

**IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
FAMILY JURISDICTION**

Family Action No.17/TAV/0096

NANDINI DEVI PERMAL KUMAR

-v-

SATISH KUMAR

For The Applicant Lady : Mr Chandra V. and Mr. Lagonilakeba V. [Millbrook Hills Law Partners]
For the Respondent Man : Mr. Yunus M. and Ms. Shaffique S. [MY Law]
Date of Hearing : 21st April 2020 and 29th May 2020
Form 9 – property
Date of Ruling : 24th July 2020

RULING – Property Distribution

BACKGROUND

1. The parties were married on the 16th of August 2008 and this was formally registered on the 12th of November 2008.
2. Both the Applicant Lady and the Respondent Man are teachers by profession.
3. The parties have no child or children.
4. At least by 2017, the parties were separated.
5. The parties divorced on the 3rd of February 2020.
6. The lady successfully obtained an *ex-parte* interim order on the 20th of November 2017 [pursuant to her form 12 and 23 application] to reside at the 'matrimonial' home' and an interim injunction for the Man not to sell or dispose of the matrimonial property described as NLTB Ref. No. 4/4/50040535 at Lubulubu (part of S/D Lot 1 in the province of Ba, in the district of Tavua with an area of 5.2744 hectares (whole).
7. The interim order was amended on the 8th of March 2018 to include that the lady be allowed to plant cash crops on the farm beside the matrimonial home occupied by the Lady.

8. The orders were later amended on the 27th of March 2018 without objection by the Respondent Man, allowing the Lady to have open access 'from the creek towards the Highway'.
9. Settlement was attempted between the parties in relation to the property distribution but that was unsuccessful.
10. When the case was called before the Registrar on the 19th of March 2018, the Man agreed to have the appliances in the home given to the Lady but later the Man changed his mind.
11. In her form 9 filed on the 3rd of November 2017, the lady sought the following:
 - i. Distribution of the three dwelling house situated at Tagitagi, Tavua being NLTB Ref No.4/4/50040535 and Instrument of Tenancy No. 10957 described as 'Lubulubu' (part of S/D Lot 1 in the province of Ba, in the district of Tavua with an area of 5.2744 Hectares (whole);
 - ii. 50% shares of Vehicle Registration No. FN435; and
 - iii. 50% shares of Vehicle Registration No. EF 420

FINANCIAL STATEMENT

12. In her form 19 financial statement filed on the 3rd of November 2017, the lady outlines the following:
 - Her average weekly salary is \$480
 - \$39.81 is paid towards her FNPF
 - She has 2 insurance policies where she pays a total of \$67.16 weekly
 - She has \$100 cash in her bank account
 - The Lady supports both her parents and can expand \$100 for them
 - There is a vehicle Nissan Primera with registration number FN435 registered in the Man's name worth \$8000 and which the Lady claims 50% ownership over
13. On the 21st of February 2018 an amended Form 9 was filed on behalf of the Lady. This time the Lady sought the distribution of the following:
 - i. A three dwelling house situated at Tagitagi, Tavua being NLTB Reference no. 4/4/50040535 Instrument of Tenancy No. 10957 described as 'Lubulubu' (part of S/D Lot 1 in the province of Ba, in the district of Tavua with an area of 5.2744 Hectares(Whole);
 - ii. David Brown Tractor – Reg no. AY533, Chassis Number/VIN 885111003986;

- iii. 50% of the rental income derived from Kadar Buksh Ltd at a rate of \$350 per month;
- iv. Nuptial Mangalsutra worth \$4000;
- v. \$1000 cash taken by the Respondent from the Applicant's dwelling;
- vi. Home appliances –
 - Refrigerator
 - Sandwich Maker
 - Television
 - DVD player
 - Furniture – Bed , Wardrobes, coffee table, dining table and chairs;
 - 2 x Air conditioning units;
 - Frying pan;
 - Washing machine;
 - Pooja Idols; and
 - Brush Cutter

14. On the 16th of March 2018 the Man filed his form 10 response seeking that the application for distribution sought for by the Lady be 'struck out'.

15. In his financial statement filed on the 27th of March 2018, the Man outlines the following:

- His average weekly salary is \$490
- \$39.81 is paid towards his FNPF
- He has an insurance policy for which he pays \$90 weekly
- There is \$500 in his bank account
- There is \$2000 in his FNPF
- There is land worth \$80,000 in his name
- He took a personal loan of \$4,000 from a bank
- He took a loan of \$48,500 from Ram Narayan
- His weekly expenses for food, bills, travelling is \$185

AEIC - LADY

16. The Lady filed her Affidavit of Evidence in Chief [AEIC] on the 17th of October 2018.

17. She relates that she married the Respondent Man in August 2008.

18. They began residing together on the 6th of December 2008.

19. They resided together with the Respondent's parents and then the parties moved into the school quarters.
20. In 2011, the parties acquired a property situated on Instrument of Tenancy TLTB Ref No: 4/4/50040535 in the area of Lubulubu (part of) S/D Lot 1 situated at Kings Road, Tavua.
21. They resided at the property since 2011.
22. The property was purchased for \$80,000.
23. The Lady says that there is a David Brown Tractor with registration number AY533 at the property and the Respondent Man has taken all the equipment.
24. The Tractor was included as part of the purchase of the property for \$80,000.
25. The Respondent's father gave \$25,000 towards the purchase of the property.
26. There was an agreement with the former owner that the balance of \$55,000 will be cleared over the next 6 years from the date of purchase.
27. In pursuit of clearing the balance owed, the Applicant Lady took a personal loan of \$10,000 from a Bank to help clear the balance entirely.
28. The property is valued at \$151,000 by a valuation company and this was done on the 13th of February 2018.
29. The Applicant believes that she is entitled to 50% of the property as she has contributed financially and non-financially to the property.
30. The Lady does the chores and looks after the house when the Man is away from home.
31. The Lady asserts that the Man disappears from home even for days and spends late nights away from home drinking grog.
32. The Lady asserts that the Man is uncaring towards her family and does not take responsibility. For example, the Man was absent when the Applicant's father suffered a stroke.
33. The Lady asserts that she pays for 'all' of the utility bills and groceries. She also does 'all' the gardening around the house.
34. The Lady was not present at the home and claims that the Man came to the house and cut the lock to the house as he did not have the keys. The Man took her nuptial

mangalsutra worth \$4,000 and \$1,000. She has lodged a complaint to police regarding that.

