

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

**ORIGINAL JURISDICTION**

<b>ACTION NUMBER:</b>	<b>19/LTK/0200</b>
<b>BETWEEN:</b>	<b>TAAHIR</b> <b>APPLICANT</b>
<b>AND:</b>	<b>ABIRA</b> <b>RESPONDENT</b>
<b>APPEARANCES:</b>	<i>Ms. Singh for the Applicant.</i> <i>Mr. Z. Mohammed for the Respondent.</i>
<b>DATE/PLACE OF JUDGMENT:</b>	<i>Friday 29 September 2023 at Suva.</i>
<b>CORAM:</b>	Hon. Madam Justice Anjala Wati
<b>CATEGORY:</b>	<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** – *AN APPLCIATION FOR AN ORDER FOR NULLITY OF MARRIAGE – refusal on the part of the wife to consummate the marriage – refusal not caused by the husband – the applicant ought to have disclosed to her husband, her true intentions at the time of the civil union that she will not consummate the marriage- non-disclosure and concealing of that information is committing fraud on her husband which vitiated his consent to the marriage – marriage void and an order for nullity granted.*

1. The husband had applied for an order for nullity of the marriage between the parties on the grounds that the consent he provided to get married to the respondent was induced by fraud on her part.

2. After hearing the evidence, I was convinced that there was fraud on her part and if that fraud did not exist the husband would not have entered into the marriage by providing his consent.
3. I now publish my brief reasons for my findings. After the marriage, both legal and traditional, there was refusal by the wife to consummate the marriage. This is not denied by her. She did not wish to indicate the reasons for the refusal to consummate the marriage but to her husband she gave many excuses such as her having stomach issues and wanting to study.
4. The applicant got her medical attention as she had complained of stomach issues but even that could not change her mind. The applicant asserts that if his wife ever informed him that this marriage would never be consummated, he would not have provided his consent to get married to her as his understanding of marriage is that it will be consummated and he will have an intimate physical relationship with his wife amongst other expectations.
5. It is the individual choice of both parties whether they want to consummate the marriage or not. No one can be forced to, otherwise it will amount to marital rape. However, it must not be overlooked that one of the expectations in the marriage is that it will be consummated and a person who does not wish to do so should make that clear at the time of the civil union.
6. If one informs the other that he or she will not consummate the marriage then the other person has full information of the intention of this one party. It will then become easy for the affected party to make a fully informed decision about the marriage. I do not think that any party would agree to this arrangement but nothing is impossible.
7. In this case, the husband says that he was not informed at the time of the civil union the true intentions of the wife and like everyone expects, he also expected that his

marriage will be consummated. If he was told of her true intentions, he would have declined the marriage.

8. I agree with the applicant that he ought to have been told that this marriage would not be consummated. He would then be able to decide whether he would provide his consent to the marriage. I must however, qualify that I would not hold the same view if it is the husband's making in this case that has prevented the consummation of the marriage. There is no evidence to suggest that the husband has willingly or unwillingly caused the situation.
  
9. I find from the evidence that the wife never intended to consummate the marriage and she lured the applicant to marry her by concealing her true intentions. That is committing marital fraud. I thus find the husband's consent to the marriage void. These are the reasons for my orders nullifying the marriage of the parties.

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***Hon. Madam Justice Anjala Wati***

**29.09.2023**

**To:**

- 1. Ms. Singh for the Applicant**
- 2. Mr. Z. Mohammed for the Respondent.**
- 3. File: Family Case Number: 19/LTK/0200.**