

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

**AT LAUTOKA**

**CASE NUMBER:** 13/LTK/0602

**BETWEEN:** RAMIZA  
APPLICANT

**AND:** MAMUDH  
RESPONDENT

*Appearances:* Mr. N. Sharma for Applicant.

No appearance for the Respondent.

*Date/Place of Judgment:* Thursday, 28 August 2014 at Lautoka.

*Judgment of:* The Hon. Justice Anjala Wati.

*Category:* The Hon. Madam Justice Anjala Wati.

*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:* RAMIZA V. MAMUDH- Fiji Family High Court Case Number:  
13/LTK/0602.

---

## **JUDGMENT**

---

**MARITAL STATUS PROCEEDINGS – APPLICATION FOR AN ORDER FOR NULLITY – application by wife on the ground that her consent to marry was not a real consent as it was obtained by duress - the ground for nullity established- application for an order for nullity granted-no order as to costs.**

---

**Legislation:**

Family Law Act No. 18 of 2003.

Marriage Act Cap. 50.

---

**Cases/Texts Referred To:**

Brodie v. Brodie [1917] P. 27.

H. v. H. [1954] P. 258.

Silver (orse. Kraft) v. Silver [1955] 1 W. L. R. 728.

Morgan v. Morgan (orse. Ransom) [1959] P. 92.

Scott v. Scott (orse. Fone) [1959] P. 103.

Szechter (orse. Karsov) v. Szechter [1971] P. 286.

In the Marriage of Suria (1977) 29 F. L.R. 308.

In the Marriage of Otway [1987] F.L.C. 91-087.

Vervaeke (formerly Messina) v. Smith [1983] 1 A. C. 145.

In the Marriage of Hosking (1994) 121 F.L.R. 196.

Griffith v. Griffith [1994] I.R. 35.

Leonards v. Leonards (1961) 2. F.L.R. 111.

Parojcic (orse. Ivetic) v. Parojcic [1958] 1 W. L. R. 1280.

Scott (falsely called Sebright) v. Sebright (1886) 12 P.D. 21.

Cooper (falsely called Crane) v. Crane [1891] p. 369.

Re Meyer [1971] P. 298.

Singh v. Singh [1971] p. 226.

Singh v. Kaur (1981) 11 Fam. Law 152.

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" 4<sup>th</sup> Edition (2002) Lawbook Co; Sydney.

---

## Case Background

1. On 11 December 2013 the wife filed an application for an order that her marriage which was solemnised at Tavua in 2012 be nullified on the ground that she did not provide her real consent to the marriage as the same was obtained by duress.

## The Law

2. Under s. 32 of the Family Law Act, a party can apply to have the marriage nullified on the grounds that the marriage is void.

3. The first limb of section 32 (2 (d) (i) of the Family Law Act 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.

4. It is fundamental to marriage that both parties consent to being joined together as husband and wife. A marriage is a “voluntary union”. The concept of voluntariness is an essential ingredient in the definition of marriage under the laws of Fiji Islands: s. 15: *Marriage Act*:

*“Marriage in Fiji shall be the voluntary union of a man and a woman to the exclusion of all others”.*

5. What is it that each party to the marriage must give real consent to? There are two possibilities here. Either the parties are required to consent simply to entering into formal marriage relationship or they are required to consent to living with the other party in the way normally expected of a husband and wife.

6. Australian and English Courts have always refused to take notice of any understanding by parties to a marriage concerning the future course of their marriage: *Brodie v. Brodie* [1917] P. 271; *H. v. H.* [1954] P. 258 at 267-269; *Silver (or. Kraft) v. Silver* [1955] 1 W. L. R. 728; *Morgan v. Morgan (or. Ransom)* [1959] P. 92; *Scott v. Scott (or. Fone)* [1959] P. 103; *Szechter (or. Karsov) v. Szechter* [1971] P. 286 at 296; *In the Marriage of Suria* (1977) 29 F. L.R. 308 at 314; *In the Marriage of Otway* [1987] F.L.C. 91-087.

