

IN THE FAMILY DIVISION OF THE HIGH COURT

AT SUVA

CASE NUMBER: 13/SUV/0434

BETWEEN: ANNE

APPLICANT

AND: NABI

RESPONDENT

Appearances: Ms. Drova for the Applicant.
Respondent in Person.

Date/Place of Written Judgment: Friday, 4 July 2014 at Suva.

Coram: 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 similarity to any persons is purely coincidental.

Anonymised Case Citation: Anne v. Nabi - Family Case number 434 Suv 2013

JUDGMENT

MARITAL STATUS PROCEEDINGS – APPLICATION FOR AN ORDER FOR NULLITY – application by wife on the ground that her consent to marry was not a real consent as it was obtained by duress - the ground for nullity not established- application for an order for nullity refused-no order as to costs.

Legislation:

Family Law Act No. 18 of 2003.

Marriage Act Cap. 50.

Cases/Texts Referred To:

Brodie v. Brodie [1917] P. 27.

H. v. H. [1954] P. 258.

Silver (orse. Kraft) v. Silver [1955] 1 W. L. R. 728.

Morgan v. Morgan (orse. Ransom) [1959] P. 92.

Scott v. Scott (orse. Fone) [1959] P. 103.

Szechter (orse. Karsov) v. Szechter [1971] P. 286.

In the Marriage of Suria (1977) 29 F. L.R. 308.

In the Marriage of Otway [1987] F.L.C. 91-087.

Vervaeke (formerly Messina) v. Smith [1983] 1 A. C. 145.

In the Marriage of Hosking (1994) 121 F.L.R. 196.

Griffith v. Griffith [1994] I.R. 35.

Leonards v. Leonards (1961) 2. F.L.R. 111.

Parojcic (orse. Ivetic) v. Parojcic [1958] 1 W. L. R. 1280.

Scott (falsely called Sebright) v. Sebright (1886) 12 P.D. 21.

Cooper (falsely called Crane) v. Crane [1891] p. 369.

Re Meyer [1971] P. 298.

Singh v. Singh [1971] p. 226.

Singh v. Kaur (1981) 11 Fam. Law 152.

Hirani v. Hirani (1982) 4 Fam. L.R (Eng.) 232.

In the Marriage of S (1980) 42 F.L.R. 94.

In the Marriage of Teves and Campomayor (1994) 122 F.L.R. 172.

Dickey, A, "Family Law" 4th Edition (2002) Lawbook Co; Sydney.

Case Background

1. On August 2013 the wife filed an application for an order that her marriage which was solemnised at Suva Registry on August 2013 be nullified on the ground that she did not provide her real consent to the marriage as the same was obtained by duress.

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.
3. The first limb of section 32 (2 (d) (i) of the Family Law Act 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. It is fundamental to marriage that both parties consent to being joined together as husband and wife. A marriage is a "*voluntary union*". The concept of voluntariness is an

essential ingredient in the definition of marriage under the laws of Fiji Islands: s. 15: *Marriage Act*:

"Marriage in Fiji shall be the voluntary union of a man and a woman to the exclusion of all others".

5. What is it that each party to the marriage must give real consent to? There are two possibilities here. Either the parties are required to consent simply to entering into formal marriage relationship or they are required to consent to living with the other party in the way normally expected of a husband and wife.
6. Australian and English Courts have always refused to take notice of any understanding by parties to a marriage concerning the future course of their marriage: *Brodie v. Brodie* [1917] P. 271; *H. v. H.* [1954] P. 258 at 267-269; *Silver (or. Kraft) v. Silver* [1955] 1 W. L. R. 728; *Morgan v. Morgan (or. Ransom)* [1959] P. 92; *Scott v. Scott (or. Fone)* [1959] P. 103; *Szechter (or. Karsov) v. Szechter* [1971] P. 286 at 296; *In the Marriage of Suria* (1977) 29 F. L.R. 308 at 314; *In the Marriage of Otway* [1987] F.L.C. 91-087.
7. There is accordingly no doubt that the consent is simply consent to enter into a formal marriage relationship, and nothing more. As Lord Hailsham said in *Vervaeke (formerly Messina) v. Smith* [1983] 1 A. C. 145 at 152, concerning the corresponding law in England:

