

**IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA**

**APPELLATE JURISDICTION**

<b>ACTION NUMBER:</b>	<b>APPEAL 8 OF 2018</b>
<b>BETWEEN:</b>	<b>RITESH</b> <b>APPELLANT</b>
<b>AND:</b>	<b>LALITA</b> <b>RESPONDENT</b>
<b>Appearances:</b>	<i>Mr. R. Charan for the Appellant</i> <i>Mr. D. Sharma for the Respondent.</i>
<b>Date/Place of judgment:</b>	<i>Tuesday 13 February 2024 at Suva.</i>
<b>Coram:</b>	Hon. Madam Justice Anjala Wati
<b>Category:</b>	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 – PROPERTY DISTRIBUTION - APPEAL** - *Wife’s claim for distribution of property of the parties to the marriage – whether husband’s salary and fringe benefits could be included in the pool of assets – whether the husband’s shares from the company could be divided – whether the husband’s mother’s property could be divided on the basis that the property in fact was owned by the Limited Liability Company in which the husband had majority shares and that the split be confined to his interest –whether the transfer of shares by the husband to his mother was a transaction that could have been held to be a transaction in sham which was to avoid the claim of the wife - whether the company ought to have been joined as party to the proceedings in the circumstances of this case– whether the husband’s interest in the Family Trust could be affected by an order – were the orders for the split just and equitable.*

**B. Texts:**

1. *Halsbury’s laws of England (3<sup>rd</sup> ed.) vol. 33, p.310, para. 541.*

.....

**Cause**

1. After a trial on the wife's application for distribution of the property of the parties to the marriage, the Family Division of the Magistrates' Court made the following orders which are now subject to an appeal by the husband:

- (1) *The husband to pay to the wife 40% of his assessed salaries, wages, and perks for the 10 years of the marriage.*
- (2) *The husband to pay to the wife an amount equivalent to 18% of the value of the property contained in the Crown Lease. (This being 40% of the husband's 45% interest in the Crown Lease Property).*
- (3) *The husband to pay to the wife an amount equivalent to 100, 160 shares in a Limited Liability Company based on the value of the said shares as at March 2006 being 40% of the 250, 401 shares allotted to him in the said company.*
- (4) *The husband to pay to the wife monies equivalent to 40% of the total value of the 4 vehicles which he drives as his own vehicles.*
- (5) *The husband to pay monies equivalent to 40% of his entitlement over the two houses and a motel situated in Australia. If any houses or assets are owned by the trust then the husband to pay monies equivalent to 40% of the total benefit he has under the trust.*
- (6) *The husband to pay to the wife monies equivalent to 40% of his entitlement over all other assets in Australia and Fiji including the monies in his account in both countries.*

2. The court also made consequential orders to give effect to the distribution orders. It justified its making of the consequential orders in paragraph 39 of the its judgment which reads as follows:

*"As mentioned above, the respondent man did not disclose any of his assets in his Form 19. However, this Court based on the evidence available before it found and declared the matrimonial properties and thereafter made the orders altering the interest as mentioned in preceding paragraph 38. In order to make the above orders, the Court needs to make further consequential orders as it deems fit and this Court has jurisdiction for the same under and by virtue of section 160(2) of the FLA 2003. The said section 160 reads;*

160-(1) *In proceedings between the parties to a marriage with respect to existing title or rights in respect of property, the Court may declare the title or rights, if any, that a party has in respect of the property.”*

3. The following orders were made and the husband was ordered to comply with the same within 1 month:

- (1) *The husband should disclose all his salary particulars and produce copies of all his Employment Contracts since 2001 to 2011 together with the full details of the perks and others facilities, including the credit card facilities he enjoyed in both companies.*
- (2) *The property situated in the Crown Lease to be independently valued and the cost of valuation is to be shared equally by both parties.*
- (3) *The value of shares in the Limited Liability Company should be independently valued as at 2006 and the cost of valuation should be shared equally by both parties.*
- (4) *All transactions including the transfer of shares in the Limited Liability Company during the course of the marriage from the husband to his mother and others are declared void ab initio and the return made up on 26.04.2006 by the private lawyer is cancelled.*
- (5) *That the status quo on the shareholding in the Limited Liability Company by Crosbie in 2006 be maintained for the purposes of his action.*
- (6) *The 4 cars driven by the husband particulars of which can be found in the unanonymized judgment of the trial court to be independently valued and the cost of valuation is to be shared equally by both parties.*
- (7) *The husband should disclose the identity and value of all assets that he owns or has an interest both in Fiji and in Australia including the Family Trust and the details and statements of all bank accounts he has maintained in Fiji and in Australia.*
- (8) *The husband to disclose to the Court the details of the Family Trust and all the assets, properties and monies in the name of the Trust and the value of his beneficial interest in the said Trust be assessed.*

4. The Court had given the parties liberty to file any general application if they wanted any further directions or consequential orders for a smooth and proper compliance of the orders.
5. The court had further ordered that if the parties were willing to settle the matter as proposed by the wife or in any other way mutually agreed upon, they were free to do so by mutual agreement and the orders under the judgment were not to be a bar for any such mutual settlement.

### ***Determination of the Appeal***

6. The husband has raised 20 grounds of appeal, most of which could have been amalgamated and simplified. Some of the grounds of appeal are general, repetitive and cumbersome. Some do not make any sense in the way it is drafted.
7. I have had difficulty in comprehending the gist of the issue in some grounds and I could not even summarize the grounds to simplify it. I have thus copied some of the grounds verbatim. It does not appear that any clear thought was given to drafting precise and clear grounds of appeal.
8. I will deal with some grounds collectively. Before I do that I must remark that the husband's counsel had made reference to the term "*matrimonial property*" which term is not the proper term under our legislation. The term used by the law is "*property of the parties to the marriage*".
9. The use of the term matrimonial property confuses everyone as it was restricted to property acquired during the marriage and before the dissolution. The term "*property of the parties to the marriage*" is a broader term which includes property acquired even before the marriage and most properties acquired after the dissolution of marriage can also be included in the pool if it can be shown on evidence that it was acquired from monies saved during the marriage or from other property(s) in which the other party had a right to claim distribution from. I would require counsel to use proper legal terms.

### **Ground 1**

10. Ground 1 states that the court erred in law in holding that the husband failed to disclose properties mentioned by the wife in so far as such a finding was not in terms of it being relied upon to find non-disclosure as open on the evidence. Whatever this ground means, the husband's counsel had raised arguments in respect of all the distribution orders made by the court.

