

IN THE FAMILY DIVISION OF THE HIGH COURT APPELLATE JURISDICTION	
CASE NUMBER:	Family Appeal No. 03 of 2020 Family Case No. 12/LAB/0077
BETWEEN:	1. MAHBUB 2. YAMEEDA
AND:	MAHFUZ
Appearances:	Mr. Bale A. and Ms. Sumer A. for the Appellants Ms. Tuiloma M. for the Respondent
Date of Hearing:	21st May 2020
Date/Place of judgment:	02nd July 2020
Judgment of:	Hon. Judge Lyone Seneviratne
Category:	<i>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 persons is purely coincidental.</i>
Anonymised Case Citation:	MAHBUB & YAMEEDA v. MAHFUZ – Fiji Family High Court Appeal Case Number: 03 of 2020
JUDGMENT OF THE COURT	

[1] The applicants-appellants (appellants) filed an application before The Family Magistrate’s Court seeking and order for maintenance for their grandchild from his parents. The first respondent in the application before the Family Magistrate’s Court is the mother of the child and the Second respondent-respondent (respondent) is the father of the child.

[2] The appellants in their application sought \$40.00 from each parents for a week as maintenance.

[3] The learned Magistrate ordered the mother to pay \$40.00 per week and the father (the respondent) was ordered to pay \$20.00 per week.

[4] The appellants appealed the decision of the learned Master on the following grounds:

- 1) The learned Magistrate failed in law and in fact in putting the interest of the child as the paramount consideration.
- 2) The learned Magistrate erred in law and in fact in not taking into consideration that both Respondents have equal responsibility as parents to provide for Mansoor, their son.
- 3) The learned Magistrate erred in law and in fact in accepting the respondent man's weekly expenses without any documentary evidence or proof and without justification of the said expenses.
- 4) The learned Magistrate erred in law and in fact in accepting the respondent man's loan repayment without any evidence whatsoever.
- 5) The learned Magistrate erred in law and in fact in accepting the respondent man's three per day hardship without viewing his shopping list or any evidence or how his child will have three meals a day.
- 6) The learned Magistrate erred in law and in fact in declaring that \$40.00 a week will cause hardship to the second respondent and yet the child's needs were not even considered.
- 7) The learned Magistrate erred in law and in fact in holding the second respondent has hardship but did not look at the child's needs.
- 8) The learned Magistrate erred in law and in fact in not assessing the proper needs of the child.
- 9) The learned Magistrate erred in law and in fact by not taking into consideration the child's direct and indirect costs incurred in providing care for the child by the applicants.

10) The learned Magistrate erred in law and in fact in not looking at the income, earning capacity, property and financial resources of the party or each of the parties.

[5] The learned Magistrate in arriving at the conclusion that the respondent should be ordered to pay \$20.00 as weekly maintenance of the child, has taken consideration his weekly income and expenses. His weekly income is \$159.42 and his weekly expenses are \$149.85. The respondent's weekly expenses include Payments for hire purchase and also a loan payment. However, the respondent has failed to tender any evidence for making such payments. He could have easily tendered receipts for such payments or any other supporting document. There is no rule of law of evidence that every piece of evidence must be corroborated by other evidence. However, in this matter the respondent would have had no difficulty whatsoever in tendering at least the copies of the hire purchase agreement and the loan agreement to show that he in fact pays loan installments.

[6] As I always say the children come to this world not because they want but because the parents want them to be here. It is therefore, the responsibility of the parents to look after their children and their difficulties cannot be an excuse for not maintaining the children. If this child was with the respondent he could never have told him that he has difficulties and therefore he could not feed the child or send him to school. He would somehow have maintained the child with all these so called difficulties.

[7] The child is seven years old and needs lot of attention and care. The grandparents have taken the responsibilities of the parents and look after the child. It is therefore, the duty of the parents sufficiently contribute to the maintenance of the child. The respondent's loan installment payments and payments made towards the hire purchase agreement cannot be considered as a difficulty in deciding on the child maintenance.

[8] Section 89 of the Family Law Act 2003 provides:

(1) In proceedings for a child maintenance order, the court may, subject to this Division, make any child maintenance order it thinks proper.

(2) The court must, in accordance with the following sections-

(a) consider the financial support necessary for the maintenance of the child; and

(b) determine the financial contribution, or respective financial contributions, towards the financial support necessary for the maintenance of the child that should be made by a party, or by parties, to the proceedings.

[9] The learned Magistrate in his judgment has considered the difficulties of the respondent but not the financial support necessary for the child maintenance. The child is seven years old and in class two and obviously not capable of earning.

[10] For the above reasons the court makes the following orders.

ORDERS

1. The appeal is allowed.
2. The respondent is ordered to pay \$40.00 per week as maintenance of the child.
3. The judgment of the learned Magistrate is accordingly varied.
4. There will be no order for costs of this appeal.

Lyone Seneviratne

JUDGE

02nd July 2020