

IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA

ORIGINAL JURISDICTION

<u>ACTION NUMBER:</u>	2024/LTK/0326
<u>BETWEEN:</u>	VANRAJ
<u>AND:</u>	KIRAN
<u>Appearances:</u>	<i>Mr. S. Nand and Ms. R. Sauqaqa for Applicant</i> <i>No appearance by the Respondent.</i>
<u>Date/Place of Judgment:</u>	<i>Monday 16 June, 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 husband on the ground that the marriage was not properly solemnized.*

APPLICANT'S APPLICATION

- [1] The applicant husband seeks to have his marriage with the respondent wife solemnized at the Births, Deaths and Marriages Registry, Lautoka on the 21st day of August, 2024 nullified, on the ground that the marriage was not properly solemnized.

RESPONDENT'S RESPONSE

- [2] The respondent wife having being served with Form 2, Application for Order of Nullity did not file and serve any response or appear in court.
- [3] The applicant gave evidence in support of his application for an order of nullity. The hearing was conducted in one day and after its conclusion counsel sought leave to file written submissions which was granted as follows:
- (a) Applicant to file and serve written submissions within 21 days.
- [4] Counsel was 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, "Vanraj," holds dual citizenship in both Australia and Fiji. He is a cabinet maker in Australia. After completing year 9, the applicant obtained a trade certificate in cabinet making. In 2023, the applicant met the respondent after his aunt in Melbourne, Australia introduced him to the respondent. The applicant and the respondent started communicating via Facebook Messenger, and they went on a couple of dates.
- [6] During Christmas 2023, the applicant invited the respondent to meet his mother, stepfather, and two nieces. The applicant's family was very fond of the respondent. At that time, the respondent was on a student visa, so they decided that she could stay with the applicant's family.

- [7] In January 2024, the respondent moved in with the applicant and his family. In March 2024, the applicant organized an engagement ceremony, during which he and the respondent became engaged. The engagement photos were marked and tendered as applicant's exhibit no. 1.
- [8] In May and August 2024, the applicant's two cousins were set to get married in Fiji, so the applicant and the respondent travelled to Fiji to attend the weddings and visit relatives. It was the respondent's first time returning to Fiji since moving to Australia. The applicant and the respondent participated in both weddings and enjoyed the celebrations.
- [9] The applicant met the respondent's parents and family members. The respondent suggested organizing their legal marriage before the traditional ceremony, scheduled for June 2025, so that her family could take part, as they had missed the engagement ceremony in Australia.
- [10] The applicant agreed to proceed with the legal marriage, with the traditional ceremony to follow later. The respondent quickly arranged for the legal marriage. According to the applicant, there was a waiting period of 21 days before the legal marriage could be solemnized, but somehow, the respondent managed to get things done before the waiting period ended. Furthermore, some of the applicant's family members at that time were also preparing to return to Australia.
- [11] The applicant and the respondent were scheduled to fly back to Melbourne on 24th August, so on 21st August 2024, they got married at the office of the Registrar of Births, Deaths and Marriages, in Lautoka. The marriage certificate of the applicant and the respondent, solemnized on 21st August 2024, was marked and tendered as applicant's exhibit no.2. The applicant stated that photos were taken at the registrar's office. The photos of the civil marriage were marked and tendered as applicant's exhibit no. 3.

- [12] After the legal marriage, the applicant noticed that the respondent was not acting like her usual self. She spoke very little, and when they reached home, the respondent did not speak to the applicant and went straight to the bedroom. The applicant said the respondent had always been a bubbly, happy, and sociable person, but this changed at the time of the legal marriage. He stated that this shift was clearly visible in the photos taken during the legal marriage.
- [13] The next day, the respondent started acting strangely. She seemed disoriented, was unaware of her surroundings particularly where she was, and did not acknowledge the applicant. However, when the respondent's father arrived, she recognized him immediately. Her father took her to their home. When the applicant later visited her in Lautoka, he noticed that she appeared absent minded and was unusually quiet.
- [14] The applicant continued to visit the respondent. On 17th September 2024, he went to see her again, only to discover that she had departed for Australia the previous day. The respondent had not informed the applicant of her departure. Upon learning that the respondent had left for Australia, the applicant withdrew his partner visa sponsorship, resulting in the cancellation of the respondent's visa.
- [15] When asked to explain why the marriage was not properly solemnized, the applicant stated that it was a fake marriage on the part of the respondent. The applicant further informed the court that he is seeking a nullity of his marriage in order to regain his bachelor status.
- [16] Upon questioning by the court, the applicant confirmed that at the time of his legal marriage, a marriage officer was present. He understood what was happening and signed the marriage certificate after the marriage officer had explained the process.
- [17] This was the applicant's case.

