

IN THE FAMILY DIVISION OF THE HIGH COURT AT LABASA

ORIGINAL JURISDICTION

CASE NUMBER: Appeal 001/2017
(Original Case Number: 15/LBS/0142)

BETWEEN: RAVEN
APPLICANT

AND: ANITA
RESPONDENT

Appearances: Appellant in Person.
Ms. S. Nasendra for the Respondent.

Date/Place of Written Judgment: Friday 05 October 2018 at Suva.

Coram: The Hon. Madam Justice Anjala Wati.

Anonymised Case Citation All identifying information in this judgment have been anonymized or removed and pseudonyms have been used for all person referred to. Any similarities to any persons is purely coincidental.

Anonymised Case Citation: Raven v. Anita - [2018-10-05] [Family Appeal number 001of 2017] [RAVEN V ANITA]

JUDGMENT

A. Catchwords:

FAMILY LAW- SPOUSAL MAINTENANCE - Spousal maintenance is not as of right- the party claiming must establish a right in accordance with s. 155 of the FLA - in determining liability it must also be established that the party from whom maintenance is claimed is reasonably able to provide maintenance- after liability is established, the question of quantum is to be decided in reference to the income and expenses of the parties- allowance must be given to the expenses of the person from whom maintenance is claimed and expenses for

whom he has a legal or customary duty to maintain- if parties are not married, it has to be first established whether the parties are in a de facto relationship which question must be decided in reference to the statutory factors outlined in s. 154A of the FLA - Where the parties dispute certain facts; the court has to arrive at a finding on the same after analyzing the evidence: regurgitation of evidence does not amount to analyzing the same and making a finding of fact..

(B). *Legislation*

Family Law Act 2003 ("FLA"): ss. 154; 154A; and 155.

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1. The appellant has filed an appeal against the decision of the Family Division of the Magistrates' Court of 12 May 2017. The court had ordered the appellant to pay spousal maintenance in the sum of \$50 per fortnight on the basis that the parties were in a de facto relationship which gave rise to liability for spousal maintenance.
 2. The appellant raised in the appeal that the evidence before the court did not establish that the parties were in a de facto relationship and that he is unable to support the respondent since he himself survives on pension of \$250 a month which he gets from Fiji National Provident Fund.
 3. The basis upon which the court made a finding on the issue of de facto relationship and the liability to pay maintenance is identified in paragraphs 10, 11 and part of paragraph 12 of the judgment. I consider it prudent to outline the pertinent parts of these paragraphs:

"10. The evidence of both ... established that they were in a defactor (sic) relationship for 12 for (sic) 13 years. They lived in the same house and they share responsibilities of cleaning the house. They sleep together and the applicant cooked for the respondent. The respondent pays for the bill and also supports the children of the applicant. The respondent does shopping for the applicant.

11. In my assessment, I am satisfied that the applicant and the respondent were in a defacto relationship. I find that the Respondent is liable to pay spousal maintenance

to the Applicant. Having considered the age of both the Applicant and the Respondent with their income and expenses, I will not grant the full amount of \$50.00 per week asked by the Applicant.

12. ...

(a) The Respondent to pay spousal maintenance to the Applicant at the rate of \$50.00 every fortnight".

4. The judgment has a glaring error in law in respect of the finding on liability to pay spousal maintenance. It appears that the court is of the view that spousal maintenance is as of right. A person does not have a right to claim spousal maintenance by virtue of being a party to the marriage which includes a de-facto relationship in Fiji: **s. 154 of the FLA.**
5. A party who seeks spousal maintenance must prove under s. 155 of the Family Law Act that the person from whom maintenance is sought is reasonably able to provide maintenance and the party seeking is unable to support herself or himself adequately, whether -

(a) by reason of having the care and control of a child of the marriage who has not attained the age of 18 years;

(b) by reason of age or physical or mental incapacity for appropriate gainful employment; or

(c) for any other adequate reason,

Having regard to relevant matter referred to in section 157.

