FAMILY LAW NULLITY -Application based on mistake as to the nature of the ceremony Uncontested evidence Breachof the laws of Australia Referral ofpapers to Attorney-General. Family Law Act 1975 (Cth) Marriage Act1961 (Cth) APPLICANT: Ms Sasani RESPONDENT: Mr King INTERVENOR: INDEPENDENT CHILDRENS LAWYER: FILENUMBER: MLC 6028 of 2013 DATE DELIVERED: 2 September 2014 PLACE DELIVERED: Melbourne PLACE HEARD: JUDGMENT OF: Cronin J HEARING DATE: 2 September 2014 REPRESENTATION COUNSEL FOR THE APPLICANT: Mr Boden SOLICITOR FOR THE APPLICANT: Starnet Legal Pty Ltd THE RESPONDENT: No appearance ORDERS Thatthe applicant have leave to proceed in the absence of the respondent. Thatthe marriage between MS SASANI to MR KING solemnized on ... March 1997 at BStreet, Suburb P is declared to be void. Thatthe application filed on 23 July 2013 by the applicant is otherwisedismissed. Thatthe reasons this day be transcribed. Thatthe Registry Manager refer the reasons this day, the order made on 2 September2014 and the affidavits of MS SASANI filed 23July 2013 and that of MR KINGfiled 2 September 2014 to the Attorney-General for the Commonwealth of Australiafor considerationas to whether any of the laws of Australia have beenbroken. IT IS NOTED that publication of this judgment by this Court underthe pseudonym Sasani & King (No. 3) has been approved by the ChiefJustice pursuant to s 121(9)(g) of the Family Law Act 1975 (Cth). FAMILY COURT OF AUSTRALIA AT MELBOURNE FILE NUMBER:MLC 6028 of 2013 Ms Sasani Applicant And Mr King Respondent REASONS FOR JUDGMENT On23 July 2013, Ms Sasani, to whom I shall refer to as theapplicant, filed an application in this Court simply seekingan orderunder the Family Law Act 1975 (Cth) (the Act) granting adecree of nullity of marriage. Section 51 of the Act provides thejurisdictional basis for such an order to be made. Beforedealing with the substantive application, I need to address the question ofprocedural issues. This case has been before theCourt on a number ofoccasions; those were in September 2013, November 2013, January 2014, February2014, and April 2014. InFebruary 2014, the matter was before me, and I indicated at the time that I wasnot comfortable about hearing it in the absenceof service upon the respondent,who for all intents and purposes is the husband at law. I adjourned the matterand, on the basisof the information set out in the affidavit material at thattime, ordered two

things: first, that the order I made on that dateand thereasons for judgment be served personally on the respondent husband care of hiscousin. The cousin was referred to in theapplicants affidavit; secondly, that the applicant have leave to issue a subpoena to the cousin togive oral evidence onthe return date on the basis that if the cousin wasreticent about telling the applicant, or indeed, the Court where the respondentwas, he might provide some assistance. Not much happened save to say that theapplicant has given evidence today that she has spokento the respondent afterwhat appears to be a fairly diligent hunt for him. Ialso have an affidavit today from a Kate Chong, who is a legal practitioner inthe employ of the solicitors for the applicant. That affidavit sets out a listof documents that were sent backwards and forwards by post to the respondent. Eventually, the respondentreturned a letter saying that there was noacknowledgement of service documents and prepaid envelope in the letter that hadbeensent to him, and he then wrote the following: So I am makingyou aware that I have received your documents and would be more than happy tosee this nullified, considering the circumstanceswhen this took place. Todaya further affidavit has been tendered to the Court in which the respondent hassaid that he agrees to the order sought by theapplicant on the basis that heagrees with the facts that were set out in the material filed by the applicant. In other words, heagrees that her evidence is true. There is some problem withthat affidavit in that it was signed in front of a pharmacist and mayindeed notbe a proper affidavit. Ihad the applicant give sworn evidence that the signature on that document is onethat she recognises. Albeit that it is now some17 years since she has lastseen the respondent, she confirmed that that is his signature. I can take somenotice of the fact, albeitthat I am not a handwriting expert, that thesignature is remarkably similar to the one that appears on the certificate ofmarriagethat has been filed with the Court. Having regard to all of that, I amsatisfied that the respondent has had an opportunity to beheard, and has, forwhatever reason, declined to be here today. Thereis some significance in that, because in an earlier judgment which seems, fromthe documents, to have been delivered to therespondent, I made an observationthat the marriage ceremony that was undertaken on ... March 1997 lookedremarkably like havingbeen undertaken as a breach of the laws of Australia. Itmay very well also have been a conspiracy to commit offences. That mayverywell

