

ANASTASSIOS
IOSIF
HJI HANNA
v.
ELIZABETH
HJI HANNA
THEN
ELIZABETH
ANDREAS

ANASTASSIOS IOSIF HJI HANNA,

Petitioner,

v.

ELIZABETH HJI HANNA THEN ELIZABETH ANDREAS,
Respondent.

(*Matrimonial Petition No. 1/71*).

Civil marriage—Validity—Marriage between two citizens of the Republic—Husband a member of the Maronite Church—Wife a member of the Greek-Orthodox Church—Marriage celebrated on June 21, 1969 (i.e. after the coming into operation on August 16, 1960, of the Constitution) at the District Office, Nicosia, under the provisions of the Marriage Law, Cap. 279—No religious ceremony—Marriage held to be not a valid marriage in view of the provisions of Article 111.1 of the Constitution—Cf. also Articles 2.3 and 22.1 and 2 of the Constitution—Cf. sections 34 and 36 of the Marriage Law, Cap. 279.

Mixed marriage—Validity—Article 22.2(a) of the Constitution—See supra.

Constitutional Law—Mixed marriage—Validity—Articles 111.1 and 22.1 and 2 of the Constitution—See supra.

Marriage—Civil marriage—Mixed marriage—Validity—See supra.

This is a husband's petition for a declaration that the (civil) marriage between the parties is null and void as being inconsistent with, and repugnant to, the provisions of Article 111.1 of the Constitution. The learned Judge of the Supreme Court accepted this submission and declared the marriage in question to be an invalid marriage.

The undisputed facts of this case are briefly as follows :—

The parties are both citizens of the Republic of Cyprus. The petitioner husband is a member of the Maronite Church and the respondent wife is a member of the Greek-Orthodox Church. On June 21, 1969, the parties went through a ceremony of marriage at the District Office of Nicosia under the provisions of the Marriage Law, Cap. 279. No religious

ceremony of marriage was celebrated either in accordance with the rites or ceremonies of the Greek-Orthodox or of the Maronite Church.

The relevant provisions of the Constitution, the full text of which is set out *post* in the judgment, are Article 111.1, Article 22.1 and 2 (and Article 2.3). It is not disputed that, but for the Constitution the Civil marriage between the parties would have been a perfectly valid one under sections 34 and 36 of the Civil Marriage Law, Cap. 279.

Held, (1). The provisions of the Marriage Law, Cap. 279 have, after the coming into operation of the Constitution (August 16, 1960), to be construed and applied with such modifications as may be necessary to bring them into conformity with the Constitution.

(2) And, in my view, it would be inconsistent with the provisions of Article 111.1 of the Constitution (see full text *post* in the judgment) to hold that the marriage between two citizens of the Republic one of whom is a Greek-Orthodox and the other a Maronite performed under the provisions of the Marriage Law, Cap. 279 is a valid marriage.

(3) In the result, I hold that the (civil) marriage celebrated between the parties on June 21, 1969, at the Commissioner's office under the provisions of the Marriage Law, Cap. 279, is not a valid marriage.

Order accordingly.

Matrimonial Petition.

Petition by the husband for a declaration that the marriage between the parties is null and void as being contrary to the law and the Constitution.

E. Liatsos with *L. Georghiadou (Mrs.)*, for the petitioner.

A. Eftychiou, for the respondent.

C. Kypridemos, Counsel of the Republic, for the Attorney-General as *amicus curiae*.

The following judgment was delivered by:—

L. LOIZOU, J.: This is a husband's petition for a declaration that the marriage between the parties is null and void as being contrary to the law and the Constitution.

1973
Dec. 31
—
ANASTASSIOS
IOSIF
HJI HANNA
v.
ELIZABETH
HJI HANNA
THEN
ELIZABETH
ANDREAS

1973
Dec. 31
—
ANASTASSIOS
IOSIF
HJI HANNA
v.
ELIZABETH
HJI HANNA
THEN
ELIZABETH
ANDREAS

The respondent by her answer prays that the marriage between the parties be declared void on the ground of the wilful refusal of the petitioner to consummate the marriage.

The undisputed facts of the case are briefly as follows:—

The petitioner is a member of the Maronite church and the respondent is a member of the Greek-Orthodox church. On the 21st June, 1969, the parties went through a ceremony of marriage at the District Office in Nicosia under the provisions of the Marriage Law, Cap. 279. At the time of the marriage the petitioner was 23 years old and the respondent 19. No religious ceremony of marriage was celebrated either in accordance with the rites or ceremonies of the Greek-Orthodox or of the Maronite Church. After the marriage the parties lived together in Nicosia for only five days and on the 8th January, 1970, the only issue of the marriage, a male child Andreas, was born.

In view of the nature of the case it was directed that the part of the prayer relating to the validity of the marriage be tried as a first issue, and, in view of the public importance of this issue, that the Court should have the benefit of the views of the Attorney-General of the Republic who was requested to appear as *amicus curiae*. Consequently on the 19th September, the Court heard the parties on this issue and also counsel for the Republic who appeared on behalf of the Attorney-General.

