

PAPUA NEW GUINEA

[IN THE PORT MORESBY FAMILY COURT OF JUSTICE

SITTING IN ITS CIVIL JURISDICTION]

DCCi (IPO) No. 109 of 2017

BETWEEN:

MARIE ANN SUNDIE

–Complainant-

AND:

JOHN ATURORO

– Defendant-

Port Moresby Family Court: T. Ganaii

2017: 12th September

CIVIL – Application for an Interim Protection Order – Objectives and Underlying Principles of the *Family Protection Act of 2013*

CIVIL - Complainant in need of urgent protection – An act of domestic violence committed against the complainant is sufficient to obtain protection from the Court - Required Standard and Onus of Proof –Balance of probabilities – Pre-requisite for granting of IPO - Recent act of domestic violence – Likelihood of further act of domestic violence

Cases Cited

1. *Rejfeke v. McElroy* [1965] HCA 46; (1965) 112 C.L.R. 517
2. *Blyth v. Blyth* [1966] A.C. 643

Reference

The Family Protection Act of 2013

Counsel

Complainant: In person – Marie Ann Sundie
 Defendant: No Appearance - Ex-Parte Hearing

EX – PARTE RULING on an APPLICATION for an INTERIM PROTECTION ORDER

Introduction:

Ganaii, M. Ms Sundie and Mr Aturoro had been in a de-factor relationship for a period of about eight (8) years. They have two (2) children: a female and a male child aged six (6) and four (4) years old respectively. Ms Sundie alleges that she has been in an abusive relationship and is seeking urgent orders for her protection.

Facts:

2. Ms Sundie, Mr Aturoro and their two children live an institutional accommodation provided by Ms Sundie's employer, the National Research Institute (NRI). She alleged that in the course of their relationship, the defendant had on numerous occasions committed acts of domestic violence on her. On some occasions these violent acts, threats and abuses were alleged to have been committed in front of the children and that there were objects being used. The following are specifics of the alleged acts of domestic violence: Beaten up on the veranda in 2012 (date not specified); beaten up under the trees and in front of children; and lifting up and throwing onto the veranda on the 20th October 2014; attempt running down with vehicle (date not specified); hit with mango branch on right thigh on the 01st June 2017; hit on left arm with air freshener on the 01st July 2017; beaten up and use of offensive word (fuck your brothers) on the 13th July 2017; spitted betel nut spittle on uniform on the 07th Aug 2017 and forced to go into vehicle, lifted and thrown into vehicle (same date).

Issues:

3. Issue arising is whether or not acts of domestic violence have been committed on Ms Sundie requiring an urgent ex-parte IPO?

Law:**4. Family Protection Act (FPA) of 2013**

The FPA was enacted by Parliament to: provide for the offence of Domestic Violence, to establish a regime for family protection orders in cases of domestic violence, to preserve and promote harmonious family relationships, and to prevent and deter domestic violence at all levels of society¹. The following sections make provisions as follows: Section 3 – Objectives of the FPA²; Section 4 - Underlying Principles of FPA³; Section 5 – Acts of Domestic Violence⁴; Section 12 (2) – Complainant is in need of protection when an act of domestic violence is committed against them; Section 12 (4) – An application for an IPO can be made ex-parte and in the absence of both parties and Section 15 – Evidence⁵.

1 Preamble of the FPA

2 To promote safe, stable and strong families; to promote and deter domestic violence at all levels of society; to recognise that domestic violence of any kind is not an accepted behaviour; and to ensure that there is effective legal protection for the survivors of domestic violence

3 Freedom from violence is everybody's right; that violence is often a learned behaviour that can be unlearned; that violence in marriage is not a private matter but a social problem of public concern; that stopping domestic violence will strengthen marriages and improve family life; that stopping domestic violence will help create a more peaceful society; and that it is the responsibility of every person to take a strong stand against domestic violence for the benefit of the whole society.

4 A person commits an act of domestic violence if they do any of the following: assault the family member (whether or not there is evidence of physical injury); or psychologically abuses, threatens, harasses or intimidates the family member; or sexually abuses the family member; stalks the family member so as to cause him or her apprehension or fear; or behaves in an indecent or offensive manner to the family member; or damages or causes damage to the family member's property; or threatens to any of the foresaid acts. Subsection (2) states that 'Stalking' is not limited to following, watching, loitering outside the family member's place of abode or work, or a place where they frequent; and making persistent phone calls, text messages to the person or to the premises where they live or work.

