

IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA

ORIGINAL JURISDICTION

ACTION NUMBER: 18/Ltk/ 0405

BETWEEN: SALOCHNA

APPLICANT

AND: ANEND

RESPONDENT

Appearances: *Mr. Padarath and Mr. Patel for the Applicant.*

No Appearance of the Respondent.

Date/Place of Written Judgment: *Friday 21 February 2020 at Suva.*

Coram: *Hon. Madam Justice Anjala Wati.*

Category: *Anonymised.*

JUDGMENT

Catchwords:

FAMILY LAW – NULLITY OF MARRIAGE – *Wife seeks that her marriage be annulled on the grounds that her husband was in a de facto relationship when the civil union between them took place and that he failed to disclose about his de facto relationship – she alleges fraud on the part of the husband which vitiates the consent that she provided to get married – insufficient evidence to prove that the husband was in a de facto relationship at the time of the marriage.*

1. The wife seeks an order that the marriage between the parties be annulled. She alleges that when the civil union between the parties took place, the husband was already in a de facto relationship with another woman.
2. It is her contention that if she knew about this de facto relationship, she would not have consented to the marriage. Her consent was obtained by fraud and as such is not real.
3. She gave oral and documentary evidence. Succinctly, she says that after the marriage, she was contacted by a female who alleged that she had been in a relationship with her husband for 14 years.
4. At the time of the trial and even post that, I have examined the evidence in detail. When I could not find from the text messages and conversation that was tendered in evidence that a de facto relationship could be established, I provided further time for the wife to find some satisfactory evidence to that effect.
5. After been granted the time, she could not come up with any evidence that would satisfy me on the balance of probability that a de facto relationship between her husband and another woman existed at the time of the civil union.
6. Given the current status of the evidence, I am not satisfied that the wife is able to establish that the husband was in a de facto relationship at the time of her marriage with him. What the evidence shows at its best is that the husband has had girl friends at some point in time. There is also evidence of him dating other women. However there is no evidence of a live-in relationship with any one of them or a de facto relationship as such at the time of the marriage between the parties.
7. If I could be satisfied on the allegation, I would not hesitate to grant an order. It is my finding in earlier matters that marriage is a voluntary union of a man to a woman to the exclusion of others.

8. A person in a de facto relationship cannot get married to another person without disclosing about the existence of the de facto relationship as that is a matter that affects the exclusivity of a marriage relationship as required by the law.
9. It has also been my finding in earlier matters that such material non-disclosures amounts to fraud on the part of the party concealing the information and that the affected party can make an application that the marriage is void if he or she can establish that the consent was granted due to the withholding of the information.
10. I do not find in this case that fraud is established and as such I refuse to grant the order for the marriage to be annulled. I dismiss the application. The applicant is at liberty to apply for dissolution of marriage as the parties marriage has broken down irretrievably as established by 12 months separation.
11. I order each party to bear their own costs of the proceedings.

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Hon. Madam Justice Anjala Wati

Judge

21.02.2020

To:

- 1. Messrs Samuel K. Ram for the Applicant.*
- 2. Respondent in Person.*
- 3. File: Case Number: 18/Ltk/0405.*