

Recent Decision of the Grand Court regarding Annulments

A recent decision of the Grand Court has brought the issue of annulments (sometimes known as “nullity”) to the fore of matrimonial law and is a timely reminder to not overlook that potential relief as well as the particular legal rules governing the topic.

Annulments, like divorce, are governed by the Matrimonial Causes Law (2005 Revision) and fall within the jurisdiction of the Grand Court. In order to obtain an annulment you must show that the marriage was never legally valid (“void”) or was valid but meets one of the reasons which allows a court to declare it invalid (“voidable”).

Examples of grounds upon which a marriage is “void” include being closely related to the person that you married; is bigamous or one of the parties is not capable of consenting to marriage because of duress, fraud or incapacity of mind.

You can also apply to have voidable marriage declared for a number of other reasons:

- It was not consummated;
- The other person had a sexually transmitted disease (STD) when you got married;
- Either party was, at the time of the marriage, of unsound mind;
- Your spouse was pregnant by someone else when you got married

As with divorce, your marriage still exists until a court declares otherwise.

In the recent decision of *Watt v Nunes* (unreported 23rd July 2020) Ramsay Hale J delivered judgement in the case of an undefended petition for an annulment. The parties had married after a brief courtship. In trying to get immigration papers for the respondent, it had been discovered that she was unwilling or unable to get a police clearance certificate from her home country. It also transpired that the respondent had not been convinced, as the petitioner thought, that she wished to have children. The application was therefore based on the alleged fraud of the respondent.

The judge reminded herself that the law obliges her to consider, even in an undefended petition for annulment, whether the facts have been proved and whether she is legally entitled to grant the application.

Consent to marriage must be voluntary. However, making an error as to somebody's character is not sufficient for a decree of nullity to be pronounced. Disappointment as to their attributes does not constitute fraud. In this case the learned judge was also unconvinced that the petitioner was unaware of the facts in question, rather he had turned a blind eye. The application was accordingly refused.

Broadhurst LLC is one of the Cayman Island's leading law firms, with an expertise in giving objective, practical legal advice in family law matters. Given that the questions around marital breakdown are often complex, with significant consequences for the parties it is advisable to seek the assistance of a professional who can give legal advice and assist in the decision making process. For further information contact yvonne@broadhurstllc.com or lynne@broadhurstllc.com.

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