

IN THE FAMILY DIVISION OF THE HIGH COURT

AT LAUTOKA

APPELLATE JURISDICTION

CASE NUMBER: 09/NAN/0327

BETWEEN: KATE

AND: ADAM

APPELLANT

RESPONDENT

Appearances: Ms. J. Nair, for the appellant.

Ms. M. Muir, for the respondent.

Date/Place of Judgment: Friday, 02nd March, 2012 at Lautoka

Coram: The Hon. Justice Anjala Wati.

Cateqorv:

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 person are purely coincidental.

Anonvmised Case Citation: KATE v ADAM- Fiji Family High Court Case Number:
09/NAN/0327.

JUDGMENT

CATCHWORDS:

FAMILY LA W: APPEAL: Security for compliance of orders.

LEGISLATION:

Family Law Act No. 18 of 2003 ("FLA")

1. On the 8th day of April, 2011 the Court heard the husband's application and ordered that his passport be released and for him to travel out of the country to be able to work and pay his maintenance arrears and the current maintenance. The husband was ordered to execute a bond in the sum of \$10,000 without a surety.
2. The wife had vehemently objected to the application and upon grant she filed an appeal. The objection was based on the grounds that the husband was in substantial arrears of maintenance and an enforcement proceeding vide a Judgment Debtor Summons ("**JDS**") was pending for execution.
3. The appeal grounds have been unnecessarily elongated when the qualm is really that the Court should not have heard the husband's application when he had not purged his contempt by complying with the Courts order and that his passport should not have been released to enable him to travel out of the country without proper arrangements being made to protect the interest of the wife and the child of the marriage who had the benefit of the principal orders in their favour.
4. The principal orders were orders for spousal and child maintenance in the sum of \$272.50 and \$291.50 per week respectively.
5. In, 2009, there was also an order made for the husband to return certain household and personal items to the wife forthwith. Till date, these items are indisputably not returned. His worship had already found the husband in contempt for not complying with this order and fined him \$500 which was to be paid within 28 days from the date of the order. In default the husband was to be imprisoned for 28 days. The fine had been paid on the Order of Commitment.
6. Ms. Nair submitted that having once been fined for not complying with the order of the Court of 2009, the husband continues to be in default of the orders. The applicant wife applied for compliance of the order and for enforcement of the maintenance arrears.
7. Ms. Nair argued that the Court should not have heard the husband's application unless he purged his contempt.
8. Ms. Nair also argued that the passport should not have been released without hearing of the wife's enforcement applications and without making proper arrangements for

payment of the maintenance monies. There should at least have been a surety in place to protect the interest of the wife and the child.

9. Ms. Muir argued that the wife had obtained an absconding warrant against the husband ex-parte, she failed to disclose the payment of maintenance by the husband and so there was material nondisclosure by the wife and the warrant needed to be discharged. As for the contempt matter, Ms. Muir argued that the committal warrant was struck out for compliance and so there was no more issue arising out of the contempt proceedings.
10. Ms. Muir also stated that the husband has been trying to return the household items from - May 2011 and they have had no response. Lately a letter was written -in September, 2011 for collection of the items but there was no response. It is very unfair for the wife to complain now. The husband had also filed for a variation application which needs to be heard. The wife's counsel also had the opportunity to test the husband's means to pay the monies but failed.
11. Ms. Muir further argued that the husband was jobless in Fiji. He found a job in Samoa. For him to pay any maintenance he needed a job and it was in the interest of the child to let the husband go so that the maintenance could be paid. His worship exercised his discretion and made the order which was best in the circumstances.
12. The issue before me is relatively simple. I have come across so many applications of the very similar nature.
13. This is a case of common sense and practical approach. The husband is in substantial arrears of maintenance and also in default of an order to return the household items.
14. Without complying with the order he applied to the Court to release him to go to Samoa and for him to be able to work and pay maintenance.
15. I would not say that the magistrate should not have heard the husband's application outright because his application to go to Samoa was so connected to the issue of payment of arrears of maintenance and the current maintenance that the application ought to have been heard. The husband indisputably did not have a job to pay the exorbitant amount of maintenance. He found a job in Samoa. The Court had to look at the husband's application and decide on the same. However his application could not

and should not have been decided independently of the wife's application for enforcement of the existing order for return of household items and the payment of current maintenance and arrears.

16. If the magistrate had adopted a holistic approach to the issue, there would not have been an issue at all.
17. Firstly, the aspect of return of belongings should have been addressed first as it did not hinge on the husband's employment. The order for release of passport for the husband to travel to Samoa could have been made conditional on compliance of this order. I am sure the husband would have complied with this order in no time.
18. Secondly, it was necessary for the magistrate to deal with the aspect of maintenance arrears and the current maintenance. Within the husband's earning limits, the Court should have made an appropriate order for payment of the arrears of maintenance and current maintenance. There was evidence that the husband would be earning some money.
19. Having made the orders, his worship should have asked the husband for a surety to ensure compliance of the orders. If this was not forthcoming, it would have been incumbent upon his worship to refuse the application for release of passport and for the husband to travel out of the country. The bond executed by the husband is meaningless as it is not a cash bond. If he fails to pay maintenance he will just default on the bond and there is no means to enforce the orders.
20. It is a serious issue that the practical approach was not adopted in this case by the magistrate and thus he fell short of complying with the law to protect the interest of the wife and the child who needed maintenance.
21. What is the best solution in the circumstances? Certainly the husband's application for variation and the wife's application for enforcement of the orders for maintenance and return of the items need to be heard. The husband needs to be present for all this.

22. I direct that a hearing date be assigned for the husband to be present on the date. Proper orders must be made on the husband's application for variation and the wife's application for enforcement. If there are any orders for payment of monies, a proper surety must be appointed for ensuring compliance. The husband must not be released from Fiji until all arrangements are properly made.
23. To protect the wife's and the child's interest, I issue an order that the husband, upon entering Fiji, must not thereafter be released and leave the country, until this order is discharged by **any** Court.
24. The stop departure orders to be uplifted only upon compliance with my directions set out in paragraph 22 of this judgment.
25. Each party to bear their own costs.

ANJALA WATI
Judge
02.03.2012

TO:

- 1. Ms. J. Nair, counsel for the appellant**
- 2. Ms. M. Muir, counsel for the respondent**
- 3. File Number: 09/NAN/0327**