

IN THE FAMILY DIVISION OF THE HIGH COURT AT SUVA

APPELLATE JURISDICTION

ACTION NUMBER:	21/Suv/ 0362
BETWEEN:	GA APPELLANT
AND:	VS RESPONDENT
Appearances:	Mr. S. Ali (DLAC) and Ms. S. Prakash for the Applicant Respondent in Person
Date/Place of judgment:	Friday 09 December 2022 at Labasa
Coram:	Hon. Madam Justice Anjala Wati
Category:	<i>All identifying information in this judgment have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarity to any persons is purely coincidental.</i>

JUDGMENT

Catchwords:

FAMILY LAW – *Applicant seeks to nullify her sister’s marriage on the grounds that the sister has stolen her identity to get married – the proper application should be to seek a declaration of validity of marriage on the grounds of fraud - allegations of stolen identity not met on the evidence – application dismissed.*

Cause and Background

1. The applicant has filed an application to have the marriage entered between the parties nullified. She has raised two grounds in support of the application. The first is that she did not give her consent to have this marriage solemnized and the second is that marriage entered into by the parties was not solemnized properly.
2. This is a case where allegations of stolen identity is being made. Two sisters are claiming to have the same name and same date of birth. The applicant who lives in Suva says that she is the person named in the marriage certificate and that the other sister in Labasa has stolen her name and date of birth. The applicant therefore contends that she never married the respondent. She claims that her name and date of birth was used by the sister in Labasa to marry the respondent but the identity is hers. She wants the marriage to be nullified because she wants to use her name and date of birth.
3. The other sister from Labasa also claims to be the person named in the marriage certificate. She says that she has been married since 2001 as stated in the marriage certificate and that she has two children out of the marriage. All her children are registered under the name used in the marriage certificate. She does not want to have her marriage nullified on the application by the Suva sister as she denies having used anyone's name and date of birth.
4. The respondent's position is that the marriage certificate relates to his marriage with the Labasa sister. He has always known the wife by the name in the marriage certificate and that she is the person to whom the details in the marriage certificate relates. He too, does not want the marriage to be nullified.

Issues

5. The issue before me is to determine whether the applicant's Labasa sister has stolen her identity to marry a person who the applicant did not want to marry and did not consent to marry.

Evidence and Analysis

6. Before I scrutinize the evidence, let me very quickly discuss the procedure to bring proceedings in cases where a third party seeks to nullify the marriage of other parties. In this case, the applicant has filed a form 2 application to nullify the marriage solemnized between the respondent and her sister. The parties to the marriage are vehemently defending the application and have indicated that they do not want their marriage nullified.
7. A third party cannot seek to nullify someone else's marriage on the grounds of fraud as stated in this application. If any fraud is alleged then a third party can seek from the court a declaration for validity or invalidity of the marriage. For that, the third person has to make both the parties to the marriage parties to the proceedings. Both the parties to the marriage will have to answer the allegations as their marriage is sought to be impeached.
8. A declaration for an order for nullity of the marriage has to be brought by a party to the marriage. The application cannot be made by a third party. In this case, the applicant has used the wrong procedure.
9. *Dickey, A. (2002). Family Law. N. S. W: Lawbook Company 4th Edition at page 183* makes it clear that:

“...proceedings for a decree of nullity of marriage must be between, or by, the parties to the marriage...., however, proceedings for a declaration on the validity and invalidity of marriage are unrestricted as to parties....In...case of Dunne v. Brow (1982) 60 F.L.R 212, McCall J. had no hesitation in allowing the daughter of a deceased husband to bring proceedings for a declaration that the recent marriage by her aged father had been invalid.

Although proceedings for a declaration of invalidity of a marriage are unrestricted to parties, it is well established that only a third party who can show sufficient interest in having a marriage declared invalid will be allowed to obtain a declaration of this kind...”

10. The applicant has also failed to make her sister a party to the application when she is alleging fraud against her. She did not even serve the application on the sister. How can the respondent be made a party to the cause alone when the allegations are not against him? Both

the parties' to the marriage are affected by the application. Both should have been made a party to the cause.