35. In 2013 the Respondent Man made a deal with a bus company for the bus company to use part of the property to park their buses.
36. The bus company has been paying \$700 monthly as rent to the Respondent Man but that company went bankrupt and was taken over by another bus company.
37. This new bus company renovated a dwelling at the property which the company uses as its office and pays \$350 to the Respondent Man until to date.

AEIC - MAN

38. The Man in his AEIC accepts that they got married on the 16th of August 2008.
39. They do not have any child or children.
40. The Man asserts that he left their house on the 2nd of July 2017 as the Lady started arguing with him.
41. The Man claims that the Lady assaulted him earlier in 2014 after which he reported the matter to police. They later reconciled in court when the Lady 'took a progressive approach'.
42. The Lady is still residing at their matrimonial property and the Man is residing with his parents.
43. The Man and the Lady purchased the property in 2011 and the Man's father helped him financially for the deposit and legal fees.
44. The Man exhibited to his affidavit, a copy of the agreement between the Man and his father.
45. The terms of the agreement reflects that the purchase of the property is to be purchased in the sum of \$80,000 and requires a \$35,000 deposit with legal costs of \$3,500. The Man's father agrees to provide the Man with \$38,500 and the balance will be handled by the Man.
46. Another agreement in the sum of \$10,000 was made between the Man and his father as this is needed by Jai Krishna [previous owner] for his medical treatment and for the 'liabilities on the property at Tagitagi'.
47. The total loan to the Man by his father is \$48,500.

48. The Man paid off the balance of the mortgage and this was directly deducted from his salary.
49. The Man exhibited to his affidavit, a copy of his bank statement for the period 1st June 2017 until 26th July 2017 reflecting a fortnightly loan deduction or payment in the sum of \$220.
50. The Man asserts that the Lady is entitled to 30% of the property and 50% share of the tractor which is also part of their assets.
51. The Man agrees to have the Lady keep all the appliances.
52. The Man is not aware of the Nuptial Mangalsutra and \$1,000 cash which the Lady refers to in her claim.

BUNDLE OF DOCUMENTS

53. Both parties have filed the same.
54. In her bundle, the Lady attaches a valuation report dated the 13th of February 2018 by a registered valuer regarding the leasehold property described as TLTB Ref No: 4/4/50040535 known as Lubulubu (Part of) S/D Lot 1.
55. The valuation was done after an inspection by the company or valuer and after a sale analysis and assessment of the Market Value of the leasehold property.
56. It is opined that the market value or best price or amount for which the property should be exchanged in the open market is \$151,000.
57. The property contains 13 hectares.
58. The lease is for 30 years from the 1st of July 2008.
59. There are 3 buildings on the property and the properties are adjacent to each other.
60. The first is the residential concrete structure which comprises of 3 bedrooms, lounge, kitchen and dining, separate ablution area with front porch and carport with a total area of 95.95 square meters.
61. The second structure comprises of a concrete and timber building with 3 bedrooms (currently used as storage and office rooms), toilet, bathroom, kitchen. This structure is used by a bus company as an office and some portion of the land [to park buses].
62. The third structure comprises of a concrete and timber. It contains 2 flats. Each flat has 2 bedrooms with a front porch. The flats are vacant.

63. The land is mostly used for sugarcane farming.
64. The unimproved land is capable of yielding 35 tonnes or more of sugarcane approximating to \$28,000.
65. The average yearly production of sugarcane on the farm is 170.39 tonnes which can bring in a profit of \$5,963.65.
66. A registered memorandum pursuant to the Land Transfer Act reflecting that NLTB Ref No. 4/4/50040535 Described as Lubulubu (part of) S/D Lot 1 in the district of Tavua, Ba with an area of 5.2744 hectares (whole) is transferred by Jai Krishna to Satish Kumar, School Teacher in the consideration of the sum of \$80,000. The memorandum was registered with the Registrar of titles on the 13th of March 2012.
67. There is cheque [cheque no. 001850] dated 11th November 2013 in the Name of a bus company for the sum of \$350 'Being paid for October Tavua flat rent'.
68. There are photos of buses parked.
69. There is a bank statement in the name of the Lady for the period 25th of August 2015 until the 18th of September 2017. The statement reflects a deposit of a \$10,000 loan on the 25th of August 2015.
70. A Fiji Sugar Corporation Limited [FSCL] Production Details for 03046 in the name of Jai Krishna for Rarawai Mill between 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017.
71. A total of 127.52 tons was harvested in **2007**. In **2008**, 236.32 tons was harvested. 182.31 tons in **2009**. In **2010** it was 135.40 tons. 63.67 tons in **2011**. 49.14 tons in **2012**. There was none in **2012** until **2016**. In **2017** it was 21.76 tons.
72. There is a letter dated the 26th of March 2018 addressed to the Officer – in – Charge of the Tavua Police Station. It is received or acknowledged by an Inspector on the 27th of March 2017. The letter addresses a complaint made by the Lady in November 2017 against the Man regarding the allegation that the Man had broken into or arranged for the entering and breaking into of the property occupied by the Lady whereby \$1000 cash and a gold nuptial Mangalsutra worth \$4,000 was stolen from the premises. In the letter, it is requested that a copy of the Lady's 'Complaint' be provided to the Lady to assist the Lady in her family proceeding.
73. For his part, the Man in his bundle attaches the NLTB Instrument of Tenancy NLTB 4/4/500535 leasing the area described as Lubulubu (PART OF) S/D Lot 1 in the Tikina of Tavua in the province of Ba and having an area approximately 5.2744 hectares

owned by MATAQALI; TAVASI to be held by Jai Krishna for a term of 30 years commencing on the first day of July, 2008 for the payment of \$800 as yearly rental.

