

**IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA**

**APPELLATE JURISDICTION**

**ACTION NUMBER:** 14/Ltk/ 0001  
(From 10/Nan/0243)

**BETWEEN:** SAM  
APPELLANT

**AND:** TABITHA  
RESPONDENT

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

*Date/Place of Judgment:* Wednesday 22 April 2015 at Lautoka.

*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:* Sam v. Tabitha – Fiji Family High Court Appeal Case Number: 14/Ltk/0001.

## **JUDGMENT**

**FAMILY LAW – APPEAL– CHILD MAINTENANCE – determining appropriate quantum with reference to the statutory factors.**

**Legislation:**

1. Family Law Act No. 18 of 2003 (“FLA”): ss. 89, 90, 91, 97(7).

**Cause**

1. On 12 September 2013, the lower Court ordered maintenance for the two children of the marriage in the sum of \$75.00 per child against the father of the children. The total that was ordered to be paid was \$150 per week for the two children.
2. Although the wife had initially made an application for spousal maintenance, she did not pursue that application at the hearing so no maintenance was granted for her.
3. Aggrieved at the order, the father appealed against the decision on the ground that the amount ordered to be paid is excessive as he has to support his mother as well. He only wishes to pay \$40.00 per week for both the children.

**Background**

4. The parties were married in 2007. They have two children of the marriage.
5. The parties separated in 2010 and have since then lived apart.
6. As at the date of this judgment, the children are X years and Y years respectively
7. The children live with their mother at their maternal grandparents' place who provide the family with the financial support necessary to maintain them.

**Trial Evidence**

8. When the mother filed the application for maintenance of the children she had claimed that the expenses for the children per week were \$134.00 which were made up as follows:

|                              |   |             |
|------------------------------|---|-------------|
| <b>a. Food</b>               | - | <b>\$55</b> |
| <b>b. Clothing and shoes</b> | - | <b>\$50</b> |

|                                  |   |             |
|----------------------------------|---|-------------|
| <b>c. Fare</b>                   | - | <b>\$ 2</b> |
| <b>d. Cleaning (House, etc.)</b> | - | <b>\$12</b> |
| <b>e. Medical</b>                | - | <b>\$15</b> |

9. At the time the application was filed the elder child was A years old and the younger child was only B months old.

10. The hearing of the application was conducted two years after so the expenses had changed. The mother testified that the children's weekly expenses were \$ 168. 57 which were made up as follows:

|                                     |   |                                     |
|-------------------------------------|---|-------------------------------------|
| <b>a. Food</b>                      | - | <b>\$105</b>                        |
| <b>b. Clothes</b>                   | - | <b>\$ 20</b>                        |
| <b>c. Travel (Elder Child)</b>      | - | <b>\$ 6 per day x 5 = \$30</b>      |
| <b>d. School Fees (Elder Child)</b> | - | <b>\$ 50 term = \$3.57 per week</b> |
| <b>e. Diapers – Younger Child</b>   | - | <b>\$ 10</b>                        |

11. The wife testified that apart from the above expenses she also has to pay for the children's medical bill.

12. In the respondent's response he had stated that his expenses per week were \$144 made up as follows:

|   |   |              |
|---|---|--------------|
| <b>a. Food</b>                          | - | <b>\$ 15</b> |
| <b>b. Household Supplies</b>            | - | <b>\$ 7</b>  |
| <b>c. Electricity</b>                   | - | <b>\$8</b>   |
| <b>d. Water</b>                         | - | <b>\$3</b>   |
| <b>e. Telephone</b>                     | - | <b>\$5</b>   |
| <b>f. Cleaning House</b>                | - | <b>\$ 3</b>  |
| <b>g. Rent</b>                          | - | <b>\$ 60</b> |
| <b>h. Medical for Mother</b>            | - | <b>\$ 5</b>  |
| <b>i. Travelling (to and from work)</b> | - | <b>\$ 18</b> |

- j. Internet** - \$ 7.50
- k. Travelling for case** - \$ 12.50

13. In his oral evidence the respondent indicated that his monthly expenses were \$828 made up as follows:

- a. Rent** - \$ 350 per month
- b. Food** - \$ 200
- c. Electricity** - \$030
- d. Water** - \$ 015
- e. Travelling** - \$100
- f. Medical** - \$ 025
- g. HP payments** - \$068
- h. Entertainment** - \$020
- i. Parental Support** - \$ 20

14. If the above expenses are to be broken down into weekly expenses it will come to \$207 per week.

**Submissions**

15. The husband stated that the food expenses for two children at \$105 per week is exaggerated. He stated that all bus services and school fees for the children are free and those expenses must be eliminated from the list.

16. It was also argued that there is no more need for the diapers for the younger child as he has grown out of the situation.

17. He used to earn \$27,000 at one time but he was terminated from employment and his salary is no longer that. If he finds a good employment he does not mind increasing the maintenance for the two children.

18. The mother stated she is unemployed and the husband is earning so he must support the children financially.
19. She is providing all the support by looking after the children. That is her contribution. She cannot go out and work because she has care and control of two small children whom she needs to look after.
20. There were other irrelevant matters raised by both parties which I do not consider it prudent to be repeated here.

### ***Law and Analysis***

21. The lower Court had found the expenses of the children proper. Given the standard of living that they have had I find that a sum of \$105 for food for two children per week is on a higher side. Instead a sum of \$75.00 is appropriate. A further sum of \$20 for the clothes is also reasonable for the two children. At least a sum of \$10 per week should be allowed for medication and medical bills. The other items like the travelling expenses, school fees and diapers are no longer necessary. Travelling expenses and school fees are now free for the children. The expense of diapers has also gone away. The total expense for the children per week comes to a sum of \$105.00 per week.
22. The mother cannot fetch this money as she is not working and looking after the children under the age of 18 years. Since the father is the only person earning, he must cater for the expenses for his children.
23. Out of the father's expenses some expenses can be brought down like rent and entertainment. I am certain that the husband can find a house in Nadi for at least \$250 per month and still live without the entertainment expense of \$20 per month. Further his travelling expenses of \$100 a month appears exaggerated as he lives in Nadi and works in Nadi. When he had filed the response, he had stated his expense to be \$18 per week which amounts to \$72.00 per month. If a sum of \$148 were to be excluded from his expenses, he would be spending a sum of \$170 a week for his expenses and will be left with at least \$110 per week. The children's expenses are \$105 per week which if divided equally between the two children comes to \$53 per child. I do not think

that it is unreasonable if the husband is asked to pay at least \$55 per child instead of \$75 per child.

24. I find that the Court had to undergo the exercise of not only ascertaining the proper expenses of the children but also the expenses of the husband. That exercise was not accurately undertaken by the Court and thus an amount of maintenance was ordered which the husband did not have the ability to pay. This exercise had to be undertaken pursuant to ss. 89 to 91 of the FLA.

### ***Final Orders***

25. I find that the order should be set aside in regards the quantum of maintenance.

26. I order that the sum of 75 per week per child in maintenance be set aside and substituted with an order for \$55 per week per child in maintenance.

27. The father has to now pay a sum of \$110 per week for the two children of the marriage with effect from the date of the order of the lower Court: ***s. 97(7) of the FLA.***

28. Each party must bear their own costs of the appeal proceeding.

Anjala Wati  
Judge  
22.04.2015

1. Appellant
2. Respondent
3. File: 14/Ltk/0001