

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

DVRO 07 – 2020

DVRO 37 - 2020

RABEN KUMAR [Applicant]

-v-

KIRAN LATA [Respondent]

Before : RM Fotofili L.
For Applicant Man : In Person, Waived Right To Counsel
For Respondent Lady : In Person, Waived Right To Counsel
Hearing : 5th May 2020
Date of Judgment : 30th June 2020

JUDGMENT

BACKGROUND

1. These decision is for both these 2 cases or 'cross DVRO' pending before me:

Raben Kumar [Man] v. Kiran Lata [Lady] Tavua DVRO 07 – 2020

Kiran Lata [Lady] v. Raben Kumar [Man] Tavua DVRO 37 - 2020

2. The parties are legally married.
3. For the purpose of this decision and for convenience, the Man will be referred to as the Applicant and the Lady as the Respondent, primarily because the man filed his application first.

4. I have decided to deal with both the applications in one decision as the parties are the same and they raise complaints surrounding the same incident and abuse during their cohabitation.
5. In his 'in person' written DVRO application, the Man alleges that the Lady swears at him, pushes him, threatens him with a knife and a roti rolling board. The man also suspects that the Lady is having an affair.
6. When I first spoke with the man regarding his written DVRO application *ex parte*, the Man added that the Lady swears at him saying that he is a 'Gundoo' or a homosexual.
7. An interim DVRO with section 27 standard non molestation conditions was imposed on the Lady on the 21st of January 2020. This was done in the absence of the Lady.
8. Police served the interim DVRO on the Lady on the 10th of February 2020 and police have filed an affidavit of service to reflect that.
9. The Lady appeared for the first time in response to the DVRO filed by the man on the 27th of April 2020.
10. The Lady verified that she has been served with the interim DVRO order in February 2020 by police.
11. The Man's application was prematurely called on the 27th of April 2020 because the Man filed another application by way of notice of motion with his supporting affidavit.
12. Primarily in his affidavit, the Man alleges that the Lady injured him with a kitchen knife during Easter. There was a fire at the house. The man is fearful for his wellbeing and he seeks a DVRO with non-contact conditions against the Lady. The man has his medical report and has reported the matter to police.
13. The Lady confirmed receiving the notice of motion and affidavit.
14. The Lady denies knifing the man. She says that her children were at home. She says that if she did it, her children will fear her and will not respect her.
15. I was not minded to add a section 29 non-contact conditions or change the interim DVRO imposed on the lady which was for the benefit of the man.
16. The Lady later filed her DVRO application on the 12th of May 2020 and I heard it *ex parte* that same day.

17. In her in person written DVRO application, the Lady alleges that the Man removes her clothes from the clothesline and tears it. The Man told her that he will murder her one day. The Man has chased the children out of the house. The Lady also alleges that the man is mixing 'something' in their food.
18. I received unsworn or un-affirmed evidence from the 15 year old daughter of the parties in pursuit of the lady's DVRO application. Again, this was done *ex parte* when the Lady's application was called for the first time.
19. The daughter in our exchange explains that she is closer to the Lady or her mother.
20. The daughter describes that the Lady 'talks slowly' but that the Man growls.
21. The daughter said that she was at home during Easter and did not see her mother or the Lady stab her father.
22. Her father has thrown food on the Lady and that was in January 2020.
23. The father was seen holding a knife and the daughter said that she saw her father tear clothes belonging to her mother.
24. The daughter said that her father told her that if she does not say that the mother stabbed him, he will chase her out of the house.
25. Having heard the Lady and their daughter, I only imposed an interim DVRO with section 27 standard non molestation conditions on the Man for the benefit of the Lady and her daughter.
26. I recommended to the lady that she can move out of the house in the meantime while a final decision is pending considering that she is employed and if she fears for her safety.
27. Police served the interim DVRO on the man on the 2nd of June 2020 and police have filed their affidavit of service reflecting the same.
28. As for the Man's DVRO application, I received evidence on the 5th of May 2020.
29. On that day, the Man gave evidence and tendered some documentary evidence.
30. The man was the only witness for his case.
31. The Lady then gave evidence.