"The fact is that in the English law of marriage there is no room for mental reservations or private arrangements regarding the parties' personal relationships once it is established that the parties are free to marry one another, have consented to the achievement of the married state and observed the necessary formalities".
8. Lindenmayer J put it in the more recent Australian case of *In the Marriage of Hosking* (1994) 121 F.L.R. 196 at 207:-

"Should a court ever be entitled to say that a party's reasons for marriage are so improper that it will declare their marriage void? The answer, in my view, must be a resounding 'no'".
9. What constitutes duress, however, is a matter of degree, and herein lies the basic problem concerning this part of the law on nullity. As Haugh J. observed in the Irish case of *Griffith v. Griffith* [1994] I.R. 35 at 42, duress may begin from a gentle form of pressure and end up with physical violence accompanied by threats of death.

10. The courts have consequently had to determine at what point constraint upon a person to marry is so severe as to nullify that person's consent to the marriage.
11. In considering this problem, courts have consistently distinguished duress from lesser forms of pressure. So in *Leonards v. Leonards* (1961) 2. F.L.R. 111 a reluctant bridegroom claimed to have married simply because he had wanted to placate his father and mother, who desired the marriage, and that he was a tormented person whose heart was not in what he was doing, and that he was under a considerable emotional stress. The court held that pressure of this kind did not constitute duress.
12. On the other hand, in *Parojic (or. Ivetic) v. Parojic* [1958] 1 W. L. R. 1280, a father, a Yugoslav refugee, ordered his daughter to marry a man chosen by him, who was another Yugoslav refugee, and he threatened to send her back to Yugoslavia against her wishes if she refused. He even hit his daughter in an argument over her refusal to marry the man in question. The court found that the girl had been terrified into obedience to her father and that the ensuing marriage accordingly void on account of duress.
13. In England, the degree of oppression that constitutes duress for the law of nullity has changed over the years. Until 1970, the two leading cases on this matter were *Scott (falsely called Sebright) v. Sebright* (1886) 12 P.D. 21 and *Cooper (falsely called Crane) v. Crane* [1891] p. 369.
14. In *Scott's* case, a wealthy young lady was induced by her suitor to put her name to a number of bills of exchange to meet some of his accommodation expenses. The young lady was subsequently pressed by discounters to pay these bills, with writs being issued against her and bankruptcy proceedings threatened. As a result of all this, she became both mentally and physically ill. The suitor, a true Victorian bounder, then told the young lady that if she married him he would make appropriate arrangements with the discounters, but if she refused he would not. Moreover, he said that if she refused to marry him he would falsely accuse her to her mother "and in every drawing-room in London" of having been seduced by him. He forcibly took her to a registry office and told her that he would shoot her if she did anything to show that she was not acting of her own free will.
15. The marriage at the registry office was held to be a nullity as the young lady had been reduced by mentally and bodily suffering to a state in which she was incapable of

offering resistance to the respondent's coercion and threats. In particular, the judge held that there can be no consent to marry if a party is in such a mental state of incompetence, whether through natural weakness of intellect or from fear (whether reasonably held or not), that he or she is unable to resist the pressure improperly brought to bear.

16. The facts of Cooper were as Victorian as the previous case. There a man took a young lady to a church, where he had arranged by stealth for marriage to take place. Outside the building he said to her "*you must come into this church and marry me, or I will blow out my brains, and you will be responsible*". The young lady was so alarmed at this, for she knew he was in the habit of carrying a revolver, that she complied with his demand. The judge held that for the wife to avoid the marriage on the ground of duress, she had to show that her mind was so perturbed by terror that she did not understand what she was doing, or alternatively that although she understood what she was doing, her powers of volition had been so paralyzed that she had succumbed to another's will. On the facts of the case, this was not established.

