

| IN THE FAMILY DIVISION OF THE HIGH COURT | |
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| CASE NUMBER: | 13/Ltk/ 0628 |
| BETWEEN: | FAHEEM |
| AND: | SALMA |
| Appearances: | <i>Mr. S. Titoko for the Applicant. No Appearance of the Respondent.</i> |
| Date/Place of judgment: | <i>Thursday 28 May 2015 at Lautoka Friday 23 October 2015 at Lautoka.</i> |
| Judgment of: | Hon. Madam Justice Anjala Wati. |
| Category: | <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: | FAHEEM v. SALMA - Fiji Family High Court Case Number: 13/Ltk/0628. |
| JUDGMENT OF THE COURT | |
| Catchwords | |
| <i>FAMILY LAW - Marriage Void for want of real consent of wife who entered into marriage when her powers of volition were paralysed to stand up against the wishes of her parents and succumbed to the same.</i> | |

1. Applicant man was married to respondent lady in 2013.
2. On 23 December 2013, he filed an application that his marriage be annulled.
3. Although he raised the ground that the parties are within a prohibited relationship and that the marriage is void as a result, I find that he adduced that ground without understanding its legal meaning.
4. The evidence constitutes the ground that the wife did not provide her real consent to the marriage. I will elaborate on this later save to say that the application does not become invalid for want of proper ground being adduced.
5. In the interest of justice, if the evidence points towards another ground of void marriage, the Court must not then prejudice the parties by striking out the application but proceed with the same and find if there are any grounds to constitute void marriage other than the one pleaded in the application.
6. The evidence adduced was lengthy and descriptive of how the marriage took place to how the wife quietly left

the husband the very next day of her traditional marriage to find her way to her paramour. I will not go into the details but refer to the same to the extent it is necessary.

7. The husband is a New Zealand Citizen. After the civil union in 2013, he returned to New Zealand. He came back to Fiji later that year for the traditional wedding.
8. The evidence holistically reveals that the wife, a Muslim girl, was in love with a man not from within the religion and who had gone to live offshore.
9. Being from a religious and a strict muslim family, she could not convince and get her family to agree to her marrying her lover. It was viewed an insult to their religion and the daughter was expected to uphold the respect and dignity of the family.
10. Her family would not let her go past their belief and faith but required her to marry applicant man who the family thought was a perfect match.
11. Having no other way and means to escape the situation her parents had created for her to marry applicant man she went through the marriage.
12. On the night of marriage, although the parties stayed in the same house and same room she avoided consummating the marriage by first killing time in an activity like having shower for close to two hours then finding excuses that she was tired. She avoided much conversation with the husband.
13. The next morning she showed symptoms of executing her plans to elope with the lover. She would be on phone for almost an hour at a time, count her money, sort out her clothes for a bag for her to take away and be on facebook every now and then.
14. During breakfast, she would eat little, avoid conversation and not engage with the husband.
15. During lunch, she found an excuse to go to the bathroom as she had abdominal aches. The husband allowed her to go to the washroom which was her first opportunity to be alone.
16. In a span of 20 minutes or so, she arranged a taxi to the airport and left the hotel. By a text she lied to her husband that she came to a pharmacy to buy medicine.
17. Whilst the husband panicked and discovered her missing, she had taken a flight to one Australian city on the same day. She then flew to another Australian city.

18. She did all that to go to her paramour whom she always loved and wanted to marry.
19. This marriage to her was an escape from the parents to whose wishes she succumbed to after her powers of volition to refuse this marriage and make them agree to marry her lover was paralysed.
20. She used the first given opportunity she was alone to run away.
21. Her actions and the evidence as a whole makes me arrive at a finding that she was under duress to marry the applicant man. She feels guilty for doing what she did to him but she too wants to now live her life with whom she wants.
22. Having found that one of the parties to the marriage did not provide her own consent freely to enter into the subject civil union, I nullify the marriage solemnized in 2013.
23. I note that the Registrar has raised the necessary certificates to this effect upon an ex-tempore ruling being issue.
24. I endorse the certificates as correct and proper document of this Court to nullify the marriage of the parties.
25. Each party must bear their own cost of the proceeding.

Anjala Wati

Judge

23.10.2015