

IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA

ORIGINAL JURISDICTION

<u>ACTION NUMBER:</u>	2018/LTK/0210
<u>BETWEEN:</u>	NANCY APPLICANT
<u>AND:</u>	SATALA RESPONDENT
<u>Appearances:</u>	<i>Mr. A. Turuva for Applicant</i> <i>No appearance by the Respondent.</i>
<u>Date/Place of Judgment:</u>	<i>Friday 11 July, 2025 at Lautoka.</i>
<u>Coram:</u>	<i>Hon. Mr. Justice Sunil Sharma</i>
<u>Category:</u>	<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

Marital Status Proceedings *-Application for order of nullity – application by wife on the ground that she did not give her real consent to the marriage because her consent was obtained by duress*

APPLICANT'S APPLICATION

- [1] The applicant wife seeks to have her marriage solemnized at Ra, on 15th day of October, 2015 nullified on the ground that she did not give her real consent to the marriage since it was obtained by duress of the respondent husband.

RESPONDENT'S RESPONSE

- [2] The applicant wife duly served the respondent husband with Form 2, Application for Order of Nullity. The respondent neither filed a response nor appeared in court at any stage of the proceedings.
- [3] The applicant gave evidence in support of her application and called one witness. The hearing was completed in one day. Upon its conclusion, the applicant sought and was granted leave to file written submissions, with the following directions:
- (a) Applicant to file and serve written submissions within 21 days.
- [4] Counsel was informed that a judgment date had been assigned, therefore, failure to file submissions as ordered would not prevent the court from delivering its judgment as scheduled.

APPLICANT'S EVIDENCE

- [5] The applicant informed the court that she had known the respondent since their secondary school days. In 2008, they were in year 12, but did only one subject together. The respondent expressed interest in her, which she reciprocated, and they began a boyfriend and girlfriend relationship during that year.

- [6] The following year, the respondent started attending another school, and the relationship ended. After completing year 13, the applicant enrolled in a two year course in Industrial Lab Technology. She subsequently graduated with a Diploma in Industrial Laboratory Technology.
- [7] In 2014, the applicant unexpectedly met the respondent at Lautoka Market after a considerable lapse of time. Both were excited to see each other and they exchanged mobile numbers. Thereafter they began meeting regularly.
- [8] As the relationship progressed, the applicant was invited by the respondent to attend the wedding of his cousin sister who was visiting from New Zealand. The groom turned out to be the applicant's neighbour and former school mate.
- [9] Although ordinarily residing in Rakiraki, the respondent would stay at his aunt's house in Lautoka, during the time of the cousin's wedding. It was during this period the applicant and the respondent developed an intimate relationship. She would stay overnight with the respondent at his aunt's residence and return to her home the following day.
- [10] In 2015, before the commencement of the cane harvesting season, the applicant became aware of a vacancy at Rakiraki. She applied for the position of a Seasonal Laboratory Analyst, which was offered to her and duly accepted. Not knowing anyone in the area who could assist with accommodation, the applicant contacted the respondent in late May, 2015 to help arrange for a flat.
- [11] The respondent's mother and aunt arranged for a one bedroom flat. Despite the applicant's objections, the respondent proceeded to move into the flat. The applicant noted that when she questioned him, he rudely responded, saying, *"My mum and my family found the house. What do you mean I cannot stay in this house?"*
- [12] The applicant did not respond. On the first day at work, she met her former university friend, Elina. When the applicant returned home, the respondent reacted abusively,

accusing her of travelling to work with the landlord in his vehicle. From that day onwards, the respondent began displaying aggressive behaviour, he would swear at her and punch her on her head, ribs, and face. As days passed, the applicant noticed that the respondent was becoming increasingly possessive. The respondent even prohibited her from wearing makeup.

- [13] The respondent routinely accompanied the applicant to the mill gate and forced her to kiss him in front of the other employees. He would also wait for her at the mill gate and escort her home after work.
- [14] The applicant disclosed her concerns with Elina after Elina noticed injuries on her head. While combing the applicant's hair, Elina caused her pain, prompting the applicant to disclose the beatings and other injuries she had sustained.
- [15] The applicant further stated that the assaults continued, forcing her to wear a cardigan to conceal her injuries. She remained employed at the mill from May to November, 2015. During this period, the respondent displayed disturbing behaviour, including damaging her clothes and handbags. The applicant became emotionally overwhelmed that she attempted suicide by cutting her wrist. The respondent also started forcefully keeping her mobile phone. While the applicant maintained contact with her mother by calling her from her workplace, she never disclosed the abuse she was enduring. The respondent's violence instilled considerable fear in the applicant.
- [16] After staying together for about five months, in October, 2015, the respondent suggested marriage. He forced the applicant to obtain all the necessary documents and pay for the fees. The civil marriage was conducted at the Registrar's Office in Rakiraki.
- [17] According to the applicant, she did not give her consent to marry the respondent. On 14th October, one day before the civil marriage, she had refused to proceed with the ceremony. She stated that none of her family members had been informed and that she did not wish

