

**IN THE FAMILY DIVISION OF THE HIGH COURT  
APPELLATE JURISDICTION**

**CASE NUMBER:**

10/LTK/0483

**BETWEEN:**

FARISHA

**AND:**

MUNIR

**Appearances:**

Mr. F. S. Koya for the Applicant.

**Date/Place of judgment:**

No appearance of Respondent.  
Wednesday, 26<sup>th</sup> January, 2011 at Lautoka.

**Judgment of:**

The Hon. Justice Anjala Wati

**Coram:**

The Hon. Justice Anjala Wati

**Category:**

*All identifying information in this judgment have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarities to any persons is purely coincidental.*

**Anonymised Case Citation:**

FARISHA V MUNIR - Fiji Family High Court Case Number:  
10/LTK/0483.

**JUDGMENT OF THE COURT**

**Catchwords**

MARITAL STATUS PROCEEDINGS - APPLICATION FOR AN ORDER FOR NULLITY - application by wife on the ground that she did not provide her real consent to the marriage because her consent was obtained under duress by the respondent husband - the test for duress not met - application dismissed with no order as to costs.

**Legislation**

Family Law Act No. 15 of 2003.

Cases/Texts Referred To

Scott (falsely called Sebright) v. Sebright (1886) 12 P. D. 2.

Cooper (falsely called Crane) v. Crane [1891] P. 369.

Szechter (or se. Karsov) v. Szechter [1971] P. 286.

Re Meyer [1971] P. 298.

Hirani v. Hirani (1982) 4 Fam. L. R. (Eng.). 232.

hi the Marriage of S (1980) 42 F.L.R. 94.

In the Marriage of Teves and Campomayor (1994) 122 F. L. R. 172.

### The Application

1. This is an application by the wife to have her marriage solemnised at Lautoka Registry in 2010 nullified on the ground that she did not provide her real consent to the marriage as the same was obtained under duress by the respondent husband.

### The Response

2. The husband was served with the application but he did not file any response nor did he appear in court to defend the matter.

### The Law

3. Section 32 (1) of the Family Law Act No. 18 of 2003 states that a party can apply for an order for nullity of the marriage on the grounds that the marriage is void. There are certain grounds under which a marriage can be held to be void. In this case the ground is alleged to be pursuant to the first limb of section 32 (2) (d) (i). I will have to state the law in respect of the ground alleged.
4. The first limb of section 32 (2) (d) (i) of the Family Law Act No. 18 of 2003 states that a marriage is void if the consent of either party to the marriage is not a real consent because it was obtained by duress.
5. Duress has been defined as follows:-
  - 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: (Scott (falsely called Sebright) v. Sebright (1886) 12 P.D, 21.)
  - o 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: (Cooper (falsely called Crane) v. Crane [1891] P. 369.)
  - If there is a threat of immediate danger to life, limb or liberty: (Szechter (orse. Karsov) v. Szechter [1971] P, 286.)
  - If there is a threat of immediate danger to life, limb (including serious danger to physical or mental health), or liberty: (Re Meyer (1971) P. 298 at pp. 306 and 307.)

- o If the threats, pressure, or whatever it is, is such as to destroy the reality of consent and overbears the will of the individual: (Hirani v. Hirani (1982) 4. Fam. L.R. (Eng.); 232.)
- 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: (In the Marriage of S (1980) 42 F.L.R 94.)
- 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 continues to overbear the will of a party to a marriage ceremony at the time of the ceremony itself: (In the Marriage of Teves and Campomayor (1994) 122 F. L. R 172)

### The Evidence

6. The wife filed an affidavit in support of the application in which she deposed as follows :-

- ® The respondent was her family friend.
- o In June, 2010, the respondent invited her to accompany him to a Farmer's festival held in Lautoka.
- After her parents gave their permission, she accompanied the respondent to the Farmer's festival in Lautoka.
- o They stayed at the festival until 10 am after which the respondent invited her to his aunt's residence at Lautoka.
- ® At his aunt's place the respondent requested her if he could make a call from her mobile phone and also requested if she could buy something to eat.
- When she gave the money his tone changed. He told her to get legally married to him at the Lautoka Registry and she refused. She told him that she was his best friend and not his fiancée or his partner. The respondent then became very aggressive and violent and called his uncle Rahul.
- « Rahul told her that since she was going out with the respondent, it was better for them to get married to each other. She still refused but the respondent lied to her by saying that

her parents had lodged a complaint with the Army Officers and the Army officers were looking for them. He also told her that if they did not get married, the Army Officers would go after them.

- She had no money to run away from him from Lautoka. Fie also had her mobile so she had no other option but to go to the Lautoka Registry and get legally married to him.
- ® Around 10pm of the same day, her father came and took her away from the respondent's aunts residence.

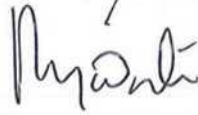
### The Determination

7. I simply find the applicants evidence incredible. If she did not want to get married, she could have explained to the marriage officer her difficulty and asked for assistance to get to her parents. She was not at the respondents' home that she could not get out and seek help. She was at a government office and that was Lautoka Registry. If the respondent created any commotion, there he would definitely have been dealt with by the marriage officer or the police officers.
8. It is also incredible that the applicant would get married under the threat that the Army Officers were looking for them. If they were, then it was a blessing in disguise for her to go away with the Army Officers and explain to them how the respondent was forcing her to get married.
9. She had no reason to succumb to the respondents demands.
10. I am of the judgment that this is a marriage where the applicant provided her consent at the time of the marriage and there was no duress on her by the husband. I am of the judgment that the applicant is concocting evidence to meet a ground for nullity. She cannot have that consent vitiated because she has not established to my satisfaction that she was under duress by her husband. The test has not been met.

### The Final Orders

11. The application for an order for nullity of marriage is refused.

12. There shall be no order for costs.



ANJALA WATI

Judge

26.01.2011

To:

1. *Mr. F. S. Koya, Counsel for the Applicant.*
2. *Respondent.*
3. *File Number: 10/Ltk/0355.*