

**IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA**

**ORIGINAL JURISDICTION**

**ACTION NUMBER:** 15/Ltk/0008

**BETWEEN:** **PARINEETA**

**APPLICANT**

**AND:** **SADHU**

**RESPONDENT**

*Appearances:* Ms. V. Narara for the Applicant.

No Appearance of the Respondent.

*Date/Place of Written Judgment:* Friday 22 April 2016 at Lautoka.

*Coram:* Hon. Madam 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:* 2016.04.22 Parineeta v Sadhu Fiji Family High Court case number 0008 of 2015

**JUDGMENT**

**Catchwords:**

FAMILY LAW - Application for Nullity of Marriage on the grounds that the husband committed fraud on the wife by not disclosing to him that he was incapable of consummating the marriage but admitting the same after the traditional marriage and in fact not consummating the marriage based on his inability- application allowed on the basis that the incapacity to consummate the marriage was within the knowledge of the husband which he deliberately concealed to secure the consent of the wife and he managed so to do, the wife provided consent on the basis that she was going to marry a man who was biologically capable of being a husband and if she was disclosed that he could not consummate the marriage, she would not have provided her consent - application for nullity granted.

Legislation:

Family Law Act No. 18 of 2003 ("FLA"): s. 32 (2) (d) (i)

1. Parineeta married Sadhu on 4 October 2014. She then filed an application for an order for nullity of marriage on 7 January 2015 which was withdrawn and struck out. The second application was filed on May 2015.

2. The ground on which the application is filed is that the wife did not provide her real consent to the marriage in that she was induced to get married to the husband without material disclosure of a pertinent fact affecting the root of the marriage that the husband was incapable of consummating the marriage.

3. The application is based on s. 32 (2) (d) (i) of the FLA which states that if consent of either party to the marriage is obtained by fraud, the marriage is void.

4. The wife testified that when she received the marriage proposal from the husband, she was very happy as he was a very good looking man and there was no reason why she would refuse the marriage. According to the wife, any woman would want to get married to a man of his good looks.

5. After the marriage, she spent close to 11 days with the husband in Fiji and she was expecting an intimate relationship with him as she was married and was the wife. She said that during her stay with the husband, he would avoid her and not show any signs of wanting to have an intimate relationship. She said that every night she attempted to be romantic so that he would consummate the marriage like all husbands do.

6. Much to her surprise and disappointment, he would, every night, create a barrier between him and her by putting a pillow in between. He would just say "goodnight" to her, turn around and sleep. She was so upset that she would call her family and friends and cry but they told her to calm down and that it will be alright.

7. She also thought that maybe, the marriage would work out and when it did not, she lost hope. She asked the husband whether there was anything wrong in her and if it was not then why he was behaving in an unexpected way but he would not reveal to her anything. Later he went away to New Zealand and she filed the first application for an order for nullity. He came back to Fiji after that and she decided to give him a chance and

revive the relationship. She therefore withdrew the application. They both again stayed together and the history repeated and this time he informed her that he had a problem in that he suffered impotency all his life and that he does not have the interest to consummate the marriage.

8. The wife testified that when this issue was clearly told to her, she was very upset but she had no other option but to file an application for nullity.

9. The wife's two witnesses, one her sister and the other a close friend of hers also testified how the wife was upset in the 11 days she spent with the husband and cried to them after having related the story.

10. The husband has not refuted the allegation in Court that he has erectile problems leading him to a state where he is incapable of consummating the marriage. The allegation of impotency is not defended.

11. On the evidence, and having seen the demeanour and deportment of the wife and her witnesses, I accept the evidence of the wife that she wanted the marriage to work and for that, she attempted with her husband, on numerous occasions, to persuade him to consummate the marriage but he did not because he was incapable of so doing. He is an impotent man, a matter which is beyond his control, but was always within his knowledge which he should have disclosed to the wife.

12. Every party to the marriage expects that the marriage would be consummated and if a party has a medical problem that incapacitates that party and that party has knowledge of the incapacity, that knowledge must be imparted to the other party to the marriage as this affects the root of the marriage. If the person knowingly does not disclose the incapacity and secures the other party's consent, the consent is not real because it is induced by material non-disclosure.

13. If the husband disclosed about his impotency to the wife, I find that she would not have provided her consent. I find that her consent was secured by fraud and that the marriage is void.

14. I therefore annul the marriage solemnized between the parties to the marriage.

**Anjala Wati**

**Judge**

**22.04.2016**

To:

1. Ms. Narara for the Applicant.
2. Respondent.
3. File: 15/ Ltk/0008.