



IN THE SUPREME COURT OF NAURU  
AT YAREN

Civil Action No. 28 of 2018

BETWEEN

Estate of Putaki Haulangi (deceased)  
(Mary Haulangi as personal representative)

First Plaintiff

And:

Mary Haulangi of Denigomodu District  
(in her personal capacity)

Second Plaintiff

And:

The Republic of Nauru  
(Secretary for Justice as legal representative)

First Defendant

And:

Estate of Valdon Dowiyogo of Baitisi District  
(Mrs Effi Dowiyogo as personal representative)

Second Defendant

Before: Khan, J  
Date of Hearing: 11 December 2019  
Date of Ruling: 28 January 2020

Case may be cited as: *Estate of Putaki Haulangi v Secretary of Justice & others*

CATCHWORDS: Claim under Fatal Accidents Act, 1846 -1908 – Claim for personal injuries. Where husband died intestate in a motor vehicle accident and wife also received injuries in the same accident – Where wife instituted proceedings as personal representative without obtaining letters of administration and also filed a claim for personal injuries in her own capacity – Where action alleges that defendant now deceased was a Minister for the Republic and vicarious liability pleaded – Where action was filed without leave of the Cabinet – Whether the action was properly instituted on behalf of the deceased husband – Whether it can be cured by an amendment – Whether consent of Cabinet required under Republic Proceedings (Amendment Act 2010) – Whether Curator can act as nominal plaintiff and defendant.

## APPEARANCES:

Counsel for the First and Second Plaintiff: V Clodumar  
Counsels for the First Defendant: J Udit and J Togran  
Counsel for the Second Defendant: K Talenoa on instructions of David Angimea

## RULING

### INTRODUCTION

1. The first plaintiff, Estate of Putaki Haulangi (deceased) (Mary Haulangi as personal representative) and the second plaintiff Mary Haulangi in her personal capacity filed a writ of summon on 2 December 2018 against the first defendant, the Republic of Nauru (Secretary for Justice as legal representative) and the second defendant, Estate of Valdon Dowiyogo (Mrs Effi Dowiyogo as personal representative).
2. This action was filed following a motor vehicle accident on 16 December 2015. On that day the second plaintiff, Mary Haulangi (Mary) was riding a motorcycle as a pillion passenger which was driven by her husband, Putaki Haulangi (Putaki). (The statement of claim does not state the registration number of the motorcycle.) Valdon Dowiyogo was a Minister for the State for the Republic of Nauru and he was driving a government vehicle, registration number GMO3. Both vehicles were travelling in the same direction and motor vehicle registration number GMO3 collided with the motorcycle from the rear and as a result Mary and Putaki were thrown off and both sustained injuries.
3. Unfortunately, Putaki received severe head injuries and was taken to RON Hospital where he was pronounced dead on arrival. Mary sustained soft tissue injuries to her head, neck, shoulder and the right leg and toe.
4. At the time of the accident, Putaki was 41 years old whilst Mary was 46 years old, they married in December 2012 and have a daughter who is 9 years old now. Both Putaki and Mary were employed by Nauru Island Security and were earning \$224 per week each.
5. Although, two causes of action arose as a result of the accident: namely, an action under Fatal Accidents Act 1846-1908 as a result of the death of Putaki entitling his dependants (wife and daughter) to file a claim as dependants; and an action for personal injuries by Mary, however, only one action was filed in this matter. I shall discuss later the requirements of filing an action under the Fatal Accidents Act 1846-1908.
6. Following the accident, the police carried out an investigation and Valdon Dowiyogo was charged on 21 November 2016 with the offence of manslaughter and negligent act causing harm. He died on 8 December 2016 before the case against him could be finalized.
7. The first and second plaintiffs' statement of claim reads as follows:

### “Statement of Claim

- 1) At all material times the second plaintiff is a citizen of Nauru residing in Denigomodu District.
- 2) At all material times the second defendant was a member of the Cabinet of the first defendant as a Minister of State and as such is vicariously liable to the plaintiff for the acts and omissions of the second defendant.
- 3) The first defendant is the owner of the vehicle registration number GMO3.
- 4) On or about 16 December 2015 during and in the course of driving on a public road the first and second plaintiffs sustained serious injuries resulting in the death of the first plaintiff and hospitalization of the second plaintiff.
- 5) The said injuries to the plaintiffs was caused by the acts or omissions of the second defendant.

