

IN THE FAMILY DIVISION OF THE HIGH COURT

AT SUVA

ORIGINAL JURISDICTION

CASE NUMBER: 13/SUV/0403

BETWEEN: RAMU
APPLICANT

AND: AMEENA
RESPONDENT

Appearances: Mr. Valenitabua for the Applicant.
Ms. Nayacalevu for the Respondent.

Date/Place of Oral Judgment: Friday 21 February 2014 at Suva

Date/Place of Written Judgment: Monday 30 June 2014 at Suva.

Coram: The Hon. Justice Anjala Wati.

Category: The Hon. Madam Justice Anjala Wati.

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 persons is purely coincidental.

Anonymised Case Citation: RAMU V. AMEENA- Fiji Family High Court Case Number:
13/SUV/0403

JUDGMENT

FAMILY LAW - dissolution of marriage - ground for dissolution of marriage as established by the statute - spousal maintenance - right to spousal maintenance - statutory qualifications.

Legislation:

Family Law Act No. 18 of 2003 ("FLA"): ss. 30, 155 and 157.

The Cause

1. The applicant husband filed an application for dissolution of marriage on the grounds that his marriage has broken down irretrievably as evidenced by 12 months separation prior to the date of filing of the application for dissolution of marriage. He states that he separated from his wife on 19 February 2012 and lived separately and apart from her since then.
2. The application is opposed by the wife on the grounds that she does not treat 19 February 2012 as the date of separation but that the date of separation is 31 January 2013.
3. The wife has also filed an application for spousal maintenance which is opposed by the husband.

The Evidence

Dissolution of Marriage

4. The husband gave evidence that he considers 19 February 2012 as the date of separation. The initial separation was on 30 January 2012 when he left the home after an argument with the wife. That was the last time they cohabited.
5. In 2012, there was a family gathering. He talked to his wife for an hour and told her that the marriage was over. He finally separated from her then and never resumed relationship with her again.
6. In 2012 he started living with another woman in a new relationship. The wife knew that he was living with another woman. She knew this on 19 February 2012.
7. From 19 February 2012, he stopped every relationship with her like living together, having sexual intercourse, shopping, and every other act they used to perform together as husband and wife.
8. After the separation, she used to text her. Some of them were biblical texts. He did not respond. Sometimes he texted her to come to his office and collect some of the things from his office especially the money.
9. When she came to the office, she wanted to pray and so he let her. When people pray they hold hands so she used to hold his hands too. She used to do the prayers. He did not agree to anything.

10. It is not correct that on his part he gave mixed feelings to his wife that the marriage could be saved as he had made it clear to her that it was over. He could not make it any clearer that the marriage was over. He did not do anything to indicate that the marriage could be saved.
11. It may be possible that when he first separated from the wife for a period of 19 days, he did not disclose about him being in another relationship but he clearly remembers saying and telling her on 19 February 2012 that the marriage was over and that he has nothing else to offer as a husband.
12. The wife gave evidence that she considers 31 January 2013 as the date of separation and not 19 February 2012. The reason she considers 31 January 2013 as the date of separation is because that is the day when he stopped financially supporting her and the other reason is that she changed her name to exclude her husband's name and she received the registered deed poll on 30 January 2013.
13. On 30 January 2012 the husband had left the house initially after a fight. He did not stay with her until 19 February when he asked for a trial separation to see if they could work out the marriage. He told her that he was unhappy with the marriage because they have been having fights. He told her not to contact him, come to his work place and to let him alone. She honoured his request.
14. After the separation, she continued to communicate with him through text messages and face to face. During the beginning of the separation, she used to contact the husband every day by text and telephone after which he barred her number. He had previously responded to some of her text messages but those were only in regards to collection of bank cards, the potential cases in court, and cancellation of 2 March 2012 lunch. He never responded when she talked about saving the marriage.
15. Before the separation, the parties used to live together, do shopping together, the sexual relationship was good but all that stopped after the separation except that he gave her money until 31 January 2013. Until 2 March 2012 though, he did not tell her that he was in another relationship. On 2 March 2012 he did by a text message because they had agreed to meet for lunch and he texted to say that the lunch was cancelled because he is in another relationship. Even then she did not consider the marriage over because she

was not going to give up so easily. She always made the approach to talk about the marriage but he was angry all the time. He did not want anything to do with her.

