

IN THE CITIZENSHIP APPEALS TRIBUNAL
AT SUVA

CITIZENSHIP APPEALS TRIBUNAL CASE NO. HIM 3 OF 2020

IN THE MATTER of an appeal under section 21 of the
Citizenship of Fiji Act 2009 from the decision of the Minister for
Immigration.

BETWEEN : **THOMAS MICHAEL EIS**
Appellant

AND : **MINISTER FOR IMMIGRATION**
Respondent

Coram : *Anjala Wati, Judge* - *Chair of the Tribunal*
S. Qica, as RM then - *Member of the Tribunal*
T. Bainivalu, as RM then - *Member of the Tribunal*

Counsel : *Appellant in Person.*
Ms. S. Chand and Ms. S. Taukei for the Respondent

Date of Judgment : *19 April 2024.*

DECISION

Wati, J; **Chair of the Tribunal**

Cause and Background

[1] Mr. Thomas Michael Eis ("*Eis*") had applied for Fiji citizenship. His application was declined by a letter of 1 September 2020. The application was declined on the basis that Eis had failed to satisfy the Minister that his marriage was or is intended to result in a genuine and continuing martial relationship.

- [2] Eis appeals the decision on the basis that when the Immigration Department interviewed his wife, she was in a confused state of mind as she is an epileptic patient, as a result of which she could not answer some questions properly, which were analyzed to determine the genuineness and continuity of the marriage.
- [3] Eis is a New Zealand citizen. He initially arrived in Fiji on 30 May 1998 under a Visitor's Permit. He continued to travel in and out of Fiji as a visitor until he was granted an exemption status in 2011 as a result of his marriage to a Fijian citizen, one KLG (*full name suppressed*). Eis exemption status was valid from 24 April 2012 to 24 April 2014.
- [4] Eis was married to KLG in December 2009. Their marriage was dissolved conditionally in June 2012.
- [5] Eis was granted a Resident Permit on assured income from 24 April 2012 to 24 April 2015.
- [6] On 30 July 2013, Eis was issued with an Investor Permit as the Director/Shareholder of the Company Eisland Organics. The Investor Permit was valid until 11 June 2016 and then extended to 11 June 2017.
- [7] On 31 May 2016, Eis married his current wife Devi (*full name suppressed*). Consequently, he was granted an exemption status under the Citizenship Act valid from 6 June 2017 to 26 February 2029.
- [8] On 29 April 2019, Eis applied for a Fijian citizenship by way of registration in accordance with s. 8(8) of the Citizenship Act of Fiji 2009 on the basis that he was married to a Fiji citizen.
- [9] The Immigration Department wanted to determine whether the marriage between the parties was a genuine one. It therefore referred Eis's application to the Compliance and Investigations Unit within the Department to determine the following:-

- (a) *whether the marriage was genuine given the 26 year age difference;*
- (b) *to interview Eis's referee's;*
- (c) *to carry out the necessary background checks with respect of Eis's previous marriage and obtain a copy of necessary dissolution of marriage documents;*
- (d) *to obtain birth certificates as necessary if the parties had children together or from previous relationships; and*
- (e) *to obtain any other information as necessary to assist in the process of Eis's application.*

[10] The Compliance and Investigations Unit subsequently conducted a site inspection of Eis's residence on or around 3 December 2019.

[11] Devi was interviewed as well. From the interview, the Investigation Team noted the following:-

- *the couple had been living together for some 7 or 8 years;*
- *whilst they were legally married, they did not have a traditional ceremony. Devi's parents did not support her marriage to Eis;*
- *Devi was aware that Eis had children from his previous marriage whom she had met twice;*
- *Devi never travelled outside Fiji;*
- *Devi was not able to answer general questions about the likes and dislikes of Eis;*
- *Devi was unaware of the size of the property purchased by Eis for farming purposes;*
- *Devi was not aware of Eis's future plans; and*
- *she was also not aware of his short visits to New Zealand at the time.*

[12] On the Investigation Report, the Department arrived at a finding that the marriage between the parties was not a genuine one. The application was thus refused.

