

IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA

APPELLATE JURISDICTION

ACTION NUMBER:	8 OF 2017 [ORIGINAL CASE NUMBER 06/BA/0097]
BETWEEN:	ARYAN APPELLANT
AND:	KAIRA RESPONDENT
APPEARANCES:	Appellant in Person. Ms. J. Singh of LAC for the Respondent.
DATE/PLACE OF JUDGMENT:	Friday 03 May 2024 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 similarity to any persons is purely coincidental.

JUDGMENT

A. Catchwords:

FAMILY LAW – SPOUSAL MAINTENANCE ARREARS – could maintenance arrears be deducted from the husband’s Fiji National Provident Fund Account and deposited in the wife’s account.

B. Legislation

1. *The Fiji National Provident Fund Act 2011* (“FNPf Act”): s.136.

Cause

1. This is an appeal by the husband against the order of the Family Division of the Magistrate’s Court wherein it had ordered that a sum of \$5,000 being part of the arrears on spousal maintenance be deducted from his Fiji National Provident Fund (“**FNPf**”) account and paid

to the wife's FNPF account. If the wife did not have an account with the FNPF, the FNPF was to create one for her and direct the sum towards the new account of the wife.

2. The husband appeals that order on the grounds that his FNPF money is for his retirement and that the court ought not to have affected his retirement funds.
3. I had given an ex-tempore ruling dismissing his appeal as it had no merits. I now proceed to deliver this short judgment in writing.

Law and Analysis

4. The husband did not dispute the arrears of \$9,505 at the time when the Judgment Debtor Summons was issued against him.
5. He had fully withdrawn his FNPF in 2013 in the sum of \$17,000. Since he continued to work as a temporary bus driver, he had collected a sum of \$5,609.10 in his FNPF account again.
6. The husband had not been making any payments on the order. He had some money in his bank account. The sum was over 1,000. He was earning at the time he was issued with a Judgment Debtor Summons. He had the means to pay but he was not paying the maintenance. His maintenance had accumulated. There were funds available in his FNPF account and the court could use that to extinguish his debt. There was no other option for the court to exercise.
7. The husband should have complied with the order of the court. He wilfully refused to. It was therefore open to the court to exercise its powers under s. 136 of the FNPF Act.
8. S.136 of the FNPF Act states:

“Matrimonial Property

136 [1] This section applies in proceedings under the Family Law Act 2003 between the parties to a marriage-

(a) With respect to existing title or rights in respect of property; or

(b) *With respect to the property of the parties to a marriage or either of them; or*

(c) *With respect to maintenance; where one or both of the parties is an FNPF member.*

[2] *The powers of the court extend to making an order requiring the Board –*

(a) *If one of the parties is not an FNPF member, to admit the party as an FNPF member and make an order under subsection (2)(b); and*

(b) *To credit a specified amount to an FNPF entitlement of a party, and debit a specified entitlement of the other party, accordingly, and*

(c) *To require a specified part of payments under an annuity payable to one of the parties to be paid to the other party.*

[3] *The Board must comply with an order under subsection (2).*

[4] *This section does not affect any other power of the court.”*

9. The order was made for the benefit of the wife as she was entitled under the law to be paid the arrears. There was a need to enforce the order for her benefit.

10. The FNPF Act allows for such deductions to be made. If the husband wanted the monies in the fund not to be affected, he should have continued to pay \$30 per week in maintenance. He failed in his duty to comply with the order of the court. He cannot expect that the order will be allowed to be flouted.

11. I find no error in law when the court made the orders appealed against.

Final Orders

12. In the final analysis, I dismiss the appeal and affirm the orders of the court below. I order each party to bear their own costs of the appeal proceedings.

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Hon. Madam Justice Anjala Wati

03.05.2024

To:
1. Appellant in Person.

2. *Legal Aid Commissions for the Respondent.*

3. *File: Family Appeal Case Number: 08 of 2017 and Original Case Number 03/BA/0097*