

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CA30/2015**

**Appeal from Family Tribunal Decision 100/2010**

[201 ] SCSC

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Dave Pillay

Appellant

versus

Gracy Pillay née Arissol

Respondent

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Heard: 22<sup>nd</sup> June 2016

Counsel: Vanessa Gill for appellant

Alexia Amesbury for respondent

Delivered: 28<sup>th</sup> June 2016

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**JUDGMENT**

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**M. TWOMEY, CJ**

- [1] The parties had been married and divorced on 31st July 2015. Of their marriage was born a daughter, whom the Petitioner was granted custody of on 4<sup>th</sup> May 2015.
- [2] The hearing of the matrimonial property matter is yet to be heard by the Supreme Court.
- [3] On the 15<sup>th</sup> June 2015 the Family Tribunal made the following order :

*“..the Respondent [Dave Pillay] shall pay the applicant [Grace Pillay] the sum of SR 6,154...and the Respondent shall also pay the school fees.”*

- [4] On 13th November 2015 after hearing both parties the Tribunal set aside the above order stating that a fresh application was to be made before the Tribunal as regards maintenance of the child of the parties but that the Appellant should pay the arrears due. The exact wording of the ruling was as follows:

*“...the Tribunal finds it fair and reasonable that the amount of SR6154 is set aside. The Applicant has arrears in regards to the order dated 15 June 2015 and as such he has to settle the same before the Tribunal is in recess on 14 December 2015...”*

That order seems to be based on the finding and record of proceedings which states:

*“...Mr. Pillay agreed to continue paying for the school fees and he agreed to pay SR6154 towards the contribution (sic) Mr. Pillay informed the Tribunal that this is the salary that the Respondent was getting and he will continue to give this amount to the Respondent.”*

- [5] The Appellant appealed this decision on several grounds which can be summarised as follows:

*The Tribunal had no jurisdiction to make the order it did and the order was vague and imprecise so as make it uncertain as to what was to be paid by the Appellant.*

- [6] The jurisdiction of the Family Tribunal is contained in section 78 of the Children Act which provides in relevant part that:

*(1)The Tribunal shall have the jurisdiction and functions conferred on it by this Act or any other written law and without prejudice to the generality of the foregoing the Tribunal shall-*

*(a) hear and determine matters relating to the care, custody, access or maintenance of a child under this Act and a written law specified in Schedule 3;*

...

- [7] From these provisions it is clear that the Family Tribunal is concerned with care orders including the maintenance of children. Ancillary relief relating to matrimonial property or spousal payments are not within the jurisdiction of the Tribunal and have to be made before the Supreme Court once divorce is granted (see section 20 of the Matrimonial Proceedings Act).
- [8] Counsel for the Appellant has submitted and Counsel for the Respondent has conceded that the Tribunal had no jurisdiction to make an order in relation to payments other than for maintenance of the child in the present matter.
- [9] The ruling of the Family Tribunal of 13<sup>th</sup> November 2015 contains vague and uncertain statements that has not helped this matter and cannot be said to have been the basis for an order of execution by the Court. It is certainly unclear whether the payment of SR6154 was for the spouse as a continuance of her salary in the business of the parties or for the maintenance of the child.
- [10] The Court cannot therefore even hazard a guess as to whether the payment was to be on a monthly basis or whether it was a one-off payment as was suggested by the Appellant.
- [11] On the same basis it is unclear whether the order to pay school fees was for one month, one term or for such time as the Tribunal thought fit. It is therefore all the more surprising that an execution of the said order was carried out and the Appellant made to pay the sum of SR44, 413.
- [12] In the circumstances this appeal succeeds. The orders of the Tribunal of 4<sup>th</sup> May 2015 and 13<sup>th</sup> November 2015 are set aside. The Application for maintenance of the child is remitted to the Family Tribunal, for proper hearing and decision. The Family Tribunal is directed to take into account payments made by the Appellant in respect of the orders which have been overturned by this judgment and have therefore to be refunded to the Appellant or set off against any proper maintenance due for the child of the parties. The Family Tribunal is also directed to make clear and precise orders to avoid further confusion and unwarranted appeals in the future.

Signed, dated and delivered at Ile du Port on 28<sup>th</sup> June 2016

**M. TWOMEY**  
Chief Justice