

IN THE FAMILY DIVISION OF THE HIGH COURT AT SUVA

APPELLATE JURISDICTION

ACTION NUMBER: 15/Suv/ 0011

BETWEEN: SEMEKI

APPELLANT

AND: LATIANARA

RESPONDENT

Appearances: Mr. V. T. Faktaufon for the Appellant.

Ms. K. Vulimainadave for the Respondent.

Date/Place of Judgment: Friday 14 February 2020 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.

JUDGMENT

Catchwords:

FAMILY LAW – SPOUSAL MAINTENANCE – application made for discharge of an order on the grounds that the parties were divorced and that the husband who was under an order for payment was unemployed – no evidence given that the reason for unemployment was genuine and not designed to avoid payment of maintenance – the evidence does not support the application for cancellation of maintenance.

1. The husband has appealed the decision of the Family Division of the Magistrates' Court. His application for cessation of spousal maintenance on the grounds that his marriage had been

dissolved was dismissed. The Court found that dissolution of marriage was not a ground to cease spousal maintenance.

2. The grounds on which the husband appeals the decision is that he is now unemployed and that he has no means to generate a constant source of income. He says that his application amounts to variation of the maintenance order and that his former wife is capable of finding employment. He also asserted that the wife had not filed a response to his application which should have established his grounds.
3. A brief background to this matter is important. The parties' had initially conceded to a sum of \$500 per fortnight in spousal maintenance. The amount was later varied to 30 per week in spousal maintenance. The husband later applied that he stops paying maintenance since he was divorced. The matter was heard undefended in the Magistrates' Court.
4. The only evidence of the husband in the Magistrates Court was that he was divorced and not working. He said he was living in a de-facto relationship and that the order for payment of \$30.00 per week in spousal maintenance had been suspended.
5. The order for payment of maintenance was suspended as the wife had been delaying in filing her response to the application for cessation of spousal maintenance and continued to seek time to do so. It was not suspended on merits of the application for variation.
6. The court was correct in finding that dissolution of marriage is not a ground for cessation of maintenance. It did not deal with the husband's unemployed circumstances to decide whether his application could constitute an application for variation of maintenance on the grounds of change of circumstances.
7. The husband's evidence was that he was unemployed. That is not on its own sufficient to cease an order for payment of spousal maintenance. It was the duty of the husband to satisfy the court that his reason for unemployment was genuine.
8. He ought to have satisfied the court on the duration for which he was unemployed and the basis on which he supports himself. It was also incumbent on him to show to the court that he

was not able to find another employment for a reason that was beyond his control and not his making. He ought to have also shown to the court that his changed circumstances is not created by him to avoid his liability.

9. This is not a case where the husband has never been employed. He has been working before, earning and supporting his wife. It was therefore crucial that he explained his unemployed status and its reason in detail in court. He failed to do that.
10. If unemployment on its own was given consideration then every person under an order for payment of spousal maintenance will take a break from employment and avoid the order. It is unfortunate that the husband did not tender sufficient evidence to support his case. The court was therefore correct in not taking the mere assertion of unemployment into account.
11. One of the other grounds of appeal states that the wife is capable of finding employment for herself. There was no evidence to this effect from the husband. I can therefore only term this ground of appeal as a mere statement which has not been supported by evidence.
12. Mr. Faktaufon argued that an order for spousal maintenance is for a temporary period until the spouse who is being paid maintenance is able to fend for him or herself. He argues that the recipient of spousal maintenance must get back on his or her feet soon.
13. There may be instances where a spouse who receives the maintenance is able to later find employment and no longer requires the support. There are other cases where the spouse may be life-long dependent on spousal maintenance. In such cases an order will continue until it is varied or discharged by a subsequent order or by operation of law.
14. The law does not set a life time for the order for spousal maintenance. In that regard, in absence of any evidence that the wife is able to fetch for herself and is so doing, Mr. Faktaufon's argument does not assist him.
15. Another ground of appeal states that the wife did not respond to the application for cancellation of the order for spousal maintenance. On that basis the matter was heard undefended and should have been decided in favour of the husband.

16. Although the matter was undefended, the husband was still under an obligation to satisfy the court that the order ought to be discharged on a proper ground. No evidence was tendered for a proper finding of changed circumstances to be made

17. I find that there was no clear evidence based on which the court could exercise its powers to cancel the order for spousal maintenance. I therefore do not find that there is any basis for the appeal and I dismiss the same entirely.

18. For clarity, the final orders are:

(a) The appeal is dismissed.

(b) Each party is to bear their own costs of the appeal proceedings.

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Hon. Madam Justice Anjala Wati

Judge

14.02.2020

To:

- 1. Faktaufon & Bale Lawyers for the Appellant.*
- 2. Legal Aid Commission for the Respondent.*
- 3. File: Appeal Case Number: 15/Suv/0011.*