16. She was misled into trial separation. She is bound by her vows that nothing will part them except death so she continued to have hopes and will continue to treat him as her husband.
17. During the separation it was her who always tried to work out the marriage than him. He used to be angry all the time. From his side he made it clear that the marriage is over but she did not accept it. He did all that he could do to indicate that he had cut all the marital ties with her.
18. During the separation she used to get mixed messages from him. She used to go and visit him in his official chambers and he used to be nice to her and sometimes she would pray with him for their marriage. Sometimes he would get angry with her and chase him out of his chambers. When he was pleasant she felt he was responsive and that there were chances of reconciliation. At one time she had a very close meeting with him in his chambers. They felt very close. He came and sat beside him and held his hand. It was from her side that there were hopes of reconciliation.
19. He did not invite her to her chambers but on one occasion he did ask her to come to his chambers and collect \$200 from him.

Spousal Maintenance

20. The wife gave evidence that she is not in any gainful full time employment. She is in early 60's. She retired in 2006 from full time work. She is in a good state of health.
21. After retirement she used to be a member of a statutory body and an Educational Committee. She used to earn \$250 per month from the statutory body which appointment ceased in 2012. Her income from that educational Committee has ceased too. Higher Education Committee has taken over all scholarships from that educational Committee.
22. Now she receives pension from FNPF at a sum of \$250 per month.

23. She owns two properties. One is in Suva. She is the sole owner of that property. The second property is in Lami Town. She obtained both these properties before she met her husband. Both properties are paid off. Only the city and land rates are owing.
24. The amount owing for Suva property is \$15,000 in total being \$1000 for city rates and \$14,000 for land rates. She tendered a state land lease statement which showed that she owed land rent in the sum of \$1,456.02 as at 2013.
25. She owes city rates for Lami property in the sum of \$5,000 and land rent arrears is over \$2,000. She tendered a rates demand notice from Lami Town Council indicating that she owed a sum of \$4,429.22 to Lami Town Council.
26. She indicated that she made arrangements with Lami Town Council to pay \$60.00 per week to clear the arrears. Her daughter is paying that amount. She lives with her in that property with her husband and 2 children. She tendered some receipts indicating payments.
27. The Lami property is on native Land. Last year the land rent arrears on the property was over \$2,000. Her husband paid \$1,000 towards these arrears. He worked at statutory body then. He made arrangements to deduct the arrears from his pay. She tendered an invoice showing arrears of land rent for Lami property in the sum of \$3,070.18.
28. At times, she resides in her matrimonial home in Rewa. She lives there whenever she has money to go there. She contributed towards the property. The house was built as a family house in 1998. Her husband took out his village housing entitlement to build the house. Her relatives built that house. By mutual agreement her in-laws lived in that house for 12 years until 2010. Then they moved to their chiefly residence. Her husband and she renovated and extended the property from end of 2010 as and when funds became available. The work completed in late 2011. The land is a communal property. It is part of the village native reserve.
29. At the moment the Rewa property is empty. She visits when she can. Her husband's first cousin looks after the property now. They moved in end of 2011 or early 2012 to live in it. She lives in Rewa property once a month. All her belongings except her clothing's are still in that house. She started living in Marine Drive property in March 2013.

30. She has two bank accounts in Westpac Bank and BSP. In her Westpac Bank she has \$19.00 and in BSP she has \$3.00. The joint account that she has had with her husband ceased in 2013 because he stopped supporting her financially. The BSP account was opened to put in work allowance and FNPF pension. Now it is paid in Westpac.
31. She had monies in FNPF as well. Upon her retirement she put aside some monies for her pension. The balance she withdrew to support her family since she was finishing work and her husband was still studying.
32. Her eldest daughter and her family live in the Suva property. They moved in last year to rent the same. Before that his other children occupied the same. The family does not have regular employment. The daughter is unemployed and her husband does construction work when he can get the job. They have entered into an agreement with her to pay rent at the rate of \$65 per week. They pay her cash. They also give her money for fuel too. They are in arrears of rent for 6-7 weeks now. The same property she rented it to the University in 1990. She used to get \$900 per month then. Now that property can fetch rent of approximately \$2,000 per month. It is not a very good house to rent now.
33. She is in the process of transferring this property to her children. Her marriage with her first husband was dissolved in 1984. The first husband died in 2001. When he remarried she offered to buy his share but he said that the surviving spouse will pass it on to the children.
34. The Lami property is occupied by another daughter and family. They also pay rent. She gets rent at \$90 per week out of which \$30 is used to pay arrears of rate. The payment is consistent. This property can fetch her about \$1,000 a month. This is commercial property right in town. It is a single house with 4 bedrooms and a self-contained bedroom. The self-contained bedroom once used to be let out.
35. She can confidently say that she is able to look for some form of employment for herself. She is in a correct physical and mental state too.
36. In the form 5 application the wife indicated that she need \$760 weekly for her expenses but in her oral evidence she stated that she needs only \$140 per week at the rate of \$20.00 per day.

