

IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA

APPELLATE JURISDICTION

CASE NUMBER:	21/LTK/0010
[ORIGINAL NUMBER]:	[21/RAK/0074]
BETWEEN:	RUCI
AND:	AISAKE
Appearances:	<i>Ms. N. Chand for the Appellant.</i> <i>Mr. Daveta for the Respondent.</i>
Date/Place of Judgment:	<i>Wednesday 19 February 2025 at Suva.</i>
Judgment of:	<i>Hon. Madam Justice Anjala Wati</i>
Category:	<i>All identifying information in this ruling have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarities to any persons is purely coincidental.</i>
Anonymized Case Citation:	RUCI v AISAKE – Fiji Family High Court Case number: 21LTK0010

A. Catchwords:

FAMILY LAW – PROPERTY – INJUNCTION – *the wife applying for injunction for preservation of the property cannot effectively enjoy an indefinite injunctive order against sale of property without seeking distribution of the property – there should have been an application for distribution of property to determine her rights in the property sought to be preserved as an injunction is granted on the basis that there is a real likelihood of her entitlements being affected if an injunction is not granted.*

Cause

1. This is an appeal by the wife against the interim orders of the Magistrates' Court of 18 November 2021. The substantive application by the wife was basically seeking injunctive relief in respect of a motor vehicle without any claim for property distribution.
2. The interim orders appealed against were in the following terms:
 - (a) *That the earlier interim orders of 11 November 2021 be rescinded;*
 - (b) *The wife to hand over the vehicle to the husband or the registered owner of the same by no later than 6pm of the date of the order. The handover of the vehicle to take place at the Rakiraki Police Station;*
 - (c) *The husband or the legally registered owner is entitled to possession and use of the vehicle without interference from the wife or her agent; and*
 - (d) *The motor vehicle shall not be legally transferred or disposed when it is in the possession of the husband or the current legal registered owner without an order of the court.*

Background

3. This wife had filed an ex-parte application seeking interim injunction preventing sale of the vehicle and for an order that the vehicle not be removed from the wife's premises. A final order was also filed seeking the same orders.
4. The basis of the application was that she was married to the respondent but had separated about 6 months before filing the application. The wife deposed in her affidavit that the motor vehicle was purchased during the marriage and she was deeply concerned that the husband will transfer or sell the said vehicle.
5. The court heard the application ex-parte. It was of the finding that it was important to preserve the vehicle so it made an order that the wife takes interim possession of the vehicle and be responsible for the upkeep and maintenance of the same. It was also ordered that during interim possession, the wife was not to transfer the vehicle.
6. The court then ordered service of the order and application on the husband and gave a returnable date.

7. When the husband appeared in court on the returnable date, the court granted the interim orders which is now subject of this appeal.
8. The husband's position was that the vehicle is not a matrimonial property as it is owned by the son from the first marriage.

The Appeal

9. The wife is aggrieved with the setting aside of the ex-parte interim orders. Her complaint is that:

(a) the vehicle was safe with her and it was essential that the matrimonial property be preserved. The cancelling of the order has affected her rights; and

(b) the court failed to consider the moral consequences of giving the vehicle to the husband as he uses it for immoral causes and lends it to third parties.

Law and Analysis

10. When the wife made an application for interim injunction for her to have possession of the vehicle and for it not to be sold, she had not filed any application for property distribution. Until date she has not filed any application for property distribution claiming her entitlement in the property.
11. She cannot indefinitely enjoy an injunctive right and enjoy the use and possession of the vehicle without making a claim for property distribution. She was given the order for her benefit but she failed to file a substantive claim for her shares. In that regard, she could not establish that her right in the property will be affected if the injunction does not continue.
12. Instead of filing an appeal in this case, she should properly pursue her rights in the property distribution application. The asset is preserved in that it cannot be sold under the interim orders.
13. A third party is now the owner of the vehicle and he is the son of the husband from the first marriage. That does not stop the wife from claiming her share in the property, if she can show that the vehicle was transferred to defeat her rights in the property.

14. The second ground of appeal is that the vehicle is being used for illegal and immoral purposes. I am of the view that if the wife's concern is that the value of the vehicle is being reduced due to the husband's misuse, then she should raise that in the substantive proceedings for distribution.

Final Orders

15. In the final analysis, I dismiss the appeal.
16. The wife is at liberty to apply for property distribution to determine her entitlement in the vehicle and/or any other property.
17. There shall be no order as to costs.

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Hon. Madam Justice Anjala Wati

19.02.2025

To:

- 1. Raikanikoda & Associates for the Appellant.***
- 2. Niudamu Lawyers for the Respondent.***
- 3. File: Family Appeal Case Number: 10 of 2021 [21/RAK/0074].***