74. A registered memorandum pursuant to the **Land Transfer Act** reflecting that NLTB Ref No. 4/4/50040535 Described as Lubulubu (part of) S/D Lot 1 in the district of Tavua, Ba with an area of 5.2744 hectares (whole) is transferred by Jai Krishna to Satish Kumar, School Teacher in the consideration of the sum of \$80,000. The memorandum was registered with the Registrar of titles on the 13th of March 2012.
75. An LTA vehicle specification for a David Brown tractor AY533. Its 'third party' is expired at least in 2015. It is registered to the Man.
76. The Man has his LIC life insurance [policy no. 2531816] and pays a premium of 27.40 fortnightly. The 'nominee' is the Lady. The sum insured under the basic plan is \$15,000. The policy commences on the 18th of December 2014.
77. The Man has another LIC life insurance [policy no. 2540896] and pays a premium of 28.25 fortnightly. The 'nominee' is the Lady. The sum insured under the basic plan is \$15,000. The policy commences on the 14th of April, 2016.
78. The Man has another LIC life insurance [policy no. 2506404] and pays a premium of 26.20 fortnightly. The 'nominee' is the Lady. The sum insured under the basic plan is \$15,000. The policy commences on the 14th of October, 2010.

ORAL EVIDENCE

79. I received oral evidence on the 21st of April 2020 where the Lady was the only one who gave evidence on that day.
80. The case was adjourned as the parties indicated that they may settle. Settlement did not happen.
81. I then received further oral evidence on the 29th of May 2020. On this day, the Man gave evidence.
82. I summarise their evidence below.

ORAL EVIDENCE – APPLICANT LADY

83. The Lady is 34 years old.
84. The parties moved into their property in 2011.
85. Ever since, the Lady has been residing at the property.
86. She separated from the Man in 2017.
87. The property was purchased for the sum of \$80,000.
88. Both the Lady and the Man went to a law firm to prepare the legal documents.
89. The Man's father gave \$25,000.
90. The Man paid \$270 fortnightly to the bank.
91. The Lady and the Man at the time had a Certificate in Education.
92. The Lady ran the house like buying groceries, bill payments, buying clothes and medical expenses.
93. When the Lady and the Man owed around \$18,000 or \$19,000, they got a call from the previous owner Jai Krishna that the latter was to undergo surgery and he wanted the full remaining sum and if it could be paid in full rather than instalments.
94. As a result, the Lady obtained a loan of \$10,000 with BSP and the Man also took a loan of \$8,000.
95. Her bank statement in her bundle of documents reflects the loan she had taken out.
96. She finished the loan repayment to the bank in 2017.
97. The Lady's uncle was in from overseas and took the money to Jai Krishna.
98. The valuation report was in 2018 and the property is valued at \$151,000 and in her opinion the value may have gone up.
99. The documents she has submitted in her bundle of documents and which has been filed is what is in her possession.
100. The bus company renting on the property has been renting since 2013.
101. The Man receives the rent money.
102. The Lady asserts that the Man drinks kava in the morning before going to work.

103. She heard that the Man's work [teaching] was not good and the Man had to be counselled.
104. The Man did not help her with family events.
105. The Lady asserts that their relationship broke down because the man was violent and 'raised his hand' on her and smashed the glass on the wardrobe in the house. In 2009 the Man smashed the windscreen of a vehicle belonging to the Lady's father.
106. The Lady sought help from the advisory counsellor.
107. The Man obtained a DVRO against the Lady and the Lady was 'threatened' to move out of the house.
108. The Lady countered with her own DVRO against the Man.
109. For some time, the Lady stayed over at her parent's house.
110. The Lady claimed that the Man cut the padlock to the house.
111. The Man admitted to the Lady.
112. The Lady discovered the nuptial necklace worth \$4,000 and \$1,000 cash in an envelope missing. The items were inside a bedroom drawer in their bedroom.
113. The Lady bought the necklace.
114. She reported the matter to police.
115. The only entrance the Lady says, is through the front door.
116. The Lady suspects that the Man is having an affair.
117. Her suspicion is based on her finding money around the house.
118. In 2014 she 'caught' the man reading a text message. The Lady called the number the man was texting. There was no response from that phone number.
119. A friend gave the Lady the name of a single teacher who was in the same school as the Man.
120. In 2016 the Lady found a phone inside the Man's vehicle with messages from that teacher.

121. Another lady sent the Applicant Lady a 'friend' request on social media. The Lady spoke to this other person who sent the friend request and the Lady informed this person to settle down with the Man if they wished.
122. In 2015 the Man 'ran away' when the Lady's father suffered a stroke.
123. When the Man left, the tractor was still at the farm.
124. When the Man did not come back, the Lady asked friends to move the tractor to the house.
125. The tractor is still at home and it has not been 'started' for 3 years now. The tyres are punctured.
126. The Lady usually manages the workers at home.
127. The Lady completed her Bachelors in Education in 2012.
128. She stopped her studies as the Man wanted to continue his Bachelor studies which he had stopped in 2008.
129. The Lady helped the Man in his assignments. Even when they separated, the Man brought her an assignment in 2014.
130. When the parties were together, the Lady does general housework, cleaning the compound and she would get help from some boys to help clean the compound.
131. The situation is the same now when they are separated.
132. The Respondent Man did not assist her.
133. The Man lazes around watching cartoons.
134. On one occasion the Man cut the coconut tree and then it fell on the house.
135. The Lady runs the house and hosts rituals.
136. The parties have separate bank accounts.
137. In 2012 the Lady's pay increased to \$24,000 per annum.
138. Before that pay raise, the Lady was receiving \$18,000 as 'certificate' pay.
139. The Man graduated in 2014 with his bachelors and his pay increased to \$24,000 per annum.

