

CASES
DECIDED BY
THE SUPREME COURT OF CYPRUS
IN ITS ORIGINAL JURISDICTION AND ON
APPEAL FROM THE DISTRICT COURTS.

[L. LOIZOU, J.]

EPAMINONDAS NICOLAOU METAXA,

Petitioner,

v.

MARGARITA MICHAEL MITA,

Respondent.

(Matrimonial Petition No. 6/74).

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5 *Marriage—Civil Marriage—Validity—Civil marriage solemnized at a Register Office in England—Parties thereto Greek Cypriots, members of the Greek-Orthodox Church and permanent residents of Cyprus, who were and still are domiciled in Cyprus—No religious ceremony in accordance with the rites and ceremonies of the Greek-Orthodox Church—Religious ceremony—Not a mere form of marriage by a condition as to essential validity of marriage—Said marriage not valid and void ab initio—Article 111.1 of the Constitution.*

10 *Constitutional Law—Marriage—Civil marriage between Greek Cypriots, members of the Greek-Orthodox Church—Validity—Article 111.1 of the Constitution.*

15 *Conflict of Laws—Marriage contracted in accordance with formalities of lex loci celebrationis—But in disregard of the religious formalities of the domicile—Validity.*

20 Both the parties to this petition are Greek Cypriots, members of the Greek-Orthodox Church, permanent residents of Cyprus and were and are still domiciled in Cyprus. On the 3rd November, 1972, they went through a ceremony of marriage at Waltham Forest Register Office in the London Borough of

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Waltham Forest, but they never went through a religious ceremony of marriage in accordance with the rites of the Greek-Orthodox Church. The parents of the parties also belong to the Greek-Orthodox Church. They are Greek Cypriots and permanent residents of Cyprus. At the relevant time the respondent was and still is an air-stewardess and only used to stay in London every now and then at a hotel when her duties as an air-stewardess so required. The petitioner was then a student in London but he later abandoned his studies and went to Athens in order to continue there. 5
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Article 111.1 of the Constitution provides as follows:

“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.” 15
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On the question of the validity of the marriage:

Held, (1) that though this marriage which was performed in accordance with the formalities of the *lex loci celebrationis* may be considered a perfectly valid marriage in England, the Greek-Orthodox Church recognizes as valid only marriages celebrated in accordance with the rites and ceremonies of that church i.e. ecclesiastical marriages and that a civil marriage celebrated between persons who are members of that church, anywhere, is void. 25
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(2) That the provisions of Article 111 relate to the substantive law of marriage applicable to matrimonial causes in which a citizen of the Republic and a member of the church referred to therein is a party and also to provisions relating to competence of the Court which is to try such a matrimonial cause; that the religious ceremony is not, therefore, considered as a mere form of marriage but as a condition of the essential va- 35

lidity of the marriage without which the marriage is considered as non-existent; and that, accordingly the marriage performed between the parties to this petition on the 3rd November, 1972 is not a valid marriage and is *void ab initio*.

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5 *Order accordingly.*

Cases referred to:

Formosa v. Formosa [1962] 3 All E.R. 419.

Matrimonial Petition.

10 Petition by the husband for a declaration that his marriage with the respondent is *null and void*.

K. Michaelides, for the petitioner.

Ch. Ioannides, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:-

15 L. LOIZOU, J.: By this petition the husband petitioner prays for a declaration that the civil marriage performed between the parties in England is *null and void* and of no effect as being contrary to law and the constitution.

The facts of the case are briefly as follows:

20 Both the petitioner and the respondent are Greek Cypriots, members of the Greek-Orthodox Church and permanent residents of Cyprus. On the 3rd November, 1972, they went through a ceremony of marriage at Waltham Forest Register Office in the London Borough of Waltham
25 Forest. At the relevant time the respondent was and still is an air-stewardess with Cyprus Airways and only used to stay in London every now and then at a hotel when her duties as an air-stewardess so required. The petitioner was then a student in London but he later abandoned his stu-
30 dies and went to Athens in order to continue there. The parents of the parties also belong to the Greek-Orthodox Church. They are Greek Cypriots and permanent residents of Cyprus.

35 On the 15th July, 1973, the respondent gave birth to a child. It is alleged in the petition that after the celebration of the civil marriage the petitioner has never co-habited with the respondent and also that he is not the father of the

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child born to her. It is further alleged that the marriage celebrated between the parties is not a valid marriage in that it was not celebrated in accordance with the rites of the Greek-Orthodox Church and that all civil marriages celebrated anywhere between citizens of the Republic belonging to the Greek-Orthodox Church after the date of the coming into operation of the Constitution are void marriages. 5

By her reply the respondent alleges that she and the petitioner met in Cyprus in or about June, 1972, and they had sexual relations first in Cyprus and later in London; in or about the beginning of October, 1972, the petitioner promised to marry her and that they believed the civil marriage solemnized on the 3rd November, 1972 to be a valid marriage; that after the celebration of the marriage they lived together and they appeared in public as husband and wife, they continued to have sexual relations and that the respondent did not have such relations with any other man; that on the 15th July, 1973, she gave birth to a female child at Bewstod Memorial Hospital and the birth of the child was registered at Stoke Newington in the London Borough of Hackney and that in the certificate of birth the name of the petitioner appears as the father of the child; that the petitioner is the father of the child and he has expressly and by conduct recognized the child as his own. 10 15 20 25

