

IN THE SUPREME COURT OF SEYCHELLES

FLAVIEN CESAR

APPELLANT

VERSUS

MARIE LISE TANGALAM

RESPONDENT

Civil Appeal No. 2 of 2005

Mr. W. Lucas for the Appellant

JUDGMENT

Perera J

This is an appeal against an order of the Family Tribunal, made on 18th May 2005. The matter before that tribunal is an application for custody, access and maintenance filed by the mother of two minor children. She is the respondent to this appeal.

According to the record of proceedings, the Family Tribunal, by order dated 29th October 2003, granted custody of the children to the respondent (*mother*), and the Appellant (*father*) was given access to the children on alternative weekends for one day from 8 a.m. to 6 p.m. The children were to be collected by the Appellant at Krishna Mart Supermarket at 4 p.m. on Saturday and returned at 6 p.m. on Sunday. Subsequently, in a report dated 3rd May 2005, the Director of Social Services recommended to the Family Tribunal that the access arrangement be suspended as the Police were investigating a complaint that the two children had been beaten up by the Appellant. This recommendation was made consequent to a visit made by the Respondent (mother) with the children to the Social Services office, where the officers observed marks on the backs of the children indicative of them being

beaten. The children were referred to the Child Protection Unit. The family Tribunal, acting on that report, made order on 18th May 2005 *inter alia* as follows-

“In the interest of the children, the Applicant (mother) is granted interim custody of the children and the order for access is suspended pending the determination of the abuse case.”

At the hearing of the Appeal, Mr. W. Lucas, Learned Counsel for the Appellant submitted that there is a criminal case filed before the Magistrates' Court against the Appellant for physical abuse of his children, and that as that case is not likely to be concluded in the near future, the tribunal ought to determine the issue of custody upon hearing the Appellant, without solely relying on the Social Services recommendation. He submitted that previous to that order the Appellant and his children have been in contact with each other on a regular basis, and that hence the Tribunal ought to have ordered at least supervised access. The Respondent, who appeared in person informed Court that despite the order of the Tribunal, the Appellant still meets the daughter on the road and beats her.

Section 2A of the children (amendment) Act no. 7 of 20-05 provides that -

2A“(1) Whenever a Court or Tribunal determines any question with respect to the upbringing of a child, the child's well being shall be its primary consideration.

2. A Court or Tribunal which determines such a question shall have regard to (inter alia) -

(c) Any harm which the child has suffered or is at risk of suffering.”

The Tribunal therefore had a duty to safeguard the minor children from being physically abused. Although in the criminal case, the presumption of innocence prevails in favour of the Appellant, yet in the wider interest, the Tribunal should ensure that there is not even any risk of harm being done to the children. In that respect, the order made by the Tribunal on 18th May 2005 cannot be faulted.

However, it would still be open to the Tribunal to inquire whether the order of suspension is being honoured, and if satisfied, may consider granting supervised access until the criminal case is concluded.

Accordingly the Appeal is otherwise dismissed, but without costs.

Copy of this judgment to be sent to the Family Tribunal.

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A.R. PERERA

JUDGE

Dated this 25th day of November 2005