11. Given the shortfall in the procedure invoked, I had required the applicant to subpoena the Labasa sister who is another party to the marriage to be present in court so that she is able to address the issues confronting the parties and the court. The Labasa sister therefore also gave evidence on the allegations.
12. Let me now scrutinize the evidence to determine whether the evidence reveals a case of stolen identity. The applicant contends that she is the person named in the marriage certificate. She has produced identity cards which shows that she is the person in the marriage certificate but the Labasa sister has also produced identity cards showing that she is the person in the marriage certificate. The production of the identity cards therefore do not establish that the applicant is the person to whom the details in the marriage certificate relates to. Both sisters have the benefit of the identity cards issued to them in the name stated in the marriage certificate.
13. I refer to Exhibit 7 and 8. Both exhibits were tendered by the applicant. Exhibit 7 contains two identity cards of the applicant. The first identity card is the voter identification card issued on 24 November 2021 and the second identity card is the joint card for Fiji Revenue & Customs Authority and Fiji National Provident Fund (*"FRCS and FNPF card"*). Exhibit 8 contains two identity cards of the Labasa sister. The first card is the voter identification card issued on 24 November 2021 and the second identity card is the joint FRCS and FNPF card.
14. I have examined the original identity card of the applicant. I found during my examination that the photograph used in the voter identity card is very different from the photo used in the joint FRCS and FNPF card. I come to the conclusion that the applicant has been using her old photo in the joint FRCS and FNPF card. This is clear from Exhibit 9 which is produced by the applicant. Exhibit 9 is the old FNPF card of the applicant. The photo in Exhibit 9 is similar to the photo in the applicant's joint FRCS and FNPF card. However the photo in the applicant's voter identification card appears to be a photo of the Labasa sister.

15. The applicant's first witness AMC (*name anonymised*) said that the photos are of the applicant's. However the applicant's second witness GP (*name anonymised*) said that in Exhibit 7 the first picture is the applicant's and the second one is that of the Labasa sister. The second witness also said that Exhibit 8 shows that the voter identification card picture belongs to the Labasa sister and the joint FRCS and FNPF card picture belongs to the applicant.
16. There is so much confusion surrounding the pictures in the identity card. The pictures and the identity card therefore cannot be given any weight to determine whether the applicant is the person to whom the details in the marriage certificate relates to.
17. The applicant says that her sister in Labasa used her birth certificate to marry in 2001. The applicant claims that if the Labasa sister used her real name and birth certificate then she would be only 15 years at the time of her marriage. The applicant contends that the Labasa sister would then not be able to get married.
18. There is no evidence before me that the Labasa sister rushed into getting married and for that she had to use the identity of the older sibling. If I were to rely on the reason submitted by the applicant then what confronts this court is the fact that she is the one who came to Suva leaving Labasa at the age of 13. She was sent by her mother to study in Suva. An unknown man picked her up and she started living with him as his wife. It is highly possible that she is the person who assumed a new identity to indicate that she was over 13 years and not younger than that.
19. The eldest sibling of the two sisters gave evidence. She said that the applicant is the person to whom the details in the marriage certificate relates. She says that that the applicant is older than the Labasa sister. I find her evidence incredible. She does not know their dates of birth. She was only one and half years old when the second sister was born and 3 years old when the third sister was born. She tried to justify the two sisters ages by saying that the applicant was in a higher class than the Labasa sister. The witness's evidence in this regard was that she attended Bobale Primary School. She said that she was in class 4 and the Suva sister was in class 3. The Labasa sister was in class 1. This evidence is in direct contradiction with the

evidence of the applicant. The applicant said that when she was in class 3, she attended Batnikama Primary School. Bobale Primary and Batnikama Primary are two different schools. The applicant's elder sister and the applicant cannot even clearly state which schools they have attended in which year.

20. The eldest sister's evidence is also incredible based on Exhibit 10. Exhibit 10 is a statutory declaration signed by the eldest sister who gave evidence on behalf of the applicant. In the statutory declaration she stated as follows:

- “1. That I am the eldest sister of GA (I have used initials for the real name used).*
- 2. That I do not want the insurance money from social welfare”.*

21. The above declaration was signed and given to the Labasa sister to collect the monies from the Social Welfare for the mother's funeral. Being the eldest in the family, the eldest sister was entitled to uplift the monies for the funeral rites. If the applicant was elder than the Labasa sister, she would also have to make a similar declaration to allow the Labasa sister to collect the monies. More than this, what concerns me is the eldest sibling referring the Labasa sister as GA (name anonymised). GA is the name used in the marriage certificate. If the eldest sibling knew that that was not her name and that the sister in Suva is the person with that name, she should not have made that declaration and given it to the Labasa sister. The declaration indicates that the Labasa sister is the person who was referred to by the eldest sister as the one in the marriage certificate. It also indicates that the Labasa sister is the second eldest sister.

