

IN THE MATTER OF DAVID FOWLER BURNESSE v THE FIJI NATIONAL PROVIDENT FUND, THE REPUBLIC OF FIJI AND THE ATTORNEY GENERAL HBC CIVIL ACTION 183 OF 2011

PRESS STATEMENT

Fiji's legal firm, ShameemLaw, has made an application in the High Court on behalf of its client, Mr David Fowler Burness, for human rights protection against unfair discrimination on the grounds of age. The application states that the proposed review of the Fiji National Provident Fund (FNPF) pension scheme will unfairly discriminate against Mr Burness and will breach the contract between the Fiji National Provident Fund and Mr Burness. The fiduciary duty of FNPF towards Mr Burness as a pensioner, as well as FNPF's contractual obligations towards him, is included in the action as grounds for legal scrutiny by the High Court.

Mr Burness is a 75 year old beneficiary of the FNPF who says that his human right to live with dignity in old age, his right to protection of his property, his right to social security, and his right to life, all of which the Republic of Fiji, as a member of the United Nations, is compelled to protect, will be violated if the proposed reforms are enacted. FNPF has said that on July 1 2011 Government will enact a new law reducing the pensions of those already receiving benefits. The principal of ShameemLaw, Dr Shaista Shameem, states that this proposal is an outrageous disrespect for the rights of elderly beneficiaries who have contributed so much to Fiji's economy through their hard work and total dedication to Fiji.

Ex-parte application for interim injunction against July 1 possible enactment of a new FNPF Decree

ShameemLaw yesterday also made an ancillary application on behalf of Mr Burness for an interim injunction against the Fiji National Provident Fund, the Republic of Fiji, and the Attorney General This application is still before the Chief Justice of Fiji for review, which is expected on June 28th. Dr Shameem will communicate the decision of the Chief Justice to the public. Dr Shameem informs the press that, since the proposed reforms were expected to be enacted by a non-reviewable Decree on July 1, her client wished to have the Court grant his application for an ex-parte injunction because the enactment of a Decree will be used to cancel or terminate his application; this would frustrate Mr Burness' right to a remedy in the courts of Fiji which in itself would be a violation of Fiji's obligations to protect and promote international human rights law. Dr Shameem said that if there is any Decree promulgated to

terminate the proceedings, ShameemLaw would consider what further actions would be appropriate for her law firm to take.

Dr Shameem said Mr Burness' application was a public interest matter of grave significance. She says it would be foolish of the Government to enact a Decree merely to thwart the desire of Mr Burness, and other pensioners in the same position, to have their legitimate grievances regarding the FNPF properly adjudicated. She urges the Government to let the Court make its decision on the basis of legal issues and not preempt its functions by promulgating a Decree just to frustrate pensioners' right to be heard by the courts. Dr Shameem said that she was confident that the High Court would consider her application on its merits as a human rights application. The application was made pursuant to the Human Rights Commission Decree No 11 of 2009 and international human rights law, and relies on the common law on human rights, contracts and fiduciary duty of the State.

The High Court has set the date for the first mention on Mr Burness' inter-partes application on 4th July. ShameemLaw today served court papers on the FNPF, the Republic of Fiji and the Attorney General.

The Notice of Motion and Affidavit in support are attached to this Press Statement for the information of the public. Stamped court copies of the documents will be available at the press conference to be held at a time and place advised today.

For further information members of the press and the public are invited to contact Dr Shaista Shameem on mobile number **9514751** or shaistashameem5@gmail.com or info@law.com.fj .

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