

IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA

ORIGINAL JURISDICTION

<i>APPEAL NUMBER:</i>	20/Ltk/ 0332
<i>BETWEEN:</i>	NSA APPELLANT
<i>AND:</i>	FF RESPONDENT
<i>Appearances:</i>	Ms. Ali of LAC for the Applicant No Appearance of the Respondent.
<i>Date/Place of judgment:</i>	Thursday 19 May 2022 at Lautoka
<i>Coram:</i>	<i>Hon. Madam Justice Anjala Wati</i>
<i>Category:</i>	<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>

JUDGMENT

Catchwords:

FAMILY LAW –Marriage – Alleged duress by parents – Is duress established on the evidence – is the marriage null and void for want of real consent to the marriage?

Cause and Background

1. It is the wife's application for an order that the marriage solemnized between the parties in 2019 be annulled. The ground raised in the application was that her parents had forced her to get married which she agreed to although her heart was not in what she was doing.

Evidence and Analysis

2. The wife and her cousin gave evidence. The wife testified that the marriage was arranged by the families. Her parents got to know that a person was coming from New Zealand to Fiji. Her parents gave his number to her so that she could talk to him for a week. She was 21 years old and a student.
3. She further testified that her parents told her that she can go out and support them. Deep down in her heart she did not want to get married as she wanted to study, work and then support them. She said that she told her parents that she does not wish to get married. They said to her that he was such a good boy and that she will not find a person like him. She agreed then.
4. I then questioned her about the nature of the pressure on her to get married and she then said that the parents told her that if she did not get married, she will have to leave the house. She had no other place to go but to go along with their wishes. She then added that her parents said that she was goof for nothing if she did not get married to the man they chose.
5. It was also part of her testimony that when she got married, the husband was good with everyone but not with her. He used to taunt her. When he went back to New Zealand, the relationship broke.

6. The cousin's evidence was that she lives with the applicant in the same house. The house is partitioned. The cousin testified that she is aware when the marriage proposal came. The parents abused her emotionally. The mother said for her to get married and make her life. She refused and they would swear at her. She cried in response.
7. The cousin further testified that the parents will cry and ask her to consider the marriage and make her life. She also said that the husband would say unnecessary things to the applicant both before and after the marriage. When I questioned her about the nature of his remarks, she only testified that it was related to her clothes.
8. First of all, I must state that I do not find the evidence of the wife and the cousin credible. It appeared to me that they have alleged pressure to escape from the marriage. The wife's evidence was also inconsistent with the evidence of the cousin on the nature of pressure put on her by the parents.
9. The wife testified that her parents threatened to remove her out of the house if she did not marry and the cousin said that they would cry and swear at her when she refused to get married. The cousin did not say anything about her being pushed out of the house.
10. I do not find that there was pressure to the extent that caused the wife to be fearful of her life, limb and liberty. The parents may have asked her to marry the man they chose. They may have shown her the good side of getting married. They may have cried and wanted her to agree but those are not pressure of a form that amounts to duress to paralyse the powers of volition of the applicant to refuse the marriage. I find that these were requests from the parents and did not amount to pressure that caused the wife to be fearful that she will be under some difficult situation if she did not marry the boy they chose.

11. I do not accept her evidence that she was threatened to be pushed out of the house. I find that she made this aspect up. I found her very evasive and not convincing when she gave the evidence. If there was any such statements by the parents, I do not find that it was said and done in such extreme circumstances causing her to be fearful of her life, limb or liberty or that she was mentally affected to a degree that she could not refuse the marriage.

Final Orders

12. In the final analysis, I do not find that the evidence of the wife establishes that there was duress to vitiate her real consent to the marriage. I therefore dismiss the application for nullity of marriage.
13. I also order each party to bear their own costs of the proceedings.

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Hon. Madam Anjala Wati
Judge
19.05.2022

To:

1. **Legal Aid Commission for the Applicant.**
2. **Respondent in Person.**
3. **File: 20/Ltk/0332.**