

IN THE FAMILY DIVISION OF THE HIGH COURT
AT LAUTOKA

CASE NUMBER: 14/Ltk/0315

BETWEEN: KIRAN
RESPONDENT

AND: AVINESH
RESPONDENT

Appearances: Applicant in Person.

No Appearance of Respondent.

Date/Place of Written Judgment: Thursday, 25 June 2015 at Lautoka.

Coram: Hon. Madam 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: Kiran v. Avinesh - Fiji Family High Court Case Number: 14/Ltk/0315.

JUDGMENT

MARITAL STATUS PROCEEDINGS – APPLICATION FOR AN ORDER FOR NULLITY - application by wife on the ground that her 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"): 32.

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

Case Background

1. In 2014 the wife filed an application for an order that their marriage which was solemnised at Lautoka Registry in 2013 be nullified on the grounds that the marriage was not solemnised properly.

Law

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

3. 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.

4. 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

5. The wife testified that she was happy to get married to the respondent but after the civil union the husband stopped contacting her. He had called her in June via skype and since then there has been no contact.

6. His mother called her in October 2014 and informed her that the son was sick. She does not know what kind of sickness he has.

7. The husband's uncle also gave evidence on behalf of the wife and stated that he does not wish to ruin the life of the applicant and the truth is that the husband is impotent and the doctors have said that it cannot be corrected.

8. The uncle also stated that there is some symptoms of cancer in his blood too and some other problem in his blood which cannot be cured.

9. The husband got sick after the marriage.

Determination

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

11. The uncle's evidence that the husband is impotent and has terminal illness is not supported by any medical evidence and so unsafe to rely on for any other ground to be established. Further, these sickness, if, it existed, at the time of the marriage, could arguably, establish a ground that the marriage is void.

12. The evidence is very clear that impotency did not exist at the time of the marriage and given the evidence I do not think it is even necessary for me to expound the law in that regard.

Final Orders

13. I 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 Wat

Judge

25.06.2015

To:

1. Applicant.
2. Respondent
3. File Number: 13/Ltk/0315.