6. The Court did not make a finding of fact as to which ground stipulated in s. 155 of the FLA entitled the respondent to be paid maintenance from the appellant. It had to be identified that the respondent met one of the grounds above. The only aspect that the Court mentions in the judgment is the age of the parties but what turned out on that giving rise to liability has not been identified.

7. The respondent had given evidence in court that she is 55 years old, a sick person and that she cannot work. Her sickness was stated to be headache and blood pressure. She used to work as a house maid before which she stopped when she started working as the Appellant's maid from where the relationship started.
8. On the evidence before the Court, it could not be established that the respondent's age and sickness precluded her from finding work or that she was mentally or physically incapable of gainful employment. At the appeal hearing the court was informed that she has found employment again as a house girl and that she earned \$15 a day. She did not work full time.
9. On the other hand the appellant could not have been, on his income, found to be able to reasonably provide for the respondent. He is a Pensioner and gets \$250.00 per month in pension. That is his source of income. His expenses in terms of his food and bills exhaust his pension. He spends about \$40.00 per week on food, \$10 on household supplies and \$13.00 on utility bills. I do not find these expenses to be unreasonable for which allowance should not be made.
10. The Court did not have regard to the appellant's expenses in making a finding of liability. It arbitrarily decided that the appellant saves \$25.00 per week from his \$60.00 per week pension for him to be able to pay \$50.00 per fortnight. I do not find on the evidence that the finding of liability and the quantum is justified to any extent.
11. If the respondent works for 4 days in a week, she would be able to get the same amount of money for her expenses. She is already working and supporting herself. The order for payment of maintenance is not supported by the facts and circumstances of the parties.
12. The respondent asserted that the appellant was getting income from rent which was disputed and could not be established that he indeed was having other source of income. A finding of fact in this regard was not made and since I have not heard the evidence on this aspect, I cannot, on the existing evidence, find on the balance of probability that the appellant has other source of income.

13. On the question of making a finding on the de-facto -relationship, the court appears to have made the finding on the basis of the assertion by the respondent only. It did not make a finding of fact with reference to s. 154A of the FLA. Section 154A states that:

"In determining whether 2 persons are in a de facto relationship, all the circumstances of the relationship are to be taken into account, including but not limited to the following as may be relevant in a particular case-

- (a) the duration of the relationship;**
- (b) the nature and extent of common residence;**
- (c) whether or not a sexual relationship exists;**
- (d) the degree of financial dependence or interdependence and arrangements for financial support between the parties;**
- (e) the ownership, use and acquisition of property; the degree of mutual commitment to a shared life;**
- (f) the care and support of children, if any;**
- (g) the performance of household duties; and**
- (h) the reputation and public aspects of the relationship.**

14. Not only had the court not analysed the evidence on the factors outlined in the above section, it also erred in fact when it failed to analyse the weight to be attached to each party's evidence and make findings of fact on the same.
15. The respondent had given evidence that she was staying with the appellant for about 13 years. They had sexual relationship. The appellant used to look after her and pay for his food and bills. He used to also look after her daughters too. She also stated that she was working for the appellant as a house girl.
16. The appellant had denied any relationship but that of an employee house girl. He did say that he allowed her to stay with him because she did not have a place to stay. She

could have stayed there all her life but for her weird behavior that made him ask her to leave. He stated that she was his house girl and used to cook and clean and that he also did some chores. He denied that they were in any form of intimate relationship.

17. In light of the dispute, the court ought to have found what evidence was acceptable and why it was so. The appellant is correct in asserting that the Court seems to have regurgitated everything that was said by the respondent and that the judgment lacks analysis of the evidence and the reasons. I could not agree more.
18. I therefore find that the orders of the court cannot be justified on the basis that there was no proper finding as to whether there existed a de-facto relationship and whether to what extent the appellant is liable to pay the maintenance.
19. As a result:
 - (a) **I set aside the orders of the Magistrates' Court. I find that the respondent has not established a right to maintenance from the appellant.**
 - (b) **Each party must bear their own costs of the appeal proceedings.**

Anjala Wati

Judge

09.03.2018

To:

1. *Appellant in Person*
2. *Legal Aid Commission for the Respondent*
3. *File: 17/Lbs/0001/*