

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
AT LAUTOKA
Appellate Jurisdiction
Civil Appeal No. 17 of 1978

BETWEEN: AKANISI NASAU Appellant

and

LOLI LEGETT Respondent

Mrs. M.L. Billeam, Counsel for the Appellant
Mr. S.D. Sahu Khan, Counsel for the Respondent.

J U D G M E N T

The appellant gave birth to a female child at Kerovou, Tailevu on 23.5.75. The birth was registered on 3.3.76.

On 18/3/76 she filed a complaint in the magistrate's Court against the respondent alleging that he is the father of the child. She was thus within the requisite statutory period of limitation contained in S.16 of the Maintenance and Affiliation Act 16/76. It was mentioned on 5/4/76, 30/5/76 and was heard on 28/5/76. At no time did the respondent appear in Court and he was adjudged the putative father and ordered to pay \$3.00 per week.

On 30/8/76 the respondent appeared and the judgment was set aside when he showed that he had been given a wrong hearing date. Various subsequent attempts at a hearing were unsuccessful and on 25.5.77 when both parties were present the appellant's witness had not appeared and she could not continue. The magistrate struck out the complaint but advised the appellant that she could file a fresh complaint when she had found her witness. He made no reference to indicate whether the accused was acquitted or discharged.

She now appeals out of time against that order on the ground that the learned magistrate in dismissing the complaint did not follow the C.P.C.

At the hearing Mrs. Billeam for the appellant submitted that the magistrate should have followed the procedure set out in S.192(2) of the C.P.C.

With respect I am inclined to the view that the appeal is mis-conceived. It appears to me that the learned magistrate did follow S. 192 C.P.C.

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That section permits the complainant to withdraw her complaint with the magistrate's permission. It is obvious that the magistrate must have intended this to be done; in fact she made no application at all. He treated her, in her ignorance of Court procedure, as if she had made such an application. By S. 192(2)(b) it was necessary for the magistrate to follow the withdrawal by making an order acquitting the accused or discharging him but no such order was recorded.

S. 192(3) C.P.C. states that where the magistrate simply makes an order discharging the accused this will not operate as a bar to subsequent proceedings against the accused. It is clear that the learned magistrate was discharging the accused and not acquitting him because he said that his striking out of the complaint would not bar a subsequent action.

Accordingly the complainant is free to re-new bar action. I would not think that she would be time-barred on a re-renewal, having instituted her proceedings within the time limited by S.16 of the Maintenance and Affiliation Act. 16/71.

LAUTOKA,
24TH NOVEMBER, 1978.

(Sgd.) J.T. WILLIAMS,
JUDGE.