

IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA

APPELLATE JURISDICTION

**ACTION NUMBER:** 0006/2013  
(Original Case Number: 12/Rak/0020)

**BETWEEN:** ILAITIA  
APPELLANT

**AND:** SUSANA  
RESPONDENT

*Appearances:* Ms. Tarai for the Appellant.

*No Appearance for the Respondent.*

*Date/Place of Written Judgment:* Wednesday 09 November 2016 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:* ILAITIA v. SUSANA- Fiji Family High Court Appeal Case Number: 0006/2013 (12/Rak/0020).

## **JUDGMENT**

Catchwords:

FAMILY LAW - CHILD MAINTENANCE - ascertaining proper amount for maintenance of the child on the existing evidence.

Legislation:

1. The Family Law Act No. 18 of 2003 ("FLA"): ss. 89(2,), 90,91.

1. The father appeals partly the decision of the Resident Magistrate ("RM") of 4 April 2013 declaring him to be the putative father of the child and ordering him to pay child maintenance in the sum of \$40 per week forthwith until the child reaches the age of 18 years.

2. The decision appealed against is the quantum of maintenance. The father is willing to pay \$20 per week instead of \$40 per week. He does not challenge the order declaring him to be the putative father of the child.

3. The subject child is born in 2011. At the time of the hearing, the child was 1 year old. He would now be 5 years old and going to school. His expenses, since the making of the order, would have definitely increased. I will however determine the appeal on the basis whether the quantum ordered at the time, in child maintenance, was sufficient and proper on the facts on the case.

4. The appeal urges that the Court was wrong in ordering the sum of \$40 per week in child maintenance without considering ss. 90 and 91 of the FLA.

5. In working out the maintenance for the children, the Court had to give consideration to the financial support necessary for the maintenance of the child and the financial contributions towards the financial support necessary for the maintenance of the child that should be made by the parties to the proceedings: s. 89(2) of the FLA. In this regard the Court had to consider the matters appearing in ss.90 and 91.

6. Neither the mother gave a breakdown of the child's expenses nor did the father give any breakdown of his expenses. Their applications were silent on this aspect. The father's response indicated that he earned in the range of \$10.00 to \$50.00 per week from his farm.

7. During the trial, the mother's evidence was that the child needed money for food, clothes and medical expenses and that she needed \$80.00 a fortnight to maintain the child.

8. The father's evidence was that \$80.00 a fortnight was too much for a child. He testified that he was the bread winner of the family and that he supported his extended family.

9. In absence of any evidence of the breakdown of the father's expenses, the need for him to maintain his extended family and the extent of the need, the father cannot challenge the Court's finding that he was capable enough to maintain the child for his basic needs of food, clothing and shelter. One cannot deny that the child needs those basic expenses although the quantum to meet those expenses was not articulated by the mother.

10. On any reasonable working, a child of 1 year would have so many expenses. He would need milk, fruits, food, clothes which needs to be bought often as they grow, and medical expenses for his clinics and likewise. If a reasonable sum were to be allocated, it cannot be anything below \$40.00 per week.

11. The father's evidence was that he was a farmer. He failed to state what he grows on the farm and why he cannot use the farm produce for sale and derive money for the child. He also failed to give material evidence on his expenses. He said that he was supporting his extended family. He did not say why he has to support them and what statutory duty he has to support them. His evidence should have established the number of people he was supporting and why they cannot support themselves.

12. His response showed that his uncle who was living with them was also earning the same amount of money as he did. He also has his grandfather living with him (as per his response) but the duty to provide for his expenses is statutorily bestowed on his uncle.

13. In light of all the evidence, I do not find that the Court erred in making a finding that the farm and the income derived from it was sufficient to provide at least \$40 per week for the child in maintenance.

14. The mother cannot provide for the child financially because she cannot leave the child image behind and fetch for employment. The child was only 1 year old at the time. It is therefore reasonable that the father be expected to provide for the child financially and the mother to provide for the child's physical and mental well-being.

15. Her contribution to the child is in the form of raising him and looking after his well-being. That in no way should be treated as contribution of a lesser value than that financially.

16. I find that on the available evidence before the Court, there was no error in fact in finding that the child needed a reasonable sum to be maintained and that the father could provide that support from the farm or from the sale of the produce from his farm.

17. In terms of final orders:

(a) The appeal is dismissed. I affirm the orders of the Magistrates' Court to take effect from the date of the judgment in the lower Court.

(b) Each party to the cause must bear the costs of the proceedings.

Judge

09.11.2016

*To:*

*1. Legal Aid Commission for the Appellant*

*2. Respondent.*

*3. File: Appeal 0006/13 (12/Rak/0020)*