32. The case was adjourned in-order that the children of the parties can give evidence as there were references in the evidence that the children were present during the alleged knifing incident during Easter.
33. 2 of the children gave evidence as court witnesses [note that the daughter had also given unsworn and un-affirmed evidence earlier on the 12th of May 2020 in relation to the Lady's application].
34. During the course of the proceedings, it has become apparent to me that the Man and Lady are in an acrimonious relationship. Their heated verbal exchanges during the proceedings satisfactorily prove this and I have had to intervene repeatedly to de-escalate their tense verbal sparring.
35. I will summarise below, the evidence that has been adduced during the course of receiving evidence in the Man's DVRO application.
36. It may best that I first list the documentary exhibits that has been tendered by the Man during his evidence and I have listed them as follows:

EXHIBIT NUMBER	DESCRIPTION
1.	<p>Fiji Police Force Medical Report dated the 12th of April 2020.</p> <p>There is a 1 cm superficial laceration observed on the upper bicep of the man.</p>
2.	<p>EFL Bill for March 2020 for account number 2627143010 with a receipt for \$90.80</p>
3.	<p>EFL Bill for April 2020 for account number 2627143010 with a receipt for \$160.00</p>
4.	<p>Written date of births for the Applicant Man, the Lady and their 5 children.</p> <p>The eldest of the children will turn 30 years in November 2020 and the youngest [daughter] will turn 16 years around the same time.</p>

5.	Sale and Purchase agreement for the Man to buy in the sum of \$14,000 the area described as 'Lot 4 and Lot 5'.
6.	Approved Plan for Lot 4 and Lot 5 where the shop and dwelling house is located
7.	Certificate of Completion and Permit to Occupy 'Retail Shop Building'
8.	<p>1 x photo of the passage separating the shop and dwelling house</p> <p>1 x photo of the Man close to a power outlet or power sockets which supplies electricity to the dwelling house</p>
9.	<p>1 x photo of the Man lying down on a hospital bed during his admission between 28th April 2020 and 2nd May 2020</p> <p>1x photo of clothes on the floor purportedly after being torn by a dog</p>
10.	1x photo of a door with a padlock. This door leads to the living room, kitchen and another bedroom.
11.	1x photo of a door with padlock leading to the master bedroom
12.	Kitchen knife with a brown handle

APW1

37. Applicant witness 1 [AP1] is the Applicant Man. He is 52 years old and resides at Toko, Tavua. He is a farmer and shop owner.
38. He states that he pays for the bills in the house and the electricity bills or EFL bills exhibited are some examples.
39. The Lady locks him out and does not allow him to use the room and kitchen.
40. When the Lady is at home, the doors are not padlocked but the Lady chases him out.
41. The Man has to use the river as a toilet.
42. The Man sleeps inside the shop where the watchmen would normally be.
43. The Man cooks inside the shop where there is no sink, kitchen and there is no toilet.
44. The Man was hospitalised at the Tavua Hospital because of high blood pressure and that he had a heart attack.
45. The Man accepts that the Lady assisted in completing their kitchen.
46. The Man received income when he was a 'Sardar', he also gets his earnings from the shop, he also farms sugarcane and raises cattle.
47. The Lady worked as a machinist.
48. The Lady helped their daughter with her school uniform.
49. Their children are at home.
50. The Man says that the children take their mother's side but accepts that his relationship with his children is good.
51. During Easter at around 10 am, the Man returned from the farm and asked the Lady whether there was any food. The Lady told him to cook his own food.
52. After the man cooked and after his meal, he went to wash his plate. The Lady was cutting potatoes.
53. The Lady and one of their son were arguing.

