



I assent.

[L.S.]

J. I. ULUIVUDA
President

[7th July 2004]

AN ACT

TO PROVIDE FOR TESTAMENTARY DISPOSITIONS AND FOR RELATED MATTERS

ENACTED by the Parliament of the Fiji Islands—

Short title

1.—(1) This Act may be cited as the Inheritance (Family Provision) Act 2004.

(2) This Act comes into force on a date appointed by the Minister by notice in the *Gazette*.

Interpretation

2. In this Act unless a contrary intention appears—

“child” means, in relation to a deceased person, any child, stepchild or adopted child of the deceased person and includes a child *en ventre sa mere*;

“Court” means the High Court of Fiji;

“dependant” in relation to a deceased person, means any person who was being wholly or substantially maintained or supported (otherwise than for full valuable consideration) by the deceased person at the time of his death being—

- (a) a parent of the deceased person;
- (b) the parent of a surviving child under the age of 18 years of the deceased person; or
- (c) a person under 18 years; or

“spouse” means, in relation to a deceased person, a surviving spouse and includes a surviving spouse who has been divorced whether before or after the commencement of this Act and who has not remarried before the death of that person, if the surviving spouse is receiving or is entitled to receive maintenance from that person at the time of that person’s death;

“stepchild” means, in relation to a deceased person, a child of that person’s spouse who is not a child of the deceased person;

“will” has the meaning given to it in the Wills Act.

Power of Court to order provisions

3.—(1) If any person (“the deceased person”) dies whether testate or intestate and adequate provision is not made for a spouse, child or dependant from the estate of the deceased person, the Court may, on application by or on behalf of the spouse, child or dependant, order that such provision as the Court thinks fit be made out of the estate of the deceased person for the spouse, child or dependant.

(2) The Court shall not make an order under this section in respect of a dependant unless it is satisfied that some provision should be made for the dependant having regard to the extent to which the dependant was being maintained or supported by the deceased person before his death, the need of the dependant for the continuance of that maintenance or support and the circumstances of the case.

(3) The Court may—

- (a) impose conditions to the order;
- (b) order that the provision be paid out as a lump sum or a periodical or other form of payment; or
- (c) refuse to make an order in favour of a spouse, child or dependant whose character or conduct is such as, in the opinion of the Court, disentitles the spouse, child or dependant to the benefit of an order, or whose circumstances are such as to make such refusal reasonable.

(4) Any payment ordered under this Act shall, unless the Court otherwise directs, fall rateably upon the whole estate of the deceased person or upon so much thereof as is or may be directly or indirectly subject to the jurisdiction of the Court.

(5) An order made under this section shall have effect as if it were a codicil to the will of the deceased or, in the case of intestacy, as if it were a will of the deceased person.

(6) The Court may, by an order or any subsequent order, exonerate any part of the estate of the deceased person from the order, after hearing any party that may be affected by such exoneration as it thinks necessary, and may for that purpose direct the personal representative to represent, or appoint any person to represent, any such party.

(7) The Court may order a periodic payment or lump sum to be paid by any beneficiary in the estate, to represent, or in commutation of, such proportion of the sum ordered to be paid as falls upon the portion of the estate in which the beneficiary is interested and exonerate such portion from further liability, and direct in what manner such periodic payment shall be secured, and to whom such lump sum shall be paid, and in what manner it shall be invested for the benefit of the person to whom the commuted payment was payable.

(8) Where an application has been filed on behalf of any person, it may be treated by the Court as, and, so far as regards the question of limitation period for application shall be deemed to be, an application on behalf of all persons who might apply.

(9) The personal representative, the Public Trustee of Fiji or any person acting as the next friend of any infant or any mentally ill person, may apply on behalf of any person being an infant, or being mentally ill in the case where such person might apply, or may apply to the Court for directions as to whether he ought so to apply, and, in the latter case, the Court may treat such application as an application on behalf of such person for the purpose of avoiding the effect of any limitation period.

(10) Unless the Court otherwise directs, no application shall be heard by the Court at the instance of a party claiming the benefit under this Act unless the proceedings for such application be instituted within 9 months after the death of the person; but the Court may at its discretion hear and determine an application although a grant of probate or letters of administration has not been made.

