

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CIVIL APPEAL NO. ABU 023 of 2024
[High Court at Suva in Family Appeal Case No. 010 of 2022]

BETWEEN : **ISOA DIBULUBULU QALUBAU**

Appellant

AND : **LAIZA MAGDALANE JOHNSON**

Respondent

Coram : **Prematilaka, RJA**
Dobson, JA
Heath, JA

Counsel : **Ms. T. Waqanika and Ms. S. Tuicakau for Appellant**
: **Ms. M. Baleloa for Respondent**

Date of Hearing : **11 July 2025**

Date of Judgment : **25 July 2025**

JUDGMENT

Prematilaka, RJA

[1] I agree with Heath, JA in terms of reasoning and orders.

Dobson, JA

[2] I agree.

Heath, JA

Introduction

- [3] Mr Isoa Qalubau and Ms Laiza Johnson married on 22 December 2009. They differ as to the date on which they separated: Mr Qalubau gave evidence that they ceased to live together as husband and wife in 2011, while Ms Johnson contends it was in 2018. An order dissolving the marriage was made on 5 March 2019.
- [4] During the course of the marriage, two properties were acquired:
- a. A freehold property situated in Suva (the Fiji property) which was purchased in 2011, for \$FJD 470,000. This property was registered in the joint names of Mr Qalubau and Ms Johnson. This property was valued at \$FJD 560,000 in 2020.
 - b. A property in Stoke-on-Trent (the UK property) which was purchased in 2012, for £247,000. This property was registered in the sole name of Mr Qalubau. It was, in 2020, valued at £225,000.
- [5] On 7 February 2020, Mr Qalubau applied to the Family Division of the Magistrates' Court at Suva for orders dividing matrimonial property. This application was determined by a decision of the Acting Senior Magistrate at Suva on 15 August 2022. He determined, on the facts found following a contested hearing, that Ms Johnson was entitled to only 5% of the value of the Fiji and UK properties.
- [6] Based on the 2020 valuations to which I have referred,¹ Ms Johnson was to receive FJD \$28,000 from the Fiji property and £11,250 from the UK property. Mr Qalubau was required to make payment to Ms Johnson in those sums on or before 31 December 2022. On receipt of that payment, Ms Johnson was to transfer her interest in the Fiji property to Mr Qalubau.
- [7] Ms Johnson appealed to the Family Division of the High Court against the Magistrate's orders. In a judgment given on 31 January 2024, Levaci J allowed the appeal, quashed

¹ See para 4 above.

the monetary awards made in the Magistrate’s Court and substituted them with an award requiring a payment representing 30% of the combined values of the Fiji and UK properties. No directions were made as to when the payment was required.

The “appeal”

[8] On 12 March 2024, Mr Qalubau purported to appeal the High Court judgment to this Court. He contended that the High Court had erred in determining that the parties should share 70% - 30% on the values attributed to the properties. His position is that Ms Johnson should receive no more than the 5% ordered by the Magistrate’s Court. Various grounds were advanced to support that position.

[9] The purported appeal was listed for hearing on 11 July 2025. At the start of the hearing the Court raised a jurisdictional problem with counsel, the nature of which we now outline.

The jurisdictional issue

[10] Section 19(3) of the Family Law Act 2003, the statute under which orders for the division of matrimonial property is made, provides that second appeals to the Court of Appeal lie only with the leave of the Court of Appeal. In full, s 19(3) states:

“19. ...

(3) Appeals from judges of the Family Division sitting on appeal from orders of the magistrates’ court lie to the Court of Appeal with leave of the Court of Appeal.

....”

[11] In addition, s12 (1)(c) of the Court of Appeal Act 1949 limits a second appeal of this type to questions of law. Section 12(1) (c) provides²:

“12.-(1) Subject to the provisions of subsection (2), an appeal shall lie under this Part in any cause or matter, not being a criminal proceeding, to the Court of Appeal-

...

² For the purposes of s12 (1) of the Court of Appeal Act, s12 (2) has no relevance to this case.

(c) on any ground of appeal which involves a question of law only, from any decision of the Supreme Court in the exercise of its appellate jurisdiction under any enactment which does not prohibit a further appeal to the Court of Appeal.

....”

[12] No application for leave has been made to this Court. Nor has any question of law been identified by Mr Qalubau to support a second appeal. We asked counsel for Mr Qalubau to explain how we had jurisdiction to determine the appeal. Counsel candidly accepted that she had overlooked the need for leave. Further, during her oral submissions, she was unable to identify a relevant point of law. A second appeal from an order dividing matrimonial property will only be entertained if this Court were satisfied that a question of law can be identified.³

[13] Because s 19(3) of the Family Law Act 1949 does not specify any time within which to make an application for leave, the more general provisions of the Court of Appeal Rules apply. Rule 15(4) of the Court of Appeal Rules, read in conjunction with rule 16, requires every application for leave to appeal to be filed and served within a period of 21 days, calculated from the date on which the judgment of the Court below was pronounced.⁴ This Court retains a broad discretion to extend the time within which an intended appellant must file and serve a leave application.⁵ However, as leave was not granted under s19 (3) of the Family Law Act, the appeal must be dismissed.

Result

[14] For those reasons:

- a) I would dismiss the purported appeal, for want of jurisdiction.
- b) Because the Court itself raised the jurisdictional impediment, I would not make any order for costs.
- c) I would order that the security for costs deposited by Mr Qalubau be returned to his lawyers.

³ Court of Appeal Act 1949, s12 (1) (c).

⁴ Court of Appeal Rules, rule 16(a).

⁵ Ibid, rule 27.

Orders of the Court:

1. The appeal is dismissed.
2. No order as to costs.
3. The sum paid into Court as security for the costs of the appeal shall be returned to Mr Qalubau's lawyers.



The Hon. Mr. Justice Chandana Prematilaka
RESIDENT JUSTICE OF APPEAL

The Hon. Mr. Justice Robert Dobson
JUSTICE OF APPEAL

The Hon. Mr. Justice Paul Heath
JUSTICE OF APPEAL

Solicitors:

Waqanika Law for the Appellant
Haniff Tuitoga Lawyers for the Respondent