

VIRISILA NAMINO (aka VIRISILA KOROIARAVUDI) v FIJI NATIONAL PROVIDENT FUND BOARD

HIGH COURT — CIVIL JURISDICTION

5 PATHIK J

31 October 2002

10 [2002] FJHC 232

Statutes — interpretation — application for relief — mischief rule — revocation of nomination — (FJ) Fiji National Provident Fund Act (Cap 219) ss 32, 33, 34, reg 55.

15 Virisila Namino (Plaintiff) sought for an application to declare the nomination by the Fiji National Provident Fund Board (FNPF) unlawful on the ground that it did not comply with the purpose or spirit of the Fiji National Provident Fund Act (the Act). The Plaintiff contended that the funds held by FNPF under the nomination should be paid out to her and the couple's adopted daughter because of the representations and statements made by the deceased before his death that all deceased's FNPF funds were written-out to her and no one else. That the court shall interpret the provisions of the Act and Regulations using the mischief rule.

20 **Held** — The law is as clear as crystal. There is no need to resort to either the mischief rule or any other rules of interpretation to interpret the provisions as to nomination in the Act. It is clear that what is stated in the said sections is what was intended. The revocation as suggested by counsel for the Plaintiff is not the law.

25 Application dismissed.

No cases referred to.

S. Valenitabua for the Plaintiff

30 *R. Lal* for the Defendant

Judgment

Pathik J. By originating summons dated 25 January 2002 the Plaintiff applied for the following relief against the Defendant:

35 (a) *A declaration* that the purported nomination by the late Joeli Severo Koroiravudi, FNPF No AT 365, of Lasaro Turagadrau, Adrea Cocagi and Varasiko Cegutuilagi to receive portions of the amount payable to nominees under s 32 of the Fiji National Provident Fund Act, Cap 219 is invalid, and/or unlawful and/or void.

40 (b) *A declaration* that the late Joeli Severo Koroiravudi's declarations to his wife Virisila Namino (aka Virisila Koroiravudi), the Plaintiff, on the day of his death indicated Joeli Severo Koroiravudi's true intentions as to the payment and use of his FNPF funds after his death and the said declarations override the purported earlier nominations of Lasaro Turagadrau, Adrea Cocagi and Varasiko Cagutuilagi.

45 (c) *An order* that the Defendants, the Fiji National Provident Fund Board, do pay all monies payable and standing to the credit of Joeli Severo Koroiravudi, FNPF No AT 365 to his widow the said Virisila Namino aka Virisila Koroiravudi and do disregard the purported nominations of

50 the said Lasaro Turagadrau, Adrea Cocagi and Varasiko Cagutuilagi. The Plaintiff filed an affidavit in support of the summons.

Background facts

The Plaintiff Virisila Namino (aka Virisila Koroiravudi) (the widow of the deceased Joeli Severo Koroiravudi) and the said deceased were married on 6 May 1975. The couple adopted one Mereani Ikanibula when she was 5 (8) months old. The Plaintiff and Mereani were his dependants. The deceased died on 25 December 2001.

As a member of the Fiji National Provident Fund (FNPF), the deceased on 8 September 1978 nominated the following persons as nominees:

- 10 (a) Adrea Cocagi Brother 3 30.10.59
- (b) Varasiko Cegutilagi Brother 3 02.11.65
- (c) Lasaro Turagadrau Brother 3 25.03.53
- (d) Virisila Koroiravudi Wife 3 1950

The issue

- 15 It is the Plaintiff's contention that the funds held by FNPF under the nomination should be paid out to her and the couple's "adopted daughter" because of the representations and statements made to her by the deceased before his death that all deceased's FNPF funds were "written-out" to her and no one else.
- 20 The issue therefore is whether in the circumstances of this case the FNPF funds now held by the Defendant ought to be paid to the Plaintiff and the "adopted" daughter.

Plaintiff's submission

- 25 Mr Valenitabua submits that it was the intention of the legislature, as evidenced from the Legislative Council Debates 1966 pp 211–68 pertaining to the Fiji National Provident Fund Bill, that in so far as the issue before the court is concerned that, inter alia, the widow and dependant of the deceased should be provided when nomination is presented to FNPF. Counsel quoted at some length 30 from the debates and from the speech of the Honourable A D Patel (now deceased) where it is stated, inter alia, (at 215):

It has been thought preferable to leave it to the member to nominate the person or persons who should receive the money as in this way it seems more likely that the persons who are in fact dependant on him will be provided for on his death.

- 35 On this aspect from the debates the relevant provisions of the Fiji National Provident Fund Act (the Act) are ss 32, 34 and reg 55.

Counsel then deals with the use of parliamentary debates on the interpretation of an Act. He goes on to consider how s 34 ought to be interpreted applying the principles applicable to interpretation of statutes. He further submits that the 40 Plaintiff relies on statements made by her deceased husband immediately before his death. He said that the deceased's statements were those of a person since deceased and the laws applicable in this instance are about exception to hearsay and about intention.