7. There is accordingly no doubt that the consent is simply consent to enter into a formal marriage relationship, and nothing more. As Lord Hailsham said in *Vervaeke (formerly Messina) v. Smith* [1983] 1 A. C. 145 at 152, concerning the corresponding law in England:

*“ The fact is that in the English law of marriage there is no room for mental reservations or private arrangements regarding the parties’ personal relationships once it is established that the parties are free to marry one another, have consented to the achievement of the married state and observed the necessary formalities”.*

8. Lindenmayer J put it in the more recent Australian case of *In the Marriage of Hosking* (1994) 121 F.L.R. 196 at 207:-

*“Should a court ever be entitled to say that a party’s reasons for marriage are so improper that it will declare their marriage void? The answer, in my view, must be a resounding ‘no’”.*

9. What constitutes duress, however, is a matter of degree, and herein lies the basic problem concerning this part of the law on nullity. As *Haugh J.* observed in the Irish case of *Griffith v. Griffith* [1994] I.R. 35 at 42, duress may begin from a gentle form of pressure and end up with physical violence accompanied by threats of death.
10. The courts have consequently had to determine at what point constraint upon a person to marry is so severe as to nullify that person's consent to the marriage.
11. In considering this problem, courts have consistently distinguished duress from lesser forms of pressure. So in *Leonards v. Leonards* (1961) 2. F.L.R. 111 a reluctant bridegroom claimed to have married simply because he had wanted to placate his father and mother, who desired the marriage, and that he was a tormented person whose heart was not in what he was doing, and that he was under a considerable emotional stress. The court held that pressure of this kind did not constitute duress.
12. On the other hand, in *Parojcic (or. Ivetic) v. Parojcic* [1958] 1 W. L. R. 1280, a father, a Yugoslav refugee, ordered his daughter to marry a man chosen by him, who was another Yugoslav refugee, and he threatened to send her back to Yugoslavia against her wishes if she refused. He even hit his daughter in an argument over her refusal to marry the man in question. The court found that the girl had terrified into obedience to her father and that the ensuing marriage accordingly void on account of duress.
13. In England, the degree of oppression that constitutes duress for the law of nullity has changed over the years. Until 1970, the two leading cases on this matter were *Scott (falsely called Sebright) v. Sebright* (1886) 12 P.D. 21 and *Cooper (falsely called Crane) v. Crane* [1891] p. 369.
14. In *Scott's* case, a wealthy young lady was induced by her suitor to put her name to a number of bills of exchange to meet some of his accommodation expenses. The young lady was subsequently pressed by discounters to pay these bills, with writs being issued against her and bankruptcy proceedings threatened. As a result of all this, she became both mentally and physically ill. The suitor, a true Victorian bounder, then told the young lady that if she married him he would make appropriate arrangements with the discounters, but if she refused he would not. Moreover, he said that if she refused to marry him he would falsely accuse her to her mother "and in every drawing-room in London" of having been seduced by him. He forcibly took her to a registry office and told her that he would shoot her if she did anything to show that she was not acting of her own free will.

15. The marriage at the registry office was held to be a nullity as the young lady had been reduced by mentally and bodily suffering to a state in which she was incapable of offering resistance to the respondent's coercion and threats. In particular, the judge held that there can be no consent to marry if a party is in such a mental state of incompetence, whether through natural weakness of intellect or from fear (whether reasonably held or not), that he or she is unable to resist the pressure improperly brought to bear.
16. The facts of Cooper were as Victorian as the previous case. There a man took a young lady to a church, where he had arranged by stealth for marriage to take place. Outside the building he said to her "*you must come into this church and marry me, or I will blow out my brains, and you will be responsible*". The young lady was so alarmed at this, for she knew he was in the habit of carrying a revolver, that she complied with his demand. The judge held that for the wife to avoid the marriage on the ground of duress, she had to show that her mind was so perturbed by terror that she did not understand what she was doing, or alternatively that although she understood what she was doing, her powers of volition had been so paralyzed that she had succumbed to another's will. On the facts of the case, this was not established.
17. From 1970 until 1982, the English courts substantially restricted the nature of the duress that could invalidate a marriage. The leading case in this regard was *Szechter (or. Karsov) v. Szechter (supra)*. The facts of this case involved both actual imprisonment and a threat of immediate danger to the petitioner's life. The petitioner was a woman in poor health who had been imprisoned in appalling conditions under communist rule in Poland for 'anti-state activities'. Her subsequent marriage was a device, to which the respondent was a willing party, to enable her to leave Poland. There *Sir Jocelyn Simon P.* held that for the purposes of the law on nullity, the cause of the duress had to be a threat of immediate danger to life, limb or liberty. In particular he said:

*"It is, in my view, insufficient to invalidate an otherwise good marriage that a party has entered into it in order to escape from a disagreeable situation, such as penury or social degradation. In order for the impediment of duress to vitiate an otherwise valid marriage, it must, in my judgment, be proved that the will of one of the parties thereto has been overborne by genuine and reasonably held fear caused by threat of immediate danger (for which the party is not himself responsible) to life, limb or liberty, so that the constraint destroys the reality of consent to ordinary wedlock".*

18. It may accordingly have been because of the special facts in that case, which the judge described as involving “*a situation of hardship brought about by heroism in the teeth of cruelty and oppression*”, that Sir Jocelyn Simon referred to the need for a threat of immediate danger of life, limb or liberty. However, be that as it may, the formulation of the law was consistently followed in England until 1982.
19. Only two qualifications were judicially suggested to the law as stated in *Szechter (orsee. Karsov) v. Szechter*. The first was that a present likelihood of future danger, rather than a threat of immediate danger, to life, limb, or liberty would suffice and the second was that “*danger to limb*” includes any serious danger to physical or mental health”: *Re Meyer [1971] P. 298 at 306-307*.
20. During the 12 years from 1970 to 1982, the test of duress in *Szechter (orsee. Karsov) v. Szechter* proved to be very restrictive in many circumstances involving the overbearing of a party’s will. Prominent among these were situations involving arranged marriages. In England, as in Australia, immigrants often wish to continue to practice the social traditions and customs of their children. The question has thus arisen in both countries in recent years of what degree of parental or communal pressure will vitiate an arranged marriage to which a child is an unwilling party.
21. In two English cases concerning arranged marriages, *Singh v. Singh [1971] p. 226* and *Singh v. Kaur (1981) 11 Fam. Law 152* the Court of Appeal approved the test laid down in *Szechter* and held that duress would nullify an arranged marriage, like any other, only if the mind of the party was so overborne by fear caused by a threat of immediate danger to life, limb or liberty that the constraint destroyed the reality of the consent to marriage. In neither case was such duress established.
22. In the subsequent case of *Hirani v. Hirani (1982) 4 Fam. L.R (Eng.) 232*, however, the Court of Appeal expressly declined to follow the law as stated in *Szechter*. Without referring to *Singh v. Singh* or *Singh v. Kaur*, the Court of Appeal held that the crucial question was simply “*whether the threats, pressure, or whatever it is, is such as to destroy the reality of consent and overbears the will of the individual*”. The court expressly held that there was no requirement of any threat to life, limb or liberty in order for there to be duress for the purposes of the law of nullity. In the light of the facts of the case, the Court of Appeal found that the will of a 9 year old Indian woman had been sufficiently overborne by her parents, who had arranged her

marriage in order to prevent her marrying a member of another religion, to vitiate her consent and thus invalidate the marriage.

23. The Australian Courts have followed the English definition of duress until in the case of *In the Marriage of S (1980)* 42 F.L.R. 94. There *Watson J.* not only declined to follow the strict test in *Szechter* but went so far as to relax the more liberal principles in *Scott and Cooper*. The facts of the case were that a girl aged 16 succumbed to parental pressure and went through an arranged marriage in a Coptic Orthodox Church in Australia. The girl had been born in Egypt and had come to Australia with her family when she was eight. The marriage had been arranged in accordance with Egyptian Coptic traditions. The girl said in evidence that she had not wanted to go through with the marriage but that her parents had insisted and she could not stand up against them. The judge found that *“she was caught in a psychological prison of family loyalty, parental pressure, sibling responsibility, religious commitment and a culture that demanded filial obedience... if she had ‘ no consenting will’ it was because these matters were operating-not threats, violence, imprisonment or physical constraint”*.

