

**IN THE HIGH COURT OF FIJI  
AT LABASA  
[APPELLATE JURISDICTION]**

<b>CASE NUMBER:</b>	Family Appeal No. 07 OF 2019
<b>BETWEEN:</b>	KUNAL <p style="text-align: right;"><u>APPELLANT</u></p>
<b>AND:</b>	SHALESHNI <p style="text-align: right;"><u>RESPONDENT</u></p>
<b>Appearances:</b>	Mr S. Sharma for the Appellant Ms S. Devi for the Respondent
<b>Date of hearing</b>	19 October, 2020
<b>Date/Place of judgment:</b>	23 October, 2020
<b>Judgment of:</b>	M. Javed Mansoor, J
<b>Category:</b>	<i>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.</i>
<b>Anonymised Case Citation:</b>	Kunal v. Shaleshni– Fiji Family High Court Appeal Case Number: 07 of 2019

**JUDGMENT**

The following case is referred to in this judgment:

Shelvin Vincent Chetty v Zabeen Nilufa Desley [2020] FJHCFD 10; Family Appeal 15/Suv/0015 (19 May 2020)

1. The appellant appealed the decision of the resident magistrate delivered on 8 July 2019, whereby the respondent was given full possession of the property at Labasa and was directed to pay the appellant 30% of the current value of the property. The court gave the appellant possession of the vehicle and directed him to pay the respondent 50% of the current value of the vehicle. Directions were issued by the magistrate to obtain valuations of both properties.
2. The appellant challenged the decision of the magistrate to award him 30% of the residential premises on the basis that there was no evidence to rebut the presumption that each party was entitled to equal share as provided in section 162 of the Family Law Act.
3. The appellant contended that the magistrate failed to consider the indirect contributions of the appellant towards taking care of family needs. He submitted that the magistrate failed to consider the evidence before court in reaching the decision. Fuller references to the grounds of appeal are omitted in view of the decision reached by court.
4. This matter was fixed for hearing on 19 October 2020. On that day, after brief submissions, the parties agreed to explore the possibility of settling the matter and to inform court on the next date. The following day, the parties informed court that they could not reach agreement regarding a fresh basis for property distribution.
5. Counsel for the respondent, however, conceded that the resident magistrate had not considered the relevant principles of law in regard to distributing property acquired by the parties during their marriage.
6. Principles relevant to the distribution of property were discussed by Wati, J in several judgments, particularly in relation to the application of sections 161 – 163 of the Family Law Act 2003. A recent decision that addresses these principles is *Chetty v Desley*<sup>1</sup>.

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<sup>1</sup> [2020] FJHCFD 10; Family Appeal 15/Suv/ 0015 (19 May 2020)

7. In view of the respondent conceding that applicable principles had not been considered, the appellant submitted that this matter be sent back for a rehearing to the Magistrate Court of Labasa. The respondent had no objection to the appellant's application for a re-hearing.
8. The parties submitted that the magistrate did not have the benefit of a proper valuation in respect of the properties that were ordered to be distributed. Both parties also agreed that the outstanding liability on the property needed to be determined. The appellant submitted that these were matters that could be resolved before the magistrate at a rehearing.
9. The respondent also sought a direction from court permitting her to reside in one of the two flats belonging to the parties until the determination of the matter by the magistrate. She submitted that though the appellant was residing in one flat, the other flat was unoccupied and that she be allowed to reside in it. Although the flats were adjoining each other, the respondent contended, the DVRO that was issued against the appellant would not interfere with her temporary occupancy of the premises until the conclusion of this matter.
10. However, the appellant was not agreeable and stated that the terms of the DVRO prevented the respondent from moving in to the premises adjoining the flat occupied by the appellant and that this would require a variation of the court order.
11. I am of the opinion that this issue is best left to the magistrate who could hear the parties on application and decide upon a course of action that is apt in the circumstances.

### **ORDER**

- A. The order of the magistrate of Labasa dated 28 July 2019 is set aside.

- B. The case is sent for rehearing by another magistrate, and to determine the distribution of the properties acquired by the parties during their marriage according to law. The rehearing is to be completed by the magistrate within three months of the date of the ruling.
- C. The parties are to bear their own costs.

M. Javed Mansoor

**JUDGE**

Delivered at Labasa on this 23<sup>rd</sup> day of October, 2020

SOLICITORS:

For the appellant: Ms. Sheenal Naidu

For the respondent: Legal Aid Commission