to get married. On the day of the civil marriage, she was again assaulted by the respondent, who told her that all his family members would be present and that she could not embarrass him. The certificate of marriage between the applicant and the respondent, solemnized on 15th October, 2015 was marked and tendered as applicant's exhibit no. 1.

[18] On one occasion, the respondent assaulted the applicant in the presence of Elina at the flat. The beatings occurred on an almost daily basis, prompting neighbours to yell from their homes, demanding the commotion stop. The applicant did not report the matter to the police because she feared the respondent. On another occasion, the respondent held a knife to the applicant's neck and threatened to kill her. The ongoing abuse began to take a serious toll on her. It eventually reached a breaking point, she could no longer endure the abuse.

[19] Early the next morning, on the 16th she quietly left the flat and, was able to contact her elder brother to inform him of what she had been experiencing. Later that day, both her brothers came and assisted her in removing her belongings. The applicant maintained that she had not entered into the marriage voluntarily but had been coerced and threatened by the respondent.

[20] The final witness, Elina, informed the court that she and the applicant had been best friends since their university days and were colleagues, both serving as Lab Analysts in 2015. One afternoon after work, the witness received a call from the applicant stating that the respondent had assaulted her. When the witness went to see the applicant she observed visible bruises on her body.

[21] Shortly after, the respondent arrived and upon suspecting that the applicant had contacted the witness, became angry with the applicant, questioning why she had called the witness. He then punched the applicant in the presence of the witness. Frightened, the witness stepped outside. While she stood outside, the respondent confronted her, saying, "*What is your business here? Get out of here.*"

[22] The witness further stated that the respondent verbally abused her. Out of concern, she contacted the applicant's brother and informed him of what she had seen. The witness

added that the respondent had also threatened the applicant, which caused her fear for the applicant's safety. She noted the applicant would wear long clothing to conceal her injuries. After witnessing the respondent's behaviour, the witness became fearful of him. She also recalled that, on one occasion while combing the applicant's hair, she observed boil like injuries on her head.

[23] This was the applicant's case.

LAW

[24] The applicant, in her Form 2 Application for Order of Nullity, relies on the ground that no real consent was given by her at the time of her legal marriage on 15th October 2015, since her consent was obtained by duress of the respondent.

[25] The above ground is stated in the first limb of section 32 (2) (d) (i) of the Family Law Act 2003. For completeness the law relating to nullity of marriage which is applicable to the application filed is as follows:

Section 32 (1) of the Family Law Act states:

“An application under this Act for an order of nullity of marriage must be based on the ground that the marriage is void.

(2) *A marriage that takes place after the commencement of this Act is void if –*

...

(d) *the consent thereto of either of the parties is not a real consent because –*

(i) *It was obtained by duress...; ...*

and not otherwise.”

[26] Over the years case authorities have defined duress in accordance with the facts and circumstances of each case as follows:

a) *In Scott (falsely called Sebright) v. Sebright (1886) 12 P.D.21 as:*

“State of mental incompetence, whether through natural weakness of intellect or from fear (whether reasonably held or not) that a party is unable to resist pressure improperly brought to bear.”;

b) *In Cooper (falsely called Crane) v. Crane [1891] P. 369 as:*

“A person’s mind is so perturbed by terror that he or she does not understand what he/she was doing or alternatively if he/she understood what he/she was doing then their powers of volition had been so paralysed that he/she succumbed to another’s will.”;

c) *In Szechter (orse Karsov) v. Szechter [1971] P.286 as:*

“If there is a threat of immediate danger to life, limb or liberty.”;

d) *In Re Meyer [1971] P.298 at pp. 306 and 307 as:*

“If there is a threat of immediate danger to life, limb (including serious danger to physical or mental health), or liberty.”;

e) *In the marriage of S (1980) 42 F.L.R 94 as:*

“If one is caught in a psychological prison of family loyalty, parental concern, sibling responsibility, religious commitment and a culture that demands filial

obedience. If these matters operate and a party has no consenting will then there is duress.”;

f) *In Hirani v.Hirani (1982) 4 Fam, L.R. (Eng.) 232 as:*

“If the threats, pressure, or whatever it is, is such as to destroy the reality of consent and overbears the will of the individual.”;

g) *In the marriage of Teves and Campomayor (1994) F.L.R 172 as:*

“Duress does not necessary need to involve a direct threat of physical violence as long as there is sufficient oppression from whatever source, acting upon a party to vitiate the reality of their consent. It must be duress at the time of the marriage ceremony and not duress at some time earlier unless the effect of this continuous to overbear the will of a party to a marriage at the time of the ceremony itself.”;