140. When cross examined, the Lady accepts that their property is on Native Land and it is registered to the Man with the previous owner being Jai Krishna.
141. The Lady was part of the talks for the land. She visited 'the lawyers' office. She told the lawyer to put the property under the Man's name. It was mutually agreed.
142. The property was bought 3 years into their marriage.
143. The Man became violent after 2 weeks of their marriage.
144. The Lady paid legal fees for the lawyer in relation to the settling the property and she visited the lawyers office for other legal documents.
145. The Lady did not have her receipts with her when she gave evidence and says that she has it at home and can bring it.
146. She paid the lawyer in instalments such as \$200 or \$100.
147. The Lady's financial contribution to the property was \$10,000.
148. The Man receives the rental fees of \$350 and also earns some money from cash crops in addition to the Man's salary as a teacher.
149. The Man uses money on kava and on his extra marital affairs.
150. The Lady explained that she found money under the carpet, car seat and \$50 was found by a 'house girl' under a carton.
151. A house girl is only employed for events and the day that the \$50 was found, that was the day the house girl was hired.
152. The Lady occupies one of the units on the property.
153. One unit is vacant and the other is rented.
154. The Lady is not paying any rent.
155. The Lady said that the Man moved out willingly from the property.
156. The Lady contributed to the farming on the land by paying the labourers. The Man too helped pay the labourers.
157. The Lady accepts that she occupies the unit valued at \$60,000.
158. She accepts that the other units may have depreciated in value.

159. The Respondent Man is paying for the rent on the land.
160. No sugarcane was harvested in 2018, 2019 and 2020 as the parties had separated.
161. The Lady and the Man agreed to have someone use a machine to cultivate the Sugarcane in 2017.
162. The Lady says that he has seen the Man with the same girl from 2014 in town.
163. The Lady gave a police statement regarding her complaint about the missing \$1,000 and Mangal sutra.

ORAL EVIDENCE – RESPONDENT MAN

164. The Man is 37 years old.
165. The parties were married in 2008.
166. They separated in 2017.
167. They have no children.
168. They own land consisting of 3 homes, a van, tractor and a car.
169. The van is with the Man.
170. The car is with the Lady.
171. The land was purchased around November 2011 and the purchase price was \$80,000.
172. The Man deposited \$25,000.
173. The balance of \$55,000, the Man agreed with the seller to pay in instalments, that is \$270 direct deposits to the seller's bank account fortnightly and after 2 years, it will be increased to \$370 fortnightly.
174. The Man's father helped him make payments and the Man has not paid his father back.
175. In 2015 the full sum for the property was paid off with a \$10,000 loan given by the Applicant Lady.
176. From his side, the Man contributed \$45,000 to pay off the balance of \$55,000.

177. The Man is willing to pay 12.5% of the value of the property to the Lady.
178. The Man took out an \$8,000 loan from the bank and used some of the money from the sale of cash crops to maintain the unit which the Lady is occupying on the property.
179. Maintenance included painting and building of the car port.
180. The Man denies that the Lady contributed to the maintenance of the property.
181. The annual rent for the leasehold property is \$850 from 2011 until to date.
182. The lease is for 30 years from 2008.
183. The Lady worked as a teacher with her annual salary of \$18,000.
184. Her working hours is between 8 am to 3.30pm similar to the Man.
185. The Lady does some work at home in the morning and afternoon such as cooking, washing and cleaning.
186. The Lady sometimes contributes to the purchase of the grocery.
187. The Man normally does the shopping.
188. As for the utility bills, sometimes the parties share the responsibilities.
189. The Man explains that there was zero harvesting between 2013 to 2016 because he did cash cropping.
190. From 2017 to 2020 they have not harvested because the Man left.
191. The block is still registered under the former owner's name Jai Krishna.
192. The tractor came with the land, the former owner told the Man that if the Man pays off a \$5,200 loan to the Grower's fund, the tractor will be given.
193. The Lady did not contribute to that \$5,200.
194. The tractor is registered under the Man's name.
195. The Man drives the tractor and maintains it.
196. The Lady does not help in the maintenance of the tractor.
197. One unit on the property is rented out for \$350 monthly.

198. However, since July 2019 until the present, the Man has not received any monthly rental from the bus company.
199. The Man normally maintains the rental unit.
200. If there is any maintenance for the rental unit, it is usually deducted from the rent amount.
201. Maintenance can include painting and changing of the sink bench.
202. The Mangal Sutra is worth \$4,700.
203. The Man harvested watermelon where he managed to get \$4,000 and the Lady used \$700 of her money to help purchase the item.
204. The complaint to police about the missing \$1,000 and the Mangal Sutra was 3 weeks after the Man had gone to the home.
205. The Man denied taking the items.
206. The Man had left the home in July 2017 and returned in August or September after applying for a DVRO.
207. The Man has been staying with his parents for about 2 years now.
208. The Lady has been staying at the property and has not been paying any rent.
209. The Unit the Lady is occupying can be rented for \$300.
210. The Man is willing to pay 20% of the value of all the matrimonial property to the Lady.
211. The parties have settled the vehicles which are in their possession, that is the van and the car and they have no qualms about this.
212. When cross examined, the Man accepted that he was in court on the 19th of August 2019 and he accepts saying that the tractor and the rent from the Unit has been sorted.
213. The Man accepts that the only issue is the leasehold property.
214. The bus company has been paying the Man rental but the Company has not paid him rent for about one year now.