(11) A person who, if a declaration of legitimacy were made upon his application under section 5 of the Legitimacy Act (Cap.57), would be entitled to make an application under this Act, may apply but such application shall not be proceeded with until the person has obtained a declaration of paternity under that Act, and the Court may give such directions and act as it thinks fit to facilitate the making and determination of all necessary applications on behalf of that person under that Act and this Act.

(12) Upon any order being made, the portion of the estate comprised therein or affected shall be held subject to the order.

(13) No mortgage, charge or assignment of or over such provisions, made before the order is made, shall be of any force, validity or effect and no such mortgage, charge or assignment made after the order is made shall be of any force, validity or effect unless made with the leave of the Court.

Power of Court to set aside transactions

4.—(1) Where, within 12 months immediately preceding the date of death the person entered into a transaction whereby the property of the deceased person was disposed in favour of a person who was not a *bona fide* purchaser for full valuable consideration, and the Court considers that the transaction was entered into with an intention by the deceased

person to avoid the rights of any potential claimant under this Act, the Court may set aside that transaction and order that the property be included in the estate of the deceased person for the purposes of this Act.

(2) For the purposes of subsection (1) the Court shall have regard to the rights and interests of any third party which might be affected when making the order.

(3) Where any sum of money or other property is received by any person as a *causa mortis* gift made by the deceased person, that sum of money or that other property shall be treated as part of the estate of the deceased; but this subsection does not render any person liable for having paid that sum or transferred that other property in order to give effect to that *causa mortis* gift.

Court may inquire into whether the order effected

5.—(1) Where, whether before or after the commencement of this Act, the Court has ordered a periodical payment or has ordered any part of an estate or a lump sum to be invested for the benefit of any person, the Court may, on the application of any person, inquire whether any party deriving benefit under the order is still living or has become possessed of or entitled to provision for his or her proper maintenance or support and into the adequacy of the provision, or whether the provision made by the order for any such party remains adequate, and the Court may increase or reduce the provision so made or discharge, vary or suspend the order or make such other order as it thinks just in the circumstances.

(2) For the purpose of subsection (1), the Court shall not increase the provisions so made unless the income of the estate or the capital or income of the part of the estate or lump sum invested for the benefit of the person concerned in pursuance of the original order is considered by the Court to be sufficient for the purposes of such increase and any other lawful payment from such income.

(3) Without limiting subsection (1), if the Court has increased the provision made for the benefit of any person and at any subsequent date the Court considers—

- (a) the income of the estate;
- (b) the capital or income of the part of the estate invested for the person; or
- (c) the capital or income of the lump sum invested for the person,

is insufficient for the purposes of the provision and any other lawful payments from that income, the Court may reduce or suspend any increase or may discharge, vary or suspend the original order as it thinks just in the circumstances.

Application of Trustee Act

6.—(1) This section applies notwithstanding section 61 of the Trustee Act (Cap.65).

(2) No action shall lie against the personal representative by reason of his having distributed any part of the estate and no application or order under this Act shall disturb the distribution, if it was properly made by the personal representative for the purpose of providing for the maintenance or support of a spouse or child of the deceased person totally or partially dependent on the deceased person immediately before the death whether or not the personal representative had notice at the time of the distribution of any application or intended application under this Act in respect of the estate.

(3) No person entitled to make an application under this Act is entitled to bring an action against the personal representative by reason of his having distributed any part of the estate if the distribution was properly made by the personal representative after the person, being of full legal capacity, notified the personal representative in writing that the person either—

- (a) consents to the distribution; or
- (b) does not intend to make any application that would affect the proposed distribution.

(4) No action shall lie against the personal representative by reason of his having distributed any part of the estate if the distribution was properly made by the personal representative after the expiration of 6 months from the death of the deceased person and without notice of any application or intended application under section 3(1) or under section 4 in respect of the estate.

(5) For the purposes of this section, notice to a personal representative of intention to make any application under this Act shall be in writing, signed by the applicant or his legal practitioner and shall lapse and be incapable of being renewed, and the personal representative may act as if he had not received the notice unless, before 3 months expires after the day on which he first receives notice of intention to make the application, the personal representative receives notice in writing that the application has been made to the Court or is served with a copy of the application.

(6) Subsection (5) does not prevent the subsequent making of an application within any other period allowed by or pursuant to this Act.

Repeal

7. Without limiting section 18 of the Interpretation Act, the Inheritance (Family Provision) Act (Cap.61) is repealed.

Passed by the House of Representatives this 9th day of June 2004.

Passed by the Senate this 1st day of July 2004.