

JUDGMENT Express

406

Divyyaa Machap
v. Lembaga Kumpulan Wang Simpanan Pekerja

[2024] 5 MLRH

DIVYYAA MACHAP

v.

LEMBAGA KUMPULAN WANG SIMPANAN PEKERJA

High Court Malaya, Shah Alam
Choong Yeow Choy JC
[Suit No: BA-22NCvC-503-12-2022]
18 June 2024

Succession: *Distribution of estate — Funds in deceased's two Employees' Provident Fund accounts that were merged — Competing claims by plaintiff as administratrix of deceased's estate and named nominee/beneficiary of deceased — Deceased named nominee beneficiary of account with no funds, which was merged with deceased's other account that had funds remaining — Whether defendant vested with power to merge deceased's accounts — Whether letters of administration took precedence over deceased's account that had no nomination*

The plaintiff was the biological daughter of Machap a/l Suppiah (deceased) whose two accounts with the defendant, ie Account No: 10458236, and Account No: 13716036 were merged by the defendant into a single account and in the process, Account No: 13716036 was deleted/erased leaving the deceased with only Account No: 10458236. Consequent thereto, competing claims were made by one Dharsyaini a/p Vijaya Kumar ('Dharsyaini') who was the nominee named in Account No: 13716036 and the plaintiff who was the administratrix of the deceased's estate. The questions of law under O 14A of the Rules of Court 2012 that the parties sought determination of *inter alia* were, whether the letters of administration ('LA') granted by the High Court vide OS No: WA-31-31NCvC-996-03-2022 took precedence since Account No: 10458236 had no nomination; whether Account No: 13716036 in respect of which Dharsyaini was the named nominee to receive the amount standing in credit therein was valid; and whether the defendant upon discovering that the deceased had during his lifetime two accounts, was vested with the power to merge both the aforesaid accounts. The plaintiff argued that the LA applied to Account No: 10458236 and that the defendant did not have the power to merge the aforesaid accounts. The defendant in response argued that the nomination made in Account No: 13716036 remained valid despite the merger as it complied with the provisions of the Employees Provident Fund Act 1991, the Employees Provident Fund Regulations 2001 ('2001 Regulations') and the Employees Provident Fund Rules 1991 ('1991 Rules'), and therefore the question of the application of the Probate and Administration Act 1959 did not arise. The defendant also argued that the statutory nomination could only be 'diberhentikan' or 'terbatal' under one of the circumstances provided for in reg 7(1) of the 2001 Regulations, and that no such circumstances arose in this instance.



Held (dismissing the OS):

(1) None of the circumstances as outlined in reg 7(1) of the 2001 Regulations had been triggered or invoked in this instance. The nomination thus remained valid and in accordance with reg 9(2)(a)(i) of the 2001 Regulations, Dharsyaini was entitled to the balance sum in Account No: 10458236 when the said account was merged with Account No: 13716036. The LA did not take precedence over the account that had no nomination. (paras 23, 25 & 26)

(2) While the Employees Provident Fund Act 1991, the 2001 Regulations and the 1991 Rules contained no express provisions granting the defendant the power to merge accounts, there were equally no provisions therein that prohibited such action. The defendant thus was entitled to exercise its administrative powers to merge the said account. (para 31)

Case(s) referred to:

How Yew Hock v. Lembaga Kumpulan Wang Simpanan Pekerja [1996] 1 MLRA 253 (refd)

Krishnaveni Munusamy & Anor v. Bawaneswary R Chinniah & Ors [2013] MLRHU 123 (refd)

Legislation referred to:

Employees Provident Fund Rules 1991, r 34

Employees Provident Fund Regulations 2001, regs 7(1), (2), (3), 9(2)(a)(i)

Rules of Court 2012, O 14A

Counsel:

For the plaintiff: Jayanthi Devi Balaguru (K Sathia Devi with her); M/s JD Balaguru

For the defendant: Noor Adzraii Noor Azhar (Saifuddin Mohd Zin with him); Lembaga Kumpulan Wang Simpanan Pekerja

JUDGMENT

Choong Yeow Choy JC:

Introduction

[1] Every contributor/member should have one main account (number) with the Employees' Provident Fund. However, in the present matter before this Court, the deceased contributor/member, Machap a/l Suppiah, had two main accounts (numbers) assigned to him. The accounts are:

(i) Account No: 10458236; and

(ii) Account No: 13716036



[2] Machap a/l Suppiah in the present case did not make any nomination for Account No: 10458236. However, he nominated one Dharsyaini a/p Vijaya Kumar as the beneficiary for Account No: 13716036.

