

<b>IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA APPELLATE JURISDICTION</b>	
<b>CASE NUMBER:</b>	<b>FAMILY APPEAL NO. 0009 OF 2017</b>
<b>BETWEEN:</b>	<b>IMAM</b>
<b>AND:</b>	<b>FARIA</b>
<b>Appearances:</b>	<i>Mr. R. Vananalagi for the Appellant</i>  <i>Ms. V. Diroiroy for the Respondent.</i>
<b>Date/Place of judgment:</b>	<i>Tuesday, 21<sup>st</sup> January, 2025 at Suva</i>
<b>Coram:</b>	<i>Hon. Madam Justice Anjala Wati.</i>
<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 is purely coincidental.</i>
<b>Anonymised Case Citation:</b>	<b>IA V FN</b>

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## **JUDGMENT**

**Catchwords:**

**FAMILY LAW – CHILD MAINTENANCE** – *Father appeals against the decision of the Court below ordering him to pay arrears of maintenance within one month – given his farm land and the ability to work the land, the capacity to pay the arrears is undeniable- time for payment extended to 3 months from the date of the appeal judgment.*

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***Cause***

1. The father appeals against the decision of the Family Division of the Magistrate’s Court ordering him to pay a sum of \$3860.90 within a month, being arrears of child maintenance, accumulating upon an order made for payment of \$50 per week for 3 children of the marriage.

2. The father asserts that the court erred in law and in fact when it found that the father had the capacity to work and pay \$3860.90 within a month.

### *Analysis*

3. Before I delve into the issue of the father's actual income and earning capacity, I must say that since the making of the initial order for maintenance, he had only paid \$50.00 for his children's maintenance.
4. My reading of the court record convinces me that he is vindictive and difficult. He is adamant not to pay any monies for his children, not that he does not have the income or the earning capacity to do so.
5. The father has made comments like *"I haven't left my wife, Madam and I didn't chase my children, I can look after my children and manage them... Why should I pay for maintenance when she doesn't want me, it is better to give the kids, I can manage them. She is living with another man, what's the point in giving her money, Madam...Madam, the applicant's sister told me that my children are not actually my children and what's the use of giving her the money when they are not my children... Madam, I'm not saying it from my own will, I've been told by her sister, if they can be called and be asked of that"* (page 64 of the records).
6. He also says at page 65 of the records *"never mind the money is in my account but all the monies and dealings are done by my mother because it is her income."*
7. The father is the owner of 29.5 acres of land (*page 62 of the court records*). He could use that land to plant cane. He says he does not plant cane because it is expensive to do so.
8. 29.5 acres of land is massive. If he wanted, he could plant over 500 tonnes of cane in that land. He finds animal farming to be a better deal for him. He should then do that work with all honesty. He has the capacity to have more animals on the farm such as goat and sheep.
9. He says he has 8-11 cows from which he sells milk and makes over \$50 to \$80 per week (*pages 62 and 82 of the court records*).
10. Apart from that, he has goats, horses, sheep and cows on the land. He has had between 23-29 cows after the order for maintenance was made (*page 61 and 73 of the court records*). He also has 4 to 7 sheep (*pages 62 and 73 of the court records*).

11. Goat and sheep farming can bring in a fortune. The father also indicated that he can sell a sheep at \$400 each but that no one is buying it (*page 73 of the court records*).
12. It is incredible that animals like goat and sheep cannot be sold. There is a great demand for goat and sheep meat. If the father works the land, even if it is for animal farming, he can make a fortune. He is just not using his ability to derive income from the land.
13. He chooses to find excuses and not fulfil his legal duty to provide for his children. He is a healthy and fit man. He has no illness. He is only obliged to look after his aged mother. From the farm produce, like selling meat and vegetables, he can conveniently provide for his living, look after his aged mother and also pay \$50 per week in maintenance for 3 children. It is not so much to ask for.
14. Given the animals he has on his farm, the substantial area of land, the weekly income from the sale of milk and the ability to extend his animal farming and vegetable farming, I find that the court was correct in coming to a conclusion that the father had the ability to pay the arrears. It may take him time to collect the money from the sale of meat and animals but it is doable, if not within a month, then definitely within 3 months.

***Final Orders***

15. I find that the father has the earning capacity to pay a sum of \$3860.90. I allow him 3 months from the date of the appeal judgment to pay this sum. In default of the payment, the Magistrate's Court orders of 20 June 2017 applies.
16. Each party is to bear their own costs of the appeal proceedings.

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***Hon. Madam Justice Anjala Wati***

***21.1.2025***

**To:**

1. ***R. Vananalagi & Associates, Suva for the Appellant.***
2. ***Legal Aid Commission, Nadi for the Respondent.***
3. ***File: Family Appeal Case Number: 9 of 2017 [15/NAN/0280].***