

IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA

ORIGINAL JURISDICTION

<u>ACTION NUMBER:</u>	2023/LTK/0141
<u>BETWEEN:</u>	AZIZ APPLICANT
<u>AND:</u>	SAIRA RESPONDENT
<u>Appearances:</u>	<i>Mr. Heritage. S for Applicant</i> <i>Ms. Taukei. L for the Respondent.</i>
<u>Date/Place of Judgment:</u>	<i>Thursday 29 May, 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>
<u>JUDGMENT</u>	
<u>Catchwords</u>	
<u>Marital Status Proceedings</u>	<i>- Application for order of nullity – application by husband on the ground that he did not give his real consent to the marriage because his consent was obtained by fraud.</i>

APPLICANT’S APPLICATION

[1] The applicant husband seeks to have his marriage solemnized at, Lautoka on 28th day of December, 2022 nullified on the ground that he did not give his real consent to the marriage since it was obtained by fraud of the respondent wife.

RESPONDENT'S RESPONSE

- [2] The respondent wife having being served with Form 2, Application for Order of Nullity is opposing the application. The respondent has filed and served Response (Marital Status Proceedings) Form 4, stating that there was no fraud and that both parties had given their real consent to marry.
- [3] The applicant gave evidence in support his application for an order of nullity. The hearing was conducted in one day and after its conclusion both counsel sought leave to file written submissions which was granted on 23rd April, 2025 as follows:
- (a) Applicant to file and serve written submissions within 21 days;
 - (b) Respondent to file and serve written submissions within 21 days thereafter.
- [4] Both counsel were told that a judgment date has been given therefore failure to file submissions as ordered would not stop the court from delivering its judgment as scheduled.

APPLICANT'S EVIDENCE

- [5] The applicant, "AZIZ informed the court that he was born in Australia. In 2019 (the exact month could not be recalled), due to family connections in Fiji, there was talk of marriage between the applicant and the respondent, "SAIRA".
- [6] As talks progressed between both families, the applicant and his parents came to Fiji for a face-to-face discussion. This was the first time the applicant met the respondent. There was an opportunity for the applicant and the respondent to have a private conversation with one another. Since it was going to be an arranged marriage, the applicant asked the respondent questions about her work, whether she was seeing someone, etc. The respondent told the applicant that she was not involved with anyone. At that time, the applicant agreed to marry the respondent.

- [7] In a week or so, both families organized an engagement ceremony during which rings were exchanged, followed by a prayer, and the families had the opportunity to meet one another.
- [8] On 28th December, 2022, the applicant and the respondent participated in a civil marriage, during which both signed the certificate of marriage and were legally married. The certificate of marriage solemnized on the 28th December, 2022 between the applicant and the respondent was marked and tendered as applicant's exhibit no.1. The photographs showing the exchange of rings and the civil marriage were marked and tendered as applicant's exhibit no.2.
- [9] After the function, the applicant left for Australia that same evening. A day or two later, the applicant became aware that his mother and sister in law were receiving friend requests on their Facebook accounts from an individual named Satish.
- [10] The applicant also stated that when he was in Fiji, he had received a friend request from Satish on his Facebook account. The applicant declined the request since he did not know this person, however, Satish attempted multiple times to send the request. Finally, the applicant accepted it.
- [11] According to the applicant, Satish had sent him messages before he accepted the friend request. However, the applicant did not see the messages sent by Satish until 30th December, 2022, that is two days after his legal marriage to the respondent.
- [12] When the applicant read the messages, he learned that Satish was in an intimate relationship with the respondent and the relationship was still ongoing. Satish also stated in the messages that he would commit suicide if the applicant marries the respondent. The applicant noted that Satish had called him on Facebook Messenger, but he had not answered the calls. The Facebook messages from Satish to the applicant were marked and tendered as applicant's exhibit no. 3.