[3] There were funds remaining in Account No: 10458236, but none left in Account No: 13716036. Normally, this would have been the end of the matter. However, the situation was complicated when the Employees' Provident Fund merged these two accounts into a single account. In the process, Account No: 13716036 was subsumed into Account No: 10458236. This action effectively deleted or erased Account No: 13716036, leaving Machap a/l Suppiah with only Account No: 10458236

[4] The events described above led to competing claims between Dharsyaini a/p Vijaya Kumar, the nominee named in Account No: 13716036, and the Plaintiff, who serves as the administratrix of Machap a/l Suppiah's estate

The Questions For Determination

[5] The parties have reached an agreement for this Court to address a number of legal questions under O 14A of the Rules of Court 2012.

[6] The Questions couched by the parties are as follows:

Question 1

Whether Machap a/l Suppiah (the Deceased) has two accounts under the Employees Provident Fund namely:

(iii) Account No: 10458236; and

(iv) Account No: 13716036

Question 2

Whether as Account No: 10458236 has no nomination, the Letters of Administration granted by the Kuala Lumpur High Court vide OS No: WA-31NCvC-996-03-2022 with the provisions of the Probate and Administration Act 1959 should take precedence.

Question 3

Whether Account No: 13716036 which has a nomination to a Dharsyaini a/p Vijaya Kumar to receive the amount standing in credit in this account which was duly registered and retained for safekeeping by the Employees' Provident Fund Board is valid.

Question 4

Whether the Employees' Provident Fund Board is vested with the power to merge Accounts No 10458236 and 13716036 during the lifetime of Machap a/l Suppiah on discovering there were two (2) accounts under Machap a/l Suppiah.



Question 5

In the even this Honourable Court answers No 4 in the affirmative, the following will be determined as to the nomination of the merged Account No: 10458236.

Question 6

If so, there was no nomination for Account No: 10458236 registered and retained for safe-keeping by the Employees' Provident Fund Board at the time of the death of Machap a/l Suppiah, having regards that at all times the nomination is revocable until the death of the nominator.

Question 7

Whether the Employees' Provident Fund Board's records at the time of the death of Machap a/l Suppiah showed that Account No: 10458236 had no nomination registered with the credit of RM55,363.26 and hence the advice of the Employees' Provident Fund Board to Divyyaa Machap to apply and obtain the Letters of Administration under the provisions of the Probate and Administration Act 1959 is valid and Divyyaa Machap is deemed the recipient.

Question 8

Whether the Employees' Provident Fund Board's records at the time of the death of Machap a/l Suppiah showed that Account No: 13716036 had the nomination of Dharsyaini a/p Vijaya Kumar registered and in safe-keeping of the Employees' Provident Fund Board with no credit.

[7] This Court holds the view that the pivotal issues in this case are encapsulated in Questions 2, 3, and 4.

The Parties And The Background Facts

[8] The Plaintiff, Divyyaa Machap, is the biological daughter of Machap a/l Suppiah.

[9] The Defendant, Kumpulan Wang Simpanan Pekerja ("KWSP") or Employees' Provident Fund ("EPF") is Malaysia's foremost pension fund. It was established in 1951 to help the Malaysian workforce save for their retirement in accordance to the Employees Provident Fund Act 1991.



