

SAMUEL V. ABIGAIL - FIJI FAMILY HIGH COURT APPEAL CASE NUMBER: 14/Ltk/0020

IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA

APPELLATE JURISDICTION

**CASE NUMBER:** 14/Ltk/0020  
(Original Case Number: 13/Ltk/0574)

**BETWEEN:** SAMUEL  
APPELLANT

**AND:** ABIGAIL  
RESPONDENT

*Appearances:* Appellant in Person.  
Respondent in Person.

*Date/Place of Written Judgment:* Friday 21 August 2015 at Suva.

*Coram:* Hon. Madam 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 persons is purely coincidental.

*Anonymised Case Citation:* SAMUEL V. ABIGAIL - FIJI FAMILY HIGH COURT APPEAL CASE NUMBER: 14/Ltk/0020

## JUDGMENT

Catchwords:

FAMILY LAW - APPEAL - EX-NUPTIAL CHILD MAINTENANCE - declaration of paternity based on blood test and other evidence - was it open to the Court to come to such finding?

Legislation:

Family Law Act No. 18 of 2003 ("FLA"):s. 132



1. On 26 November 2013, the mother filed an application for a declaration of paternity and child maintenance.

2. After a defended hearing the Court arrived at a finding that the appellant was the putative father of the child.

3. Aggrieved at the order, the father appealed.

4. He says that the Court erred in law and in fact in accepting the blood test when he had raised in Court that the person who carried out the blood test is known to the mother and as a result, the report is unreliable and incorrect.

5. At the appeal the father stated that when he went for the blood test, the nurses in the hospital told him that the mother was not co-operating and that she wanted to speak to a doctor in the laboratory who was related to her. From what he heard from the nurses, he is suspicious that the result has been interfered with and that it is not a correct report.

6. The appellant also raised in his appeal argument that the child was born in 2013. The application was only filed after 8 months when he had filed for recovery of his two children from his ex-wife. He says that his ex-wife has colluded with the respondent and asked her to frame him for this case when he is not the biological father.

7. The respondent denied that she is related to anyone in the hospital or the laboratory which conducted her blood test. She also denies being related to his ex-wife. She said that there was delay in asking for maintenance because the father stayed or cohabited with her for most of 2013, that is, when she was still pregnant until the child was X months old. They separated after a dispute so she has to file the application for maintenance.

8. I have gone through the records of the court and perused the evidence that was adduced at the trial.

9. It was not only the blood report based on which the Court adjudged the appellant as the putative father but also upon the evidence of the mother and her witness whom she believed over the appellant.

10. The Court was correct in finding that the evidence that the mother had exclusive sexual relationship with the father in 2012 as a result of which the child was conceived and born, his living together with the mother during the pregnancy and after the delivery of child, and his confession to respondent's mother at the hospital when the child was born that he was the father was not contradicted.

11. On the evidence before the Court, I do not find that there was any error in adjudging the appellant as the father of the child.

12. With the evidence being largely undisputed, that is the only conclusion that the Court could have arrived at.

13. There is no challenge at the appeal that the evidence that the Court relied on apart from the blood test was given improper weight. The only challenge is the blood report and the delay in bringing the application for maintenance. Even if I were to exclude the blood report from the evidence, the remaining evidence is still available to make a finding of paternity against the appellant.

14. The issue of bringing the proceedings for maintenance when the child was X months old does not have any bearing on the issue of paternity in this case.

15. In the final analysis, I do not find the appeal to have any merits.

16. I therefore make the following orders:

(a). The appeal is dismissed;

(b). The matter is sent back to the Magistrates' Court for completion of proceedings, that is, for hearing of the application for final maintenance as there is only an interim order in place.

(c). The Registrar to allocate a date and inform the parties.

(d). Each party to bear their own costs of the proceeding.

Anjala Wati

Judge

21.0 8.2015

To:

1. Appellant.
2. Respondent.
3. File: 14/Ltk/ 0020.