215. The Man accepts that the bus company is willing to give the rent and he did not take it.
216. The Man accepts that productivity is the amount of sugarcane the land can produce.
217. The Man denies that it is his fault that the farm was not producing for 4 years as he was doing cash cropping.
218. The Man accepts that the average sugarcane the farm yields is 170 tonnes.
219. The Man accepts that the Lady assisted him in handling the money from the sales of the watermelon or cash crop.
220. The Man accepts that while farming, the Lady would cook food for the labourers.
221. When the Man was in Suva selling the watermelon, the Lady will handle the labourers.
222. The Man denies that the Lady will pay the labourers as the Man will return and will pay and transport the labourers.
223. The Man was referred to his AEIC at paragraph 11 which relates that he agrees to give the Applicant Lady 30% share of the property [leasehold] and 50% share after selling the tractor.
224. The Man agrees to that proposal.
225. The Man accepts that he and the Lady and his father helped purchase the property.
226. The Man accepts that he is holding the property on his behalf the Lady's behalf.
227. The Man denies that the money given by his father to assist in the purchase of the property was a gift.
228. The Man accepts that he signed the agreement with his father which is exhibited in his AEIC.
229. The Man's brother is a witness to the agreement.
230. The Man accepts that there is no date in the agreement.
231. His father has not taken any legal action regarding the loan but his father is still asking for the money.
232. The Man accepts that the Lady did the house work.

233. The Lady cooked for the Man.
234. Ironed his clothes.
235. Washed the dishes.
236. Sometimes went shopping.
237. Paid for utilities.
238. The Man accepts that they held religious functions at home.
239. The Lady participated.
240. The parties had sexual intercourse.
241. The Man accepts that the Lady was a good wife.
242. The Man says that he has thought about the contributions, maintenance of the properties, work at the farm since filing his AEIC and he thinks that it now should be 20% to the Lady
243. The 'block no.' for the property is not registered with FSC under the Man's name yet as he has not sought for the change with FSC.
244. 21.76 tons of sugarcane was harvested in 2017 as the Man requested Tagitagi fare trade harvester to harvest the cane.
245. The Man accepts that when the cane was harvested, he had already left and was not present and so the Lady attended to it.
246. The beneficiary for the Man's three life policies is the Lady and that has not changed until to-date.
247. The Man accepts that after the property was acquired in 2011, he took out more life insurance policies.
248. The Man completed his Bachelors in 2014 but he was still earning \$18,000.
249. The Man was earning \$26,600 per annum in 2016.
250. The Man used his FNPF and his own money to help pay for his education and his insurance.
251. The Man accepts that the Lady was with him and she contributed.

252. The Man denied that the Lady paid for a contractor to work on the home.
253. The Lady accompanied the Man to the hardware shop to purchase materials.
254. The money used for the work done on the home was from the loan the Man had taken.
255. The Man doesn't think that the Lady used any of her money for the maintenance or improvement to the home.
256. The Man also did cash cropping and some of the profit was used on the farm and on the home. The purchase of the Mangal Sutra is an example where the Man spent \$4,000.

SUBMISSIONS BY COUNSELS

257. Counsels for both the Lady and the Man have filed their written submissions.
258. I am thankful to the counsels for this and I have considered their submissions in the course of preparing this decision.
259. Counsel for the Lady submits that the rental proceeds for the unit being rented by the bus company should be calculated from August 2017 until the date of the decision. The total amount calculated from August 2017 until July 2020 is in the amount of \$12,250.00 and if 50% is owned by the Lady, then she is entitled to \$6125.00.
260. The money provided by the Man's father to assist in the purchase of the property was never understood by the Lady to be a loan. The terms of settlement exhibited as **SK1** in the Man's AEIC is questionable. For example, the amount reflected in it shows that the Man's father provided \$35,000 and not \$25,000 which was the deposit testified to by the parties.
261. No evidence of repayments have been made by the Man to the father if it was a loan. Even if it was a loan, the claim by the Father is time barred pursuant to section 4 of the **Limitation Act**.
262. The total value of the property is \$151,000.00 as the productivity for the farm is still in existence if someone cultivates the farm.
263. If the Lady is entitled to 50% of the tractor when sold, 50% of the rental income and 50% of the leasehold property, this means that the Lady is entitled to \$81,625.00.

264. Until this amount is paid, it is submitted that the Lady continue to reside at the property and collect rental from the bus company. The Man is to pay the rental to ITLTB.
265. In their submission, counsel for the Man accepts that the value of the leasehold property is \$151,000.
266. The Man submits that the tractor is now valued less than \$8,000 as claimed by the Lady. No valuation report has been provided regarding this.
267. The Man is willing to give 50% of the rental proceeds for the unit being rented to the bus company for \$350. The Man is willing to give the Lady her share for the 30 months the parties have been separated.
268. The Man does not accept that he has to compensate the Lady for the Mangal Sutra or the \$1,000 cash as the Lady has failed to prove that the items were taken by the Man.
269. \$25,000 was given by the Man's father as deposit for the acquisition of the Land.
270. This \$25,000 is a liability on the property or owed by the Man.
271. The Man gave \$45,000 to help purchase the property.
272. The Lady gave \$10,000 to help purchase the property.
273. The Man is willing to pay the Lady 12.5% as her share from the value of the land and improvements.
274. The Lady's household activities did not affect the Lady's work and that 'every individual indulges in such activities in her life. It is essential to cook and wash clothes whether a person is married or not.'
275. If the court can determine how the above including buying groceries, preparing for rituals, paying utility bills can be regarded as indirect financial contribution towards the conservation and improvement of the property.
276. It is submitted that there is no 'link' between the Lady's actions and how it assists the Man financially to maintain and conserve the property.
277. It is submitted that native land cannot be alienated but the court can make orders to address the shares or interest vested in the native land pursuant to section 166 (2) of the **Family Law Act 2003**.
278. The property did not yield any sugarcane between 2017 until to date.