Law and Analysis

[13] Eis had applied for citizenship by registration. Section 8(7), (8) and (9) of the Citizenship Act of Fiji 2009 applies to him. Section 8 (7), (8), and (9) of the Citizenship Act of Fiji 2009 states:

“[7] An application for citizenship by registration made by an adult who is or has been married to a citizen must be granted if the applicant-

(a) has been lawfully present in Fiji for a total of 3 of the 5 years immediately before the application; and

(b) complies with the conditions prescribed by subsections (8) and (9).

[8] If, in respect of an application to which subsection (7) applies, the Minister forms the opinion that the applicant is a person who entered into a marriage with a citizen that was not a genuine and continuing martial relationship, the Minister may, by notice in writing, require the applicant to satisfy the Minister that the marriage was or is intended to result in a genuine and continuing marital relationship.

[9] If, within a reasonable time after receipt of a notice under subsection (8), the applicant fails to satisfy the Minister that the marriage was or is intended to result in a genuine and continuing marital relationship, the Minister may refuse to grant the application for registration.”

[14] In considering whether a marriage is genuine, normally a number of factors are considered. Some of the factors are, the nature of the household; financial commitment of the parties’ and the social aspects of the marriage.

[15] In this case, although Devi is married to Eis, she does not have much knowledge about him and his daily lives. She has no idea about his likes, his dislikes, his travel plans and when he leaves for his country. This is unusual in a marriage which is serious and genuine.

[16] I do not accept Eis’s submissions that his wife did not understand the questions properly when interviewed by the Department as she was in a confused state of mind due to her medical condition of being an epileptic patient. There is no medical evidence before us that Devi’s sickness has affected her mind to the extent that she is unable to understand

and answer questions or that her medical condition causes her to be in a confused state of mind. If Devi was mentally unstable or not able to represent her interests to the extent it is made out by the appellant, there should be some evidence to this effect.

[17] Eis had a chance to bring Devi to the Tribunal for the Tribunal to hear from her. He chose to keep her away from the proceedings. I do understand that the parties are now separated but this does not mean that the wife could not give evidence on whether the marriage was intended to be genuine and continuing.

[18] Eis could not demonstrate to us that there is togetherness in the marriage. He could not demonstrate a joint household like it is expected in a marriage.

[19] Further, there is no indication of any joint financial commitment between the parties to the marriage. The appellant has a big farm. He conducts the business of organic farming. Yet he does not support his wife with the income he derives from the farming. The wife is still dependent on poverty allowance given to her by the social welfare department. This was reflected by the appellant himself in his letter to the Tribunal of 10 September 2020. He writes:

“The farming and living expenses are all in my name due to Sulochna’s medical needs and subsequent lack of education due to her condition. However, Sulochna has full access to the business account and on my return to Fiji, we will be changing the current business account to a joint account. Our Business License to be a Certified Organic Turmeric Farm is in both our names (please see attached license). Sulochna has independent income from Social Welfare (Poverty allowance) and I have independent income from by New Zealand Superannuation”.

[20] If the appellant is supporting his wife Sulochna financially, there is then no need for her to be on poverty allowance. The indication by the appellant that the wife draws from the government provided assistance clarifies that they do not have a shared financial commitment. ~~The appellant is not supporting her financially.~~

- [21] The appellant's contention in the same letter that Sulochna has access to his business account and that the Business License is in her name maybe a clever argument but it is not genuine. The argument has been brought up to show that the marriage is genuine. There is no evidence of the appellant looking after the needs and wants of his wife. Why else would he let her depend on poverty allowance?
- [22] The Appellant has visited New Zealand after the marriage. He has never taken the wife away, especially when she has not seen the outside world. One question that then bothers me is whether the family and friends of both the parties to the marriage have accepted the marriage. It also bothers me whether they live as husband and wife on a genuine basis.
- [23] The appellant is not able to establish that his marriage was or is intended to result in a genuine and continuing marital relationship. He has produced statements from a few people. These are his friends and workers on the farm. They have written letters or signed a document stating that they believe that the couple are in a genuine married relationship.
- [24] Most of them have signed the document even after the parties have separated. All signatures are from 27 March 2021 to 3 April 2021 when the wife had left Eis and started living with another person who worked for Eis on the farm.
- [25] On 3 April 2021 Eis wrote a letter to the Tribunal. The final paragraph of his letter in part reads:-

"When I returned to Fiji we returned to normal relationships. However, after 4 days I decided that we no longer needed the caretaker, ZA (full name suppressed), who had engaged to care for my Epileptic wife and carry out day to day duties in my absence. My wife decided to run off with him. At the time I implored her to stay and I have a voice recording of that conversation which supports my statement. Since then we have been in daily telephone contact when I have on many occasions asked her to return and continue with our relationship and dreams. On occasions she has visited me and on one occasion slept over. I hold no malice and sincerely wish for her to return.