[27] The above definitions of duress was taken into consideration by Justice Wati in *SSS v. PKT – Fiji Family High Court case no. 11/SUV/0330* which I accept is the correct position of the law in Fiji as well.

DURESS TO OVERBEAR THE WILL OF A PARTY

[28] *In the marriage of Teves and Campomayor (supra)* the Family Court of Australia held that duress at the time of giving consent at the marriage ceremony was critical. Lindenmayer J. at page 181 states the above in the following words:

“... duress does not necessarily need to involve a direct threat of physical violence so long as there is sufficient oppression, from whatever source, acting upon a party to vitiate the reality of their consent.

A similar interpretation seems to be that now favoured in England. Ormrod LJ in the Court of Appeal in Hirani v. Hirani, (1983) 4 FLR 232 at 234, a case involving similar facts to In Marriage of S. said, about duress that:

“The crucial question in these cases, particularly where a marriage is involved, is whether threats, pressure or whatever it is, is such as to destroy the reality of consent and overbears the will of the individual.”

[29] *Section 26 (a) of the Family Law Act states:*

“A court exercising jurisdiction under this Act must, in the exercise of that jurisdiction, have regard to –

(a) the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life ...”

[30] The burden of proving lack of real consent at the time of the marriage rests with the applicant. The court is mindful that an application for an order of nullity is not to be taken lightly. The law recognizes the importance of preserving and protecting the institution of marriage, therefore, a decree of nullity cannot be granted as a matter of discretion. If the evidence establishes that a marriage is void, appropriate remedies must be granted.

ANALYSIS

[31] The applicant submits that her marriage to the respondent is void, on the basis that she did not give her real consent to marry him, her consent was obtained by the respondent’s duress. The applicant and the respondent were secondary schoolmates. When both were in year 12, they developed a mutual liking for each other.

[32] As weeks passed by, the applicant and the respondent entered into a romantic relationship. The applicant progressed to year 13, at the commencement of the new academic year, she

noted that the respondent was no longer attending the same school. After completing secondary school, the applicant pursued and completed her tertiary education. In 2014, by stroke of coincidence, the applicant and the respondent met again. This unexpected reunion brought joy and a renewed connection, strengthening the bond between them.

[33] During their conversation, it was revealed that the respondent's cousin sister was arriving from New Zealand to marry with one of their former schoolmates. Upon the respondent's invitation, the applicant went to the venue where the wedding was to be held. Their courtship became increasingly intimate, to the extent that the applicant began spending time with the respondent without informing her family.

[34] In 2015, the applicant secured employment in, Rakiraki. As the respondent was from Rakiraki, she sought his assistance in finding a suitable flat. He did so, and the applicant moved to Rakiraki in May of that year. The respondent also moved into the flat, much to the applicant's surprise, but she did not raised any objection.

[35] Over time, the applicant noted that the respondent, who was unemployed, became increasingly possessive, easily agitated, and violent. He began demanding that she walk with him to her work place and insisted on picking her up from the work place gate. In front of her male colleagues, he would embarrass her by forcing her to kiss him. The relationship deteriorated, as the respondent assaulted the applicant almost daily. To conceal her injuries, the applicant wore clothing that fully covered her entire body.

[36] The applicant described her life with the respondent as increasingly unbearable. She did not report the incidents to the police because she was very afraid of him. She further alleged that, on one occasion the respondent held a knife to her neck and threatened to kill her.

[37] In relation to the civil marriage, it was the respondent who informed his family to be present. The respondent forced the applicant to participate in the civil marriage by threatening to inflict further harm should she embarrass him by refusing to comply. The

ceremony proceeded without any of her family members, and the applicant did not even inform her best friend and colleague, Elina, of the marriage.

