

IN THE SUPREME COURT OF SEYCHELLES

PATRICK NICETTE **APPELLANT**
VERSUS
LAURENCE PATRICIA LAVAL **RESPONDENT**

Civil Appeal No 7 of 2005

Appellant in Person

Respondent in Person

JUDGMENT

Perera J

In this appeal from a decision of the Family Tribunal, the Appellant seeks a variation of the quantum of the amount ordered as maintenance on the ground that it has been made on a miscalculation of his next income. It is not in dispute that the parties separated on 12th January 2004. The respondent (*mother*) took custody of the 6 year old girl Vicky Nicette, while the Appellant (*father*) had the custody of the 13 year old boy Yannick Nicette.

The respondent sought a formal order of custody of Vicky and claimed Rs400 - Rs500 as maintenance, as she earned a salary of only Rs.1800 per month. She stated that her salary was insufficient to pay her utility bills and to maintain herself and the child, and hence had to rely on financial help from her mother and brother.

The Appellant is a Director at the Ministry of Employment and youth. He stated on oath that his salary was Rs.6293 per month. He also received an allowance of Rs950 per month as a member of the Film classification Board, which appointment is on a two year renewal basis. Hence his gross salary was Rs.7242. He further stated that he had a housing loan which is being repaid in monthly instalments of Rs.1500, a personal bank loan, which he repays Rs.764

monthly, and a further sum of Rs250 for utility bills. He further stated that as a family tradition he gave his mother Rs400 every month. He also needed about Rs2200 for his expenses. He gave Yannick Rs35 to Rs40 per day for his mid day snack and lunch. Hence his total expenses would be Rs5874. The Family Tribunal miscalculated the total expenses as Rs4914. He was therefore left with a balance of Rs.1369.

The Family Tribunal made a further mistake and stated that the Appellant's gross income was Rs7295, whereas it was Rs7243.

Section 8(2) of the Children Act provides that the reasonable monthly sum should be based on -

1. *The earnings of each parent*
2. *Other children whom the defaulting parent is liable to maintain;*
and
3. *Other financial commitments of the defaulting parent*

Such sum shall not be less than 15% of the defaulting parent's "take home earnings for each child in respect of whom the order is made, subject to a maximum of 50% in all, and sufficient to maintain the child.

The Family Tribunal in deciding on Rs500 as the monthly sum, stated that the Appellant earned Rs7293 (when it was Rs.7243), and that his total expenses was around Rs5000. The Tribunal also erroneously stated that his residual balance was Rs2000 whereas it was Rs.1369, and considered Rs.500 to be a reasonable sum.

The term "*take-home earnings*" is defined in the Act as the "gross earnings less income tax and group 1(a), 2 or 3 contributions under the Social Security Decree 1979". It was submitted by the Appellant, that after Rs1000 is deducted for Social Security his net salary was Rs5793. Hence with the

allowance of Rs.950, his *“take home earnings”* was Rs.6743. That allowance was not attached to the salary of his substantive post as a director, although it formed part of the *“take home earnings”*.

The quantum of maintenance payable is based on the provisions of Section 8(2) read with Section 4 of the Children Act. As jurisdiction to determine matters relating to care, custody, access and maintenance of a child has now been vested in the Family Tribunal, it is not proper for this Court to determine an issue of fact. Hence the case is remitted back for a proper determination of the quantum on the basis of the correct *“take home earnings”* and proof of the deductions and personal expenses.

The Appellant stated to Court that he is paying Rs500 per month in terms of the order. He shall continue to pay that amount until the Family Tribunal reviews the order of 12th September 2005 on an assessment of the Appellant’s correct financial position.

The appeal is therefore partially allowed.

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A.R. PERERA

JUDGE

Dated this 3rd day of November 2006