11. The husband's counsel is complaining about the amendment that the wife had made to her claim through Form 9 application.
12. His counsel also argued that the wife claimed the property in Australia as matrimonial property when she did not know who the owner of the property was. She had testified that his father was the owner. She did not give evidence as to who owned the property and the nature of the property.
13. It was submitted that the properties, being the two houses in Australia were owned by his mother who was not a party to the proceedings. It was therefore contended that the court ought not to have included the properties in the pool of assets as it belonged to a third party.
14. The husband's counsel further asserted that the court erred in holding the shares in the two companies as matrimonial properties when in fact the shares were transferred in year 2006 by him to his mother.
15. There was also argument raised in respect of the distribution orders made against the 4 vehicles. It was asserted that the 4 vehicles should not have been included in the pool of assets as the Limited Liability Company was the owner of the said vehicles. He did not own it to be distributed. The properties of the company cannot be included as the property of the parties to the marriage. It was contended that the company is a separate entity and is not a party to the proceedings to defend the allegations.
16. The husband's counsel further asserted that the monies taken to Australia by the wife belonged to his mother and should not be included in the pool of assets. His counsel argued that these monies were used by his parents to provide for the parties expenses when they visited Australia.
17. It was argued that the wife had failed to join the companies and his parents as parties to the proceedings. She therefore could not claim and the court could not award any shares from the company or from property that belonged to it and his parents.
18. Ground 1 basically is in relation to the court's finding that the husband had failed to disclose properties mentioned by the wife. That ground is specific to the court's finding on non-disclosure by the husband. The husband's argument therefore should be confined to whether he had made the disclosures and whether the court erred in coming to a finding that he did not. Instead he goes onto argue various other matters under this ground. Had it not been for his written submissions, the wife's counsel would have been seriously prejudiced in dealing with the arguments as it is not foreseeable that other issues would be argued under this ground.

19. Since the wife's counsel was able to deal with all the issues raised, I will address the argument of the husband's counsel. Ordinarily, this would not be allowed on the appeal.
20. I refer to the contention that the wife had amended her claim. I cannot understand the reason why the husband's counsel is even raising this point. There is no bar on any party from amending their claim. If there was any objection to any application for amendment, the husband should have raised his concerns in the trial court, and not on the appeal. Nothing turns out from this argument as no prejudice or miscarriage of justice is shown.
21. The husband's counsel also raised concerns regarding the 2 houses in Australia. It is raised that there was no evidence of ownership adduced and since it is owned by a third party, that party should have been joined as the party to the cause.
22. The husband himself had confirmed in his evidence that his mother owned the two houses in Australia. Why is he then asserting that there was lack of evidence of ownership of this property? He had access to all the documents. The concern is that he failed to produce evidence of ownership. He should have provided satisfactory evidence to this effect.
23. There was clear evidence before the court that although the mother was registered as the proprietor of the two houses in Australia, it was the company which effectively owned the same and registered it on his mother's name.
24. It was this company that sent monies through the wife and other members of the family which was used to buy the assets in Australia. The mother had no income to buy the property. She was earning a meager amount from the Limited Liability. There was no evidence tendered by the husband that his mother had substantial amount of money from any other source to buy two houses in Australia.
25. If she is not the person who has bought the house, it is only acceptable that the monies were sent from the Company and the Company was the real owner. It was therefore proper to include the properties in the pool of assets. The husband was found to have shares in the Company which he had transferred. The court had found that these transfer of shares were done to defeat the wife's claim in the property. I will deal with this issue later. If the husband has shares in the Company than he has an interest in the Australian homes too. That is how the Australian properties were included in the pool. The husband cannot brush away his interest in the Australian homes on the basis that his mother owns

it. Maybe she does on paper but the actual ownership is that of the Limited Liability Company in which the husband has an interest.

26. It was necessary that the husband produce documents to indicate when the property was bought and whether it was purchased in his mother's name from the beginning or was there a transfer somewhere during the time when the parties started suffering issues in the marriage due to the husband's relationship outside the marriage? Clear documentary evidence from the husband was necessary and his failure left the court to accept the evidence of the wife. I do not find that he can complain about his failure.
27. The husband had the opportunity to counter the evidence and show how the Australian homes were purchased. He did not tender any evidence. It was therefore open to the court to find the wife's evidence as credible that monies were taken out from Fiji and used to buy these properties. These monies belonged to the Limited Liability Company.
28. The husband owned 50.08% of the properties in Australia. The court awarded the wife distribution from his share. I do not find it unjust and inequitable that the wife was granted her share from the Australian homes.
29. This property may be owned by the mother but the real ownership was a sham. If the mother was interested in defending her interest in the property, she would have intervened in the proceedings. She did not. Nor did the husband bring her to court to give evidence in the proceedings. This indicates that the husband and the mother chose to stay quiet only on the hope that the registered proprietorship in his mother's name would provide him some rescue which intention was clearly and properly discovered by the court.
30. In regards the Limited Liability Company, the husband had transferred his shares to his mother in 2006. The court found that these transfers were a sham and set aside the transactions and brought the shares back in the pool for distribution. It then gave the wife an award that the husband pay her 40% of the value of his 50.08% shares in one of the companies.
31. I do not find that there was any error of law or fact in making a finding that the transfer of shares was a sham and was done purposely to defeat the wife's claim should any arise. The Court had proper evidentiary basis to make such a finding.

32. During the hearing, the husband's position was that he did not own any assets. The evidence showed that he had transferred his shares in the two key companies to his mother.
33. He had agreed in this evidence during the trial that during the marriage he owned 900 shares in one company and 250,401 shares in another company. However in 2006, he said that he had transferred these shares to his mother. He testified that the shares in both companies were now owned and controlled by his mother and his father. His mother had not paid any monies for the transfer of the shares. There was also no reason why the shares were transferred all of a sudden.
34. The husband's counsel argues that the transfer of shares was done whilst the marriage still subsisted. It was contended that this was so done in 2006 and the wife did not bring any claim to assert that the transfer was done to defeat her interests.
35. It unfolded in the evidence that it was in 2006 that the wife had found out that the husband was having another relationship outside the marriage. She then walked out of the marriage. This then made the husband to act and transfer his shares to his mother. At that time the wife did not bring any claim for distribution and seek that the transfer of shares was a sham. When the marriage finally did not work out, she brought the application for distribution where the transfer was declared sham. I therefore do not find that the marriage was happy and rosy when the transfer of shares was done. There was a problem in the marriage and that awakened the husband to play his tricks. He knew that he had to show that he was worthless on paper. He had to act in that fashion to avoid the wife from making any claims.
36. His actions and the lifestyle that he lives shows that the Company is his alter ego. He owns the company. He gets all the luxuries and benefits from the companies. He enjoys a grandeur lifestyle. He drives 4 luxury vehicles from the companies. He controls the company. This all unfolded in the evidence.
37. His contention that the benefits given to him by the company were a gift to him was not accepted by the court. It was not accepted that these enjoyment was as result of being an employee of the company. It was open to the court to make such a finding. If the court did not pay attention to his lifestyle and him basically controlling the company, the husband would have managed to avoid the distribution proceedings. On the evidence, it was proper not to allow him to defeat the wife's interest in the properties.