279. The Lady is entitled to 12.5 % of the rental income.
280. The Lady has not made any contribution to the purchase and maintenance of the tractor.
281. The Lady has not provided any evidence to support her allegation that the Man stole the \$1,000 cash and Mangal Sutra.
282. No evidence has been adduced by the Lady that she will suffer if she leaves the property.

RELEVANT LAW AND PRINCIPLES

283. I am mindful of the four step approach outlined by the High Court [see for example **Manisha v Dharma** [2019] FJHCFD 2; Family Case 0416 Suv of 2017 (11th September 2019)] :

- i. Identity and value of the assets and liability of the parties:
- ii. Parties contributions to the assets [financial and non- financial contribution]:
- iii. Consider the factors outlined in the **Family Law Act 2003** particularly section 162 (3): and
- iv. Consider whether the orders proposed in light of the provision above is appropriate.

284. Section 161 (1) of the **Family Law Act 2003** prescribes the following:

In proceeding with respect to the property of the parties to a marriage or either of them, the court may make such order as it considers appropriate altering the interests of the parties in the property, including –

(a) an order for a settlement of property in substitution for any interest in the property; and

(b) an order requiring either or both of the parties to make, for the benefit of either or both of the parties or a child of the marriage, such settlement or transfer of property as the court determines.

285. Section 162 of the **Family Law Act 2003** prescribes:

(1) In considering what order (if any) should be made under section 161 in proceedings with respect to any property of the parties to a marriage or either of them, the court must take into account –

(a) the financial contribution made directly or indirectly by or on behalf of a party to the marriage or a child of the marriage to the acquisition, conservation or improvement of any of the property of the parties to the marriage or either of them, or otherwise in relation to any of the last mentioned property, whether or not the last mentioned property has, since the making of the contribution, ceased to be the property of the parties, to the marriage or either of them;

(b) the contribution (other than a financial contribution) made directly or indirectly by or on behalf of a party to the marriage or a child of the marriage to the acquisition, conservation or improvement of any of the property of the parties to the marriage or either of them, or otherwise in relation to any of that last mentioned property, whether or not that last mentioned property has, since the making of the contribution, ceased to be the property of the parties to the marriage or either of them;

(c) the contribution made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of homemaker or parent;

(d) the eligibility of either party for a pension, allowance or benefit under –

(i) any law of Fiji or of another country; or

(ii) any superannuation fund or scheme, whether the fund or scheme was established, or operates, within or outside Fiji.

(2) For the purposes of subsection (1) the contribution of the parties to a marriage is presumed to be equal, but the presumption may be rebutted if a court considers a finding of equal contribution is on the facts of the case repugnant to justice, (for example as a marriage of short duration).

(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 the circumstances is reasonable;

(f) the financial resources available to a person if cohabitating 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 circumstance which, in the opinion of the court, the justice of the case requires to be taken into account.

ANALYSIS

Identity and Value of Assets

286. I summarise the properties of the parties as follows:

- i. **Leasehold NLTB Ref No.4/4/50040535 and Instrument of Tenancy No. 10957 described as 'Lubulubu' (part of S/D Lot 1 in the province of Ba, in the district of Tavua with an area of 5.2744 Hectares (whole)).**

The lease has about 18 years left.

There are 3 units or dwelling on the property.

The first is the residential concrete structure which comprises of 3 bedrooms, lounge, kitchen and dining, separate ablution area with front porch and carport with a total area of 95.95 square meters. This is currently occupied by the Lady. The value of this property is \$60,000.

The second structure comprises of a concrete and timber building with 3 bedrooms (currently used as storage and office rooms), toilet, bathroom, kitchen. This

structure is used by a bus company as an office and some portion of the land [to park buses].

The third structure comprises of a concrete and timber. It contains 2 flats. Each flat has 2 bedrooms with a front porch. The flats are vacant.

The second and third structure is valued at \$30,000.

The whole property is valued at \$151,000 according to the valuation report given in 2018.

- ii. Rent \$350 monthly for one of the units on the leasehold property which is used by the bus company.

With the evidence before me, for example the cheque exhibited by the Lady in her bundle of documents for rent of \$350 paid by the bus company in November 2013, at least by November 2013 \$350 monthly rental was being paid by the bus company for the use of a unit and parking space on the leasehold property.

The Lady also seeks 50% of the rental proceeds between August 2017 until July 2020 which brings her share to \$6,125.

- iii. Tractor AY533, there is no valuation given for this.
- iv. Vehicles – EF 420 with the lady and Nissan Primera registration number FN435 with the man. No valuation was provided for the vehicles.
- v. \$1,000 cash
- vi. Nuptial Mangalsutra worth \$4,000 but which the Man says is worth \$4,700.
- vii. Household appliances
- viii. Refrigerator
- ix. Sandwich Maker
- x. Television
- xi. DVD player
- xii. Furniture – Bed , Wardrobes, coffee table, dining table and chairs;
- xiii. 2 x Air conditioning units;
- xiv. Frying pan;
- xv. Washing machine;
- xvi. Pooja Idols; and
- xvii. Brush Cutter