### Particulars of Negligence

- a) The second defendant operated a motor vehicle with registration number GMO3 in a negligent manner on the public road in Yaren District on 16 December 2015.
- b) As a result of operating the said vehicle in a negligent manner, the second defendant collided with the back of the motorcycle driven by the first plaintiff with the second plaintiff riding pinion on the said motorcycle.
- c) The first plaintiff died as a result of the collision.
- d) The first defendant, its servants or agents assigned the vehicle GMO3 to the second defendant in his official capacity and personal use in this capacity as the Minister for State.
- e) The second defendant failed to keep within the speed limit of the public road.
- f) The second defendant omitted to take necessary precaution to maintain a space between the said vehicle and the motorcycle.
- g) The second defendant was charged with manslaughter, contrary to Section 303 and Section 10 of the Criminal Code 1899 on 21 November 2016 and negligent act causing harm contrary to Section 328 of the Criminal Code 1899.

- 6) As a consequence of the matters pleaded in paragraph 6 above the first plaintiff and second plaintiff suffered severe injuries, much inconvenience, mental anguish, pain suffering and loss of damages.
- 7) The first plaintiff died of his injuries at the scene of the accident.

#### Particulars of Injuries and Damages

- a) The first plaintiff was born on 18 February 1974. He was 41 years old when he died on 16 December 2015. He was married to Mary Haulangi and they had one daughter, Eleni Hetty Haulangi who was born on 23 April 2009. She was only 6 years old when her father died. The first plaintiff was employed by Nauru Island Security earning \$224 per week at the time of his death. He augmented the family livelihood with reef fishing and deep-sea fishing selling some of his catches. He earned around \$70-\$150 per week from the sales.
- b) The first plaintiff was dead on arrival at hospital. The medical report prepared by Dr Josese Vuki on 30 December 2015 stated that the first plaintiff suffered severe brain injuries, bilateral cerebral hemorrhage, basal skull fracture. Dr Vuki also made a statement dated 2 March 2016 whereby he stated that the victim sustained extensive brain traumatic injury with intra cerebral hemorrhage and hypovolemic shock as the direct cause of death.
- c) The second plaintiff was born on 22 November 1972. She is 46 years old. She married the deceased Putaki Haulangi on 29 December 2012. They have one child from the marriage, Miss Eleni Hetty Haulangi born on 23 April 2009. She was employed by the Nauru Island Security earning \$224 per week. She stopped working from October 2015 as she was tending to her sick husband.
- d) The second plaintiff was admitted to hospital following the incident. Dr Vuki prepared a medical report dated 21 January 2016 stating that the second plaintiff suffered multiple soft tissue injuries, painful head, neck and should joints (Rt); abrasion (Rt); big toe/extensure and (Rt) leg and bruises/ painful left...
- e) The second plaintiff remained as an inpatient for 2 weeks was discharged. After 2 weeks as an out-patient, she was re-admitted as the big toe on her right foot had to be amputated.
- f) The second plaintiff is still suffering pain on her right wrist, loss of balance and pain of the mid-lower back. Because of her injuries she is unable to work and is sharing a quarter with a friend in the Location Compound, Block 73/room 2. She and her friend are both disable. Her friend has one child. They experience hardship in their daily living, in particular, getting fresh water as it has to be collected manually in a bucket and carried to their unit.

- g) The second plaintiff is receiving a disability pension of \$200 per fortnight. Most of the money goes to the buying of food and electrical power. It is insufficient to maintain a comfortable livelihood.
  - h) The second plaintiff feels neglected and isolated by the community as she cannot work and earn money, her daily frustration of her disability requiring her to stay at home causing much mental anguish and sense of uselessness.
  - i) The child of the second plaintiff was attending Boe Infants School at the time her father died. She used to be taken to this school by her father and he would remain with her until she finished for the day. The following year (2016 after the incident) she attended Yaren Primary School but was struggling due to the loss of her father. It greatly affected to education and wellbeing. She missed him desperately.
- 8) The second plaintiff further suffered special damages in the sum of \$170,572 and general damages in the sum of \$20,000, particulars of which are enclosed as attachment 'A' Schedule of Damages with the Statement of Claim.
- 9) The second plaintiff seeks interest at the rate deemed appropriate by the Court on special damages but not less than 8%; and 8% on general damages pursuant to Civil Procedure Act 1972 Section 19(1) and (2) respectively.

