IN THE FAMILY HIGH COURT OF FIJI **IN THE CENTRAL DIVISION**	
CASE NUMBER:	24/SUV/0001
BETWEEN:	VAURASI AND TINA
AND:	LORENZO
AND:	ARIETA
Appearances:	*Ms. Tokavou V. for the Appellants* *No appearance by 1st Respondent* *Ms. Singh for the 2nd Respondent* *Ms. Gani as the Child Representative*
Date/Place of Judgment:	*Monday 02 June 2025 at Suva.*
Judgment of:	*Hon. Madam Justice Senileba L. T. T. Waqainabete-Levaci*
Category:	*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.*
Anonymized Case Citation:	VAURASI AND TINA v LORENZO AND ARIETA – Fiji Family High Court Case number: 24SUV0001

J U D G E M E N T

INTRODUCTION AND GROUNDS OF APPEAL

1.0 This is an application appealing against the decision of the Resident Magistrate by the grandparents of the child, the Appellants. The child was born on 20 August 2016 and had resided with the Appellants since April of 2017.

2.0 The decision of the Resident Magistrate had granted unsupervised contacts with the biological mother as a day visit on Saturdays, daily mobile contacts at restricted times with the child, shared holiday contacts during the two weeks break with the 2nd Respondent and finally, residence during the long school holidays in Christmas until the child attains 18 years.

3.0 The Appellants objected to the decision and appealed against it raising 10 grounds of errors of law and fact. The Court will address each ground of appeal accordingly together with submissions by parties.

SUBMISSIONS BY PARTIES

4.0 The Appellant submitted that the parties had filed a child abuse application alleging violent behavior against the child Tessa on 14 March 2021 during her stay with the 1st Respondent at the Appellants residence and again violent behavior in March 2021 to the 1st Respondent when visiting their child.

5.0 In response the 2nd Respondent then filed two separate abuse of child allegations (Form 15) which was disputed by the Appellants. There were interim residence orders to the Appellants with day contacts on Saturday to the 2nd Respondent in 2021 as well as restricted daily telephone contacts.

6.0 In the first, second and third grounds of appeal, the Appellant argued that the Magistrate erred in law and fact by failing to allow the Appellants to cross-examine Mr. Evan, a witness mentioned in the social welfare report as well as Mary, the landlord to the two Respondents as to her behavior. Hence they argued there was no proper weight given to the evidence regarding the violent behavior of the 2nd Respondent.

7.0 In the fourth ground of appeal, despite the 2nd Respondents violent behavior being deposed in the supporting Affidavit as well as the two social welfare

reports, no weight was given to these evidences to conclude that the 2nd respondent had a past abusive behavior.

8.0 As a result in accordance with ground 5, the failure to allow for cross-examination left the Magistrate to err in law and fact by failing to consider the best interest of the child.

9.0 The sixth ground was the in-depth analysis of the finances of the parties in the social welfare report would have given sufficient evidence of the capabilities of the Appellants to give the best care and interest to the children.

10.0 The seventh ground was that the Magistrate erred in failing to analyze the social welfare report that stated the close bond between the appellant and the child and hence in accordance with the eighth ground, the magistrate failed to properly balance the best interests of the child to that of the evidences of the Appellants and in accordance with Ground 9, gave irrelevant regard for the lack of bonding of the child with the 2nd Respondent based only on the contact which was granted recently.

11.0 In response the Respondents argue that for the grounds from 1-4 of the Appeal, that the evidence by Mr Evan was contrary to the Brown -v- Dunn principle that any contradicting evidence requires that an opportunity to the witness to respond accordingly. There was no Affidavit to give full effect of this and reference was made to Ashika -v- Romika [2020] FJCA in which there must be evidence of direct correlation of the abuse to the welfare of the child.

12.0 In response to grounds 5-8 stating section 47 (2) (a) of the Family Law Act requires that the child know both parents and have contact regularly and that parents have a responsibility to maintain and take care of their children and their wellbeing and development referring to Randy -v- Ana [2015] Family High Court in which the legal duty and responsibility rests with the mother if the mother is willing to take care of the child. There is a second child which the mother has given care to and provided for.

13.0 That in response to ground 9, the Appellants had delayed contacts with the child and 2nd respondents intermittently with excuses and not to spend time alone with the child when exercising contact.

14.0 For ground 10, the respondent argued that the Appellants actions were well calculated to deny contact of the child with the 2nd respondents and control the involvement of the 2nd respondent event to the extent seeking for psychiatric evaluation. Submissions to the case of Jones -v- Dunkel where adverse inferences can be made where an uncalled witness is expected to be called and

their absence is unexplained. Inferences cannot be drawn to fill in the gaps to cause suspicions.

