attached to the application for withdrawal. I will assess each of it. The first is from the doctor who filled the relevant part of the application form. This was Dr. Rokobuli. He was nominated by FNPF to examine the applicant. Dr. Rokobuli answers two pertinent questions in the application as follows:

“Q23: Do you consider the above named person to be physically/mentally incapacitated from ever engaging in any further employment?”

A: Yes.

Q24: If so, disclose the reasons that you suggest should be taken into account by FNPF in considering withdrawal of contributions.

A: Previous injury affects her ability to perform activities of daily living, police duties and other form of employment.”

22. The same doctor provides a comprehensive medical report on 11 April 2024. This report notes that her vital signs were normal. There was no limb length discrepancy on Galleazzi and true length

measurements. Her range of motion on her left hip was slightly reduced. The neurovascular assessment of her foot and leg were intact. X-rays of the pelvis showed mild loss of joint spaces at left femoro-acetabular joint with associated subchondral sclerosis. There was a well-defined rounded lucency noted overlying left femoral head suggestive of a subchondral cyst.

23. There is another medical report of 30 March 2013 from Batra Hospital and Medical Research Centre. The report states that on investigation, the applicant was diagnosed with a diffused posterocentral disc protrusion C5-6. She also had a posterior annular tear L4-L5 with mild thecal compression and slightly reduced 25(OH) vit. D. She also had mild osteopenia. It further states that besides medicine, she was put on physiotherapy and she had responded well. She was strongly advised to reduce weight and attend to physiotherapy and also to do home physiotherapy for longer period, for about a year or two.
24. Another report that was attached to the application for withdrawal was dated 16 October 2008 from Lautoka Hospital.
25. The report in its recommendations states as follows:

“In view of all above and because of the fact that all these complications happened due to the result of serious motor vehicle accident, and also be reminded that her left Pelvic Bone totally got healed from the wrong side and seriously considering that she has to bear her pains and injuries whole of her life time, and to avoid major complications, thus I recommend that she has to stick rigidly with the respective abroad and local doctors instructions to maintain her good health and to avoid the major dislocation of the left Hip Bone and also to reduce the risk of any onset arthritis developing in her weight bearing joints (Left Pelvic Bone) and seriously reminding her with the total concern of surgical treatments.

She is awarded a disability of 30%.”

26. After analyzing all the reports, the medical board had come to a conclusion that the applicant was not physically incapacitated from engaging in any further employment.
27. The only medical report that suggests that the applicant is physically incapacitated from ever engaging in any further employment is that of 11 April 2024 by Dr. Rokobuli.

28. Dr. Rokobuli had based his report on the previous injuries sustained by the applicant. He said that there were early signs of osteoarthritis in left hip with antalgic gait and ongoing pain and discomfort. The diagnosis was left acetabular fracture with early osteoarthritis.
29. The injuries that Dr. Rokobuli based his opinion on were old injuries sustained in a motor vehicle accident on 10 August 2022. After that accident, the applicant had received treatment in Fiji, New Zealand and India.
30. After her injuries and treatment, she continued to work for almost 17 years before she was dismissed from employment. If she was physically incapacitated from ever engaging in any further employment due to the injuries sustained in the motor vehicle accident, she would not be able to work for 17 years as a Police Officer. There is no evidence that she was dismissed from her employment due to her injuries which prevented her from working.
31. I thus conclude that her injuries sustained in the motor vehicle accident does not physically or mentally incapacitate her from engaging in any further employment. There is no medical report to suggest that her medical condition has worsened to prevent her from ever engaging in any further employment.
32. The only notable medical issue in the report of 11 April 2024 by Dr. Rokobuli was that her left hip motion was slightly reduced. The x-ray report did not identify any fracture and dislocation. There are however signs of early osteoarthritis. Except for early osteoarthritis, the medical conditions of the applicant are the same that she sustained from the motor vehicle accident. These are not new medical conditions arising out of the said accident. The previous medical reports indicate that there was an onset of osteoarthritis. Early osteoarthritis can be managed with medicine and exercise. It should not prevent the applicant from working.
33. I therefore cannot find enough evidence to arrive at a conclusion that the medical board was wrong in coming to a medical finding that applicant is not physically incapacitated from ever engaging in any further employment.
34. On the evidence before me, I find that Dr. Rokobuli appears to have just reflected the applicant's views in his report as his. He does not say how the slight reduced hip motion will affect the plaintiff in engaging in work. He does not say why the pain management therapy and health management as suggested by doctors abroad cannot help her in maintaining her health.