5 A court may make interim protection orders on such evidence as the court considers sufficient and appropriate having regard to the interim nature of the order and where the complainant is unable to attend the case because of injuries, the court may accept affidavit evidence on behalf of the complainant.

5. Intent and Purpose of IPO is to maintain Peace in the meantime:

The intent and purpose of granting IPOs is to maintain peace in the family in the meantime until underlying issues are properly resolved. In many IPO proceedings⁶, experience show that underlying causes include: marital or relationship issues on trust; commitment; honesty, fairness, respect and genuine love between couples, issues over children and involving other immediate family members and issue on property.

The *FPA* does provide for the Courts to order mediation and counselling⁷ where parties agree. This emphasises the need to encourage parties to talk about their issues, confront them in a more mature and orderly fashion and to reach understandings that should create a more harmonious family.

6. Case Law: Onus and standard of prove:

In IPO proceedings under the *FPA*, although some acts of domestic violence are criminal in nature, the Court does not sit to enquire and make findings of guilt and enter a conviction. This is different to where a defendant had been charged for the offence of domestic violence. In IPO proceedings, there is no requirement for the discharge of the criminal standard of proof. Hence, the court only has to be *reasonably satisfied* on the balance of probabilities that a fact existed as in any civil case. The required standard of proof when considering evidence in allegations of commission of acts of domestic violence requiring urgent need for ex-parte hearing and granting of IPO is on the balance of probabilities. The Court is required to consider only whether or not there is sufficient evidence to find that an act of domestic violence has occurred; and that the complainant needs the orders for immediate protection to maintain the status quo and peace in the family until underlying issues are properly addressed.

7. In *Rejtek v. McElroy* [1965] HCA 46; (1965) 112 C.L.R. 517, at pp. 521-522, the High Court of Australia said in this case:

“The difference between the criminal standard of proof and the civil standard of proof is no mere matter of words: it is a matter of critical substance. No matter how grave the fact which is to be found in a civil case, the mind had only to be reasonably satisfied and has not with respect to any matter in issue in such a proceeding to attain that degree of certainty which is indispensable to the support of a conviction upon a criminal charge.”

8. In *Blyth v. Blyth* [1966] A.C. 643, at p. 669, as Lord Denning said in the House of Lords decision of when dealing with the standard of proof in a divorce case:

“In short it [standard of proof] comes to this: so far as the grounds for divorce are concerned, the case, like any civil case, may be proved by a preponderance of probability, but the degree of probability depends on the subject matter.”

⁶ Experiences in IPO Proceedings in Family and District Court in PNG

⁷ Section 11 – Conditions relating to Counseling and Mediation – A court may direct either or both the defendant and the complainant to participate in – Counseling; or mediation or both.

Evidence:

9. Ms Sundie relies on her own affidavit sworn and filed (undated but filed together with an Information and Summons upon an Information dated the 08th of September 2017). In her affidavit Ms Sundie describes all major incidents of acts of domestic violence in the relationship. She also attaches copies of photographs of injuries sustained and medical treatment received for the injuries. The evidence also indicates the extent of the injuries which include: bruising and swelling on left leg requiring her to attend to Gerehu General Hospital where ice pack was applied; stiffness and pain in right neck; swelling and lump in right upper chest causing discomfort and pain when sneezing or coughing; kicked on back, head and shoulders, resulting in bruises being sustained. All injuries required medical attention at various hospitals or clinics.

10. Ms Sundie describes events that led up to the different acts of violence. Most of what she described provided explanations as to how an argument erupted leading to the alleged acts of domestic violence. These included marital or relationship issues on trust; commitment; honesty, fairness and respect between both parties. Other issues related to use of family vehicle, the children and Mr Aturoro's ban from entering the NRI premises. It is worth noting and it is commendable that evidence show that PNG NRI is working on a Domestic Violence Policy and may be one of the leading State agencies that has given realisation to the intent and objectives of the Family Protection Legislation in PNG especially in realising that Domestic Violence is not a private matter and it is a social problem of public concern. Further, NRI efforts show that everyone must take full responsibility to take a strong stand against domestic violence for the benefit of the whole society.