17. From 1970 until 1982, the English courts substantially restricted the nature of the duress that could invalidate a marriage. The leading case in this regard was *Szechter (orse. Karsov) v. Szechter (supra)*. The facts of this case involved both actual imprisonment and a threat of immediate danger to the petitioner's life. The petitioner was a woman in poor health who had been imprisoned in appalling conditions under communist rule in Poland for 'anti-state activities'. Her subsequent marriage was a device, to which the respondent was a willing party, to enable her to leave Poland. There *Sir Jocelyn Simon P.* held that for the purposes of the law on nullity, the cause of the duress had to be a threat of immediate danger to life, limb or liberty. In particular he said:

"It is, in my view, insufficient to invalidate an otherwise good marriage that a party has entered into it in order to escape from a disagreeable situation, such as penury or social degradation. In order for the impediment of duress to vitiate an otherwise valid marriage, it must, in my judgment, be proved that the will of one of the parties thereto has been overborne by genuine and reasonably held fear caused by threat of immediate danger (for which the party is not himself responsible) to life, limb or liberty, so that the constraint destroys the reality of consent to ordinary wedlock".

18. It may accordingly have been because of the special facts in that case, which the judge described as involving "*a situation of hardship brought about by heroism in the teeth of cruelty*

and oppression”, that Sir Jocelyn Simon referred to the need for a threat of immediate danger of life, limb or liberty. However, be that as it may, the formulation of the law was consistently followed in England until 1982.

19. Only two qualifications were judicially suggested to the law as stated in *Szechter (orsee. Karsov) v. Szechter*. The first was that a present likelihood of future danger, rather than a threat of immediate danger, to life, limb, or liberty would suffice and the second was that ‘danger to limb’ includes any serious danger to physical or mental health”: *Re Meyer* [1971] P. 298 at 306-307.
20. During the 12 years from 1970 to 1982, the test of duress in *Szechter (orsee. Karsov) v. Szechter* proved to be very restrictive in many circumstances involving the overbearing of a party’s will. Prominent among these were situations involving arranged marriages. In England, as in Australia, immigrants often wish to continue to practice the social traditions and customs of their children. The question has thus arisen in both countries in recent years of what degree of parental or communal pressure will vitiate an arranged marriage to which a child is an unwilling party.
21. In two English cases concerning arranged marriages, *Singh v. Singh* [1971] p. 226 and *Singh v. Kaur* (1981) 11 Fam. Law 152 the Court of Appeal approved the test laid down in *Szechter* and held that duress would nullify an arranged marriage, like any other, only if the mind of the party was so overborne by fear caused by a threat of immediate danger to life, limb or liberty that the constraint destroyed the reality of the consent to marriage. In neither case was such duress established.
22. In the subsequent case of *Hirani v. Hirani* (1982) 4 Fam. L.R (Eng.) 232, however, the Court of Appeal expressly declined to follow the law as stated in *Szechter*. Without referring to *Singh v. Singh* or *Singh v. Kaur*, the Court of Appeal held that the crucial question was simply “whether the threats, pressure, or whatever it is, is such as to destroy the reality of consent and overbears the will of the individual”. The court expressly held that there was no requirement of any threat to life, limb or liberty in order for there to be duress for the purposes of the law of nullity. In the light of the facts of the case, the Court of Appeal found that the will of a 9 year old Indian woman had been sufficiently overborne by her parents, who had arranged her marriage in order to prevent her marrying a member of another religion, to vitiate her consent and thus invalidate the marriage.

23. The Australian Courts have followed the English definition of duress until in the case of *In the Marriage of S* (1980) 42 F.L.R. 94. There *Watson J.* not only declined to follow the strict test in *Szechter* but went so far as to relax the more liberal principles in *Scott and Cooper*. The facts of the case were that a girl aged 16 succumbed to parental pressure and went through an arranged marriage in a Coptic Orthodox Church in Australia. The girl had been born in Egypt and had come to Australia with her family when she was eight. The marriage had been arranged in accordance with Egyptian Coptic traditions. The girl said in evidence that she had not wanted to go through with the marriage but that her parents had insisted and she could not stand up against them. The judge found that “*she was caught in a psychological prison of family loyalty, parental pressure, sibling responsibility, religious commitment and a culture that demanded filial obedience... if she had ‘ no consenting will’ it was because these matters were operating-not threats, violence, imprisonment or physical constraint”* .

