

1982 February. 20

[A. LOIZOU, J.]

ANDROULLA NAHHAS NEE ZACHARIA CHRISTODOULOU,
Petitioner.

v.

SALAH M. NAHHAS,
Respondent.

(*Matrimonial Petition No. 15/81*).

Matrimonial causes—Nullity of marriage—Wilful refusal to consummate the marriage—Burden of proof—Refusal persisting up to the date of presentation of petition—Decree nisi of nullity granted.

This was a wife's petition for a decree of nullity of her marriage on the ground of the husband's wilful refusal to consummate the marriage. In spite of petitioner's willingness to consummate the marriage, which went on for a considerable time, he wilfully refused to do so. Respondent was approached by the petitioner's uncle who repeated to him the complaint of the petitioner about his refusal to consummate the marriage and he remained silent and expressed no comment whatsoever. The next day he took his clothes and left the petitioner and has not returned since.

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Held, that the respondent—husband wilfully refused to consummate the marriage, although this was proposed to him by the petitioner with tact, persuasion and encouragement as an ordinary spouse would use in the circumstances and that the respondent wilfully refused to consummate it; that, moreover, this wilful refusal persisted up to the date of the presentation of this petition inasmuch as the respondent has left the conjugal home, soon after the meeting with her uncle and has not sought to resume cohabitation with her; that the burden of proof, which is on the petitioner, has been discharged and therefore, a decree nisi of nullity will be granted on the ground of the husband's wilful refusal to consummate the marriage.

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Decree nisi of nullity granted.

Matrimonial Petition.

Petition by the wife for nullity of marriage due to the wilful refusal of the husband to consummate the marriage.

P. Mouaimis for *P. Soteriou*, for the petitioner.

5 Respondent absent.

A. LOIZOU J. gave the following judgment. This is an undefended wife's petition "that her marriage be declared null and void and/or dissolved owing to the wilful refusal of the respondent/husband to consummate the marriage".

10 The parties were married at the District Officer's Office in Limassol under the Marriage Law, Cap. 279. Their marriage has never been celebrated in accordance with the rites of the Greek Orthodox church, of which the petitioner is a member, nor was contracted or solemnized in accordance with the rites
15 of the Moslem faith to which the respondent belongs. After their marriage the parties lived at Limassol where they still reside and are domiciled in Cyprus, which domicile gives to this Court the jurisdiction to entertain this suit for nullity.

In support of her case the petitioner gave evidence herself and called as a witness her uncle, Andreas Lycourgos, who has
20 corroborated her testimony in all material respects. The petitioner has testified that in spite of her willingness and tact to consummate the marriage which went on for a considerable time, he wilfully refused to do so. It appears that he was not
25 prepared to respond to her proposal. Eventually she complained to her uncle, who has been standing to her like a father since her father's death. Lycourgos went to the house and met the respondent/husband and repeated to him the complaint of the petitioner about his refusal to consummate the
30 marriage, but the respondent remained silent and expressed no comment whatsoever. The next day the respondent took his clothes and left the petitioner and has not returned since then.

On the evidence before me I am satisfied that the respondent/husband wilfully refused to consummate the marriage, although
35 this was proposed to him by the petitioner with tact, persuasion and encouragement as an ordinary spouse would use in the circumstances and that the respondent wilfully refused to consummate it. Moreover this wilful refusal persisted up to the date

of the presentation of this petition inasmuch as the respondent has left the conjugal home, soon after the meeting with her uncle and has not sought to resume cohabitation with her.

The burden of proof, which is on the petitioner, has been discharged to my satisfaction and I grant a decree nisi of nullity on the ground of the husband's wilful refusal to consummate the marriage and I award costs in favour of the petitioner. 5

*Decree nisi of nullity granted
with costs.*