- [26] The letters and signatures on the sheet is unreliable. The appellant's relationship was or is not intended to be genuine and continuing. Not only the separation establishes that but there is lack of togetherness shown by any of the evidence.
- [27] Eis has attached some pictures to his appeal. The pictures show the appellant and Devi together. However there are no pictures of the appellant with his wife and any friends or family members. There are no pictures of the couple celebrating or attending any social function with family or friends or anywhere else.
- [28] If the relationship was for such long period as 8 years, I am sure that Devi would have integrated with Eis's friends and family and vice versa.
- [29] There is no evidence that the couple have held themselves out as genuinely married and living as husband and wife.
- [30] The appellant has shown us a will which he made on 21 June 2019. By that will he is giving one property to his wife. Some other properties are given to his granddaughters.
- [31] A will is a document that does not indicate ownership of property. It can be changed anytime. I cannot place much weight to this document as the wife does not hold any property in her name.
- [32] There is a letter by the Health Inspector Seaqaqa which approves a business license for certified organic farm for turmeric in Devi's name. The approval was valid until 31 December 2018. There is no further evidence indicating that a license was indeed issued in her name or that it continues. The wife does not seem to know anything about the business or the land or any future plans of Eis. If she was aware that she holds the business license in her name, she would have mentioned this to the Immigration Officers.
- [33] I do not find that the appellant was able to satisfy the Minister that his marriage to the wife was or is intended to be genuine and a continuing one. On the balance of probability he did not meet the requirement of the Act.

Result

[34] The appeal should be dismissed with costs of \$3,500 to the respondent to be paid within 21 days.

Oica, J; Member of the Tribunal

[35] I agree with the findings that Mr. Eis has not met the requirements of the Act to satisfy the Minister or the Tribunal that his marriage to Devi was or is intended to be genuine and continuing.

[36] He is now separated from his wife. We had taken into account this information although it was not something that was before the Minister at the time of consideration of the application.

[37] Given the evidence, I agree that the appeal should be dismissed with costs.

T. Bainivalu; Member of the Tribunal

[38] Eis married a woman 26 years younger to him. His application to be a citizen of Fiji by registration was viewed with suspicion causing the Immigration Department to investigate into the requirements of the Act which was whether the marriage was genuine and intended to be a continuing one. Their investigation revealed it was not.

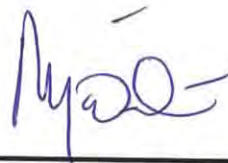
[39] On appeal, Eis could not satisfy us that on the balance of probability that he met the requirements. His evidence is not convincing for us to disturb the decision of the Minister declining the citizenship.

[40] I too agree with the Madam Justice Wati that this appeal should be dismissed with costs.

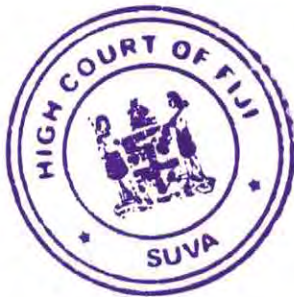
Orders

[41] The orders of the Tribunal are:

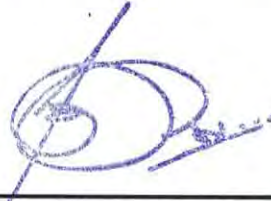
- (i) *The appeal is dismissed.*
- (ii) *The appellant is to pay to the respondent costs of the appeal proceedings in the sum of \$3,500 within 21 days.*



Hon. Justice Anjala Wati
CHAIR



Hon. Justice Samuela Qica
MEMBER



Resident Magistrate Tomasi Bainivalu
MEMBER

Solicitors:

Appellant in Person.
Office of the Attorney General for the Respondent.
File: HIM 03 of 2020.

