

1983 July 28
[A. LOIZOU, J.]

SYLVIE ENOTIADES NEE LALAURIE,

Petitioner.

CHRISTAKIS CHARALAMBOUS ENOTIADES.

Respondent.

(Matrimonial Petition No. 12/83).

*Matrimonial Causes—Practice—Adultery—Proof by affidavit evidence
where witnesses are abroad—Principles applicable.*

5 This was an application by the petitioner, in a matrimonial
petition for a decree of divorce on the ground of the husband's
adultery, for an order granting leave to her to prove the facts
of the case stated in the petition, partly by an affidavit sworn
by her and partly by oral testimony. The application was
based on the ground that the petitioner a French national, was
residing in the Republic of France and was unable to attend
10 and give oral evidence on the date of the hearing due to the
nature of her employment in France; and on the ground that
the basic facts of the case pertaining to the alleged adultery
will be sworn by a witness who will be produced in Court. What
was sought to be proved by affidavit evidence were the rest
15 of the facts alleged in the petition.

Held, that though leave to prove adultery by affidavit in
undefended cases where the witnesses are abroad, or for other
reasons could not give evidence in open Court, should be given
only as exceptional indulgence in special circumstances it is
20 recognized that in special circumstances adultery might be
proved by affidavit alone, and this mode of proof is permitted
where there is evidence aliunde and where the affidavit provides
merely corroborative evidence of adultery; that in the light of
the special circumstances pertaining to the petitioner which
25 call for exceptional indulgence, the application will be granted
as in the present case, it is not the adultery itself that is sought
to be proved by affidavit evidence, as in respect of that there

is evidence aliunde, and the affidavit will cover, as it appears, the "fringe" of the case, plus the supply of corroborative evidence of adultery.

Application granted.

Cases referred to:	5
<i>Adams v. Adams and Guest</i> [1873] L.T. 699;	
<i>Ling v. Ling and Croker</i> [1858] 1 Sw. & Tr. 180;	
<i>Gayer v. Gayer</i> [1917] P. 64;	
<i>Wilson v. Wilson and Berry</i> [1929] 73 Sol. Jo. 284;	
<i>Goodman v. Goodman and Pinfield</i> [1920] P. 67.	10

Application.

Ex parte application by the petitioner for leave to prove the facts of the case stated in the petition, partly by affidavit sworn by her and partly by oral testimony.

M. Montanos, for applicant-petitioner. 15

A. LOIZOU J. gave the following ruling. This is a matrimonial petition filed on behalf of the wife for a decree of divorce on the ground of adultery by her husband who, though duly served, failed to enter an appearance or contest the proceedings.

This ex parte application has been made for an order granting leave to the petitioner to prove the facts of the case stated in the petition, partly by an affidavit sworn by her and partly by oral testimony. 20

This application is based on rules 39 and 102 of our Matrimonial Causes Rules and on rule 25 of the English Matrimonial Causes Rules of 1957. In support thereof an affidavit sworn by counsel for the petitioner has been filed deposing, inter alia, that the petitioner is a French national and that she resides at "Le Cruzel" Foulayronnes, 4700 Agen, Lot et Garonne, in the Republic of France, and that she is unable to attend and give oral evidence on the date of the hearing due to the nature of her employment in France. Furthermore, as explicitly stated by counsel, the basic facts of the case pertaining to the alleged 25 30

adultery will be shown by a witness who will be produced in Court; what is sought to be proved by affidavit evidence are the rest of the facts alleged in the petition

5 The question of affidavit evidence is dealt with, by reference to the appropriate English Rules in *Ravden on Divorce*, 8th edition, p 576, para 66 where it is stated "Parties may be permitted (a) to verify their respective cases wholly, or in part (b), by affidavit (c). but, unless the order giving such leave be drawn up, it seems the proceedings would be irregular" This statement of the Law is based on rule 25 of the Matrimonial Causes Rules of 1957 set out in full in *Ravden* (supra) p 1341 and for the sake of brevity I will not reproduce it here

10 It was the tendency of the Courts to allow the "fringe" of a case, not substantial parts, to be proved by affidavit (See *Adams v Adams and Guest*, [1873] L.T. 699 and *Ling v Ling and Croker*, (1858) 1 Sw & Tr. 180 (dissolution), referred to in *Ravden on Divorce*, p 578) But as pointed out therein, the tendency was to relax this rule until the former practice was disapproved by the Court of Appeal in *Gaver v Gaver* [1917] P 64 where it was laid down that "leave to prove adultery by affidavit in undefended cases where the witnesses were abroad, or for other reasons could not give evidence in open Court, should be given only as exceptional indulgence in special circumstances". It was further recognized in that case, however that "in special circumstances adultery might be proved by affidavit alone, and the Court now not infrequently permits this mode of proof where there is evidence ahande and where the affidavit provides merely corroborative evidence of adultery see *Wilson v Wilson and Berry* [1929] 73 Sol Jo. 284 (evidence entirely by affidavit)."

30 Guided by the aforesaid exposition of the Law and bearing in mind the special circumstances pertaining to the petitioner which call for exceptional indulgence, I shall grant the application as in the present case, as already stated, it is not the adultery itself that is sought to be proved by affidavit evidence, as in respect of that there is evidence ahande, and the affidavit will cover, as it appears, the "fringe" of the case, plus the supply of corroborative evidence of adultery.

40 I take this opportunity to point out that where such leave is given to a petitioner to give evidence by affidavit, there should be

stated in such affidavit all the admissible facts to the knowledge of the deponent which bear upon the case, whether they prove adultery or not. (see *Goodman v. Goodman and Pinfield*, [1920] P. 67).

The application is, therefore, granted with no order as to costs. 5

In view, however, of the requirement that the order has to be drawn up before the hearing, otherwise the proceedings would be irregular, the hearing of this petition, which was fixed for today, is adjourned to the 9th August, 1983, at 9.30 a.m., so allowing time for the drawing up of this order. 10

Application granted. No order as to costs.