

IN THE FAMILY DIVISION OF THE HIGH COURT AT SUVA

ORIGINAL JURISDICTION

ACTION NUMBER:	20/Suv/0221
BETWEEN:	NOEL APPLICANT
AND:	SCARLETT RESPONDENT
APPEARANCES:	<i>Mr. P. Niubalavu for the Applicant.</i> <i>No Appearance for the Respondent.</i> <i>Mr. Neel Singh, Registrar- General on summons from court.</i>
DATE/PLACE OF JUDGMENT:	<i>Monday 22 April 2024 at Suva.</i>
CORAM:	Hon. Madam Justice Anjala Wati
CATEGORY:	<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

A. Catchwords:

FAMILY LAW – **APPLICATION FOR AN ORDER FOR NULLITY OF MARRIAGE** –*application by husband for an order for nullity of marriage on the grounds that his marriage is void as the wife was already married to another person when this marriage was solemnized- evidence established the allegation- marriage null and void.*

B. Legislation:

- 1. *Family Law Act 2003 ('FLA'): s. 32(2).***

Cause

1. The husband had filed an application for an order for nullity of the marriage on the grounds that the wife was already married to another person when his marriage was solemnized. He asserts that his marriage was null and void.
2. Based on the clear evidence that the wife was already married to someone else in another jurisdiction, I had granted an order for nullity of marriage and indicated that I will publish a short written judgment later, which I do so now.

Analysis and Order

3. There is unchallenged evidence in the form of a judgment and a certificate of dissolution of marriage from another jurisdiction that the wife was still married to another person when this marriage in Fiji was solemnized. She had applied for a dissolution of marriage in the other jurisdiction but no orders had been made when she entered into this marriage in Fiji. Her marriage in the other jurisdiction was still intact and valid. She ought to have waited for a dissolution of marriage order from the court in that jurisdiction before getting married in Fiji. By getting married in Fiji, this marriage became null and void. In Fiji, a person cannot get married to the other whilst he or she is still married to some other person.
4. S. 32(2) of the FLA states that *“a marriage that takes place after the commencement of this Act is void if –either of the parties is, at the time of the marriage, lawfully, married to some other person”*.
5. The wife had been dishonest to the Registrar- General of the Births, Deaths, and Marriages. She gave a declaration to the Registrar- General that she is a spinster. The Registrar- General had also done his best to obtain a certificate from the country of the wife’s birth to ensure that she was single. A certificate was issued from that country stating that she was single and that there was no impediment to her getting married.
6. The Registrar- General did not know, as neither the wife informed him, nor did any of the papers disclose, that she was living in another country other than the country of her birth. The wife knew that if she disclosed this, the Registrar- General would have required her to produce a certificate of single

status from the place of her residence and she would not be able to do that as she was already married in that country.

7. I had summoned the Registrar-General to court to ascertain if there are any shortfalls from his side for me to provide guidance to him like I have done in other cases. I do not find any shortfall on his part. I find that if the Registrar-General knew that the wife was living in another country than the country of birth, he would have required a certificate of single status from that country she was living in.
8. I thank the Registrar-General in co-operating in the proceedings and providing to the court the necessary information. I request the Senior Court Officer to furnish to the Office of the Registrar – General a copy of this judgment for reference.
9. Based on s. 32(2) of the FLA, this marriage was void and as such I had granted an order for nullity earlier. The certificates issued on my earlier directions are proper.

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Hon. Madam Justice Anjala Wati

22.04.2024

To:

1. *Oceanic IP Lawyers for the Applicant.*
2. *Respondent in Person.*
3. *File: Family Case Number: 20/Suv/0221.*