

**RE S (PRACTICE: MUSLIM WOMEN GIVING EVIDENCE)**

Family Division

Macur J

24 November 2006

*Marriage – Decree of Nullity – Forced marriage – Duress vitiating consent  
Oral evidence – Conditions for removal of veil whilst evidence given*

The petitioner, a 21-year-old Muslim woman who wore the veil, had undergone a form of marriage in a Muslim ceremony in Tanzania, having originally travelled to Tanzania for what she understood to be a vacation. The marriage followed a 2-year campaign of familial pressure on her to marry the respondent. At the time of the marriage, the petitioner was an isolated 18-year-old, accompanied only by the maternal aunt and uncle who had been instrumental in arranging the marriage on behalf of the maternal grandparents. While in Tanzania, she had no access to her immediate family or to means of leaving Tanzania independently. The purpose of the marriage was to enable the respondent to apply for a visa to enter the UK. Following her return to England, the petitioner was subjected to further pressure to undergo an Islamic wedding ceremony with the respondent in the UK. The pressure included aggression, telephone calls, restriction of her freedom and removal of access to money. She was put in 'constant fear' of the grandparents with whom she was living at that stage, including fear of physical violence or even 'honour killing'. The petitioner, who had not lived with the respondent or consummated the marriage, sought a decree of nullity of marriage pursuant to s 12(1)(c) of the Matrimonial Causes Act 1973. The other issue that arose was whether the petitioner should be required to remove her veil whilst giving evidence and whether appropriate arrangements could be made to enable her to do so without breaching her religious principles.

**Held** – granting a decree of nullity –

(1) There was cogent evidence on which to find that the will of the petitioner was overborne by the duress applied by the extended family members and thus to justify the grant of a decree of nullity (see paras [11], [12]).

(2) The ability to observe a witness's demeanour and deportment during the giving of oral evidence was essential to assessing accuracy and credibility. It was a matter of extreme importance that witnesses in sensitive cases were permitted to present their case to the satisfaction of the court while maintaining their religious observance of dress (see paras [15], [16]).

**Per curiam:** the facility of screens and the ability, if at all possible, to list such cases before a female judge would obviate the objections of litigants or witnesses, subject to an assessment of the genuine nature of their unwillingness to appear before the court without the veil. Requests for such accommodation of religious difference would be considered on the circumstances of each case and the court must be alert to any opportunistic attempt to derail proceedings (see para [17]).

**Statutory provision considered**

Matrimonial Causes Act 1973, s 12(1)(c)

*Teertha Gupta* for the petitioner

The respondent did not attend and was not represented

*Cur adv vult*

**MACUR J:**

[1] This is the application of S, who is now just 21 years of age and seeks petition of nullity in relation to the ceremony of marriage which she underwent with Mr J at the Ilala District in the region of Dar es Salaam, Tanzania. That wedding took place on 1 June 2004. It took place at a time, I am satisfied, when the petitioner was visiting Tanzania in the anticipation and expectation of vacation. During the time of her stay in Tanzania, she became aware of wedding preparations which she was duly informed were to be preparations for her own wedding. She wished to distance herself from those preparations and made known her unwillingness to proceed.

[2] I am satisfied upon the evidence of the petitioner that she was subjected to considerable duress. This duress was made the more effective by events which had occurred prior to her travel to Tanzania, following two previous proposals of marriage by Mr J, a resident of Tanzania.

[3] At 16, S received the first proposal. The respondent is distantly related to the petitioner by virtue of her maternal aunt-in-law. The refusal of the proposal resulted in pressure being brought to bear upon the petitioner, albeit that the pressure at that time was gentle and consisted of oral persuasion and some indication that the family, particularly the grandparents, would be opposed to S maintaining a career. The pressure increased and continued, and I am satisfied that on one occasion S was beaten with a stick and on another occasion slapped in the face by virtue of the grandparents' belief that she was not succumbing to their control of her life. Accusations were made against her by her grandparents and her means of communication with friends and other members of the family were severely curtailed by the removal of her mobile telephone.

[4] On the trip to Tanzania, the pressure brought to bear upon S consisted of threat of physical violence, in terms that she would be killed, and, secondly, the threat that she would be unable to return to the UK because her passport and travel documents would be withheld if she did not go through with the ceremony. The petitioner was in Tanzania without immediate family support, she having accompanied her maternal aunt-in-law and maternal uncle but without recourse, whether by phone or other indirect means, to her own parents and brothers.

[5] The nature of the ceremony was such that the respondent was entitled to make a visa application to be admitted into the UK. It is clear from the affidavit of the petitioner that there had been some pre-planning in that a file containing bank statements and payslips were provided to the British High Commission in support of that visa application. Those bank statements and payslips must have been provided to the maternal aunt-in-law via the grandparents with whom the petitioner lived.

[6] Following her return to the UK, approximately 7 days after the wedding, the petitioner's grandfather began to arrange an Islamic wedding ceremony between the petitioner and the respondent which was to take place on 27 July. The petitioner made clear her opposition to this marriage. She was met with aggression and she attempted to avoid the respondent when he arrived in the UK, refusing, if possible, to answer his telephone calls to her. I accept her evidence that she has not lived with the respondent since her return to the UK. I accept her evidence that the marriage has not been consummated.

[7] The pressure upon the petitioner continued. Restrictions were put upon her independence, her money was removed, she was monitored as to her comings and goings and there was frequent berating at the hands of the grandparents. S, in her affidavit, refers to the fact that she was in 'constant fear' whilst residing with them.

[8] Her situation is underlined by the fact that she has sought and obtained refuge from her family in order to avoid the Islamic wedding. She has had to move between several refuges in several cities to avoid her family who have come to know of her address. I am satisfied that she did so because she was in fear of them and also that this represented the previous behaviour of her family towards her.