38. There are other acts of the husband which clearly establishes that he has incorrectly reflected that he did not have anything to do with the company whilst he continued to control the two companies and enjoy all the luxuries it could afford. After the application for dissolution of marriage was filed in December 2010, he got the Limited Liability Company to apply for a loan from ANZ in January 2011. In his financial statement, he reflected the loan as his. If this Limited Liability Company was not his, why does he show that he is responsible to pay the loan?
39. Further, during the pendency of the distribution proceedings, he was served with a Notice to Produce in July 2013. He then purported to resign as a Director of both the companies in order to avoid having to produce key company records that would have showed the true assets and value of the two companies. Yet he still controlled and managed the companies.
40. He refused to admit that he had a real interest in the two companies. He refused to therefore disclose how much travel funds he had taken to Australia during the period of the marriage. He refused to disclose his true salary which included all his fringe benefits and credit card expenditure. He chose to plead ignorance about the assets that were acquired in Australia even though he used to live in the two homes and was a beneficiary in a Trust that purportedly owned a 32 room motel. The court did not accept that the husband had really divested himself of ownership of his shares in the two companies. The court saw that he continued to control the companies.
41. In his financial statement, the husband indicated that he was earning \$711.54 per week (Page 1189 - Volume 4 of the Court Records) and his expenses were \$652.46 per week leaving him a balance of \$59.08 per week. He had stated that his parents were only earning \$242.07 each per week (Page 1191 - Volume 4 of the Court Records). This also showed that his parents who are both retired did not work for the Company and had little control of the two companies and he still remained in control.
42. In respect of the argument that the company, its shareholders and his parents were not a party to the cause and no orders should have been made against the properties owned by the companies and his parents, I find that the parents chose not to take part in the proceedings. Further, what formed part of the pool of assets were the husband's shares in the two companies and his shares in the assets. In any event, he is the person who owns and controls the Companies and any orders against the Company is basically an order against him.
43. I now turn to the husband's contention on the distribution in the 4 vehicles. He was ordered to pay monies equivalent to 40% of the total value of the four vehicles. The evidence clearly shows that both

the parties living expenses was paid from the Limited Liability Company. The husband's travel and luxury items were funded through a visa card that was paid for by the Company.

44. The husband gave evidence that he was driving these 4 vehicles bought by the company. The cars were owned by the company but he regarded those as his. He was driving those cars, He was looking after all of the cars. It was purchased for his benefit (Page 288 - Volume 1 of the Court Records).
45. It also unfolded in the evidence that owning cars and motorbikes were his hobby. There was even a newspaper article published about him owning classic Aussie cars (Page 860 and 862 - Volume 3 of the Court Records). Against that evidence, it was open to the court to arrive at a finding that the vehicles belonged to the husband and ought to be distributed. I have no evidentiary basis to interfere with that finding.

### Ground 2

46. In ground 2, the husband contends that the court erred in law in failing to properly consider the submissions of the husband with respect to the fourth step, which was not to criticize Her Ladyship Madam Justice Wati, but rather to invoke the concept of justice and equity, to both control the substance and the form of the final orders which the court failed to undertake.
47. The husband's counsel argued that the court erred in law and fact by not accurately assessing the contributions in step 2 and future needs factors in step 3 of the distribution process which gave an unjust and inequitable split of 60:40 between the husband and the wife respectively. It was argued that the husband has residence of 2 children of the marriage and is maintaining them by looking after their daily expenses, food, education, medical entertainment and clothing. This ought to have been considered by the court.
48. The husband's counsel refuses to acknowledge the diligence with which the court determined the wife's contribution to the property of the parties to the marriage and a how it also painstakingly assessed the "*future needs*" factors.
49. I will first of all refer to paragraphs 27- 32 of the Judgment. These paragraphs very clearly outline and discuss the wife's contribution to the property. The paragraphs reads:

“[26]        *This section identifies three types of the contributions made by the parties to a marriage. Those are; (a) financial contribution, (b) non- financial contribution and (c) contribution made to the welfare of the family. As I mentioned above, the section 162(2) also provides for a rebuttable presumption in relation to the contribution of the parties. It can be*

*rebutted if the court finds, on the facts of the case, that the equal contribution is repugnant to justice. In fact this section has provided one example also. That is marriage of short duration. This is an example only. There can be other situations as well where this presumption would be repugnant of justice. Further, this does not mean in my opinion that, the presumption of equal contribution cannot be rebutted in case of marriage of long duration. Even in case of marriage of long duration the court can find it repugnant to justice on the facts of a case. Therefore, I now turn to discuss the contribution of the parties under each category, to see whether I can presume equal contribution of the parties in this case or not.*

[27] *Though the applicant lady had been working before the marriage, she gave up her employment after the marriage. In her testimony the applicant lady stated that, it was on advice of her in laws who did not want their daughter in law was working whilst they had well established family business, she left her job. Admittedly, the applicant lady did not financially contribute to the family during their long period of ten years marriage life. However, non-financial contribution and the contribution to the welfare of the family during this long period are immense.*

[28] *The Applicant lady categorically stated the duties she performed at home during the period of marriage. According to her testimony, she starts her domestic duties approximately at 5.00am the time she usually woke up those days. The applicant had been playing a major role in domestic duties though there were maids and another person by the name of ...-the cousin of respondent man. The duties of the lady include, but not limited to, preparing the morning tea and breakfast for the respondent and his parents, getting the husband ready to work and the son to school, with the assistance of the maids cleaning the prayer area and the house works, preparing lunch for the husband and his parents, picking up the son from school, preparing the dinner, etc. The applicant lady, whilst maintaining an excellent relationship based on love and affection with the in laws during the period of ten years of marriage, continued to perform her domestic duties leaving no room for complaint.*

[29] *Apart from the above contribution to the family as summarized above, the applicant lady contributed for the betterment of family business which ranked from interviewing the administrative staff to cleaning her husband's office and making tea for those employees who worked in night shifts. However, the applicant lady was never paid those duties she performed for the family business. It seems from the evidence of the lady that, she too considered the family business as top priority and contributed for the same without any reservation, even though she was not paid for what she tendered to the both family companies. Though she was cross examined by the counsel for the man and suggested that, she never contributed for the family companies, that line of questioning never discredited her evidence in my view. She was firm on her evidence and answered all questions during the cross examination with the positive demeanor.*