- [13] After reading all the messages, the applicant called Satish on Facebook Messenger in the presence of his father, and the conversation was recorded on the applicant's father's mobile phone. Five recordings were played in court. The audio recordings (saved on USB drive) were marked and tendered as applicant's exhibit no. 6.
- [14] The applicant stated that the audio recordings revealed that Satish was asked by the respondent to contact him and explain that Satish and the respondent were in a relationship and for Satish to send the messages exchanged between them from their TikTok accounts. The messages were marked and tendered as applicant's exhibit no. 4.
- [15] Upon receipt of the TikTok messages, the applicant called Satish, who told him that additional messages had been exchanged between him and the respondent on Instagram and that he would send them to the applicant's Instagram account. According to the applicant, the messages exchanged between the respondent and Satish on Instagram were similar to those Satish had sent him on Facebook Messenger. The applicant also pointed out that it was the respondent, via her Instagram account, who had sent to Satish his contact details. The Instagram messages were marked and tendered as applicant's exhibit no. 5.
- [16] The applicant again called Satish for the third time, and his father spoke with Satish which was recorded. Satish revealed that he had been in a relationship with the respondent for about nine to ten years and that the respondent had been forced by her parents to marry the applicant. Upon hearing this, the applicant called the respondent, who at first denied having a relationship with Satish, however, upon further questioning, she stated that Satish was her former boyfriend.
- [17] At this time, a conference call was made, during which Satish, the respondent, and the applicant spoke and listened to one another. The respondent denied having any relationship with Satish. According to the applicant, from 2019 until their marriage in 2022, the respondent had never told him anything about Satish or that she had been in a relationship with him. The applicant would not have married the respondent if she had told him that she was in a relationship with Satish.

[18] In cross examination, the applicant agreed that the exchange of rings had taken place in May 2022 and from May till December, 2022 he was in contact with the respondent. It was the respondent who usually contacted him and initiated the conversation between the two.

[19] Due to COVID-19, there was a pause in discussions, as it was uncertain whether the marriage would proceed. In 2022, the families resumed discussions about the possibility of marriage between the applicant and the respondent, provided the respondent was not married.

[20] The applicant agreed that the messages in exhibits 3 and 4 did not have a complete date, as the year was missing. The applicant also agreed that there was no evidence in the messages between Satish and the respondent confirming that they had communicated in 2022. Furthermore, the applicant had not asked Satish to specify the year in which the messages were exchanged between him and the respondent.

[21] When questioned why he believed Satish so easily that Satish and the respondent were in an existing relationship when there was no indication of the year in which the intimate messages between them were exchanged, the applicant responded by saying:

If someone is mentioning to me that they love someone so much that they are going to commit suicide, anyone would believe them.

[22] The applicant denied that the messages sent to him could have been fabricated by Satish or that Satish had invented a story claiming he was in a relationship with the respondent at the time.

[23] The applicant agreed that it was possible that the messages sent to him by Satish were exchanged between Satish and the respondent when they first started their relationship. The applicant also agreed that during the three way conversation, Satish had asked the respondent if she loved him, and the respondent had replied “no”. The applicant also

agreed the respondent had stated that she had not been texting or speaking to Satish for a longtime.

[24] Finally, the applicant stated that after he ended his relationship with the respondent, within a week or so, the respondent and Satish participated in a religious wedding ceremony and started living as a couple.

[25] In re-examination, the applicant stated that he received the messages on his Facebook and Instagram accounts in 2022.

[26] This was the applicant's case.

RESPONDENT'S EVIDENCE

[27] The respondent informed the court that in 2022, she was 22 years old and the applicant is her legal husband. According to the respondent, her marriage to the applicant was arranged by both families. The first time she met the applicant was in May, 2022, however, she had seen the applicant's photo in June 2019. They were communicating with each other by messaging and chatting via Viber and Facebook Messenger.

[28] There was a pause in their relationship from 2020 to 2022 due to COVID-19. After the pandemic, the families reconnected, and the respondent agreed to marry the applicant. Subsequently, the respondent and the applicant resumed communication in April 2022 and got engaged in May. At the time of the engagement, she was not in any other relationship.

[29] When the applicant was in Fiji, both before and after the engagement, he and the respondent were not close. Following their engagement in May 2022, the applicant returned in December 2022 for the civil marriage.