[38] The applicant further contended that Elina had personally witnessed the respondent's violence toward her, including an unprovoked assault. The applicant asserted that the respondent made her life so unbearable - a living hell that she became suicidal. Neighbours had also begun complaining about the noise coming from the applicant's flat. Despite being solely responsible for paying rent, utility bills, buying groceries and other household expenses, the respondent continued to demand money from her.

[39] The applicant eventually mustered the courage to leave the flat. With the assistance of some individuals she was able to relay her problems to her elder brother, who came with their younger brother from Lautoka. They loaded her belongings from the flat in the respondent's presence, and left.

[40] The applicant urges the court to consider her evidence objectively. She entered into the relationship without informing her mother and siblings, which was marred by emotional and physical abuse. Out of sheer embarrassment and a desire to save her dignity, she initially withheld the truth about her failed relationship and subsequent marriage. However, when she could not take it anymore, she eventually informed them. According to the applicant, the degree of force, violence, and coercion inflicted by the respondent prior to and on the day of the civil marriage was such that she had no choice but to submit to his demands. It was out of fear that she consented to marry the respondent on that day.

DETERMINATION

[41] At the outset, I would like to thank counsel for filing his written submissions within the timeline ordered.

- [42] It is not in dispute that the applicant and the respondent were in an intimate relationship and living as a couple well before their marriage was solemnized on 15th October, 2015.
- [43] The court notes that the applicant maintained a secret relationship with the respondent, without telling her mother or brothers. She provided a detailed narrative of the physical abuse, coercion, and use of force by the respondent, both in the lead-up to and on the morning of the civil marriage. The applicant's account was corroborated by her colleague and close friend, Elina, who not only observed visible injuries on the applicant but also witnessed, on at least one occasion, the respondent assaulting the applicant.
- [44] After carefully considering the applicant's evidence, I am satisfied that her evidence was both truthful and reliable. It is evident that the respondent was a violent person from the time they began living in a defacto relationship. I also accept that the applicant became increasingly separated from her family and, due to feelings of shame, regret and fear of the respondent did not disclose the extent of her relationship with the respondent to her family.
- [45] The respondent, on the other hand, took advantage of the applicant's emotional vulnerability, he was aware that she lacked the courage to challenge him or report his behaviour to the police. Her silence in the face of his abuse gave rise to a sense of boldness – allowing him to continue his violence on the applicant without any regard for the consequences. The court further finds it reasonable to infer, on the facts presented, that the applicant continued to live with the respondent in the hope that he would change his ways and their relationship could be maintained.
- [46] The court recognizes that victims of domestic violence may exhibit a range of responses to their experiences. Some may lodge complaints promptly, driven by distress or anger. Others may delay disclosure, or refrain from reporting altogether, due to fear, shame, confusion, or cultural sensitivities. A victim's hesitation or partial disclosure may arise from modesty or the perceived impropriety of speaking openly about private matters. In

this case, the applicant was subject to threats from the respondent, who exercised control over her by persistently monitoring her whereabouts and exhibiting possessive behaviour.

[47] From the evidence presented, I am satisfied that the applicant was so overwhelmed by fear that she became suicidal, having reached a point where she could no longer endure the abuse. I also accept that, due to feelings of shame and fear of the respondent, the applicant did not disclose the abuse to Elina until the latter became aware of and witnessed the respondent's violent conduct. In my judgment, the continued mental and physical abuse inflicted upon the applicant led to a state of profound isolation, rendering her vulnerable, helpless, and without support.

[48] Elina also provided a credible account of what she had witnessed, which supports the applicant's evidence.

[49] I am satisfied, based on the evidence presented, that the applicant's consent to marry the respondent did not constitute real consent, as it was obtained by the respondent's duress. The respondent subjected the applicant to persistent abuse from the time they began living together, and his threats to kill her prevented her from reporting the matter to the police or pursuing any action against him. During the hearing, I also observed that the applicant is a sensitive individual who, out of self-respect and dignity, avoided confrontation by suffering in silence.

[50] I have no reason to doubt the applicant's evidence.

FINAL ORDERS

- (a) The application for order of nullity of marriage is hereby granted.
- (b) The marriage solemnized on 15th day of October, 2015 at, Ra between the applicant and the respondent is declared to be void.

- (c) The court registry is to raise the necessary certificates and forward the same to the Registrar General's office to give effect to the orders made herein.
- (d) Applicant to bear her own costs.

.....

Sunil Sharma
JUDGE

At Lautoka
11 July, 2025

Solicitors
Messrs Turuva Legal, Vunavou Lane, Nadi for the Applicant.
Respondent not present.