

**IN THE FAMILY DIVISION OF THE HIGH COURT AT SUVA**

**APPELLATE JURISDICTION**

<b>APPEAL NUMBER:</b>	<b><i>19/Suv/ 0005</i></b> <b><i>(Original Action Number: 18/Nas/0635)</i></b>
<b>BETWEEN:</b>	<b><i>Ramu</i></b> <b>APPELLANT</b>
<b>AND:</b>	<b><i>Amisha</i></b> <b>RESPONDENT</b>
<b>Appearances:</b>	<i>Ms. Kean for the Appellant.</i> <i>Respondent in Person.</i>
<b>Date/Place of judgment:</b>	<i>Wednesday 20 October 2021 at Suva.</i>
<b>Coram:</b>	<i>Hon. Madam Justice Anjala Wati</i>
<b>Category:</b>	<i>All identifying information in this judgment have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarities to any persons is purely coincidental.</i>

**JUDGMENT**

**A. Catchwords:**

**FAMILY LAW – CHILD MAINTENANCE** – Appeal by father on the ground that the award of maintenance by the trial court is not adequate – whether the court had taken into account proper income and expenses of the parties – whether the court had taken into consideration proper needs of the child – whether the court had arrived at a proper amount for the maintenance of the child – whether the award of child maintenance is adequate and if not what is the proper award in the circumstances of the case.

**B. Legislation:**

- 1. Family Law Act 2003 (“FLA”): ss. 90 and 91.**

### ***Cause and Background***

1. The father appeals against the decision of the Family Division of the Magistrates Court of 21 November 2019 on the quantum of award against the mother in the sum of \$25.00 per week in child maintenance.
2. The father is not convinced with the quantum and appeals on the ground that the Court did not take into account the proper needs of the child.
3. In the form of brief background, the parties were married in mid - 2016. They separated in late 2017. They have one son from the marriage. The child is 9 years old now. Their marriage was dissolved in early 2019.

### ***Analysis***

4. The only reason the Court provided for arriving at the quantum of \$25.00 per week is justified in one sentence which appears in paragraph 11 of the judgment. I will cite the paragraph in full:

*“Having established that the respondent is liable to pay child maintenance the question remaining to be answered is, how much? I have gone over the testimony of the respondent. Whatever amount that is to be given has to reflect the economic realities of the respondent and the greater need of their child getting the support he needs”.*

5. The Court does go onto say that it has considered the factors in s. 90 of the FLA but it does not go onto identify what it considers to be the proper needs of the child and the proper income and expenses of the parties to arrive at a suitable quantum for the child.
6. When the Court assesses child maintenance, it is duty bound to consider ss. 90 and 91 of the FLA. In simple terms, in this case, the Court ought to have examined the income of the parties and their proper needs to be sustained from that income. It would then have to see

what portion of their income is available to maintain the child after working out the proper needs of the child.

7. There is no point in saying that it has considered the law when the Court fails to act in terms of the law to justify the reasons for its findings. The way the Court worked out the child maintenance is what I call amounts to "*plucking a figure from the air*".
8. The Court is bestowed with the duty and responsibility to ensure that when proceedings in respect of the child are before it, the interest of the child is taken care of. Dealing with matters in a lethargic way does not promote the interest of the child. It is urged that the Court below will take some heed of my concerns and act properly in the near future so that proper needs of the child are met by both parents.
9. Since the Court below has not justified its reasons for arriving at the quantum, I will examine on the pleadings and the evidence as to what order is suitable in the case.
10. Let me first deal with the father's application and evidence. In his application for child maintenance, he stated that he is a truck driver. His application contains sworn information. In that application he indicates that he does not have any income. I find this very surprising. If he is working, he is supposed to earn income. Why else is he working? Why is there a need for him to hide his income? His application form is therefore not reliable although it has sworn evidence.
11. He notes his weekly expenses as \$362.00 which is made up as follows:

- *Food* - *\$100.00*
- *Electricity* - *\$50.00*
- *Water* - *\$10.00*
- *Telephone* - *\$7.00*
- *Motor Vehicle – Petrol* - *\$40.00*
- *Other loan repayments* - *\$105.00*
- *Wear and Tear (vehicle)* - *\$50.00*