Finding of facts:

11. Upon reliance on the affidavit, photographic and medical evidence of Ms Sundie, and on the balance of probabilities, this Court finds these to be the present facts of the case:

- parties are in a familial relationship i.e. de - factor relationship and out of which they have two children. Ms Sundie rightly seeks protection under the *FPA*
- Mr Aturoro had assaulted, threatened and abused Ms Sundie on a number of occasions
- an occasion of an act of domestic violence occurred in front of the children
- Ms Sundie sustained injuries ranging from bruised thigh and left arm, bruised and stiff neck and bruised back
- Ms Sundie suffered from emotional and verbal abuse.
- Mr Aturoro had damaged property belonging to Ms Sundie's employer, namely the NRI institutional accommodation
- latest incident of an act of domestic violence occurred on the 07th August 2017. It was in front of the children, where the children witnessed Mr Aturoro spit betel nut spittle onto Ms Sundie's NRI work uniform, he then forced her into the vehicle; and where she refused, he then lifted her up off her feet and threw her into the vehicle. Ms Sundie sustained bruises to her back
- Ms Sundie and Mr Aturoro have relationship issues relating to trust; commitment;

honesty, fairness and respect between them as couples. There is evidence of Mr Aturoro being banned from entering NRI premises, thus being prevented from seeing and living with his children which may be an issue for him requiring mediation or counselling. There are also issues involving other immediate family members. Further evidence shows issues involving property, namely a family vehicle. The ban on Mr Aturoro may be an issue for him in terms of his ability to find accommodation.

12. Application of the law to the facts:

Having satisfied myself on the affidavit evidence on the balance of probabilities that Ms Sundie was assaulted, threatened and mentally and verbally abused by Mr Aturoro and further that Mr Aturoro also damaged property belonging to Ms Sundie's employer, I find that Ms Sundie is in urgent need of an interim protection order and that her employer's property, namely the Institutional accommodation that Ms Sundie and her immediate family live in also has to be protected. I find further that there is likelihood of the defendant committing further acts of domestic violence because of unresolved issues.

13. Ruling:

1. An Interim Protection Order (IPO) is granted for the immediate and urgent protection of the complainant MARIE ANN SUNDIE

2. The IPO applies for 30 days commencing on the date of service of the orders on the defendant. The IPO expires 30 days after date of service of the IPO on the defendant unless revoked, varied, extended or is replaced by a Permanent Protection Order.

3. The following conditions are imposed in the IPO:

(a) Conditions relating to Good Behaviour:

- (i) Defendant must be of good behaviour and must maintain peace at all times towards the complainant
- (ii) Defendant must not commit any act of Domestic Violence including physical violence or any threat of violence directly or indirectly on the complainant in NCD or anywhere else in PNG at her place of work or place of abode
- (iii) Defendant is restrained and prohibited from harassing, intimidating and or using abusive and offensive words, behaviours and gestures on the complainant

(b) Conditions relating to Individual Protection:

- (i) Defendant is restrained and prohibited from approaching the Complainant within a boundary of 200 meters in radius at her place of work or place of abode at the National Research Institute (NRI) where he has the intention to do harm, threaten, intimidate or harass the complainant
- (ii) Defendant is restrained and prohibited from communicating with the complainant directly or indirectly through any means of communication whether it be through email communications, phone calls or text messages,

or through other persons with the intention to do harm, threaten, intimidate or harass the complainant and

(c) Conditions relating to Property:

- (i) Defendant is restrained and prohibited from damaging any personal property belonging to the complainant
- (ii) Defendant is restrained and prohibited from damaging any property belonging to the complainant's employer, National Research Institute (NRI) and more particularly the accommodation that the complainant and the children reside in

4. In the event that there is a breach of these orders by the defendant, the defendant must be arrested, charged, brought to court and be dealt with according to law

5. With the help of the Police, the complainant is to serve on the defendant the Information; the Summons upon an Information and the Interim Protection Order. After service, the complainant must file a Proof of Service (POS) Form at the Court Registry.

6. The substantive matter returns to Court in 14 days' time, at 9.30 am for mention.

7. In obiter, although not specifically sought, it is this court's respectful view that any underlying and consequential issues should be addressed properly through mediation and or counselling in order to prevent future arguments and consequential violence. However, this is not to say that there is or may be excuses or reasons for violence. It is Universally declared that every human person has the right and freedom to live freely without being subjected to violence and so there is no excuse for violence.

8. Parties response to mediation and counselling is a matter entirely up to them and more particularly for the survivor or complainant to decide on if parties want to continue to live together, to protect and safeguard the relationship (or 'status' marriage whatever the case may be) and considering the interest of the children and safety and security of the complainant.

9. Orders accordingly.

Complainant

In person

Defendant

No appearance, Ex-parte