37. When she got married both of them provided for the family. In 2001 the husband resigned from employment and joined politics. In 2002 he did not get any job and so she supported the family then. Then the husband told her that he wanted to study. She supported him. From 2001 to 2007 he was unemployed. In 2007 he started work at statutory body. During the period of unemployment she was responsible to manage the family financially. When he started working he started supporting the family until he left her in February 2012. She used to pay maintenance for her husband's children and arrears for houses. She attended to all family obligations of both sides as a wife. She collected money for funeral and gave the husband's family moral support to come back to Rewa and also gave advice on education.
38. Now she is retired and he was to provide for the family. They actually had set up an office in the Rewa house. The understanding was that she was to be a consultant and he was to practice and support her.
39. When the husband graduated with Law Degree he took out a \$20,000 loan. He used \$10,000 to buy a boat for business. They held equal shares in the business. The operation ceased in 2008. The remaining \$10,000 was used to renovate the Lami property. The husband paid off the \$20,000 loan and he was the one who supported the family as she was not working then. The Lami property was repaired substantially. They extended the living room, created a bedroom, a verandah, a laundry and a storeroom. Besides that the husband gave \$1,000 for payment for land rent.
40. When she supported the husband to obtain further education, she was working at a University and she obtained 25% discount on payment of tuition fees. She only paid for his first year education and for the rest of the 3 ½ years he was on scholarship.
41. The husband gave evidence that the expenses stated by the wife are highly exaggerated. The wife can maintain herself as she gets pension and the collective value of the Suva and Lami property is quite substantial. The properties would fetch about \$3000 collectively in rent being \$2000 for the Suva property and \$1000 for Lami property. He spent about \$6,000 in renovating the Lami property and \$1,000 in payment of arrears of land rent. He also transferred to her a vehicle worth \$5,000. The self-contained room in Lami can fetch about \$400-\$500 a month.

42. The wife can fetch money from her properties to maintain herself. There would be more than enough for her.
43. From his income he pays his expenses and the household expenses. His current partner buys her personal things from her money. He also maintains his parents. He gives them \$100 every fortnight and to his children from his previous marriage he sends about \$200 every fortnight. His expenses calculate to \$1,859.29 per week.
44. He has withdrawn his monies from the FNPF account and he has used the monies but cannot itemise where the funds have been used.

The Law and Analysis

Dissolution of Marriage

45. The grounds for dissolution of marriage is that a party must establish that the marriage has broken down irretrievably and the ground will be held to be established if and only if the parties have separated and have thereafter lived separately and apart for a continuous period of not less than 12 months immediately preceding the date of the filing of the application for dissolution of marriage.
46. The application for dissolution of marriage in this case was filed by the husband on 27 February 2013. The husband had initially left the house on 30 January 2012 after an argument with the wife. Then on 19 February 2012 there was a family gathering which the husband and wife both attended. There the parties had a discussion for an hour. According to the husband it was then when he told the wife that the marriage was over and that he was leaving her. The wife says that the husband asked for trial separation to see whether the marriage can be worked out. The husband says that he could not make it any clearer to her that the marriage was over but the wife says that she was misled to separate, thinking, as she was told, that they were going to get back. After the separation the wife says that it was mostly her who had the hopes of reconciliation. The husband hardly texted her but that he gave her mixed feelings.
47. This is a matter where the husband and wife have given two different versions of why the separation occurred. The wife says that it was only a trial separation. I have difficulty believing the wife in what she says having seen her demeanour and deportment. She herself has given evidence that from his side the husband did what he could do to sever

the ties from her. It was her who had hopes. I find that the wife did not in any circumstance want to accept that the marriage was over and is over so she is concocting this issue of trial separation.