[30] *The counsel for the respondent man cross examined the applicant lady, inter alia, on her alleged failure to include her income from her business ... and the intention was to show*

*that, she was not faithful in her disclosure of true income. I do not think this has discredited her entire or part of evidence as she provided some additional documents to show her income from the said private business.*

[31] *On the other hand, the respondent man, being a qualified ... looked after the operation of both family companies. However, applicant lady played a double role as the homemaker and a “wide range assistant” to respondent in the operation of both companies. These both roles played by the lady made the man easy and comfortable to do his business in both companies and the very important fact is that, the lady neither been paid any remuneration for the jobs she had been doing in both companies, nor she expected anything of that kind from both companies.*

[32] *The entire evidence before this court clearly shows that, though the lady did not financially contribute for the family, her non-financial contribution, the contribution to the welfare of the family and the unpaid contribution for betterment of both companies are immense and enormous. Thus, the circumstances of this matter undoubtedly favour the presumption of equal contribution by the parties to the marriage as provided in section 162(2) of FLA 2003. Furthermore, given the long duration of marriage and dual role played by the applicant lady throughout the period, I do not see any reason which makes finding of equal contribution is repugnant to justice, in this case. Therefore, I decide that, both parties contribution for the matrimonial properties mentioned above are equal.”*

50. I did not wish to unnecessary replicate the trial judgment in the appeal judgment but I did so to reflect that the court had undertaken the task of assessing the wife’s contribution. I wonder whether the husband and his counsel had given their mind to the above parts of the judgment to assert that the court did not assess the parties’ contribution to the property of the parties to the marriage.

51. After the process of assessing the parties’ contribution to the property of the parties to the marriage, the court determined that the presumption of equal contribution had not been rebutted and that the parties’ contribution to the properties were equal. After that assessment, the court went onto examining the future needs factors in paragraphs 33-35 and 37-38 of the Judgment as follows:

[33] *The section 162(3) of FLA 2003 provides for “future needs” factors as Madam Justice Anjala Wati described in **KN v. MYH (supra)**. This section provides that;*

*162(3) The court must also take into account –*

*(a) the age and state of health of the parties;*

- (b) the income, property and financial resources, including any interest in inalienable property, of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment;*
- (c) whether either party has the care and control of a child of the marriage who has not attained the age of 18 years;*
- (d) the commitments of each of the parties that are necessary to enable the party to support –
  - (i) himself or herself; and*
  - (ii) a child or another person that the party has a legal or customary duty to support.**
- (e) a standard of living that in all circumstances is reasonable;*
- (f) the financial resources available to a person if cohabiting with another person;*
- (g) the duration of the marriage;*
- (h) the terms of any order for spousal or child maintenance made in favour of or against a party;*
- (i) any other fact or circumstances which, in the opinion of the court, the justice of the case requires to be taken into account.*

*[34] The applicant lady, though she did not disclose her business in her Form 19, admitted running a business in a small level, whilst living with her sister in Suva. Admittedly, she lived in a very luxury life during the period of marriage. She often enjoyed foreign trips sponsored by the family companies. However, she is deprived of those facilities now after the separation from the respondent man. On the other hand, there is no change in the lifestyle of the respondent man and he continues to enjoy all the facilities as he admitted during the cross examination. Though she now cannot expect the same standard of living as before, she should have a standard of living that in all circumstances is reasonable as provided in section 162(3)(e) of FLA 2003. Furthermore, the respondent man is relatively in a better position than the applicant lady in terms of the income, property, financial resources and the scale of his business as opposed to the lady....*

*[35] In the meantime, the both children of marriage are with the respondent and he has the commitment to support them. Though the parents of the man are living with him, they too hold the shares in the family companies and receive monthly salary. Hence the man does*

*not owe any legal or customary duty to support them. In addition, the parties lived together for a decade in their marriage which is substantially a long duration.*

[37] *For the reasons mentioned above, the facts of this case do not rebut the presumption of equal contribution by the parties to the properties that are subject to this application. The only additional commitment of the Respondent is that he has to support both children of marriage who are under his custody. Apart from that, he is in better position than the lady in every aspect and factor that the court needs to consider in this case.*

[38] *Therefore, I consider that allocation of 60% of value of the properties identified in the preceding paragraph 23 to the Respondent Man and balance 40% to the Applicant Lady will be appropriate, just and equitable order that I can make in this matter and I order accordingly.”*

52. It was due to the husband having the commitment to look after the children that his share was increased by 10%. I see no basis for the husband’s complaint that him having care and control of the children was not factored in.

### **Ground 3**

53. Under ground 3, it was asserted that the court erred in law in holding that the Crown Lease property was matrimonial property within the meaning of the Family Law Act 2003; without giving any reason for so holding and despite that fact that the property was and had been registered in the name of one of the Companies prior to the marriage.

54. The husband’s counsel argued that in ***MFC v. NT Fiji Family High Court Appeal Case Number: 13/Ltk/0013*** I had stated in paragraph 37 that:

*“The husband’s father had an indefeasible title to the property. To claim any legal or equitable interest in his property is a matter for another Court and not Family Court. The only way the Family could have dealt with the issue was to have joined the father as a party to the action...”*

55. Following that, it was argued that Crown Lease property was owned by one of the companies and that company was not joined as a party to these proceedings. It was argued that the company was a separate entity and will continue to own the subject lease regardless of how its employees come and go. It was contended that the husband’s parents were Directors and Shareholders of that company and neither of them have been made a party to these proceedings as well.

56. It was raised that the registered proprietor, if not sued need not attend Court irrespective of the fact that there is dispute about his property because he is protected by the principles of indefeasibility of

title under the Land Transfer Act. The court cannot make any orders affecting the interests of the third party without he or she being joined as a party to the cause.

57. I find that the court was justified in holding that the property in Crown Lease was part of the pool of assets. The husband had owned 900 out of 2000 shares in one of the companies which owned the Crown Lease property. This reflected that the husband beneficially owned 45% of the family home, his mother owned 5% and his father owned 50%.
58. The court first reinstated the husband's 45% ownership in the company. It then ordered that the husband pay 40% of the value of his 45% shareholding in the Company. This amounted to 18% of the value of the family home. The order made by the court did not affect the ownership of his parents. It has given the wife an equity in the family home which can be quantified and paid off. There was no need to join the Company.

