

IN THE FAMILY DIVISION OF THE HIGH COURT
AT SUVA

CASE NUMBER: 09/SUV/0008

BETWEEN: ANARE
APPELLANT

AND: LITI
RESPONDENT

Appearances: Mr. Tarere of LAC for Appellant.
Respondent in Person.

Date/Place of Judgment: Tuesday, 25th January, 2011 at Suva.

Judgment of: The Hon. Justice Anjala Wati.

Category: *All identifying information in this Judgment have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarities to any person are purely coincidental.*

Anonymised Case Citation: Anare v Liti- Fiji Family High Court Case Number:
09/SUV/0008

JUDGMENT OF THE COURT

APPEAL -MAINTENANCE - ORDERS MADE TEN YEARS AGO-APPELLANT WAS ADJUDGED TO BE THE PUTATIVE FATHER OF THE CHILD AND ORDERED TO PAY MAINTENANCE- APPELLANT APPEALED TWICE BEFORE-ONCE HIS APPEAL WAS ALLOWED AND SENT BACK FOR RE-TRIAL WHERE HE WAS AGAIN ADJUDGED TO BE THE PUTATIVE FATHER OF THE CHILD-HE APPEALED AGAIN AND HIS APPEAL WAS REFUSED-THIS APPEAL CONCERNS FRESH EVIDENCE THAT MOTHER HAS CONFESSED VIA A TEXT MESSAGE THAT HE IS NOT THE FATHER OF THE CHILD-IF MATERIAL EVIDENCE PREVIOUSLY PRESENTED TO COURT WAS FALSE

The Appeal

1. This is an appeal against the decision of the learned Magistrate whereby in 2000 the appellant was adjudged to be the putative father of the child born in 2008. On this day the order for maintenance in the sum of \$7.50 per week for the child was made. This order was varied -in 2006 to \$15.00 per week until the child attained the age of 18 years.

2. Previously the father had filed two appeals. The first one was heard and the matter was sent back for re-trial before another Magistrate. The appellant again was adjudged the putative father of the child by another Magistrate. He appealed again and his appeal was unsuccessful. This is the appellants' third appeal.

The Grounds of Appeal

3. The appellant has raised only one ground of appeal and that is that the mother of the child has admitted through a mobile text message that he is not the father of the child.

The Orders Sought

4. The appellant seeks an order that the decision of the Learned Magistrate adjudging him to be the putative father of the child be set aside together with the orders for maintenance.

The Appellants Submissions

5. The appellant submitted that -in 2009 he received text messages from the mobile phone of the respondent mother through which she stated that he is not the father of the child. There is now further fresh evidence upon which this court should grant this appeal.

The Respondents Submissions

6. The respondent mother submitted that the father has made applications in court to cease maintenance payments to the child. She confesses that she did send the messages but she did so under stress, anger and frustration. The appellant had sent him 3 messages saying that he was not the father of the child and that she should tell the son that he is not the father of the child. In the message the appellant also said that he does not want to be acknowledged as the father of the child nor will he acknowledge the child as his son. He also wrote that he will not allow the child to call him father. He further texted that he does not want to see the son at his home and that he will embarrass and reprimand the son if he calls him father.
7. The mother said that the father tested her patience and she lost it but she apologizes for saying all that. The appellant is the father and that has been established in court as well.

The Determination

8. All the texts were in Fijian language and I have had the text messages translated to this court.
9. The text messages were initiated by the father when he started demanding that the child does not call him father and said that the child is not-his son. He is only paying maintenance because of the order.

The appellant further said that the child must stop calling him father or else he will scold the child and the child will be upset. He also said that he does not want the child at his home and if the child does go then he will chase the child away. The text also said that if anyone called him the child's father he will frankly tell them that he is not.

10. The mother replied saying that the appellant can continue paying until the end while the real father enjoys. She also said that she would have quashed the case if he was the real father. She texted that the appellant has to look after the child till the end and when all is done then she will tell the child who the real father is. In the meantime the appellant has to waste his money.
11. The evidence that the appellant is relying on now was not before the trial magistrate in the first place. There was therefore no error of law of fact committed by the trial magistrate.
12. The appellant cannot bring this issue to the appeal court to set aside the decision of the learned magistrate. His right lies in applying for a variation or modification of maintenance. Our legislature has recognised that in circumstances where material evidence presented to the court was false, the party who has suffered as a result of the false evidence can apply to the court to cancel the maintenance. False evidence is of course not a ground for appeal but a ground for modification of maintenance.
13. S. 97 (2) (a) of the Act states that a party can apply to the court for discharge of maintenance.
14. S. 97(3) outlines the circumstances in which the application for discharge could be made and one of the circumstances is listed in s. 97(3) (d) of the Act and that is "that material facts were withheld from the court that made the order, or from a court that varied the order, or that material evidence previously given to such a court was false".
15. The appeal must be dismissed and the appellant is at liberty to file an application for discharge of maintenance.
16. It is a matter for the trial magistrate to assess the new evidence, the circumstances in which the texts were exchanged, the weight to be placed on each text message and other factors he considers fit to determine the application for discharge.
17. The appellant is in arrears of maintenance and ordering costs against him would financially burden him more. Further, the appellant was represented by the Legal Aid Commission indicating that he has financial difficulties. Not much time was wasted in hearing this appeal. I make no order as to costs.

The Final Orders

18. The appeal is dismissed.
19. The appellant is at liberty to file an application for discharge of maintenance.
20. Each party to bear its own costs.

ANJALA WATI

Judge

25.01.2011

To:

1. *Mr. Tarere of LAC, Counsel for the Appellant.*
2. *Respondent.*
3. *File Number O9/SUV/000S.*