

IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA

APPELLATE JURISDICTION

ACTION NUMBER:	17/NAN/0212
BETWEEN:	ROMESH APPELLANT
AND:	RAJESWARI RESPONDENT
APPEARANCES:	Ms. N. Sharma (LAC) for the Appellant. Mr. Z. Mohammed for the Respondent.
DATE/PLACE OF JUDGMENT:	Friday 6 October 2023 at Suva.
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.

JUDGMENT

Catchwords:

FAMILY LAW – CHILD MAINTENANCE – application by child’s father for child maintenance against the mother – mother unemployed but no evidence tendered that she is not capable of earning – lower amount of maintenance fixed for the child against the mother on the basis that this sum could be earned by any person to cater for the child’s living – balance expenses for the son to be catered for by the father – parents primary duty to maintain the children must be given codification and unless there is evidence that a parent has no income, property or financial resources from which income could be derived or that he or she does not have any earning capacity, maintenance must be granted for the children.

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Cause

1. The father of the only child of the marriage had applied for child maintenance against the mother of the child. The child is now 13 years old.
2. The application for child maintenance was dismissed on the grounds that although the mother had the legal responsibility to maintain the child, she was not in a position to provide for the child financially as she was unemployed and fully dependent on her de-facto partner for a living. The application for child maintenance was consequently dismissed.
3. Aggrieved at the decision, the father appealed. He raised that the court below had erroneously dismissed the application for child maintenance based on the mother's financial means.

Law and Analysis

4. The main reason put forward by the father to seek child maintenance in this case was that he is unable to work as he needs to take care of the child. He said that if his mother came back and stayed with him to look after the child, he could work and provide for the child.
5. The father's evidence was that he needed \$75.00 per week for maintenance of the child made up as follows:

Food	-	\$50.00
Fares	-	\$15.00
Education Expenses	-	<u>\$10.00</u>
Total		<u>\$75.00</u>

6. The evidence revealed that none of the parties derived any income as both were unemployed. However, none of the parties gave evidence that they were not capable of earning any income.

7. Both parents have a primary duty to maintain the child. They may not be earning any income but in absence of any evidence of their inability to work and derive an income, I find that both should find work and maintain their duty of looking after the only child they have.
8. It is not for any party to prove that the other can or cannot maintain the child. Each party has to establish their income, unemployment, ability or inability to earn. Since both parties failed to establish why they cannot earn money, I find that both are deliberately avoiding earning any money.
9. The father should send the child to school and earn an income for himself and the child. The mother, although unemployed should also find work. There is no evidence on why she cannot work to provide for her child.
10. The mother does not have any physical or mental ailment that she cannot provide for the child. There are so many types of work which does not require highly qualified people to work. There is no evidence that the mother has made any effort to work and that she is not getting any work. I find that she ought to provide for the child too.
11. I find the expenses of the child at \$75.00 per week as proper and not an exorbitant amount to maintain the child. From that I find that the father is able to find work and cater towards major expenses of the child as he is a panel beater by profession and he can easily work. He has been working before.
12. The mother should also provide for the child but since she has not worked all this time, she should not be imposed with an amount which is unrealistic. A minimum amount should be fixed which can be earned by any hard working person. There are different types of work which can be undertaken by the mother. These work does not even require her to be educated. This includes but is not limited to work as machinist, personal sewing business, paid housework, planting and selling flowers and vegetables, cleaning and so on.

13. It would be unjust for a child to suffer because their parents are refusing to work or do not want to even plant and sell for their children. If they are permitted to avoid their liability, the children will suffer.

14. I find that a minimum sum of \$15.00 per week is not hard to earn for the mother and provide to her child. She has a duty to maintain her child and she cannot shrug that responsibility unless she is incapable of earning which she has not established on the evidence. The father can provide the balance of the expenses.

Final Orders

15. In the final analysis, I allow the appeal and order the mother to pay child maintenance in the sum of \$15.00 per week with effect from next week -13.10.2023.

16. Each party shall bear their own costs of the proceedings.

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Hon. Madam Justice Anjala Wati

06.10.2023

To:

1. Legal Aid Commission for the Appellant.
2. Zoyab Shafi Mohammed Legal.
3. File: Family Case Number: 17/NAN/0212.