15.0 Finally, there is no error in law and facts. The 2nd respondent is not absent or neglectful but because of socio-economics.

16.0 Child representative reiterated the best interest of child was paramount and that the child was unable to be interviewed in Court. 8 reports were submitted into Court on the best wishes of the child and not confirmed the allegations of abuse or neglect.

17.0 The argument by Appellant to call for Mr. Amo could not be done as the social welfare officers were not called at all to give consistent evidences in Court as to what they had recorded.

18.0 Finally, the child representative argued that the current orders are beneficial for the child.

LAW AND ANALYSIS

19.0 Section 19 (1) of the Family Law Act 2003 stipulates that an Appeal from the Family Division of the Magistrates Court lies to the Family Division of the High Court.

20.0 Section 17 of the Family Law Act 2003 empowers judges of the division to hear matters vested by law or custom granted to the High Court including the hearing of appeals.

21.0 Order 11.1 and Order 5 of the Family Law Rules 2005 require that the Appeal be filed within 30 days from the date of the Decision. The filing of this appeal is within time.

22.0 When determining an appeal, the Court will be slow to overturn a decision of the lower courts unless there are profound errors of law and/or fact.

23.0 The Court will therefore deal with the Grounds of Appeal.

24.0 For the first three grounds, given that they deal with similar issues, the Court will consider the grounds together. The First three grounds are as follows:

Ground 1: The Magistrate erred in law and./or fact when he prevented the Applicants from questioning on the issue of the Second Respondents past violent and abusive behavior thereby denying the Applicants procedural fairness and the opportunity to present their whole case.

Ground 2: The Magistrate erred in law and/or in fact when he held that there was no evidence to show or prove that the Second Respondent had been abusive or her actions constituted abuse towards the child Adam as he disallowed her questioning attempting to establish the Second Respondents abusive behavior.

Ground 3: The Magistrate erred in law and/or in fact in failing to consider, analyse and to give the proper weight to some or all of the evidence of the Second Respondents violent and abusive behavior, in his determination to award residence of the child to the Second Respondent from third term school holidays of 2024 to when the child turns 18 years of age.

Grounds 4: The Magistrate erred in fact when he held that the Applicants had not raised in their Affidavits nor disclosed to the Second Respondent her alleged past abusive behavior.

25.0 In the Court records, it reads:

Tikoisuva: *Concerns to put everything to Court to assist court in coming to a decision in the best interest of the children.*

Court: *We note your concerns and in the best interest of the administration of justice together with upholding and protecting the forum of proceeding court will not entertain any further questions on any incident occurring in Nadi or about the year 2016-2020.*

26.0 In his decision the Resident Magistrate determined that:

[110] While Applicants tried to show 2nd Respondent/Mother was a violent or abusive person, Court had on a couple of occasions to interject and stop Applicants form establishing questions centered on this issue because they were not raised by the Applicants in their Affidavits nor did they disclose to 2nd Respondent/Mother issues regarding her alleged past abusive behavior. But significantly and importantly, these alleged past abuse was not committed in the presence of the child.

[111] also there is no evidence before this Court to show or prove the 2nd Respondent has been abusive or her actions constitute abuse towards the child Adam with whom she was caring for the past 8 years.

[112] While Court accepts that 2nd Respondents actions on 6th March 2021 did constitute abuse, court is mindful of the fact that this abuse only resulted

from when 2nd Respondent would visit the Child in the presence of the Applicants.

27.0 Given that the Resident Magistrate was conducting the trial proper for residence and contact as well as child abuse, it was within his powers to have allowed for the hearing of evidences pertaining to allegations of abuse in the Case occurring from 2016 to 2021.

28.0 When the Court allows for oral evidence in trial for all the applications, it was therefore open to the learned Magistrate, it was upon the Resident Magistrate to allow such evidences and its veracity be cross-examined by the 2nd Respondent.

29.0 To have not allowed for the hearing of evidences inclusive of allegations of risk of abuse, would have removed the right of the Applicant to be heard on the applications pertaining to allegations of Child Abuse as well as factors to consider when determining Residence and Contact in accordance with section 121 of the Family Law Act.

30.0 It was after trial that the Resident Magistrate was in a position to consider whether there was any weight to be given to the evidences and if not the reasons for doing so.

31.0 I therefore find that for Grounds 1 and 3 that the Resident Magistrate erred in law and in fact in refusing to hear evidences pertaining to abuse.

