

IN THE FAMILY DIVISION OF THE HIGH COURT
AT LAUTOKA

CASE NUMBER: 15/Ltk/0122

BETWEEN: KAVIT APPLICANT I

AND: SANJANA APPLICANT II

Appearances: No Appearance of Applicant I.

Applicant II in Person.

Date/Place of Written Judgment: Thursday, 25 June 2015 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: Kavit v. Sanjana- Fiji Family High Court Case Number: 15/Ltk/0122.

JUDGMENT

MARITAL STATUS PROCEEDINGS - APPLICATION FOR AN ORDER FOR NULLITY - application by husband and wife on the ground that their marriage was not solemnised properly, ground not established- application for an order for nullity dismissed-no order as to costs.

Legislation:

Family Law Act No. 18 of 2003 ("FLA"): s. 32.

Marriage Act Cap. 50 ("MA"): ss. 16 to 28

Case Background

1. in 2015 the parties filed a joint application for an order that their marriage which was solemnised at Nadi in 2015 be nullified on the grounds that the marriage was not solemnised properly.
2. in 2015, the matter was adjourned for parties to consider whether they would proceed with their application and if they did not, for a Notice of Discontinuance, to be filed which was to be dealt with in 2015, but if the parties intended to proceed with the matter, the case was to be heard.
3. When the matter was called , no notice of discontinuance was filed so the matter proceeded to hearing in absence of the first applicant who was not present to tender any evidence on his behalf when he properly should have been in Court.

Law

4. Under s. 32 of the FLA, a party can apply to have the marriage nullified on the grounds that the marriage is void.
5. 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.

6. 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.

Evidence

7. The wife testified that the parties had undergone both the civil and the traditional marriage. A day after the traditional marriage she informed her husband that she has had a previous relationship and then the husband decided that they should not continue with the marriage. Both of them agreed to file the application.

Determination

8. There is no evidence to establish that the marriage of the parties was not solemnised properly and so the ground is not established.

9. The wife's evidence that she had a boyfriend before she got married and that this information caused the rift between the married couple does not constitute any ground under which a marriage can be declared void.

Final Orders

10. I dismiss the application for an order for nullity.

11. There shall be no order as to costs.

12. The applicants shall have a month within which they can appeal against the decision dismissing her application for an order for nullity.

Anjala Wati

Judge

25.06.2015

To:

1. Applicants I and II.

2. File Number: 14/Ltk/0122