

**IN THE FAMILY DIVISION OF THE HIGH COURT  
AT SUVA  
ORIGINAL JURISDICTION**

<b>CASE NUMBER:</b>	10/SUV/0302
<b>BETWEEN:</b>	SATISH
<b>AND:</b>	ARISHMA
<b>Appearances:</b>	Mr A. Vakaloloma for the Applicants
<b>Date/Place of judgment:</b>	Tuesday, 25th January, 2011 at Suva.
<b>Judgment of:</b>	The Hon. Justice Anjala Wati.
<b>Category:</b>	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:	SATISH v. ARISHMA - Fiji Family High 109/SUV/0302 Court Case Number

## **JUDGMENT OF THE COURT**

*MARITAL STATUS PROCEEDINGS - APPLICATION FOR AN ORDER FOR NULLITY - application by parties jointly to have their marriage nullified on the ground that one party was already married at the time of this marriage, the marriage was not properly solemnised, and that the parties did not provide their real consent to marriage-neither ground established-application for nullity refused with no order as to costs.*

### Legislation

*Family Law Act No. 15 of 2003.  
Marriage Act, Cap.50.*

### Cases/Texts Referred To

*Dickey, A, "Family Law" 4<sup>th</sup> Edition (2002) Lawbook Co. Sydney.*

### The Application

1. The parties have jointly filed an application to have their marriage solemnised at Khatri Hall on the 30<sup>th</sup> day of August 2008 nullified on the grounds that one party

was already married, the marriage was not properly solemnised and that the parties did not provide their real consent.

### 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 three particular grounds are alleged. The first ground is alleged to be pursuant to section 32 (2) (a), the second ground is alleged to be pursuant to 32 (2) (c), and the third ground is alleged to be pursuant to section 32 (2) (d). I will have to state the law in respect of the grounds alleged.
3. Section 32 (2) (a) states that "A marriage that takes place after the commencement of this Act is void if either of the parties is, at the time of the marriage, lawfully married to some other person".
4. Section 32 (2) (c) of the Family Law Act No. 18 of 2003 states that a marriage is void if there is failure to comply with the requirements of the law of that place with respect to the form of solemnization of marriages.
5. The formalities of this marriage are governed by the Marriage Act, Cap. 50, Laws of Fiji.
6. The basic requirements in respect of solemnization of this marriage are stipulated in ss. 16 to 28 of the Marriage Act, Cap. 50.
7. I do not find it necessary to restate the provisions as there was no evidence that the marriage was not solemnized in terms of the Marriage Act, Cap. 50.
8. The parties have also outlined in their application that their consent was not a real consent. S. 32 (2) (d) outlines the various ways in which the consent can be held not to be real. S. 32 (2) (d) (i) states that if there is duress or fraud then the consent is not real. S. 32 (2) (d) (ii) states that if the party is mistaken as to the identity of the other party or as to the nature of the ceremony performed then the consent is not real consent. S. 32 (2) (d) (iii) states that consent can also not be real if a party is incapable of understanding the nature and effect of the marriage ceremony.

### The Evidence

9. On the 20<sup>th</sup> day of July, 2010, the husband filed an affidavit and deposed the following:-

- © Both the parties were attending a medical institute in Suva when they first met in 2005. They became friends. In August 2008 they decided to get married. They also decided to live separately until they were traditionally married.
- They consulted their parents and they agreed for them to get married but to stay apart until the traditional marriage.
- o After the marriage they continued to live separately. He worked at Sigatoka and the wife worked at the main hospital in Suva.
- Since then they are waiting for the parents to arrange and organise a traditional marriage. In the process the parties have grown apart as they cannot meet and discuss problems. Jealousy grew and they would argue all the time. There is now loss of interest in marriage and this has brought humiliation to them as well. They therefore want the marriage to be nullified.

### The Determination

10. This is one application which falls in the category of frivolous.
11. There is no evidence that one party was married to someone else at the time of the marriage. I wonder why this ground was invoked in the first place.
12. There is also no evidence that the civil marriage was not solemnised properly. It is clear from the evidence of the applicant husband that he means the term "marriage" to be a religious marriage. However the marriage referred to in section 32 (2) (c) of the Family Law Act is the civil marriage solemnized and registered under the provisions of the Marriage Act, Cap. 50 and not the religious marriage.
13. The use of the terms "comply with the requirements of the law of that place with respect to the form of solemnization" in s. 32 (2) (c) clearly indicates that the marriage that is referred to is the registered marriage solemnized under the Marriage Act, Cap 50 because in Fiji marriages are solemnized under the said Marriage Act and only those marriages duly solemnized under the Act are given legal recognition.

14. Section 38 of the Marriage Act, Cap 50 is relevant. It reads that:-

"Every marriage duly solemnized under the provisions of this act unless therein expressly declared to be void shall be deemed to be good and valid in law until the contrary is proven."

15. In Fiji religious marriages are recognised as an additional ceremony which has no legal effect. It does not supersede or invalidate the marriage which must be first solemnized under the provisions of the Marriage Act. Religious Marriages can only be performed after the civil/legal marriage. Section 36 of the Marriage Act, Cap. 50 is relevant. It states that:-

"At any time after the solemnization of a marriage by the Registrar-General or district registrar, the parties to such marriage may, if they so desire, upon the production of the certificate of the Registrar-General or district registrar as to the marriage, have a further marriage service performed according to the form ordained or use by the religion or religious denomination to which either or each of such parties belong. Nothing in the reading or celebration of a marriage service under the provisions of subsection (1) shall supersede or invalidate any marriage previously solemnized nor shall such reading or celebration be entered as a marriage in the register of marriages.

16. There is no evidence that the marriage to which our Act refers to was not solemnized properly.

17. The third ground is no real consent. There is no evidence that the parties were under duress to get married, or there was fraud, or one party was mistaken as to the identity of the other party or as to the nature of the ceremony performed, or that one party was mentally incapable of understanding the nature and effect of the marriage ceremony.

18. The application for an order for nullity must therefore be refused for the above reasons.

#### The Final Orders

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

20. There shall be no order for costs.

ANJALA WATI

Judge  
25.01.2011

**To;**

1. **Afr.** *Vakalolonta, counsel for the Applicants.*
2. *File Number: 10/Siv/0302.*