- [30] The respondent knows one Satish, who is her former boyfriend. She was in a relationship with Satish from 2018 to January 2019, and at that time, she was 18 years old. She knew Satish from high school days, as they attended the same school. When questioned about how long she had known Satish, the respondent replied “*two to three years,*” but their relationship lasted only one year.
- [31] The relationship ended in 2019 after the respondent left school and started working. Her parents disapproved of her relationship with Satish due to religious differences, as Satish was a Hindu and she was a Muslim. From 2019 to December 2022 she was not in contact with Satish.
- [32] In respect of the messages exhibited in court, the respondent said that she was not aware that Satish had sent to the applicant copies of the messages she and Satish had exchanged in the past.
- [33] The respondent agreed that she had a TikTok account and that she had sent those messages to Satish in 2018 when she was in a relationship with him. However, she denied the messages on Instagram were hers, even though the picture profile for the account named “A” was the same one used by Satish. The respondent maintained that she had not been messaging or calling Satish during her relationship with the applicant.
- [34] In respect of the audio recording played in court, the respondent denied Satish’s assertion that they were having a relationship for about nine to ten years and that they were in love. However, she agreed that Satish had truthfully stated that her parents did not accept him because he was a Hindu. She also affirmed that at no time her parents had forced her to marry the applicant and it was her wish to do so.
- [35] Furthermore, the respondent stated that if she did not marry the applicant her mother would commit suicide. The respondent denied having access to Satish’s Facebook account or being aware of all the messages Satish had sent to the applicant. She stated if the applicant wanted any clarification, he should have contacted her directly.

- [36] The respondent said she had no intention of deceiving the applicant into marrying her. She was happy to marry the applicant and build a future based on a genuine marriage.
- [37] When asked about her religious marriage to Satish, the respondent stated that one week after the applicant ended the relationship, she started receiving calls from both families, accusing her of being immoral and playing around with boys' emotions. The following week, Satish contacted her and suggested that they settle down. The respondent agreed, left her parents' house, and moved to Satish's house in January, 2023. Since December, 2024, they have been living together in her parents' house, which was converted into a flat. The religious ceremony she had with Satish was a "Nikah", performed after Satish converted to Islam.
- [38] In cross examination, when exhibit 3 (Facebook messages) was shown, the respondent agreed that one of the messages from Satish stated that he would convert to Islam. In another message, Satish expressed that he loved the respondent, wanted to marry her, and asked the applicant not to marry her.
- [39] When asked if she had knowledge about the above messages, the respondent disagreed. However, she confirmed that Satish had converted to Islam to marry her. The respondent stated that she had married Satish in a traditional ceremony two weeks after the applicant ended their relationship.
- [40] When shown exhibit 4, the respondent agreed that the messages were from her TikTok account. She was referred to messages on 16th December at 8.43pm which was read as follows:

Satish: "You won't leave me but

Resp: Talk to you later

Satish: Will be together

Resp: If I got married then

Satish: What if you got married to me then.

[41] When asked whether she had sent the above messages to Satish in December 2022, the respondent disagreed, stating that the messages were not exchanged in 2022.

[42] The respondent was again referred to the messages of 16th December, at 8.41pm between her and Satish which was read as follows:

Satish: Ji Baa, we don't have much time?

Resp: We don't have much time, I am worried, afraid.

Satish: Bye, now but tora se busy he.

Resp: Tensed.

Satish: Don't be afraid, I won't leave you.

[43] When it was suggested that her civil marriage to the applicant was only twelve days after, and that she did not have much time, which caused her fear, the respondent disagreed.

[44] Again, when it was suggested that she had expressed worry because her marriage to the applicant was approaching, the respondent explained that the messages were not from 2022 but were exchanged earlier, during her relationship with Satish.

[45] When it was put to the respondent that in 2022, there was a discussion about having a religious marriage after the civil marriage, and that was why in the exchange of messages between her and Satish she had mentioned the word marriage, and she was frightened.

The respondent disagreed and stated *“if I didn’t want to marry applicant I wouldn’t have to take so long, I would have done the marriage earlier before the applicant”*.

[46] When shown exhibit 5 (Instagram messages) the respondent agreed that the “A” account had the same profile picture as Satish’s Instagram account. The first message was read as follows:-

A: Make sure to send what we have send on messenger. Tell him to see your messenger as well. And send him all screenshot of whatever you two chat please. So that I can prepare myself here as well. Can you do it or not.

Satish: Ji Jaan.

A: Send exactly what we have send on messenger please same to same. Just copy and paste.

Satish: Apke Hubby hai. Translation: He is your husband.

A: Huh...

[47] The respondent recalled that Satish had said in an audio recording that “A” was her Punjabi account, however, she denied having such an account. The respondent also denied directing Satish from the A account to send their messages to the applicant.

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“Tell him to see your messenger as well?”