Whereof the plaintiff seeks the following relief:

- a) Special Damages: \$2300;
  - b) Loss of Past, Present and Future Earning Capacity: \$168,272;
  - c) Special Damages Interest at the rate of 10%: \$17,057.20
  - d) General Damages for pain, suffering and loss of amenities: \$20,000
  - e) Past, Present and Future medical costs: Nil
  - f) Interest on general damages at the rate of 8% per annum: \$1,600
  - g) Cost of these proceedings: \$3,000
  - h) Such other relief this Honourable Court may consider appropriate."
8. The second defendant was served on 8 December 2018 and an appearance was entered on her behalf. It is not clear as to when the first defendant was served, however, a memorandum of appearance was filed on its behalf on 26 August 2019.

#### STRIKE OUT APPLICATION

9. The second defendant filed an application to strike out the plaintiffs claim on 20 December 2018 pursuant to Order 15 of the Civil Procedure Rules 1972 seeking the following orders:

That the action be struck out:

- i. That leave of the Cabinet was not obtained pursuant to the provisions of Section 3 of the Republic Proceedings Act 1972; and
  - ii. That the proceeding lacks legal standing due to the limitations set out in section 70(3) of the Succession, Probate and Administration Act 1976.
10. The first defendant also filed a strike out application on 26 August 2019 pursuant to Order 15 of the Civil Procedure Rules 1972 in which the following orders were sought:
  - i) That the action be struck out as leave of the Cabinet was not obtained as required by Section 3 of the Republic Proceedings (Amendment) Act 2010; and
  - ii) That the first plaintiff has no locus standi to commence these proceedings.
11. Effectively the two strike out applications have similar grounds.

#### PLAINTIFFS APPLICATION TO AMEND THE WRIT AND STATEMENT OF CLAIM

12. Mr Clodumar filed an application on 4 October 2019 to amend the writ and statement of claim to change the first plaintiff from “Putaki Haulangi (deceased) (Mary Haulangi as personal representative)” to be amended to “Curator of Intestate Estate (for the Estate of deceased Putaki Haulangi)” and the second plaintiff to be changed from ‘Mary Haulangi of Denigomodu District (in her personal capacity)’ to “Mary Haulangi of Denigomodu District” the second defendant to be changed from the “Estate of Valdon Dowiyogo of Baiti District (Mrs Effi Dowiyogo as personal representative)” to “Estate of Valdon Dowiyogo (Mrs Efi Dowiyogo as beneficiary of the Estate”.
13. After the plaintiff filed the application to amend the writ and statement of claim it was accepted by the Registry and the court seal was placed on the documents but for some reason it was not issued or allocated a hearing date and therefore remained in the court file. It was still not issued until 10 December 2019 when the strike out application was set down for hearing before me. I ordered that the amended application be issued forthwith and be served on the defendants’ counsels and adjourned the matter to 11 December 2019. Unfortunately, it was again not issued and Mr Clodumar was unable to serve the defendants’ counsels. The strike out application hearing continued on 11 December 2019 and Mr Clodumar made submissions that the amendment ought to be granted and it was objected to by Mr Udit as he was not served but I allowed Mr Clodumar to make submissions on the proposed amendment.
14. I will be dealing with the strike out application and the application for amendment simultaneously.

#### SUBMISSIONS

15. The second defendant’s submissions is that because of the position held by Mr Valdon Dowiyogo the claim is based on the principles of vicarious liability and the plaintiff failed to obtain the consent of the Cabinet pursuant to the provisions of Section 3 of the Republic Proceedings (Amendment) Act 2010 and thus the action ought to be struck out; and further submission is based on non-compliance of section 70(3) Succession

Probate and Administration Act (1976 Act) in that the proceedings should have been filed within 6 months and it was filed much later and it should therefore be struck out. I will set out the entire provision of section 70 of 1976 Act which is as follows:

Section 70 Effect of Death on Certain Causes of Action

- 1) Subject to the provision of this section, on the death of any person after the commencement of this Act, all causes of action subsisting against or vested in him shall survive against him, or as the case may be for the benefit of, his estate;

Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or for claims for damages on the grounds of adultery.

