

**IN THE FAMILY DIVISION OF THE HIGH COURT  
APPELLATE JURISDICTION**

<b>CASE NUMBER:</b>	10/Ltk/0106
<b>BETWEEN:</b>	Nafisa
<b>AND:</b>	Suhail
<b>Appearances:</b>	Applicant in Person No appearance of Respondent
<b>Date/Place of judgment:</b>	Thursday 20 <sup>th</sup> January 2011 at Lautoka
<b>Judgment of:</b>	The Hon Justice Anjala Wati
<b>Coram:</b>	
<b>Category:</b>	<i>All identifying information in this judgment have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarities to any persons is purely coincidental.</i>
<b>Anonymised Case Citation:</b>	

**JUDGMENT OF THE COURT**

**Catchwords**

MARITAL STATUS PROCEEDINGS - APPLICATION FOR AN ORDER FOR NULLITY - application by wife on the ground that she did not provide her real consent to the marriage because her consent was obtained under duress by her parents -the ground of duress not established-application dismissed with no order as to costs.

**Legislation**

Family Law Act No. 18 of 2003.

Cases/Texts Referred To

*Scott (falsely called Sebright) v. Sebright (188(5) 12 P. D. 2.*

*Cooper (falsely called Crane) v. Crane [1891 ] P. 369.*

*Szechter (orse. Karsov) v. Szechter [1971 ] P. 286.*

*Re Meyer [1971] P. 298.*

*Hirani v. Hirani (1982) 4 Fain. L. R. (Eng.). 232.*

*In the Marriage of S (1980) 42 F.L.R. 94.*

*In the Marriage of Teves and Cainpomayor (1994) 122 F. L. R. 172.*

Dickey, A, "Family Law" 4<sup>th</sup> Edition (2002) Lawbook Co. Sydney.

AT LAUTOKA	
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	APPLICANT
AND:	Suhail
	RESPONDENT
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The Application

1. This is an application by the wife to have her marriage solemnised at Lautoka Registry in , 2009 nullified on grounds that she did not provide her real consent to the marriage as the same was obtained under duress.

### The Response

2. The husband was served with the application but he did not file any response nor did he appear in court to defend the matter.

### The Law

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3. Section 32 (1) of the Family Law Act No. 18 of 2003 states that a party can apply for an order for nullity of the marriage on the grounds that the marriage is void. There are certain grounds under which a marriage can be held to be void. In this case the ground is alleged to be pursuant to the first limb of section 32 (2) (d) (i). I will have to state the law in respect of the ground alleged.
4. The first limb of section 32 (2) (d) (i) of the Family Law Act No. 18 of 2003 states that a marriage is void if the consent of either party to the marriage is not a real consent because it was obtained by duress.
5. Duress has been defined as follows:-
  - © State of mental incompetence, whether through natural weakness of intellect or from fear (whether reasonably held or not) that a party is unable to resist pressure improperly brought to bear: (Scott (falsely called Sebright) v. Sebright (1886) 12 P.D. 21.)
  - A person's mind is so perturbed by terror that he or she does not understand what he/she was doing or alternatively if he/she understood what he/she was doing then their powers of volition had been so paralysed that he/ she succumbed to another's will: (Cooper (falsely called Crane) v. Crane [18911 P. 369.])
  - © If there is a threat of immediate danger to life, limb or liberty: (Szechter (orse. Karsov) v. Szechter [19711 P. 286.])
  - © If there is a threat of immediate danger to life, limb (including serious danger to physical or mental health), or liberty: (Re Meyer [19711 P. 298 at pp. 306 and 307.])
  - If the threats, pressure, or whatever it is, is such as to destroy the reality of consent

and overbears the will of the individual: (Hirani v. Hirani (1982) 4. Fam. L.R. (Eng))

- o If one is caught in a psychological prison of family loyalty, parental concern, sibling responsibility, religious commitment and a culture that demands filial obedience. If these matters operate and a party has no consenting will then there is duress: (In the Marriage of S (1980) 42 F.L.R 94.)
- Duress does not necessary need to involve a direct threat of physical violence as long as there is sufficient oppression from whatever source, acting upon a party to vitiate the reality of their consent. It must be duress at the time of the marriage ceremony and not duress at some time earlier unless the effect of this continues to overbear the will of a party to a marriage ceremony at the time of the ceremony itself: (In the Marriage of Teves and Campomayor (1994) 122 F. L. R172)

#### The Evidence

6. The wife gave the following evidence:-
  - o She was 18 years of age and schooling. Her parents forced her to get married. She did not want to get married.
  - o The parents said that the husband is from Australia and that she would have a good future and so she agreed.
  - o The husband came to Fiji. They got engaged and after engagement he went away. He never called. They texted twice or thrice in a week and finally he did not want to get married.
  - © He said for her to cancel the wedding. She told her parents that the husband was swearing at her and the parents and that she cannot get married to him. The parents agreed that she should get out of the relationship.
  - e She is a Muslim girl and when the parents suggested that she get married for her betterment, she could not refuse and go against them. She respects the parents and so she never said that she did not want to get married.
7. The applicants' father also gave evidence. He said as follows:-
  - They said to their daughter that it was good for her to get married and she

agreed. So they got her married.

© Subsequently he started swearing at her. They later knew he was involved with a married woman. So they want her out of the marriage.

#### The Determination

8. This is yet another case which is hunting for a ground to nullify the marriage. There was no pressure on the applicant. She decided to adhere to her parent's suggestion to get married. That does not amount to duress.
9. The father has come out with the true reason why nullity is desired. The husband has started swearing at the wife and he is involved with another married woman. This state of affairs about which they learnt and faced after marriage is being used to negate the consent which is not permissible.
10. The applicant was capable of resisting marriage. She was not 18 years but 19 years and an accountant as per her marriage certificate. She willingly agreed and provided her consent so the marriage cannot be invalidated.

#### The Final Orders

11. The application for an order for nullity of marriage is refused.
12. There shall be no order for costs.

ANTALA WATT

Judge

20.01.2011

<b>To;</b>	
<b>7.</b>	<i>Applicant.</i>
<b>2.</b>	<i>Respondent.</i>
<b>3.</b>	<i>File Number :K)/Ltk/0106.</i>