[48] The respondent agreed that whatever Satish said in the audio recording that she told Satish to message the applicant matched with the messages mentioned in exhibit 5 (the Instagram account). However, the respondent denied that she had sent those messages from her Punjabi account, “A”.

[49] The respondent agreed that the first time the applicant asked her who Satish is, she did not tell him that Satish was her former boyfriend.

[50] The respondent disagreed that she was communicating with Satish at the time of the legal marriage. When it was suggested that she was in a relationship with Satish during her legal marriage and had not disclosed this to the applicant, the respondent disagreed stating; *“applicant never asked about my past at all”*. When questioned further about a private conversation in which the applicant had asked her, the respondent replied:

“According to him, past doesn’t matter since we were planning our future”.

[51] The respondent disagreed that she had misled the applicant into believing that she was not in a relationship with Satish, which led to the applicant consenting to marry her on 28th December, 2022.

[52] In re-examination, the respondent stated that, in the exchange of messages between her and Satish, the expressions of worry, fear and tension were not in 2022 and it related to a different matter. She further confirmed that what Satish said in the audio recording matched the contents of the Instagram messages.

[53] The final respondent’s witness, Pawan (“P”), also known as Satish (“S”), informed the court that he has been living with the respondent in her parents’ flat. They have been living together for the past three to four years. Their relationship began in 2018 and continued until January, 2019, then resumed in 2023. Satish also lived in the same area as the respondent, which is how he learned that the respondent was getting engaged and married in 2022. He contacted the applicant, and they spoke on the phone and exchanged messages on Instagram and Facebook Messenger.

[54] When exhibit 3 (Facebook messages) was shown he agreed it was his account and he had messaged the applicant in December, 2022. The messages were read as follows:

“Hi, sorry you don’t know me, but ‘Saira’ knows me well. We love each other a lot and we already had our moments and I cannot live without her, I really love her and if you can understand and help.”

“Our love is for years, I cannot live without her if I didn’t get her I will commit suicide. Please try to understand and help me.”

“I am ready to convert myself into a Muslim but her parents still doesn’t accept me but we really love each other.”

[55] The witness confirmed that he had sent the above messages to the applicant. Additionally, he also called the applicant, explaining that whatever he was doing was to preserve his relationship with the respondent.

[56] When exhibit 4 was shown, the witness agreed that the messages in the TikTok account had been exchanged between him and the respondent from 2018 to 2019. At that time, they were in a relationship. The witness confirmed that he had sent these messages to the applicant.

[57] When asked why they were having an exchange of messages about marriage in 2018. The witness said it was a casual talk due to different religions. The witness was referred to the messages from 8:41pm to 8:42pm which was read as follows:

“We don’t have much time, I am worried, afraid but I know thora se busy hai jaan, tensed, Suno don’t be afraid I won’t leave you.”

[58] When asked what was this messaging in regards to, the witness said *“at this moment we had an argument, she was trying to patch up.”* This was in 2018.

[59] When shown exhibit 5, the witness stated that “A” was his Instagram account and that he had been messaging his other account, Satish. At that time, the respondent did not have

access to his “A” account, and the messages on his Instagram were exchanged solely between himself. When asked why he did this, the witness said he wanted to inform the applicant that he and the respondent were talking and that the applicant could help him get back with the respondent.

[60] When the audio recording exhibit no. 6 was played, the witness agreed it was him in the recording.

Audio Part 1

[61] The witness agreed that he had been speaking with the applicant and had told him that the respondent knew he was contacting the applicant. However, this was not true, including what he told the applicant as recorded that he and the respondent were in a relationship for nine to ten years. The witness also admitted that he had told the applicant that he and the respondent were in love, but her parents did not accept him.

[62] According to the witness, at that time, he was drunk and had expressed that he actually wanted to be with the respondent. However, the witness stated that he had no knowledge about the respondent at the time as he did not have any contact with her.

Audio Part 2

[63] The witness agreed it was him talking to the applicant that he had sent to the applicant the screen shots of Instagram messages he had exchanged with the respondent.

Audio Part 3

[64] The witness agreed that he had been speaking with the applicant’s father, during which he stated that he and the respondent were in a relationship for about nine to ten years. However, he stated that this was not true, as he was drunk and he was unaware of what he was saying at the time.

