

IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA

APPELLATE JURISDICTION

<u>ACTION NUMBER:</u>	APPEAL CASE NUMBER 0009 of 2021 <i>[Original Case Number: 19/NAN/0433]</i>
<u>BETWEEN:</u>	RONEEL APPELLANT
<u>AND:</u>	SHEENA RESPONDENT
<i>Appearances:</i>	<i>Mr. J. Prakashan for the Appellant</i> <i>Ms. Takali for the Respondent.</i>
<i>Date/Place of Judgment:</i>	<i>Tuesday 21 January 2025 at Suva</i>
<i>Coram:</i>	<i>Hon. Madam Justice Anjala Wati.</i>
<i>Category:</i>	<i>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.</i>

JUDGMENT

Catchwords:

FAMILY LAW – CHILD MAINTENANCE – consent orders made by court – father subsequently applies for a variation – the court below refused the application for variation – father appeals – the evidence does not establish a change in his financial circumstances as pleaded to qualify for a variation – appeal dismissed.

Cause

1. The father appeals against the decision of the Family Division of the Magistrate's Court in refusing to vary the consent order for child maintenance in the sum \$400 per month. The father had sought an order for payment of \$150 per month instead.
2. The court below had found that the father could not establish that he did not have the financial capacity to meet the consent orders although he had changed work.
3. The court noted that after finishing work abroad where he was paid almost or above \$5000 per month, he received the following sums of monies in his account:-

9/10/2020	-	\$10,490
7/11/2020	-	5,000
9/11/2020	-	3,500
16/11/2020	-	1,140

4. It was found that the father never explained where the monies post his employment abroad came from. The court also found that contrary to his assertion in the affidavit evidence in chief, the father testified on oath that he was earning a sum of around \$4,000 per month. His application for variation showed that he earned \$5,000 per month.
5. Based on the evidence of his income and expenses, the court found that he was not able to establish a case of change in his financial circumstances to qualify for a variation.

The Appeal

6. The issue that arises on appeal is whether the court erred in holding that the father is capable of continuing to pay \$400 per month in child maintenance.

Law and Analysis

7. It was for the father to establish that there was a change in his financial circumstances that he could not meet the payments of \$400 per month.
8. He ought to have shown to the court a change in his income and earning capacity.

9. There was no such evidence before the court. Post his work abroad, he had a sum of over or close to \$10,000 deposited in his account in the 2 months period. Even if I were to ignore these large sums of monies coming in his account and concentrate on his sworn application about his income and expenses, the father still cannot justify that his means have changed to the extent that he cannot meet his obligation.

10. The father's weekly gross income is sworn to be \$1,250 per week. His basic expenses per week are as follows:-

<i>Food</i>	-	\$150
<i>Household Supplies</i>	-	\$50
<i>Electricity</i>	-	\$50
<i>Water</i>	-	\$60
<i>Telephone</i>	-	\$75
<i>Clothing and Shoes</i>	-	\$30
<i>Cleaning Products</i>	-	\$30
<i>Rent</i>	-	\$75
<i>Mortgage</i>	-	\$255
<i>Parents Care</i>	-	\$50
<i>Life Insurance</i>	-	\$175

11. The total of his expenses comes to \$1000 per week. Some of the expenses above are quite exaggerated. I do not find that by any standard the water bills will come to \$60 per week. It should not be more than \$10.00 per week. I will make an allowance for only \$10.00 per week for water bills.

12. Further, a sum of \$75 per week for telephone is excessive. This expense should be managed and reduced to \$15 per week. These days, there are various promotions on telephone recharge purchases weekly. The father should take advantage of that and save money for his child.

13. If the two expenses are not exaggerated, the father can easily save up to \$110 a week. Out of that, a sum of \$100 per week should be used to pay the maintenance.

14. I have given the father the benefit of all his expenses. Even his electricity bill at \$50 a week is exaggerated for one person. If used wisely, this expense should not exceed \$20 per week. He will then save at least \$120 per month for himself.

15. I do not find that he was or is able to establish a change in his circumstances to qualify for a decrease in child maintenance. He always had the means to pay the monies on consent orders.

16. When I was dealing with the appeal, the father had made an application for suspension of part of the maintenance and I has suspended the payment of \$200 per month. I had informed him that if he was not successful then he will have to pay arrears of maintenance from the day of suspension of \$200. He now has to pay the arrears.

Final Orders

17. The appeal is dismissed. The order to pay \$400 per month in child maintenance is affirmed.

18. The father is to pay all arrears of maintenance which has arisen due to the suspension of the payment of \$200 per month in child maintenance or otherwise.

19. The mother of the child is at liberty to issue the Judgment Debtor Summons or any other enforcement proceedings to have the arrears cleared.

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Hon. Madam Justice Anjala Wati

21.01.2025

To:

1. ***Prakashan & Associates, Nadi for the Appellant.***
2. ***Siddiq Koya Lawyers, Nadi for the Respondent.***
3. ***File: Family Appeal Case Number: 9 of 2021 [19/NAN/0433].***