

IN THE FAMILY DIVISION OF THE HIGH COURT

AT LAUTOKA

ORIGINAL JURISDICTION

CASE NUMBER: 10/BA/0016

BETWEEN: PRAKASH

APPLICANT

AND: ADASHA

RESPONDENT

Appearances: Applicant in Person.

No appearance of Respondent.

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 judgement have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarity to any person is purely coincidental.

Anonymized Case Citation:

PRASKASH v ADASHA - Fiji Family High Court  
Case Number 10/BA/0016.

# JUDGMENT OF THE COURT

MARITAL STATUS PROCEEDINGS - APPLICATION FOR AN ORDER FOR NULLITY - application by husband on the ground that he did not provide his real consent to the marriage because his consent was obtained under duress by his parents-application allowed with no order as to costs.

## Legislation

Family Law Act No. 18 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.

*Szecliter (or. Karsov) v. Szecliter* [1971] P. 286.

*Re Meyer* [1971] P. 298.

*Hiram 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 Cainpomayor* (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 husband to have his marriage solemnised at, Ba on the 22<sup>nd</sup> day of August, 2009 nullified on ground that he did not provide his real consent to the marriage as the same was obtained under duress.

## 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. 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:-
  - o 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.)
  - o 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 (or. 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: (Hiram 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

6. The husband gave the following evidence:-

- He was working in Labasa and is originally from the west where his parents both reside.
- His father called him and informed him that there was a girl from America and whether he was interested in getting married.
- He informed his father to wait for him until he comes to Ba, sees the girl and decides for himself.
- On a Friday he came to Ba and when he reached home, he saw a shed erected in his compound and that all the preparation was done for the wedding. All the visitors and people had been invited for the next day to attend the marriage.
- He was shocked and could not come to terms with the arrangement. He questioned his father as to why he did not wait for him to come and decide. His father said that the girl had to return in a week so he had to rush. His father then said that it was too late for him to refuse anything as there would be big embarrassment and loss of dignity amongst the families and relatives. He could not understand anything because the marriage was the very next day. He had to go along with the arrangement so that the peace and harmony amongst the family was maintained but he himself was unbelievably shocked.
- The next day the marriage took place and in October he told the wife what had happened and that he really did not want to go through the ceremony until such time he had decided for himself.
- He also told the girl that he was not even interested in going to America and her father then got drunk and swore at him. The girl then said that will not come and stay in Fiji and that she wanted her single status back.

7. The father also gave evidence. He testified as follows:-

- He asked his son about the marriage. He told the son that the girl was from America and was in Fiji. He had refused and said that he would decide when he comes to Ba. He did not wait for the sons consent and told the girls family that they had agreed to get married. He made all arrangements and made a shed as well. When the son arrived, he resisted when he saw all the arrangements but as his father he pleaded to save the family and everyone the embarrassment as the marriage was going to take place the next day. He requested his son to go through the ceremony and for his family sake he did what he was asked to. He got married unhappily to keep the family's dignity.

#### The Determination

8. This is a case where there is no threat or violence involved but an oppression of a nature which the son was submerged under. He told his father that he would go to his parents place and decide for himself regarding the marriage. His father without his consent and knowledge agreed to the marriage and also made all arrangements for the very next day including making a shed and inviting everyone to attend the ceremony. Upon the sons arrival he noticed the arrangements and he was shocked. He refused but it is not very easy for a son, albeit an independent person, to allow embarrassment and humiliation to affect his family.
9. In Indian culture, it is indeed a big humiliation and embarrassment for parents to cancel the wedding a day before. The families and the relatives all end up questioning, cursing, embarrassing and humiliating the entire family who is suffering.
10. The marriage was to take place the next day and there was no time for the thinking process and any concrete steps to be taken.
11. The son was oppressed with the parents request and anticipation of embarrassment and also he was psychological imprisoned to stand by his parents to go through the marriage. His culture also does not expect him to renege after all the arrangements are made. It demands that there be obedience to parents' efforts in organising the marriage.

12. The applicants' powers of volition were paralysed because of the time factor as well. He could not just cancel the marriage few hours before. In the circumstances he had to go through the marriage. In my judgment, any person would do what he did in the circumstances. One would have to succumb to the parents' wishes. He did as well. His consent was not *lais* because it was overborne by the will of his parents.

13. The marriage cannot be allowed to stand.

The Final Orders

14. The application for an order for nullity of marriage is allowed.

15. The marriage of the parties solemnised at, Ba on the 22<sup>nd</sup> day of August, 2009 is declared null and void.

16. There shall be no order for costs.

ANJALA WATI

Judge

20.01.2011

To:

1. APPLICANT
2. RESPONDENT
3. FILE NUMBER 10/BA/0016