

IN THE FAMILY DIVISION OF THE HIGH COURT AT SUVA

ORIGINAL JURISDICTION

CASE NUMBER:	20/SUV/0001
BETWEEN:	LOATA
AND:	SAMUELA
Appearances:	<i>Ms. L. David for the Appellant.</i> <i>No Appearance of the Respondent.</i>
Date/Place of ruling:	<i>Friday 07 June 2024 at Suva.</i>
Ruling of:	<i>The Hon. Madam Justice Anjala Wati.</i>
Category:	<i>All identifying information in this ruling have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarities to any persons is purely coincidental.</i>
Anonymized Case Citation:	LOATA v SAMUELA – Fiji Family High Court Case number: 20SUV0001

JUDGMENT

Catchwords:

FAMILY LAW – APPEAL – MAINTENANCE – WIFE AND CHILDREN – *has the court below worked out the proper amount of maintenance payable to the wife and children- what are the proper needs of the persons entitled to payment and to what extent the person liable to pay can meet those needs.*

Cause

1. The wife appeals against the quantum of maintenance, both spousal and children.
2. The court below had made orders for spousal maintenance in the sum of \$50 per fortnight and maintenance for four children in the sum of \$100 per fortnight. A total of \$150 per fortnight was ordered against the husband.

The Appeal

3. The appeal asserts that in assessing the amount payable, the court failed to consider all relevant factors.

The Magistrate's Court's Findings, Law and Analysis

4. The only reason in granting the amount it did was outlined by the court as follows:

“The next is quantum. I have carefully gone over the evidence presented to me in the matter. The difficulty here is to ensure sufficient maintenance is granted whilst ensuring that the respondent is not rendered bankrupt from these proceedings.”

5. The judgment then reflects the amount payable. The judgment is seriously bereft of any analysis. In determining the amount payable, the court ought to have assessed the proper needs of the four children of the marriage and the wife. It then had to work out from the husband's income what should be set aside for his commitment. After the necessary commitments of the husband was worked out, it was to be determined how much he could pay to the wife and the children.
6. The court did not assess the needs of any person, either the ones entitled to receive the payment or the one liable to pay.
7. The husband was paid a net salary of \$1598 per fortnight. His response indicated that he needed \$650.81 per week to maintain himself. I find that from that contended necessary expenses, a sum of \$98.60 should be deducted as it was for mortgage payments. He has sold the property. There is uncontroverted evidence to that effect. A further sum of \$16.90 should also be deducted as he now does not need to use it for the lease premium.

8. On his own claim therefore, he needs a sum of about \$550 to maintain himself in a week which is \$1,100 per fortnight.
9. He is left with about \$500 per fortnight. He has 4 children and a wife to look after. The children are of ages 16, 12, 10 and 8. It is not unreasonable to require him to spend at least one third of his earnings on the wife and children. He is being given allowance for all his expenses. I have not deducted or reduced any of his expenses except for the ones identified above.
10. The wife in her evidence had said that she needed \$500 for the children and \$100 for herself. She wanted a total of \$600 per fortnight to maintain herself and the children.
11. If the husband pays \$500 per fortnight to the family, he should still be able to save money for himself provided he does not spend money on unnecessary commitments. For example, he says he uses \$25 per week for car parking. He can find a place at his employment to park without having to pay for this cost.
12. The wife gave evidence that she also gets some support from her brother. This may assist her to cater for the full expenses.
13. I therefore find that a sum of \$400 per fortnight for the 4 children being \$100 per child and \$100 per fortnight for the wife to be a suitable sum.

Final Orders

14. I allow the appeal. I set aside the decision of the court below and order the husband to pay as follows:

- ***400 per fortnight in child maintenance (\$100 per child per fortnight).***
- ***\$100 per fortnight in spousal maintenance.***

Total \$500 per fortnight in both child and spousal maintenance.

15. The orders shall take effect from 14.06.2024.
16. Each party should bear their own costs of the appeal proceedings.

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Hon. Madam Justice Anjala Wati

07.06.2024

To:

- 1. Legal Aid Commission for the Appellant.*
- 2. Respondent.*
- 3. File: Family Appeal Case Number: 01/2020.*