

1979 December 27

[A. LOIZOU, J.]

STAVROS E. NEOPHYTOU,

*Petitioner,*

v.

ELENI E. NEOPHYTOU NEE IOANNOU ISI,

*Respondent.*

(*Matrimonial Petition No. 6/79*).

5 *Marriage—Civil marriage—Validity—Civil marriage solemnized in a Civil Marriage Office in the Soviet Union—Parties thereto Greek Cypriots, members of the Greek-Orthodox Church, permanently resident and domiciled in Cyprus—No religious ceremony in accordance with the rites of the Greek-Orthodox Church—Though held in accordance with formalities of the lex loci celebrationis, said marriage void ab initio because it was contracted in disregard of Article 111 of the Constitution.*

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

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

15 On April 30, 1975 the parties to this petition, both Greek Cypriots, members of the Greek-Orthodox Church, permanently resident and domiciled in the Republic of Cyprus, went through a ceremony of Civil marriage in the Office of Civil Marriages at Rastov-on-Don in the Soviet Union. It was common  
20 ground that they have not gone through a religious ceremony of marriage in accordance with the rites of the Greek-Orthodox Church.

*Upon a petition for a declaration that the said marriage was null and void:*

25 *Held, that the parties cannot be considered as having been*

validly married as this is a matter of personal status coming within the exclusive competence of the Church to which the parties belong in accordance with Article 111.1 of the Constitution (see, also, *Metaxas v. Mitas* (1977) 1 C.L.R. 1); that the said marriage ceremony is void *ab initio*, although it was held in accordance with the formalities of the *lex loci celebrationis*, as a marriage contracted in disregard of Article 111 of the Constitution for Cypriots to whom it applies is not recognised as a valid one; and that, accordingly, a declaration should be made to that effect. 5 10

*Declaration that marriage void  
ab initio.*

Cases referred to:

*Metaxas v. Mitas* (1977) 1 C.L.R. 1.

**Matrimonial Petition.** 15

Petition by the husband for a declaration that the civil ceremony of marriage that the parties went through in the Office of Civil Marriages a Rastov-on-Don in the Soviet Union on the 30th April, 1975, is a nullity.

*A. Efstychiou*, for the petitioner. 20

*Ph. Clerides*, for the respondent.

A. LOIZOU J. gave the following judgment. The petitioner husband hereby prays for a declaration that the ceremony of marriage performed between the parties on the 30th April, 1975, in the Office of Civil Marriages at Rastov-on-Don in the Soviet Union is null and void and of no effect as being contrary to the Law and the Constitution. 25

The parties in these proceedings are both Greek Cypriots, members of the Greek Orthodox Church, were and still are permanently resident and domiciled in the Republic of Cyprus. 30

On the 30th April, 1975, they went through a ceremony of Civil Marriage at the aforesaid office and thereafter returned to Cyprus and have been living here ever since. Out of the said relationship they acquired two daughters named Natalia and Sylvia, born on the 11th November, 1976 and the 3rd August, 1979, respectively. 35

It is the case for the petitioner husband that under the Laws

and the Constitution, and in particular Article 111 thereof, the only way for such Cypriot nationals and members of the Greek Orthodox Church to be validly married, is to go through a religious ceremony in accordance with the rites of the Greek Orthodox Church. In fact, it is a common ground that the parties have not gone through such a religious ceremony and there is hardly any disagreement between counsel of both sides as to the legal consequences of the ceremony of marriage through which the parties went in the Soviet Union, as well as to the attitude of the Greek-Orthodox Church which recognizes as valid only marriages celebrated in accordance with its rites and ceremonies and that a civil marriage celebrated between persons who are members of this Church anywhere is void.

Under Article 111 of the Constitution and on the authority of the case of *Metaxas v. Mitas* (1977) 1 C.L.R., p. 1, the parties cannot be considered as having been validly married as this is a matter of personal status coming within the exclusive competence of the Church to which the parties belong in accordance with Article 111.1 of the Constitution. The marriage ceremony through which they went on the 30th April, 1975, is void ab initio, although it was held in accordance with the formalities of the *lex loci celebrationis* as a marriage contracted in disregard of Article 111 of the Constitution for Cypriots to whom it applies is not recognized as a valid one and a declaration should be made to that effect.

However, a very unfortunate situation is, as a result, created for the two issues of this void marriage. As far as their custody is concerned, the natural mother is entitled to it under section 6 of the Guardianship of Infants and Prodigals Law, Cap. 277, and I need not make any order to that effect. Moreover as counsel informed me, the respondent mother has filed in the District Court of Nicosia an application for an affiliation order under section 8 of the Illegitimate Children Law, Cap. 278. But to my mind once the petitioner husband admits clearly the paternity of the issues of this relationship the better course would have been, and I am glad to hear from counsel that he intends to do so, for him to proceed himself for their legitimation as these children should not pay the price for the entanglements that exist in the law.

In the result the marriage under consideration performed

between the parties in this petition on the 30th April, 1975, is hereby declared as null and void ab initio but in the circumstances I make no order as to costs.

*Marriage declared null and void ab initio. No order as to costs.*

5