

THE ESTATE OF LATE IMO TA'ASI (Deceased)**AND****THE WILLS PROBATE AND ADMINISTRATION ACT 1987**HIGH COURT OF SOLOMON ISLANDS
(KABUI, J.)

Civil Case No.184 of 2003

Date of Hearing: 18th November 2005.
Date of Ruling: 22nd November 2005*Osia Ta'asi in person being the Applicant.*
G. Fa'aitoa for the 1st Respondent.
*A. Radclyffe for the 2nd Respondent.***RULING**

Kabui, J. The late Imo Ta'asi died on 25th May 2003 at Titiana village, Gizo, in the Western Province. He died without having made a will. At the time of his death, he had a substantial sum against his name representing his contributions to NPF as an employee of Solomon Star Company Limited. He is survived by a wife and seven children. The eldest child has married. His wife bore him three children. The other three children were born outside of wedlock. The married daughter might have been born outside of wedlock as well. The NPF Board had decided to share his NPF contributions between all his surviving children in varying amounts, the largest share going to his married daughter.

The Letters of Administration were granted to his surviving wife on 5th November 2003 although his wife was living away from him at the time of his death. His NPF contributions did not form part of his estate for the purpose of the administration of his estates.

Whilst in admission in the Central Hospital before his death, the Applicant and his wife were with him until he was discharged. He went back to his village and died there soon after his discharge from the Central Hospital in Honiara.

One of his brothers is the Applicant. He, his wife and other blood relatives had looked after the deceased in his last days in Titiana village until his death. They attended to all the funeral matters etc. and then the late Imo Ta'asi was buried in his resting place.

The Applicant's application.

Clearly, the Applicant is not happy with the NPF Board's decision to share his brother's NPF contributions exclusively between the children of the deceased. He therefore wants that decision by the NPF Board to be quashed and that the contributions must be paid to him. He also wants that no part of such contributions should be paid to the surviving wife. Lastly, he wants to be the one looking after the shares of the children as the guardian.

Does the Applicant have locus standi or legal standing to come to Court?

Counsel for the 2nd Respondent, Mr. Radclyffe, applied for the Originating Summons filed by the Applicant to be dismissed on the ground that the Applicant had no standing in his

action. Counsel for the NPF, Mr. Fa'aitoa, also supported the application for the dismissal of the Originating Summons. Section 33(c) of the NPF Act (Cap.109) is therefore relevant and comes into play immediately for the purpose of this application.

Section 33 (c) states-

“if no person is nominated to receive the amount or the portion, then the amount or the portion shall, notwithstanding any law to the contrary, be distributed in accordance with the custom of the member to the children, spouse and other persons entitled thereto in accordance with that custom.”

Custom is part of the law of Solomon Islands under the Constitution. The Applicant has missed out on the distribution of the deceased's NPF contributions under his custom. The spouse is not complaining but the Applicant is and that is why he has come to Court. Apart from the children and the surviving spouse, other persons so entitled in custom may also qualify as recipients of the deceased's NPF contributions.

Conclusion.

Does the Applicant have standing to raise his complaint under section 33(c) above? The answer is clearly yes. (See **Eileen Gaveke Tanavalu and Jaward Gaveke Tanavalu v. Nelson Tanavalu and the Solomon Islands Provident Fund**, Civil Appeal No. 3 of 1998). He is one of the blood brothers of the deceased all of whom are of Kiribati origin. Under the custom of Kiribati, he may be entitled as a possible recipient of the NPF contributions. The Applicant clearly has locus standi or legal standing to question the NPF Board distribution. I rule accordingly.

Rose Ta'asi is out of the dispute and should not be a party to the proceedings as the 2nd Respondent. I order that she be not joined unless advised to do otherwise by her Solicitor.

Frank O. Kabui
Puisne Judge