

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA

DVRO 74 - 2017

KRISHNA WATI

[Applicant]

-v-

ANAND LAL

[Respondent]

Before : RM Fotofili L.
For Applicant Lady : Ms Ali S. [Legal Aid Commission]
Respondent : Ms Henao G. [Legal Aid Commission]
Hearing : 23rd and 26th July 2019
Date of Judgment : 13th August 2019

JUDGMENT

BACKGROUND

1. The Applicant lady initiated a domestic violence application against 2 Respondents.
2. 1 of them has passed away Mr Anil Lal and with the consent of the parties, he has been discharged from this case.
3. The case remains against Mr Anand Lal.
4. It is not in dispute that the parties are siblings.
5. The Applicant lady in her initial 'in person' application has sought for a section 27 and 29 domestic violence order pursuant to the **Domestic Violence Act** 2009, against the Respondents.

6. That was granted on the 20th of October 2017 but only in the interim.
7. That interim order remains against the Respondent and his family.
8. The Applicant lady in her written application, alleged that the Respondent damaged her water pipe, they argue about the land, she was threatened that she will be burned, she has been sworn at and abused. The case about the land is pending in the civil court.
9. The Respondent in his written response denies the allegation. He says that they live on the same land but it is the Applicant who causes problems with his family. He says that the Applicant brought this proceeding because the Applicant did not like the Respondent telling the Applicant about the Applicant daughter's behaviour. He says that the pipe the Applicant refers to is above ground and cars can cause damage to it on the driveway.
10. The issue about the exposed pipe was dealt with on the 10th of December 2018 and the court was satisfied that the lady had done her part to conceal or bury it.
11. The hearing was focussed on the remaining allegations.

ORAL EVIDENCE

AW1

12. Applicant's witness 1 [AW1] was the Applicant lady herself. She gave sworn evidence.
13. The Applicant is 66 years old and having made some enquiries with her in court, I was satisfied that she was competent to give evidence.
14. She is eldest in her family and the Respondent is her younger brother. The other Respondent who has passed away and who has been discharged is also her brother.
15. They are all staying in the same compound but in different houses.
16. They all use a common driveway or road.
17. The Applicant's house is on a hill and she has to pass the Respondent's house in-order to reach her own or come from her house and pass the Respondent's house in-order to reach the main road.
18. A map or printout from Google Earth was tendered by her as **Ap - Exhibit 1**.

19. It is a top view of the compound.
20. The Applicant identified her house on the printout as the house with a red roof.
21. The Applicant said that since their father passed away, she has been having trouble with the Respondent.
22. Their differences are about the land their father left them.
23. The Applicant says that when her daughter was attending school, the Respondent would block the road so that her daughter could not get through.
24. She alleges that the Respondent puts grease on the gate and the grease would get on her daughter's clothes.
25. The Applicant now stays alone as her children have left home because of their work but they usually visit her.
26. The Applicant says that one day, the Respondent tried to hit her and her daughter.
27. The Respondent's daughter [Applicant's niece] also said ' put this bitch in the house, lock it, set it on fire'.
28. The Applicant wants a DVRO to assist her in her claim to the land and she is afraid that she will be killed as she is alone.
29. In cross examination, the Applicant accepts that her daughter would be around 20 to 25 years old.
30. The Applicant denies that her daughters return home in the early mornings or that they bring strangers home.
31. The Applicant denies that her differences with the Respondent did not start when the Respondent spoke to the Applicant's daughters.
32. The Applicant accepts that she did not report any threat or abusive language by the Respondent or the Respondent's family to police.
33. Their case about the land is pending in the High Court at Lautoka.

34. The Applicant says that she was threatened with a notice to vacate but she has not received any.
35. There is no fencing at the compound but there are tall trees.
36. The Applicant says that she saw the Respondent putting grease on the gate.
37. The Respondent will have to use the same gate too.
38. She maintains that the Respondent said she was a bitch.

AW2

39. AW2 is Ms Rajeshni Radika Jag.
40. She is the Applicant's daughter.
41. The Respondent is her uncle.
42. She says that when her father was alive, the Respondent was good to them.
43. Then, they had differences about the land.
44. The DVRO application was lodged after their High Court case about the land.
45. AW2 says that the Respondent blocks the road using the gate and puts cow dung and grease on the gate.
46. She says that this was to prevent her from crossing and to miss school.
47. She says that the Respondent locks the gate and keeps the key.
48. She says that she reported to police in 2007 and a police officer warned the Respondent not to cause any trouble and broke open the gate.
49. The gate is no longer there now.
50. She adds that she saw the Respondent cutting down their banana and pawpaw plants.
51. They have tried to sort it out with the village advisory.

52. The Respondent warns that he will issue them a notice or blue paper.
53. The Respondent said that he will lock her and her mother and burn them alive.
54. The Respondent showed his butt once and that was reported to police.
55. The Respondent alleges that AW2 and her sister have affairs with men.
56. AW2 denies that she drinks alcohol.
57. AW2 identified **Ap - Exhibit 1** and explains that she was the one that printed it out.
58. In cross examination, she accepts that the Respondent uses the common driveway.
59. She maintains that the Respondent put cow dung on the gate.
60. She could see the Respondent from her home doing that.
61. The grease and dung stuck to her uniform when she crosses the gate.
62. She said that the Respondent swear and threatens them and even said that he will rape her. She has complained to the Fiji Women's Crisis Centre, to police and the Prime Minister's Office.
63. She denied fabricating the allegations to help the lady Applicant or AW1.
64. That was the case for the Applicant.
65. The Respondent chose to give evidence.

