

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

**AT SUVA**

**ORIGINAL JURISDICTION  
PRINCIPAL RELIEF**

**Case No: 0868/SUV/2007**

**E S R and S S  
[Annulment of Marriage]**

Counsel for the Applicant: Mr Ram Chand

Date of Hearing: 20/03/08

Date of Judgment: 20/03/08

**JUDGMENT**

**1. Details of Marriage Certificate**

This application for nullity is made by E S R in respect of her marriage to S S which was solemnized on 25 August 2005 at the Suva Registry of the Registrar of Births, Deaths and Marriages in Fiji. The Marriage Certificate describes Ms R as a student and spinster aged 19 years, her date of birth being January 1986. Mr S is described as a chef and bachelor, his age as 22 years and date of birth as May 1983. His usual place of residence is stated as an address in Aotearoa/New Zealand. Ms R's usual place of residence is an address in Tailevu, Fiji.

1.1 Both Ms R and Mr S are Fiji Islands citizens, with Ms R present in the Fiji Islands at the making of the application.

1.2 The application was made on 30 October 2007.

**2. Ground of Nullity**

The application lists 'party already married' as the ground of nullity. This arises under section 32 of the *Family Law Act 2003*, where an application for an order of nullity must be upon the ground that the marriage is void (s. 32(1)). Section 32(2) goes on to list the various bases upon which the Court has power to determine a marriage is void, including where –

(a) either of the parties is, at the time of the marriage, lawfully married to some other person; ...

2.1 Mr S did not object to the nullity application and consistent with section 187 of the Family Law Act, he and Ms R provided an Affidavit to the Court in respect of the application.<sup>1</sup> This was useful to the Court in providing information about the

---

<sup>1</sup> Section 187 says that evidence of 'any material matter' may be given on Affidavit at the hearing of proceedings other than proceedings for principal relief (divorce or annulment), and proceedings for

circumstances in relation to which the ground is nominated, rather than merely the blunt statement from the application form that the reason is 'party already married'. As I have previously observed, the form is not particularly helpful to the Court or to parties. This is so especially as in family matters and particularly annulments parties may be unlikely to be represented.

2.2 In my view, the form should at least provide an incentive to a party or joint parties to indicate in their own words the reasons for the selection of a particular ground. It is not unusual for those making application to be confused about the meaning of the statements setting out each ground and sometimes to select an inappropriate ground due to this confusion. The way the grounds are stated gives rise to this and the problem becomes clear when the parties appear in Court unless the Court takes steps prior to the hearing to clarify the grounds as I did in this case. The form does not provide for the most effective and efficient approach to accessing the law.

2.3 In the present case, Ms R having listed 'party already married', before proceeding to hearing I made the following orders:

### **ORDERS**

1. Within 14 days the Applicant to serve and file an Affidavit:
  - (a) if the Husband was married to someone else prior to the marriage to the Applicant – an Affidavit and copy of marriage certificate of the Husband to that other person;
  - (b) if the Husband was not married to someone else – an Affidavit stating the ground on which the application is made and the basis for that ground.
2. The Husband to have 14 days after receipt of the Affidavit to serve and file an Affidavit in reply if any.
3. The date of hearing [3<sup>rd</sup> January] be vacated and a date to be fixed once the time for lodging of the Husband's Affidavit has expired.
4. Liberty to apply.

2.4 It would not have assisted the Application had the hearing gone ahead, with a request having to be made at that time for documentary evidence as to Mr S's previous marriage. This highlights the need for the form to be more informative and clear to parties as to what may be required for a nullity application to proceed.

### **3. Affidavit Evidence of the Parties**

As the applicant, Ms R provided the principal Affidavit. Mr S's Affidavit simply states that he is the Respondent, has received a copy of Ms R's Affidavit and has perused it and its Annexures, and that he 'admit[s] and agree[s] to all the contents as contained in the ... Affidavit and [has] no objection for [the] marriage [being] nullified at the earliest': Affidavit of S S, sworn 25 February 2008

---

principal relief that are undefended at the time of the hearing. Mr S did not defend against the application. Rather, by letter of 26 November 2007 to Ms R's Solicitors he stated he had no objection to the marriage being nullified: Annexure 'G' to Ms R's Affidavit.

