

IN THE FAMILY DIVISION OF THE HIGH COURT AT SUVA
APPELLATE JURISDICTION

ACTION NUMBER:	20/Suv/0026
BETWEEN:	RACHITA APPLICANT
AND:	RISHIT RESPONDENT
Appearances:	<u>Applicant:</u> Present – In Person. <u>Respondent:</u> Present – Mr R. Dayal (Sarju Prasad Esquire).
Date of Hearing	Tuesday 13 February 2024
Date of Judgment	Wednesday 27 March 2024.
Coram:	Hon. Mr. Justice Chaitanya Lakshman
Category:	<i>All identifying information in this judgment have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarity to any persons is purely coincidental.</i>

Decision - Alteration of Property Interests (Property Distribution)

A. Introduction

1. On 29th January 2020 the file relating to the parties was transferred from Nasinu to the Family High Court in Suva, upon the application of the Applicant/Lady. The matters relating to the parties has since been dealt with by the High Court. The Applicant/Lady sought leave of the Court to institute property proceedings as she was out of time. On 18th May 2023, Justice Wati granted leave to the Applicant/Lady to file property distribution proceedings. The Respondent/Man was given time to file Form 10 and 19. A Form 10 was filed on 18th May 2023. The Applicant/Lady filed her Form 19 (Financial Statement) on 31st March 2023. The Respondent/man has not filed a Form 19 despite numerous reminders and being given ample opportunity to file one.
2. The Applicant/Lady sought the following Orders in relation to property distribution:
 - “1. ...order for transfer of property HA Lease 296022 Lot 7 on DP 7287, Naitasiri containing 242 m² on [her] name absolutely.
 2. that the costs of the transfer be borne by the parties equally.
 3. ... transfer (DH587) vehicle to the Respondent, Namely Rajeshwar Prasad.
 4.”
3. The Respondent/Man in his response on property sought the following Orders:
 - “1.
 2.
 3. that the Applicant lady buys and pays \$100,000.00 (One Hundred Thousand Dollars) to the Respondent man for a full and final property settlement).
 4. ...”
4. I am informed that the Applicant willingly transferred the vehicle (not in road worthy condition) to the Respondent. The only property in issue is the house and land being HA Sub-Lease # 379425 on Lot 7, DP 7287 located at Matau Road, Caubati. I note that number quoted by the Applicant is the Lease Number which is 296022.
5. The Parties were married on 8th May 2011. They separated on 10th November 2017. Certificate of final dissolution of marriage was granted on 2nd May 2019. The parties have a child (DOB - 8/7/2012). The Applicant, her parents and the Respondent gave evidence at the trial.

B. The Relevant Laws and Case Authorities

6. Section 160 of the Family Law Act 2003 sets out the declaration of interests in property in proceedings between the parties to a marriage. Section 161 sets out the alteration of property interests and the appropriate orders that the Court may make. Section 162 then

goes on to set out the factors to be taken into account by the Court. The sections are comprehensive and I take note of the provisions and the requirements that are to be followed. The relevant Rules are in Division 8.7 - Financial Circumstances of the Family Court Rules 2005.

7. Section 2 of the Family Law Act 2003 defines “property”. It is as follows:

“in relation to the parties to a marriage or either of them, means property within or outside Fiji to which those parties are, or that party is, entitled, whether in possession or reversion;”

In **KN v. MYH – Fiji Family High Court Case Number: 08/BA/0043**, it was held that the definition means the property acquired within or outside marriage including property acquired outside marriage and retained after the marriage is dissolved.

8. Section 154 of the Family Law Act defines property that is subject to distribution. Since 25th November 2011, the amount standing to the credit of the party’s accounts in the Fiji National Provident Fund is excluded as property. It is not to be included in the pool of assets.
9. The recommended steps in determining property distribution have been set out in **KN v. MYH – Fiji Family High Court Case Number: 08/BA/0043**. It is similar to what used is used in Australia where the Courts have identified a four-step process in working through every property matter. It is as follows:
- (a) *identify and value the assets and liabilities of the parties;*
 - (b) *assess the parties’ contributions to the assets;*
 - (c) *assess a range of factors set out mainly in s 162(3) of the Act; and*
 - (d) *consider whether the order proposed after consideration of all those factors is “appropriate”.*

C. Determination

10. I have noted the application, the response filed, the affidavits, and the evidence given by the witnesses, the relevant documents, and the relevant laws. The **First Step** in property distribution matters is to identify and value the assets and liabilities of the parties. The Court has noted that the asset in issue in this matter is the house and the land described in HA Sub-Lease # 379425 on Lot 7 DP 7287 located at Matau Road, Caubati. The property was acquired in 2014 for \$97,000.00. The loan repayment due (to BSP) for the house as at 18th May 2023 was \$30557.82. This is a liability. The property was inspected and valued in February 2022 and assessed to have a market value of \$245,000.00 (vep).
11. The contribution of the parties towards the assets is **Step Two** of the process. The Applicant has shown that she contributed \$14,000.00 from her FNPF towards the acquisition of the property. She paid legal fees for the transfer of the property. She later bought furniture and air-conditioner. She made renovations to the house. The Applicant has been making repayments towards the loan which initially was \$306.00 per fortnight

and later increased to \$339.50 per fortnight. The Applicant has also been paying the ground rental of \$180 per annum and rates to Nasinu Town Council, which is \$140.00 per annum. The Applicant's evidence was supported by receipts and statements. According to the Applicant she is supporting and maintaining the child from her salary. She further added that apart from the \$5000.00 FNPF contribution of the Respondent, he made no other contribution towards the property in the 3 years they were together following the acquisition of the property.