In the course of the hearing of the petition the petitioner gave evidence on oath and, *inter alia*, stated that he was a student in London between September, 1971 and September, 1973, when he left and went to continue his studies in Athens. He met the respondent in Nicosia in July, 1972, when he was here for his vacations but that up to the time of the celebration of the marriage he had no sexual relations with her because, although he had not proposed to her in so many words, he understood from her demeanour that she would not consent to this. The first time he had sexual relations with her, he said, was on the first night of their marriage and that he then realised that the respondent was not a virgin as she pretended to be and as a result they quarrelled and separated and she returned to Cyprus; and thereafter they never had sexual relations again. Their intention, he said, was not to have any children and for this reason she started taking pills ten 30 35 40

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days before the marriage. In cross-examination he said it was the respondent who had proposed marriage to him but he did admit, nevertheless, that he wrote to her father and asked for her hand in marriage. He also admitted that
5 he did meet her in London after the alleged separation but such meetings were for the purpose of negotiating the divorce. He further admitted writing to her and addressing her as his wife but that he did this at her request and for the sake of her parents who, she told him, were sick people. In such letters he mentioned the child but again he
10 did so at her request.

I do not consider it necessary for the purposes of this petition to comment on the petitioner's evidence but I must say that it seems to me that the contents of the letter
15 *exhibit 2* addressed by him to one Michalakis, a relation of the respondent, to say the least, belies his allegations about their relations and the paternity of the child born to the respondent.

Having briefly set out the facts I now revert to the issue
20 of the validity of the marriage. In considering this matter I have derived considerable assistance from a study on the right to marry and found a family especially under the law of Cyprus by the Attorney-General of the Republic Mr. Criton G. Tornaritis, Q.C., to which I have been referred
25 by counsel for the petitioner.

As stated earlier on it is common ground that the parties were at all time material to these proceedings and still are domiciled in Cyprus, they are members of the Greek-Orthodox Church and that no religious ceremony in accordance with the rites and ceremonies of that church
30 took place but only a civil marriage was solemnized at a Register Office in England.

The relevant constitutional provision is Article 111.1 of the Constitution which reads as follows:

35 "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
40 legitimation by order of the court or adoption of members of the Greek-Orthodox Church or of a re-

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ligious 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". 5

The religious groups to which reference is made in this Article are those religious groups whose members being neither members of the Greek Community nor of the Turkish Community have opted to belong to the Greek Community. 10

And although under section 29(2)(b) of the Courts of Justice Law, 1960, the law applicable in relation to matrimonial causes within the jurisdiction of this Court is that which was applied by the Supreme Court of Cyprus on the day preceding Independence Day, that is to say, the law applied by the High Court of Justice in England in exercise of its Matrimonial Jurisdiction (see section 20(b) of the Courts of Justice Law (Cap. 8) now repealed) such provision is in view of Article 179 now subject to Article 111 of the Constitution which is the supreme law of the Republic and no law shall be inconsistent with any of the provisions of the Constitution. 15 20 25

There is uncontradicted evidence in the present case given by an advocate who is an expert on the law of the Greek-Orthodox Church that that church recognizes as valid only marriages celebrated in accordance with the rites and ceremonies of that church *i.e.* ecclesiastical marriages and that a civil marriage celebrated between persons who are members of that church, anywhere, is void. 30

It is clear from the above that the provisions of Article 111 relate to the substantive law of marriage applicable to matrimonial cases in which a citizen of the Republic and a member of the church referred to therein is a party and also to provisions relating to the competence of the Court which is to try such a matrimonial case. 35 40

The religious ceremony is not, therefore, considered as 40

a mere form of marriage but as a condition of the essential validity of the marriage without which the marriage is considered as non-existent.

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5 The right to marry is safeguarded by Article 22.1 of the Constitution which is in these terms:

“Any person reaching nubile age is free to marry and found a family according to the law relating to marriage, applicable to such person under the provisions of this Constitution”.

10 It will thus be seen that this right is somewhat restricted in the sense that it has to be exercised in accordance with the law relating to marriage applicable to such person under the provisions of the Constitution.

15 I am well aware that this marriage which was performed in accordance with the formalities of the *lex loci celebrationis* may be considered a perfectly valid marriage in England; and that the Courts in England have expressed their views regarding the validity of marriages of this kind in no uncertain terms in cases like *Formosa v. Formosa*
20 [1962] 3 All E.R. 419 where they held that the requirements of the law of the church of Malta for a religious ceremony offended intolerably against the concept of justice prevailing in the English Courts. This may well be so. But whilst one may have the greatest respect for this view of
25 English Courts, nevertheless, the Courts in Cyprus are bound to administer the law of the Republic as provided in its Constitution.

30 In this respect useful reference may be made to a passage from Cheshire's Private International Law, 9th ed., at p. 318:

35 “The principle that a marriage which is in accordance with the formalities of the *lex loci celebrationis* is to be regarded as formally valid everywhere even though it would have been void if solemnized in that manner in the country where one or both of the parties are domiciled is generally but not universally accepted. Thus in those countries where status depends upon religious law, as it does in Cyprus and Greece for persons of the Orthodox faith, in Malta for Ro-

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man Catholics, and in Cyprus for Moslems, a marriage contracted in disregard of the religious formalities of the domicil, no matter where solemnized, is not recognized as valid. For instance, a civil marriage contracted in London by a Roman Catholic domiciled in Malta is not recognized by Maltese law. Nevertheless, the marriage remains valid in the eyes of English law". 5

In the light of the foregoing I feel bound to hold that, on the facts of this case, the marriage performed between the parties to this petition on the 3rd November, 1972, is not a valid marriage and is void ab initio. 10

In all the circumstances of this case I am not prepared to make any order as to costs.

Order accordingly. 15