

**IN THE FAMILY DIVISION OF THE HIGH COURT  
APPELLATE JURISDICTION**

**CASE NUMBER:**

16/Ltk/ 0006

**BETWEEN:**

**KUNAL**

**AND:**

**SACHI**

**Appearances:**

Ms. K. Vulimainadave of LAC for the Appellant.

Ms. J. Singh of LAC for the Respondent.

**Date/Place of judgment:**

*Thursday 15 February 2018 at Lautoka.*

**Coram:**

*Hon. Madam Justice Anjala Wati.*

**Category:**

*All identifying information in this judgment have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarity to any persons is purely coincidental.*

**Anonymised Case Citation:**

*KUNAL v. SACHI - Fiji Family High Court Appeal Case Number: i6/Ltk/0006*

**JUDGMENT OF THE COURT**

**Catchwords**

FAMILYJAW - Maintenance and Parenting Orders - Appropriate amount that should be ordered for the children - best interest of the children- why contact should be defined in this case.

### **Cause**

1. On 29 April 2016, the Family Division of the Magistrates' Court, upon hearing the mother's application for residence of the children of the marriage and maintenance for the children and herself, ordered:
  - (a) *that the residence of the two children be granted to the mother with reasonable contact to the father.*
  - (b) *that the father pay maintenance for both the children at the rate of \$50.00 per week until the children reach the age of 18 or upon further variation.*
  - (c) *that the application for spousal maintenance be dismissed.*
2. Aggrieved at the decision on the quantum for maintenance for the children and the parenting orders, the husband appealed raising 3 grounds as follows:
  1. *that the maintenance in the sum of \$50.00 for the children is excessive;*
  2. *that the court failed to consider all the relevant factors in s. 121 of the Family Law Act when deciding on the best interest of the children;*
  3. *that the court erred in not considering the evidence of the father when deciding on the residence of the children thereby rendering the judgment unfair and unbalanced.*
3. In form of brief background of the parties, they were married in 1998. They have two children of the marriage.
4. The parties separated in 2014. Since then the children have been living with the mother. Their marriage was dissolved in 2016.

### *Law and Analysis*

5. Ground 1 complains that the maintenance in the sum of \$50.00 is excessive. Whether the sum is excessive or not is a matter that can be determined upon revisiting the evidence of the parties.
6. The mother's evidence was that she earns \$320 per month. During the appeal hearing she advised the court that her earnings had increased to \$520.00 a month. In her application for the maintenance filed under oath she had stated that she needed \$70.00 to maintain the children per week. She also stated in the application that she needed \$49.00 to maintain herself.
7. Out of the \$70.00 that she needed to spend on the children, her application indicated that she spent \$60 on food and \$10.00 on school expenses. Her expenses of \$49.00 were made up as follows:

<i>Food:</i>	\$30.00
<i>Electricity:</i>	\$10.00
<i>Water:</i>	\$4.00
<i>Fares:</i>	\$ 5-00

8. In Court, the oral evidence of the mother on her income and expenses were basically the same as what she had stated in her application except that in her application she had stated that she was unemployed, which she was at the time, and she had not included in the expenses the bus fare for the children. Her oral evidence indicates that the bus fare is \$1.40 per child both ways which calculates to \$14.00 per week for the two children. She found employment post filing of the application.
9. I do not find that the mother's expenses are overrated or unreasonable. The expenses that she has identified are necessary for her and the children's day to day living. All these expenses must be allowed.
10. At the rate of \$49.00 per week, she needs \$196.00 a month to maintain herself. From her income of \$320.00 per month, she is left with a sum of \$124.00 per week. The children's expenses are \$336.00 per month (bus fare included). If she uses her savings of \$124.00 per

month on the children, she still needs \$212 per month from somewhere to cater for all the basic needs of the children. This equates to about \$53.00 per week in support that she needs from someone else.

11. To add to that, I take regard of her material evidence that she is the person who buys the children's bags, stationaries, uniform and shoes. These expenses alone will be approximately not less than \$500 for both the children per year.
12. The children also need money for medical bills, medicine, clothes, shoes, pocket expenses, and for social activities. The parent who lives with the children ends up paying for all these necessities. In this case, the mother has not made any claim for these.
13. She will alone have to bear these expenses for the children. I also take into account the fact that she has informed the court that her income has increased from \$320 per month to \$520 per month which means that she has an increase of \$200 per month. This amounts to \$2400 per year.
14. In view of her increased income, I expect that the children's expenses that she has not claimed will be taken care of. The concern however is the money that she needs on a daily basis for the children's day to day needs.
15. For that, the court has to determine whether the other parent who has parental responsibility is able to shoulder the needs of the children. To make this finding, I  
  
have to see the legitimate income and expenses of the father and ascertain what he can afford for the welfare of the children.
16. In his sworn response, the father stated that he earned \$160 a week net and needed \$182.00 per week to maintain himself. His expenses were broken down as follows:

<i>Food:</i>	\$80.00
<i>Electricity</i>	\$7.00
<i>Telephone:</i>	\$ 5.00

*Clothing and Shoes*                    **\$40.00**  
*Fares*                                        **\$30.00**  
*Hire Purchase Repayments:* **\$20.00**