RW1

66. Respondent witness 1 [RW1] is the Respondent himself Mr. Anand Lal.
67. He is 57 years old.
68. The Applicant lady is his elder sister.
69. Their homes are about 30 to 40 meters apart.

70. He was shown **Ap – Exhibit 1** or printout and disputes the length depicted in it but accepts that their houses can be seen on it.
71. He says that his relationship with the Applicant lady was normal.
72. They have been together since childhood.
73. The Applicant lady asked their father for a space to build on the compound.
74. The Respondent says that his issues with the Applicant developed after the Respondent spoke to his nieces or the Applicant lady's daughters about bringing people to the area and shouting when drunk when crossing the Respondent's house.
75. The Respondent stopped them.
76. The Respondent described that one night the dogs were barking and he went to investigate. He found a police officer named Shiri near the Applicant lady's house hiding in the cassava patch. The officer told him to keep quite as he is going up.
77. The Respondent called Vatukoula Police Station to enquire what the officer was doing there and he was informed that the officer is off duty.
78. The Respondent has raised the matter with 'them' and told them not to do those things as their reputation will suffer and they have daughters.
79. When he raised it with his nieces, the Respondent said that they swore.
80. The gate is made of 2 posts and a wire linking them. It is for vehicles and not for people.
81. The Respondent works doing shift work and can return home sometimes in the morning. His wife is at home and he has a disabled daughter.
82. He put up the gate so that people do not come around unnecessarily. He did not put it up to stop the Applicant lady.
83. The Respondent denies threatening the Applicant or his nieces and denies that he cut off any of the Applicant's trees.
84. He denies putting grease.
85. He is the trustee of the land.

86. He has never asked his sister for rent or threatened to evict them.
87. The Respondent has not been charged or arrested.
88. He said that there was an allegation that he swore but he was shopping at the time and he told police his alibi when they came to enquire with him.
89. In cross examination he said that he is the administrator of the estate or property.
90. He denies harassing the Applicant or his sister when the latter asked for her share.
91. There is 1 road or driveway but the Applicant does not use their own.
92. He has no problem with the sister using this 1 driveway but their problems arose after she filed the DVRO.
93. The gate isn't locked and a hook is used.
94. He denies that police removed the gate.
95. He says that he is not on talking terms with the Applicant and that is why he cannot threaten her if that is the allegation.
96. That was the case for the Respondent.

ANALYSIS

Burden and Standard of Proof

97. The Applicant normally carries the burden.
98. The standard of proof when deciding any question of fact is to be decided on the balance of probabilities [section 46 (1) of the Domestic Violence Act 2009].
99. The rules of evidence is more relaxed in this type of proceeding and it does not need to conform with criminal or civil rules. The court may receive any evidence as it thinks fit [section 48 (1) of the Domestic Violence Act 2009].

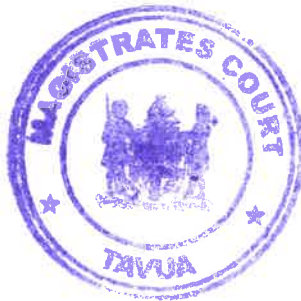
FINDINGS

- 100.** I am not convinced to the necessary standard, with the evidence given by the Applicant lady AW1 and her daughter AW2 that the Respondent threatened them that he will burn them in the house.
- 101.** Having observed and listened to them and analysing the evidence, their account of this seems to be from what they heard from other people and not that they heard directly from the Respondent.
- 102.** The lack of any complaint to police regarding the threat to commit arson or to burn them reinforces my view.
- 103.** AW2 the Applicant daughter's evidence appeared to me to be rehearsed and robotic. It was unnatural and seemed that her lines were memorized before coming to court.
- 104.** Both the Applicant and the daughter's evidence regarding the putting of grease or cow dung on the gate is implausible too. Especially if the Respondent will be using that same gate.
- 105.** Their evidence that they witnessed the Respondent putting cow dung and grease, I do not believe. They say they saw him doing this from their house. They admit that there are tall trees around and I doubt that they would have been able to see the gate from their house. Even if they did see the Respondent putting something on the gate, whether it was cow dung and grease. Furtheron, their allegation that his specific intention was to prevent AW2 from going to school.
- 106.** There is an immense amount of conjecture infused into the allegation in my opinion.
- 107.** I am satisfied though that there is interference by the Respondent into the social life of AW2.
- 108.** I am satisfied that the animosity between the parties have reached the stage where they enquiring into the private affairs of each family and the Applicants making allegations based on assumptions against the Respondent.
- 109.** If a consenting adult has an affair with AW2, that is not the concern of the Respondent to be calling the police station to 'dig around'.
- 110.** I also do not find or do not accept any allegation made by the Applicant or AW1 and AW2 against the Respondent's family.

CONCLUSION

111. For the reasons given above, the application succeeds but only in part.
112. I remove section 29 non-contact conditions against the Respondent and his family.
113. I remove section 27 against the Respondent's family.
114. I impose section 27 standard non-molestation conditions against the Applicant lady, her daughter AW2 and the Respondent.
115. Police are to serve and explain the section 27 order on AW2 and file the affidavit of service within 1 month from today.
116. I will explain the section 27 standard non-molestation conditions to both the Applicant lady and the Respondent now.

28 days to appeal to the High Court



LISIATE T.V FOTOFILI
Resident Magistrate

At Tavua this 13th day of August 2019.