

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

**AT SUVA**

<b>ACTION NUMBER:</b>	<b>23 SUV 0039</b>
<b>BETWEEN:</b>	<b>RAGHU</b> <b>APPLICANT</b>
<b>AND:</b>	<b>SAANVI</b> <b>RESPONDENT</b>
<b>APPEARANCES:</b>	Mr. A. Chand for the Applicant Mr. Emasi for the Respondent
<b>DATE/PLACE OF JUDGMENT:</b>	Friday 04 August 2023 at Suva
<b>CORAM:</b>	Hon. Mr. Justice Chaitanya Lakshman
<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**

**Application for Order for Nullity**

1. An application for an order for nullity (Form 2) was filed by the Applicant on 1<sup>st</sup> February 2023. The Form 2 was served on the Respondent and an Affidavit of Service (Form 22) and an Acknowledgement of Service (Form 21) was filed. On 13<sup>th</sup> June 2023 the matter was set for Trial. On that day neither the Respondent/Lady nor any of her lawyers had appeared in Court. At an earlier date the Respondent/Lady was given 21 days to file her response. None has been filed.
2. The ground relied upon by the Applicant in his application for nullity is “*wife was already in a relationship prior to legal marriage and had prospects of marrying the other partner.*” The relevant section of the Family Law Act 2003

relied upon by the Applicant is Section 32 (2) (a) which is “either of the parties is, at the time of the marriage, lawfully married to some other person.”

3. The evidence of the Applicant at the trial was that a day after the legal marriage between the parties on 21<sup>st</sup> November 2022 at Nadi he received messages about relationships of the Respondent. He was sent screenshots that the Respondent was in relationship with some else and had a child. This issue was addressed between the Applicant and the Respondent. The Applicant asked the Respondent to block the person. All along the Applicant believed the Respondent. Apart from that incident two other males were allegedly associated with the Respondent. Later the Applicant found out that the Respondent was still communicating with one of those, who the Applicant had asked the Respondent to block on Facebook. According to the Applicant the Respondent denied all the relationships until recently, when she messaged him that she was in a relationship with one person. The Applicant in cross-examination stated that he was aware that the Respondent was residing with her mother and that he was not aware of her previous relationships before the legal marriage. According to the Applicant he was informed by the Respondent about a relationship 2 days after the legal. He told the Respondent to move on and block everybody.
4. The Respondent/Lady in her evidence informed the Court that the family (parents, aunt and cousin) of the Applicant had come to see her in July 2022. She admitted that she was in a relationship with one person and it ended before the Applicants family went to see her at her residence in Nadi. Initially the Respondent did not agree to marry the Applicant. After family pressure she agreed. At the time of her legal marriage to the Applicant she was not in a relationship with any one. She also informed the Court that she is not married to any other person. The Respondent also informed the Court that the Applicant agreed with her past and had told her to forget about it and move on. She also denied being in a defacto relationship when she got married to the Applicant. The Respondent agreed that currently she was back in a relationship with one person. This was after she realised she would not be with the Applicant.
5. In order for nullity to be granted the parties need to establish grounds outlined in Section 32 (2) of the Family Law Act 2003. In this matter the Applicant relied on Section 32 (2) (a) which is “either of the parties is, at the time of the marriage, lawfully married to some other person.” There was no evidence in this matter that the Respondent was lawfully married to another person at the time of her legal marriage to the Applicant.
6. The Applicant in fact attempted to expended Section 32 (2) (a) to include that his *wife was already in a relationship prior to legal marriage and had prospects of marrying the other partner*. From the evidence of the parties this Court finds that neither party was at the time of their marriage, lawfully married to some other person. The Respondent informed the Court that she

was in a relationship prior to her marriage to the Applicant. The relationship ended in July 2022 prior to the family of the Applicant visiting her residence in Nadi. The parties married in November 2022. According to the Respondent she was not in a de facto relationship and she did not hide her relationship with another to the Applicant. In this matter the Applicant has not provided substantive evidence that the Respondent was in a de facto relationship. There is no evidence before this Court that the Respondent was married to someone else as is alleged by the Applicant in his application.

7. For the reasons given herein the Application for an Order seeking nullity is dismissed.

**Court Orders:**

- (i) **The Application for Nullity is dismissed.**
- (ii) **No orders as to Costs.**

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Chaitanya Lakshman

**Acting Puisne Judge**

4<sup>th</sup> August 2023