

**IN THE MAGISTRATES COURT OF THE REPUBLIC OF FIJI  
AT SUVA**

**DVRO Application No: 105 of 2023**

**BETWEEN** : MALAKAI KOTOBALAVU FAHA, Block 26, Flat 139, Reba, Nadera.  
(Market Vendor)

**APPLICANT**

**AND** : TIKIKO KOROCAWARI and MOALA NIKOLASA, Both at Sawana  
Village, Vanuabalavu, Lau ( Farmers)

**RESPONDENTS**

For the Applicant : In person

For the Respondents : Legal Aid Commission

**RULING**

**INTRODUCTION**

1. Applicant man filed this application against the Respondent men seeking domestic Violence restraining orders (“DVRO”) under section 27 and 29 of the Domestic Violence Act 2009 (“the Act”) before this Court on 11-07-2023.
2. Having read the application and heard the applicant in person, this court issued an interim DVRO under section 27 of the Act, against the respondents for the protection of the applicant and the other 03 protected persons.
3. 1<sup>st</sup> Respondent appeared in Court on 01-08-2023 and sought time to file Affidavit in reply to the application on behalf of both Respondents, the 2<sup>nd</sup> respondent being his son. . The court granted time for respondents to file an affidavit in reply.
4. 1<sup>st</sup> Respondent filed his affidavit in reply on 05-10-2023 and in the said affidavit a Letter of Authority from 2<sup>nd</sup> Respondent annexed and marked as “TK01”. Counsel for the Respondent on this day moved the Court to grant further time to file a Supplementary Affidavit since they received some more information to submit to court.

5. Supplementary Affidavit was filed on 26-10-2023. The Applicant man was granted time to file any Response to the Affidavits in Reply filed on behalf of Respondents. The applicant man filed a letter in the registry of Court on 06-02-2024 as a response.
6. On 06-02-2024, parties informed the court that they are not filing any further submissions and sought the court ruling on this application based on the documents so far submitted to the court by both parties.
7. The following ruling of this court is made after considering all the material before it.

#### **LAW**

8. This court has to ascertain whether the applicant has established a domestic relationship between him and the respondents and whether the respondent has committed, is committing or is likely to commit a domestic violent act against the applicant. In this regard, this court is guided by the provisions of the Act, particularly, sections 2, 3, 23, 46 and 48.
9. The applicant has the burden of proving her application and every question of fact shall be decided on the balance of probabilities.
10. The application of the applicant man has been submitted as a form of an affidavit. It has a declaration to the correctness declared and attested before a Justice of peace. Respondent filed their replies by way of affidavits. The applicant has given his response in a letter, but not as in affidavit format. However, since the applicant did not have legal representation, this court consider all the above documents to arrive at the conclusion of this ruling.

#### **APPLICANT'S CONTENTION**

11. Applicant stated in his application that Respondent assaulted the 1<sup>st</sup> protected person who is his sister on 27-04-2023 at Sawana village, in Lau. However, he has not specified which respondent assaulted the lady. The reason for the alleged assault being a property dispute.
12. The applicant man submitted to the court the respondent chased him away from that property, when he visited there.

#### **RESPONDENTS CONTENTION**

13. In their affidavits in reply, 1<sup>st</sup> respondent (also on behalf of 2<sup>nd</sup> respondent) denied the allegation. However, the documents annexed to the affidavit of the respondent filed on 05-10-2023 marked as "TK02" draw the inference of a property issue. Also, the

**MC Suva DVRO 105 /2023 -Ruling-**

copy of the Medical Examination Form ( TK 2A) and the letter dated 25-09-2023 issued by the by the Vanuvabalavu police station ( TK 2B) both marked and annexed to Supplementary Affidavit in Reply dated 26-10-2023 filed by the respondent confirms that there was a complaint of assault made against the 1<sup>st</sup> Respondent by the 1<sup>st</sup> protected person. The said investigation was aborted due to non-availability of witness other than the complainant.

**ANALISIS**

14. In considering the above, it is established that there is a domestic relationship prevailing between the applicant, the respondents and the protected persons.
15. However, the applicant has not substantiated any allegation of violence against the 2<sup>nd</sup> Respondent.
16. There was a police complaint against the 1<sup>st</sup> respondent , made by the 1<sup>st</sup> protected person made to Vanuvabalavu police station on 27-04-2023. Therefore, it is established that there was a dispute between parties and 1<sup>st</sup> respondent on committing or likely to be committed domestic violence against the applicant and three other protected persons. Since this is based on a property issue, there is a probability of a repetition of the incident.
17. Taking into consideration all the above facts before this court, I hold that it is justifiable to issue a DVRO for the safety and wellbeing of the applicant and three other protected persons.

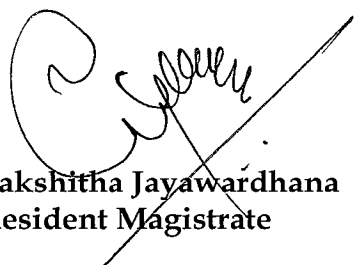
**ODER OF THE COURT**

18. Final Domestic Violence Restraining Oder is issued under section 27 of the Domestic Violence Act, against the 1<sup>st</sup> Respondent for the protection of the Applicant man and 1<sup>st</sup> to 3<sup>rd</sup> protected persons.

**RIGHT TO APPEAL**

19. There is a right to appeal against this ruling.



  
**Lakshitha Jayawardhana**  
**Resident Magistrate**

At Suva, On this 12<sup>th</sup> day of March 2024.