

**IN THE CIVIL DIVISION OF THE HIGH COURT [LABASA]**

<b>CASE NUMBER:</b>	007 OF 2020
<b>BETWEEN:</b>	AKASH
<b>AND:</b>	SONIA
<b>Appearances:</b>	Mr Sharma. S. for the Appellant Ms. Raj. R. for the Respondent
<b>Date/Place of judgment:</b>	Monday, 12 September 2022 at Labasa
<b>Judgment of:</b>	The Hon. Justice A.L.B. Brito-Mutunayagam
<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</i>
<b>Anonymized Case Citation:</b>	AKASH v SONIA – Fiji Family High Court Appeal Case number: 20LAB0007

**JUDGMENT OF THE COURT**

1. The appellant appeals a Ruling of the Magistrates' Court granting the respondent a transfer of proceedings to the Magistrates' Court in Nadi. The respondent had filed Form 12 & 23 applications seeking an order to have her Form 5 application for maintenance and the appellant's Form 9 application transferred to Nadi Family Court.
  
2. The appellant appeals on the following grounds of appeal:
  - a) *That the learned Magistrate erred in law and in fact in failing to consider the factors outlined in Section 28(2) of the Family Law Act and Rule 5.16 of the Family Law Act.*
  - b) *That the learned Magistrate erred in law and in fact in failing to consider that the Form 9 Application was filed by the Appellant prior to the Respondent lady filing Form 5 Application for Spousal and Child maintenance.*
  - c) *That the learned Magistrate erred in law and in fact in not taking into account that no supporting documents had been adduced in court in support of the Respondent lady's contention that she doesn't have the means to travel to Labasa Family Court for the hearing of her Form 5 Application.*
  - d) *That the learned Magistrate erred in law and in fact in not taking into account that in transferring the file to Nadi Magistrate's Court, the Respondent/Man will incur more legal fees being agency fees for mentions and travelling costs of him, his son and his solicitor in travelling to Nadi to conduct the hearings and based his finding only on the inconvenience that may be caused to the Respondent/Lady.*
  - e) *That the learned Magistrate erred in law and in fact taking into consideration irrelevant factors when deciding to transfer the matter, such as the Respondent being a Branch Manager and that he has a property in Sigatoka which is in breach of Section 28(2) of the Family Law Act and Rule 5.16 of the Family Law Act.*
  - f) *That the learned Magistrate erred in law and in fact in not considering that the Respondent/Man also has liabilities and responsibilities as he is also taking care of his elderly mother and one son.*
  - g) *That the learned Magistrate erred in law and in fact in not considering the material fact that if the matter is transferred to Nadi Family Court, it will be heard and determined expeditiously than the Labasa Family Court.*

3. The question at the heart of this appeal, as contended in the first ground is whether the lower Court had failed to take into account the criteria laid down in section 28 of the Family Law Act viz, “the *interests of justice, or of convenience to the parties*” and the “*other (pending) proceedings in relation to the same marriage..*”, in transferring these proceedings from the Labasa Magistrates’ Court.
  
4. Section 28 of the Family Law Act states:
  - 1) If-
    - (a) *there are pending in a court proceedings which have been instituted under this Act or are being continued in accordance with section 4: and*
    - (b) *it appears to that court that other proceedings which have been so instituted or are being so continued in relation to the same marriage or void marriage or to the same matter are pending in another court, the first-mentioned court may stay the first-mentioned proceedings for such time as it considers appropriate or may dismiss the proceeding.*
  - 2) If-
    - a) *there are pending in a court proceedings that have been instituted under this act or are being continued in accordance with section 4; and*
    - b) *it appears to that court that it is in the interests of justice, or of convenience to the parties, that the proceedings be doubt with in another court having jurisdiction under this Act, the court may transfer the proceedings to the other court.*  
(emphasis mine).
  
5. Section 28(2) of the FLA provides two grounds for the court to consider transfer of the proceedings to another court, viz, the interests of justice and convenience to the parties.

6. Rule 5.16 states that the matters to be considered

(1) *In considering a transfer under this order, the court shall have regard to*

(a) *The wishes of the parties*

(b) *Whether proceedings in respect of an associated matter are pending in the other court, and*

(c) *Whether if the proceedings is transferred it is likely to be heard and determined at less cost and more convenience to the parties than if the proceedings is not transferred.*

(d) *Whether the proceedings is likely to be heard and determined earlier in the other court,*

(e) *The availability of particular procedures appropriate for the class of proceeding; and*

(f) *The interest of the administration of justice.*

7. In evidence in chief, the respondent said that she seeks a transfer of all the proceedings, as she incurs expenses in travelling to Labasa and her daughter is asthmatic. She is self-employed and borrows money from her father to come to Labasa. Due to the impact of Covid 19, her rental business is not doing well and brings her \$50 to \$100 a week. She has 3 cars with 1 under repair. She resides with her father in Nadi. He financially supports her and her 9 year old daughter. She borrowed \$700.00 from her father for air tickets. She leaves at 5am to take the flight. She cannot afford the air fare to Labasa and it is inconvenient to travel by boat with her daughter. She has no relatives in Labasa to stay with and returns to Suva the same day. The respondent is a Bank Manager and owns a house in Sigatoka. She said that “*most of time, his residence is in Sigatoka*”.

8. The respondent, in his affidavit opposing the application stated that his Form 9 application is pending in the Labasa Magistrates’ Court. The respondent did not appear on mention days. He is employed as a Manager at the Bank, Labasa branch. He looks after his son and mother. As a Branch Manager and Supervisor, he is not at liberty to make frequent applications for leave to attend Nadi Courts. It is greatly prejudicial and inconvenient to him, his son and mother, since there are no other family members to look after them in his absence. He drops and picks his child from school. The respondent’s transfer application

has not shown any good cause. She will not be caused any inconvenience to attend a hearing in Labasa, as she is a business woman and at liberty to schedule her times.

9. I would note that the appellant's Form 9 application is pending in the Labasa Magistrates' Court.
10. The appellant contends that the respondent had not established that she does not have means to travel to Labasa. The Learned Magistrate failed to take into account that he will incur more legal fees and costs in travelling to Nadi with his son and based his finding only on the inconvenience that may be caused to the respondent, not the appellant who is also taking care of his elderly mother and son.
11. It transpired in the respondent's cross examination that the appellant picked her and their daughter from the Labasa Airport, paid their expenses for food and paid their daughter's air fare. She also said that on mention dates she appears via skype and needs to be present in person only at the hearing.
12. In the light of the respondent's evidence, I can find no reason for her complaint of inconvenience to travel to Labasa. Moreover, she can continue to appear via skype on mention and also on the hearing date.
13. The appellant stated that he has been transferred to Labasa branch of the Bank and will find it difficult to obtain leave to go to Nadi. The respondent, on the other hand, runs her own business.
14. In my judgment, the interests of justice and convenience to the parties require the respondents' and the appellant's applications to be heard in the Labasa Magistrates Court
15. The appeal succeeds.

16. *Orders*

- a. The appeal is allowed,
- b. I set aside the Ruling of the Learned Magistrate of 9<sup>th</sup> November,2020, and direct the appellant's application and respondents' application to be heard in the Labasa Magistrates Court .
- c. I make no order as to costs.

**A.L.B. Brito-Mutunayagam**  
**Judge**  
**12<sup>th</sup> September,2022**