

1981 September 26

[A. LOIZOU J.]

MARIA SAVVA IOAKIM

Petitioner,

v.

BERNARDINO LOPEX OKIHUELS

Respondent.

(Matrimonial Petition No. 6/81).

Matrimonial Causes—Divorce—Desertion—Withdrawal of respondent from conjugal home—Animus deserendi on his part—Desertion proved—Decree nisi in favour of petitioner granted.

5 This was a wife's petition for divorce on the ground of deser-
tion. The parties were living together in Cuba until the 14th
June, 1977 when the respondent husband left the petitioner
and settled by himself in another house refusing any communi-
cation with her. On account of this and on seeing no possibility
10 for his return to the conjugal home and compelled by circum-
stances she returned to Cyprus. Thereafter the petitioner made
efforts for the return of the respondent to the conjugal home but
he made clear his intention of deserting the petitioner and of
bringing co-habitation permanently to an end.

15 *Held*, that there has been established the separation of the
one spouse from the other with the intention on the part of
the deserting spouse of bringing cohabitation permanently
to an end without reasonable cause and without the consent
of the other spouse; that in addition to the withdrawal of the
20 respondent from the conjugal home in Cuba, there exists such
a conduct on his behalf that it evinces his intention of deserting
the petitioner; that the state of separation that existed is clearly
attributed to the animus deserendi on the part of the respondent;
that from his whole demeanour nothing can be inferred suggest-
ing that he had the intention to resume cohabitation at any
25 time, on the contrary he expressly excluded such a possibility;
that, therefore, there exists in law desertion on the part of the

respondent; accordingly a decree nisi in favour of the petitioner will be granted.

Decree nisi granted.

Cases referred to:

Hadjiyiannis v. Hadjiyiannis (1979) 1 C.L.R. 227; 5

Avraam v. Avraam (1979) 1 C.L.R. 661;

Eleftheriou v. Charalambous (1980) 1 C.L.R. 600.

Matrimonial Petition.

Wife's Petition for dissolution of marriage because of the husband's desertion. 10

M. Papapetrou, for the petitioner.

Respondent absent. Duly served.

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

The petitioner a Greek Cypriot, member of the Greek Orthodox Church of Cyprus, and the respondent a Cubanese national, member of the Roman Catholic Church, went through a ceremony of civil marriage at the embassy of Cuba in Sofia Bulgaria and they lived together for three years in that country; then she returned to Cyprus where she stayed until 1973, whereas the respondent returned to Cuba. 20

On or about April 1973 the petitioner went to Cuba and stayed with the respondent. Out of this marriage there has been an issue, a boy named Savvas Lopez Ioakim born on the 13th January 1969 in Sofia. The marriage has not been celebrated in accordance with the rites of any church. 25

On or about the 14th June 1977, the respondent left the petitioner and settled by himself in another house refusing any communication with her. On account of this and on seeing no possibility for his return to the conjugal home and obviously compelled by circumstances, she returned to Cyprus. In spite of her efforts the respondent has shown no intention to return to his conjugal home, but on the contrary he has made clear his intention of deserting the petitioner and of bringing cohabitation permanently to an end and without any reasonable cause. 30
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In 1978 P.W.2. Petros Michael Petrou, went to Cuba for studies. The petitioner gave him a letter for the respondent, whom, however he did not find at his last known address but through the assistance of some Greeks residing in Cuba he met
5 him at his place of work. This witness spoke to him about the petitioner and that the latter wanted to know what his intentions were and whether he would want her back, upon which the respondent said that the marriage was over, that the matter had finished and that he had started a new way of life on his own.

10 On these facts, which have been duly proved by the evidence of the petitioner and that of her witness, Petrou, I am satisfied that there exists in Law desertion on the part of the respondent. There has been established the separation of the one spouse from the other with the intention on the part of the deserting
15 spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse. In addition to the withdrawal of the respondent from the conjugal home in Cuba, there exists such a conduct on his behalf that it evinces his intention of deserting the petitioner; the state of
20 separation that existed is clearly attributed to the animus deserendi on the part of the respondent. From his whole demeanour nothing can be inferred suggesting that he had the intention to resume cohabitation at any time, on the contrary he expressly excluded such a possibility. If any authorities on the legal
25 principles involved are necessary, reference may be made to the cases of *Andreas Hadjiyiannis v. Alida Hadjiyiannis*, (1979) 1 C.L.R. p. 227; *Evgenios Avraam v. Lilian Avraam* (1979) 1 C.L.R. p. 661; *Stella Eleftheriou v. Eleftherios Charalambous* (1980) 1 C.L.R. p. 600.

30 I accordingly find the case proved and I grant a decree nisi in favour of the petitioner. With regard to the issue of the marriage his custody is given at present to the petitioner with whom he has all along been residing.

35 The question, however, of the custody of the said child and the arrangements which have been or are to be made for his upbringing will be considered (see section 2 of the Matrimonial Proceedings (Children) Act 1958), together with the application for the making of this decree absolute. There will be, however,

no order as to costs for these proceedings, as none have been claimed.

Decree nisi granted. No order as to costs.