[65] The witness agreed that he had stated the respondent's parents had forced her to get married to the applicant because he was a Hindu. However, this was not true but a fabrication by him.

[66] The witness stated that he had informed the applicant's father that he knew the applicant had been in Fiji for his engagement. The witness further claimed that the respondent's mother was blackmailing the respondent into marrying the applicant, and threatening to commit suicide if the respondent refused.

[67] However, the witness stated that he had fabricated this assertion. Regarding his earlier statement that it was the respondent's decision for him to send friend requests to the applicant and his family, the witness clarified that this was not true, since he had wanted to do so.

[68] Also the witness said he had stated that the respondent had access to his Facebook account but this was not true, he was the one sending those messages.

Audio Part 5

[69] The witness once again agreed that he was the one in the audio recording with the applicant and the respondent. He confirmed that he had sent the messages between himself and the respondent to the applicant. However, when the respondent denied communicating with the witness, she told the truth. Additionally, the witness admitted that his claim that the respondent was communicating with him under a Punjabi account was not true.

[70] In cross examination, the witness once again confirmed that he had been messaging as "A" and receiving responses as Satish. He stated that he was the one who had captured the screenshots and sent them to the applicant.

[71] The witness agreed that he was a dishonest person and his evidence in court had been entirely false. However, as the questioning progressed, the witness changed his position and stated *“I took oath on the Quran and whatever I said is correct.”*

[72] In re-examination, the witness stated that he had been confused when he said “yes” to the question that his evidence was entirely false. He further emphasized that he was also confused when he admitted lying to “Aziz” and his father during their conversation, which is why he had responded “yes”.

[73] This was the respondent’s case.

LAW

[74] The applicant in his Form 2 Application for an Order of Nullity relies on the ground that no real consent was given by him when he got legally married to the respondent on 28th December, 2022 since his consent was obtained by fraud of the respondent.

[75] 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 ... fraud; ...*

and not otherwise.”

[76] The applicant relies on ground of fraud in support of his application for nullity. The Family Law Act does not define fraud, however, over the years the courts have defined fraud in several cases.

[77] In my considered judgment, the definition of fraud *In the marriage of B J and G Otway 11 Fam LR 99 (16 May, 1986)*, where McCall J. expressed the view that the term “fraud” should not be given a liberal or expanded meaning, is no longer persuasive. The Family Law Act in Fiji is a no fault based legislation therefore, the phrase “fraud” in section 32 (2) (d) (i) must be read in light of civil law standards and not interpreted as akin to criminal fraud. This means any reference to civil law fraud must adhere to civil law standards, with the civil standard of proof applied.

[78] Furthermore, the above case authority is a 1986 decision that has been overtaken by technological advancements and changing lifestyles. The meaning of fraud, if not interpreted broadly within the context of Fijian culture and way of life, may hinder the attainment of justice. In this regard, any concealment of material and pertinent information that fundamentally affects the root or foundation of a marriage contract - if disclosed - could have prevented the other party from entering into the marriage. This now appears to be an accepted basis for alleging fraud (*see Radhesh vs. Sushmita, 18/SUV/0611 (4 October, 2023), Abhilash vs. Kaashvi, 16/SUV/0127, (4 October, 2023)*).

[79] In the marriage of *Deniz (1977) 31 F.L.R 114*, Justice Frederico made an important observation when fraud is relied upon as a ground, at page 117 he stated inter alia:

Clearly the fraud relied on must be one which goes to the root of the marriage contract.

[80] The onus of proving absence of consent at the time of the marriage rests upon the applicant. I am mindful that an application for an order of nullity is not to be taken

lightly. The law recognizes the need to preserve and protect the institution of marriage hence, the court cannot grant a decree of nullity as a matter of discretion. If the evidence establishes that a marriage is void, appropriate remedies must be granted.