LAW

[18] The applicant in his Form 2 Application for an Order of Nullity relies on the ground that his marriage with the respondent was not properly solemnized.

[19] The above ground is stated in section 32 (2) (c) 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 –*

...

(c) *the marriage is not a valid marriage under the law of the place where the marriage takes place, by reason of a failure to comply with the requirements of the law of that place with respect to the form of solemnisation of marriages...*

and not otherwise.”

[20] The burden of proving that the marriage was not properly solemnized rests upon the applicant under the civil standard of proof. I am mindful that an application for an order of nullity should not be taken lightly. The law recognizes the need to preserve and protect the institution of marriage, hence, the court does not have discretion to grant a decree of nullity. If the evidence establishes that a marriage is void, appropriate remedies must be granted.

ANALYSIS

- [21] The applicant contends that his marriage to the respondent is void because it was not properly solemnized. According to the applicant, the respondent had faked the marriage. She intended to deceive the unsuspecting applicant keeping him oblivious to her true motives for marrying him. The applicant asserts that the respondent was only interested in his money and obtaining a permanent residency in Australia.
- [22] Moreover, the respondent's attitude changed after the legal marriage. She began behaving in an unusual manner, ceased all communications with the applicant, and no longer showed interest in him. The most shocking part of her behaviour was that she secretly left for Australia without informing him.
- [23] The applicant further states that he found the respondent's behaviour troubling, as she did not display any happiness at the time of the civil marriage. The photos taken during the ceremony at the office of the Registrar of Births, Deaths and Marriages (marked as exhibit 3) makes this obvious.

DETERMINATION

- [24] The applicant's counsel did not file the written submissions as ordered. The court cannot wait indefinitely. The applicant and his counsel were informed that the judgment will still be delivered if the submissions are not filed.
- [25] It is not in dispute that the applicant and the respondent had been cohabiting as a couple in Melbourne, Australia, since January 2024. The respondent continued to reside in Australia after the applicant sponsored her partner visa, which was approved by the Australian Immigration.

- [26] The couple travelled to Fiji to attend the weddings of two of the applicant's cousins. Afterwards, they visited the Office of the Registrar of Births, Deaths and Marriages to formalize their civil union. The applicant informed the court that the marriage ceremony was officiated by a Marriage Officer.
- [27] The marriage certificate complies with the Marriage Act and is signed on behalf of the Registrar-General, bearing the original signature and official rubber stamp. According to the certificate, the marriage between the applicant and the respondent was solemnized on 21st August 2024, and registered on the same day. The document includes all the relevant details of the applicant and the respondent, as well as those of the witnesses.
- [28] Furthermore, the photos tendered as evidence depict the applicant and the respondent before the Marriage Officer, with several attendees believed to be relatives of the parties, along with two witnesses who signed the certificate of marriage. The applicant appears to be smiling in one of the photos.
- [29] The respondent is also seen in the photos, sitting beside the applicant, appearing to observe the process before accepting the certificate of marriage alongside the applicant. While the respondent is not smiling in any of the photos tendered, this does not necessarily indicate a lack of cooperation or that the marriage was not properly solemnized.
- [30] Another aspect of the matter is that only a portion of the photos have been tendered in court, there may be more. For example, in the photos tendered the respondent is not seen to be signing the certificate of marriage, but this does not mean that she did not sign the document. The fact that both the respondent and the applicant accepted the certificate of marriage suggests their mutual acknowledgement that the marriage was properly solemnized.

[31] The applicant has not alleged any fraud on the part of the Marriage Officer or the manner in which the marriage ceremony was conducted. In fact, the applicant told the court that he was fully aware of the process and that everything was clearly explained by the Marriage Officer.

[32] Based on the evidence presented, this court is satisfied that the marriage between the applicant and the respondent was properly solemnized on 21st August 2024. Accordingly, the sole ground for an order of nullity has not been proven by the applicant.

FINAL ORDERS

- (a) The application for an order of nullity of marriage is dismissed due to lack of merits.
- (b) Applicant to bear his own costs.

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Sunil Sharma
JUDGE

At Lautoka
16 June, 2025

Solicitors
Messrs. S. Nand Lawyers for the Applicant.
No Appearance by the Respondent.