24. *In the Marriage of Teves and Campomayor* (1994) 122 F.L.R. 172, *Lindenmayer J.* had no hesitation in following the decision in the *Marriage of S*. He said:

“ It can be said that duress does not necessarily need to involve a direct threat of physical violence so long as there is sufficient oppression, from whatever source, acting upon a party to vitiate the reality of their consent” .

The judge in this case also emphasized that it is duress at the time of marriage ceremony with which the law of nullity is concerned, 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.

The Evidence

25. The wife and her uncle gave evidence on her behalf. In her evidence in chief the wife stated that:

- *Her parents have separated. Her mother and she lived with her maternal aunt Jane and her husband Naren. She continues to stay with them. Her mother is remarried and has moved away.*

- *She was unsuccessful in Form 6 so she decided to stay home and look for work. She was then 18 years of age. In or about October 2012, she started working in a store in Nausori.*
- *She came in contact with the respondent sometime in January 2013 and this occurred through her job as a cashier. The respondent worked for store in Nausori. She found out his name when they exchanged phone numbers in May 2013 or thereabouts.*
- *After the exchange of phone numbers, the respondent and she would talk over the phone at night and they would also exchange text messages. The respondent would also talk to her during the day at the store.*
- *Initially the respondent introduced himself as Ramu, a Hindu name. She was always under the impression that he was a Hindu but after a month of communication she found out that he was from a Muslim descend.*
- *Over a period of time the respondent and she started meeting for lunch and on 3 occasions she visited his house and on all 3 occasions, his mother was present.*
- *Over a period of time, the relationship turned into one where kisses were exchanged but they did not get sexually involved.*
- *On few occasions the respondent asked her to marry him but she always refused stating that she had no intention to get married at that stage and that she was not ready for marriage. The respondent would always reply that he would wait.*
- *Once when she refused the respondent's proposal for marriage, they did not talk for two days. After this incident, the respondent's mother, concerned about his whereabouts approached her and told her that the respondent had not been returning home at night and that the family had no idea as to his whereabouts. Due to her concern, she assured her that she would speak to the respondent.*
- *On or about 11 July 2013, the respondent asked her to have lunch with her at a Restaurant in Nausori. He asked her to come to his van that was parked beside the restaurant and it was there that he again asked her to marry her.*
- *She refused the proposal and made it clear that she had no intention of marrying him due to the difference in the religion. The respondent then proceeded to take*

out a razor and cut his wrist a number of times in front of her. She was so scared by his actions that she left him and went to her workplace.

- *Later that night the respondent called her and they spoke. From then onwards they talked every night on the cell phone. They would also meet for lunch too. Her family members did not know of her relationship with the respondent.*
- *On 8 August 2013, she dressed as usual for work. At that time it did not occur to her that she would be getting married that day.*
- *She reached her workplace and later the respondent came over and asked her to have lunch with her. She agreed and went to meet him at the carpark. The respondent hired a taxi and told him that his mother wanted to see her.*
- *She agreed to accompany him to his house. It was about 11.30am. When they reached home, the mother was preparing sweets for Eid.*
- *She greeted her. She had her lunch which she had prepared at her home and brought to work. She helped the respondent's mother in preparing the sweets. At all times the respondent was sitting with them in the lounge. She realised after sometime that it was late and she asked the respondent to drop her back to work. He said that he would shortly do so and went inside the house. She waited for 15 minutes before he returned. She again asked him to drop her back. It was at this point that he grabbed her hand and led her to his bedroom. He told her that she would not be leaving his house. She again informed him that she needed to get back to work.*
- *The respondent left the room and she overheard him telling his mother to ensure that she does not leave the house. She grabbed her bag to leave but the respondent caught her outside the house. He started to drag her inside and told her that she would be able to leave if she listened to him.*
- *When she came inside, the respondent told her that she could not leave the house. He took her bag and locked it away. He also told her that he would report to the police that he had brought a girl home. After telling his mother to watch over her, he left home.*
- *After sometime, he returned in his friend's taxi and informed his mother and her that the police at Nausori Police Station wanted to see her. However instead of*

going to Nausori Police Station he went to the Nakasi Police Station. Upon reaching the Nakasi Police Station, the respondent's friend, whose name she cannot recall, went to the police and returned to say that the police was calling them. She cannot recall the police or the badge number. The police informed them that if both of them wanted to marry then the parents would not be able to do anything about it.