[9] The last occasion upon which S saw any members of her family was at the event of her maternal grandmother's funeral. S indicates that she attended to pay her respects knowing that her grandfather, the person who she believes to have orchestrated the marriage and who has been, upon her evidence, primarily responsible for the pressure under which she has been subjected to for some considerable time, was in Kenya at the time.

[10] She continues to be in fear of her parents, believes that she will be at grave risk of physical violence and that she may even be a victim of a so-called 'honour killing'. She does not regard the threats to be idle and even now her fear of what their reaction may be to her actions caused her to make successful application to the court to withhold her address from the petition and all documents to be served on her behalf.

[11] In the circumstances, I find that there is cogent evidence upon which to make findings that at the time of the marriage on 1 June 2004, S's will was overborne by the duress applied by members of her family, particularly the agents of her grandparents, the maternal aunt-in-law and uncle. I am satisfied that at the time she went through with the ceremony that she believed that she was at physical risk, particularly in view of her isolation in Tanzania, and had no reason to disbelieve the threats that she would not return to the UK unless the marriage ceremony was to take place with her participation.

[12] In those circumstances, I grant decree of nullity nisi, pursuant to s 12(1)(c) of the Matrimonial Causes Act 1973. I find that the respondent has been served with a copy of the petition and was so served on 11 August 2006 in Manchester. I do so by reason of his signature identified to me upon the acknowledgement of service alongside the notification that he was represented by Joan Fergusson & Co Solicitors of Cheetham, Manchester. Within that acknowledgement of service he indicated no intention to defend the case. I am satisfied that he has not been served with the order of Charles J dated 1 November, the failure to effect service by reason of his removal and his present address being unknown to his previous solicitors or to others of whom inquiries have been made. There is every likelihood that he has returned to Tanzania. I direct that a copy of the decree nisi be served upon his last known address in Tanzania in order that it may legitimately and reasonably be expected to be brought to his attention by those to whom he is related.

[13] I have had brought to my attention the fact that he has signed a divorce petition dated 25 May 2006 but not issued until 16 August 2006. I regard the service of that petition, on the evidence of the petitioner in the nullity

proceedings, namely, S, to be by reason of convenience to the respondent and not in any way to infer that he had not received the decree of nullity which he has acknowledged service of.

MACUR J: Mr Gupta, is there any other matter that you would wish me to include in the judgment?

MR GUPTA: Your Ladyship, I was just thinking about the way that your Ladyship has conducted this hearing because it neatly sidesteps all the issues, that in the courts are fashionable at the moment, concerning the veil. I spoke to the Clerk of the Rules 2 days ago and asked whether or not screens could be provided, whether one could detect the sex of the judge, and was told, no, but as it happens, of course, it was listed in front of your Ladyship and it has been a practical solution to what could have been a difficult problem, as your Ladyship saw from my position statement.

MACUR J: Yes.

MR GUPTA: That really decides all the issues, that if the matter is listed under a female judge and if temporary screening, and if an umbrella is used, that evidence can be given and that one does not enter into a debate about whether or not the identity of the petitioner or the individual who is wearing a face veil has to be ascertained and whether her oral evidence is to be given without a veil. As I said, it just is such a practical solution and can be dealt with without any alleged human rights arguments, putting it that way, because I think it is a traditional rather than a religious question. My client may differ on that.

MACUR J: Yes.

MR GUPTA: All those issues are being put to one side.

MACUR J: Shall I deal with it very briefly?

MR GUPTA: I would be most grateful. Thank you.

MACUR J: Yes, thank you. And, if necessary, it can be inserted at the outset of the judgment.

[14] This matter that comes before me on the application of the petitioner, S, for a decree of nullity involves a practical problem which was properly brought to my attention by the position statement filed by Mr Gupta, who appeared on her behalf.

[15] S, as a practising Muslim, has taken the veil and has appeared in court in my presence in full face veil. She had concerns about removing her veil in order to give evidence before me. She was concerned by virtue of the fact that these proceedings are held in open court and that she was represented by male counsel, it being fortunate that no other member of the court is male. In the circumstances, and to facilitate the hearing this morning, the petitioner indicated that she was willing to remove her veil in order that I could observe her demeanour and expression at the time that she gave me her oral evidence, provided that she could be screened from the view of Mr Gupta. Mr Gupta also agreed.

[16] In those circumstances, although these proceedings have been in open court, a careful supervision of entrance into the court has ensured that any male entering within the doors has been stopped before he approached that

part of the court whereby he would have the opportunity to observe the petitioner, and Mr Gupta has been screened from the petitioner's view by means of a large umbrella. The ability to observe a witness' demeanour and deportment during the giving of evidence is important and, in my view, essential to assess accuracy and credibility. It is a matter of extreme importance that witnesses in such sensitive cases as this should be permitted to present their case to the satisfaction of the court but also observing their religious observance of dress. In my view, the facility of screens and the ability, if at all possible, to list these cases before a female judge, would obviate the objections of litigants or witnesses subject to an assessment of the genuine nature of their unwillingness to appear before the court without the veil.

[17] Each case must obviously be looked at in its own circumstances, and the court must be alert to any opportunistic attempt to derail proceedings listed with all expectation of conclusion, but it seems to me that Mr Gupta's suggestion made at the commencement of these proceedings was easily facilitated, met any objection that may be made as to the inability to make accurate assessment of the witness if the face is covered, and permitted the conclusion of the hearing promptly and in the best interests of the parties.

*Order accordingly.*

Solicitors: *Dawson Cornwell* for the petitioner

CATHERINE SHELLEY  
*Law Reporter*