32.0 For Grounds 2, the learned Magistrate had therefore erred in law and fact by arriving at the conclusion that he did, without properly weighing out the cross-examinations on allegations of child abuse from 2016 to 2021.

33.0 There were 5 reports prepared and filed by Department of Social Welfare, one specifically for Child Abuse which was filed on 20 April 2021. There were two reports by Empower Pacific, Counselling for the child.

34.0 In one of the Reports, the Appellants submission was that a Mr. Edwards, a neighbor of the Applicants was not examined for his evidence regarding the social welfare interview. In their submissions, the Respondents argued that since the Report was accepted without any need for cross-examination of the deponents, there was no need to interview Mr. Edwards. Furthermore, Mr. Edwards statement was hearsay as per the assessment of the Report by the Social Welfare officer.

35.0 I find that the reasons by the Resident Magistrate for refusing to hear cross examination on the child abuse, had pre-determined the allegations of child abuse without considering the evidences at trial. The Resident Magistrate had

closed his mind without considering any further evidences from the parties pertaining to child abuse in order to consider how best to determine the interests of the child in accordance with the Family Law Act.

36.0 I also find no sufficient cogent reasons for refusing the evidences of cross-examination of the Applicants.

37.0 Furthermore, given the disputed views of the significant other in the report of 22 April 2021, it would have been in the best interests of the child for the Court to have the social welfare officer summoned in order to verify his or her assessments during trial.

38.0 Therefore it was upon the Resident Magistrate, after hearing evidences to weigh it and then determine whether or not the allegations of child abuse are substantiated and whether this did give certain weight against the factors provided for in determining the best interest of the child.

39.0 Having considered that the Resident Magistrate had erred in not allowing for evidences to be examined in Court, the Court finds after having perused his final decision, that he had found that the 2nd respondent as being abusive to the child indirectly and therefore a DVRO was imposed.

40.0 The Court therefore finds that having considered that the Resident Magistrate had erred in law and fact, the Court then examines the Records and determined that DVRO would have been imposed against the 2nd respondent to protect the child with supervised contact awarded at the commencement of visitation rights for a period of 6 months.

41.0 The Court finds that the Resident Magistrate erred in fact and law for grounds 1,2,3 and 4.

42.0 In Grounds 5 is as follows:

Grounds 5: The Magistrate erred in law and/or in fact in failing to consider and/or property weigh in the best interest of the child, some or all the evidence of the parties abilities, financial and otherwise, to care for the child and help the child achieve his full potential.

43.0 In his decision the learned magistrate determined:

[113] Court has noted all the evidence in its totality regarding the issue of residence of the child and Court wishes to summarize this case as a very unfortunate case of one party denying the other party the opportunity and experiences to know, care and develop the child's welfare regardless of the party's financial or social circumstances.

[114] While the Applicants may view their motive for giving respondents conditions (before taking the child) as reasonable or good, Court thinks otherwise because it now seems Applicants were never intending to return the child, especially after establishing a bond with the child.

[115] Court notes the child is seven (7) years old while Applicants are 61 years and 65 years old respectively, retirees and financially dependent on a policy as well as their son who is a primary school teacher. While Court accepts that both Applicants have looked after the child for past 7 years, court is also mindful of the child's care, welfare and development for the next 11 years.

44.0 Financial capability of an Applicant is only one of the many factors to be considered in so far as Residence and Contact is concerned. Having considered the factors that the Resident Magistrate considered and weighed against each other, the Court finds that the Resident Magistrate had taken all these issues into consideration and gave reasons as to why he took into consideration the contributory evidences of the 2nd Respondent over that of the contributory evidences of the Applicants.

45.0 The Court finds that the Resident Magistrate did not err in law or in fact for Ground 5.

46.0 In Ground 6,7,8,9 and 10 it was as follows:

Ground 6: The Magistrate erred in law and/or fact in failing to consider some or all of the evidences on the effect on the child's education as well as the practical difficulty and expense of the child having weekend contact with the Second Respondent from 5am Friday to 5pm Sunday on the last weekend of each month.

Ground 7: The Magistrate erred in law and/or fact in emphasizing their need to give Second Respondent an opportunity to raise the child in his awarding of residency to her from the third term holidays of 2024 to when the child turns 18 years of age and failing to give reasons or inadequate reasons as to why that is the best interest of the child.

