

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

**ORIGINAL JURISDICTION**

<b>ACTION NUMBER:</b>	<b>17/LTK/0609</b>
<b>BETWEEN:</b>	<b>BERNAD</b> <b>APPLICANT</b>
<b>AND:</b>	<b>MANHEER</b> <b>RESPONDENT</b>
<b>APPEARANCES:</b>	<i>Mr. R. Charan for the Applicant.</i> <i>No Appearance for the Respondent.</i>
<b>DATE/PLACE OF JUDGMENT:</b>	<i>Friday 29 September 2023 at Suva.</i>
<b>CORAM:</b>	Hon. Madam Justice Anjala Wati
<b>CATEGORY:</b>	<i>All identifying information in this judgment have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarity to any persons is purely coincidental.</i>

**JUDGMENT**

**Catchwords:**

**FAMILY LAW** – **APPLICATION FOR AN ORDER FOR NULLITY OF MARRIAGE** – *wife raises duress inducing her consent – no evidence of any duress on her – application dismissed.*

1. The wife had filed an application for an order for nullity of her marriage on the grounds that the marriage was void for want of her real consent. She asserted that she was forced by her parents to get married to the respondent. The evidence did not establish any duress and as such I had dismissed her application. I now publish my findings.

2. In her evidence, the applicant clearly stated that the husband had come from abroad and he was to marry her elder sister but since she was taller than him in height, her father asked her to marry him. She agreed to the marriage because it is the trend of the family not to refuse their parents.
3. It was only later after the civil union that she told her brother that she was not happy with the marriage who then indicated that he will discuss her situation with a lawyer.
4. The wife's father also gave evidence. He said that initially he wanted her elder daughter to get married to the respondent but since their heights did not match he asked his younger daughter whether she wanted to marry him.
5. The father says that she agreed to the marriage. She did not ever say that she was not happy with the marriage. He continued that he did say that she will have a good future as cyclone Winston had destroyed their home. However, he did not force her to get married. It was later and after the civil union that she indicated that she did not want to continue with the marriage.
6. The marriage celebrant also gave evidence. The material part of her evidence was that she asked for both parties consent before solemnizing the marriage. The applicant clearly agreed to the marriage. There was no force on her. The applicant looked very proud at the time of entering into the marriage. The celebrant said that she had asked the parties three times for their agreement.
7. The material evidence from all the witnesses does not establish that there was any undue pressure on the wife to agree to the marriage. She was happy and willing to get married to the respondent. She provided her real consent to get married.
8. Her assertion that she agreed to her father's request as it is tradition to obey their parents does not amount to duress. There is no convincing evidence that the father had wanted her to marry the respondent. Indeed he did ask her for her consent and without showing any reluctance she agreed.

9. Most parents suggest marriage and show advantages of getting married. It was for the wife to express clearly what she wanted. She did not say “no” for once. She just agreed and her father had no reason to believe that she was not happy to get married.
10. If the applicant was under any form of mental or physical oppression that she could not exercise her right to decline the marriage or if her powers of volition were paralyzed due to the mental or physical restriction caused by the oppression then her consent would be not real.
11. Here the applicant, without expressing her views, agreed to the marriage when asked by her father. That does not amount to “*no real consent*”.
12. Further, if the applicant was unhappily providing her consent, the marriage celebrant would not have noted that pride in her at the time of the solemnization of the marriage.
13. I find that it is the change of heart after the marriage that has caused this application. I do not find an iota of evidence that points towards any form of duress by anyone on the applicant to agree to the marriage.
14. I do not find that the applicant has established no real consent and as such her application for an order for nullity of her marriage was dismissed. Each party is to bear their own costs of the proceedings.

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***Hon. Madam Justice Anjala Wati***

***29.09.2023***

***To:***

- 1. Ravneet Charan Lawyers for the Applicant***
- 2. Janend Sharma Lawyers for the Respondent.***
- 3. File: Family Case Number: 17/LTK/0609.***