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IN THE FAMILY DIVISION OF THE HIGH COURT  
AT LAUTOKA

ORIGINAL JURISDICTION

CASE NUMBER: 10/NAN/0217

BETWEEN: JAMILA

APPLICANT

AND: NAZAB

RESPONDENT

Appearances: Applicant in Person.

Respondent in Person.

Date/Place of Judgment: Thursday, 20<sup>th</sup> January, 2011 at Lautoka.

Judgment of: The Hon. Justice Anjala Wati.

Category: 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.

Anonymised Case Citation: JAMILA v NAZAB - Fiji Family High Court Case Number: 10/NAN/0217.

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## JUDGMENT OF THE COURT

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*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- the ground of duress not established- application dismissed with no order as to costs.*

### Legislation

Family Law Act No. 28 of 2003.

### Cases/Texts Referred To

*Scott (falsely called Sebright) v. Sebright (1886) 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 Fam. L. R. (Eng.). 232.*

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

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

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

### The Application

1. This is an application by the wife to have her marriage solemnised in Lautoka in June, 2010 nullified on the ground 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. However he appeared in court but did not defend the matter.

### The Law

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 [1891] P. 369.)
- o If there is a threat of immediate danger to life, limb or liberty: (Szechter (orse. Karsov) v. Szechter [1971] P. 286.)
- o If there is a threat of immediate danger to life, limb (including serious danger to physical or mental health), or liberty: (Re Meyer [1971] P. 298 at pp. 306 and 307.)
- o 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.). 232.)
- © 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.)
- o 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

### The Evidence

6. The wife gave evidence that she does not love the respondent and does not accept him as her husband. She only married him for his sake because he used to get sick and

emotional. He used to cry and she got emotionally blackmailed. After their engagement he also told her that he does not love her.

#### The Determination

7. The evidence falls far short of establishing any pressure or oppression to overbear the will of the applicant wife. She did not love the husband and yet she got married because the husband used to get sick and emotional. Despite feeling sorry for him, she had the powers to express her wishes and refuse the marriage. She did not, and she went ahead and provided her consent. This consent cannot be vitiated without the ground of duress being established. Marriage is an institution that needs to be respected. The parties have given it no serious thought and the court cannot assist them in disregarding existence of marriages validly entered into.

8. The test for duress has not been met.

#### The Final Orders

9. The application for an order for nullity of marriage is refused.

10. There shall be no order for costs.

**ANJALA WATI**  
**Judge**

**20.01.2011**

To:

1. *Applicant.*
2. *Respondent.*
3. *File Number 10/Nan/0217.*