- 2) Where the cause of action survives, as provided for by the preceding subsection, for the benefit of the estate of the deceased person, the damages recoverable for the benefit of the estate of the dead person shall:
  - a) Not include any exemplary damages;
  - b) In the case of a breach of promise to marry, shall be limited to such damage, if any, to the estate of the person as flows from the breach of promise to marry; and
  - c) Where the death of that person has been caused by the act or omission which gives rise to a cause of action shall be calculated without reference to any loss or gain to his estate consequent on his death, except that the sum in respect of funeral expenses may be included.
- 3) No proceedings may be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of the deceased person, unless:
  - a) Proceedings against him in respect of that cause of action were pending at the date of the hearing; or
  - b) Proceedings are taken in respect of thereof not later than 6 months after probate or administration was first granted.
- 4) Where the damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purpose of this Act to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.
- 5) The rights conferred by this Act for the benefit of the estates of the deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of the deceased persons by a Fatal Accidents Acts 1846-1908, of England in their application to Nauru;

and so much this Act as relates to causes of action against the estates of deceased persons shall apply in relation to the causes of action under the said Act as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1) of this section.

- 6) In the event of insolvency of any estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.
16. Mr Udit filed written submissions and provided case authorities cited in his submissions. He submitted that under common law when a person dies intestate, then an action can only be commenced after the grant of letters of administration; and in the case of a person dying testate the executor appointed by the deceased in his will can file a proceeding as an executor but before the final judgement is made the executor has to produce the probate documents to the court. He further submitted that under Order 12 Rule 8 of Civil Procedure Rules 1972 the parties could be changed if the proceedings were filed before their deaths. In this matter both the first plaintiff and second defendant were deceased when the proceedings were filed; so, Order 12 Rule 8 would not be of any assistance. The crux of Mr Udit's submission is that Putaki died intestate and the action was filed without obtaining letters of administration and thus "it was born dead and could not be revived"<sup>1</sup>.
17. He submits that no amount of amendment can revive the action and it should therefore be struck out against the Republic on that basis alone.
18. In the amendment application for the amendment of the writ and the statement of claim Mr Clodumar wants the curator to replace the first plaintiff. He submits that under s.37 (3) of the 1976 Act Nauruans do not have to apply for letters of administration, as the estates vest in the Curator, and that the estate of Putaki has not been determined by the Nauru Lands Committee as yet, and therefore he can substitute the Curator as the plaintiff as per the proposed amended writ and statement of Claim. S.37 reads:

Pending Grant Estate to Vest in the Curator

- 1) Pending the grant of probate of a Will or administration of the estate of a deceased person, the real and personal estate of that person shall, without any charge being leviable thereof, vest in the Curator for the purpose of:
- a) accepting service of notice in proceedings and acting as nominal defendant or, in proceedings commenced by the deceased person before his death, as nominal defendant;
  - b) .....
  - c) .....
- 2) In the performance of his duties under the preceding subsection the Curator may incur any expense necessary for that purpose; and such expenses shall be recovered by him from the estate. The Curator shall be liable for any loss suffered by the estate as a result of his willful default or his failing to exercise in the performance of his duties the degree of care which a reasonably prudent man would in the circumstances exercise in respect of his own affairs. Upon grant of probate or

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<sup>1</sup> Ingall v Moran [1944] 1KB 160 at 165 and 165



administration being made in respect of the will or estate of the deceased person to any other person other than the Curator, the Curator shall account to the executor or administrator shall pay or hand over to him all monies and other property received by the Curator in the performance of his duties under the preceding subsection and remaining in his hands:

Provided that the liabilities of the Curator under this section shall be the liabilities of the Republic and not of the Curator personally except where:

- a) he acts otherwise than in good faith;
  - b) he acts illegally; or
  - c) he acts with gross negligence.
- 3) Notwithstanding the provisions of s.3, the provisions of this section shall apply to the estates of Nauruans

Provided that, for the purposes of applying the provisions of this section to the estates of Nauruans, the expression '**pending the grant of probate of a will or the administration of estate of a deceased person**' shall be taken as meaning the period for such persons that until the time when the persons entitled to receive the estate as beneficiaries has been finally ascertained, whether by family agreement, a decision of the Nauru Lands Committee or where any appeal is taken against the Nauru Lands Committee the decision of that Court on that appeal.

19. Mr Clodumar also wants to change the second defendant in the amendment application from "Estate of Valdion Dowiyogo (Mrs Effi Dowiyogo as personal representative to the "beneficiary of the said estate)."

#### CONSIDERATION

20. The common law of England as at 31 January 1968 was adopted as the law of Nauru by section 4 of the Customs Adopted Laws Act 1971 and again by section 11 Supreme Court Act 2018 where it is stated:

##### Common Law and Law of Equity

The common law and law of Equity of England continued to apply in the Republic to the extent of any inconsistency with any written laws.