17. In his oral evidence, the father stated that he earned \$106.00 net income per week and that he looked after his mother. He stated that his shopping bill comes to \$60.00 to \$70.00 per week. He paid \$42.00 a month for electricity and \$60 to \$70 in 3 months for water.
18. In his oral evidence, the father confirmed that after meeting all his expenses he manages to save \$30 to \$40 per week for the children. His evidence is incredible. His application indicates that his expenses are beyond his income. His oral evidence also indicates the same. Yet in his oral evidence he says that he manages to save money for the children.
19. In light of my suspicion, I had asked both the parties to file their pay slips or their recent bank statements. The father filed his bank statement of Late July to late August when he was unemployed. His bank statements therefore do not show any deposits. However he told the court two inconsistent versions. The first that he was unemployed and second that he earned \$45 per day which calculates to \$270 for 6 days and \$225.00 for 5 days.
20. To his advantage, I will work his income at the rate of \$225.00 per week. If I allow him his reasonable expenses for food at the rate of \$60 per week, electricity bills at the rate of \$45.00 a week, water bills at the rate of \$20 per week, fares and payments at the rate of \$50.00 per week, his total expenses would come to \$175.00 per week. He still will save \$50 a week to pay the children.
21. Although the court did not analyse the income and expenses of the parties, the finding that the father should pay maintenance to the children in the sum of \$50.00 per week is justified. I do not find that there was any error of law or fact when the finding for payment of maintenance for the children collectively at the rate of \$50.00 was made.
22. The second and third ground of appeal relate to the order of residence in favour of the mother. The grounds complain that the court did not analyse the best interest factors and the father's evidence in making the parenting orders.

23. The only evidence that the father gave in relation to why he should have residence of the children was that he wants the children and that he did not want to pay the maintenance. He said that he had his own house with a big compound and the children can be looked after by his mother and the children can go to school x. There was no other evidence on any factors outlined in s. 121 (2) which could be given weight in favour of the father.
24. S. 121 require the court to assess the best interest of the child based on various factors. Since there was no evidence in that regard, the court found that the children's wishes, the mother's evidence and the homes assessment report favoured the fact that residence should be awarded to the mother.
25. Ever since the parties have separated, the children have lived with their mother. There is no allegation or complaint that the mother does not meet the needs, interest and welfare of the children. If the status quo had to be changed, there has to be a finding that the interest of the children so demands that there be a change.
26. The mother's evidence was that she has always looked after the children. She loved them immensely and that she fully supported them intellectually, emotionally and physically. She is the one who is concerned with the development of the children and the father has not shown any interest. She contended that whenever she took the children for the father to exercise contact, he did not turn up to have contact with the children. He also never wished them for their birthdays, has been violent and does not provide any support to them.
27. The report by the Authorized Agency also recommended that the children stay with the mother. Neither the mother's evidence nor the report of the Authorized Agency was challenged. To add to that, the children had expressed wishes to stay with the mother. Based on the evidence, the court could not make any finding that it was in the best interest of the children that their residence be with the father.
28. Based on the evidence the only finding that could be arrived at was that the mother has residence of the children. I do not find that there was any error in law or fact in arriving at that conclusion.

29. The court had also ordered the father to have reasonable contact. I find this order to be inchoate. The court was very well aware of the feud and acrimony between the parties. In light of that, it was only prudent that contact was defined so that the parties knew the clear terms of it to be followed. What is reasonable to one party may not be to another and in such a situation, contact would be unworkable and the children deprived of their rights to be with the father.

30. I have had a discussion with the children regarding having contact with their father. It was revealed that the children are looking forward to seeing their father and his parents and spending time with them. They have not expressed any reservations regarding that.

31. I had consulted the parties during the appeal hearing and defined contact for them until such time I returned a judgment in the matter. I find that there is no prejudice to any party if those orders are made final with some modifications.

#### ***Final Orders***

32. In the final analysis, I dismiss the father's appeal that the maintenance is excessive and that he should have residence of the children. In that regard I affirm the decision of the Magistrates' court.

33. I however set aside the order of the court giving reasonable contact of the children to the father and order that the father shall have contact of the children as follows:

1. *The father shall have contact of the children every alternate Saturday at 12pm to Sunday 12pm with effect from 24 February 2018. The father is to pick the children up from x Police Station (the preferred place of the parties in view of the acrimony between them to avoid any violence and public fights) and the mother to take back the children from y Police Station.*

2. *In addition to that the father is to have contact of the children for half of all school holidays being the second half of the school holidays starting from a Friday to Sunday.*

3. *The father is at liberty to have telephone contact with the children at any time between 5pm*

to 9pm each day and the same liberty is extended to the mother if the children are with the father for contact.

4. *If there are any difficulties in exercising contact, the father is to communicate this to the mother at least 24 hours before the scheduled time for contact.*
  5. *“In addition to the above orders, the parties can by consent change the times for contact for the suitability of the children.*
  6. Nothing in this order shall preclude the parties from extending the contact hours either by hours or days or weeks.
34. Each party shall bear their own costs of the proceedings.

**Anjala Wati**

**Judge**

**15.02.2018**

**To:**

1. **Ms. K. Vulimainadavi, LAC, for the Appellant.**
2. **Ms. J. Singh, LAC, for the Respondent.**
3. **File:16/Ltk/ooi6.**