35. The applicant's counsel says that the plaintiff is suffering financial hardship and if the FNPF is not able to assist her now, what is the point of keeping the monies for her retirement. She says that there is no point of keeping her savings if she does not live to use the monies.
36. I am of the finding that the FNPF Act should give the court powers to make an order for withdrawal of the full funds apart from the grounds prescribed by the FNPF Act. If the Act does not give the court powers then I cannot make such orders.
37. Ms. Kant, counsel for the applicant says that the FNPF Act does not forbid the court from making of the orders under the Act on a ground different from that prescribed. She says that I have jurisdiction to do so under s.100 (3) of the Constitution of Fiji which provides that I have unlimited original civil jurisdiction.
38. S. 100(3) of the Constitution states that *"the High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other jurisdiction as is conferred on it under this Constitution or any written law."*
39. The provision of the Constitution says that the original jurisdiction of the High Court is to be derived from the written law. If I am to exercise my jurisdiction under the FNPF Act to order payment of monies on grounds other than that specified in the FNPF Act, then that jurisdiction must be provided for in the Act. The power to do so must be expressly provided. There is no such power in the Act for me to exercise my jurisdiction.
40. Ms. Kant also argued that under the Constitution, the applicant has a right to life, medical treatment housing and dignity which has been violated by FNPF in not allowing her to fully withdraw her FNPF monies which the applicant is entitled to under s.59 of the FNPF Act.
41. S.59 of the FNPF Act states that the Board may make rules for the withdrawal of monies from the FNPF member's general entitlements. S.59 therefore only relates to the general account of a member and not the preserved account. Full withdrawals under preserved accounts are caught by s.53 which I have already addressed.
42. Under s. 53, The FNPF Board must be satisfied that the applicant qualifies under that provision for a full withdrawal and since there was no convincing medical evidence, the FNPF, I find, had correctly refused the application.

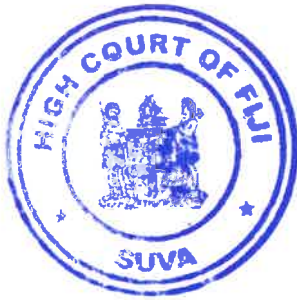
43. The Board has exercised its powers given to it under the law. It is not depriving the applicant of a right to live. The applicant does not qualify for a withdrawal and she has a right to live by finding employment for herself. The FNPF is not restraining her from doing that.
44. The applicant says that she needs medical treatment and the FNPF is depriving her of that. There is no report to suggest that the applicant needs medical treatment and the extent of the financial exposure for the treatment. She says that she has kidney stones. She has not established that the Government Hospital in Fiji does not have the capacity to address that medical condition and that she needs finance to have it done by a private specialist. Further, her application was not for medical treatment and as such she cannot say that the FNPF has refused to assist her for medical treatment.
45. On the issue of housing, I find that the application was not made for housing assistance. The application was on a ground which she cannot establish. I do not accept the applicant's counsel's submission that the FNPF is equivalent to the state which ought to ensure that the applicant's constitutional rights are fulfilled. FNPF is the custodian of its member's monies and it is not owned by the state to use the money for fulfilling people's constitutional rights apart from the ones prescribed by the FNPF Act.
46. The applicant has failed to disclose to the court the large sums of interim payment monies she received in her accident claim. She received the first sum in January 2012 and the second sum in November 2012. She received a total sum of \$85,000. She got that money on the basis of her need for medical treatment. However in her affidavit in this proceedings, she states that her medical treatment was funded by the Police Insurance Scheme. She had some reviews on her own but that was not the substantive treatment for which substantial financial expenditure will incur.
47. She fails to disclose what happened to all the monies, why she did not invest it for her future use especially when she was working and earning. She also fails to address why she allowed her case to be struck out for want of prosecution if she was in dire need of finance. She ought to have prosecuted her case to assist her financially.
48. I have taken judicial notice of the interim payments made to her in *Lautoka HBC 215 of 2005* and the fact that the action was struck out due to her laxity. She has not come to this court with clean hands in respect of her financial status. Her evidence on her financial need is therefore tainted for want of honesty.

49. I do not find that she has been able to establish a ground under s.53 of the FNPF Act to qualify for a full withdrawal.

Final Orders

50. In the final analysis, I dismiss the applicant's application for full withdrawal of her FNPF monies.

51. I shall not order any costs against the applicant.



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Hon. Madam Justice Anjala Wati

Judge

09.04.2025

To:

1. *Crown Law for the Applicant.*
2. *FNPF Legal Services Department, Suva for the Respondent.*
3. *File: Suva HBM 2 of 2025.*

