

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

CASE NUMBER:	10/LTK/0540
BETWEEN:	RASHEED
AND:	RUKSHANA
Appearances:	Applicant I in Person. No appearance of Applicant II.
Date/Place of judgment:	Tuesday, 01st February, 2011 at Lautoka
Judgment of:	The Hon. Justice Anjala Wati.
Coram:	The Hon. 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 similarities to any persons is purely coincidental.</i>
Anonymised Case Citation:	RASHEED V RUKSHANA - Fiji Family High Court Case Number: 10/LTK/0540.

JUDGMENT OF THE COURT

Catchwords

MARITAL STATUS PROCEEDINGS - APPLICATION FOR AN ORDER FOR NULLUM - joint application by parties on the ground that the husband did not provide his real consent to the marriage because his consent was obtained under duress by his mother- the test for duress not established -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. Ilirani (1982) 4 Fam. L. R. (Eng.). 232.

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

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

Re Meyer [1971] P. 298.

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

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

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

The Application

1. This is an application by the parties jointly to have their marriage solemnised at Lautoka Registry in 2010 nullified on grounds that the husband did not provide his real consent to the marriage as the same was obtained under duress by his mother.

The Law

2. 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 sec 32 (2) (d) (i). I will have to state the law in respect of the ground alleged.
3. 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.
4. 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.)
 - 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 (or. 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.)
 - 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

5. Only the husband and his mother gave evidence on behalf of the first applicant.

6. The husband testified as follows:-• He was living in Suva. He was called home by the mother. He went home and saw that the girls' family had arrived for the marriage ceremony. His mother started crying and said for him to agree to the marriage. The marriage was to take place the next day and he agreed to get married because his mother has raised him up as a single parent and he did not wish to disobey his mother by declining to get married.

- He wants to get out of the marriage as it was not his choice to get married.

7. The mother gave evidence that her son was working in Suva. She called him home and did not tell him that he was to get married. The girls' family had arrived at her place and she had agreed to the marriage. She asked her son to get married and the son initially declined but she told the son to get married as it was good for the son and her too. The son then agreed to get married.

The Determination

8. The son agreed to marry so he could remain obedient and keep his mother happy. This does not constitute duress at all.

9. The husband's powers to refuse the marriage had not been paralysed. He agreed to listen to his mother and provide his consent. That consent becomes his own consent and he cannot have the same vitiated.

10. I also do not believe him that he had to get married because the girl's family had arrived for

marriage at his place. The marriage did not even take place at his place. It took place at Lautoka Registry and as a grown up independent person, he had the ability to discuss with his mother his wishes and convince her, like he has now done after marriage that he does not wish to remain married.

11. The test for duress has not been established and the application must be dismissed forthwith.

The Final Orders

12. The application for an order for nullity of marriage is refused.
13. There shall be no order to costs.

Anjala Wati

Judge

1.2.2011

To:

1. *Applicant I*
2. *Applicant II*
3. *File Number 101 Ltk 03*

To:

1. *Applicant I.*
2. *Applicant II.*
3. *File Number 10/Ltk/0540.*

