

IN THE FAMILY DIVISION OF THE HIGH COURT

AT LAUTOKA

CASE NUMBER: 14/LTK/0285

BETWEEN: SINDURTA
APPLICANT

AND: UDAY
RESPONDENT

Appearances: Applicant in Person.

Respondent in Person.

Date/Place of Judgment: Friday, 29 August 2014 at Lautoka.

Judgment of: The Hon. Justice Anjala Wati.

Category: The Hon. Madam Justice Anjala Wati.

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: SINDURTA V UDAY- Fiji Family High Court Case Number:
14/LTK/0285.

JUDGMENT

MARITAL STATUS PROCEEDINGS – APPLICATION FOR AN ORDER FOR NULLITY – application by wife on the ground that her marriage was not properly solemnised and that the parties are within a prohibited relationship- no evidence tendered to establish the grounds- application dismissed with no order as to costs.

Legislation:

Family Law Act No. 18 of 2003 (“FLA”).

Marriage Act Cap. 50 (“MA”).

Cases:

1. *Haines v. Jeffreys* (1696) 1 Com. 2; 92 E.R. 928.
2. *R. v. Chafin* (1702) 3 Salk. 66; 91 E.R. 695.

Case Background

1. On 12 June 2014 the wife filed an application for an order that her marriage which was solemnised in 2013 be nullified on the grounds that the said marriage was not properly solemnised and that the parties are within a prohibited relationship.

The Law

2. Under s. 32 of the Family Law Act, a party can apply to have the marriage nullified on the grounds that the marriage is void. A marriage is void if and only if:-
 - (a) *Either of the parties is, at the time of the marriage, lawfully married to some other person;*
 - (b) *The parties are within a prohibited relationship;*
 - (c) *The marriage is not a valid marriage under the law of the place where the marriage takes place, by reason of failure to comply with the requirements of the law of that place with respect to the form of solemnization of marriages;*
 - (d) *The consent thereto of either of the parties is not a real consent because-*
 - (i) *It was obtained by duress or fraud;*
 - (ii) *That party is mistaken as to the identity of the other party or as to the nature of the ceremony performed; or*
 - (iii) *That party is mentally incapable of understanding the nature and effect of the marriage ceremony; or*
 - (e) *Either of the parties is not of marriageable age.*

3. Each country's law will specify how a marriage must be solemnized. In Fiji, the rules governing solemnization is listed in the MA, ss. 16 to 28. If those rules are not complied with, a marriage is void.
4. The provision on what constitutes a prohibited relationship is set out in s. 32 (3). In short, the section provides that a person cannot marry his or her ancestor or descendant, or brother or sister of the whole or half blood. An ancestor is anyone from whom a person is descended, including a parent. In practical terms this means:

A man cannot marry his:-

- (a) Grandmother;
- (b) Mother;
- (c) Sister or half sister;
- (d) Daughter; or granddaughter;

A woman cannot marry her:-

- (a) Grandfather;
- (b) Father;
- (c) Brother or half-brother;
- (d) Son;
- (e) Grandson.

5. By s. 32(4) an adopted child is considered to be the natural child of his or her adoptive parents as well as of his or her natural parents for the purposes of determining a prohibited relationship.

6. By s. 32(6) (a), an annulment, cancellation or discharge of an adoption order does not affect the continued application of the rules concerning prohibited relationships. By s. 32(6) (b), these rules apply cumulatively in the event of the adoption of a child on more than one occasion.
7. It is well established at law that a relationship between or through an ex-nuptial child and his or her parents is sufficient to bring parties within the prohibited relationships of marriage: *Haines v. Jeffreys* (1696) 1 Com. 2; 92 E.R. 928; *R. v. Chafin* (1702) 3 Salk. 66; 91 E.R. 695; *R. v. Inhabitants of Brighton* (1861) 1 B. & S. 447 at 459; 121 E.R. 782 at 786.

The Evidence

8. Only the wife gave evidence in this case. The husband refused to give any evidence. The wife stated that after the civil marriage there was no traditional marriage. The parties have never cohabited. They both lived separately with their parents.

The Determination

9. The wife's evidence does not meet the grounds upon which she has filed this application for annulment of marriage. She has failed to give any evidence to suggest that the marriage was not solemnised according to the laws of the country. The marriage referred to in the FLA is the civil marriage and not the traditional marriage.
10. The marriage that is given legal effect is the civil marriage and not the traditional one. Traditional marriages are permitted as additional ceremonies but do not have any legal effect under the MA.
11. The wife has also not tendered any evidence which indicates that the parties are within the prohibited relationship as outlined above.
12. The application is ill-founded.

Final Orders.

13. I therefore dismiss the application for an order for nullity.
14. There shall be no order as to costs.
15. The applicant shall have a month within which she can appeal against the decision dismissing her application for an order for nullity.

ANJALA WATI
JUDGE
29.08.2014

To:

1. **Applicant in Person.**
2. **Respondent in Person.**
3. **File Number: 14/LTK/0285.**