
IN THE FAMILY DIVISION OF THE HIGH COURT

AT LAUTOKA

ORIGINAL JURISDICTION

CASE NUMBER:

10/NAD/0062

BETWEEN:

NAREN

APPLICANT

AND:

ARTI

RESPONDENT

Appearances:

Applicant in Person.

No appearance of Respondent.

Date/Place of Judgment:

Thursday, 20th January, 2011 at Lautoka.

Judgment of:

The Hon. Justice Anjala Wati.

Category:

All identifying information in this judgment have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarities to any persons is purely coincidental.

Anonymised Case Citation:

NAREN v ARTI - Fiji Family High Court Case Number:
10/NAD/0062.

JUDGMENT OF THE COURT

MARITAL STATUS PROCEEDINGS - APPLICATION FOR AN ORDER FOR NULLITY - application by husband on the ground that after legal marriage no traditional marriage took place and so his marriage was not solemnised properly-tlre ground not established-application dismissed with no order as to costs.

Legislation

Family Law Act No. 18 of 2003.

Marriage Act, Cap.50.

The Application

1. This is an application by the husband to have his marriage solemnised at Suva Registry on May, 2009 nullified on the ground that the marriage was not solemnised properly.

The Response

2. The wife was served with the application but she did not file any response nor did she appear in court to defend the matter.

The Law

3. Section 32 (1) of the Family Law Act No. 18 of 2003 states that a party can apply for an order for nullity of the marriage on the grounds that the marriage is void. There are certain grounds under which a marriage can be held to be void. In this case the ground is alleged to be pursuant to section 32 (2) (c) of the Act.
4. Section 32 (2) (c) of the Family Law Act No. 18 of 2003 states that a marriage is void if there is failure to comply with the requirements of the law of that place with respect to the form of solemnization of marriages.
5. The formalities of this marriage are governed by the Marriage Act, Cap. 50, Laws of Fiji.
6. The basic requirements in respect of solemnization of this marriage are stipulated in ss. 16 to 28 of the Marriage Act, Cap. 50.
7. I do not find it necessary to restate the provisions as there was no evidence that the marriage was not solemnized in terms of the Marriage Act, Cap. 50.

The Evidence

8. The husband gave evidence to the effect that his marriage was arranged. After the legal marriage, the wife did not want to get married traditionally. There was no traditional marriage and so his marriage was not solemnised properly.

The Determination

9. There is no evidence that the civil marriage was not solemnised properly. It is clear from the evidence of the applicant that he means the term "marriage" to be a religious marriage. However the marriage referred to in section 32 (2) (c) of the Family Law Act is the civil marriage solemnized and registered under the provisions of the Marriage Act, Cap. 50 and not the religious marriage.
10. The use of the terms "*comply with the requirements of the law of that place with respect to the form of solemnization*" in s. 32 (2) (c) clearly indicates that the marriage that is referred to is the registered marriage solemnized under the Marriage Act, Cap 50 because in Fiji marriages are solemnized under the said Marriage Act and only those marriages duly solemnized under the Act are given legal recognition.
11. Section 38 of the Marriage Act, Cap 50 is relevant. It reads that:-

"Every marriage duly solemnized under the provisions of this act unless therein expressly declared to be void shall be deemed to be good and valid in law until the contrary is proven."
12. In Fiji religious marriages are recognised as an additional ceremony which has no legal effect. It does not supersede or invalidate the marriage which must be first solemnized under the provisions of the Marriage Act. Religious Marriages can only be performed after the civil/legal marriage. Section 36 of the Marriage Act, Cap. 50 is relevant. It states that:-

"At any time after the solemnization of a marriage by the Registrar-General or district registrar, the parties to such marriage may, if they so desire, upon the production of the certificate of the Registrar-General or district registrar as to the marriage, have a further marriage service performed according to the form ordained or use by the religion or religious denomination to which either or each of such parties belong."

Nothing in the reading or celebration of a marriage service under the provisions of subsection (1) shall supersede or invalidate any marriage previously solemnized nor shall such reading or celebration be entered as a marriage in the register of marriages."
13. There is no evidence that the marriage to which our Act refers to was not solemnized properly.
14. The application for an order for nullity must therefore be refused for the above reasons.

The Final Orders

15. The application for an order for nullity of marriage is refused.
16. There shall be no order for costs.

ANJALA WATI

Judge

20.01.2011

To:

1. *Applicant.*
2. *Respondent.*
3. *File Number. 10/NAD/0062*