

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

**ORIGINAL JURISDICTION**

**ACTION NUMBER:** 18/Suv/ 0465

**BETWEEN:** **KESWINI**  
APPLICANT

**AND:** **ZAKIM**  
RESPONDENT

*Appearances:* Mr. A. Chand and Ms. S. Daunivesi from LAC for the Applicant.

*No Appearance of the Respondent.*

*Date/Place of Oral Judgment:* Monday 12 November 2018 at Suva.

*Date/Place of Written Judgment:* Tuesday 25 June 2019 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.

---

**JUDGMENT**

**Catchwords:**

**FAMILY LAW** – Marriage void for want of real consent – duress on wife – physical and mental threat of violence inflicted on wife by the husband at the time of the civil union which vitiates her consent.

---

1. The wife has brought an application for an order for declaration of nullity of the marriage solemnized between the parties in February 2018 on the grounds that she entered into the same under duress from her husband.
2. The matter was heard undefended. The husband was served with the application but he chose not to defend the matter.
3. After hearing the evidence at length, I found that the wife had gone through extreme mental and physical violence at the time she provided her consent to the marriage. It was due to the violence that she provided her consent to the marriage. The violence continued for until three months. The wife managed to free herself from the husband with the help of her family and police after which she filed this application.
4. I find from the evidence that prior to the marriage, the parties were courting. The wife was studying abroad and the husband was living with his parents in the Northern Division. They would keep in touch through phone and other applications such as Facebook Messenger and Viber.
5. It unfolded in the evidence that the wife would visit her parents in the Northern Division during her school breaks. During this time the husband would meet her and most often create a violent scene near her home such as parking near her home, tooting the horn, calling out on her and shouting at her parents.
6. Her parents did not like her continuing the relationship with him due to his violent nature. However, she would every time calm the husband down and the relationship continued. The unfortunate situation continued every time she was in Fiji.
7. Early 2018, she once again visited her parents. She was in town on the day in question. The husband started calling her on her phone. He vehemently followed her in town. She was with her mother at the time. He warned her at that time that if she did not meet him, he would cause a scene and also embarrass her in the town. He also threatened to embarrass her mother too.

8. The wife thought of calming him down like she used to do before. She met him and on this particular occasion, he pushed her into a taxi and started questioning her about one another man who happened to be the wife's cousin who had accompanied her to a required institution.
9. The husband then forcefully took her phone, assaulted her and took her to his home where she was confined to a room. His parents would not come to her assistance and not even allow her to talk to her parents. Her pleas to go home and talk to her parents fell on deaf ears. They would not even allow her to answer her parent's calls who were desperately calling her.
10. The husband and his family were from a renowned background and they kept threatening her that if she did not do as she was told, she might even lose her life and her parents can be in danger as well.
11. I find that the wife believed that if she did not listen to the husband and his parents, her own parents and she too could be subject to some form of violence, ridicule or contempt.
12. The husband and his parents then organized a very quick civil and religious ceremony to which I find the wife consented to under fear and threat. I find from the evidence that she was hugely interested in completing her studies. Although she was in a relationship with the husband, she had no intention to get married at the time. I find that she did not voluntarily consent to the marriage.
13. After the marriage, the husband continued to cause mental and physical violence on her. She was not allowed to talk to her parents for three months and in these three months she underwent extreme violence which was life threatening.
14. The evidence tendered through the photographs, the police statements and the evidence on the domestic violence restraining order application reveals that the wife's life was in danger. It came to an extent that after the wife left the husband upon issuance of the domestic violence restraining orders, he pursued her and breached the orders by assaulting her again.

After the assault, he tried to cover up the incident by causing an accident in the vehicle he was driving. He had forced her inside that vehicle. She was found unconscious by the police.

15. The husband has been charged for breach of the domestic violence orders and the matter is still pending for determination in one another court.
16. What has become clear and uncontroverted is that since the time the wife was forced by the husband to his residence where the parties got married until three months when she decided to leave the husband, the wife had gone through severe mental and physical torture. It is fortunate that she has survived the violence.
17. The evidence reveals that the husband has no regard for the safety of his wife and continues to cause violence on her. The wife's continued fear for her life and safety is genuine. She has in her favour the domestic violence restraining orders which practically did not stop the husband from his continued violence.
18. I find that at the time of the marriage, she succumbed to the pressure put on her by her husband and her parents because she could not stand up against the torture that she was subjected to both mentally and physically. She was reasonably fearful of her parent's and her life and safety. She thought it prudent to go through the marriage ceremony to avoid any harm on her parents and herself. I find that the consent that she provided was not real and that the marriage between the parties is null and void.
19. The order for declaration of nullity of the marriage between the parties granted on 12 November 2018 via an oral judgment is confirmed.

**Anjala Wati**

Judge

25.06.2019

**To:**

1. *Legal Aid Commission for the Applicant.*
2. *Respondent.*
3. *File: 18/Suv/0465.*