

IN THE FAMILY DIVISION OF THE HIGH COURT SUVA

ORIGINAL JURISDICTION

ACTION NUMBER: 19/Suv/0187

BETWEEN: PEETAMBAR

APPLICANT

AND: AKSHARA

RESPONDENT

Appearances: Mr. Nilesh Sharma for the Applicant.

No Appearance of the Respondent.

Date/Place of Written Judgment: Friday 14 February 2020 at Suva.

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.

JUDGMENT

A. Catchwords:

FAMILY LAW – NULLITY OF MARRIAGE – husband alleges fraud on the part of the wife – it is alleged that the wife had pretended and held herself out as a school teacher when she was not and that she has forged her educational qualifications – husband asserts mistake as to identity due to the fraud – misrepresentation about a person’s rank is not enough to vitiate consent as long as the husband agreed to marry the human being he did – there is no mistake as to the personal identity of the wife – application dismissed.

B. Cases /Legislation:

1. *C. v. C* [1942] N. Z. L. R. 356.
2. *Sullivan v. Sullivan (falsely called Oldacre)* (1818) 2. Hag. Con. 238; 161 E.R. 728.
3. *Moss v. Moss (orse. Archer)* [1897] P. 263.
4. *Crimes Act 2009: s. 178.*

1. The wife seeks an order that the marriage solemnized between the parties be annulled. He is alleging that the consent that he provided on the day for the civil union is not a real consent because it is vitiated by fraud.
2. I will identify the husband's evidence in a nutshell. His grievance is that his wife lied to him that she is a school teacher when she is not. He asserts that she has forged so many documents to convince him that she is a school teacher.
3. He says that he only married her believing that she is an educated professional. He always wanted to marry an educated woman who would be able to work in Australia and support herself and not be a burden on him.
4. He subsequently found out that she has forged her educational qualifications to indicate that she is qualified to be a teacher and that she was teaching in various schools.
5. He clearly stated that he was therefore mistaken as to her identity and if he knew that she was not a school teacher, he would not have married her. In that regard he says that his consent was obtained by fraud.
6. The husband called a witness from the Ministry of Education who testified that the wife had been provided a contract by the Ministry of Education on 24 April 2019 to teach in a primary school. That was her first contract. She was given the job after she had applied and selected in the interview as the suitable candidate.
7. The witness stated that when she was offered the job, the Ministry relied on the certificates provided by her. They had only seen copies of the documents and at the time no originals were sighted by the interview panel.
8. He said that upon receiving a complaint, it was later discovered that the certificates she had presented to the Ministry to acquire the job could not be verified by the University which appears to have given her the certificate. The Ministry therefore asked the wife to show cause why her employment should not be summarily dismissed.

9. The witness further testified that when the wife did not show cause, her employment was summarily terminated and the matter has been referred to the police. The investigations are under way.
10. The counsel for the husband has submitted that the wife's act of forging the educational qualification is a crime under the Crimes Act 2009. He identified s. 178 which in my reading of the same prohibits a person from wilfully making a false oath or declaration, notice or certificate under any Act in relation to marriage to procure a marriage or a marriage certificate or license.
11. S. 178 also prohibits other acts which does not cover the allegations made in this case. I therefore need not expound on the remaining provisions.
12. The counsel for the husband argued that if the act of the wife constitutes a crime then the Family Court should also recognize that such criminal acts invalidates a marriage.
13. I do not find that this is a case where the wife is alleged to have made a declaration or statement under oath required under any Act relating to marriage to procure the marriage. S. 178 therefore, prima facie, does not assist the husband's case. Even if it did, it is not established that the wife has contravened the provisions of the Crimes Act 2009. She has not been convicted for an offence under the Crimes Act.
14. Further, even if the wife was convicted under the said provisions of the Crimes Act, it is not automatic that the marriage will be annulled. It has to be identified that the facts based on which the conviction was founded constitutes a statutory ground for declaring a marriage void.
15. The allegation is for forging of the educational qualifications. It is also argued that since there was misrepresentation about the wife's profession, the husband was mistaken as to the identity of the wife.
16. On the issue of mistake as to identity, the facts do not establish the allegation. The husband had seen the wife and was happy with her. She identified herself as the person she is. There is

no distortion regarding her identity as a person. The husband cannot say that he mistook her for someone else.

17. On the question of the alleged forging of the documents, which, as argued by the husband constitutes fraud on the part of the wife regarding her professional status, I prefer to follow the English cases of *Sullivan v. Sullivan (falsely called Oldacre)* (1818) 2. Hag. Con. 238; 161 E.R. 728 and *Moss v. Moss (or se. Archer)* [1897] P. 263.
18. In the English cases, it was held that fraudulent misrepresentations as to such matters as a person's rank, family, fortune, age or habits of life would not nullify a marriage so long as each party consented to marry the other person.
19. I am also of the same view as expressed in the English cases. If misrepresentations about a person's rank, family, fortune, age or habits of life were to be used to nullify the marriages than most marriages would be subject to scrutiny on the grounds that one party was told that the other comes from a good family background, is educated and has good habits in life which turns out to be totally or partially incorrect. These allegations can even come up after these matters are discovered many years post the family being settled as a unit.
20. If these matters were to be given regard, I would be *opening up a can of worms* for the families and the institution of marriage. I am not saying that I basing my decision on this factor. I am of the view that the decision in the English cases that I have cited can be fully justified on the basis that it does support the principle that every false representations about a person in respect of his or her characteristic or rank can vitiate an otherwise good marriage.
21. I think it is prudent that I also identify the case of *C. v. C* [1942] N. Z. L. R. 356. There, a widow was induced by one Samuel Coley into believing that he was Michael Miller, a well-known Australian featherweight boxer, and that he had ample financial means and good prospects. On the basis of these representations, the woman married the imposter.
22. *Justice Callan* found that the petitioner truly consented to marry the human being to whom she was married and that the marriage was valid notwithstanding the false representations.

23. In *C v. C (supra)*, the degree of the misrepresentation was more severe than the matter at hand. It involved a person lying about his name and who he was as a person. Here there is no such distortion. The person remains the same. What may be different as held out to the husband is her profession and her qualification. This however remains to be established conclusively. I might have to add that it is not for me to establish whether the wife had committed fraud as the issue is not for me to decide. This is a matter that needs to be tried in a different court.

24. I find that the husband was satisfied and happy with the human being he married. Her identity as a person was not distorted and therefore the consent to the marriage was not induced.

25. In the final analysis:

(a) I dismiss the application for an order for the marriage to be annulled.

(b) I order each party to bear their own costs.

(c) I note that the parties can apply for dissolution of marriage on the grounds that the marriage has broken down irretrievably. This is a matter for them to consider.

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Hon. Madam Justice Anjala Wati

Judge

14.02.2020

To:

- 1. Nilesh Sharma Lawyers for the Applicant.*
- 2. Respondent in Person.*

3. File: Case Number: 19/Suv/0187.