

**Vi v Mahe**

Supreme Court, Nuku'aiofa

Lewis J

10 App 497/95

2 &amp; 18 April 1996

*Paternity - corroboration**Evidence - corroboration - paternity*

This was an appeal against a Magistrates Court paternity Order.

20 Held:

1. Corroboration of the evidence of the mother was required.
2. The Magistrate did not state, as he must, what he thought amounted to corroboration.
3. The Magistrate could not, as he did, use a claimed physical resemblance of child to appellant as a factor affecting his judgment.
4. The appeal was allowed and there being no evidence corroborative of the respondent the verdict of the Magistrate was set aside.

30 Statute considered Maintenance of Illegitimate Children Act s.6  
Magistrates' Courts Act ss. 74 -5

Counsel for appellant : Mrs Vaihu

Counsel for respondent : Mr Tonga

### Judgment

This Appeal is brought against the decision of a Magistrate delivered on 17 March 1995. The Appellant in this Court was alleged to have been the father of a child delivered of the Respondent on 17 April 1994.

The Magistrate found that the Appellant was the father of the child after considering the evidence before him. The learned Magistrate found that the Appellant was not a credible witness. That is a matter for the Magistrate and it is rare that an Appellate Court will interfere with a Magistrate's findings of fact concerning credibility. In this case there is a need for this court to intervene since there is in my respectful view an error of law on the part of the Magistrate.

The error concerns the matter of the presence or absence of corroboration. The Magistrate adverted to the rule requiring corroboration - Maintenance of Illegitimate Children Act [1988] Cap.30 Section 6:-

"6(2) No person shall be adjudged to be the father of an illegitimate child upon the evidence of the mother or a woman who is with child as aforesaid unless her evidence is corroborated in some material particular to the satisfaction of the Magistrate."

It is unclear upon just what evidence the Magistrate based his finding of corroboration. He made no reference to just what he thought amounted to corroboration. Since the necessity for corroboration is a matter of law and there is at best no clarity in what the Magistrate says amounts to corroboration therefore the appeal must succeed on that ground alone.

There are other grounds with which I shall deal for the sake of completeness.

GROUND 1. "The Magistrate's Judgment was in error with regards to the Plaintiff's claim that her baby's father is the Defendant. The only independent witness in the trial was Dr. Semisi Latu whose evidence much contradicted the Plaintiff's claim."

GROUND 2. "The Magistrate erred in finding that the "Baby's Face take after the Defendant" (SIC)."

GROUND 3, 4 and 5 are grounds consequential upon the appeal failing and I therefore need not consider them.

GROUND 1. It seems to me relates to the presence or absence of corroboration with which I have already dealt.

GROUND 2. Implies that the Magistrate took into account a non relevant, indeed an inadmissible consideration namely resemblance or similar appearance of the child to the Defendant. Provided that he does not use the perception he holds of the resemblance of the child to the defendant to be a factor in determining paternity he is of course allowed the observation. In this case I am left with the strong conviction that he arrived at his final judgment by using resemblance as a factor affecting his judgment which of course is a proscribed use. This ground succeeds.

Lastly Mr. Tonga of counsel for the Respondent argued that although the appeal was lodged within the statutory period the recognisance which the act requires the appellant to enter was entered into out of time. The ground on any view of the law does not arise. This is not a criminal matter giving rise to considerations of whether an appellant may be at large or not. It is a paternity dispute and in the the real sense a civil matter. The Magistrates' Courts Act cap. 11 sections 74 and 75 do not contemplate bail in civil cases.

The only circumstance where a bail recognisance may be relevant is where a Magistrate has properly judged the matter to be one which requires bail (i.e. a criminal matter). This is not such a matter.

I have considered whether this matter should be remitted to the learned Magistrate to enable him the opportunity of expressing his view on what part or parts of the evidence he considered amounted to corroboration. Having considered the evidence available to the learned Magistrate I am convinced that there is none capable of bearing the confirmatory character which supports the evidence of the respondent in a material particular.

80 The appeal is allowed and the verdict of the learned Magistrate is set aside.