54. Then the Lady ran towards the Man with a kitchen knife [that knife is exhibited] and the Lady hit the Man on his left shoulder.
55. The Man was examined at the hospital.
56. The Man reported to police the same day he was hit with the knife.
57. The Lady was taken in for an interview by police and released. No charge was laid.
58. The Man added that the Lady was swearing [unspecified] and very angry and that is why she hit him with the knife.
59. The Man said that he did not do anything to the Lady.
60. On Easter Wednesday night, there was a fire that started at 2 am in the bulk room.
61. The Man's brush cutter, tyres and spare parts got burnt.
62. The fire reached the kitchen.
63. One of their sons woke up smelling the burnt tyre and ran to see where the fire was.
64. A wooden wall was pried open by their son using a crow bar and water was poured on the fire.
65. The Man called the Police at Vatukoula and Tavua and the fire brigade was arranged.
66. The fire was partly put out by their sons and the rest by the fire brigade.
67. The Man's wife was in their master bedroom which is on a separate side of the house.
68. The cause of the fire is unknown and some materials have been taken for testing by the staff from the fire department.
69. All of them in the house were interviewed by police on the same night of the fire.
70. The Man says that the Lady maybe having an affair and his justification for that claim is that his wife does not sleep with him and that he is a heart patient.
71. When cross examined, the Man accepts that their son helps in paying the bills.

72. The Man has taken some pots and groceries from the house as he has nothing else to use.
73. The Man adds that he suspects the Lady is having an affair because they have not slept together for 2 years.
74. The Man denied that the Lady's clothes were torn before they had dogs.
75. The Man accepted that he was in his 'outing' clothes on the night of the fire.
76. He accepts that he does not normally wear those clothes when he is sleeping.
77. The Man says that he wore them as they were the clothes available.
78. The Man says that he cannot wake up at 2 am to be starting the fire.
79. The door to the bulk room is not locked and anyone can pull it open.
80. The Man accepts that he sells kerosene inside the shop.
81. The Man says that he sometimes attend their daughter's parent's day.
82. Their daughter is close to the Lady.
83. The Man supports the daughter by building the home and the shop.
84. The Man denied getting injured or cut when he was out in the sugarcane field earlier.
85. The Man says that he uses the river as a toilet when the Lady leaves the home for work.
86. They have 3 bathrooms and toilets but 2 of them are locked 'full time' and the 3rd is used by their son who smokes a lot.
87. The Man adds that the Lady called him 'Gundoo' and said that she will kill him by kicking him.
88. The Man denies making up the allegation so that he can 'bring another woman'.
89. The Man says he has no time for that as he has 4 children.
90. The Man says that he can look after the 4 children if the Lady moves out.
91. The Man denies that he will chase the children out of the house.

RW1

92. Respondent witness 1 [RW1] is the Respondent Lady Ms. Kiran Lata. She is 40 years old and resides at Toko, Tavua. She is a machinist.
93. The Lady describes that she normally leaves home at 7am and returns at 6pm.
94. When she returns from work, she prepares food for everyone and sometimes she gives food to the Man.
95. The Lady denies swearing at the Man.
96. The Man has sworn at her mother and father saying 'Maichod' [motherfucker] and the Man says that her parents seem like they are dead.
97. The Lady keeps herself separated from her husband.
98. The Man hurts her a lot and so she will have her children give the Man food.
99. The Man tells her that she has no shame and should vacate the house.
100. The Lady works in Ba but does not rent in Ba.
101. Before, the Lady did not put any lock but upon the request of her children, the Lady has put a lock and tower bolt to prevent people from the shop entering their house.
102. They also have items that they don't want stolen.
103. Sometimes the Man is also not at home as he goes to the hospital.
104. When the Lady locks the master bedroom, there are still 2 other toilets and bathroom that is free.
105. The master bedroom is for the Lady and her daughter.
106. The Lady says that they worked to build a separate house.
107. The Lady says that if she stabbed the Man, she would like him to bring a witness.
108. The Lady denies having an argument with his son on that day.

109. The Lady says that their children can give information or evidence about that.
110. The Lady denies threatening the Man with a rolling board.
111. The Lady wakes up at 4am when the Man is still asleep.
112. The Lady's clothes are on the clothesline and the Man takes it out and steps on it.
113. One Sunday, the Lady saw the Man pulled her skirt without taking off the pegs and stepped on her skirt.
114. The Man did not see her watching him.
115. The Lady did not complain thinking that she will have to go to court.
116. The Lady says that the man says that he has given her clothes to another lady he is having an affair with.
117. The Man switches off the electricity.
118. The Man takes her groceries.
119. The Man wants her to vacate the house.
120. When cross examined, the Lady said that their daughter does not want the Lady to leave and their daughter told the Lady to let her know if the Lady does. Their daughter cried when saying that.
121. The Man did not wish to ask any more questions during his time to cross examine.