- The same police officer advised the respondent that he could obtain their birth certificates from the Post Office. The respondent then took out ten dollars and gave it to the officer and said that it was his lunch money. At no time was she aware as to what was happening or about to happen.*
- They returned to the taxi which headed towards Suva. She asked the respondent where they were going as she needed to return to work. He replied that they were going to Suva as he had some work there.*
- During the ride to Suva, neither the respondent nor his friend driving the van discussed or mentioned anything about the marriage. Even at that point she did not know what was going on or was about to happen.*
- When they arrived at Suva, they went to Suvavou house. She was not aware that there was a marriage office located there. The respondent took out their birth certificates at the registry. She did not know what it was for and had no idea that he had wanted it for their marriage.*
- When they went into the marriage office she asked the respondent what they were doing there. He replied that if they got married, her parents would not be able to do anything. She became more scared and frightened of him.*
- In the marriage office they were told by an officer that the office was about to close and that the next day was fully booked. The respondent informed the officer that they needed to marry the same day and that they could not wait for the next day. She was still so confused as to what was happening.*
- When she signed the marriage certificate, she did it against her will as she was scared that the respondent would do something to her if she did not sign the certificate. The marriage was witnessed by his friend and a staff of the marriage office.*

- *After their legal marriage had taken place, they returned to the respondent's place. It was about 4pm. At his home, the respondent informed his mother and aunt about the marriage. His aunt requested that her parents be informed. The respondent did not say anything to this but left to go somewhere.*
- *At 7.30pm or thereabout his parents and uncles came to the respondent's house and requested to take her home for the night and that she would return the next day. At her parent's house she informed them of what had happened and they were not happy with this.*
- *The parties have not consummated marriage. From the time her parents and relatives took her from the respondent's home, she has not returned or has any desire to return to his home. She has not been in contact with the respondent nor does she wish to have any contact with him although he has tired contacting her.*
- *It was through the respondent's trickery and the fear that he would do something if she did not comply with his wishes. She was forced into the marriage and she has no desires to be in it.*

26. In the cross- examination the husband started telling the Court his version of the story. I informed him that that could be done when he takes stand.

27. The wife's uncle Naren's evidence in chief was that:

- *He is married to the applicant's aunt Jane When the applicant's parent's marriage got dissolved in 2003, her mother and her came to live with them. The applicant still lives with them but her mother went away after her remarriage in 2007.*
- *The applicant completed but was unsuccessful in Form 6. In or about October 2012, she started work a store in Nausori.*
- *He was at work when he was informed by his wife who had been informed by the applicant's boss that the applicant had not returned to work after lunch break. This was brought to his attention at about 4. 45 pm. This came as a huge shock to him. He went home immediately to wait for the applicant to come back home. He made calls to her workplace but was informed that she had not returned.*

- *At around 6.30pm, he received a call from Annes's stepfather. He informed her that they had located her. He also informed him that she married a boy working at a store.*
- *The store is located near Nausori town. A group of relatives and him met at Annes stepfather's house and made their way to the store. The respondent's house is in the same compound as the store. There they confronted the respondent.*
- *Initially the respondent denied the marriage but when they informed him that they were aware of the marriage, he admitted that they had been married that day and also showed them the marriage certificate to confirm the marriage.*
- *When they requested to see the applicant, the respondent informed them that she did not want to see them. She later confirmed this to be a lie.*
- *Upon the applicant's mother's insistence, they were finally let inside the house where they met Anne. They asked the respondent's family to allow them to take her back to their house for the night and that she would return the next day. They agreed to the request and they were allowed to take her home. At Suresh's home, they questioned her and expressed their disappointment with the marriage. She maintained that she had no idea of the respondent's intention of marrying her that day. She stated that she never had any intention of marrying the respondent and only signed the certificate as she was frightened that the respondent would do something to her.*
- *The applicant is a very trusting person and can be easily manipulated into things because of her trusting nature. She never mentioned the respondent to them or other family members and she never told anyone of them that she was interested in marrying anyone.*
- *Since leaving the respondent's house, she has not returned to the respondent nor has she ever expressed any intention of returning to him. He believes that the applicant has no desire to return nor does she want to be married to the respondent given the manner in which he had tricked and/or frightened her into marrying him.*

