

**IN THE MAGISTRATES COURT OF THE REPUBLIC OF FIJI
AT SUVA**

DVRO Application No: 202 of 2021

BETWEEN : ROSHINI DEVI Jittu Estate, Samabula. (Domestic Duties)

APPLICANT

AND : MOHAMMED SHAVNEEL SHAUTT Jittu Estate, Samabula.(Carpenter)

RESPONDENT

For the Applicant Ms. Maharaj, K. (Legal Aid Commission)

For the Respondent Ms. Kirti, V. (Legal Aid Commission)

RULING

INTRODUCTION

1. Applicant lady filed this application against the Respondent man seeking domestic Violence restraining orders (“DVRO”) under section 27 and 29 of the Domestic Violence Act 2009 (“the Act”) before this Court on 06-12-2021.
2. Having read the application and heard the applicant in person, this court issued an interim DVRO under section 27 of the Act, against the respondent for the protection of the applicant and the other 05 protected persons.
3. Respondent appeared in Court on 20-01-2022 and sought time to file Affidavit in reply to the application. The court granted time to the respondent to file an affidavit in reply and to the applicant to response to it.
4. Respondent filed his affidavit in reply on 22-02-2022 and applicant filed her affidavit in response on 05-04-2022. The matter thereafter fixed for hearing and hearing taken placed before this court on 09-09-2022.

5. At the hearing applicant and respondent gave evidence for and against the application. After concluding their evidence parties were given an opportunity to file written submissions, however only the counsel for the applicant expressed the desire to file submissions.
6. The following ruling of this court is made after considering the evidence before it, the application, the reply of the respondent, the applicant's response to the reply and the submissions filed on behalf of the applicant.

LAW

7. This court has to ascertain whether the applicant has established a domestic relationship between her and the respondent and whether the respondent has committed, is committing or is likely to commit a domestic violent act against the applicant. In this regard, this court is guided by the provisions of the Act, particularly, sections 2, 3, 23, 46 and 48.
8. The applicant has the burden of proving her application and every question of fact shall be decided on the balance of probabilities.
9. In the evidence in chief of the applicant, she stated that the respondent is her son. At the time of initiating the application, he was with them at her house. But sometimes in January 2022, he left the house. She stated that when the applicant was at home, he used to play a video game named Free Fire and used to swear, her other children and herself heard that. This had happened in lot of times. He used to do that in late night at about 2.00 am, disturbing the others. He used to come home drunk and hit on the tin to open the door. Due to that sound, the other children got up. Sometimes when her other children returning from playing soccer, the respondent had hit them with a broom stick. She had divorced her husband and he has not supported them. Only the respondent had supported her and gave her \$50.00 per week. Since no one to supporting them, she called a person named Ritikesh Dayal to her home to support them. The respondent used to chase him from home. On 24-11-2021 respondent for the first time swore at her and left the house. Before that she had some arguments with the respondent. She further stated that although the respondent left the house, he can hit his siblings at anywhere, since he used to do it when he was with them. She felt safe after receiving the interim DVRO.

10. In her cross examination she stated that although the respondent gave her money, he used to ask it back for phone recharges or taxi fares. She did not accept that Ritikesh Dayal was her de facto partner. He was her sister's husbands' brother and a good person. She refused the suggestion that she instituted the DVRO against her son because he objected to her de facto relationship and bringing her partner home when a 5-year-old girl was at home. Counsel further suggested that the applicant filed the DVRO application only to get rid of her son, she replied " Yes. Because he was giving headaches."
11. The respondent in his evidence in chief stated that the applicant is his mother. When he went home after work on 24-11-2021 he saw one Ritikesh Dayal at home. He inquired from the applicant then she told that he was her boyfriend, and she further told him that if he had any problem, he could leave the house and the door was opened. He replied that he was not leaving house, then she said it was her house and he can not stay there. Then he called his father. After that he went to police station and told them his story and asked to lodge a report, but it was refused. He denied the allegation made by the applicant that he came home drunk, and he hit his siblings with broom stick. He further stated his father had made a report against the applicant in Raiwaqa police station for assaulting the children. He stated that the applicant filed this DVRO application to send him away from the house and she already thrown two other brothers from her house.
12. In cross examination he stated that he is staying with his stepfather and his cousin now. He admitted that on 24-11-2021 he was furious and was angry with the applicant and had an argument with her. But refused that he had sworn at her or used hurtful and bad words. The house that the applicant is living owns to the father, but he was not living with them since there was a DVRO against him. He stated that the applicant told that she brought her de facto partner to the house. There was a complaint made against the applicant at Raiwaqa police station by his father and he was a witness in that matter. He further sated that he maintained good relationship with his other siblings, and he supported them in their studies, and he had not beaten them up. He refused the suggestion that he had came home late nights got drunk and caused lot of disturbance in the house.

ANALYSIS

13. I have observed the demeanor of both the applicant and respondent giving evidence before me. It is my observation that the respondent gave his evidence before this court more confidently than the applicant.

14. The domestic relationship between the applicant and the respondent is established before this court without challenge. Applicant and the respondent are mother and the son and they were living under the same roof until January 2022.
15. This court now has to examine the evidence before it to determine whether the respondent has committed, is committing or is likely to commit a domestic violent act against the applicant.
16. Applicant had alleged three types of incidents against the respondent. Firstly, his irresponsible behavior by playing video games in late night and swearing loud, coming home drunk and making noise at the door and waking up the others. Secondly, hitting other siblings with a broom stick. Final allegation is that respondent swore at the applicant on 24-11-2021. All three alleged incidents have happened in the past and since the respondent is not living in the applicant house, the first and the second scenarios can not be repeated. The respondent denied all those allegations and applicant, apart from her evidence, she does not submit any other witness or other form of evidence in corroborating her allegations. In these circumstances, I hold that the applicant failed to establish her mere allegation in more persuasive manner.
17. With regard to the incident happened on the 24-11-2021, the respondent accepts the fact that he inquired from the applicant the purpose of Rithkesh Dayal's presence in their home. Also accept that he had an argument with the applicant on that matter and he was angry about what she had done. But he categorically denied the fact that he swore at the applicant. His contention was that his mother the applicant has initiated this DVRO application to send him away from home since he raised objections for the presence of Ritikesh Dayal . On the other hand, in cross examination the applicant admitted that she initiated this application to get rid of his son who gave her "headaches." Consequently, it is appropriate to hold that the respondent's version in this regard is the probable one.
18. The respondent has left the applicant house and living separately now. I see no threat of future violation or breach of peace between parties accordingly. A DVRO will curtail the personal liberty of the person who receives it, therefor, the court should be amply convinced to issue a DVRO in an appropriate instance. This preventive judicial apparatus should not be misused to take vengeance against anybody.

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19. Taking into consideration all the above facts before this court, I hold that the probable version of evidence is the respondent's version. The applicant's application therefore necessarily fails.

ODERS OF THE COURT

20. a) Applicant's application for Domestic Violence Restraining Oder is refused and dismissed,
b) Interim DVRO dated 06-12-2021 issued in this matter is hereby dissolved.

RIGHT TO APPEAL

21. There is a right to appeal against this ruling.




Lakshitha Jayawardhana
Resident Magistrate

At Suva, On this 17th day of October 2022.