

1980 April 9

[A. LOIZOU, J.]

FOZIYE S. ABUL-HAWA, FORMERLY A. TAYIM,
Petitioner,

v.

SOULEIMAN DAOD ABUL-HAWA,
Respondent.

(*Matrimonial Petition No. 4/80*).

Matrimonial Causes—Divorce—Desertion—Husband withdrawing from co-habitation without reasonable cause and without wife's consent for a period of more than three years immediately preceding presentation of petition—Conduct leading to conclusion that he left wife with intention of bringing co-habitation permanently to an end—Guilty of desertion—Decree nisi in favour of wife.

Matrimonial Causes—Practice—Decree nisi with provisional order for custody of child to wife—Question of custody and arrangements for care and upbringing of child left for consideration together with application for making the decree absolute—Section 2 of the Matrimonial Proceedings Children's Act, 1958.

This was an undefended petition for divorce on the ground of desertion. The wife-petitioner adduced evidence, which remained uncontradicted and was accepted by the Court, to the effect that the husband deserted her on the 18th December, 1976 without reasonable cause and without her consent and has not since returned to the conjugal home in spite of her efforts to bring him back, nor has he shown any intention whatsoever to do so.

Held, that the whole conduct of the respondent leads to the conclusion that he left the petitioner with the intention on his part of bringing cohabitation permanently to an end; that, therefore, desertion which has lasted for a period of more than three years immediately preceding the presentation of this petition has been proved beyond reasonable doubt; and that, accordingly, a decree nisi in favour of the petitioner wife will be granted.

(2) That the custody of the child of the marriage, a son born on 9.9.1973, will at present be given to the wife but this matter and the arrangements that have to be made for his care and unbringing will be considered together with the application for the making of this decree absolute. 5

Decree nisi granted.

Matrimonial Petition.

Petition by the wife for divorce on the ground of the husband's desertion.

C. HadjiNicolaou, for the petitioner. 10

Respondent absent.

A. LOIZOU J. gave the following judgment. This is an undefended wife's petition for divorce on the ground of desertion. The respondent husband was duly served but he failed to enter an appearance or contest the proceedings. 15

The parties who are of Arab origin and of the Moslem faith, were born in Cyprus after their parents came from Palestine and settled here in 1948. They were married at the District Office Nicosia on the 4th March, 1972, under the provisions of the Marriage Law Cap. 279. After their said marriage the parties lived together until the 18th December, 1976, when the respondent deserted the petitioner without reasonable cause and without the consent of the petitioner. He withdrew from cohabitation with her at 11 Stratigou Makriyianni Street, Limassol, and has not returned to the conjugal home in spite of the efforts made by the petitioner wife to bring him back, nor has he shown any intention whatsoever to do so. His whole conduct leads me to the conclusion that the respondent husband left the petitioner with the intention on his part of bringing cohabitation permanently to an end. 20
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All this is born out from the evidence adduced on behalf of the petitioner wife which has remained uncontradicted. Having accepted same in full, as true and reliable, I find that desertion which has lasted for a period of more than three years immediately preceding the presentation of the present petition has been proved beyond reasonable doubt and I accordingly grant a decree nisi in favour of the petitioner wife. 35

Out of the said marriage there was a child, a son, born on the

9th September, 1973, who continues living with the petitioner wife and attends the English School at Limassol. His custody is given at present to the petitioner wife. The question, however, of the custody of the child and the arrangements that have been
5 made or are to be made for his care and upbringing will be considered (see section 2 of the Matrimonial Proceedings Children's Act 1958) together with the application for the making of this decree absolute.

10 There will be, however, no order as to costs for these proceedings as none have been claimed.

Decree nisi granted.