22. The applicant's witness AMC could not verify which sister is the person named in the marriage certificate. His evidence is full of inconsistencies and I thus cannot accept it. He kept contending that the applicant is the person named in the marriage certificate. He said that the applicant is elder than the Labasa sister. However, he could not even indicate their year of birth. He could not state with any degree of confidence which schools and classes they were in any given year.

23. I questioned AMC as to which class the applicant was in when he was in class 3, he replied class 4 or 5. He is not sure of that even. I then asked which class was the Labasa sister in, he replied that she was in class 4 and the applicant was in class 5. I found him to be calculating the answers to suit his evidence as to who was older. His evidence also contradicted the applicant's evidence. The applicant said in her evidence that after class 4 she shifted to Taveuni. She did not go to school in Taveuni. If she did not attend any school in Taveuni then the last class she would attend school is class 4. This then does not support the evidence of the witness AMC that when he was in class 3, the applicant was in class 4 or 5. The applicant cannot be in class 4 with the Labasa sister or vice versa unless one sister has repeated a class. There was no mention by the applicant or any of her sisters that one of the sisters had repeated a class. The evidence was that the sisters were in different classes.
24. The applicant's another witness was the applicant's cousin named GP (name anonymised). He said that the two sisters are his paternal aunt's children. He was born in 1979. He is about 6 years older than the two sisters. His evidence was confusing. He testified that the Suva sister was known as AD (name anonymised). This is however not the name used in the marriage certificate but the name the applicant contends belongs to the Labasa sister. He also stated that he does not know the real name of the Labasa sister. He however contended that the Suva sister is older than the Labasa sister. Towards the end of his evidence he said that the person named in the marriage certificate is in Suva court referring to the applicant. The evidence of this witness is unreliable for want of clarity to the degree required by this court.
25. It is for the applicant to establish with certainty that she is the person named in the marriage certificate and that her identity was being used to enter into a marriage she did not consent to. The evidence before me does not establish that. There is no concrete evidence before me to suggest that the Labasa sister has stolen the applicant's identity. The Labasa sister's contention that she is the person named in the marriage certificate cannot be impeached on the evidence before me.
26. Her husband said that he knows that his wife is older than the applicant. He contends that his mother in law told the police that his wife is older than the applicant. He testified that his wife was using the name in the marriage certificate even before the marriage.

27. The Labasa sister had also very strongly contended that she is the person named in the marriage certificate and that is what her mother had told the police officers.
28. I had informed the applicant's counsel to subpoena the police officers to assist in this case. It could have been established from their evidence what the mother had stated in her statement. At least there would be some concrete evidence on this matter. The applicant's counsel did not want to approach the evidence in that way. I therefore cannot accept the eldest sister's evidence that the mother had told her that since the Labasa sister was young, she used the applicant's birth certificate to marry her. I do not think that anyone will want to so easily lose their identity when they are grown-ups just to get married. Further, it is for the applicant to establish her claim and she should have brought all possible evidence to establish her allegations.
29. The two sisters have a step sister. She is the youngest in the family. She gave evidence that her mother told her that the Labasa sister was the person named in the marriage certificate. The youngest sister's evidence was that she has always known the Labasa sister by the name mentioned in the marriage certificate. The Labasa sister has always used that name even before the marriage. The youngest sister testified that they used to go to church together and that the Labasa sister was baptized before marriage by the name in the marriage certificate.
30. I am not in a position to give any credence to the evidence of the applicant and her witnesses that the Labasa sister has stolen her identity to marry the respondent. I therefore find that the applicant has not established her allegations. Her application to have the marriage between the Labasa sister and the respondent nullified is dismissed.

Final Orders

31. In the final analysis, I find that the applicant has not been able to establish that her sister has used her identity to marry the respondent. I dismiss the applicant's application to annul the marriage between the respondent and her Labasa sister.
32. Each party shall bear their own costs of the proceedings.

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Hon. Madam Justice Anjala Wati

Judge

09.12.2022

To:

- 1. Legal Aid Commission for the Applicant.*
- 2. File: Appeal Case Number: 21/Suv/0362.*