48. The parties had already separated for three weeks prior to 19 February 2012 which was on 30 January 2012. The separation occurred after a fight. The parties finally separated on 19 February 2012. There was no need for a trial separation as the parties were not cohabiting at that time but that they were separation. After that initial separation when the parties met next on 19 February 2012, it was for them to decide whether they were going to live together or separate. There was no question of trial separation as there was already separation. If the marriage was to be worked out or could have been saved, the parties would have tried to live together and work it out and not separate again.
49. I further find that if there was trial separation as the wife asserts, there would have been some discussion as to the time by when the parties had to make a decision on whether or not they were to reconcile or treat the marriage as over. There were no such discussions leading me to believe the husband that he indeed, after separating with his wife on 30 January 2012, declared the marriage over on 19 February 2012.
50. The wife also stated that from the husband's side he did everything to sever the ties. It was from her side that she never considered the marriage over and only when the finance stopped coming on 30 January 2013 and when she changed her name by deed poll does she consider that the marriage was over. This evidence of the wife is consistent with the evidence of the husband that he could not make it any clearer to the wife on 19 February 2012 that the marriage was over.
51. I have no reason to disbelieve the husband that he was already in a relationship on 30 January 2012 and that he was living with another woman. He may not have told the wife of the relationship but given the situation on his side there was no reason for him to have a trial separation only. I find that he not only had a physical separation from his wife but communicated to her that the marriage was over and did all that he could to sever the ties with her. He was being generous in continuing to support her financially and to at times respond to some of her text messages and allow her in his office and let her to talk to him and pray but that in no way could amount to giving mixed messages. He was humble enough not to behave in a way to hurt the wife and was being generous. That should not be used to his disadvantage.

52. Another reason why I do not believe the wife is that she says that she had hopes of her marriage surviving even though she was told in no uncertain terms on 2 March 2012 by a text message from the husband that he was in another relationship with a woman and so he cancelled the lunch that was planned by them. After that the wife should not have expected anything else from the husband to indicate that the marriage was over. It is another matter if she continues to have hopes and feelings towards the marriage but that cannot be used to say that the husband did not make his position clear.
53. The wife says that according to her religious belief only death can part them. She however does forget that her first marriage was dissolved and she entered into another one. So she cannot rely on her religious belief to say that because of her religious belief she could not consider the marriage over between the parties.
54. I find that on 19 February 2012 the marriage had broken down irretrievably as the parties had separated for a continuous period of not less than 12 months preceding the date of filing of the application for dissolution of marriage.

Spousal Maintenance

55. Under s. 155 of the FLA, one party to the marriage is only liable to maintain the other if the first mentioned party is reasonably able to do so if, and only if, that other party is unable to support herself or himself adequately whether:
- a. by reason of having care and control of a child of the marriage who has not attained the age of 18 years;*
 - b. by reason of age or physical or mental incapacity for appropriate gainful employment; or*
 - c. for any other adequate reason having regard to any relevant matter referred to in section 157.*
56. S. 157 lists a whole range of matters to be considered to which I have given consideration to.
57. The wife does not have any child under the age of 18 years for care and control. She further testified that she is physically and mentally fit to secure an employment but even if she was not she has substantial property from which she can and must derive income to pay for every expense that she has listed for in her application. The property at Suva

and Lami can collectively fetch her about \$3000 a month. With that she has a pension of \$250 a month. This would calculate her income to \$3250 a month. Even if I were to allow all her expenses as reasonable at the rate of \$760 per month, she would be able to finance her expenses if she derived income from her properties.

58. The wife says that she wants to give the property to her children as that was the wish of her first late husband. If the parties wanted the children to benefit from the property there would have been some arrangements in the estate for them. The wife says that she needs to house her children. She first needs to support herself because the children are all adults and married and capable of looking after themselves. They are not in school or physically and mentally challenged to depend on her. She cannot fetch for herself as yet so there is no question of maintaining her adult children.
59. Even if lets out the Lami property, she can accommodate herself in the self- contained room and have enough to survive on her own.
60. The husband has assisted her in increasing the valuation of her property as he has done substantial renovations to the same. That renovation will assist her in getting a good rental income which she should target. In addition she has already been given an asset of \$5,000 by the husband. He has also been supporting her until 31 January 2013.
61. The wife does not have responsibility to support anyone else and I find that under s. 155 of the FLA and taking into account s. 157 factors, she has not established that she is liable to be maintained by the husband.

Final Orders

62. In the final analysis I make the following orders:
- a. The marriage solemnised between the parties in 1996 be dissolved. I grant conditional order for dissolution of marriage to become final after a month.*
 - b. The application for spousal maintenance is dismissed.*
 - c. Each party to bear their own cost.*

ANJALA WATI

JUDGE

31.06.2014

To:

1. ***Mr. Valenitabua, Counsel for the Applicant.***
2. ***Ms. Nayacalevu, Counsel for the Respondent***
3. ***File Number: 13/SUV/0403.***