[10] Machap a/l Suppiah passed away on 17 July 2021. Thereafter, the Plaintiff made the following averment in her Statement of Claim in a Writ action that she had commenced against the Defendant on 15 December 2022:

1. Plaintiff telah dinasihati oleh pegawai Kumpulan Wang Simpanan Pekerja agar memohon satu Surat Kuasa Mentadbir untuk pengeluaran KWSP si mati MACHAP A/L SUPPIAH (K/P NO: 680106-04-5373/A0999502) NO. AKAUN: 10458236.
2. Plaintiff telah memohon dan memperolehi Surat Kuasa Mentadbir No: WA-31NCvC-996-03/2022 untuk harta pusaka si mati MACHAP A/L SUPPIAH (K/P NO: 680106-04-5373/A0999502) bertarikh 31 Mei 2022 berdasarkan semakan awal dilakukan pada ketika itu.
3. Plaintiff telah melalui firma peguamcaranya, Tetuan JD Balaguru menghantar satu surat bertarikh 19 September 2022 kepada Defendan mengenai tuntutan pengeluaran KWSP si mati MACHAP A/L SUPPIAH (NO. AKAUN: 10458236) oleh Plaintiff.
4. Plaintiff telah sekali lagi melalui firma peguamcaranya, Tetuan JD Balaguru menghantar satu lagi surat peringatan bertarikh 10 November 2022 kepada Defendan mengenai tuntutan pengeluaran KWSP si mati MACHAP A/L SUPPIAH (NO. AKAUN: 10458236) oleh Plaintiff.
5. Pada 1 Disember 2022, Plaintiff telah menerima satu surat daripada Defendan yang bertarikh 24 November 2022 dan ditandakan "TANPA PREJUDIS" di mana Plaintiff dinasihatkan bahawa sekiranya Plaintiff mempunyai bantahan terhadap penamaan yang dibuat oleh mendiang bapanya semasa hayatnya, Plaintiff dinasihatkan untuk menggunakan saluran perundangan dengan memfailkan Injunksi Mahkamah atau Saman Pemula daripada Mahkamah Tinggi (Sivil) dan menamakan Lembaga KWSP sebagai responden.

[11] The root cause for the filing of this action by the Plaintiff against the Defendant can be attributed to two decisions and/or actions taken by the Defendant. The first is their decision in merging the two accounts into a single account and the second was their decision that the nomination of Account No: 13716036 is deemed automatically the nomination for Account No: 10458236. These decisions meant that the monies that were originally in Account No: 10458236 are now subject to a claim by both Dharsyaini a/p Vijaya Kumar, the beneficiary nominated for Account No: 13716036 and the Plaintiff, the Administratrix of Machap a/l Suppiah's estate.

The Parties' Contentions

[12] The Plaintiff's contentions were simply that first, the deceased member Macha a/l Suppiah did not make any nomination for Account No: 10458236 under reg 9 of the Employees Provident Fund Regulations 2001. However, the Plaintiff did concede and did not challenge the fact that the deceased member Macha a/l Suppiah did make a nomination on 7 April 2014 for Account No: 13716036 under reg 9 of the said Regulations. The beneficiary named being Dharsyaini a/p Vijaya Kumar.



[13] Following the above, the Plaintiff's argument was that the Letters of Administration granted by the Kuala Lumpur High Court vide OS No: WA-31NCvC-996-03-2022 under the provisions of the Probate and Administration Act 1959 apply to Account No: 10458236.

[14] A parallel submission made by the Plaintiff was that the Defendant is not vested with any power to merge the accounts of the Plaintiff.

[15] As far as the Defendant was concerned, it was merely exercising its administrative power when it merged the two accounts.

[16] More importantly, the Defendant argued that the nomination made in Account No: 13716036 had complied with the provisions of the Employees Provident Fund Act 1991, the Employees Provident Fund Regulations 2001 and the Employees Provident Fund Rules 1991. That statutory nomination can only be "diberhentikan" or become "terbatal" under one or the circumstances expressly provided for in reg 7(1) of the Employees Provident Fund Regulations 2001 and that did not happen in the present case. Hence, the nomination remains valid despite the merger of the accounts.