28. The uncle was not cross-examined on his evidence.

29. The husband also gave evidence. He stated in his evidence in chief that:

- *They met in the shop she was working. He used to deliver bread there. He had given his mobile number to the company she was working in. She took his mobile number and called him. After calling she would not talk so he swore at her. Then she told her name. They started talking and became friends. The frequency of the conversation increased. They proposed to each other. They used to meet at lunch hours. Sometimes she used to go to his place during lunch to meet his mother.*
- *On several occasions he asked her to marry him and she said that she was not ready and that she was scared to inform her parents of the relationship.*
- *She said she will inform him when she wants to get married. One day they went to a jewellery shop to choose wedding ring for both of them.*
- *A day before the marriage she promised him that she will meet his mother and give him a surprise. On the day of the marriage she came to work and went to his home. He again asked her to marry him. She agreed and said that she was frightened of her parents and the police. He told her that he would go and talk to the police in Nausori Police Station. She agreed. He went to the Nausori Police Station leaving her with his mother. He went to Nausori Police Station. The Police Officer asked him to bring the applicant to the Police Station so that he can take her statement.*
- *He returned home and asked her to accompany him to the Nausori Police Station. She said that her parents would be looking for her and instead of Nausori Police Station for them to go to Nakasi Police Station. They both went to Nakasi Police Station as suggested by her. The Police officer there took their statement.*
- *A report from Nakasi Police Station was tendered as R Ex - 1. After that they went and got married. He never forced or threatened her or did anything against her will. At the end of the solemnisation of marriage, she asked for a kiss and he kissed her. After that they went to buy her some clothes from Nakasi and then they went home. Everyone was happy. The wife took photos of everyone.*
- *He was going to a shop in Nakasi where he met the wife's parents and uncle. They asked him whether the applicant was with him. He said she was and that*

they were married. They asked for proof and he showed them the marriage certificate. They asked to meet the wife. He asked his wife whether she wanted to meet them and she refused and said that she did not even want to see their face.

- *Her family asked him to allow her to go with them and that they will send her back after two days. He asked her and she refused but since her parents kept insisting he told her to go and that he would come and pick her up. She said that if she went with them, they would not allow her to come back to him but he asked her to go. He gave one of his mobiles to him so that he could contact her. When she reached there, the mobile was switched off. She called from her father's phone and said that the mobile he gave was lost. The following day was Eid festival. They were waiting for her to come back. She did not. He went to her place. Her mother said that she was not at home. After sometime he received a call from Nausori Police Station and was informed that the wife had reported that he had forced her to get married. He went to the Nausori Police Station and was asked by the police why they did not come to Nausori Police Station and he gave the reason. From there he came back to his home. He called her several times but she did not answer. When he called at her aunty's place she would swear at him and say that he is a muslim.*

30. Under cross-examination, the husband stated that:

- *They had six months relationship before they got married.*
- *Before marriage they used to meet every lunch except on Wednesdays and Sundays.*
- *In their relationship they were happy. They used to kiss each other only. They did not have a sexual relationship.*
- *He proposed her for marriage when he felt that he was in love. He proposed her several times for marriage.*
- *She said that she will inform him when they can get married because she told him that she would inform her parents later as there was religious difference between them.*