include an imam who has signed the marriage certificate. Iam quite concerned about what has happened here for the same reasons that Ipreviously articulated, because the very fabric of oursociety is based uponsuch things as the institution of marriage, which is solemnised pursuant to astatutory power. Any breachof that creates serious problems for society. Onesuch example of that is that it would seem from the evidence that the respondenthas, since 1997, married. There is no suggestion that he ever applied for adivorce or an annulment of that marriage, and indeed,if he was aware that whatI am dealing with was a marriage, then he would be committing the state offence,depending on where hewas more recently married, of bigamy. Thusthe law treats the annulment of marriages extremely seriously. To determinewhether or not a marriage is void, I turn to section 23 of the Marriage Act1961 (Cth). The applicant relies upon subsection 1(d)(ii) of thatprovision, that is, that the consent of either of the parties to this ceremonywas not a real consent, because that partywas mistaken as to the nature of theceremony performed. It is difficult for the Court to discern just exactly whathappened inthis case because, apart from the fact that it is 17 years ago, theevidence is extremely brief, and I now have a statement fromthe respondentindicating that what the applicant says is true. Thefacts therefore were as follows. In around March 1997, the applicant was an 18year old schoolgirl. She says that she was inYear 12 at a local secondarycollege. At that time, she was in a boyfriend-girlfriend relationship with therespondent. At thattime, she said she was under immense psychological pressurebecause her parents informed her that she had to undergo an arrangedmarriage. She said she did not want to live with a person that she was not in love with. Shesaid she asked the respondent who was her boyfriend for advice on how she couldavoid the arranged marriage. He told her thathe could obtain a fake marriagecertificate. I stress that this was a reference to obtaining a certificate, asdistinct from undergoingsome form of marriage. The applicant said that therespondent assured her that she would not have to marry him, but that he couldget a document which looked like a real marriage certificate. Indeed, the exactopposite happened. Theapplicants unchallenged evidence is that on ... March 1997, therespondent, in the company of two other males whom shenamed, took her to BStreet, Suburb P, where she went to the backyard of the building, and there meta person who she

said was tohelp them obtain a fake certificate. She said shewas not told this persons name or any particulars of what was happening. Thebizarre feature of that statement is that the applicant subsequently made asearch of the Registry of Births, Deaths and Marriagesto find, that on thatday, according to the rites of the Islamic faith, a marriage ceremony was saidto have taken place, conductedby an imam whose name on the certificate is Mr C.The applicant was unable to tell me how the certificate came into existence, butshe did remember signing a document. As I observed in discussion, the documentis remarkably concise. It contains not only thespelling of the various names,but also the parties occupations, their addresses, and their birthplacesand birthdates. Someonemust have provided details such as the parents full names of theapplicant and respondent, including what is describedquaintly on thecertificate as the maiden name of the respective parties mothers. Itseems unlikely that someone such asan 18 year old girls boyfriend wouldhave that finite detail, but in any event, that is not my task to delve into. Theapplicants evidence is that she simply signed a piece of paper,ostensibly to get a fake marriage certificate. Havingsigned the paper, shethen left the four men and returned to the front of the house, where she gotinto the car. Three men thenjoined her, and they drove off, being told thatthe certificate would be provided to them shortly thereafter. She said she wasnotsurprised with the rush and lack of formality with the whole process becausethere was nothing real about the procedure, becausethe whole idea was to get afake marriage certificate. Havingreturned home, the applicant was informed that the arranged marriage had beencancelled. She did not then tell her parentsabout the existence of the fakecertificate, let alone what had occurred on ... March. No doubt she turned hermind to studies,because some two months or so later, she ended the relationshipwith the respondent. The applicants evidence is that shehas not had anycontact with the respondent thereafter for the last 17 years. Havingregard to the provisions of section 23 of the Act, there is no other conclusionthat I can draw than that the consent of the applicant was not a real consentbecause shewas mistaken as to the nature of the ceremony performed. Indeed, asshe said in her affidavit, no formal wedding ceremony was performedat all. AsI observed in discussion, it is conceivable that in some cultures, ceremoniestake place without the parties being togetheraccording to custom and religions.That

should not happen in Australia because of the provisions of such sectionsas 45, 46 and 48of the Marriage Act. Iam satisfied on the evidence that the applicant did not undergo a ceremony, didnot understand that she was participating in anyceremony, and certainly did notcontemplate that she was marrying. Allof that leads to the conclusion that there were various breaches of the laws ofAustralia. Having warned everyone on a previousoccasion that, if I was sosatisfied, I would pass the matter on to the relevant authorities, I think itbehoves the Court to indicatehere that the documents arising out of theseproceedings should be made available to the Attorney-General of the CommonwealthofAustralia to decide whether any further steps should be taken against eitherthe applicant, the respondent, the two named witnesses,Mr D, Mr E, and indeed,Imam C. Inthe matter of Sasani & King (No. 3), I formally order that themarriage said to have taken place on ... March 1997 is declared a nullity. Theapplication filed on 23July 2013 is otherwise dismissed. I direct thatthe reasons this day and the orders consequent upon those reasons, together withthe affidavit of the applicant and the affidavit this day of the respondent, bereferred by the registry manager of the MelbourneRegistry to theAttorney-General for the Commonwealth of Australia for further determination. I certify that the preceding twenty (20) paragraphs are a truecopy of the reasons for judgment of the Honourable Justice Cronin deliveredon 2September 2014. Associate: Date: 22 October2014 AustLII:Copyright Policy|Disclaimers|Privacy Policy|Feedback URL: http://www.austlii.edu.au/au/cases/cth/FamCA/2014/910.html