CW1

122. Court witness 1 [CW1] is Mr. Ravishek Krishnil. He is 21 years old and resides at Toko, Tavua. He is unemployed.
123. During Easter he was at home with the Man and Lady who are his parents.
124. CW1 says that nothing unusual happened during that Easter weekend.
125. The Man and Lady sometimes fight and are sometimes good to each other.

126. They all stay in the same house.
127. During Easter, police came and that was not the first time.
128. CW1 denied seeing his mother or the Lady knife the Man.
129. CW1 does not know how the fire started in the bulk room.
130. The bulk room is not locked and can be accessed from outside.
131. The fire started around 2 am and CW1 cannot recall the date exactly but says that it was earlier in the year.
132. When CW1 went inside the bulkroom, he saw a burning tyre.
133. CW1's mother or the Lady was sleeping and they woke her up.
134. CW1's father or the Man called the fire brigade.
135. CW1 says that around 7.30pm or about 7 hours before the fire started, he saw his father or the Man near an electric post which is 5 meters away from the house.
136. CW1 says that this was unusual.
137. The Man was wearing a shirt and long pants just like what the Man is wearing in court.
138. CW1 says that his father or the Man sometimes wear the same clothes.
139. CW1 is unaware of anyone who might want to set the fire alight.
140. During the cross examination of CW1 by the Applicant Man, CW1 accepted that his mother or the Lady was cutting potatoes with a knife.
141. The knife exhibited in court was shown to CW1 and he accepts that it was the same knife the Lady was using.
142. CW1 accepted that he was seated on the table when the Lady was cutting potatoes.
143. CW1 denied seeing the Lady trying to stab the Man.
144. CW1 denied that the Lady and the Man were fighting.

145. CW1 said that he saw the Man at the electric post because he saw the Man with the help of lights from a passing car.

146. The Lady did not wish to cross examine CW1.

CW2

147. CW2 is Ms Supriya Kiran, 15 years old, student, residing at Toko, Tavua.

148. The Man and Lady are her parents.

149. Her brother is CW1.

150. She describes that the relationship between her parents as bad.

151. Sometimes the Man and Lady argue.

152. Sometimes the Man throws food at the Lady and that happened in January 2020.

153. The food landed on the floor.

154. CW2 said that the Lady did not do anything.

155. CW2 is closer to her mother.

156. When cross examined by the Man, CW2 said she is closer to her mother because the Man does not give her anything or attend her parent's day.

157. CW2 accepted being at home during Easter and that the Lady did not stab the Man.

158. CW2 accepted that the Lady was cutting potatoes using a knife and accepted that the knife in court looks like the same knife she used.

159. When the Man put to CW2 that he showed her the stab wound, CW2 said the Man told her that blood was there.

160. The Lady did not wish to cross examine CW2.

SUBMISSIONS

161. I invited submission from the parties after the evidence was adduced or received.
162. The Lady added that the Man beat her when she was pregnant with a long rod but she did not complain. The Man can build another house in a vacant part of the land.
163. The Man denied hitting the Lady with the rod and adds that the lady can reside somewhere else.

ANALYSIS

Burden and Standard of Proof

164. The general rule is that the party that makes the claim, carries the burden.
165. The Applicant normally carries the burden. For example the Applicant Man has filed his DVRO application together with his application by way of Notice of Motion and Affidavit making his accusations against the Lady.
166. That burden will shift if for example if the Respondent Lady makes a counter claim in the course of the proceedings.
167. The Lady has filed a cross DVRO and made counter accusations against the Man. The Lady also carries the burden in proving her accusations.
168. 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**].
169. 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**].

