

**IN THE FAMILY DIVISION OF THE HIGH COURT
APPELLATE JURISDICTION**

CASE NUMBER:	Family Case No. 21 LAB 001
BETWEEN:	STELLA
AND:	NOEL
Appearances:	Mr. Singh S - for the Applicant Mr. Rabuku J. - for the Respondent
Date/Place of judgment:	Tuesday, 05 th October, 2021 @ 10am
Judgment of:	Hon. Mr. Justice Vishwa Datt Sharma
Category:	<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>
Anonymised Case Citation:	<i>SNK vs. NK – Fiji Family High Court Case Number: 12/Lab/0001</i>

JUDGMENT OF THE COURT

Decision

[Transfer of Proceedings pursuant to Rules 5.4 – 5.16; Division 5.2 of the Family Magistrates Court Rules]

INTRODUCTION

1. The Applicant Stella filed a Form 12 and 23 application coupled with a Form 9 Final Orders against the Respondent Noel, and sought for the following Orders-
 - i. That Savusavu Family Magistrates Court case number 17/SAV/122 be transferred to the Family High Court at Labasa and the proceedings be delt with by a Judge of the Labasa Family High Court.
 - ii. Costs to be paid in cause.

2. The application is made pursuant to **Section 28 (3) of the Family Law Act 18 of 2003**
3. The Applicant in her Form 23 Affidavit deposed the following-
 - i. That she is the Applicant in the Form 9 application for Property Settlement and related matters.
 - ii. That she is aware that her present Solicitor and the Respondent's previous Solicitors on record have both agreed to a transfer of this matter to the High Court.
 - iii. That she has a complex claim and it is best that the High Court of Fiji at Labasa deals with all the matters in dispute between the parties.
 - iv. That she has not been able to have this matter in the Savusavu Court heard in the past 3 years and her case is being unduly delayed.
4. Subsequently, the Respondent filed an Affidavit in Opposition stating that-
 - i. There is an existing application filed by Ranjani Charitable Foundation seeking to intervene and be made a party to the Savusavu proceedings;
 - ii. The Interim Injunction made ex-parte on 23rd November 2018 by Savusavu Court be uplifted and set aside;
 - iii. That ex-parte of 23rd November 2018 is in relation to two properties registered under the Foundation which the Applicant claims to be the matrimonial properties;
 - iv. The Ruling in the Intervenor Application is impending delivery; and
 - v. Ranjani Charitable Foundation is an Interested Party since it holds the title to the matrimonial properties that is the subject of the ex-parte Order made on 23rd November 2018.
5. The Court also takes the notification of the fact that the Applicant, Stella obtained the **Injunctive Orders** against Ranjani Charitable Foundation and lodged caveats preventing any dealings with regards to the two properties in issue in this proceedings.

DETERMINATION

6. The issue for this Court to currently determine is "**whether Savusavu Magistrates Court Case Number 17/SAV/122 be transferred to the Family High Court at Labasa and the proceedings be delt with by a Judge of the High Court at Labasa together with costs?**"
7. On 9th June 2020, the Applicant filed an application at the Savusavu Magistrates Court seeking an Order for the current proceedings to be transferred to the Family High Court Division in Suva.
8. This application was made in light of the Form 9 Property and related matters and that the Applicant's application made was somewhat complex in nature.

9. The learned Resident Magistrate considering the complexity of the proceedings granted an Order on 20th August 2020 for the transfer of the proceedings to the Family High Court at Suva subject to the decision of the Judge in the Family High Court at Suva.
10. On 02nd December 2020, the Honourable Family High Court Judge at Suva directed that the file be remitted to the Savusavu Family Court Resident Magistrate and that the Resident Magistrate did not have the powers under the Family Law Act to transfer the matter to the High Court in Suva and that his Orders were of no effect and as such refused to list the matter before the Court.
11. In light of the above directives, I make reference to **Section 28 (3) of the Family Law Act 18 of 2003**:

(3) The judge of the Family Division may of his or her own motion or on the application of a party at anytime order that any proceedings he transferred from the Family Division of the High Court to the Family Division of the Magistrates' Court or from the Magistrates' Court to the Family Division of the High Court.

12. Further reference is made to **Division 5.2, Family Law Rules 5.14 - 5.15** which deals with **Transfer of Proceedings between Courts and by Parties**.
13. After the directives of the Honourable Judge of the Family High Court Division at Suva, ' that the Orders of the Resident Magistrate were of no effect and the refusal to list the matter before the Court', the Applicant/Counsel should have known the consequent procedure better on the cause to be undertake in order to seek the proper forum to seek an Order for the transfer of this pending matter in the Family Division of the Magistrates Court Savusavu to the Family Division of the High Court at Labasa.
14. The earlier application for transfer made at the Savusavu Family Magistrate's Court was already heard and determined by the Presiding Hon. Resident Magistrate.
15. The Applicant/Counsel in the circumstances should have made a fresh application and sought for the transfer of the impending proceedings to the Family Division of the High Court at Labasa. The Applicant should have exhausted the original avenue for his current application accordingly.
16. However, the Applicant/Counsel has failed to follow the procedural aspect required in terms of the Rules to file its current transfer of proceedings application at the proper forum rather decided to file the same directly at the Labasa Family High Court.
17. Bearing in mind the aforesaid rationale, I have no alternative but to dismiss the current impending application made in terms of Form 12 and 23 together with the Form 9 Application for Final Orders accordingly.
18. Since the matter proceeded to a full hearing with written submissions by Counsel and filing of documentary opposition by the Respondent, it therefore entitles the Respondent a summarily assessed costs of \$650 to be paid by the Applicant.
19. Following are the Orders of this Court-

Orders:

- i. Forms 12 and 23 together with Form 9 application for Final Orders are hereby dismissed accordingly.
- ii. There will be an Order for the costs to the Respondent against the Plaintiff summarily assessed by Court at \$650.
- iii. The Savusavu Family Magistrates Court to be remitted and furnished with a copy of my decision accordingly.

VISHWA DATT SHARMA

JUDGE

SUVA

05th Day of October, 2021

cc: Shelvin Singh Lawyers, Suva.
Law Solutions, Suva.