This Court's Decision

[17] The answer to Question 1 is undisputable and it is in the affirmative. The reason being the deceased Machap a/l Suppiah had registered himself as a member on 10 March 1984 using his old Identity Card bearing the No: A009502. For this he was assigned Account No: 10458236. However, on 1 August 1995, the deceased Machap a/l Suppiah had registered himself as a member for the second time, using his new identity card bearing No: 680106-04-5373. On this occasion, he was assigned with Account No: 13716036.

[18] The answers to Questions 2 and 3 are crucial for the determination of this matter. Before this Court could answer both of these questions, it is apt that we recap the arguments advanced by the parties.

[19] As Account No: 10458236 was without any nomination, the Plaintiff reasoned that the Letters of Administration granted by the Kuala Lumpur High Court vide OS No: WA-31NCvC-996-03-2022 under the provisions of the Probate and Administration Act 1959 apply to this account. Accordingly, the Plaintiff contended that the answer to Question 2 should be in the affirmative.

[20] The Defendant argued instead that since the two accounts have been merged and the nomination from Account No: 13716036 remains as a valid nomination, the question of the application of the Probate and Administration Act 1959 does not arise. The logic of this argument being that the accounts have been merged and the nomination was in no way affected by the merger of these accounts.



[21] The nomination made in Account No: 13716036 was indeed valid as it was made in accordance with the provisions of the Employees Provident Fund Act 1991, the Employees Provident Fund Regulations 2001 and the Employees Provident Fund Rules 1991. That was a statutory nomination as explicated by the Federal Court in *How Yew Hock v. Lembaga Kumpulan Wang Simpanan Pekerja* [1996] 1 MLRA 253. This point was conceded by the Plaintiff.

[22] Regulation 7(1) of the Employees Provident Fund Regulations 2001 provides as follows:

Penghentian Penamaan

7.(1) Sesuatu penamaan hendaklah terhenti berkuat kuasa:

- (c) dengan apa-apa penamaan yang dibuat kemudiannya dalam borang KWSP 4; atau

[Pin. PU(A) 382/2016]

- (d) bagi ahli yang beragama Islam, jika:

- (i) pos satu tahun dari tarikh kematian ahli.

[Pin. PU(A) 382/2016]

[23] Upon an examination of reg 7(1), this Court is in agreement with the Defendant that the none of the circumstances as outlined in reg 7(1) has been triggered or invoked in this case.

[24] In addition, this Court takes cognisance of regs 7(2) and 7(3) which state as follows:

- (2) Penamaan yang disebut dalam subperaturan (1) tidaklah terbatal dengan apa-apa wasiat atau apa-apa perbuatan, peristiwa atau cara lain.
- (3) Jika terdapat lebih daripada seorang orang yang dinamakan dan salah seorang daripada orang yang dinamakan itu mati terlebih dahulu daripada ahli, maka, jika tiada apa-apa penamaan yang dibuat kemudiannya oleh ahli itu bagi melupuskan bahagian orang yang dinamakan yang telah mati itu, bahagian itu hendaklah kembali kepada harta pusaka ahli itu.

[25] Since the nomination remains valid, this Court agrees with the Defendant that in accordance with reg 9(2)(a)(i) of the Employees Provident Fund Regulations 2001 (which deals with “Pembayaran atas kematian ahli jika ada penamaan”), Dharsyaini a/l Vijaya Kumar is entitled to the balance sum in Account No: 10458236 when this account was merged with Account No: 13716036. Regulation 9(2)(a)(i) of the Employees Provident Fund Regulations 2001 reads as follows:

- (2) Jika seorang ahli mati dan terdapat penamaan dibuat mengikut Peraturan-Peraturan ini:



(a) orang sebenar yang dinamakan itu hendaklah menerima amaun yang berada pada kredit ahli yang mati itu:

(i) dalam hal ahli yang bukan beragama Islam, sebagai seorang benefisiari;

[26] In view of the above, the answer to Question 2 is in the negative while the answer to Question 3 is in the affirmative.

[27] On whether the Employees' Provident Fund Board is vested with the power to merge the two accounts, the Plaintiff's position is that the Defendant is not vested with any power to merge the accounts of the Plaintiff while the Defendant maintained that it was merely exercising its administrative power to merge the accounts.