#### **Ground 4**

59. Ground 4 states that the court erred in law in finding that:

- (a) The transfer of shares in another Company was done in March 2006 in order to defeat the claim of the wife when there was no such claim made at the time by the wife.*
- (b) That the husband was unbelievable and unreliable in his evidence in the absence of grounds and or reasons being given to identify the finding of unreliability and disbelief being identified with precision of and concerning the husband.*
- (c) The transfer of the shares was done in contravention of s.169 of the Act and further it failed to identify the reasons why the application of s.169 had been made out contrary to submissions made by the husband.*
- (d) The pre-emptive rights associated with the shares in one of the other Companies were not utilized to defeat any order of the Court (as none had been applied for as at March 2006) or at all in circumstances contrary to s.169 of the Act.*
- (e) The shares of the husband as at March 2006 was Matrimonial Property within the meaning of the Act.*

60. It was argued by the husband's counsel that the parties were married for a period of 10 years and 12 days. The transfer of shares in the Companies were done in March 2006. At that time the parties were happily married. There was no such claim by the wife at the time that the transaction was to defeat her claim for distribution.
61. The parties separated some 5 years later after the transfer of the shares. The husband's counsel argued that he had no knowledge that by his action in month of March 2006 that he is defeating the wife's claim for distribution of matrimonial property. It was asserted that he did not defeat any such claim of the wife as he did not have knowledge and the claim only arose some 5 years later.
62. The court had heard all the evidence relating to the shares. The husband was ordered to pay the wife an amount equivalent to 100,160 shares in the Company based on the value of the said shares as at March 2006 (this is 40% of 250,401 shares allotted to him in the said company).
63. The award has nothing to do with pre-emptive rights. The court did not make any order relating to the husband's mother's shares in this Company. All the court did was to overturn the 2006 sham transfer and reinstate the husband's 250,401 shares in this Company and give the wife an award based on 40% of the value of the husband's share in this Company.
64. During the hearing it emerged that the husband owned 250,401 shares in this Company. He therefore held 50.08% of the shares in the company. This Company was owned by the husband and his mother. This company was used to fund the purchase of the family's assets and lifestyle. The husband was and remains this Company's Managing Director. His mother who has never worked for the Company is a housewife. At the date of hearing, this Company still owned the business and the husband was still managing the business.
65. The husband was caught in another relationship outside the marriage. The relationship and the marriage started having problems. It is then when the husband transferred his 250,401 shares to his mother. The transfer of shares was a sham and no monies were ever paid for the shares.
66. The husband continues to manage and control this Company and enjoys all the benefits that he enjoyed from this company before the transfer of shares. This company continues to totally fund this lifestyle. The transfer of shares was not bona fide. It was purely done to defeat the wife's claim against the said shares in this Company. I find no basis to interfere with the findings of the court.



**Grounds 5 and 6**

67. Ground 5 states that the court erred in law and in fact in holding that the husband's salary was in a quantum, if not in the order of \$250,000.00 as claimed by the wife, then certainly more than what he claimed in his Form 19 upon the following basis:

(i) *That the husband had the benefit of four (4) company vehicles that he used and that*

(ii) *He was continuing to enjoy "all the perks and facilities including foreign trips and holidays" (whatever that meant but was not defined).*

68. It was argued that the salary and benefits could not be included in the pool of assets for distribution. The husband's counsel argued that his benefits could not indicate the salary he earned.

69. Ground 6 states that court erred in law in holding that the concept of "all the perks and facilities" were part of the husband's salary and by further erring in law in not placing any reliance on the husband's evidence but the wife's without giving specific reasons why it chose and accepted the wife's evidence as credible.

70. The husband's counsel argued that he had testified that the perks were a reward for his hard work and dedication to the company and in no way could be redeemed by cash.

71. He further argued that the court erred in law by not taking into account the taxable salary of the husband as property which is considered as the salary of an employee and not the rewards and/or perks that came with the success of an employee or his/her position in a company.

72. In respect of grounds 5 and 6 I find that the court erred in including that the salary and fringe benefits that the husband was earning from the Company ought to be included in the pool of assets for distribution.

73. A person's salary does not and should not form part of the pool of assets. It is not property that is capable of division. It is income which is derived for the daily survival of a person and those who he or she is legally obliged to maintain.

74. Under the FLA, the proceedings which affects a person's income is, maintenance proceedings. Maintenance proceedings include proceedings for parental, spousal and child maintenance. The income and benefits does not get shared in property distribution proceedings. It is a component that is normally considered in determining the "*future needs*" of the parties and if a party has significant economic disparity, his or her share may get adjusted in the final distribution. The salary itself does not get divided unless the court is faced with an application for maintenance and has considered both the proceedings collectively.
75. Property is that which belongs to a person exclusively of others and can be subject to bargain and sale: *Halsbury's laws of England (3<sup>rd</sup> ed.) vol. 33, p.310, para. 541*. Income, salary and fringe benefit is not for exclusive use of the husband. He has to maintain his children with that. He cannot sell or bargain that right to receive an income, salary or benefit. It thus is not property that can be subject to an order for division.
76. I find merits in grounds 5 and 6 of the appeal and allow the same to the extent that the husband's salary and fringe benefits should not have been included in the pool of assets to be divided.

#### **Grounds 7, 8 and 9**

77. Ground 7 states that the court erred in finding that the funds provided by the company and taken to Australia by the wife were used to acquire property in Australia in so far as it purported to find in the absence of:
- (i) *Any evidence that the funds were applied to the acquisition of property in Australia and in particular by the husband as the provider of the funds;*
  - (ii) *That the properties in Australia was occasionally occupied by the husband and the wife as guests while staying there and gave them and especially the husband no proprietary right to those properties or enable them to be considered and included as matrimonial property;*
  - (iii) *The motel owned by the Family Trust was in effect purchased by the husband from monies taken through and with due notification in the passports of the husband and the wife was on the evidence of the wife monies taken to purchase properties in Australia;*

*was in all the circumstances of the case and the totality of the evidence as led in all the circumstances against the evidence and the weight of the evidence.*

78. It was argued that the wife testified that she and the husband took funds to Australia and the funds was provided by the company which was used to purchase the properties in Australia. However, she at no point gave evidence that it was the husband's monies which she took.

79. It was argued that in absence of tax clearance certificates, the court held that monies belonged to the husband and the properties purchased from said monies formed part of the pool. The parties used to stay in the subject property whilst their visit to Australia and the property is owned by a third party and cannot form part of the pool of assets.

80. On the motel, it was submitted that it owned by the Family Trust. The trustee was not a party to this proceedings. This motel cannot be dealt with as property of the parties to the marriage.

