
IN THE FAMILY DIVISION OF THE HIGH COURT

AT LAUTOKA

ORIGINAL JURISDICTION

CASE NUMBER:

10/NAN/0097

BETWEEN:

ARPANA

APPLICANT

AND:

SALEN

RESPONDENT

Appearances:

Applicant in Person.

No appearance of Respondent.

Date/Place of Judgment:

Thursday, 20th January, 2011 at Lautoka.

Judgment of:

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:

ARPANA v SALEN- Fiji Family High Court Case
Number: 09/NAN/0097.

JUDGMENT OF THE COURT

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

Legislation

Family Law Act No. 18 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 (orse. Karsov) v. Szecliter [1971] P. 286.

Re Meyer [1971] P. 298.

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

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

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

Vickey, A, "Family Law" 4th Edition (2002) Lawbook Co. Sydney.

The Application

1. This is an application by the wife to have her marriage solemnised in Auckland in July, 2009 nullified on the ground that she did not provide her real consent to the marriage as the same was obtained under duress.

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 section 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.)

- 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.)
- o 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.)
- 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.)
- o 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. R172)

The Evidence

5. The wife gave the following evidence:-

- © The marriage was arranged by her father. He said that the man is well off and for her to marry this man. He said that he has done a lot of things for her and that it was time that she paid her back by marrying this man. She went to New Zealand and stayed with her cousin and she got married. Her mother got sick and she came back to Fiji. Later her father passed away. She asked her husband if he would assist in taking her family to New

Zealand or assist in looking after them. He did not want to contribute so they decided to end the relationship and not go ahead with the wedding ceremony.

o She has to stay back and look after her family. She cannot go to New Zealand.

The Determination

6. The applicant's father did ask her to get married. She was capable of granting or withholding her consent and she granted her consent. She was 26 years and independent and her powers of volition were not paralysed. She chose to go along with her father's wishes when she could have resisted the marriage. She cannot now say that she was under pressure to marry. In fact, after marriage she was willing to work the same out but for the husband's refusal to look after her family. She has no one to look after her family after her father's death so she does not want to go to New Zealand. If the husband had agreed to assist the family by taking them to New Zealand, the application would not have been filed. This issue of pressure is an afterthought.
7. If the applicant was not willing, she could have refused to go to New Zealand, not applied for her visa and stayed back. She was alone when she got married. Her parents were here in Fiji. She could have told her husband that she did not wish to go through the ceremony.
8. I am not satisfied that the applicant was under duress and she has not established the test for duress.

The Final Orders

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

10. There shall be no order for costs.

ANJALA WATI

Judge

To:

1. *Applicant.*
2. *Respondent.*
3. *File Number: 10/Nan/0097.*