ANALYSIS

- [81] The applicant contends that his marriage to the respondent is void because he did not give his real consent to marry her, his consent was obtained by fraud. The respondent had been in an intimate relationship with a person named Satish for the past nine to ten years, both before and at the time of her civil marriage to the applicant. Unknown to the applicant, after their legal marriage, it was the respondent who provided Satish with the applicant's per Satish information, including his Facebook and Instagram details, in an effort to contact him.
- [82] Upon receipt of the applicant's social media details, Satish began calling and messaging the applicant. Unfortunately, the applicant did not read the messages sent by Satish before his civil marriage. Had the respondent disclosed her ongoing relationship with Satish, the applicant would not have married her. The applicant later read the messages exchanged between Satish and the respondent, which Satish had sent and the applicant had received on 30th December, 2022.
- [83] In order to confirm the authenticity of the messages and determine what was going on, the applicant called Satish and audio recorded their conversations. The applicant felt betrayed by the respondent, as it was now clear that an intimate relationship had existed between the respondent and Satish for the past nine to ten years and remained ongoing.
- [84] The bond between the respondent and Satish was so strong that Satish was willing to convert to Islam and had even considered suicide if he was unable to settle down with the respondent. Satish appeared genuine in his intentions and had truthfully informed the

applicant that the respondent had forwarded his contact information to him. As a result Satish provided all the evidence and information about their relationship to the applicant and sought the applicant's assistance in saving his love life.

[85] Shocked by this revelation, the applicant initiated a three way conference call with the respondent and Satish. The respondent denied the allegations, but when asked again by the applicant whether she knew Satish, she falsely stated that Satish was her former boyfriend.

[86] After informing the respondent that he was ending the relationship, the applicant later learned that, the respondent and Satish had begun living together in a de facto relationship as of January, 2023. The applicant asserts that the respondent had concealed the truth about her ongoing relationship with Satish at the time of their civil marriage.

[87] After the civil marriage, both Satish and the respondent became increasingly desperate, fearful and anxious because the traditional "Nikah" ceremony was to be performed. As a result, the respondent had no choice but to coach Satish to disclose their ongoing relationship to the applicant in an effort to make the applicant leave the respondent permanently.

[88] The applicant submits that the fraud orchestrated by the respondent was well planned and systematically executed to his detriment. He had only consented to marry the respondent after she assured him that there were no impediments to their marriage and that she was not in a relationship with anyone. According to the applicant, the respondent had been dishonest and had misled him into marrying her.

[89] On the other hand, the respondent denies the fraud allegations made against her. She states that, although she had been in a relationship with Satish during her high school years that relationship had ended in January 2019. At the time of her civil marriage to the applicant, she was not in contact with Satish. She further states that the messages

exchanged between them were not recent but when they were in a boyfriend and girlfriend relationship, long before the civil marriage.

[90] It is incorrect for the applicant to assert that the respondent committed fraud against him. She maintains that she was not in a relationship at the time of the civil marriage. After the applicant ended the relationship, both families labelled the respondent as immoral, and it was then she decided to settle down with Satish.

[91] The respondent was sincere and had expressed her desire to lead a happy married life with the applicant. She did not do anything to jeopardize her marriage to the applicant. The applicant had no interest about her past, and both of them were focused on the future.

DETERMINATION

[92] At the outset, I would like to thank both counsel for filing their written submissions, which were of great assistance.

[93] This was a highly contested nullity application that brought forward some sensitive facts. Bearing this in mind, and given the sensitivity of the evidence presented, the court has taken care to avoid detailing all such facts in this judgment.

[94] It is not in dispute that the applicant and the respondent had not met until May 2022, and their marriage was solemnized on 28th December 2022. Since this was an arranged marriage, it was accepted that the applicant and the respondent were unaware of each other's past until informed by the other or by someone else.

[95] At this point, I would like to state that marriage is an institution built on trust. As a result, any party to a marriage who withholds vital information that goes to the root of the marriage contract such as a person's de facto relationship with another, an ongoing intimate relationship, or pregnancy runs the risk of being held accountable for the suppression of such information. Failure to disclose such information before or at the

time of a civil marriage, could be seen as obtaining the consent of the innocent party by fraud.

[96] When Satish sent the Facebook Messenger messages to the applicant at the respondent's behest, in one of the messages, Satish stated:

"We have already gone out together. How can you marry a girl who has already been out with me?"

[97] This case concerns the respondent and Satish being in an ongoing, stable relationship, and the respondent deliberately suppressed or withheld this information at the time of the civil marriage.

[98] The issue for determination is whether the marriage solemnized between the applicant and the respondent is void on the basis that the applicant's consent to marry the respondent did not constitute real consent.

[99] After carefully considering the evidence presented by the applicant and the respondent, as well as the exhibits tendered, I believe the applicant's evidence to be truthful and reliable. It is clear to me that the respondent, even before entering into the civil marriage with the applicant, was in an intimate relationship with Satish and, therefore, could not have fulfilled the obligations of her marriage to the applicant.