81. Ground 8 states that the court erred in law in finding that the properties purchased in Australia were purchased by the husband. This, it was submitted, clearly not open on the evidence before the court. There was further no evidence led by the wife upon whom the onus lay to prove her case on ownership of the properties in Australia.

82. Ground 9 states that the court, in para. 20 of its decision stated that it "seemed" from the evidence of both the lady (Respondent) and the man (Appellant) that during the course of their marriage they took monies from Fiji from time to time through their passports and that those monies were used by the husband's mother to buy properties in Australia was:

*(a) against the evidence of both the parties;*

*(b) had no basis in fact or law that such funds were so utilized to acquire the properties in Australia; and*

*(c) the husband was not shown to have any legal or equitable interest in the properties and further erred in law in determining that the properties constituted matrimonial property in the absence of clear evidence to support such a finding as to the houses and the motel of which evidence was given they were registered to proprietors other than the husband.*

83. It was argued that wife had testified that both the husband and she took funds to Australia. At no point she gave evidence that the monies belonged to the husband. In absence of tax clearance certificates for monies remitted by the parties to Australia from Fiji, the court erred in making a finding that it was the husband's money and that the properties purchased from said monies formed part of the pool. The parties used to stay in the subject property while their visit to Australia and the property is owned by a third party and cannot form part of the pool of assets.
84. I have gone through the judgment. In relation to the properties in Australia, the court had discussed the evidence and analysed the same in paragraphs 20 to 22, 21, and 22 of the Judgment.
85. The husband was ordered to pay the wife monies equivalent to 40% of his entitlement over the two houses and a motel situated in Australia. If any house or assets were owned by the Trust, then the husband was ordered to pay the wife monies equivalent to 40% of the total benefits the husband had under the said Trust.
86. The wife had testified in detail about the assets owned by the family in Australia. The properties in Australia were two houses and a 32 room motel. The parties lived in the two homes in Australia at various times.
87. The wife further testified that these properties were purchased through monies generated by the Company and family members would frequently take monies to Australia as travel funds and these funds were used to buy these properties.
88. The husband was cross examined on this issue. His evidence was that he did not know how the properties were purchased in Australia (*Page 282 - Volume 1 of the Court Records*). He then said that these properties were owned by his mother (*Page 282 - Volume 1 of the Court Records*).
89. His mother was a housewife who was a shareholder in one Company. She was receiving an income of \$244.07 per week. How could his mother buy two properties in Australia?
90. Further, the husband and his family do not have any business in Australia from which the properties could have been purchased. The obvious inference that the court was entitled to draw was that funds were sent from Fiji from the Company and were used to buy these properties. All the funds came from a Company in which the husband had majority shares. This Company was managed and controlled by the husband.

91. Apart from the inference that the court could draw, there was uncontroverted evidence before it as to how these family properties were purchased. If the properties were purchased through any other means, the husband ought to have given evidence on how it was done. He failed to provide such evidence and failed to refute this irresistible inference and the direct evidence from the wife that the property was purchased from the monies sent by the Company in Fiji.
92. The evidence of the wife was far more credible than the general denials given by the husband. The court chose to believe and uphold the more credible evidence given by the wife. If the husband thinks that he can use funds from his Company and buy properties in other persons names to avoid any sort of liability then his strategy is obviously improper when it comes to distribution under the Family Law Act. I have no basis to interfere with that finding of the Court that the assets in Australia were purchased from the monies sent from a Company in Fiji and the wife was therefore entitled to her shares from these properties.
93. On the issue of a Family Trust owning the motel, the court had before it a registered copy of the Deed of Variation of the Trust which had the names of the excluded beneficiaries. The document appears in Volume 4 of the Court Records. The court found from this document that the husband was not an excluded beneficiary under the Trust. If the husband had any other evidence which excluded him as the beneficiary, he should have produced that in Court. He failed to do so and now cannot complain that there was no evidence.

#### **Ground 10**

94. Ground 10 states that the court erred in law in finding that the husband despite admitting he took funds to Australia as spending monies for holidays in accordance with exchange control limits was found to have been non genuine and as such guilty of non-disclosure as to property in circumstances where the finding was made was never put to him nor was it available as the monies were not matrimonial property but rather a gift from the Limited Liability Company.
95. The husband's counsel argued that in their respective testimonies, both parties had agreed that the Limited Liability Company used to pay for the parties expenses in Australia. This monies for expenditure should in no way form part of the pool of assets. The husband had given full and frank disclosure about these monies.
96. I find that all that the court did was to say that the monies taken from Fiji to Australia were used to buy the properties in Australia. It did not divide the monies that was taken from Fiji to Australia. If the husband is keeping any amount of that money in his Australian account then that gets divided by

40% to the wife. If these monies were gifts and is under his names then that becomes his property and he has no reason to say that it should not form part of the pool as it were meant for the expenses. If the monies were meant for the expenses for both parties then surely any savings are meant for both parties.

97. I further do not agree with the husband's submissions that he made full and frank disclosures about the monies he took to Australia. He never gave any accounts of what he took, how it was spent and what was not used. He did not say how the properties in Australia were purchased when he ought to know about the same. He is very much part of the Company that finances his luxury lifestyle in Fiji and Australia. The properties in Australia cannot just come on its own. Someone has to generate funds for purchase. If the husband says he does not know that obviously his evidence is not acceptable. He is responsible for material non-disclosures.

**Grounds 11, 12 and 13**

98. Ground 11 states that the court erred in law in failing to find on the evidence that the husband was not a beneficiary under the Trust and that even if he was, his entitlement under the Trust as a discretionary trust, could not amount to matrimonial property.

99. The husband's counsel argued that no evidence was led by the wife to establish that the Trust constitutes a matrimonial property and that the trustee is not a party to the proceedings and so no orders could have been made against the Trust.

100. Ground 12 states that the court erred in upholding a submission made for the wife that in view of the beneficiaries excluded he had to be included in the absence of proof by conventional means which was not forthcoming from the wife upon whom the onus and burden lay and in respect it did not shift. The court therefore erred in holding that the husband was a beneficiary in the trust when there was no evidence to this effect.

101. It was argued that the wife failed to lead any evidence in regards to existence of a Trust, let alone the husband's beneficial entitlement therein.

102. Ground 13 states that the court further erred in law in law in failing to find as it should have that the exclusion of hitherto named beneficiaries from the Trust did not mean the husband was a beneficiary contrary to the evidence and submissions. The husband's counsel argued that the Trust excluded the step children and him as the beneficiary.

