

IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA

APPELLATE JURISDICTION

CASE NUMBER:	22/LTK/0002
[ORIGINAL NUMBER]:	[21/BA/0091]
BETWEEN:	KESHAV
AND:	KITIANA
Appearances:	<i>Ms. N. Chand for the Appellant</i> <i>Respondent in Person.</i>
Date/Place of Judgment:	<i>Tuesday 21 January 2025 at Suva.</i>
Judgment of:	<i>Hon. Madam Justice Anjala Wati</i>
Category:	<i>All identifying information in this ruling have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarities to any persons is purely coincidental.</i>
Anonymized Case Citation:	KESHAV v KITIANA – Fiji Family High Court Case number: 22LTK0002
<p>A. <u>Catchwords:</u></p> <p><u>FAMILY LAW</u> – <u>DISSOLUTION OF MARRIAGE</u> – <i>Had the parties’ marriage broken down irretrievably as established by 12 months separation preceding the date of the filing of the application for an order for dissolution of marriage to have been granted by the Family Division of the Magistrate’s Court.</i></p> <p>B. <u>Legislation:</u></p> <p>1. <i>Family Law Act 2003 (“FLA”): <u>s. 30.</u></i></p>	

Cause

1. The husband appeals against the order for dissolution of marriage. The Family Division of the Magistrate's Court had issued a conditional order for dissolution of marriage which was to become final after 30 days.
2. Given the appeal, I had ordered that the dissolution of marriage not be registered by the Registrar of Births, Deaths and Marriages.

The Appeal

3. The husband contends that the Court below erred in not considering the husband's interest and in interpreting s.30 of the Family Law Act 2003 in dealing with the application for dissolution of marriage. His position is that the marriage had not broken down irretrievably. He says that although there was separation for over 12 months, the parties to the marriage used to meet each other as husband and wife. He also says that there was possibility of reconciliation between the parties.

Law and Analysis

4. I will start with the legal provision on dissolution of marriage. S.30 of the FLA reads:-

“(1) An application under this Act by a party to a marriage for an order for dissolution of the marriage must be based on the ground that the marriage has broken down irretrievably.

(2) Subject to subsection (3), in a proceeding instituted by an application, the ground will be held to have been established, and an order for dissolution of the marriage must be made, if, and only if, the court is satisfied that the parties have separated and have thereafter lived separately and apart for a continuous period of not less than 12 months immediately preceding the date of the filing of the application for dissolution of marriage.

(3) An order for dissolution of marriage will not be made if the court is satisfied that there is a reasonable likelihood of cohabitation being resumed.”

5. When the husband was served with the application for dissolution of marriage, he did not file his response to contest that the marriage had not broken down irretrievably. Neither the Court, nor the wife, was put on notice that the application was contested. The Court however still granted him a hearing and enquired from him his response to the application. He said that he disagreed with the application. He admitted to the Court that he and his wife were not living together for over a year. He however stated that despite the separation, the parties used to meet each other.

6. The wife informed the Court below that the separation was for over a year and that they never lived together after that. She also informed the Court that the parties had gone for counselling but they could not reconcile.
7. At the appeal hearing, the husband informed the Court that despite the separation, the parties would still meet. He insinuated that the meeting with each other shows that they did not separate. The wife does not deny meeting the husband. Her position is that they had met to see if the relationship could be worked out but they could not reconcile.
8. The Court records indicate that the parties had gone for counselling but that they could not reconcile. The wife is adamant that she will not reconcile. She does not want to live with the husband anymore.
9. I find that given the information before it, the Court below was correct in arriving at a finding that parties' marriage had broken down irretrievably in that they had separated for more than 12 months preceding the date of the filing of the application for dissolution of marriage. They did meet after the separation. The purpose was to see if the marriage could be saved. It could not.
10. If there was reconciliation, there would be cohabitation. They did not cohabit after separation. The meeting after separation did not establish cohabitation or reconciliation. The continued separation established that the marriage had broken down irretrievably.
11. In his application to stay the conditional order, the husband says that they had never separated. He says that he was working on an Island and for that reason the wife used to stay at her mother's place. Whilst he was away at work on an Island, the wife filed for a divorce. He says that when he was spending time with her at the hotel, she informed him of the divorce. He was surprised.
12. He also says that he could not come to Court due to the lockdown and the Court granted the order for dissolution of marriage, which is unfair. He deposed in his affidavit that his marriage had not broken down irretrievably and they were likely to resume cohabitation.
13. I do not find the husband to be honest in his deposition. He says that he could not come to Court when the dissolution of marriage was granted. The Court record shows that he was present and told the Court that although they were separated, they used to meet each other.

14. Even at the appeal hearing, the husband did not indicate that he was not in Court when the order for dissolution of marriage was made. I find that he was in Court. He did not make correct representations to this Court at the time of making the application for stay of the conditional order.
15. He says that he was surprised when being told about the divorce by the wife. I find that incredible. He knew about the application at all times. He was even served with the application for dissolution of marriage. He does not challenge service. How could he then be shocked or surprised?
16. Further, both at the hearing in Court below and the appeal hearing, the husband he did not contest the separation contrary to what he does in the application for stay of the conditional order. His only contention at both the hearings was that the meeting after separation established that there was no separation. His statements in the affidavit and in the Court is contradictory.
17. The husband's position that reconciliation would have occurred is untenable given the wife's action in refusing to reconcile despite attempts being made by the parties.

Final Orders

18. In the final analysis, I do not find any merits in the appeal and I dismiss the same.
19. The Registrar of the Family Division of the High Court, Lautoka is to now process the final order for registration at the Registrar, Births, Deaths and Marriages Office.
20. Each party is to bear their own costs of the appeal proceedings.

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Hon. Madam Justice Anjala Wati

21.01.2025

To:

1. ***Raikanikoda & Associates for the Appellant.***
2. ***Respondent in Person.***
3. ***File: Family Appeal Case Number: 02 of 2022 [21/BA/0091].***