[100] The respondent was already in an ongoing intimate relationship with Satish, colluding and planning with him to ensure that the applicant leaves the respondent permanently and cancels the marriage. I accept that it was the respondent who knew the per Satish details of the applicant and his social media accounts. She forwarded this information to Satish so that Satish could immediately contact the applicant and bring to his attention the intimate messages and emojis that had been exchanged between the two.

- [101] The respondent was in a continuous relationship with Satish and, at the time of the civil marriage, fraudulently induced the applicant to enter into the marriage without any intention of fulfilling her obligations as his wife. She lied to the applicant when she said that she was not in a relationship with anyone. According to the tendered photographs, the respondent was smiling and appearing cooperative in a manner that did not raise any doubt or suspicion regarding her intentions or motive to deceive the applicant.
- [102] The respondent was alert to what was happening around her. After the civil marriage, there was a move towards traditional marriage, which caused the respondent to become tensed, worried, and fearful that she would lose Satish forever. This act of desperation led to careful coordination between the respondent and Satish. Satish told the truth when he conversed with the applicant and the applicant's father, as evidenced by the audio recording tendered in court.
- [103] However, Satish reversed his position in court, claiming that he was drunk at the time he spoke to the applicant's father and the applicant. I listened to the audio recording again, and there is nothing to suggest that Satish was intoxicated. He maintained the same composure and control as in previous instances, as evidenced by the audio recordings tendered. He gave rational answers when questioned by the applicant and his father. In an effort to protect the respondent, Satish provided a false testimony in court. Moreover, it is nonsensical to fathom that the Instagram account "A" belonged to the Satish and that he was sending messages to himself is an outright lie.
- [104] I accept that the respondent and Satish were in a relationship for nine to ten years, which continued behind the scene but could not materialize due to their religious differences. The respondent did not have the courage to stand up to her parents and get married to Satish due to religious differences. The respondent went along with the marriage until she realized the consequences of her decision after the civil marriage. With Satish's assistance, the respondent exposed their relationship to the applicant to ensure that it remained intact.

- [105] The Instagram account “A” belonged to the respondent, yet she falsely claimed in court that it was not her account. The messages in the “A” account illustrate the respondent’s instructions to Satish to forward their private messages to the applicant. It was the respondent who had knowledge of the applicant’s Instagram account, and she had sent the screenshots to Satish so that he could initiate communication with the applicant.
- [106] The respondent, in collaboration with Satish, attempted to deceive the court into believing that their relationship had ended in January, 2019. However, if that were true, then how could it be that, just two weeks after the breakup between the applicant and the respondent, they began living together – a situation that continues to date?
- [107] The respondent did not tell the truth when she claimed in court that she was unaware that Satish had sent their messages to the applicant. I accept that the respondent was the author of the “A” account messages, and that she had instructed Satish to send all their messages to the applicant. The respondent attempted to rely on the fact that the TikTok account did not indicate the year in which the messages were exchanged between her and Satish. I accept that when the respondent messaged Satish on 16th December, it was in 2022, - twelve days before the civil marriage. The contents of those messages are undisputed and indicate the desperation that overcame the respondent, as after the civil marriage, the religious marriage was around the corner.
- [108] The respondent maintained a brave face in court while denying committing any fraud against the applicant. I do not place any weight on the evidence of the respondent and Satish. The fraud perpetrated by the respondent against the applicant is so fundamental that it has undermined the foundation or the root of the marriage contract.
- [109] I am satisfied on the evidence presented, that the applicant’s consent did not constitute real consent, as it was obtained by fraud when the respondent wife failed to disclose to the applicant husband material and crucial information that fundamentally affected the root or the foundation of their marriage. I am also satisfied that, had the applicant been

made aware of the existing intimate relationship between the respondent and Satish, he would not have consented to the marriage.

FINAL ORDERS

- (a) The application for order of nullity of marriage is hereby granted.
- (b) The marriage solemnized on 28th day of December, 2022 at, Lautoka 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) Each party to bear their own costs.

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Sunil Sharma
JUDGE

At Lautoka
29 May, 2025

Solicitors
Messrs Iqbal Khan & Associates for the Applicant.
Office of the Legal Aid Commission for the Respondent.