- xviii. Insurance Policies

- xix. **FNPF**
- xx. **Money in their individual bank accounts**

- 287. I am cognizant of the valuation report regarding the leasehold property that was given in 2018. I agree with the position taken by the parties during the trial and the valuation given, that the leasehold property is now still worth the same which is \$151,000.
- 288. The parties have not raised, pressed for or made any claim regarding the money in their respective bank accounts, FNPF, insurance policy of the other party and the vehicles [excluding the tractor] which are currently in their respective possessions.
- 289. It is clear to me that the parties are content with leaving these properties undisturbed as they are and I am not minded to make any order regarding the distribution of these. We may revisit this later if for example there is any need for any of the parties to sell or transfer or give the property in-order that any sum owed by them is to be settled.
- 290. The Man also does not dispute having the Lady take the household appliances, including the TV, refrigerator and other things.
- 291. There is no value regarding all of these items. I would be speculating if I put an exact figure but by ordinary standards and taking into account their profession and their financial statements, I do not think that these items would be less than \$6,000 in value.
- 292. I am persuaded with the evidence of both parties that there existed a Mangal Sutra. It was for their wedding.
- 293. I am more convinced by the Man's evidence that the item is worth \$4,700 and not \$4,000 as claimed by the Lady. The Man contributed \$4,000 and the Lady contributed \$700 to its purchase.
- 294. I believe the Lady that it was at the home on the Leasehold property. I also believe the Lady that she had \$1,000 in the bedroom drawer.
- 295. I believe the Lady that both the Mangal Sutra and the \$1,000 cash went missing in 2017. It was during the time the Lady and the Man had separated and cross DVRO's were being filed or sought. That the padlock to the house was broken. The Lady's complaint to police is consistent with her allegation that the items maybe stolen.
- 296. Considering the relationship of the parties at the time, that the items went missing from their bedroom, that the padlock was broken, it is reasonable to suspect that it could have been the Man who took the items.

297. However, reasonable suspicion is not the same standard or not as high as the standard of on the balance of probabilities.
298. There is certainly circumstantial evidence and it is reasonable to suspect that it could be the Man who took the items, but I am not convinced on the balance of probabilities that it was the Man who took them.
299. The assets remaining to be sorted now are the leasehold property, the tractor and the rental proceeds.
300. For the rental proceeds, I agree with the timeline proposed by counsel for the Lady in their submission and that is between August 2017 until July 2020 where a total of \$12,250 is owed by the bus company in rent or would have been paid in rent.
301. I agree with the timeline and the rental amount owed or paid as that fits in comfortably too with the time the parties separated. It is also undisputed by the parties that the rent for the unit is \$350.

Liabilities

302. I realise the liabilities to be the yearly rental to NLTB in the sum of \$800 which the Man in his oral evidence says its \$850 and a \$25,000 loan by the Man's father to help in the purchase of the leasehold property but which the Man in his oral evidence says is \$48,500 and has annexed the written agreement between the Man and his father to the Man's AEIC.

Parties Financial and Non-Financial Contribution To The Assets

303. The leasehold was purchased in 2011 for \$80,000.
304. I accept that the Man has been paying the yearly rental for the property to NLTB and he has been paying since 2011. This is not disputed by the Lady.
305. The ITLB instrument of Tenancy which is part of the Man's bundle of documents and the memorandum regarding the transfer of the leasehold property from the former owner Jai Krishna to the Man shows that the yearly rental is \$800 for the leasehold property.
306. The Man in his oral evidence says that the yearly rental is \$850.
307. I am not sure why there is a difference of \$50 and the man does not explain this.
308. I accept the yearly rental to be \$800 and not \$850.

309. So far, the Man has contributed \$7,200 in paying the yearly rental to NLTB.
310. I accept that both parties have contributed financially to the purchase of the leasehold property.
311. The Lady contributed \$10,000 and the balance was sorted by the Man.
312. I accept the Lady's oral evidence that she also paid for the lawyer's fees. I do not need her evidence corroborated with receipts. She was compelling and believable regarding this in her oral evidence. I accept that she paid \$200 for legal fees.
313. The balance of \$70,000 was settled by the Man.
314. In the submission by the Man's Counsel, it is asserted that the Man contributed \$25,000. In his oral evidence, the Man said that he deposited \$25,000 towards the purchase of the property. In his AEIC, the Man exhibited an agreement purportedly made between the Man and his father which reflects that the deposit to be made towards the leasehold property is \$35,000.
315. I have deep reservations about accepting the purported agreements [Note, there was another agreement for the father to lend the Man another \$10,000] between the Man and his father. The most important is that the agreements are undated and I question the reliability of the family members who witnessed the purported agreements.
316. I still find and accept that the father helped the Man make financial contributions to the purchase of the leasehold property though.
317. It was very likely an informal loan between the 2 family members. As the Man said in his oral evidence, his father asks for the money but no legal action has been taken.
318. If the loans were taken in 2011, then the father cannot take legal action to recover the monies he gave the Man towards the purchase of the property as the action would be time barred.
319. The Man may pay a social cost [such as being ignored or despised by his father] for not paying his father back but that cannot be recognised legally. I doubt and it is unlikely that he will suffer any social consequence as the Man is already staying with his parents and by all accounts, comfortably.
320. I will consider \$70,000 as financial contribution by the Man towards the purchase of the property and rule out any liability on the property such as any claim by the father as the father is time barred from claiming his money back.

321. I accept that the Man contributed about \$8,000 in maintaining and making improvements to the unit occupied by the Lady by painting and building a car port.
322. The Man too has been paying the yearly rental for the leasehold property to NLTB since 2011 which amounts to \$7,200.
323. Other improvements to the units are deducted from the rent paid by the occupant of the rental unit.
324. I accept that the tractor is included or purchased as part of the leasehold property and the Man explains this in his oral evidence.
325. I accept that the Man caters for the maintenance of the tractor.
326. Nothing compelling dissuades me from finding and accepting that both the parties contributed non-financially to the maintenance of the leasehold property. The parties took turns in paying for the utility bills, bought groceries attended to the farm, paid and transport the labourers, the Lady cooked for the labourers inter alia.
327. I accept and believe that the Lady took the lead role in certain situations such as when there were functions at home, when her father suffered a stroke and the Man was not around. I also accept that the Lady cooked for the Man, cleaned the house, washed the dishes, the laundry and also spent time looking after the farm.
328. Sex or gender should not dictate who does the washing or cleaning or cooking or farming. The Lady did it anyways and the Man did cash cropping and sugarcane farming.
329. When listening to and observing the Lady give evidence, the Lady struck me as a responsible person and a hard worker.
330. Importantly and this is unchallenged by the Man, the Lady assisted the Man complete his studies and helping the Man in his assignment is an example.
331. I find that the non-financial contribution of Lady far exceeds that of the Man.