Family or Domestic Relationship

170. Section 2 of the **Domestic Violence Act 2009**, defines a family or domestic relationship to mean the relationship of a spouse; other family member such as a father or mother in law, son or daughter in law or brother or sister in law or aunt or uncle in law or any other person

who in the particular circumstance should be regarded as a family member; person who normally or regularly resides in the household or residential facility ; boyfriend or girlfriend; or person who is wholly or partly dependent on on-going paid or unpaid care or a person who provides such care.

Violence

- 171.** Section 3 (2) of the **Domestic Violence Act 2009** describes violence to mean physical injury or threat of this, sexual abuse or the threat of this, damaging property or the threat of this, threatening, intimidating or harassing, persistently behaving in an abusive, cruel, inhumane, degrading, provocative or offensive manner, causing the victim to apprehend fear by following the victim or loitering in a place frequented by the victim, entering or interfering with a home or place occupied by the victim, interfering with the property of the victim, keeping the victim under surveillance, causing or allowing a child to see or hear any of the above, causing another person to do any of the acts mentioned above towards the victim.
- 172.** Section 3 (5) of the same Act prescribes that a single act or a number of acts forming a pattern of behaviour may amount to violence even though some or all of the acts when viewed in isolation may appear minor or trivial.

FINDINGS

The Man's Claim

- 173.** I will deal with his most serious claim first and that is the alleged knifing during the Easter weekend.
- 174.** I found the Man to be forthright and candid about this. I did not see any reason why I should doubt his credibility regarding this point. I also see no reason why I should question his reliability regarding this point either.
- 175.** His medical report which I accept to be contemporaneous and the undisputed evidence that the Lady was in possession of the knife at the time, goes towards supporting his claim.
- 176.** I did not find the lady and the children as compelling and convincing as the Man regarding the knifing incident.
- 177.** For example, their daughter's evidence was particularly unconvincing about this part. For example, when the Man questioned her that he showed her the injury, their daughter gave a wavering answer that the Man said that there was blood there. She did not answer the question directly and was evasive.

178. It is likely that the man was knifed albeit it is a minor laceration to his left shoulder.
179. I reject the assertion that the injury was sustained in the farm earlier and I reject any notion that it may have been self-inflicted.
180. I find and accept, based on the Man's evidence that he was knifed during his argument with the Lady.
181. It most likely happened during the heat of the moment and it is not as if the Lady went looking for the knife, she was by chance in possession of it already during the argument.
182. I am not satisfied that it was intentional by the Lady and it was very likely careless of her. The knife very likely brushed the man during their argument.
183. I also find the Man's evidence convincing in relation to being threatened with a rolling board by the lady.
184. I accept that there was a fire around Easter and it was in the bulk room and it started around 2 am.
185. I do not find any compelling evidence to suggest that the Man was most likely to be blamed for the fire.
186. The circumstantial evidence that he was seen about 7 hours earlier standing at an electric post and wearing clothes he normally wears when he leaves the house is unconvincing and speculative.
187. As the parties said in evidence, the bulk room is not secured and can still be opened by any person.
188. I find and accept that some doors to the dwelling house such as the master bedroom is locked as shown in the photos exhibited.
189. I find that part of it is to keep the Man out and to prevent any other person from entering the dwelling house.
190. It is unfortunate but I find the locking of the doors necessary in light of the animosity between the parties and their distrust of each other. I also accept the explanation by the lady that they have valuables to secure.
191. I find the Man's claim to be exaggerated that he uses the river as a toilet.

192. I accept that he does use it on occasion but not to the regular degree as the man unconvincingly tries to make it out to be in his oral evidence.
193. He can still use the other toilets in the dwelling house.
194. I am not persuaded that their son occupies or uses the toilet to smoke all throughout the day which prevents the man from using the bathroom.
195. The place is in the name of the Man and he can ask his son to vacate the toilet if the Man needs to use it.
196. Incidentally, I accept the Man's evidence that he has to use the space in the shop to cook, eat and sleep.
197. Again, this is unfortunate but it is because of the relationship between him and the Lady and it might be for the good of everyone although it is inconvenient to the Man.
198. Infidelity *per se* is not a good ground to entertain any application for a domestic violence restraining order, let alone issue a domestic violence restraining order.
199. The parties offer only suspicions at best.
200. Even if it were the case that the Man or the Lady is having an extra marital affair, I do not see any reason why I should interfere.
201. The parties are not in a loving relationship from all appearances and the parties are entitled to their happiness and gratification with any other consenting adult which makes it no one else's business.
202. I accept that the Man has health concerns such as a heart problem and high blood pressure.
203. The photo of him in hospital is exhibited and there seem to be no dispute about his health by the parties.

