

<b>IN THE FAMILY DIVISION OF THE HIGH COURT</b>	
<b>CASE NUMBER:</b>	10/LTK/0378
<b>BETWEEN:</b>	DIVYA
<b>AND:</b>	VICKY
<b>Appearances:</b>	No appearance of Applicant and Respondent
<b>Date/Place of judgment:</b>	Wednesday, 11 <sup>th</sup> March, 2011 at Lautoka
<b>Judgment of:</b>	The Hon. 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 similarities to any persons is purely coincidental.</i>
Anonymised Case Citation:	DIVYA V VICKY – Fiji Family High Court Case number: 10/LTK/0378
<b>JUDGMENT OF THE COURT</b>	
<b>Catchwords</b>	
MARITAL STATUS PROCEEDINGS – APPLICATION FOR ORDER FOR NULLITY – application by wife on the ground that she did not provide her real consent to the marriage because her consent was obtained under duress by her parents- the ground of duress not established – application dismissed with no order as to costs.	
<b>Legislation</b>	
<i>Family Law Act No. 18 of 2003.</i>	
<b>Cases/Texts</b>	
<i>Scott (falsely called Sebright) v. Sebright (1886) 12 P.D 2.</i>	
<i>Cooper (falsely called Crane) v. Crane [1891] P. 369.</i>	
<i>Szechter (orse, Karsov) v. Szechchter [1971] P. 286</i>	
<i>Re Meyer [1971] P. 298</i>	
<i>Hirani v. Hirani (1982) 4 Fam. L. R. (Eng.) 232</i>	
<i>In the Marriage of S(1980) 42 f.l.r. 94.</i>	
<i>In the Marriage od Teves and Compomayor (1994) 122 FLR 172</i>	

### The Application

1. This is an application by the wife to have her marriage solemnised at , Nasinu in January, 2010 nullified on the ground that she did not provide her real consent to the marriage as the same was obtained under duress.

### The Response

2. The husband was served with the application but he did not file any response nor did he 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 the first limb of section 32 (2) (d) (i). I will have to state the law in respect of the ground alleged. The first limb of section 32 (2) (d) (i) of the Family Law Act No. 18 of 2003 states that a marriage is void if the consent of either party to the marriage is not a real consent because it was obtained by duress.
4. Duress has been defined as follows:-

- State of mental incompetence, whether through natural weakness of intellect or from fear (whether reasonably held or not) that a party is unable to resist pressure improperly brought to bear: (Scott (falsely called Sebright) v. Sebright (1886) 12 P.D. 21.)
- A person's mind is so perturbed by terror that he or she does not understand what he/she was doing or alternatively if he/she understood what he/she was doing then their powers of volition had been so paralysed that he/ she succumbed to another's will: (Cooper (falsely called Crane) v. Crane [1891] P. 369.)
- If there is a threat of immediate danger to life, limb or liberty: (Szechter (or se, Karsov) v. Szechter [1971] P. 286.)

- If there is a threat of immediate danger to life, limb (including serious danger to physical or mental health), or liberty: (Re Meyer [1971] P. 298 at pp. 306 and 307.)
- If the threats, pressure, or whatever it is, is such as to destroy the reality of consent and overbears the will of the individual: (Hirani v. Hirani (1982) 4. Fam. L.R. (Eng.)-232.)
- If one is caught in a psychological prison of family loyalty, parental concern, sibling responsibility, religious commitment and a culture that demands filial obedience. If these matters operate and a party has no consenting will then there is duress: (In the Marriage of S (1980) 42 F.L.R 94.)
- Duress does not necessary need to involve a direct threat of physical violence as long as there is sufficient oppression from whatever source, acting upon a party to vitiate the reality of their consent. It must be duress at the time of the marriage ceremony and not duress at some time earlier unless the effect of this continues to overbear the will of a party to a marriage ceremony at the time of the ceremony itself: (In the Marriage of Teves and Campomayor (1994) 122 F. L. R172)

#### The Evidence

5. The wife did not appear to substantiate the ground stated in the application but her father did, and he gave the following evidence:-

- He was looking for a boy so that he could get his daughter married.
- The respondent and his family arrived at his place to propose marriage. He and his family liked the boy so they agreed to get their daughter married. She was informed and initially she refused but he said to her that she was getting old and she ought to get married. She then agreed. The civil and the traditional marriage took place.
- His daughter went to the husbands place and in a days time noticed that the husband was drinking alcohol and also socialising with other girls. She did not like this, came back home and flew back to Australia as she was living there. She therefore wants the marriage to be nullified.

### The Determination

6. This is yet another case which is hunting for a ground to nullify the marriage. There was no pressure on the applicant. She decided to adhere to her parent's suggestion to get married as she was getting old. That does not amount to duress.
7. She was 31 years of age and financially dependent and living on her own in Australia. She came from Australia to get married, when she was quite capable of resisting the marriage. She is already dependent and lives separately from her parents. She is a divorcee and she has gone through the institution of marriage once before. She should appreciate that the decision to marry requires serious thoughts. The father has come out with the true reason why nullity is desired. The husband started drinking alcohol and socialising with girls which the wife did not like and decided to end the marriage. These are incidents arising after the marriage which is the real cause of the breakdown. These incidents cannot be used to vitiate the consent of the wife which I find was properly granted without any pressure or duress by the parents.

### The Final Orders

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

■

ANJALA WATI

Judge

11.03.2011

**7b:**

1. Applicant.

2. Respondent.

3. File Number :10/Ltk/0378.