21. The common law position on instituting proceedings by an administrator is set out in paragraphs 12 and 13<sup>2</sup> where it is stated:

[12] The rule goes back to the Privy Council case *Mayappa Chetty v Subarmani Chetty* (Supra) [1916] 1AC 603 at 608 and 609 said:

*'It is quite clear that an executor derives his title and authority from the will of his testator and not from any grant of probate. The personal property of the testator, including all rights of action, vests in him upon the testator's death, and the consequence is that he can institute an action*

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<sup>2</sup> Written submissions dated 10 December 2019 filed by Mr Udit

*in the character of an executor before he proves his will. He cannot, it is true, obtain a decree before probate, but this is not because his title depends on probate, but because the production of the probate is the only way in which, by the rules of the Court, he is allowed to prove his title. An administrator, on the other hand, derives his title solely under his grant, and cannot, therefore institute an action as administrator before he gets his grant. The law on this point is well settled; see Comyns Digest, "Administration", B.9 and 10; Thompson v Reynolds 3C.& P 123; and Woolley v Clark 5 B and Ald.744.*

[13] Insofar as it relates to the issue of the power of an administrator, Lord Justice Scott in *Ingall v Moran* [1944] 1KB 160 at 164 and 65 (supra) stated:

*"It is true that when he got his title by the grant of administration he prima facie became entitled to sue, and could then have issued a new writ, but that was all. An application by him to treat the original writ of September 17 as retrospectively valid from that date would have been refused by the court, not only because it might prejudice existing rights of defence, but because it would not be permissible under the Rules of the Supreme Court or the Judicature Acts. The old writ, was in truth, incurably a nullity. It was borne dead and could not be revived'.*

22. The common law position is consistent with our written law that is section 37(1)(a) of the 1976 Act where it is stated: "accepting services of notices and proceedings ... in proceedings commenced by the deceased **person before his death**, as nominal plaintiff. The operative words are the proceedings "**commenced by the deceased**". Only in that instance can the Curator be the nominal plaintiff. Section 37(1)(a) is consistent with Order 12, Rule 8 of the Civil Procedure Rules where the parties to the proceedings can be changed after their death.

#### FATAL ACCIDENTS ACT 1846-1908

23. The Fatal Accident Act 1846-1908 was also adopted as the law of Nauru by Section 4 of the Customs Laws Adopted Act 1972 and it is also mentioned in Section 70 of the 1976 Act.
24. In *Winfield and Jolowicz on Tort*<sup>3</sup> it is stated as follows:

"The action must normally be brought on behalf of the dependants by the executor or the administrator of the deceased<sup>4</sup> where there is no personal representative or no action is brought by him within 6 months, any dependant who is entitled to benefit under the Act may sue in his own name on behalf of himself and others.<sup>5</sup>"

<sup>3</sup> 9<sup>th</sup> Edition by JA Jolowicz with T Ellis Lewis and BM Harris page 512

<sup>4</sup> S.2. An Executor's title to sue dates from the death, but then administrator must first obtain a grant of administration: *Hilton v Sutton Steam Laundry* [1946] K.B 65; *Finnegan v Cementation Co. Ltd.* [1953] 1Q.B. 688. Cf. *Stebbins v Holst & Co Ltd* [1953] 1W.L.R 603; *Bowler v John Mowlem and Co.* [1954] 1W.L.R 1445

<sup>5</sup> Fatal Accidents Act 1864, s.1. if there is no executor or administrator, the dependents need not wait six months before suing: *Holleran v Bagnell* (1879) 4L.R.l.r. 740

25. In *Finnegan v Cementation Co. Ltd*<sup>6</sup> it was stated as follows:

“Singleton L.J, having stated the facts and read sections 1, 2 and 3 of the Fatal Accidents Act, 1846 and section 1 of the amending Fatal Accidents Act 1864 continued:

The result of the amendment made by the Act of 1846 is that if there be no executor or administrator of the deceased’s estate, it is open to a person who would benefit under the provision of the Act to bring an action instead of the action being brought by the executor or administrator.”