[28] In addressing this point, the Plaintiff reverted to the following argument, that is, the deceased Machap a/l Suppiah did not make a second or subsequent nomination, citing r 34 of the of the Employees Provident Fund Rules 1991 which reads as follows:

34. Nominations to be made in Form EPF 4.

- (1) Every nomination shall be made in writing in Form EPF 4 and shall be signed by the member of the Fund in the presence of a witness, and the signature of such member shall be attested by the witness.
- (2) Where a member of the Fund having made a nomination in accordance with these Rules wishes to make a second or subsequent nomination he shall complete and forward a fresh Form EPF 4 containing such nomination.
- (3) A nomination shall be of no effect unless the Form EPF 4 duly completed is sent and reaches the Board during the lifetime of the member.
- (4) Every nomination form registered shall be retained in safe-keeping by the Board.
- (5) Any person who attests the signature of the member of the Fund in respect of a nomination shall be disqualified from any benefit thereunder.

[29] The Plaintiff further referred this Court to the decision of the High Court in *Krishnaveni Munusamy & Anor v. Bawaneswary R Chinniah & Ors* [2013] MLRHU 123 which had alluded to the said r 34.

[30] The core argument made by the Plaintiff is that "it is not within the powers of the Defendant to deem that the nomination made by the Deceased for Account No: 13716036 is automatically to be treated as the nominee for Account No: 10458236, bearing in mind that there is no fresh nomination in the prescribed Form EPF 4 containing such nomination and retained in safe-keeping by the Board for Account No: 10458236".



[31] While it is true that the Employees Provident Fund Act 1991, the Employees Provident Fund Regulations 2001, and the Employees Provident Fund Rules 1991 contain no express provisions granting the Defendant the power to merge accounts, there are equally no provisions within these Act, Regulations, and Rules that prohibit such action. Therefore, this Court concludes that the Defendant is entitled to exercise its administrative powers to merge the said account.

[32] In view of the findings by this Court as to the issues raised in Questions 2 and 3 (in paras [19] to [26]) and in Question 4 (in paras [27] to [31]), this Court is of the considered view that the answers to Questions 6, 7 and 8 are self-evident.

[33] This is one case where the outcome will be devastating to either the claimants, namely, the Plaintiff and Dharsyaini a/l Vijaya Kumar. It is unfortunate that only one of these claimants will be entitled to the proceeds in the account of Machap a/l Suppiah that is with the Defendant.

[34] The Defendant has no vested interest in the present suit. Its only concern is to perform its statutory duties as demanded of it.

[35] It is acknowledged that Machap a/l Suppiah did not make a new nomination or renominate Dharsyaini a/p Vijaya Kumar after the accounts were merged. However, it is equally important to note that he did not cancel the existing nomination of Dharsyaini a/p Vijaya Kumar either.

[36] This case is unprecedented, and the Court must proceed by thoroughly examining and applying the existing provisions of the 'law.' An interpretation of these provisions supports the position advocated by the Defendant.

[37] The Originating Summons in encl 1 is dismissed.

[38] This Court is of the view that, considering the circumstances of the case, an order of no costs is fair.





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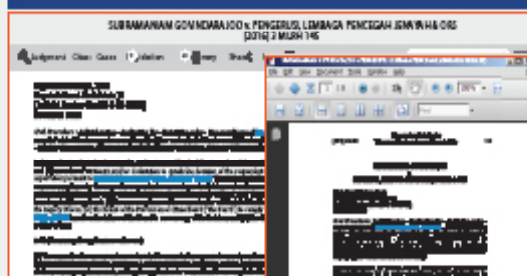
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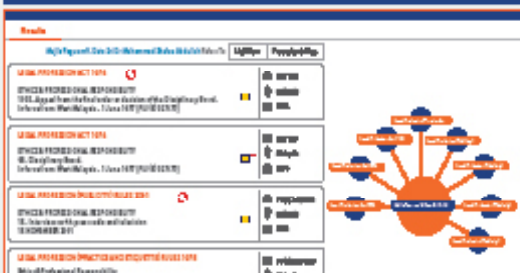
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