

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

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| <b>CASE NUMBER:</b>              | 11/SUV/0344  |
| <b>BETWEEN:</b>                  | ARTIKA<br>APPLICANT  |
| <b>AND:</b>                      | RAVINESH<br>RESPONDENT   |
| <b>Appearances:</b>              | Mr. R.P Chaudhry for the Applicant.<br>No appearance of the Respondent.  |
| <b>Date/Place of judgment:</b>   | Friday, 16th December, 2011 at Suva.   |
| <b>Coram:</b>                    | The Hon. Justice Anjala Wati.  |
| <b>Category:</b>                 | <i>All identifying information in this judgment has 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> | ARTIKA V. RAVINESH - Fiji Family High Court Case Number: 11/SUV/0344.  |

**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 husband and also on the ground that the marriage was not solemnised properly - the ground for duress established-application granted with no order as to costs.*

### **Legislation**

*Family Law Act No. 18 of 2003.*

*Marriage Act, Cap. 50*

*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 Campomayor (1994) 122 F. L. R. 172.*

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

### **The Application**

1. This is an application by the wife to have her marriage solemnised in Suva in June, 2011 nullified on ground that she did not provide her real consent to the marriage as the same was obtained under duress by her husband and also on the ground that her marriage was not solemnised properly.

### **The Response**

2. The husband did not file any response to the proceedings, nor did he appear in Court at the trial.

### **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 grounds are alleged to be pursuant to s. 32(2) (c) and the first limb of section 32 (2) (d) (i). I will have to state the law in respect of the grounds alleged.
4. 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.

5. The formalities of this marriage are governed by the **Marriage Act, Cap. 50, Laws of Fiji**.
6. The basic requirements in respect of solemnization of this marriage are stipulated in ss. 16 to 28 of the Marriage Act, Cap. 50.
7. 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.
8. 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. 219*
  - *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.)*
  - *If there is a threat of immediate danger to life, limb or liberty: (Szechter (orse. Karsov) v. Szechter [1971] 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 [1971] 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.). 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.)*
  - *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.R 172)*

### **The Evidence**

9. The wife gave evidence by depositing an affidavit. She deposed that she met the respondent in Labasa on or around January, 2010 whilst she was studying at a tertiary institution. She was in the institution from 2008 to 2010. She is over 20 years old and is working in healthcare. On or around June, 2011, the respondent forced her to sign the marriage certificate form by saying that if she did not, he would harm or kill himself. She, at first, refused, as she did not want to have the marriage conducted secretly. When she mentioned her feelings to the respondent, he cut himself and said that he would kill himself. She annexed pictures of the respondent which shows abrasions. She deposed that the pictures are of the day of the marriage.
10. On the day in question, the respondent took her to a Marriage Registry around 9.30am for signing of the marriage certificate. The respondent, with his two workmates forcefully made her sign the marriage certificate from the computer and the digital security systems. The respondent said that if she refused, he would kill himself. Given the situation, she signed the marriage certificate. The marriage was witnessed by the said workmates. After signing the marriage certificate, they went to the sister's house. The respondent advised her not to call her family or friends and to advise them later. She managed to escape on the 24<sup>th</sup> day of June, 2011 and sought assistance of her brother in another town. The matter was reported to the police by the brother.
11. She consented to the marriage because she feared that the respondent would hurt himself.

### **The Determination**

12. There is insufficient evidence that the marriage was not solemnised properly. The applicant must establish as to which requirement of the solemnization of marriage set out by the law was not followed. On this basis the marriage cannot be nullified.
13. On the grounds of duress, I find that the wife was under genuine fear that the respondent

would hurt or kill himself as he had in fact carried out the threat by making cuts on his body. That mental fear made the wife weak. That fear overbore the will of the wife. Her consent that she provided, thus, was not real.

14. The marriage must be nullified on the grounds of duress.

**The Final Orders**

15. The application for an order for nullity of marriage is granted. The marriage solemnised between the parties in June, 2011 is hereby annulled.

16. The Registry to raise the necessary certificates and forward the same to the BDM Registry for necessary action.

17. There shall be no order for costs.

ANJALA WATI  
Judge  
16.12.2011

To:

1. Messrs Gordon & Chaudhry Lawyers, solicitors for the Applicant.
2. Respondent.
3. File Number 11/Suv/03