

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

**APPELLATE JURISDICTION**

<b>CASE NUMBER:</b>	17/LTK/0002
<b>[ORIGINAL DVRO CASE NUMBER]:</b>	29 of 2016
<b>BETWEEN:</b>	SALMA
<b>AND:</b>	TAHIR
<b>Appearances:</b>	<i>Mr. J. Sharma for the Appellant.</i> <i>Respondent in Person.</i>
<b>Date/Place of Judgment:</b>	<i>Wednesday 25 September 2024 at Suva.</i>
<b>Judgment of:</b>	<i>Hon. Madam Justice Anjala Wati</i>
<b>Category:</b>	<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>
<b>Anonymized Case Citation:</b>	SALMA v TAHIR – Fiji Family High Court Case number: 17LTK0002

**JUDGMENT**

A. Catchwords:

**FAMILY LAW – APPEAL – DOMESTIC VIOLENCE RESTRAINING ORDER** – *whether there was family or domestic relationship between the alleged perpetrator and the protected persons for a domestic violence restraining order to be made– whether the requirements of s. 23 of the DVA were met to issue the final standard non-molestation orders.*

B. Legislation:

1. *Domestic Violence Act 2009 (“DVA”): ss. 2; 3; 23; and 30.*

### ***Cause and Background***

1. The respondent had applied for a domestic violence restraining order for himself, his de-facto partner and her two children. The application was made against the appellant, who was, at the time of the making of the application, the wife of the respondent, but they had separated. The respondent had applied for a dissolution of marriage. At the time of the final hearing of the application, the marriage was dissolved and the respondent had married his partner.
2. The allegation of violence in the application was that the appellant had been served with an application for dissolution of marriage after which she became violent. It was alleged that she then turned up at the place where the respondent was living and threatened to beat his partner and her children in front of him. She also warned the partner that she would do that all the time.
3. The respondent also alleged that his partner and children were both embarrassed and scared. He had reported the matter to the police.
4. The appellant denied the allegations and opposed the application. The court had initially granted an interim domestic violence restraining order being standard non-molestation orders against the appellant. The order was made in favour of the husband, his partner and her 2 children. After the trial proper, the order was finalized.

### ***The Appeal***

5. Aggrieved with the final order, the wife appealed. There are 11 grounds of appeal. The issues that arise from the appeal grounds are:

*(1) Was there a family or domestic relationship between the appellant and the respondent, his current wife and her two children for the order to have been issued in their favour? (Grounds 2, 4, and 5)*

*(2) Is the final judgment inchoate in not specifying who the protected persons are? (Ground 3)*

*(3) Was it proper for the court to rely on Wikipedia Free Encyclopedia to make a finding on whether swearing amounts to violence? (Ground 6)*

(4) *Should a final order have been issued, given the evidence of the parties? (Grounds 1, 7, 8, 9, 10 and 11).*

***Law and Analysis***

6. The first issue is whether there was a family or domestic relationship between the appellant and the respondent, his current wife and her two children.
7. S.2 of the DVA defines “*family or domestic relationship*”. It says that “*family or domestic relationship*” means the relationship of-:
  - (a) *spouse;*
  - (b) *other family member;*
  - (c) *person who normally or regularly resides in the household or residential facility;*
  - (d) *boyfriend or girlfriend;*
  - (e) *person who is wholly or partly dependent on ongoing paid or unpaid care or a person who provides such care.*
8. The term “*other family member*” is defined to include a clan, kin, or other person who in the particular circumstances should be regarded as a family member.
9. Even though the parties to the proceedings are divorced, they have been in a domestic relationship. The definition of domestic violence in s. 3 of the DVA makes it clear that past relationships are included. The appellant therefore was clearly in a domestic relationship with the respondent.
10. As for the respondent’s current wife and her two children, the definition of “*other family member*” is wide enough to cover them. The definition says that it includes other persons who in the particular circumstances should be regarded as family member.
11. The respondent is married to his partner. The current wife is the spouse of the respondent. Her children are now the respondent’s family. They cannot be excluded from the definition of “*other family member*”.
12. Further, s. 30 of the DVA clearly permits that a spouse of the protected person can be covered by the order. It reads-:

### *Additional Conditions – Spouse*

“30 [1] *Subject to subsection (2), where a court makes, or intends to make, a domestic violence restraining order under this Act for the safety and well-being of a person, the court may direct that the order, or specified parts of the order, also apply for the benefit of a person, not being the respondent, who is the spouse of the protected person.*

[2] *The court may make a direction under subsection (1) when satisfied that –*

- (a) *the respondent is engaging in, or has engaged in, behaviour that, if the respondent and the person were or had been in a family or domestic relationship would amount to domestic violence against the person; and*
- (b) *The respondent’s behaviour towards the person is wholly or partly due to the person’s relationship with a protected person; and*
- (c) *the making of the direction is necessary for the safety of the person; and*
- (d) *where practical in the circumstances, the court is satisfied that the person consents to the direction being made”.*

13. The term “*spouse*” under s. 2 of the DVA includes a person who is or has been in a *de facto* relationship with the other person. Mr. Sharma argues that since the current wife was not legally married to the respondent when the application was made, she could not be protected under the DVA.

14. The law does not support that argument. S. 30 makes it very clear that the protection can extend to the spouse. In this case, there was evidentiary basis to extend it to the spouse, as the alleged violence was due to the relationship of the respondent and his current wife which aggrieved the appellant. That evidence was given weight.