- *His family did not have any issue with her religion because she had assured them that she would convert and that her name was going to be Aisha. His parents and grandmother were there when she said that.*
- *He wanted to go to the Police Station because he was worried that something could happen if he did not inform the police.*
- *He did not do anything without her consent.*
- *It was 8 August 2013 when he went to Nakasi Police Station. They went in a motor vehicle. The wife also went inside the police station and signed the diary. The diary note is in the police station.*
- *He had purchased a ring on lay-by. That was on 6 August 2013. It was for the wife. He had purchased the same.*
- *He cannot remember the date of birth his wife.*
- *Since he had little money that day, he only purchased the ring for her and not for himself.*
- *He proposed to the wife before he purchased the wedding ring. He cannot remember the date exactly.*
- *He did not make any prior booking for marriage because even he did not know that they would be getting married that day. Only on 8 August did she confirm that she would get married to him.*
- *When he reached the marriage office, he explained to the officer that they wanted to get married that day because they have not informed her parents about the marriage. The officer said he would check what bookings he has and let them know. He checked and told them that he was free and could have the marriage performed.*
- *He told the wife to inform her parents and she refused and so he did not want to ask her parents as she asked him not to. He had told his parents and they told him to report the matter to the police before they got married and that is what he did.*

- *After marriage he contacted the wife and most of the time the aunt answers the phone.*
- *He showed one of the photos of the wife taken on the wedding date. The details in the cellular data showed that the photo was taken on the date of the wedding but at 12.12pm. The picture was taken before the wedding and not after wedding. There were some photographs taken but they were not with him at the time he gave evidence.*
- *Before the wedding he had never talked to her uncle or parents but had only seen them from a distance.*
- *He never bribed any police officer with any amount of money as alleged.*

The Determination

31. The husband and wife have both given different versions of how the marriage took place. I have to accept one piece of evidence and reject the other. In this case I accept the evidence of the husband that the wife went through the marriage willingly.

32. She did not want to disclose to her parents that she was going to get married to a muslim boy and even scared the husband into not telling the parents.

33. Both parties were in love and the police report confirms that the willingly accepted to enter into the marriage. The evidence that the police office was bribed is concocted to find a rescue against the report. If the police officer was bribed he should have been reported against and dealt with. The report reads:

“ This is to confirm that one Mr. Nabi and Anne of Nausori called in at Nakasi Police Station on the 8th day of August, 2013 and stated that they are going to get married on their own free will”.

34. There would have been so many police officer at the Nakasi Police Station and if the wife was pressured she could have asked for help from any one of them not necessarily the police officer whom she thought was bribed by the husband. The police would have definitely come to the rescue of the wife and not let the husband leave with the wife. There was nothing to fear at the police station as the wife was given an opportunity by the police to go the station and indicate her willingness or reluctance to get married.

35. Further, at the marriage office, the marriage officer could have been informed if the wife was being forced. She neither informed the police nor did she inform the marriage officer because she was a willing party to the marriage and the consent she gave was her real consent.
36. If the husband had forced the wife to get married he would not have dared to go to the police station as there would have always been a risk that the wife was going to inform the police and get the husband charged.
37. I find that the wife has changed her tune to suit her parents and relatives version of how the marriage took place because they do not support her being married to a muslim boy.
38. I have also perused the photograph of the wife before the wedding. She appears very happy in the photograph and there is no sign of any pressure on her at that time. Indeed that picture was taken before the marriage but the evidence is that the incident leading up to the marriage is suspicious.
39. Indisputably the wife had refused the husband's proposal to marry and this happened on so many occasions. The husband respected her decision and appeared to me to be a very dignified and respectful person. I find that he only proceeded to get married when the wife agreed which was all of a sudden on 8 August and that is the reason why he did not have any prior bookings for marriage. If he had planned to force her for marriage on 8 August 2013 there surely would have been signs of preparation but this was an unorganised event. Even the husband's parents had no idea that the marriage was going to take place.
40. I find that the consent that the wife granted was her real consent and after providing her real consent she wants to get out of the marriage where the law of nullity cannot provide her any rescue on the grounds of duress.

The Final Orders

41. I therefore refuse the application for an order of nullity.
42. There shall be no order as to costs.

ANJALA WATI

JUDGE

04.07.2014

To:

- 1. Ms. Drova for the Applicant**
- 2. Respondent in person.**
- 3. File Number 13/SUV/434**