

IN THE ESTATE OF SUNY WUNSAN TONG (deceased) MADALENE TONG -v- R.V.
EMERY AND JOHN SULLIVAN (Co-ADMINISTRATORS)

High Court of Solomon Islands

(Palmer J.)

Civil Case No. 32 of 1991

Hearing: 25 January 1994

Ruling: 31 January 1994

P. Tegavota for Applicant

T. Kama for Co-Administrators

PALMER J: The Applicant, Madalene Tong, applies by way of summons filed on the 25th of January 1994, for an increase in the maintenance payable to her and her children under an order of this court dated the 22nd of February 1991. An affidavit filed on the same day by Madalene Tong has been deposed to in support of the application. I have read that affidavit and noted its contents.

The Respondents oppose the application. In support of that, an unsworn response from Mr Sullivans, one of the Co-Administrates has been submitted to the court.

The first concern raised by the Applicant relates to her children's educational expenses.

In his response, Mr Sullivan pointed out that in early 1992 an order permitting the Co-Administrators to pay in their discretion educational and medical expenses for the infant beneficiaries as interim distributions had been obtained. Mr Sullivan also pointed out that they have consistently told Mrs Tong that they will consider reimbursing under that order, any reasonable expenses incurred on production of receipts or invoices, subject always to the availability of funds.

Now the matters pertaining to this raised by Madalene Tong relate to the purchases of new books, uniforms and shoes for the children. In paragraph 4 of her affidavit filed on the 25th of January 1994, she itemises the things needed and their estimated cost.

I would have thought that this was a fairly straight forward matter of either having receipts or invoices produced to the Co-Administrator to deal with. Those items raised in paragraph 4 are adequately covered by the Order of 1992 referred to in Mr Sullivan's

unsworn statement. No orders or further directions need to be made by this court in respect of those items. All that would need to be done by the Applicant is to ensure that she either gets receipts or invoices that will satisfy the Co-Administrators of such an expenditure as warranted and reasonable. The only time I will expect such matters to be brought before my attention is when the exercise of the discretion of the Co-Administrators to refuse to give a refund or make payment is being challenged by the Applicant or any of the children.

The next matter referred to relates to a number of household goods. This has been detailed in paragraph 5 of the same affidavit.

The response in the unsworn statement of Mr Sullivan at paragraph 2 (d) is quite proper and also applicable here. It reads: "*If Mrs Tong wishes to apply to us for an interim distribution to cover these matters, she may do so. We would then seek court approval for the necessary discretionary power. The discretion would have to be exercised along the same lines as set out above.*" The interim distribution can be shared between the applicant and her six children, as they will all benefit from this anyway.

There is another matter, relating to the purchase of a vehicle, which was raised by the Applicant, during the hearing in chambers, which can also in my view be dealt with in the same way as suggested by Mr Sullivan in respect of the household goods. I need say no more. What needs to be understood about these interim distributions is that they are dependent so much on the availability of funds, and this is a matter within the discretion of the Co-Administrators to deal with.

The next matter referred to in the second affidavit of the Applicant filed also on the same date (25/1/94) is that she alleges that the order of the 22nd of February 1991 specifically provided that whenever the Applicant is in Honiara, she should be paid A\$300. per week.

That order specifically provides:

"That so long as Madaline Tong is in Honiara, Sunny Tong shall pay A\$300 per week as interim maintenance for Madaline Tong and \$2,220 per month as maintenance for the children.

So long as Madalene Tong is in Australia Sunny Tong shall pay A\$2,500 per month as maintenance for Madalene Tong and the children of the marriage."

It seems to me that the Order was specifically aimed at the situation where the Applicant was residing in Honiara separately from her children in Australia. However, as worded, it can be construed as including the situation where the Applicant resides in Australia and comes to Honiara for certain matters only. If this generally worded order is unsatisfactory, then the proper way is for the Co-Administrator to apply to have it varied. What needs to be understood is that if the Applicant claims A\$300.00 for any week she resides in the Solomons, then A\$300.00 must be deducted for that month from the maintenance paid in Australia so that the children receive only \$2,200.00 for that month.

The Applicant claims that there have been times spent in the Solomons but of which she had not been paid. I suggest that she places her claim before the Co-Administrators with sufficient evidence in support, and any outstanding amounts due, shall be paid to her. What the Applicant must understand is that if she wishes to rely on the first formula for payment, then it means that her children will only get \$2,200.00 for their maintenance for that month, whilst she will be paid at the rate of A\$300. per week for the time spent in Solomon Islands.

If there is still any doubts about the calculations concerning these, then they can be placed before me for my approval. What the Applicant must understand too is that all the monies spent on those trips by the Co-Administrators may be deducted.

The next matter is the question of increase for maintenance. The Applicant submits that it should be increased by at least \$500.00. She submits that the childrens demand as they grow older also increase. I accept this as a reasonable demand. However, this must be weighed against the ability of the estate to sustain any such increases. Mr Sullivan points out that the Brisbane CPI index increased by about 1.50% per annum. For the total of 3 years, the increase was about 4.5%. An increase of 4.5% on \$2,500.00 is approximately \$106.25.

I take note that the administration of the estate is proceeding very well. However, there are several litigation which are yet to be sorted out and would be quite costly. Bearing all these in mind, I will allow an increase of only A\$120.00 with effect from the month of February 1994.

Costs of this application will be borne by the estate.

(A.R. Palmer)
JUDGE