24. *In the Marriage of Teves and Campomayor (1994)* 122 F.L.R. 172, *Lindenmayer J.* had no hesitation in following the decision in the *Marriage of S*. He said:

*“ It can be said that duress does not necessarily need to involve a direct threat of physical violence so long as there is sufficient oppression, from whatever source, acting upon a party to vitiate the reality of their consent”*.

The judge in this case also emphasized that it is duress at the time of marriage ceremony with which the law of nullity is concerned, 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.

### **The Evidence**

25. The wife and her father gave evidence. The wife testified that:

- ***She lives with her parents and 2 siblings, a brother and sister both of whom are disabled.***
- ***She looks after her siblings.***
- ***She is educated up to Form 5. After Form 5 she stayed home to look after her siblings.***

- *The person she married is related to her neighbours. Her husband had come to their neighbour's house. He was looking for a girl to marry.*
- *Her father and grandfather went to the neighbour's house and informed the neighbour that they had a daughter of marriageable age. They stayed at neighbours place for about 2 hours. She did not know why they had gone to the neighbours place. They had not told her anything nor had she asked them anything. At that time she was looking after her siblings.*
- *When her father and grandfather came back, they told her that there was a boy at the neighbour's place who was looking for a girl to marry. Her mother told her the same and she said that she was not ready. Her parents asked her to see the boy at least as according to them there was nothing wrong in seeing the boy.*
- *Since her father and grandfather had suggested her as the person to marry, they started forcing her to see the boy.*
- *The neighbour's house is not far away. She can see the neighbours place from her house. The daughter in law from the neighbours place came to take her to see the boy. She went with her grandmother to their place.*
- *The parents and grandparents kept persisting her to get married. The grandfather kept saying that it was time for her to get married and he wanted to see her married before he died.*
- *There was no physical force on her though. There was only verbal pressure.*
- *Her father is a very strict person. He would always want to be obeyed and does not take her views in any matter.*
- *Upon being persisted she went to see the boy at the neighbours place. She saw the boy but did not agree to marry him. The boy's family saw her and liked her. The boy liked her too and agreed to get married to her. She told her grandmother that she did not like the boy.*
- *Without asking her, her father agreed that she would marry the boy. She had not even talked to the boy. She just spoke to her family and they said that he was a good boy.*

- *The same day her father made all arrangements for the marriage. Her grandfather kept persisting that she gets married. Her father and grandfather said that they liked the boy and that she should get married. Her mother said the same thing.*
- *Her father said that he has made all the arrangements. She told her grandmother that she did not want to get married but the grandmother said that it was too late for her to refuse the marriage as all the arrangements had been done.*
- *The legal marriage took place the same day she saw the boy at 2pm at her residence. She would have seen the boy for approximately an hour and she was forced to marry a person she did not even know.*
- *The marriage officer was present and he asked her whether she wanted to get married. She said yes as her family had asked her too and all the arrangements were made so quickly.*
- *After the civil union she told her parents that she still could not go ahead with the marriage. She indicated that she had been pressured into the union. She became very depressed and lost appetite. She stopped eating and became isolated.*
- *He father then said to her that given some time she would be alright and for her to take some time to think about the marriage and get to know the boy better.*
- *After the civil marriage she did not even talk to the boy. He had once called and spoken to her mother.*
- *The other time when the boy called she refused to talk to him despite her mother forcing her to get married.*
- *She continuously told her parents that she would not go ahead because she did not want to marry that boy. She did not know him and was not ready.*
- *After seeing her situation her father finally agreed that she should be relieved from the problem that they had imposed on her.*

26. The father testified that he has three children; 2 daughters and a son. The applicant is the eldest in the family. The son is in 20's and the smallest female child is in class 1. His wife is his first cousin. Son is mentally retarded. Youngest daughter is alright but is slow in talking.

