

IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA

APPELLATE JURISDICTION

CASE NUMBER:	17/LTK/0001
[ORIGINAL DVRO CASE NUMBER]:	320 of 2013
BETWEEN:	JAANVI
AND:	RAKHI
Appearances:	<i>Ms. J. Singh (LAC) for the Appellant. Mr. Vananalagi for the Respondent.</i>
Date/Place of Judgment:	<i>Thursday 3 October 2024 at Suva.</i>
Judgment of:	<i>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:	JAANVI v RAKHI – Fiji Family High Court Case number: 17LTK0001

JUDGMENT

A. **Catchwords:**

FAMILY LAW – APPEAL – DOMESTIC VIOLENCE RESTRAINING ORDER – *whether there was family or domestic relationship between the alleged perpetrator and the protected person for a domestic violence restraining order to be made – on the evidence of the parties, a clan or kin was established..*

B. **Legislation:**

1. **Domestic Violence Act 2009 (“DVA”): ss. 2; and 73.**

Cause and Background

1. This appeal emanates from a domestic violence restraining order issued against the appellant. The respondent had applied for a domestic violence restraining order against the appellant.
2. After the hearing, a standard s.27 non-molestation orders were granted against the appellant. A further order was granted that the appellant must not contact the respondent at her residence.
3. The appellant wishes to appeal the orders. She was a day late in appealing so she filed an application seeking leave to appeal out of time.
4. The affidavit in support of the application for extension of time states that she was only a day late in filing the appeal. The only proposed ground of appeal is that the court erred in making a finding that a domestic relationship exists between the appellant and the respondent.

Law and Analysis

5. The issue before this court is whether leave to appeal out of time should be granted. The appellant's counsel has failed to address me on the powers of the court under the DVA to grant extension of time to appeal.
6. S.73 (2) of the DVA states that "*an appeal must be commenced within 28 days of the date on which the order or decision which is the subject of the appeal was made*".
7. Although I do not find there to be inordinate delay, I still need to be convinced that I have powers under the DVA to consider an application for extension of time.
8. There is no provision in the DVA which allows for application for extension of time to appeal. In absence of any such provision, would or should any other law apply? What is the law that should apply and which court should consider the application for leave to appeal out of time? It was the duty of the appellant to address me on the above issues. The submissions do not address that at all.

9. Be that as it may, I am of the view that I should concentrate on the ground of appeal. If the appeal has any merits, then leave to appeal out of time should be granted given that there was hardly any delay in the filing of the appeal. This is presuming that the High Court Rules 1988 will apply for extension of time to appeal.
10. The issue on appeal is whether the evidence established a family or domestic relationship between the parties to the proceedings. On the question of how the appellant and the respondent were related, at least 6 persons testified.
11. The respondent's evidence was that her father-in-law and the appellant's husband's father were cousin brothers. This made her husband and the appellant's husband second cousins. The appellant was therefore her sister-in-law.
12. The respondent's father-in-law testified that the appellant's husband's father is his first cousin. He explained that the appellant's father-in-law's mother and his mother were real sisters.
13. There is no inconsistency between the evidence of the respondent and her father-in-law. The father-in-law's explanation amounts to him and the appellant's father-in-law being cousins. That is exactly what the respondent said in her evidence.
14. The respondent's husband also gave evidence. He too said that his father and the appellant's father-in-law were cousins. They were related by blood.
15. The appellant denied any blood relations with the respondent. She said that they were only neighbors.
16. The appellant's husband denied that his father and the respondent's father-in-law were first cousins.
17. The appellant's mother-in-law also gave evidence. She denied that the respondent's father-in-law and her husband were cousins. She denied any blood relations. When asked how they were related, she said that the respondent's father-in-law is the step son of the family and that she does not know that her husband is his first cousin. She says if they were, she would know. Her evidence was inconsistent. She denies blood relations only because the respondent's father-in-law is the step son of the family.

18. Even if the respondent and her father-in-law were not telling the truth, there was admission by the appellant's mother-in-law that the respondent's father-in-law was the step son of the family. Her evidence established family or domestic relationship.
19. Given the evidence of the respondent, her father- in-law and the appellant's mother- in-law, a *clan* or *kin* was established. The parties therefore fall in the definition of "*other family member*" in s.2 of the DVA.
20. It was open to the court to come to the finding that there was domestic relationship between the parties as they were interrelated family members.
21. I do not find any merits in the proposed grounds of appeal and the application for leave to appeal out of time should fail.

Final Orders

22. The ground of appeal does not have any merits and for that reason I dismiss the application for leave to appeal out of time.
23. There shall be no order as to costs.

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Hon. Madam Justice Anjala Wati

3.10.2024

To:

- 1. Legal Aid Commission for the Appellant.***
- 2. Legal Aid Commission for the Respondent.***
- 3. File: Family Appeal Case Number: 01 of 2017.***