

IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA

ORIGINAL JURISDICTION

ACTION NUMBER: 19/Ltk/ 0336

BETWEEN: DARSHIK

APPLICANT

AND: ASHEELTA

RESPONDENT

Appearances: Applicant in Person.

Respondent in Person.

Date/Place of Oral Judgment: Thursday 17 October 2019 at Lautoka.

Date/Place of Written Judgment: Friday 21 February 2020 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

Category: Anonymised.

JUDGMENT

Catchwords:

FAMILY LAW – NULLITY OF MARRIAGE – *Marriage nullified on the grounds that the wife was in a de-facto relationship with another person and did not disclose the same to the husband at the time of the marriage which amounts to him being defrauded into providing his consent to the marriage.*

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1. On 17 October 2019, I had heard the husband’s application for an order that the marriage of the parties be annulled on the grounds that after the civil union, when he returned to Australia, the wife had called him and informed him about her live-in relationship with another man.

2. She had then informed the husband that she loved her de facto partner more than him and that she does not wish to continue the civil union with him.
3. Upon hearing the evidence I had ordered that the marriage solemnized between the parties be annulled. I now produce written evidence to support the order I had granted.
4. I will only refer to the material evidence in this case. I do not think that the evidence regarding how the parties met and how the civil union took place will have a bearing on my findings.
5. The wife was in court when it was alleged that she had been in a live- in relationship with another man and that she failed to disclose this to the husband. She only informed him of this when he returned to Australia after the civil marriage with her.
6. The wife did not contest the evidence that was adduced by the husband and her mother. She also failed to cross-examine them. She also did not give any evidence.
7. I find from the uncontroverted evidence that the wife was in a de facto relationship with another man at the time of the marriage. Since she was in such a relationship, she was already a party to an existing marriage under the laws of Fiji and she could not have entered into a civil union with another man without disclosing this information to him.
8. Marriage requires a voluntary union of a man and a woman to the exclusion of others. There was no exclusive relationship in this marriage. The wife ought to have disclosed this aspect of the de facto relationship with the husband and let him make a conscious decision of whether he will enter into a civil union with her or not.
9. The husband has given evidence in no uncertain terms that if he had known about the relationship he would not have provided his consent. I believe he would not have as that is a very factor that affects the grant or withholding of the consent. That is an information that affects the root of the marriage.

10. If the information was not concealed, I find that the husband would not have provided his consent. His consent was obtained through fraud and not real.
11. I thus find that the marriage that was entered into was void. I confirm my earlier orders that the marriage solemnised between the parties must be annulled. I endorse the certificates issued under my oral judgment.
12. I order each party to bear their own costs of the proceedings.

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Hon. Madam Justice Anjala Wati

Judge

21.02.2020

To:

- 1. Applicant in Person.*
- 2. Respondent in Person.*
- 3. File: Case Number 2019/Ltk/0336.*