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**IN THE FAMILY COURT  
AT AUCKLAND**

**I TE KŌTI WHĀNAU  
KI TĀMAKI MAKĀURAU**

**FAM-2022-095-006104  
[2023] NZFC 4075**

IN THE MATTER OF	FAMILY PROCEEDINGS ACT 1980
BETWEEN	ALI DARVISH Applicant
AND	YANZHI CHENG Respondent

Hearing: 28 March 2023

Appearances: Applicant in Person  
Respondent in Person

Judgment: 26 April 2023

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**RESERVED JUDGMENT OF JUDGE D A BURNS**  
**[In relation to application to have a marriage declared void ab initio]**

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## Background

[1] The parties married on 25 September 2019. It was purportedly a second marriage for both parties. At the time of this marriage the applicant's first marriage had been dissolved some years earlier than 2016. However, the respondent's first marriage, which occurred overseas in 2014, had not been dissolved and this fact was not declared by her and the parties online application for the marriage licence.

[2] The Department of Internal Affairs (Births, Deaths and Marriages) advised the applicant that this "marriage" between the parties was void ab initio as one of the parties was not free to marry on 25 September 2019. However, they were not required to do anything further legally.

[3] The respondent subsequently obtained a dissolution of her overseas marriage in July 2020, almost 10 months after her purported marriage to the applicant.

[4] The parties eventually separated and even though they were entitled to "remarry", after the respondent's first marriage dissolution was obtained, this did not occur.

[5] The applicant subsequently applied under s 29 of the Family Proceedings Act 1980 for an order declaring his marriage to the respondent void ab initio. I set out a chronology of events below:

### CHRONOLOGY

<b>Date</b>	<b>Event</b>
20 May 2014	Respondent marries Meng Ting Liu in China – her first marriage
12 July 2016	Applicant's first marriage dissolved
25 September 2019	Applicant and respondent marry in NZ
10 June 2020	Order dissolving respondent's first marriage
11 July 2020	Dissolution order sealed
13 September 2022	Application for order declaring parties' marriage void ab initio filed in FC
3 November 2022	Service effected on respondent

[6] The application to have the marriage declared void ab initio came before me for hearing. Both parties attended Court and were in person. I heard from them further. I reserved judgment.

### **Discussion**

[7] The applicant's first marriage was dissolved at the date of the parties' marriage on 25 September 2019 so he was free to enter into another marriage. However, the same cannot be said of the respondent. She was still legally married to her first husband on 25 September 2019 and that marriage was not dissolved until some months after the parties' purported marriage. Essentially the parties to this matter have a "void marriage" because under New Zealand law a marriage is void ab initio on the grounds of bigamy, which effectively means that the marriage has no legal status.

[8] The applicant has applied pursuant to s 29 of the Family Proceedings Act 1980 for an order declaring the parties' marriage void ab initio. Section 29 provides as follows:

#### **29 Application for order declaring marriage or civil union void**

An application for an order declaring a marriage or civil union to be void ab initio (whether or not the marriage or civil union is governed by New Zealand law) may be made only—

- (a) Where the applicant or the respondent is domiciled or resident in New Zealand at the time of the filing of the application; or
- (b) Where the marriage or civil union was solemnised in New Zealand.

[9] The applicant confirms that he is resident in New Zealand and the Certificate for their purported marriage on 25 September 2019 indicates that the marriage was solemnised in New Zealand. Thus, the criteria in s 29 appears to be satisfied and the applicant is entitled to make an application under s 29.

[10] Section 30 confers jurisdiction on the Family Court to make an order declaring a marriage to be void. That section states:

**30 Power of Family Court to make order declaring marriage or civil union void**

Every application under section 29 of this Act shall be heard and determined in [the Family Court].

[11] To assist the Family Court in determining a s 29 application, s 31 sets out the exhaustive grounds for declaring a marriage or civil union void. The relevant provisions of s 31 provides:

**31 Grounds on which marriage or civil union void**

- (1) A marriage or civil union that is governed by New Zealand law shall be void ab initio (whether or not an order has been made declaring the marriage or civil union to be void) only where—
  - (a) in the case of a marriage or civil union that is governed by New Zealand law so far as it relates to capacity to marry—
    - (i) at the time of the solemnisation of the marriage or civil union, either party was already married or in a civil union; or
- ...
- (2) Nothing in subsection (1) of this section shall affect the law as to the validity in New Zealand of a marriage or civil union that is not governed by the law of New Zealand, or the jurisdiction of [the Family Court] to make an order declaring any such marriage or civil union to be void ab initio.

[12] Section 31 effectively deems a marriage as void ab initio, where any of the listed grounds in s 31(1) apply, whether or not the Family Court has made an order declaring the marriage to be void.

[13] Hammond J in *X v Y* said:<sup>1</sup>

...pursuant to s 31(1)(a)(i) of the Family Proceedings Act 1980, a marriage between parties where one party was already married was void *ab initio* (whether or not an order has been made declaring the marriage to be void). The wife was therefore entitled to describe herself (as she did on the occasion of her marriage to the applicant) as having been “never married”.

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<sup>1</sup> *X v Y* HC Auckland M557/97, 16 February 1997, Hammond J.

[14] Thus, in the present case where one of the parties to the “marriage” has apparently committed bigamy that marriage is void ab initio under s 31(1)(a)(i) whether or not the parties have a Court declaration to that effect. However, as the applicant now seeks such a Court declaration the criteria in s 31(1)(a) requires firstly that the marriage is governed by New Zealand law, and secondly that at the time the marriage was solemnised one of the parties was already married.

[15] There is no issue in this case that the marriage of the parties is governed by New Zealand law. Their New Zealand marriage certificate is evidence of this.

[16] Further, the applicant’s evidence in his application that the respondent was legally married at the time he and the respondent went through their marriage ceremony is accepted. I accept the exhibited sealed order dissolving the respondent’s first marriage, which post-dated the purported marriage between the parties. I find that it is sufficient evidence for the Court to accept the fact of bigamy.

[17] Notably, that the respondent committed bigamy is also a criminal offence under the Crimes Act 1961.<sup>2</sup>

**205 Bigamy defined**

(1) Bigamy is

(a) the act of a person who, being married, goes through a form of marriage or civil union in New Zealand with a third person;  
or

...

**Judgment**

[18] A marriage that is deemed or declared to be void ab initio by virtue of s 31(1) effectively means that there is no marriage at all. I am satisfied that the factors in s 31 of the Family Proceedings Act are proven to have been contravened. The Court has jurisdiction pursuant to s 30 to declare the marriage void ab initio. I find the applicant has provided the appropriate documentation to establish the application. I find that

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<sup>2</sup> Section 206 Crimes Act 1961 specifies that everyone who commits bigamy is liable to imprisonment of a term not exceeding 7 years.

the respondent was not free to enter into a marriage ceremony with the applicant in New Zealand on 25 September 2019. Accordingly, there is no impediment to the Court granting the application. I therefore declare that the marriage between the parties that was solemnised on 25 September 2019 is void ab initio.

[19] There is no issue as to costs.

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Judge DA Burns

Family Court Judge | Kaiwhakawā o te Kōti Whānau

Date of authentication | Rā motuhēhēnga: 26/04/2023