

1982 June 14

[L. LOIZOU, J.]

ROBERTOS DE STEFANO,

*Petitioner,*

v.

IOANNA DE STEFANO THEN IOANNA GEORGHIOU  
DEMETRIADOU NEE CHARALAMBOUS,

*Respondent.*

*(Matrimonial Petition No. 3/78).*

*Marriage—Civil marriage—Validity—Civil Marriage solemnized in Cyprus under the provisions of the Marriage Law, Cap. 279—No religious ceremony of marriage—Parties citizens of the Republic and domiciled in Cyprus—Husband a member of the Roman Catholic Church belonging to the latin community—*  
5 *Wife a member of the Greek Orthodox Church—Said marriage invalid as being inconsistent with provisions of Article 111.1 of the Constitution—Article 22(1) and (2)(a) of the Constitution and sections 34 and 36 of the Marriage Law, Cap. 279.*

10 On December 3, 1968, the parties to this petition went through a ceremony of marriage at the District Office in Limassol under the provisions of the Marriage Law, Cap. 279. They were both citizens of the Republic and domiciled in Cyprus. The petitioner was a member of the Roman Catholic Church belong-  
15 ing to the Latin\* Community and the respondent a member of the Greek Orthodox Church. No religious ceremony of marriage was celebrated either in accordance with the rites and ceremonies of the Greek Orthodox Church or of the Roman Catholic Church.

20 *Upon a petition for a declaration that the marriage between*

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\* The latin community was one of the religious groups to which the provisions of Article 2.3 of the Constitution applied. Under this Article citizens of the Republic who do not belong to the Greek or Turkish Community shall, within three months of the coming into operation of the Constitution, opt to belong to either the Greek or the Turkish Community. The latin community opted to belong to the Greek Community.

*the parties was null and void as being contrary to the provisions\* of the Constitution:*

*Held*, 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; that though 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, 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; that, therefore, 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 Latin performed under the provisions of the Marriage Law is a valid marriage (see *HadjiHanna v. HadjiHanna* (1973) 1

\* The relevant provisions of the Constitution were Articles 22(1) and (2)(a) and 111.1 which run as follows:

"22(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)(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.

111.1 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".

\*\* Article 2.3 of the Constitution reads as follows:

"2.3 Citizens of the Republic who do not come within the provisions of paragraph (1) or (2) of this Article shall, within three months of the date of the coming into operation of this Constitution, opt to belong to either the Greek or the Turkish Community as individuals, but, if they belong to a religious group, shall so opt as a religious group and upon such option they shall be deemed to be members of such Community".

C.L.R. 186); accordingly the marriage between the parties is not a valid marriage and is hereby declared null and void.

*Marriage declared null and void.*

Cases referred to:

- 5 *HadjiHanna v. HadjiHanna* (1973) 1 C.L.R. 186.

**Matrimonial Petition.**

Petition by the husband for a declaration that the civil ceremony of marriage performed between the parties at the District Officer's Office in Limassol is null and void.

- 10 *St. Mc Bride*, for the petitioner.

Respondent absent. No appearance for her.

*Cur. adv. vult.*

- 15 L. LOIZOU J. read the following judgment. This is a husband's petition for a declaration that the marriage between the parties is null and void as being contrary to the provisions of the Constitution.

The respondent—wife entered an appearance to the petition but took no further part and the hearing of the petition proceeded undefended.

- 20 The petition, as originally filed, contained several prayers but on the application of the petitioner the issue relating to the nullity of the marriage was proceeded with first.

The relevant facts of the case, according to the evidence adduced, are briefly as follows:

- 25 The petitioner and the respondent are citizens of the Republic of Cyprus. They were both born in Limassol. The petitioner on the 31st October, 1938 and the respondent on the 19th June, 1944. They are both domiciled in Cyprus but now living in Athens. The petitioner is a member of the Roman Catholic  
30 Church belonging to the Latin community and the respondent a member of the Greek Orthodox Church. On the 3rd day of December, 1968, they went through a ceremony of marriage at the District Office in Limassol under the provisions of the Marriage Law, Cap. 279. No religious ceremony of marriage  
35 was celebrated either in accordance with the rites and ceremonies of the Greek Orthodox Church or of the Roman Catholic

Church. After the ceremony the parties lived and co-habited at various addresses in Limassol. The respondent is at present residing in Athens.

The statutory provisions relevant to the issue are Articles 111.1 and 22.1 and 2(a) of the Constitution. 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. 5 10

Article 22.1 makes provision for the right to marry and found a family according to the law relating to marriage applicable to the parties under the provisions of the Constitution; and paragraph 2(1) of this Article relates to mixed marriages where the law relating to marriage applicable to 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. 15 20

The Latin community is one of the religious groups to which the provisions of paragraph 3 of Article 2 of the Constitution apply. 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 3rd December, 1968 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. 25 30

Having considered this matter I am clearly of the view 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 35

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 Latin performed under the provisions of the Marriage Law is a valid marriage. See *HadjiHanna v. HadjiHanna* (1973) 1 C.L.R. 186.

In the result my decision on this issue is that the marriage celebrated between the parties on the 3rd December, 1968, at the Commissioner's office under the provisions of the Marriage Law, Cap. 279 is not a valid marriage and is hereby declared null and void accordingly.

*Marriage declared null and void.*