3.1 Ms R's Affidavit evidence is as follows:

- She married Mr S in accordance with the information in the Marriage Certificate and particularly, as a spinster whilst Mr S 'purportedly described himself as a "Bachelor"'.
- Following the marriage, Ms R joined Mr S in Aotearoa/New Zealand.
- Ms R applied for a work permit in Aotearoa/New Zealand whereby she received correspondence from the Department of Immigration requesting 'evidence and information as to whether [she] and [Mr S were] living in a genuine and a stable relationship': Letter of 18 April 2007, Annexure 'B'.
- On 23 April 2007, Ms R received a further letter from the Department of Immigration requesting her to provide Mr S's divorce documents in respect of his previous marriage: Letter of 8 May 2007, Annexure 'C'
- On 8 May 2007, another letter from the Department of Immigration was received by Ms R, this stating that Mr S 'at the time of his marriage to [her] falsely listed his status as a "Bachelor"'. This letter states further: 'As your sponsor was not divorced from his first wife at the time of his marriage to you on 25 August 2005, it appears that this marriage is not a lawful marriage': Letter of 8 May 2007, Annexure 'D', para 4
- Ms R's work application was then processed by the Department of Immigration under the partnership policy: Annexure 'D'
- On 6 June 2007, Ms R received advice by letter from the Department of Immigration, stating her application for the work permit was approved under the partnership policy and stating further:

We acknowledge your reply to your letter dated 8 May 2007 and note that although your sponsor is now divorced, the divorce was not sealed until after your marriage took place in Fiji on 25 August 2005. This means that your marriage in Fiji on 25 August 2005 is not a legal marriage and you are required to make the appropriate arrangement to correct this with the authorities in Fiji. Please produce evidence that you have done this with your next application: Letter of 6 June 2007, Annexure 'E'

3.2 Ms R says that Mr S 'did not relate to [her] his true marital status' when she and he married in Fiji. She states that she has made this application for nullity 'in order to correct the anomalies' indicated in her Affidavit and advised to her by the Aotearoa/New Zealand Department of Immigration.

3.3 In the Affidavit Ms R states that she is 'unable to provide the marriage certificate' of Mr S's marriage to N Se (Mr S's (now) previous wife) as she has 'difficulty in obtaining one from New Zealand'. However, she sets out a number of matters, substantiated by further Annexures to her Affidavit, put forward as confirmation of Mr S's previous marriage. These include:

- Application and Affidavit by one party for an order dissolving a Marriage – filed by Ms Se and confirming that the previous marriage took place on 7 February 2002: Annexure ‘H’ to Ms R’s Affidavit.
- Photocopy of Order of the Family Court of Aotearoa/New Zealand (Waitakare in Auckland) being the Order dissolving the Marriage between Ms Se and Mr S – dated 20 October 2006: Annexure ‘I’ to Ms R’s Affidavit
- Letter of 8 May 2007 wherein Immigration Officer Ms Ruth Meek of the Aotearoa/New Zealand Department of Immigration acknowledges receipt of a copy of the Order dissolving Marriage between Mr S and Ms Se sealed 20 October 2006: Annexure ‘D’ to Ms Rai’s Affidavit

3.4 Ms R’s Affidavit then says she wishes her marital status to revert to ‘spinster’ to enable her to enter into a legal and valid marriage with Mr S and to enable the Aotearoa/New Zealand Department of Immigration to process her application successfully so that she can remain in that country permanently. She observes that the Department of Immigration has advised and assisted her to ‘continue living in partnership with Mr S and to rectify and regularise [her] unlawful marital status by making appropriate arrangements to correct [this] with the authorities in Fiji and to provide evidence with [her] next application with the Department in New Zealand in order to remain there legally’: Affidavit, paras 16, 17

