

IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA

APPELLATE JURISDICTION

CASE NUMBER:	21/LTK/0006
[ORIGINAL CASE NUMBER]:	[19/NAN/0015]
BETWEEN:	JUHI
AND:	GAURAV
Appearances:	<i>Ms. N. Sharma of LAC for the Appellant Respondent in Person</i>
Date/Place of Judgment:	<i>Tuesday 21 January 2025 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:	JUHI v GAURAV – Fiji Family High Court Case number: 21LTK0006

JUDGMENT

Catchwords:

FAMILY LAW – SPOUSAL MAINTENANCE – *The wife could not establish a statutory ground to qualify for spousal maintenance – the trial court was correct in not awarding her spousal maintenance for more than a year – appeal by the wife dismissed.*

Cause

1. The wife appeals against the decision of the Family Division of the Magistrate's Court wherein it ordered the husband to pay spousal maintenance for 1 year at the rate of \$50 per week. The 1 years' time was given to the wife to look for work to support herself.

Court's Findings

2. The court found that the wife had been financially dependent on the husband for 10 years since she started living with him. She had left her work as a salesgirl. However, the evidence did not demonstrate that she did not have the capacity to work. It was found that she could still find gainful employment at the age of 56. However, it was of the view that she will need time to look for work for herself and a year's time was granted to her. Until then, the husband was to maintain her at the rate of \$50 per week.
3. It was also found that the wife did not have a legal duty to look after the husband's old mother. It was his responsibility to do so. It took note of the fact that the mother had also filed for a parental maintenance application against the same son. The husband's mother was also receiving \$100 monthly from social welfare.

The Appeal

4. The wife says that the court erred in law and in fact in granting spousal maintenance for only a year when:
 - (i) *she is unable to obtain gainful employment considering her age;*
 - (ii) *she is looking after the husband's mother who is close to 90 years old; and*
 - (iii) *the husband's dependents are either working or able to work and earn an income.*

Law and Analysis

5. At the appeal hearing, the wife's position was that she was only asking for maintenance until the 2 properties that the husband had transferred to her was registered in her name.
6. It was very clear during the appeal hearing that the husband transferred two properties in the wife's name. The first property is in the Western Division. It is a land consisting of an area of 0.1622 hectares. The second is a property in the Central Division. It is also a land consisting of 447m².

7. Further to that, the husband had paid to the wife a sum of \$8,000 on 13 December 2021 as her share for the sale of the vehicle. He also gave her an additional \$2,000 which was a refund of the survey fee. Together with all that, she also got household items worth \$25,000.
8. It is not disputed that the value of the land in the West is over \$50,000 and the value of the land in the Central Division is also over \$50,000. The cash monies of \$10,000 identified above had been paid to her 6 months before the hearing of the appeal.
9. Given the cash payments to the wife and the substantial value of the properties she received from her husband, there is no basis for the wife to ask for spousal maintenance until the two properties are registered in her name. She can use the \$10,000 for her living until the two properties are registered in her name. She admits that she can sell the land. She can use the income from the land and invest it for her future use. I cannot overlook that the husband has given her property to the vicinity of 135,000.
10. There was no evidence produced to suggest that there is any impediment in her finding some kind of work to support herself. On the other hand the husband has reached the retirement age of 60 but he is still working to maintain himself and his new family. Given his age, he could have retired too. If he did retire, there would be no basis to ask for spousal maintenance. It is time that the wife uses other sources to derive income as she can do so.
11. I find that the wife has enough cash at hand and properties to realize it to maintain herself. If she wants, she can work too. She is younger than the husband. She does not qualify for spousal maintenance.

Final Orders

12. The appeal by the wife has no merits. It is dismissed.
13. Each party is to bear their own costs of the appeal proceedings.

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Hon. Madam Justice Anjala Wati

21.1.2025

To:

1. ***Legal Aid Commission for the Appellant.***
2. ***Respondent in Person.***
3. ***File: Family Appeal Case Number: 6 of 2021 [19/NAN/0015].***