12. The contribution of the Respondent was \$5000.00 (from his FNPF) when the property was initially acquired. I do not find that he made any other contributions towards the property. He did not produce any evidence to show that he contributed in any other way to enhance, develop or renovate the property. The Respondent did not provide any receipts or statements to support his evidence in Court. By filing a Form 19, a party files his or her financial statement. In this matter the Respondent did not file a Form 19 despite numerous reminders. The Respondent has not made a full and frank disclosure of his financial circumstances. This is to his detriment. The Court is not in a position to appraise his financial position. All the repayments and incidental payments were all being made by the Applicant. The evidence shows that a loan of \$70750.00 was taken in 2014. The remaining sum due to BSP as at May 2023 was \$30557.82. This shows that the Applicant alone over this period paid around \$40,000.00. The Respondent has not shown that he made a single payment towards the home loan.
13. From the evidence given in Court and the documents filed I find that the Applicant made financial and non-financial contribution during her marriage to the Respondent. I find that the Applicant contributed extensively towards the property in issue. The Respondent's only contribution was an initial \$5000.00 from his FNPF towards the acquisition of the property. The marriage of the parties was not of a long duration. The circumstances in this matter does not favour the presumption of equal contribution by the parties to the marriage as provided in Section 162 (2) of the Family Law Act 2003. Given the role played by the Applicant in the marriage and her extensive financial and non-financial contribution for the duration of the marriage I find that equality of contribution would be repugnant to justice.
14. The Applicant basically sustained the family when they were all together. It does not mean that I discount the fact that the Respondent had not contributed towards his family during the marriage. It is the duty of the father and the man of the house to do his part. The Respondent has not provided any tangible evidence in Court to support his claim for equal share in the property. They had both started off on equal footing. When they were married both were Police Officers. The Applicant has maintained her occupation and a regular income. The Respondent for some reason has not done the same. His earnings decreased. He was not able to support the family as much as the Applicant did. The Respondent informed me that he provided for his daughter, bought household items, groceries and did some maintenance on the house. The evidence of him doing maintenance work on the house is not supported by any other evidence. The Respondent also stated that he made no contribution towards the house after separation and that when the house was bought he was earning \$300 to \$350 per week.
15. For the **Third Step** which relates to Section 162 (3) of the Family Law Act 2003 I note the "future need" factors. The parties have a daughter. She will be 12 years old later this year. She is residing with her mother. The Respondent does not have contact with

her. No maintenance is being paid for the child. The Applicant is 36 years old and is employed as a Police Officer. She has already spent 18 years in the Police Force. She is physically fit and the sole-breadwinner. The Respondent is 38 years old. He is a driver and resides with his parents. The Applicant has care and full responsibilities of their child. No assistance is provided by the Respondent. The child's needs will increase as she grows older. Everything for the child is being provided by the Applicant/Mother. The Applicant apart from financial support for the child bears the responsibility of providing her emotional support. This will continue in future. The Applicant/Mother should not be burdened unreasonably, be it financially or otherwise. She has numerous responsibilities. After acquiring the property, renovations were made to the house. This increased the value of the property. This all was due to the contribution and effort put in by the Applicant. The enhancement of the value of the property is due to the commitment of the Applicant. She has maintained and paid the loans and other undertakings of the property over time. The Respondent needs to be fair to the Applicant. He knows how much he has contributed towards the property, be it initially or over time. The Respondent seeking parity is unreasonable. It is not fair.

16. My final assessment of this matter is that the Applicant pay the Respondent \$6,500.00 as his share in the matrimonial property. Upon payment by the Applicant of \$6,500.00 to the Respondent, the Respondent is to execute the transfer (and any other accompanying documents) of his share and interests in Sub Lease # 379425, Lot 7 DP 7287 located at Matau Road, Caubati to the Applicant. In order that we reach finality I seek that the payment and the transfer be done within 3 months of this judgment. Should the Respondent delay or fail to execute the transfer upon being paid \$6,500.00 by the Applicant/Lady I direct that the Family Court Registrar to execute the said transfer and any other accompanying documents. If there are any costs (legal or otherwise) related to the transfer of the interest and shares of the Respondent to the Applicant it is to be borne by the Applicant.
17. The Parties are at liberty to file an application (if necessary) if they wish to seek any further directions or consequential orders to carry out or give effect to the orders of the Court.

D. Orders of the Court

The Court Orders are as follows:

- (a) **The Applicant/Lady is to pay the Respondent/Man \$6,500.00 as his share in the matrimonial property (Sub Lease # 379425, Lot 7 DP 7287 located at Matau Road, Caubati).**
- (b) **Upon payment by the Applicant/Lady of \$6,500.00 to the Respondent/Man, the Respondent/Man is to execute the transfer (and any other accompanying documents) of his share and interests in the Sub Lease # 379425, Lot 7 DP 7287 located at Matau Road, Caubati to the Applicant/Lady.**

- (c) **The payment by the Applicant/Lady to the Respondent/Man and the transfer by the Respondent/Man to the Applicant/Lady shall be done within 3 months of this judgment.**
- (d) **I direct that the Family Court Registrar to execute the said transfer (and any other accompanying documents) if the Respondent delays or fails to execute the same upon payment of the \$6,500.00 by the Applicant/Lady.**
- (e) **Any costs (legal or otherwise) related to the transfer of the shares of the Respondent/Man in the matrimonial property (Sub Lease # 379425, Lot 7 DP 7287 located at Matau Road, Caubati) to the Applicant/Lady is to be borne by the Applicant/Lady.**
- (f) **The Parties are at liberty to file an application if they so desire to seek any further directions or consequential orders to carry out or give effect to the orders of the Court.**

.....
Chaitanya Lakshman
Acting Puisne Judge