It was contended on the part of the petitioner that in view of the provisions of Articles 111.1 and 22 of the Constitution the marriage between the parties is null and void and of no effect. In an elaborate submission counsel appearing on behalf of the Attorney-General of the Republic supported this view. On the other hand counsel for the respondent submitted that the provisions of Articles 111.1 and 22 of the Constitution have not affected the position as it existed before independence and that the law applicable is the Marriage Law, Cap. 279 and, therefore, the civil marriage between the parties is a valid marriage.

The statutory provisions relevant to the issue are the following :

1. Article 111.1 of the Constitution which reads as follows :

“ 1. Subject to the provisions of this Constitution any matter relating to betrothal, marriage, divorce,

nullity of marriage, judicial separation or restitution of conjugal rights or to family relations other than legitimation by order of the Court or adoption of members of the Greek-Orthodox Church or of a religious group to which the provisions of paragraph 3 of Article 2 shall apply shall, on and after the date of the coming into operation of this Constitution, be governed by the law of the Greek-Orthodox Church or of the Church of such religious group, as the case may be, and shall be cognizable by a tribunal of such Church and no Communal Chamber shall act inconsistently with the provisions of such law.”

1973
Dec. 31
—
ANASTASSIOS
IOSIF
HJI HANNA
v.
ELIZABETH
HJI HANNA
THEN
ELIZABETH
ANDREAS

2. Article 22.1 and 2 of the Constitution which reads as follows :

“ 1. Any person reaching nubile age is free to marry and to found a family according to the law relating to marriage, applicable to such person under the provisions of this Constitution.

2. The provisions of paragraph 1 of this Article shall, in the following cases, be applied as follows :

(a) If the law relating to marriage applicable to the parties as provided under Article 111 is not the same, the parties may elect to have their marriage governed by the law applicable to either of them under such Article ;

(b) if the provisions of Article 111 are not applicable to any of the parties to the marriage and neither of such parties is a member of the Turkish Community, the marriage shall be governed by a law of the Republic which the House of Representatives shall make and which shall not contain any restrictions other than those relating to age, health, proximity of relationship and prohibition of polygamy ;

(c) if the provisions of Article 111 are applicable only to one of the parties to the marriage and the other party is not a member of the Turkish Community, the marriage shall be governed by the law of the Republic as in sub-paragraph (b) of this paragraph provided :

Provided that the parties may elect to have their marriage governed by the law applicable, under Article 111, to one of such parties in so far as such law allows such marriage.”

1973

Dec. 31

—
ANASTASSIOS
IOSIF
HJI HANNA
v.
ELIZABETH
HJI HANNA
THEN
ELIZABETH
ANDREAS

It will thus be observed that under the provisions of Article 111.1 of the Constitution on and after the date of its coming into operation matters relating to marriage and divorce of members of the Greek-Orthodox church and of any religious group to which the provisions of paragraph 3 of Article 2 of the Constitution apply shall be governed by the law of the Greek-Orthodox church or of the church of such religious group, as the case may be, and shall be cognizable by the Tribunal of such church. It may be added that the Maronite Community is one of the religious groups to which the provisions of paragraph 3 of Article 2 of the Constitution apply.

Article 22.1, which is modelled on Article 12 of the European Convention on Human Rights, makes provision for the right to marry and form a family according to the law relating to marriage applicable ; and paragraph 2 (a) of this Article relates to mixed marriages where the law of the parties as provided under Article 111.1 is not the same and provides that the parties may elect to have their marriage governed by the law applicable to either of them under the said Article.

As stated earlier on the marriage between the parties was performed by the District Officer under the provisions of the Marriage Law, Cap. 279 on the 21st June, 1969, *i.e.* after the coming into operation of the Constitution and the question that falls for determination is whether this marriage is a valid marriage having regard to the provisions of Article 111.1 of the Constitution.

Having given the matter my best consideration I am clearly of opinion that after the coming into operation of the Constitution a civil marriage between citizens of the Republic who are either members of the Greek-Orthodox church or of a religious group to which the provisions of Article 2.3 apply is not a valid marriage. Sections 34 and 36 of the Marriage Law, Cap. 279 expressly provide that the provisions of the said Law do not apply to any marriages in which either of the parties is a Turk professing the Moslem faith and to marriages the parties to which are both members of the Greek-Orthodox church, respectively. But the provisions of that law have, after the coming into operation of the Constitution, to be construed and applied with such modifications as may be necessary to bring them into conformity with the Constitution and, in my view, it would be inconsistent with the provisions of Article 111.1 of the Constitution to hold that the marriage between two citizens

of the Republic one of whom is a Greek-Orthodox and the other a Maronite performed under the provisions of the Marriage Law is a valid marriage.

In the result my decision on this issue is that the marriage celebrated between the parties on the 21st June, 1969, at the Commissioner's office under the provisions of the Marriage Law, Cap. 279 is not a valid marriage.

Order accordingly.

1973
Dec. 31
—
ANASTASSIOS
IOSIF
HJI HANNA
v.
ELIZABETH
HJI HANNA
THEN
ELIZABETH
ANDREAS