Section 162 (3) of the FLA

332. The parties are in their 30's and there is nothing to indicate that their health is other than normal.
333. The parties married in 2008 and separated in 2017. They divorced in February 2020.

334. They have no child or children.
335. Both are teachers. Currently they earn approximately \$500 net pay fortnightly.
336. The parties were receiving an annual salary of \$18,000 when they started teaching.
337. I accept that the Lady first graduated with her bachelors in 2012 resulting in her annual salary increasing to \$24,000.
338. The Man was still receiving \$18,000 annual salary until he obtained his bachelors in 2014 resulting in his pay increasing to \$24,000.
339. For approximately 2 years, the Lady was receiving more pay than the Man and I accept that she would have invested this in their marriage.
340. I accept that the Lady was looking after her father who suffered a stroke while the parties were married and still together. It is unclear though how long this was for and whether it is still ongoing.
341. It is likely that the Man is with another partner and I accept the Lady's evidence regarding that.
342. It is unclear whether the Man and his new partner are cohabitating and the background of this partner but it appears that this partner is also working as a teacher and can sustain herself.
343. There is no indication of any person dependent on either the Lady or Man at the moment.
344. The Lady is not asking for more than 50% of her share to the leasehold property, the tractor and rental proceeds.
345. The default position or starting position is the presumption that their contribution is equal.
346. As I have found earlier, the Man has contributed more financially to the property such as the \$70,000 going towards the purchase of the property, the \$7,200 so far for the yearly rental to NTLB, the \$8,000 to improvements made to the unit. The contribution by the Man also needs to be considered in light of the fortunate circumstance that his father cannot claim back the money he loaned the Man.
347. The financial contribution by the Man is counterweighed by the far superior non-financial contribution of the Lady and the factor that she had earned more for about 2 years than the Man.

348. I see no reason to find that the presumption is rebutted. It remains and it is not repugnant to justice to conclude so.
349. The tractor was purchased as part of the lease hold property and the rental proceeds is derived from a unit on the lease hold property. As result of the parties being entitled to equal share of the leasehold property, *ipso facto* they are entitled to equal share of the tractor and the rental proceeds.

ORDERS/DECLARATIONS

350. Based on the reasons and findings made, I make the following orders and or declaration:

Leasehold Property

- i. **Both the Applicant Lady and the Respondent Man are entitled to equal share or 50% share of the leasehold property described as Leasehold NLTB Ref No.4/4/50040535 and Instrument of Tenancy No. 10957 described as 'Lubulubu' (part of S/D Lot 1 in the province of Ba, in the district of Tavua with an area of 5.2744 Hectares (whole) which is valued at \$151,000;**
- ii. **The leasehold property will remain registered in the Respondent Man's name and I direct the Magistrates' Court Registry to send this matter to the High Court hereafter so that an injunction/caveat is registered on the leasehold property to prevent any transfer, sale or disposal of the property during the life of the lease [18 years remaining] without the approval of the court.**
- iii. **The Applicant Lady is entitled to and is at liberty to remain and occupy the dwelling or unit that she is in currently in, at the leasehold property and this unit is valued at \$60,000;**
- iv. **The Lady is entitled to open, unrestricted and uninterrupted access and use of the area from the 'creek to the main highway' on the leasehold property;**
- v. **The Man is entitled to open, unrestricted and uninterrupted access and use of the other areas of the leasehold property including the 2 other units or dwelling house [valued at \$30,000] on the leasehold property, he can let and deal with the 2 dwelling units as he pleases;**
- vi. **The parties are to consult each other and mutually agree to the management and use of the farm and if they cannot agree, either or both parties can make an application to the court to determine the dispute;**

- vii. From hereon out or when the yearly rental is next due, both the Applicant Lady and Respondent Man are equally liable and responsible for paying that yearly rental of the leasehold property to NLTB whether the yearly rental is \$800 or \$850 or any other amount. They are to pay their individual 50% or settle the yearly rental in line with the tenancy agreement made with NLTB and comply with their obligations of the tenancy agreement with NLTB.

Tractor

- viii. Both the Applicant Lady and the Respondent Man are entitled to equal share or 50% share of the David Brown Tractor – Reg no. AY533, Chassis Number/VIN 885111003986
- ix. However since the Lady is in occupation and in use of the unit or dwelling valued at \$60,000, I divest the lady's share in the tractor and declare that it is wholly owned by the Man and he can deal with the tractor as he wishes. It remains registered to him;

Rental Proceeds

- x. Both the Applicant Lady and the Respondent Man are entitled to equal share or 50% of the rental proceeds for the use of the unit rented by the bus company between the period August 2017 until July 2020 where a total of \$12,250 is owed by the bus company in rent or would have been paid in rent.
- xi. However, since the Lady is in occupation and in use of the unit or dwelling valued at \$60,000, I divest the lady's share in the rental proceeds and vest this wholly to the Man.

Balance

- xii. Taking into account the \$60,000 unit the Applicant Lady is in and has been occupying since their separation minus her divested share in the tractor which I would approximate to the value of \$3,500 [value of the tractor to be approximately \$7,000] and minus the Lady's share in the rental proceeds which I calculate to be \$6,125, I calculate that the Lady still owes the Man approximately \$20,400.
- xiii. The 2 dwelling units now vested to the man has the potential to rake in more revenue or rent over the next 18 years of the remaining life of the lease and which the Lady will not receive.
- xiv. The \$20,400 owed by the Lady is recoverable by the Man overtime and I will not order that the Lady pay this remaining amount to the Man.

351. I deem the above orders and or declaration appropriate or consistent with section 162 of the Family Law Act 2003.

352. Costs in the proceedings will be borne by each party.

353. 1 month to appeal



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Lisate T.V Fotofili

Resident Magistrate

Dated at Tavua this 24th day of July, 2020.