Grounds 8: The Magistrate erred in law and or in fact when he awarded residence to the Second Respondent from third term school holidays of 2024 to when the child turns 18 years of age because she was willing to undertake her responsibility and failing to give reasons or adequate reasons why that was in the best interests of the child

Grounds 9: The Magistrate erred in law and/or fact when he held that the:

a. *Applicants had promised that he would return the child back to her after 2 days following their visit in 2021;*
b. *Applicant had refused to let the Second Respondent have alone time with the child on the occasions of her two visits;*
c. *That the Applicants had imposed conditions on the respondents for taking the child away from them;*
d. *That the Applicants never intended to return the child.*

Ground 10: The Magistrate erred in law and/or fact failing to properly analyse the evidence and drawing the wrong inferences at arriving at a decision that was plainly wrong when he inferred that:

a. *The Applicants were denying the other party the opportunity and experience* to know*, care and develop the childs' welfare regardless of the party's financial or social circumstances'*
b. *The Applicants actions were well calculated to deny the second respondent any opportunity to know the child for fear that the child will get to know its mother; or that a bond would develop between them which may cause second respondent to want the child back*
c. *The Applicants wanted to take the child and control the second respondents involvement as a parent to the child so much so that they sort orders for second respondent to be referred for psychiatric assessment just to prove that second respondent was not a suitable patient or person to be with the child.'*

47.0 The decision of the Resident Magistrate was as follows:

[123] Having considered the evidence before this Court regarding this Application, the Court finds that 2nd Respondent is apparent willing to undertake her parental responsibility for the welfare of the child.

[124] Court at this stage is not of the view that it would in the best interest of the child to immediately transfer or imposed the parental responsibility onto 2nd Respondent for the best interest of the child even though 2nd Respondent mother is willing and may and can care for the child with whatever she has available.

[125] However, this Court will hold the Applicants to their word that they are willing to slowly and gradually reintroduce the child to his family, and they will return the child, On this note Court will not interfere with the status quo but will allow the child to know his mother and father.

48.0 When considering the reasons for the decision, the Resident Magistrate had weighed out all the primary evidences and also the social welfare reports and Counselling reports. It confirmed the current employment and earnings of the Applicant as a casual worker and of the two Applicants current financial earnings, their current residences and capability to provide for the welfare and support for the child and length of years the child had spent with the Applicant in their care.

49.0 The Resident Magistrate had weighed all these evidences into the factors in section 121 of the Family Law Act to arrive at the decision of granting Contact on the last weekend of each month.

50.0 The Resident Magistrate had considered the evidences of all the parties given on oath together with the interviews and assessment from the Social Welfare Report to arrive at its conclusion which it was open to do.

51.0 Despite the Applicant arguing that there were no adequate reasons to arrive at that decision, the Court finds that this is not incorrect and open to the Resident Magistrate to consider that it was the case given the manner in which the evidences were presented at trial and the weight that was given to each evidence.

52.0 I find that there was no error of law or fact for the Resident Magistrate to conclude that there was some motives of the Applicants to deny the 2nd Respondent of her right to look after the child.

53.0 I also find no error in law and fact by the Resident Magistrate to conclude that there were intentions by the Applicants to eventually return the child to live with the mother but had delayed doing so given the current living conditions of the 2nd Respondents and the financial capability in looking after the child as well as the emotional bond between the parties. There was no error in fact and law for Ground 8.

54.0 However the Court is of the view that on arriving at this conclusion, the Resident Magistrate erred in imposing orders for the exercise of contacts unsupervised given the current existing DVRO, imposing unsupervised contacts on a day basis every Saturday given the geographical distances and the urgency in granting residency within a period of a 11 months without staggering the contacts and slowly removing supervision.

55.0 Hence in regards to Grounds 6 and 7, the Resident Magistrate failed to consider that in light of the current DVRO, that supervised contact would have been the better option. Furthermore, given the distance in travelling, the option be open to the mother to activate her rights to Supervised Contact by travelling down to Suva for Supervised Contact purposes at the end of each month on Saturdays from 9am to 4pm for the next 6 months.

56.0 For Grounds 9 and 10 the Court finds there was no error in fact and law against the Resident Magistrates decision.

57.0 For Grounds 8, the Court finds that the Resident Magistrate had erred in fact by determining the urgency of awarding Residence without a gradual and staggered approach to contact until residence is awarded in light of the DVRO conditions.

58.0 The Court will therefore dismiss the Orders and substitute with similar Orders but restricted.

59.0 The Resident Magistrate, in his haste to grant Contact, had failed to consider the geographical logistics of implementing the Contact arrangements for a weekly basis.

60.0 The Court finds that weekend contacts may be too draining on all parties at this stage financially, but may unsettle the normal caring environment conducive for the welfare of the child.