15. In respect of the children of the respondent’s current wife, they lived with the respondent because their mother was in a relationship with him. It is absurd not to protect the children who have become the respondent’s family.

16. The second issue is whether the final orders specify who the protected persons are? The final judgment does not specifically identify the protected persons but it says that the interim domestic violence restraining order is finalized.

17. The interim domestic violence restraining order names the protected persons. The final order extends to them. Although it is preferred that the final order specifies the protected persons, it cannot be set

aside in this case as it should be understood that the protected persons are the same as the ones in the interim orders unless specifically excluded in the final orders.

18. Mr. Sharma says that there are 4 other persons named in the application and the interim order as protected persons and there is lack of evidence of who they are. I read only two names, apart from the name of the respondent and his current wife. They are named as ZZ and MR (*full names suppressed*). They are the current wife's children. She clearly gave evidence that they were her children and were under 18. I see no confusion about their identity.
19. The appellant is also raising that the court should not have relied on Wikipedia Free Encyclopedia to come to a finding that swearing is bad language and not acceptable. The reference to the Encyclopedia was to fortify the definition of domestic violence under the DVA. The term "*domestic violence*" under the DVA includes swearing as it is an offensive behavior. I find no reason why the appellant is aggrieved.
20. The final issue is whether the evidence established that there was domestic violence by the appellant. The respondent and his wife gave evidence of violence by the appellant on the day specified in the application. The evidence also covered other incidents that occurred after the filing of the application.
21. The appellants counsel argued that when certain acts of violence were not mentioned in the application, it could not be included in the evidence to make a finding on the same. I find it very insensitive on the part of the appellant to raise that other acts of violence could not have been included in the hearing of the application.
22. It was proper that the court heard of all acts of violence, even of the ones that occurred after the filing of the application. The respondent was not expected to file another application to include other acts.
23. The purpose of the DVA is to promote the safety and well-being of the victims of domestic violence. The duty of the court is to promote that objective than to be concerned about the peripheral arguments as long as it does not have the tendency to impact on the substantive rights of the affected party. In this case, no prejudice has been caused to the appellant. She had a chance to present her defence to all the allegations put to her.
24. In coming to a finding as to whether the violence had occurred, the court below accepted the evidence of the respondent and his current wife. The court believed their evidence over the evidence of the

appellant. The counsel for the appellant expressed concern as to why the appellant was not believed. It is argued that the reasons for the same ought to have been provided.

25. The court found that it was more probable than not that the appellant committed the violence after being served with the application for dissolution of marriage. It said that it believed the evidence of the husband that the appellant's reaction towards him changed when she was served with the application for dissolution of marriage that led to her stalking his current wife and abusing both of them.
26. It was open to the court to accept the evidence of the respondent and his current wife. This issue was resolved on credibility. The explanation for the finding can be found in the judgment if it is read holistically. The court does say that it did not find any material inconsistencies in the evidence of the respondent and his wife on the issue of violence. The appellant's counsel is pointing to some inconsistencies. I do not find that those inconsistencies reflect that the respondent or the witness had not been honest about the allegations of violence.
27. I do not have the same benefit of assessing the credibility of the parties and their witnesses. It is thus not proper for me to interfere with the findings of the court below.
28. The final order was not issued for any other reason as contended by the appellant. It is argued by the appellant that the court issued the same because there was already an order against the respondent. There is no such finding. What the court observed was that the respondent had said in his evidence that there is an order against him and he is obeying that. He also wanted the appellant to show him that respect. I do not find any confusion between what the court reflected the evidence to be and what its findings were. The appellant chooses to be confused. A clear reading of the judgment is recommended.
29. Finally, s. 23 of the DVA reads:-

***“Grounds for making a domestic violence restraining order***

23. [1] *A court may make a domestic violence restraining order for the safety and well-being of a person if satisfied that the person is, or has been, in a family or domestic relationship with the respondent, and –*

*(a) the respondent has committed, is committing, or is likely to commit domestic violence against that person or against another person relevant to the application: and*

*(b) the making of the order is necessary for the safety and well-being of the person or another person relevant to the application, or both.*

*[2] In determining whether a domestic violence restraining order should be made for the safety and well-being of a person, the court must consider-*

- (a) whether there is reason for concern that the respondent's behaviour or other behaviour that would be domestic violence may be repeated by the respondent;*
- (b) the perception of the applicant and of a person who would be protected by the order, about the nature and seriousness of the respondent's behaviour in respect of which the application is made; and*
- (c) the effect of the respondent's behavior on each person who would be protected by the order including the effect of the respondent's behaviour on their ability to go about their normal life and normal routines".*

30. The court had reflected that the nature of the relationship of the parties to the proceeding was such that it could give rise to agony when separation occurs and one party moves on in life, which is what happened in this case. That created tension for the former wife to take a bold stance. In such a case, it was necessary for the orders to be issued for the protection of the respondent and his family. They were entitled to be free from all commotion and confrontation in their day to day work and home life.

31. I find that the court had ensured that the requirements of s. 23 were met before issuing the final orders. There is no basis for me to impeach those orders.

### ***Final Orders***

32. In the final analysis, I do not find any merits in the appeal and I dismiss the same. I uphold the final orders of the court below. There shall be no order for costs.

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***Hon. Madam Justice Anjala Wati***

***25.09.2024***

**To:**

- 1. Janend Sharma Lawyers for the Appellant.***
- 2. Respondent in Person.***
- 3. File: Family Appeal Case Number: 02 of 2017.***