

<b>IN THE FAMILY DIVISION OF THE HIGH COURT</b>	
<b>ORIGINAL JURISDICTION</b>	
<b>CASE NUMBER:</b>	10/NAN/0404
<b>BETWEEN:</b>	SHIVIKA
<b>AND:</b>	SUBHASH
<b>Appearances:</b>	Applicant in person.  No appearance of Respondent.
<b>Date/Place of judgment:</b>	Thursday, 14th April, 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 are purely coincidental.</i>
<b>Anonymised Case Citation:</b>	Shivika v Subhash Fiji Family High Court Case Number: 10/NAN/0404.

## JUDGEMENT OF THE COURT

***Catchwords: MARITAL STATUS PROCEEDINGS - APPLICATION FOR AN ORDER FOR NULLITY - avulication bit wife on the around that the parties were within a prohibited relationship at the time of the marriage and that the marriage of the parties was not solemnised properly-none of the grounds established-application dismissed with no order as to costs.***

***Legislation***

*Family Law Act No. IS of 2003.*

*Marriage Act, Cap.50.*

1. This is an application by the wife to have her marriage solemnised in the West in 2009 nullified on the grounds that the parties were within a prohibited relationship and that their marriage was not properly solemnised.

#### The Response

2. The husband was served with the application but he did not file any response. He also did not 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. In this case two particular grounds are alleged. The first ground is alleged to be pursuant to section 32 (2) (b), and the second is alleged to be pursuant to s. 32 2 (c) of the Family Law Act.
4. Prohibited marriages are explained in s. 32 (3) of the Family Law Act. It states that "marriages that are within a prohibited relationship are marriages between a person and an ancestor or descendant of the person; or between a brother and a sister (whether of the whole blood or half-blood).
5. Section 32 (2) (c) of the Family Law Act No. 18 of 2003 states that a marriage is void if there is failure to comply with the requirements of the law of that place with respect to the form of solemnization of marriages.
6. The formalities of this marriage are governed by the Marriage Act, Cap. 50, Laws of Fiji.
7. The basic requirements in respect of solemnization of this marriage are stipulated in ss. 16 to 28 of the Marriage Act, Cap. 50.

#### The Evidence

8. The wife gave evidence to the effect that there had to be a traditional marriage which did not take place and so the parties are within a prohibited relationship and also that their marriage is not solemnised properly. The wife also said that after the civil marriage, the husband had gone back to his country of residence and contacted her only 4-5 times thus far and that their marriage does not hold any significance.

### The Determination

9. This is a properly and validly solemnised marriage. There is no evidence that the parties were within a prohibited relationship or that the marriage was not solemnised properly.
10. The wife does not seem to place value on the civil marriage but the traditional marriage.
11. However the marriage referred to in section 32 (2) (c) of the Family Law Act is the civil marriage solemnized and registered under the provisions of the Marriage Act, Cap. 50 and not the religious marriage.
12. The use of the terms "*comply with the requirements of the law of that place with respect to the form of solemnization*" in s. 32 (2) (c) clearly indicates that the marriage that is referred to is the registered marriage solemnized under the Marriage Act, Cap 50 because in Fiji marriages are solemnized under the said Marriage Act and only those marriages duly solemnized under the Act are given legal recognition.
13. Section 38 of the Marriage Act, Cap 50 is relevant. It reads that:-  
  
*"Every marriage duly solemnized under the provisions of this Act unless therein expressly declared to be void shall be deemed to be good and valid in law until the contrary is proven."*
14. In Fiji, religious marriages are recognised as an additional ceremony which has no legal effect. It does not supersede or invalidate the marriage which must be first solemnized under the provisions of the Marriage Act. Religious Marriages can only be performed after the civil/legal marriage. Section 36 of the Marriage Act, Cap. 50 is relevant. It states that:-

*"At any time after the solemnization of a marriage by the Registrar-General or district registrar, the parties to such marriage may, if they so desire, upon the production of the certificate of the Registrar-General or district registrar as to the marriage, have a further marriage service performed according to the form ordained or use by the religion or religious denomination to which either or each of such parties belong.*

*Nothing in the reading or celebration of a marriage service under the provisions of subsection (1) shall supersede or invalidate any marriage previously solemnized nor shall such reading or celebration be entered as a marriage in the register of marriages".*

15. For the above reasons, the application for an order for nullity must be refused.

The Final Orders

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

17. There shall be no order for costs.

ANJALA WATI

Judge

14.04.2011

To:

1. Applicant.

2. Respondent.

3. File Number 10/Nan/0404.