26. According to s.3 of the Fatal Accidents Act 1864 the proceedings must be brought within 1 year of the death of the deceased and L.J. Singleton expressed disappointment in *Finnegan v Cementation* (supra) where he stated at page 688 as follows:

“These technicalities are a blot upon the administration of the law, and everyone except the successful party likes them. The decrease in number as the years go on, and I wish that I could see a way around this one. I do not know why the Fatal Accidents Act of 1864 contained a provision that the action must be brought within a year of the death. There is no such limiting period in the case of an injury, however serious... If the plaintiff has sued merely as the widow of her husband the point which is now raised could not have been taken.”

27. So, when one reads the provisions of the Fatal Accidents Act 1864 together with the provisions of s.70(3) of the 1976 Act then it makes sense as to why it is stated therein that proceedings are to be taken within 6 months of the grant of probate or letters of administration. In this case the plaintiff did not obtain letters of administration so the issue of filing the action within 6 months does not arise, however, under s.3 of the Fatal Accidents Act 1846 the action should have been filed within 12 months of the death of the deceased. He died on 8 December 2016 and the action was filed on 7 December 2018 some 2 years later, which is well beyond the limitation period of 12 months.

## TWO SEPARATE CAUSES OF ACTION

28. I had stated earlier that there should have been two separate causes of action: one in relation to the Fatal Accidents Act and the other in relation to the personal injuries suffered by Mary – my discussions under the heading Fatal Accidents Act 1864 clarifies as to the importance of two separate causes of actions.

## CONCLUSION

29. This action contained two sets of causes of action – the first plaintiff’s claim is for damages suffered by Mary and her daughter as dependants as a result of the death of the deceased, Putaki, while Mary Haulangi the second plaintiff represents herself for her claim for personal injuries. If I were able to carve out this action into two, then I would hold that the action by the first plaintiff was a nullity and “it was born dead and could not be revived”<sup>7</sup>.

<sup>6</sup> (1953) 1QB 688 at page 691

<sup>7</sup> *Ingall v Moran* [1944] 1KB 160 at 165 and 165

30. So that action against the first defendant is struck out.
31. The second plaintiff has a cause of action against the first defendant as she is basing her claim on vicarious liability and the issue is whether the Cabinet's consent was obtained as required by s.3 of Republic Proceedings (Amendment) Act 2010. It is conceded by Mr Clodumar that Cabinet's leave was not obtained and for that reason alone I hold that the action against the first defendant is incompetent and is struck out.
32. The first plaintiff's claim against the second defendant was against her in her personal capacity as the personal representative of the deceased Valdon Dowiyogo. If she was the personal representative then the action would have been proper but she was not the personal representative of the deceased. Mr Clodumar now wishes to claim against Mrs Effi Dowiyogo as the beneficiary of the estate. Section 70 (3) states:  
  
"No proceedings shall be maintainable in respect of a cause of action in tort by which this section has **survived against the estate** of the deceased person." (emphasis added)
33. There is a cause of action against the deceased's estate and not against Mrs Effi Dowiyogo as the beneficiary of the estate so the application for amendment is refused and the action against the second defendant is struck act.

#### ADDITIONAL ISSUE

34. Mr Clodumar in his submissions stated that the reason he did not seek the Cabinet's approval to bring the action against the Republic was that he was seeking indemnity under the Third-Party Insurance Policy from the insurer.

#### THIRD PARTY INSURANCE

35. The Third-Party Insurance requirements is contained in Part 7 of the Motor Traffic Act 2014 and I just wish to highlight s.97 (2)(a) where it is stated:
  2. No sum shall be payable by an approved insurance company under the provisions of the subsection (1):
    - a) in respect of any judgement unless before, or within seven days after the commencement of the proceedings in which the judgement was given, the insurance company has notice of the bringing of the proceedings;
36. I believe the Third-Party Insurer was not informed that this action was filed. The requirement is that the Third-Party Insurer must be given notice of the bringing of the proceedings within seven days and the onus is on the plaintiff to do so. If the plaintiff fails to do so within seven days then the insurance company can refuse to satisfy the judgement- see *Dominion Insurance Limited v Bamforth and Others*<sup>8</sup>.
37. I believe that this is the first case of this nature in Nauru. It is indeed a very sad and unfortunate case as many deadlines and conditions have not been met. I sympathise

<sup>8</sup> Supreme Court of Fiji – Civil Appeal No. CBV 0005 of 2002 Justices Fatiaki, French and Blanchard

with the widow of Putaki, Mary, in making these findings against her and unfortunately, I have no discretions to do otherwise.

38. I make no orders as to costs.

DATED this 28 day of January 2020



Mohammed Shafiullah Khan  
Judge

