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**IN THE FAMILY COURT  
AT AUCKLAND**

**I TE KŌTI WHĀNAU  
KI TĀMAKI MAKĀURAU**

**FAM-2020-004-001181  
[2021] NZFC 1704**

IN THE MATTER OF	THE MARRIAGE ACT 1955
BETWEEN	PETER CHARLES MAZANY Applicant
AND	REGISTRAR GENERAL, BIRTHS, DEATHS AND MARRIAGES Respondent

Hearing: 25 February 2021

Appearances: Applicant appears in Person  
No appearances by or for the Respondent  
L Halford as Counsel to Assist

Judgment: 25 February 2021

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**ORAL JUDGMENT OF JUDGE L de JONG  
[Marriage Act 1955 – marriage by proxy]**

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***Introduction***

[1] This case is about how the lure and power of the internet has been thwarted by COVID-19.

***What is the relevant background?***

[2] Mr Mazany and Ms Sakhoncharoen met over the internet. Ms Sakhoncharoen explains how they have “created the miracle of love and we share our life by WhatsApp video calls and messages.”<sup>1</sup> They meet electronically for an hour or more each day and exchange multiple messages.

[3] Mr Mazany and Ms Sakhoncharoen want to get married. Mr Mazany is a New Zealand citizen and lives in Auckland. He is aged 63. Ms Sakhoncharoen is a 45 year old Thai citizen and lives in Bangkok.

[4] The problem is that COVID-19 restrictions mean neither party can travel to marry their “miracle of love.” Both have experienced unsuccessful relationships but they have finally found true love together after a “wonderful period of four months of getting to know each other deeply.”<sup>2</sup> I have been provided with a selection of photographs and more intimate messages than I need to demonstrate the intensity of their relationship. It is now about six months since they first met.

***What is this Court’s decision?***

[5] Mr Mazany implores me to use the Marriage Act 1955 to help them. He applies under s 34 to marry Ms Sakhoncharoen by proxy. He also seeks leave to file two more affidavits to support their case, one from him and one from Ms Sakhoncharoen.

[6] Under s 34(2) I have a discretion to authorise their marriage if I am satisfied Ms Sakhoncharoen is “unable to come to New Zealand by reason of the existence of a state of war or armed conflict or by reason of the conditions of his service as a member of the armed forces of any Commonwealth country.”

[7] If s 34(2) applies, it is possible for them to marry in New Zealand if Ms Sakhoncharoen provides<sup>3</sup> written consent, a declaration that she does not know of any

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<sup>1</sup> Ms Sakhoncharoen’s affidavit dated 12 February 2021.

<sup>2</sup> Paragraph 6 of Mr Mazany’s affidavit dated 27 November 2020.

<sup>3</sup> See s 34(4) and reg 5 of the Proxy Marriage Regulations 1958.

lawful impediment to the marriage, and if she appoints someone to act as her proxy when the marriage is solemnised.

[8] The parties are desperate to marry and do not want to wait until their respective borders open to foreigners. They want to find a way to stop COVID-19 coming between them and they are worried they will miss the opportunity to formalise the deep love they have for each other.

[9] Mr Mazany urges me to adapt s 34(2) by finding the current restriction on international travel is “tantamount to a state of war,” and to extend the state of war definition to cover the unique effects of COVID-19 which has otherwise defeated their right and freedoms to marry.

[10] In heartfelt submissions, Mr Mazany believes it is important to have a broader interpretation of the state of war definition so that it is up to date with current unforeseen circumstances.

[11] Mr Mazany also outlined the personal situation he faces with regard to his granddaughter. He is clearly devoted to his mother and grandchildren.

[12] Mr Mazany accepts that, even if I grant his application, this does not necessarily mean Ms Sakhoncharoen will be granted a visa. However, he believes it will enhance the application they wish to make to allow Ms Sakhoncharoen to come to New Zealand to be Mr Mazany’s wife and to support him.

[13] Mr Mazany has utilised his obvious IT skills to research and attach media articles to his affidavit. They include headlines like “Coronavirus; Jacinda Ardern declares war on Covid-19 but Kiwis aren’t listening.” They include an article about Prime Minister Ardern declaring a state of emergency and calling in the military to manage our border. And they include an article about President Biden announcing that USA is “at war with the virus.”

[14] I accept COVID travel restrictions have the same effect on these parties as if their respective countries were at war with one another or other countries.

[15] There does not appear to be any statutory definition of the phrase state of war or armed conflict. However, there has been some judicial guidance. The most recent judicial definition of “war” is referred to in *In re Hourigan* [1946] NZLR 1. It is the decision of the then Supreme Court. Myers CJ identified a definition in *Smith’s International Law*, 6<sup>th</sup> Ed.187, that “War” is defined as the state or condition of Governments contending by force.”<sup>4</sup> Myers CJ went on to find that “[t]he courts will take judicial notice of the existence of a state of war; and only if they are unable to do so may the Courts seek information from the Executive Government.”

[16] The courts have also acknowledged a broader interpretation. For example in *Re Berry (deceased)* [1955] NZLR 1003, the then Supreme Court acknowledged that even though there was no de jure of war in existence, the court was still able to acknowledge that New Zealand was engaged in a de facto war in Korea.<sup>5</sup> It may well be that the Marriage Act had this in mind when it referred to armed conflict as distinct from a state of war.

[17] Common sense suggests that a state of war or armed conflict contemplates civil war or one country declaring war against the other.<sup>6</sup> We are not faced with either situation. I find the “war against COVID-19” utilising military support, declaring a state of emergency, imposing alert level lockdowns, and restricting international travel, does not reach the state of war or armed conflict threshold.

[18] It might well have been interesting if either party was a member of the armed forces and their conditions of service affected their ability to travel for marriage. It is clear from the evidence, that Ms Sakhoncharoen is unable to travel to New Zealand in these difficult times. She is not eligible for a visa. She has applied for a visa on humanitarian grounds but it appears the Minister will not consider that application.

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<sup>4</sup> This is the “declaration of war, which is an act of State, and the state of war continues until another act of State terminates it” – line 11 p2; line18 p3.

<sup>5</sup> At line 44 p1008.

<sup>6</sup> My Judges’ research counsel did not have sufficient time to research this case on the morning of the hearing when I received this file but he has since located Hansard records on 25 October 1955 (307 NZPD 3280) that make the Parliamentary debate clear that this provision was not intended to include “any other emergency such as national disaster.”

[19] Mr Mazany's ability to travel to Thailand is less clear but the problem for him is that I have found the threshold cannot be met in terms of the intention of the section to apply in a situation of a state of war or armed conflict.

## **ORDERS & DIRECTIONS**

[20] I make the following orders and directions:

- (1) Leave is granted to file evidence out of time;
- (2) The application to authorise a marriage by proxy is dismissed;
- (3) The appointment of counsel to assist the Court is terminated.

Judge L deJong  
Family Court Judge

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