

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

**APPELLATE JURISDICTION**

**ACTION NUMBER:** 10/Ltk/ 0386

**BETWEEN:** KAILASH

APPELLANT

**AND:** HIRDESHNI

RESPONDENT

Appearances: Mr. Satish Kumar (Surety) for the Appellant.

No Appearance for the Respondent.

Date/Place of Judgment: Friday 21 February 2020 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

Category: Anonymised.

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**JUDGMENT**

**Catchwords:**

**FAMILY LAW – APPLICATION FOR DISCHARGE OF MAINTENANCE FOR CHILD OVER 18 YEARS – Child in the University and on Tertiary Education Loan Scheme through which he gets assistance for tuition and related expenses– the child has not been able to complete tertiary education since 2014 –the time for attainment of his basic education has lapsed and the child is now expected to earn and support himself - no reason shown why the maintenance order should continue.**

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1. This appeal was prosecuted by the surety on behalf of the father of the child who has left the country in 2010. The surety is his biological brother.

2. On 12 June 2015, the court had ordered the father of the child to pay \$150.00 in maintenance per week for his educational purposes. The surety was bound by this order under a bond that he had entered into on behalf of his brother and the father of the child. The child then was over 18 years old.
3. On 23 January 2017, the surety, on behalf of the father of the child, prosecuted an application for variation of maintenance to be reduced to \$75.00 per week. The mother of the child showed no interest in defending the application.
4. The application was refused by the Magistrates' Court on the basis that although the child was supported through the Tertiary Education Loan Scheme since first semester of 2015, it was not clear as to how much the child was receiving in terms of monetary amount.
5. The surety then appealed the decision on the grounds that the court failed to have regard to the evidence that the child is on Tertiary Education Loan Scheme since the first Semester of 2014 and that he has been in the tertiary institution since 2014. He is supposed to have finished his education by now and started earning for his living. The evidence by the University showed that the child kept changing his courses which shows that he is not interested in finishing his education and one reason could be that he is enjoying the benefit of the maintenance payment.
6. I have perused the evidence in this case. I must say that I had ordered the application to be served on the child as well since he is now 24 years old. The child, together with his mother, has shown no interest in defending the appeal. I have to thus decide the matter based on the submissions of the surety and the evidence tendered in the Magistrates' Court.
7. The evidence from the University Degree is that the child had started his University studies from the year 2014. In the first Semester of 2015, he changed his course to Bachelor of Commerce. He successfully completed 2 courses under the programme.
8. In Semester 2 of 2016, he changed his programme. He has successfully completed 5 courses out of 13 courses under the programme. He was enrolled for 4 courses in Semester 2 of 2017.

9. The evidence from the University stated that he was studying through distance and flexible learning mode at the University since 2014. He had been sponsored by the Tertiary Education Loan Scheme since Semester 1 of 2015.
10. When the maintenance order was made, it was for the benefit of the child's education. This meant that the child was to use this money for his upkeep and educational purposes.
11. It was for the mother and the child to show why the maintenance should not be discharged in light of the evidence that the child had been sponsored and that he has not taken a keen interest to finish his course since 2014. It is now 5 years since the child is in the University. He is supposed to have completed his degree course by now and started earning.
12. The purpose of providing maintenance to a child over the age of 18 years is to ensure that he does not fall out of the education system. It is to assist the child complete his basic education and then use the education for his survival. In this case the child, if I may be allowed to call him that, is 24 years old now. At this age, a person normally graduates with a degree from the University and enters the work force.
13. There is no such sign of the child completing his education. The court is also bereft of a satisfactory reason why he is not working and supporting himself.
14. I find from the evidence that it is not fair and in the interest of the child that the order for payment of maintenance continues. It is a prime time in his age when he has to become independent and work for his living.
15. I therefore confirm my earlier orders of 17 July 2019 as follows:
  - a. *That the appeal is allowed.*
  - b. *The child maintenance is revoked with effect from March 2015. All the payments made under the order before this day shall be handed over to the child .*
  - c. *That Surety is now discharged as the surety from the maintenance proceedings.*

- d. That the stop departure against the surety is cancelled forthwith.*
- e. The Registry is to inform the Immigration of the orders for cancellation of the stop departure.*
- f. A copy of this order is to be given to the surety as well.*
- g. Each party shall bear their own costs of the appeal proceedings.*

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*Hon. Madam Justice Anjala Wati*

*Judge*

*21.02.2020*

*To:*

- 1. Surety for the Appellant.*
- 2. Respondent.*
- 3. File: Appeal Case Number: 10/Ltk/0386.*