

In the High Court of Fiji  
At Labasa  
Family Division

Appeal No. 1 of 2022

Ram Naresh  
Appellant

v.

Kaveni Masitokailagi  
Respondent

Counsel: Ms R. Raj for the appellant  
The respondent absent and unrepresented  
Date of hearing: 19<sup>th</sup> October,2022  
Date of Judgment: 30<sup>th</sup> March,2023

### **Judgment**

1. The appellant appeals a judgment of the Magistrates Court. The lower court held that there was sufficient evidence to make final, the interim Domestic Violence Restraining Order,(DVRO) against the appellant. The section 27 (non-molestation conditions) was made permanent.

2. The grounds of appeal read:

- (i) *That the Honourable Trial Magistrate erred in fact when she failed to consider and give sufficient weight to the credibility/truthfulness of the DVRO application filed by the Applicant Lady*
- (ii) *That the Honourable Trial Magistrate erred in fact when she failed to take into consideration that the Applicant did not take out DVRO against the Respondent nor made a police report in December 2021 or after she left the matrimonial home on the 29<sup>th</sup> December 2021.*
- (iii) *That the Honourable Trial Magistrate erred in fact when she failed to consider that the Respondent had reported an allegation of assault against the Applicant's brother-in-law on 12<sup>th</sup> January 2022 and the Applicant Lady filed her DVRO application thereafter on the 13<sup>th</sup> January 2022 making her testimony unreliable and not credible.*

3. The respondent, in her application of 13<sup>th</sup> January, 2022 for a DVRO in the lower court stated that on 29<sup>th</sup> December, 2021, the respondent told her not to go to her village to see her family as they were deceitful. Before Christmas, the respondent had slapped her head a few times, as he was angry that she wanted to spend Christmas with her children in the village. She had 2 children before her marriage to the respondent. The respondent does not accept them. He only wants her to look after his children. The application concludes that the respondent has a temper and been a violent man during their 5 years of marriage. She also sought non-contact conditions.

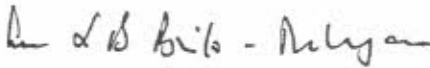
4. I have perused the record.

5. The respondent, in evidence in chief said that the appellant was aggressive to her. He treated her as a slave and did not give her money. She did not like him.

6. The appellant, in his evidence said that the respondent complained to the Police three weeks later. She asked him if she could spend Christmas with her family. He told her that they could go after the New Year, as she had to help him in his business. He told her that his two children are at home and told her not to leave them alone. When he returned, he found the house messed and his daughter alone at home. The respondent had left at 10am.

The appellant said that after a few days, he went to her place. One of her sister's husband picked him and threw him out stating that he was an Indian. The respondent said that he loved his wife, would mend his ways and learn from his mistakes. He told her to bring his children when they got married. She said that her sister was not releasing her children.

7. The Learned Magistrate had the advantage of hearing the evidence of the parties and seeing their demeanor.
8. I find no reason to set aside her finding of fact that there was a threat to the safety of the respondent and sufficient evidence to make final the interim Domestic Violence Restraining Order,(DVRO) against the appellant.
9. I do not find merit in the second and third grounds of appeal which contend that the lower court did not consider that the respondent made her application for a DVRO two weeks after the assault.
10. **Orders**
  - a. The appeal is dismissed
  - b. I make no order as to costs.

  
**A.L.B. Brito-Mutunayagam**  
**JUDGE**  
**30<sup>th</sup> March, 2023**