- 45 From the debates, Mr Valenitabua submits that the court "infer and/or aver that the primary object or purpose of the Act is to address contingencies by way of survivors" benefit to cater for the contingency of widowhood and the loss of the breadwinner and that s 34 of the Act "ought to be read in the context of the purpose for which the Act was enacted".

- 50 Counsel submits that the deceased's FNPF funds ought to be paid to the Plaintiff and the said Mereani and be utilised for their maintenance, and for other purposes, as intended by the Act.

As far as the nominees, apart from the Plaintiff, are concerned they are all well to do. The nomination, therefore he submits does not “comply with the purpose or spirit of the Act iewe submit, the dependants should be or are nominated by a member to be paid the survivors” benefit at the death of this member.

5 Counsel wants the court to interpret the provisions of the Act and Regulations using the “mischief rule”.

On the statement of the deceased he said that a declaration was made against his pecuniary interest and as such, that declaration is not hearsay.

10 For these reasons he submits that all monies in the deceased’s account held by the Defendant should be paid to the Plaintiff for her and their adopted daughter’s benefit.

Defendant’s submission

15 After the deceased’s death the sum to which the Plaintiff was entitled to under the nomination pursuant to s 32 of the Fiji National Provident Fund Act Cap 219 was paid out to her on her application.

20 The Defendant says that the law clearly provides incidence when a nomination can be revoked. There was no subsequent nomination filed by the deceased member. The Defendant is not aware of any “declaration” as alleged having been made by the deceased member to anyone. It is submitted by counsel that if the court were to take such declaration and make orders in favour of the plainfiff it would be opening a “flood gate”.

25 Ms Lal for the Defendant submits that the Plaintiff’s claim ought to be dismissed with costs. On the issue of declaration and cases cited by counsel, Ms Lal says that in all these cases the court had on oral evidence given by the witnesses given its decision when the court had the opportunity to judge on the credibility of the witnesses before accepting such declaration.

Consideration of the issue

30 Before considering the issue it is important to bear in mind the law applicable to payment out pursuant to nominations as provided in the Fiji National Provident Fund Act Cap 219 (the Act).

On nomination s 34 of the Act provides:

35 *Any employee or member of the Fund may, by a memorandum executed in the prescribed manner, nominate a person or person to receive in his or their own right said portions of the amount payable out of the fund under the provisions of s 32 on his death as such memorandum shall indicate, and any employee who does not nominate such a person may be required by the board to declare, in writing, that he does not desire to do so.*

40 And on payment out pursuant to a nomination s 32 of the Act states:

The Board shall, after the death of any member of the Fund and upon the application of a person nominated under the provisions of section 34, pay to the applicant such part of the sum standing to the credit of such member as shall have been set out in the memorandum executed in accordance with that section.

45 For the purposes of the issue before me it is important to bear in mind reg 55 of the Act which provides for circumstances in which the nomination can be revoked. The revocation as suggested by counsel for the Plaintiff is not the law. The said reg 55 provides:

50 *55. A nomination shall be revoked —*
(a) by the death of the nominee or, where there is more than 1 nominee, by the death of all the nominees in the lifetime of the nominator;

(b) *so far as relates to the interest thereunder of any nominee, being 1 of 2, or more nominees, by the death of that nominee in the lifetime of the nominator, unless the interest of the nominee is disposed of by the nomination: Provided that, in the event of any such revocation, the amount which would have been payable to such deceased nominee shall be paid to the surviving nominees in equal shares;*

(c) *by a subsequent nomination duly made in accordance with the provisions of these Regulations by the same nominator;*

(d) *by the marriage of the nominator as provided in section 34 of the Act, but a nomination shall not be revoked by any will or by any other act, event, or means whatsoever.*

(Amended by Legal Notice 83 of 1969.)

Mr Valenitabua's main argument is based on his understanding of what the intention of the legislature was when the Fiji National Provident Fund Bill was presented to be debated by the then legislative council. He goes to great lengths in citing extracts from the council debates. It will not serve any purpose in commenting on what was said for after debating the Bill it was passed into an Act and that is what we have today and that is the law.

It must be understood by all concerned that, as far as the system and procedure for "nominating" is concerned it is contained in the Act and in particular in the sections I have cited hereabove. The court's function is to interpret these sections.

Mr Valenitabua has made a very novel approach to the issue before me. It is indeed a very hollow approach and there is no substance in it whatsoever. I must commend him for his research but I am afraid it is not of any assistance to him or to this court.

I find that the law is as clear as crystal. There is no need for me to resort to either the "mischief rule" or any other rules of interpretation to interpret the provisions as to "nomination" in the Act. If what counsel says was meant to be the intention of the legislature then it would have said so in so many words. It is clear that what is stated in the said sections is what was intended.

I find that this application is devoid of merits and is a frivolous one.

Therefore, the nominees must be paid out as nominated by the deceased.

The application is therefore dismissed with costs to Defendant in the sum of \$300.

Application dismissed.