The Lady's Claim

204. Firstly, I am not satisfied with the Lady's claim that she was hit with an iron rod years ago by the Man.

- 205.** The Lady raised this claim sort of as an afterthought when she was making submissions. She did not raise it in her written application and even in her evidence. She has not been tested or cross-examined too on this claim.
- 206.** I find it belated, unreliable and unsupported. I dismiss this claim by the Lady.
- 207.** I do not believe the Lady and their daughter when they claimed that they saw the Man cutting or tearing the Lady's clothes. They were nonchalant, unnatural and unconvincing when describing this.
- 208.** The photo tendered by the man as Exhibit 9 showing him bent over some clothes on the floor is unconvincing too. It looks staged.
- 209.** I am unconvinced that these clothes were torn by dogs.
- 210.** Although I am unconvinced that the Lady and their daughter saw the Man tear some clothes, I do accept that some clothes belonging to the Lady has been torn.
- 211.** I am convinced that it was likely done by the Man. Their acrimonious relationship persuades me so and this is sufficient motive for him to do it. In addition, the photos which the Man tendered as part of his case and which I find to be staged, puts him at the scene.
- 212.** I am convinced too that the Man threw some food although I am not convinced that it was directly at the Lady. The food I accept fell on the floor. I am satisfied that it happened in the presence of at least their daughter.
- 213.** The switching off of the electricity and taking groceries is a vague claim and the lady does not explain this well. The Man could have done this for good reasons, if they did happen or had paid or contributed to the purchase of the groceries. I dismiss this claim by the Lady.
- 214.** I believe the Lady that the Man has sworn at her parents saying Maichod or motherfucker and compares them to zombies or like they are dead.
- 215.** I found the Lady convincing regarding this claim.
- 216.** Their daughter also alleged that her father or the Man told her to say that the Lady knifed him. If the daughter does not, the man said that he will chase her out.
- 217.** I accept that the Man did say this and I find their daughter compelling and convincing regarding this point.
- 218.** I have found that the Lady did knife the Man.

219. It could be argued that the Man was asking their daughter to tell the truth.
220. That could be so but to propose that he will chase her out of the house if she does not tell the truth is unconscionable considering her age and the unenviable and unfair position the children are placed in, in having to decide whether to side with either parent.

SUMMARY

221. Based on the above, inappropriate behaviour has been found to have been committed by both the Man and the Lady.
222. By all appearances, the Lady and the children are in the matrimonial home while the Man is in the shop. The shop and the home is separated by a passage a few meters wide.
223. The parties have had a share in looking after the home and making improvements to it.
224. In an ideal situation, a section 29 non-contact and a section 33 'weapons' order and even a section 31 order for the safety and well-being of their youngest daughter, may be appropriate.
225. If I order the above, I am afraid that it will be more of an impediment rather than beneficial and will interfere in the ordinary affairs of the parties and interfere with their right to the matrimonial home and interfere with their youngest daughter's decision to live with her parents.
226. The Man and Lady are at liberty to move out or vacate at their own volition. If they wish to continue staying as they are now, then they must learn to bear with each other and risk breaching any DVRO order that maybe imposed.
227. Taking into account the circumstance of this case amongst other things and to be fair to both parties, I order the following:

ORDER

228. I finalise the section 27 with standard non-molestation conditions on the Man for the benefit and protection of the Lady and their daughter.
229. I finalise the section 27 with standard non-molestation conditions on the Lady for the benefit and protection of the Man.

230. The parties will bear their own costs in relation to the cause.

231. 1 month to appeal.



LISIATE T.V FOTOFILI
Resident Magistrate

At Tavua this 30th day of June, 2020