103. Let me look at evidence that was available to the court. It unfolded in the evidence that the husband's father was the Appointer under the Family Trust. The Deed of Trust had been varied by the husband's father on 20<sup>th</sup> January 2010. Before that date several of the husband's siblings and their spouses were beneficiaries under the Family Trust.
104. On 20<sup>th</sup> January 2010 a Deed of Variation was registered which clearly showed that all other children had been excluded as beneficiaries under the Trust except for the husband. The court therefore had evidence before it that the husband was in fact a beneficiary as at 20<sup>th</sup> January 2010.
105. The order of the court was for the husband to declare what was the extent of his ownership as a beneficiary under the Family Trust. It awarded the wife 40% share in the husband's interest in the said Family Trust. The evidence before the court was that this Family Trust owned the 32 room motel. There was an ancillary order made by the court where the court again gave the husband the opportunity to disclose all assets owned by the Family Trust which he has not done so far post the judgment. He has still not made full and frank disclosures. How can he then be asserting that there is no evidence of him as the beneficiary? He falls by his own contemptuous actions.
106. The husband knew that the wife would be using all these documents to assist her claim. It was therefore incumbent on the husband to provide contrary evidence. He did not. Now he is saying that the wife had the onus of proof. She did her best to provide all the evidence that she had in her possession. Why did not the husband do so? He cannot sit on his rights and complain on the appeal that there was no proper evidence. What did he do to assist in a proper determination?
107. Further, there enough evidence that the monies sent by the Limited liability Company were used to buy assets in Australia. The court therefore had the evidence to make a finding that assets in Australia were purchased from funds given by the Limited Liability Company. Since the husband owned 50.08% of this Company, he clearly had a beneficial interest in all assets in Australia.
108. It was clear that husband's father who earned \$244.07 per week was not in a financial position to buy assets such as a 32 room motel. If he had any such financial ability to do so then why was that evidence not produced and why did the father not attend court to protect his investment?
109. The husband's parents were in fact part of the proceedings but decided not to take part in the property hearing.

**Grounds 14, 15 and 16**

110. Ground 14 states that the court erred in law in holding that the fact that the monies were taken from

Fiji and used by the husband's mother, a housewife, and after depositing it into her account to purchase houses in Australia was clear evidence that the houses were purchased by the husband using "monies from the companies" and registered in the name of the husband's mother was an error of law in so far as:

*(a) the evidence did not admit of nor support such a finding;*

*(b) the fact that the funds were provided by a corporation (not identified by the court) did not enable a finding that they constituted property of the parties to the marriage; and*

*(c) The fact that the properties were registered in the husband's mother's name did not enable a finding that they were matrimonial property in the absence of a date as to acquisition and a finding that the acquisition was done to defeat the wife's rights under the Act.*

111. It was argued by the husband's counsel that in absence of the evidence one cannot conclude that monies were given by the husband and used to purchase properties in his mother's name.

112. It was further argued that the wife admitted to monies being provided by the Limited Liability Company and not her therefore the property was not purchased by the husband's money in which she could ask for a share. Further, his mother was not a party to the proceedings, her property could not have been included in the pool.

113. Ground 15 states that the court erred in holding and declaring that both the houses and the motel in

Australia "including other assets owned by the said Trust are the matrimonial properties for the purposes of the proceedings (in the absence of evidence nor identifying what those other assets were) in so far as it had no evidential basis to hold and find as he did and further failed to identify with precision the evidential basis for making the blanket finding as it did thereby erring in law in doing so.

114. It was argued that it was not established that the monies remitted from Fiji to Australia by the parties' were given by the husband and is property of the parties to the marriage therefore the properties in Australia cannot be regarded as property of the parties to the marriage.



115. Ground 16 states that the court erred in law in finding in the absence of evidence that and against the evidence as led before him that it was the husband's "housekeeper mother" who purchased the houses when she was not even an Australian resident such finding being clearly against the evidence and never put to the him as a proposition that his mother lacked capacity to acquire the reality and in the circumstances a finding devoid of natural justice and upon which its reliance to determine the matrimonial property was both untenable and unavailable at law and on the evidence.
116. The argument tendered under this ground was that it had not been established that the husband's mother could not purchase properties in Australia as she was not an Australian resident and such allegation not being put to the husband.
117. I reiterate that the evidence before the court was that monies were given by the Limited Liability Company and taken to Australia. These funds were used to buy properties in Australia. The wife gave uncontroverted evidence that these properties were purchased through monies generated by the Limited Liability Company and family members would frequently take monies to Australia as travel funds and these funds were used to buy these properties.
118. In his cross-examination evidence, the husband said that he did not know how the properties were purchased in Australia (Page 282 -Volume 1 of the Court Records). He also testified that these properties were owned by his mother (Page 282 -Volume 1 of the Court Records). He did not produce any evidence to show that the properties were owned by his mother. Even if she owned it, how could she buy these properties on a little over \$200 per week income in Fiji? There was no evidence produced by the husband that his mother had the financial capacity to buy these properties? Any ownership by his mother therefore was not real and meant to avoid any claims on the properties.
119. It was open to the court to accept the evidence of the wife that the Limited Liability Company bought this property and was the real owner of the same. There was no reliable evidence to refute the irresistible inference.

**Ground 17**

120. Ground 17 states that the court erred in law in failing to find and hold that the husband had no beneficial interest equating to matrimonial property in the Trust.

121. It was argued that the Trust is not a separate entity. The essential features of the Trust are that one person (Trustee) is the owner of the Trust property and is bound to use their legal position as owner for the benefit of another person (beneficiary). The Appellant was not a beneficiary to the Trust.
122. I have dealt with the issue of Family Trust and the basis on which the court was justified in distributing the husband's interest in the trust. I see no basis to exclude the interest from the pool.

### **Ground 18**

123. Ground 18 states that the court had failed to find that the wife had engaged in substantial non-disclosures in breach of her statutory obligations in the following respects:
1. *not disclosing her business activities and interests in 2 private businesses of hers;*
  2. *the failure to lodge income tax returns since she had started to work and continued to fail to disclose them at the trial;*
  3. *the failure to disclose income earned from a floral business despite evidence led from her in cross examination.*

*Such disclosure warranting a finding of a breach of the Act but disregarded and being dealt with by the court to the detriment of the husband.*

124. I do not find any relevance to the ground raised by the husband. The wife had started some private business after the separation. This was not relevant to the distribution proceedings. If it was any relevant then I find that the court had taken it into account that she had some little earnings from these businesses when it was ascertaining the parties' economic stability in the future.

### **Ground 19**

125. Ground 19 states that the Court erred in law in finding that the wife's contribution to the betterment

of companies was “immense and enormous” such finding being made in the absence of evidence as to quantum of the contribution and specificity as required by s.162(2) of the Act in determining the extent of the contribution as between each party to the marriage.

