

<b>IN THE FAMILY DIVISION OF THE HIGH COURT APPELLATE JURISDICTION</b>	
<b>CASE NUMBER:</b>	09/SUV/0221
<b>BETWEEN:</b>	ANISH
<b>AND:</b>	ISHIKA
<b>Appearances:</b>	Applicant in Person  No appearance for the Respondent.
<b>Date/Place of judgment:</b>	Tuesday, 25 <sup>th</sup> January, 2011 at Suva.
<b>Judgment of:</b>	The Hon. Justice Anjala Wati.
<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 are purely coincidental.</i>
<b>Anonymised Case Citation:</b>	Anish v Ishika - Fiji Family High Court Case Number: 09/SUV/0221
<b>JUDGMENT OF THE COURT</b>	
<p><b>Catchwords:</b> <u>MARITAL STATUS PROCEEDINGS</u> - <u>APPLICATION FOR AN ORDER FOR NULLITY</u> - application by husband on the ground that he did not provide his real consent to the marriage-no basis outlined in evidence as to why the consent was not real- the ground for "no real consent" not established-application dismissed with no order as to costs.</p> <p><u>Legislation</u></p> <p>Family Law Act No. 15 of 2003.</p>	

Application

1. This is an application by the husband to have his marriage solemnised at Central Eastern PA's Office in 2008 nullified on the ground that he did not provide his real consent to the marriage.

### The Response

2. The wife was served with the application but she did not file any response nor did she appear in court to 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. Section 32 (2) (d) states that a marriage is void if consent of either of the parties is not a real consent. No real consent can arise in 3 ways as per the Act. The first is if consent is obtained by duress or fraud: s. 32 (2) (d) (i). The second is if a party is mistaken as to the identity of the other party or as to the nature of the ceremony performed: s. 32 (2) (d) (ii). The third is if a party is mentally incapable of understanding the nature and effect of the marriage ceremony: s. 32 (2) (d) (iii).
4. The evidence of the applicant husband does not stipulate the ground on which he is relying on to say that his consent was not real.

### The Evidence

5. The husband gave the following evidence:-
  - He was very happy to get married and he provided his consent. After three weeks of the marriage the wife told him that she was not interested in him and that she was in love with another boy.
6. The applicants' uncle also gave evidence. He said as follows:-
  - His nephew was happy to get married. The wife went away with another man. He does not know when she got involved with another man.

### The Determination

7. The state of affairs is unfortunate for the husband. However his only option left is to apply for dissolution of marriage because he has not been able to establish any ground based on which it can be said that his consent had not been real at the time of the marriage. This is an incident after marriage which has certainly caused loss to the husband but that incident cannot be related at the time of marriage to vitiate the consent.

The Final Orders

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

**ANJALA WATI**

Judge

25.01.2011

*TO:*

1. *Applicant*
2. *Respondent*
3. *File Number: 09/Suz/0221*