

IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA
ORIGINAL JURISDICTION

ACTION NUMBER: 15/Ltk/ 0100

BETWEEN: KARAN

AND: DIMPLE

Appearances: Mr . N. Sharma for the Applicant.

Respondent in Person.

Date/Place of Written Judgment: Monday 18 April 2016 at Suva.

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: 2016.04.18 Karan v Dimple Family High Court case 0100 of 2015

JUDGMENT

Catchwords:

FAMILY LAW - Application for Nullity of Marriage on the grounds that the wife committed fraud on husband by not disclosing to him that she did not wish to go through the marriage and by gaining financial advantage from him despite having formed a view that she will not go through the marriage- grounds/or fraud not met- application dismissed.

Legislation:

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

1. Karan was married to Dimple in 2013 at Lautoka .

2. On 13 February 2015, he filed an application that the marriage between the parties be nullified on the grounds that his consent to marry was induced by fraud on the part of the wife.

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 husband says that he came from overseas to marry the wife. After the traditional marriage the wife refused to consummate the marriage and when she was confronted with why she was avoiding him, she eventually, after having avoided him on a number of occasions, told him that she was under a lot of pressure and that she needed more time to think about the marriage.

5. The husband also testified that all her behavior towards him constitutes fraud, in that; knowing that she did not want to go through the marriage, she did not inform him of her intentions but induced him to pay for her visa application, police clearance and driving license. He said that she would call him from time to time and ask for money and he did send the money on the understanding that she would get married to him but after the traditional marriage, she decided to change her mind. Now they are not living together since the traditional marriage and this is on her choice alone.

6. The husband says that the wife only performed a sham marriage to gain financial advantage for herself. She knew at all times that she did not want to marry him that is why she was slow to enter into correspondence with him , would not want to share the same bed with him during the honeymoon and leaving the husband on the honeymoon day and going to her relatives place.

7. The husband says that his intentions to marry her were genuine but hers was not and that is fraud on her part to have led him on to believe that she wanted to marry him when her motive was only financial gain.

8. The wife's evidence was that she initially told her father that she will not marry but when her parents said that he was a nice person; she agreed to get married. The pressure to marry was initially there but at the time of legal marriage she was not under any form of pressure and that she had agreed to the same. She did not even inform the husband that she did not want to get married to him.

9. After the legal marriage, the husband and her family started putting a lot of pressure on her and her family. They made allegations that she had not lodged her police clearance application. She had done this and had sent the receipt to them as well.

10. The wife also testified that on the day of the legal marriage, it was agreed that the husband's family could financially spend on her in whatever way they wanted but she was to choose the clothes and the sizes. Around the time of the traditional wedding, his family changed the mind and said to her that they will buy the clothes and that she had to wear what they bought. The wife said that her mother-in-law would also come to her house and not eat or drink anything. Seeing all this, the wife said that she felt that if they could not agree on these small matters, after the traditional wedding, it was going to be very difficult for her to live with the husband and her family. She therefore changed her mind about the traditional marriage.

11. The wife said that she was therefore under a lot of pressure to go ahead with the traditional marriage but she reluctantly went through the same. She had however agreed to the legal marriage. During the legal marriage, she was happy to go through the same and she was in fact happy.

12. I have heard the evidence of both the parties. There is clear evidence that the wife initially did not want to go through the legal marriage but she finally was happy and agreed to get married. She gave her consent to the same which was real consent. The civil marriage therefore cannot be vitiated for want of real consent.

13. There is also clear evidence that she was unhappy to go through the traditional marriage but in law it has to be established that the real consent was not provided at the time of the civil marriage.

14. I believe the evidence of the wife that it was only after the legal marriage that she began to feel the pressure from the husband and his family and that they started imposing terms on her which made her feel very unhappy and uncomfortable. She thus did not wish that the traditional marriage take place but because the same had been organized she had to go through it and she did after which she had no choice but to find courage to inform the husband that she was under pressure and that she needed time to think about the whole episode.

15. I do not find from the evidence that she had committed fraud on the husband by not telling him that she did not want to marry him. At the time she entered into the legal marriage, she informs the Court and I have no reason to doubt her, that she was happy. There was therefore no reason why she should tell the husband about her initial reservations or that by not doing so she led him on. If she wanted to get married, she did it because she was happy to do so. She cannot be said to have led him on.

16. The husband says that she led him on to get married because she wanted to gain financially as she got the husband to pay for the police clearance, the visa application and the tickets. I find that the matters for which she asked for payments were associated with her marriage and for her to be able to cohabit with the husband overseas. She did not ask for money for her benefit alone or for transactions independent of the marriage.

17. I further accept her evidence that she wanted the husband to pay for these costs as they had agreed to pay for the same. If she went ahead with asking for costs to be paid, it shows that she was ready and willing to live with her husband but for the change of heart after the legal marriage.

18. The wife has not gained anything financially as these were only costs or disbursements to enable her to live with her husband overseas. If she decided that she would not live with him, she could not gain from the transactions paid for by the husband. At least there is no evidence that she took advantage from or gained advantage from any of these transactions.

19. I do not find that there was motive for financial gain and if there was, the wife would have in fact gone overseas and then informed the husband of her intention not to live with him. She had no ulterior motive to go overseas.

20. I do not find on the evidence any fraud on her part. I find that there is a change of heart after the civil marriage which has caused the unrest and that that is not sufficient to vitiate a good marriage.

21. I therefore dismiss the application for nullity and order that each party bear their own costs of the proceedings.

Anjala Wati

Judge

To:

1. Mr. N. Sharma for the Applicant.
2. Respondent.
3. File : 15 /Ltk/0100.