

IN THE FAMILY DIVISION OF THE HIGH COURT AT SUVA  
ORIGINAL JURISDICTION

**ACTION NUMBER:** 15/Suv/ 0352

**BETWEEN:** MICHAEL  
APPLICANT I

**AND:** ELLIE  
APPLICANT II

*Appearances:* Mr. Hiulare for the Applicants.

*Date/Place of Written Judgment:* Monday 11 January 2016 at Suva.

*Coram:* Hon. Madam Justice Anjala Wati.

*Category:* 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:* 2016.01.11 Michael v Ellie Family High Court Case number 0352 of 2015.

JUDGMENT

Catchwords:

FAMILY LAW - Marriage Void for want of real consent of husband who entered into marriage when his wife was pregnant to someone else and the information not being revealed to the husband at the time of the marriage.

Legislation:

The Family Law Act No. 18 of 2003 ("FLA"): s 32(2) (d) (i).

1. The parties were married on 11 June 2009 at the Suva Registry.

2. At the time they were married, evidence from the parties and defacto partner reveals that the wife was pregnant to defacto partner and that she deliberately did not disclose this fact to the husband, the first applicant. She insinuated to the husband that she was pregnant to him.

3. After the legal marriage, the wife went away with defacto partner and started living with him. The husband, after his studies and work overseas, came to Fiji and then got an opportunity to apply for his marriage to be nullified.

4. He says that his wife defrauded him and that is not disputed by any party.

5. In Fiji a marriage is void if consent of one party to the marriage is obtained by fraud: s. 32 (2) (d) (i) of the FLA.

6. In this case the wife deliberately concealed the information that she was pregnant to another knowing very well that she was. Further, knowing very well that the husband was not the father of the child, she told him that he was the father. This lie was to obtain the consent of the husband which he granted on the basis that he is the father of the child.

7. When he discovered that he was not he realized that he has been defrauded into this marriage.

8. I find that if it was not for the deliberate lie, the husband would not have provided his consent to the marriage.

9. He would have married her if she was pregnant to him. If he was told that she was pregnant to some other man, he would not have provided his consent to marry the wife.

10. I find that his consent was secured by fraud and that it was not his real consent.

11. I therefore order that the marriage solemnized between the parties be annulled and that the Registrar of the Division raises the necessary certificate to this effect and transmit the same to the relevant authorities for notation.

**Judge**

**11.01.2016**

To:

1. Mr. *Hiuare* for the Applicants.

2. File; 15/ Suv/ 0352.