3.5 Ms R states further that she does not wish ‘to be regarded as a Divorcee because it is no fault of [hers] that [she] entered into [the] marriage [with Mr S in the circumstances] as certain facts as [she] outline[s] were beyond [her] knowledge’: Affidavit, para 28

3.6 An Order for Nullity is, she states, sought by her on the material contained in the Affidavit and principally on the following grounds:

- That Mr S was previously married to N Se, the marriage not having been dissolved when he married Ms R;
- That Mr S did not disclose his true marital status to Ms R when they married;
- That Ms R was misled into the marriage by Mr S through his not disclosing to her the true facts in relation to his previous marital status with Ms Se;
- That Ms R’s marriage to Mr S on 25 August 2005 is not a lawful marriage: Affidavit para 19

#### **4. The Law**

Under Fiji law, a person legally married to another is not entitled to enter into another marriage so long as the former marriage is subsisting. A marriage subsists until it is formally ended through the legal process by annulment or divorce, or through the death of one of the parties.

4.1 Amongst other matters, the Family Law Act emphasises the importance of marriage, observing that the courts exercising jurisdiction under the Act have a mandatory obligation to have regard to:

- (a) the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life;
- (b) the need to give the widest possible protection and assistance to the family as the natural and fundamental group unit of society, particularly while the family is responsible for the care and education of dependent children;
- (c) the need to protect the rights of children and to promote their welfare;
- (d) the means available for assisting parties to a marriage to consider reconciliation or the improvement of their relationship to each other and to the children of the marriage;
- (e) the Convention of the Rights of the Child (1989) and the Convention on the Elimination of all Forms of Discrimination Against Women (1979).

4.2 Albeit a Marriage Certificate attesting to the marriage of Mr S with his (now) former wife was unable to be produced to the Court, the material which has been produced affirms that at the date of the marriage between Ms R and Mr S, Mr S was married to another person, namely Ms Se. Ms R's Affidavit and Annexures set out clearly the basis upon which the application for nullity is made, and why 'previous marriage' is the ground notified in the application.

4.3 Because it is serious for a person to marry another person when already married, it is important to include the following remarks.

4.4 I note that Mr S was very young at the time of the marriage to Ms Se – 19 years of age. This provides no 'excuse' for his concealing his marital status from Ms R, nor for his misleading the Fiji Registrar of Births Deaths and Marriages. He was 22 years of age when he went through the marriage ceremony with Ms R and albeit it is understood from Counsel that action was on foot or at least at hand to end that marriage by divorce, the divorce did not in fact go through the Aotearoa/New Zealand Court until, it appears, one year later. Even had it been immediately pending, this would not have justified Mr S's entry into marriage with Ms R.

4.5 It is important that Ms S recognise that in doing as he did he placed himself in a position where not only was he being untruthful to his intended wife, Ms R, but he ran the risk of the authorities taking action against him. As I have said, it is unlawful to enter into marriage knowing that you are already married to someone else.

4.6 Taking into account all the matters set out in Ms R's Affidavit and the submissions made by Mr Ram Chand, Counsel for Ms R, it is axiomatic that the marriage now in question, that between Ms R and Mr S taking place in Fiji on 25 August 2005, is void and of no effect. An annulment must issue.

4.7 This means that Ms R is a person who has never been lawfully married and her status is that of spinster. By the orders below, she is entitled to describe herself as a 'spinster' and to have herself so described should she marry Mr S as it is understood is

her and his intention and wish. Mr S, of course, must describe himself not as a bachelor but as a divorced person.

**Declaration and Orders**

1. The marriage of E S R and S S taking place the Suva Registry in the Republic of the Fiji Islands on 25 August 2005 is declared void under section 32 of the Family Law Act.
2. The marriage is thereby annulled.
3. E S R now resumes the lawful status of 'spinster' a status which by reason of the nullity of the marriage was and at all times has been and is now her true lawful status until and unless she marries.
4. No order as to costs.



**Jocelynn A. Scutt**  
**Judge**  
20/03/08