61.0 However in the event the 2nd Respondent travels into Suva for work/visitation purposes, she should be allowed, at least with 24 hours' prior notice, to have physical supervised contact 1 day/evening during the week.

62.0 There are tensions between the parties as to the exercise of Contacts. Even if Supervised. Both parties must put aside their differences to allow the child to gain free access to love, care and welfare from the 2nd Respondent as well as from the Applicants.

63.0 The Court recommends that an independent person/close relative to the child from the Applicants or respondent side, provide supervision for Contact purposes to enable independent but neutral stance during the exercise of supervised Contact.

64.0 The Court determines that phone/mobile contact remains as per the Orders of the Resident Magistrate as this is appropriate.

65.0 Finally for public holiday and school holiday purposes, this should be varied to be exercised after the 6 month supervised contact when unsupervised contact is

exercised for the next 12 months. The parties will share alternative weeks equally, with the 2nd Respondent exercising her contact for the 1st week of the 1st and 2nd term holidays, to pick the child from Applicants residence and will be required to return the child to his grandparents on the 2nd week of holidays. For the 3rd term holidays, the 2nd Respondent will be required to exercise contact on the first 4 weeks of the holidays with the child and returned to the grandparents where he will complete his period of holidays.

66.0 I therefore find that the Magistrate erred in fact and law by giving Residence to the 2nd Respondent completely without putting in place conditions of contact and conditions of residence staggered over a period a limited time period.

67.0 The current residence and contact orders I will now impose will continue to take effect for a period of 18 months between the Applicants and the 2nd Respondent and after that period, the parties will exercise Joint Residency.

68.0 Prior to exercising Joint Residency and before the cease of Contact arrangements, the 2nd Respondents will make arrangements for the child to be in residence at the commencement of the new school year.

69.0 At the beginning of Joint Residency, the child will remain in residence for the first 4 weeks of the 3rd Term Holidays and will then be dropped off by the Applicants at the 2nd Respondents premises where he will remain in residence until he reaches the age of 18 years.

70.0 During joint residency with the 2nd Respondents, the Applicants will exercise residence during weekends at the end of each month, open phone contacts at times and days amenable to both parties, school holidays and public holidays provided 24 hours prior notification.

71.0 In the event the child or one of the parties, for reasons beyond control, is unable to exercise their rights, 24 hours prior notification must be made.

ORDERS

72.0 The Court will order as follows:

(i) Appeal Grounds 1,2,3,4,6, 7 are upheld;

(ii) Appeal Grounds 5,8, 9 and 10 dismissed;

(iii) The current Orders for Residence and Contact are varied and substituted with the following orders:

(i) Residence of the Child remains with the Applicants for a period of 18 months and that Supervised Contacts for the first 6 months is awarded to the 2nd Respondents on the weekend at the end of each month here in Suva from Saturday 9am to 4pm and Sunday 9am to 4pm;

(ii) That open phone contacts is granted at the end of the day at 6pm on Tuesdays and Thursdays is given to the 2nd Respondent;

(iii) That if the 2nd Respondents visits Suva, supervised visitation and can be rights can be exercised provided there is 24 hours prior notification;

(iv) That the supervision of contact arrangements during the first 6 months be made by an available and willing immediate/close family member of the Applicant or Respondent that is amenable to both parties;

(v) That at the end of 6 months supervised contact, that there be unsupervised Contact arrangements by the 2nd Respondent with the same Contact terms, for a further period of 12 months;

(vi) That from when unsupervised contact becomes effective, both parties share equal time with the child for the term holidays with the 2nd Respondent exercising her shared time first;

(vii) That during unsupervised contact, the 2nd Respondent is at liberty to take the child to Lautoka during the weekends or during holidays at her own expense and return the child.

(viii) That at the end of 12 months of contact, the parties will automatically share Joint Residency.

(ix) The child will complete the school year in residence with the Applicants whilst Contact conditions will be exercised as residency conditions by the 2nd Respondent.

(x) During the 3rd term holidays, the Applicants will spend 4 weeks with the child in residence. At the end of the 4 weeks of the holidays, the Applicants together with the 1st Respondent will take the child over to the 2nd Respondents where he will spend the rest of his holidays and reside in residence until the age of 18 years.

(xi) Therefore during the joint residency, the Applicants are at liberty to exercise visitation rights on a weekend once a month, open phone contacts at times and days of the week amenable to both parties, joint shared holidays between the parties.

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Justice Senileba L.T.T. Waqainabete-Levaci
Puisne Judge of the High Court of Fiji