27. The boy had come to the neighbours place as he was related to them. He was looking for a girl to marry. The neighbours suggested to him to see the boy and said that if he was happy he could get his daughter married. The discussion took place 2 or 3 days prior to the boy visiting the neighbours.
28. He discussed the plans with his wife and told her not to inform the daughter about it as he wanted to see the boy first and if everything was alright, he would then tell the daughter.
29. He went to the neighbours place with his father in law. The daughter stayed home. She had no idea that they had gone to see the boy for her marriage.
30. At the neighbours place, he met the boy's family and talked to them. He liked the boy and his family. So did his father in law. He told them to wait and that he will inform his daughter. If everything was alright for her then he would arrange the marriage.
31. His daughter came and saw the boy. The boy and his family liked the daughter but she did not and told her grandmother that she did not like him. She did not say anything before all of them that she did not like the boy.
32. They consented for marriage. The daughter told her mother that she does not wish to get married but she was not heard. She has to normally do what they say for her to do. His wife told him that the daughter did not want to get married and he said that she has to and that it was too early for her to refuse. He liked the boy and his family and he wanted the daughter to get married to him. He would not listen to the daughter.
33. They decided to have the civil marriage the following week but the boy's family said that they had come from Suva and that they did not want to make another trip so they decided to have them married the same day. They went to the District Officer to arrange the marriage. They got the marriage officer at their place.
34. He told his wife to get the daughter ready for the marriage. Even before the civil union the daughter told him that she did not want to get married. He told her that it was too late as the marriage was arranged and it would be a big embarrassment for him. If she wanted she could change her mind later but not at that moment.
35. The marriage took place at his place. After the marriage the daughter got very depressed. She stopped eating, stopped talking to everyone and became very lonely. She insisted

that she would not get through the traditional marriage and then he decided to support her. He asks for forgiveness that he did that to his child.

### ***The Determination***

36. I have before me a person who was totally dependent on her parents for a living and day to day support. She was unemployed and unable to stand for herself or take part in any decision making process. Being under the care of her parents and financially dependent on them, she had to obey them in every instruction she was given. Her being a female also deprived her of her opinion and ability to stand up against her parents and implement her views.
37. On the day of her marriage, she started her day normally when suddenly she was asked to see a boy and decide whether she liked him for marriage. She refused immediately but was told that she just had to see the boy. She reluctantly followed the instructions and upon seeing the boy she did not have a liking for him and told all the people she could to refuse the marriage but everyone turned against her and insisted that she got married.
38. She had nowhere to go and no one to turn to. Her circumstances of being controlled by her parents' every time once again overshadowed her decision. She kept refusing but immediately her father arranged the marriage on the same day. Then the time was against the wife. She could not find time to find an alternative place or rescue. Everything happened so quickly. She submitted to the marriage as she could not have said no as she was under her parents care.
39. Not being independent and not being able to leave the house as the wife was under the parents care, she agreed after being mentally oppressed to get married. Even after the marriage the wife did not change her stance and insisted that she could not live with the boy. Her attitude changed and she became very depressed. Since she had time she continued refusing the traditional marriage and finally after feeling sorry for the child, the father decided to support her. He also realised the wrong he had committed on her.
40. I find that there was mental oppression due to strict instructions by parents to marry the boy and due to lack of independence financially and otherwise that the wife was unable to stand up for herself against her parents' wishes. I find that the consent that she gave was vitiated by her parents will. She was overborne by her parents' instructions. Her powers of volition were paralysed. The consent that she provided was not her real consent.

41. I must also say that having seen the demeanour and deportment of the wife I find that she is very intimidated by her father and is hardly able to speak for herself. She looked very scared and appears to be a person who cannot stand up for herself. The father appeared a very strict man who would not take no for an answer from his daughter. With such a stern father, I do not think that it was possible for the daughter to disagree with him although she unsuccessfully tried.

***The Final Orders.***

42. I therefore allow the application for an order for nullity. I order that the parties marriage solemnised in 2012 be annulled and there shall be no order as to costs.

ANJALA WATI

Judge

28.08.2014

To:

1. Mr N. Sharma for the Applicant.
2. Respondent.
3. File Number: 13/LTK/0602.