

IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA

APPELLATE JURISDICTION

<u>ACTION NUMBER:</u>	APPEAL CASE NUMBER 2010/LTK/0547
<u>BETWEEN:</u>	MERE APPELLANT
<u>AND:</u>	JEKE RESPONDENT
<u>Appearances:</u>	<i>Ms. T. Singh for the Appellant</i> <i>Ms. D. Prasad and Ms. K. Kumar for the Respondent.</i>
<u>Date/Place of Judgment:</u>	<i>Wednesday 07 August 2024 at Suva</i>
<u>Coram:</u>	<i>Hon. Madam Justice Anjala Wati.</i>
<u>Category:</u>	<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>

JUDGMENT

Catchwords:

FAMILY LAW – SPOUSAL MAINTENANCE – *Was the wife entitled to an increase in maintenance - was there reliable medical evidence that the wife had a permanent incapacity due to her illness that she could not have a gainful employment and was the husband able to provide continued support to the wife- medical evidence was short of establishing permanent incapacity for the wife to have a gainful employment- husband was unemployed and retired and did not have sufficient means to provide for the wife financially.*

Cause

1. The wife appeals against the decision of the Family Division of the Magistrates' Court dismissing her application for variation of spousal maintenance from \$25 per week to \$70 per week and allowing the husband's application for cessation of spousal maintenance.
2. The court had also dismissed the wife's application for property distribution but there is no appeal surrounding that.

The Court's Findings

3. The court reflected that the basis on which the wife required an increase in her spousal maintenance was that the cost of living had increased. It appreciated that since the making of the last orders, the cost of living had increased. It then went onto determining whether the order should be increased or ceased, given the position of the parties.
4. The court reflected that the wife was initially granted spousal maintenance based on her medical condition. It found that the medical report that the wife continued to rely on at the time of the hearing of her application for variation of spousal maintenance was 2 years old. It found that the wife failed to furnish any current reliable medical evidence to the court which established that she still had the same medical condition which prevented her from supporting herself.
5. The court referred to the medical evidence of January 2018. It said that that was not a proper medical certificate which could confirm that the wife was still unable to get a gainful employment due to her medical condition.
6. The court said that that medical report stated that "*currently she has recovered well from her surgery and will be unfit to carry out normal house work taking into account the severity of her problems with the surgery that she has undertaken*". The court found that this report was 2 years old and did not indicate any permanent incapacity on the part of the wife to be able to find gainful employment.
7. The court indicated that the wife gave evidence that she was not fit to work because of the surgery in 2016. She had stated in her evidence that she was taking medications daily and attending clinics once in every three weeks. The court said that she was unable to bring the medical prescriptions and clinic card to establish her contention. When asked to bring the same, she did not attend court until the husband closed his case.

8. The court had allowed the wife to file a copy of her medical card with an affidavit. She filed a copy of a document which the court found did not show any record of the clinic dates. The court noted that the document stated that it was an open clinic card.
9. The court disbelieved the evidence of the wife that she was taking medications for the same sickness she had in 2016. It did not accept her evidence on her incapacity to work for a living as reliable. The court stated that the circumstances of the wife had changed with time and that she did not have any medical condition which prevented her from earning for herself.
10. The court also found that the circumstances of the husband had changed too. He had no work since May 2020. He had moved to the village and had started farming for his living. He had 2 children to look after too. The court found that he did not have sufficient income to pay spousal maintenance.

The Appeal

11. The wife has raised that the court has erred in law and in fact in not considering the medical report tendered by the wife and in ordering her to get the medical report when the husband was giving evidence.

Law and Analysis

12. The first ground of appeal relates to the court not considering the medical report tendered by the wife. It is not correct that the court did not consider the medical report tendered by the wife.
13. It took into account the medical report and found it unreliable as it was over 2 years old. That report did not say that the wife's ailment and surgery totally incapacitated her from gaining employment or working. The report stated that she has recovered well from her surgery and will be unfit to carry out normal house work. It also said that she is unfit to be employed by any institution.
14. There was no follow-up medical report to say that the wife has not recovered or that her condition continuously prevented her from carrying out any kind of work. Understandably, in 2018, she may not have been able to work due to her surgery in 2016. However, there was no evidence of continued treatment as stated in the medical report. The report also talked about treatment abroad but in the 4 years post-surgery, there was no evidence of any treatment locally or abroad.

15. The court could not rely on an old report and find that the wife was unfit to work and support herself. She was given a chance to bring updated medical report but she is even complaining of that. She failed to make use of the advantage given to her by the court to furnish the court with credible evidence. In her evidence, she said that she could bring a medical report if given time but the trial was in progress and the only time the court could give was until the husband closed his case.
16. Further, the evidence of the parties ought to have established that the husband could support her. Indisputably, the husband had lost his job. He has also retired. He lives in the village and is surviving from his farm. He farms his sister's land. The land is a mataqali land. The planting is only sufficient for his survival. He does not own a land to be able to derive income from it.
17. Given the evidence, it was open to the court to find that the husband could no longer support the wife. He supported her for almost 10 years after the parties had separated. The parties had only lived together for less than 4 years. Now that he is no longer employed, he does not have consistent income to provide for her.
18. I do not find any error on the part of the court in ceasing the order for payment of maintenance both on the basis that the wife could not establish a continued need to be maintained because of her sickness and the husband's inability to pay her spousal maintenance.

Final Orders

19. I dismiss the appeal and order each party to bear their own costs of the appeal proceedings.

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Hon. Madam Justice Anjala Wati

07.08.2024

To:

1. ***Legal Aid Commission for the Appellant.***
2. ***Zoyab Shafi Mohammed Legal for the Respondent.***
3. ***File: Family Appeal Case Number: 10/LTK/0547.***