

**IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA**

**ORIGINAL JURISDICTION**

<b>APPEAL NUMBER:</b>	17/Nan/0306
<b>BETWEEN:</b>	SSNK <b>APPELLANT</b>
<b>AND:</b>	MTF <b>RESPONDENT</b>
<b>Appearances:</b>	Mr. J. K. Sharma for the Applicant. Respondent in Person.
<b>Date/Place of judgment:</b>	Thursday 17 May 2022 at Lautoka
<b>Coram:</b>	Hon. Madam Justice Anjala Wati
<b>Category:</b>	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**

**Catchwords:**

**FAMILY LAW** – Marriage void for want of real consent of wife who entered into the marriage without knowing and appreciating that the document that she signed was a marriage certificate – she was of the belief that it was an agreement to get married upon completion of her education which she was compelled to sign as she was threatened that if she refused to sign that document, the respondent will drink poison and commit suicide – respondent showed to the wife that he has access to the poison by showing the same to her– petrified by the threat, the wife executed a document which subsequently was found to be a marriage certificate – she did not provide her consent to the marriage voluntarily and the marriage was entered into under duress to save herself from being blamed and to placate the husband into refraining from committing suicide.

### ***Cause and Background***

1. On the wife's application for an order that the marriage solemnized between the parties in 2015 be annulled, I had granted the order vide an ex-tempore judgment given the urgency. In that ex-tempore judgment I had arrived at a finding that I had accepted her evidence of the wife as credible as there was no reason to disbelieve her. Her evidence was also not challenged by the husband to any extent.
2. In regards whether the wife had established the ground that she did not provide her real consent to the marriage, I had arrived at a finding that she did not.
3. My finding was that her mind was so perturbed by terror of the husband committing suicide that she signed a document believing that she was entering into an agreement to get married to him after she completed her education. She did this so that she could placate him and not be blamed for his death by suicide.
4. I had further found that even if she provided her consent to the marriage, she did so under duress. She was succumbed by the fear that the respondent will lose his life if she did not sign a document as required by her. She proceeded on the basis that that was the only way to save the life of a person.
5. I had found that she did not act freely and voluntarily to enter into the marriage that she did and that the marriage that she had entered into was null and void.
6. I am obliged to publish the written reasons for the findings I had arrived at earlier and I do so now. Before that I will briefly outline the evidence of the wife. The husband did not give evidence or challenge the evidence of the wife.

### ***The Evidence***

7. The wife gave the following evidence:

- She and the husband went to the same school – Nadi Muslim College. He was 1 year ahead of her. They had the same group of friends. They knew each other and got along.
- After finishing the High School, he joined Fiji National University at Namaka, Nadi. When she finished school, she went to University of Fiji in Saweni, Lautoka. Since almost all of his friends had joined the University of Fiji, he would spend most of his time at the University of Fiji. He had his own car so he could travel between the two Universities. She would also meet him often because of the common friendship but they were not in a relationship.
- One day, one of her friends told her that he liked her. After that he himself came and told her the same thing.
- She told him that she did not want to be in a relationship and wanted to concentrate on her studies. She was a private student and her parents worked very hard to save money and educate her. She did not want her attention to be diverted.
- After that she started avoiding him as much as she could. It was however impossible to completely avoid him as he was part of the circle of friends. He would still try and talk to her but she would keep her association with him to a bare minimum. He then stopped pestering her after a while and started speaking to her as a friend. She also talked and continued to treat him like a friend.
- One day he asked her to go to lunch with him to Lautoka City. He said that two of their friends Reshad Ali and Zenoviya Shamim were going to meet them in Lautoka for lunch. She agreed and went to Lautoka in his car.