12. He seeks in the application an award of \$100 per week for the child. He notes the child's expenses as \$100 per week which consists of \$50 for food and \$50 for clothing and shoes.
13. In his oral evidence in Court, the father stated that his application correctly reflects the expenses for him and the child. He further stated that he looks after the child. He caters for the child when he is sick. The child also has school expenses.
14. The trial proceedings do not show that any party was given a chance to cross – examine the other party on their proper income and expenses. There is however no complaint by any party on this issue. I will therefore presume that none of the parties wanted to challenge the evidence that the other had tendered in Court.
15. Given the evidence in the lower Court, I will work out the proper income and expenses of the father. His counsel informed me that his annual income was \$18,000 per annum. It is common knowledge that there is no tax applicable on this amount. The compulsory deduction that he needs to pay on this amount is the Fiji National Provident Fund which I will calculate at 8%, although the government has reduced this to 5% temporarily due to Covid – 19 pandemic.
16. The proper net income of the father is \$318.00 per week. From the expenses that he has listed in his application, I find that the expenses for electricity is inflated. For two people, I do not find that the amount of electricity for a month would be \$200. If anything, I will give an allowance for \$100 a month which is \$25.00 per week for him and the child. He has also noted his expenses for motor vehicle wear and tear to be \$50 per week. He has not tendered any documents to indicate that the wear and tear expense is so high. I find that the amount is inflated. The proper allowance that can be made is \$100.00 a month. I also do not find that he has provided any evidence for payment of loans at the rate of \$105.00 per week. He does not state what the loan is for and why he took the loan. The amount is not justified on the evidence and I will not make any allowance for loan repayment as a result.

17. I therefore find that the proper expenses for the father are \$207.00 per week. From his income he is left over with about \$111 per week. I find that the child will need at least \$100 a week for his needs which includes money for his food, travel expenses, school stationaries, medicine, clothes, and pocket expenses. Although the father has only noted \$50 for food and \$50 for clothes and shoes, I find that the sum of \$50 for clothes and shoes can include all other expenses I have identified which he has not made any claims for.

18. The father has asked this Court to award him \$35.00 per week for taxi fare. He says that this is the amount that costs him for 5 days for return from school. He did not make this claim in the lower court. He did not identify this as a claim in his application or support his claim by evidence in the lower court or in the appeal proceedings.

19. I find that the claim for taxi fare was neither properly made in the first place nor verified for which any allowance should be made. I therefore still work at \$100 per week and find that to be the proper expenses for the child.

20. The wife's response includes her income and expenses. In that response she states that her income per week is \$182.50 per week. Her expenses is shown to be \$181 per week which includes:

- *Fares/car parking* - \$10.00
- *Other loan repayments* -\$139.00
- *Mobile recharge* - \$7.00
- *Printing* - \$5.00
- *Pocket Expenses* -\$20.00

21. In her application the wife stated that she can only pay \$5.00 per week for the child but in her oral evidence she stated that she cannot pay any child maintenance. She testified that she is paying for her school fees. She has to pay for her loans. Her deductions are too much and that her de-facto husband is supporting her.

22. The wife has tendered statements of her loan account. There is evidence that she is paying loan to Kontiki Finance and Fijian Teachers Association. In July 2019, the outstanding balance for the Kontiki Finance loan was \$1376.73. It is now 2 years since and that amount should be paid off now. I therefore will not give any further allowance for this loan.
23. The loan statement from the Fijian Teachers Association shows outstanding balance of \$610.00 as at August 2019. Even that amount should be paid off in the last two years.
24. Even if I give the wife full allowance for all her other expenses as identified in her application, I find that she will have a sum of at least \$139 per week left which she allocated for the loans. This amount is available to meet the child's expenses. If she makes equal contribution for the child expenses, she will be left with a sum of at least \$89 per week for her to further her education which she says she wants to do. She has money left with her for her other expenses. She cannot ignore the affairs of the child and concentrate only on herself. She is responsible for the financial needs of her child.
25. The father will be left to pay the remaining \$50 from his available finance of \$111. After paying this amount he will have remaining balance of \$61.00 as saving for him and the child when the mother will have \$89 for her savings. There will still be disparity in the amount each saves but I find that to be justified as the mother wishes to continue her education. If that can bring her more income, it would be beneficial for her and the child in the near future.
26. I do not overlook the fact that a parent who looks after the child every day does not only have the financial burden but other responsibilities as well. One needs to take out time and effort to raise a child. There are so many unexpected costs that a child incurs and that responsibility falls on the care-giver.
27. The mother must understand this aspect. She is only supporting the child financially and that too upon an imposed order of the Court. I can see her reluctance in not wanting to maintain the child. She must realize her responsibilities and appreciate the efforts of the father in raising the child. She must contribute at least financially towards some of the expenses of the

child. The father, like I said, is still having the bigger responsibility in all aspects of maintaining the child.

***Final Orders***

28. For the reasons I have outlined, I make the following orders:

- a. The appeal is allowed.***
- b. I substitute the Magistrate's Courts orders with an order that the mother pays to the child a sum of \$50 per week in child maintenance.***
- c. The order shall take effect from 30 October 2021.***
- d. Each party shall bear their own costs of the appeal proceedings.***

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***Hon. Madam Justice Anjala Wati***

***Judge***

***21. 10. 2021***

**To:**

- 1. Legal Aid Commission for the Appellant.***
- 2. Respondent in Person.***
- 3. File: Appeal Case Number: 19/Suv/0005.***