

IN THE FAMILY DIVISION OF THE HIGH COURT AT SUVA

APPELLATE JURISDICTION

ACTION NUMBER:	<i>Family Appeal Case Number 02 of 2022</i>
BETWEEN:	<i>RUSHIKA</i> <i>APPELLANT</i>
AND:	<i>FNPF</i> <i>RESPONDENT</i>
APPEARANCES:	<i>Appellant in Person.</i> <i>Mr. S. Ligani for the Respondent.</i>
DATE/PLACE OF JUDGMENT:	<i>Friday 3 November 2023 at Suva.</i>
CORAM:	<i>Hon. Madam Justice Anjala Wati</i>
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>

JUDGMENT

A. Catchwords:

FAMILY LAW – MAINTENANCE ARREARS– *order for FNPF to transfer money from one account to another to satisfy maintenance arrears – order could not be complied with as there was no active account – affected party cannot seek any gainful orders on appeal – appeal out of time – appeal dismissed.*

B. LEGISLATION:

1. *Family Law Rules 2005 (“FLR”): Rule: 11.06*

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Cause

1. On 13 January 2021, the Family Division of the Magistrates’ Court had ordered the wife to open up an account at the Fiji National Provident Fund [**“FNPF”**] and for the FNPF to transfer the sum of \$9,965.90 from the monies held in the husband’s account to the wife’s new account to satisfy the arrears of maintenance.

2. On the same day of the making of the order, the wife wrote to the FNPF and enquired why it was failing to comply with the order given in court on that day. The very next day Mr. S. Ligani wrote to the wife and stated that her husband stood as a withdrawn member and he had withdrawn all his monies from the FNPF account in the year 2009. Mr. Ligani also indicated that he will write a letter and inform the court too.
3. The wife then filed an appeal against the decision of the court stating as follows:
 - (a) *That the FNPF failed to produce full disclosures to the court in regards to the status of the husband's account.*
 - (b) *That the Magistrate failed to conduct a reasonable search of the husband's account in the FNPF although a letter was written to make that request.*
 - (c) *That FNPF failed to inform her of the status of the account.*
 - (d) *That FNPF wasted the time of the wife and the court by attending the court when it did not have any money in the husband's account.*
 - (e) *That the wife is without any justice.*

Law and Analysis

4. I must first say that the wife's appeal is filed way out of time. She should have filed her appeal by 12 February 2021. She did not. Her appeal was filed on 25 March 2021. If she wanted to file an appeal out of time, she should have obtained leave from the Magistrates' Court to file her appeal out of time: ***Rule 11.01(b) of the Family Law Rules.***
5. There was no application to appeal the orders out of time. The appeal is therefore not properly before me and ought to be struck out.
6. I will however very briefly go into the crux of the appeal. Before making any orders for transfer of funds from one account to another to satisfy the maintenance debt, it was incumbent on the court to require the FNPF to produce a statement of the husband's account to see if there were any funds to satisfy the order. The FNPF

cannot provide any person's account information to the court unless it is ordered by the court or is given with the consent of the member.

7. The FNPF could also not seek an order against the member as it had not brought the proceedings against the member and could not subject the member to such an order on its own.
8. Without knowing whether there were funds available in the husband's account, the making of the orders subsequently became futile. However, the wife cannot claim any loss against the FNPF. It has not caused any loss to the wife.
9. The wife is not disadvantaged in any way when FNPF stated that there were no funds available to comply with the order. All that has happened is that the proceedings to get the arrears from FNPF has consumed time of the wife and the FNPF.
10. If the court knew that the husband was a withdrawn member, all it could have done was not to make any orders at all. I find that the court's order has also not caused the wife any actual monetary loss. She needs to pursue the arrears from the debtor himself. This appeal will not bring any gainful orders to the wife despite the error of the Magistrates' Court in proceeding to make the orders without knowing the status of the husband's account.

Final Orders

11. I find that there is no merits in the appeal and I dismiss the same. Each party is to bear their own costs of the appeal proceedings.

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Hon. Madam Justice Anjala Wati

03.11.2023

To:

1. ***Appellant.***
2. ***Fiji National Provident Fund.***
3. ***File: Family Appeal Case Number: 02/2021.***