- He took her to the Lautoka City Market Car Park in Level 2 and told her that she will have to go with him and sign a document. She asked her what document he wanted her to sign. He said that it was a document which said that once she completed her studies, she will marry him. She got shocked and refused to sign any document.
- He then showed her a handwritten letter to her. She cannot recall the exact content of the letter but it was to the effect that he was committing suicide because she had betrayed him in love and that he had no choice but to kill himself. She became very frightened.
- He showed her a small plastic bottle (size of a small coca cola bottle) with white liquid in it. He told her that the bottle contained Gramazone which she thought was poisonous. He told her to do as he wanted or he would drink it then and there.
- At that point she was pertified and thought that if he commits suicide, she will get into trouble with the police and she may even go to prison. Her whole life would be over and her parents would be shamed. She had no choice but to comply with the demands.
- He took her to a building opposite the Lautoka Bus Station and told her that she was to say yes to everything that was asked. He told her that if she refused to sign the paper then he was going to commit suicide.
- When they were inside the building, Reshad Ali and Zenoviya Shamim were already there. He spoke with the person behind the desk and after few minutes they were asked to see a lady who asked them to sign a document. She did as asked because she was very scared.

- After signing the document, she told him that she had to go back to her class and that her father was going to pick her up after the class. He then dropped her back at the University. When he left the University, she immediately caught a bus and came home. She did not know what to do. She was very afraid. She was too scared to tell her parents about the whole fiasco.
- She did not go to the University for a few days after that incident. He rang her on her mobile a few times and she did not talk to him. Thereafter she stopped all communications with him and refused to see him or meet him. Since he was no longer a student and had started working, he could not come to her University freely. He eventually stopped calling her.
- She was into her final year of studies. Her parents had received a marriage proposal for her. They discussed the proposal with her and it was agreed that she will get engaged and get married after she graduated.
- As part of the preparation, her mother went to get a single status confirmation from the Registrar General's office. The office informed them that there was already a marriage registered in her name with the Respondent. She then realized that the paper that she had signed was not an agreement but a marriage certificate. She was shocked. It was then when she told her mother about what transpired in 2015. She then extracted a copy of the marriage certificate.
- She has never lived with the Respondent. She has not ever spent a night with him. She has never had any physical relationship with him. They have never even touched each other's hands. There has never been any sexual relationship between them. A religious marriage has never taken place. She did not consent to getting married with him and that the marriage between them is null and void.

## **Findings**

8. When the evidence was being given in Court, the Respondent was present. He did not refute any allegations against him. He did not provide any contrary evidence. I must say that with that, the demeanour and deportment of the applicant did not indicate that she had concocted the evidence to wriggle out of a situation which she had created.
9. She became a victim of the threat imposed on her by the Respondent. It was understandable that she would be very scared and frightened. She was with a person who was threatening to commit suicide. If he died then and there, she would be the first person to be questioned. She would be asked to explain the situation. She was only 22 years old that time and a student. Anyone in her situation will get frightened and will want to placate the person carrying out the threat to calm the situation.
10. In that scenario, it cannot be expected that the victim will think rationally and will look at and read the documents required to be signed. The primary aim of the victim will be to immediately get out that fearful situation and to avoid being seen with the person.
11. The Applicant did what she thought was proper in the circumstances and she acted quickly to save the Respondent from committing suicide and save herself from the blame and harm. She did not act freely and the marriage that she entered into was not by her choice, free of any pressure of mind. When she signed the marriage certificate believing that it was an agreement to get married, she signed it under fear and without appreciating that she was getting married.
12. She had no intention to get married to the Respondent and to her mind she did not. All that she knows is that she had entered into an agreement which turned out to be a marriage certificate.

13. Her consent to the marriage is not her real consent. The marriage between the parties is therefore null and void as declared earlier.

**Final Orders**

14. In the final analysis I make the following orders:

- (a). ***That the marriage solemnized between the parties was null and void.***
- (b). ***The certificates issued to the Registrar General pursuant to my ex-tempore judgment is proper and valid.***
- (c). ***Each party shall bear their own costs of the proceedings.***

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**Hon. Madam Anjala Wati**

**Judge**

**17.05.2022**

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**To:**

- 1. Janend Sharma Lawyers for the Applicant.**
- 2. Respondent in Person.**
- 3. File: 17/Nan/0306.**