

IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA

ORIGINAL JURISDICTION

<i>APPEAL NUMBER:</i>	20/Ltk/ 0346
<i>BETWEEN:</i>	SSN APPELLANT
<i>AND:</i>	AIS RESPONDENT
<i>Appearances:</i>	<i>Applicant in Person.</i> <i>No Appearance of the Respondent.</i>
<i>Date/Place of judgment:</i>	<i>Thursday 19 May 2022 at Lautoka</i>
<i>Coram:</i>	<i>Hon. Madam Justice Anjala Wati</i>
<i>Category:</i>	<i>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.</i>

JUDGMENT

Catchwords:

FAMILY LAW –Marriage – alleged material non-disclosure on the part of the husband – is the marriage null and void for want of real consent to the marriage?

Cause and Background

1. It is the wife's application for an order that the marriage solemnized between the parties in 2019 be annulled. The ground raised in the application was that the husband was already married to another party thus making this marriage null and void. The ground that a party to the marriage is married to another party can only be successfully relied on when the first marriage has not been dissolved at the time of the second marriage which was not the case here.
2. When the matter proceeded to hearing, it was clear that the wife was relying on the ground that the husband had committed a fraud by material non-disclosures which vitiated her consent to the marriage thus making the marriage null and void.

Evidence and Analysis

3. The wife and her brother gave evidence in Court. The husband did not appear in court and contest the matter. The summary of the evidence is that when the wife was in her first employment she became acquainted with the husband. As time went, they became friends and then fell in love.
4. The wife informed her mother of the relationship. The mother refused to accept him given the age gap between them. The wife is 12 years younger, was in her early twenties and the man was in his mid-thirties. The age was the only issue causing the difference.
5. The wife and her mother did not at any time know that he was already married with 3 children. They also did not know that there were court proceedings on foot in respect of the marriage and the children. The husband did not disclose this to the wife. He quietly attended the court proceedings.

6. When the husband's first marriage was dissolved, he asked and convinced the wife that they get legally married without telling her parents. He convinced her on the basis that if they disclosed that they wanted to get married, the parents would not accept the relationship due to the age difference. He still did not tell her about the marriage, the children and the court proceedings. He convinced her that after the marriage, her parents will have to accept the relationship.
7. She agreed with him as she was very much in love with him. When they got married, the husband then asked her to elope with him. She refused and it is then when she told her parents that she was married.
8. Upon learning as to who the man was, the brother told her that he was a married man and had 3 children out of the marriage. He also told her about the court proceedings. She was shocked, felt betrayed and was devastated. She wept endlessly. She thought of asking him and he admitted that he had 3 children of the marriage. However he said that the children are with their mother which was not correct.
9. The order of the Court indicated that the husband had entered into consent orders with his first wife that he will have residence of 1 child and contact of the other 2 children in the weekends. He was also ordered to pay maintenance for the two children in the sum of \$100 per week. The order was made a month before the marriage. After discovering the full information, she broke all ties with the husband.
10. I find that when it came to the question of whether the husband was married before or not, that information could have been easily obtained from the marriage certificate. The wife cannot blame the husband for not disclosing that information.
11. At the time of the marriage, the wife would have had access to the information about his previous marriage from the marriage certificate that she signed. Although, I

accept that she did not pay attention to that fact, she cannot get out of the marriage on the grounds of material non-disclosures affecting the root of the marriage.

12. However, I find that when it comes to the issue of whether a party has children and their day to day care and responsibility for any period, that information is very crucial and must be disclosed before the marriage. That information is crucial for the other party to decide whether he or she will go ahead with the marriage and take on board the responsibility of children from an earlier marriage.
13. The other party cannot be kept in the dark because after the marriage the parties become jointly responsible as a family to look after the interest of the child and provide all the support for the mental and physical well-being of the child. It is expected that the parties to the marriage will function as a family for all matters including the best interest of the children.
14. In this case, it cannot be dismissed that it was not fraudulent conduct on the part of the husband in hiding this material information from the wife to influence her consent to the marriage. The wife should have been given a free and fair chance to decide whether she will get married and take on board the responsibility of the children. She cannot be fairly expected to continue with the marriage and remove herself from the responsibilities of looking after the children. She is expected to function as a family with the husband.
15. If these matters were disclosed to her, she would not have provided her consent to the marriage as her breaking the ties with the man she loved so much upon hearing the information is evident of that. She does not wish to continue with the marriage and accept the responsibilities that came with it as that is not something which she expected and agreed to.

16. I find that she did not provide her real consent to the marriage as it was vitiated by fraud. I find that the marriage entered into by the parties is null and void.

Final Orders

17. In the final analysis, I make the following orders:

(a) That the marriage solemnized between the parties is null and void. I therefore annul the marriage.

(b) The Registrar of the Court is to raise the necessary certificates and send the same to the Registrar of Births, Deaths and Marriages.

(c) Each party shall bear their own costs of the proceedings.

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**Hon. Madam Anjala Wati
Judge
19.05.2022**

To:

1. **Applicant in Person.**
2. **Respondent in Person.**
3. **File: 20/Nan/0346.**