126. I have already given details of what contributions the wife said she had made and was recognized by the court. The court had dealt with the aspect of her contributions very diligently and I have even outlined those portions in this judgment. It is not worth repeating the same.

127. In any event, the wife gave uncontroverted evidence that she did the following:

*(a) She would get up at approximately 5am, freshen up, breast feed her daughter and put her back to sleep. If the child did not go to sleep, she would give her to her mother-in-law to look after. She would go outside and check if her husband's safety boots had been polished, if it was not, she would do it herself. She would then head for the kitchen.*

*(b) She would make her husband's breakfast which was a banana and wheat shake. When they had a female cow for a few months, she would have to milk the cow, and then boil the milk. Then her husband's cousin and she would both do the cooking for the family. One of them would make the roti and the chutney and the other would make the curries. They would both set up the table for the family.*

*(c) She made the tea and cut up fruits for her father-in-law. She would then wake up their son and bath him and get him ready for school. She would pack her son's school lunch and feed him and take him to school.*

*(d) If their daughter needed attention, then she would attend to her and another family member would drop their son. Occasionally she would have to clean the outside prayer area if the maid or the husband's cousin could not do it. This was 2 large areas for 2 different Hindu Gods (Hanuman and Lakshmi) and after washing and scrubbing the area daily she would have to paste cow dung around the Tulsi plant and the prayer area. If she did this then she would have her shower.*

*(e) After completing all her chores, she would then have her breakfast. As soon as her mother-in-law completed her daily prayers, she had to make her fresh pot of masala tea and serve her.*

*She would then attend to her daughter and feed her then bath her and put her back to sleep. She would then tidy their room and have her shower when she did not do the prayer area.*

- (f) She would then assist the maids around with the housework which would include washing and scrubbing 6 toilets and bathrooms, sweeping or mopping sections that were in use in the entire massive 3 storey home. This normally happened when they were short staffed. If not she would go to tend to the gardens and look after the Orchids and other plants.*
- (g) At around 12 o'clock she would get a call or when the husband came home, she would dish out his lunch, make him a fresh pot of Chinese or herbal tea and sit with him while he ate and then clear his dishes away.*
- (h) She would then do other chores. And in between attend to their daughter. At about 2.30pm she would pick up their son from school. If she was busy with chores another family member would pick him up.*
- (i) At around 3.30pm on a normal day she would start to prepare or cook dinner. On Mondays and Fridays, she would start cooking after lunch with the help of her mother in law and the husband's cousin. The cooking begins at around 1pm and finishes around 5pm because of the extensive variety.*
- (j) She would then get the children and herself showered and ready for prayers after the table was set for a buffet vegetarian dinner.*
- (k) After feeding the children and having dinner she would assist the husband's cousin with clearing and washing up the dishes and sweeping the kitchen and emptying the bins and feeding the dogs.*
- (l) Then she would attend to the children and the husband and finally sleep at around 11pm only to begin another day with everything again. This even happened on Sundays.*

128. I cannot fathom why these effort of a wife and a mother should be ignored and not given any credit. She relentlessly did these tasks.

129. Apart from cooking and cleaning for the family, she also entertained and looked after guests and friends who came to their residence.
130. She also worked in the company office for a few hours at a time however every day for a whole month as the office girl employed at the time who is related to them was away schooling and was also cross training. On many occasions she would go and cross check the cash and credit sales and verify the loader driver and clerk figures to see if they all balanced. She would also check the fuel record books and interview staff especially when hiring office or admin staff.
131. She collected the cash sales to give to her mother in law for household expenses. She did this daily when her in laws were away on trips. When no family member was in the office, she recalled that she once calculated the months cash takings to be around \$15K.
132. She set up, landscaped and planted all the plants around the office garden with the help of other employees. She assisted with some paperwork, faxing, typing and filing. A month or so before Diwali, she would assist the office staff clean and tidy cabinets and wash the windows and do general clean up almost every year. She normally rearranged and cleaned the husband's office.
133. She ordered and delivered food to employees at the job sites. She made tea and sometimes delivered it with bread for breakfast to employees who worked through the night to early hours of the morning especially during projects works.
134. When the Limited Liability Company was awarded major contracts, her works also included working day and night till late hours in preparing and packing all household items needed for the camp sites for cooking. She packed all clothing, bedding, first aid kits, medical and other items needed for her husband's personal use when away at projects especially for camping. She would normally cross check packed items with an employee of the Company on pick up and return.
135. She said she did most of the shopping of food items and cleaning products, vegetables and other items for the camps unless she was not available or not feeling well. She would follow up with the staff or the husband's cousin with items running out and would ensure the replacement were met.
136. She testified that she cooked and also assisted her mother in law or her friend at the time to prepare meals for employees especially when they left in barges to go to outer islands.

137. In all those years she had never been paid any wages and FNPF for all that she did for the Company

and she believed she had played a major role in ensuring the employees and the staff were well looked after.

138. The wife's contribution was not challenged and based on her enormous contribution it would be repugnant to justice to find that her contribution was not equal. The husband was not in a position to rebut the presumption of equal contribution. I cannot be shown any basis to impeach the findings of the court.

#### Ground 20

139. Ground 20 states that the court erred in law in holding that the husband failed to disclose any of his

assets in his Form 19 and that the wife was not guilty and/or in breach of non-disclosures in respect of the conduct of her business.

140. It was crystal clear that the husband had not made any disclosures about anything that is why the consequential orders had to be made. If he made any disclosures, there would not be orders regarding valuation, trust documents and so forth. I see no basis why he is pointing a finger at the non-disclosures made by the wife when in the scheme of the distribution, it did not affect his interests.

#### ***Final Orders***

141. In the final analysis, I make the following orders:

***a. I allow the appeal only in part. I find that the income and fringe benefits of the husband could not form part of the pool to be distributed. I thus set aside the order of the court affecting his salary and benefits and any consequential orders affecting the salary and benefits.***

***b. I dismiss the appeal in respect of all other grounds and affirm the findings and orders of the court including the consequential orders.***

- c. The husband shall have 1 month from now to comply with the consequential orders of the court in absence of which the wife is at liberty to have the court to assess her monetary share without prejudice to her rights to bring contempt proceedings.*
- d. The wife shall have the right to engage any personnel to carry out the valuations that are necessary without any interference from the husband, his servants or agents.*
- e. Each party shall bear their own costs of the appeal proceedings.*

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

*13.02.2024*

To:

1. *Ravneet Charan Lawyers for the Appellant.*
2. *R. Patel Lawyers for the Respondent.*
3. *File: Lautoka Family Court Appeal Case Number: 8/2019.*