

1984 January 24

[PIKIS, J.]

AKIS S. PAPASAVVAS,

Petitioner.

v.

YIANNOULLA JOHNSTONE,

Respondent.

(*Matrimonial Petition No. 20/83*).

Matrimonial causes—Jurisdiction—Nullity of marriage—Aute-nuptial domicile of wife different from that of husband—Courts of the two countries of domicile may exercise concurrent jurisdiction over validity of marriage.

Domicile—Domicile of origin—Abandonment in favour of domicile of choice—Principles applicable. 5

Marriage—Civil marriage solemnized at Register Office in England—Validity—Both parties members of the Greek Orthodox Church and domiciled in Cyprus—Husband a Greek Cypriot and wife a British national—Their personal status governed by the provisions of Article 111 of the Constitution—In the absence of an ecclesiastical marriage their status remained unaltered—They could not be validly married except in accordance with the provisions of Article 217 of the Charter of the Autocephalous Church of Cyprus—Marriage declared null. 10
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Constitutional Law—Marriage—Article 111 of the Constitution—Not confined to members of the Greek Community stricto sensu, as defined in Article 2, but extends to all members of the Greek Orthodox Church provided they are domiciled in Cyprus.

Marriage—Validity—Rule of private international law that a marriage conducted in accordance with the formalities of the lex loci celebrationis is regarded as formally valid everywhere—How affected by the provisions of Article 111 of the Constitution. 20

On October 23, 1981, the petitioner, a Greek Cypriot, domiciled in Cyprus, member of the Greek Orthodox Church and a 25

citizen of Cyprus went into a civil marriage with the respondent at a Register Office in England under the provisions of the Marriage Act, 1949. The respondent was, also, a member of the Greek Orthodox Church, but she was a British national and holder of a British passport. She was born in the U.K. in 1961 and her parents were Cypriots, and members of the Greek Orthodox Church. Her domicile of origin was England. She came to Cyprus in 1980, rented accommodation and took up a job in furtherance of her intention to settle in Cyprus. She, also, took out an identity card under the provisions of the Registration of Residents Law, Cap. 85 that records her as a resident of Cyprus. The collapse of her marriage to the petitioner had no effect upon her residence in this Country or her future plans. Since she settled in Cyprus in 1980, she was joined by her mother who has permanently, like herself, made Cyprus her home.

Upon a petition by the husband for a declaration of nullity of the marriage because it was held contrary to the laws and rites of the Greek Orthodox Church of Cyprus, particularly Article 217 of the Holy Greek Orthodox Autocephalous Church of Cyprus:*

Held, (1) that in cases of nullity, where the ante-nuptial domicile of the wife is different from that of the husband, the Courts of the two countries of domicile of the parties may exercise concurrent jurisdiction over the validity of the marriage; and that, therefore, this Court has jurisdiction to adjudicate upon the validity of the marriage and shall proceed to examine the merits of the declaration sought.

(2) That by way of exception to the rule of private international law, laying down that a marriage conducted in accordance with the formalities of *lex loci celebrationis* is regarded as formally valid everywhere, the marriage of Greek Cypriots affected by the provisions of Article 111 of the Constitution is invalid, independently of where it is celebrated, unless conducted in accordance with the canons and rites of the Greek Orthodox Church; that the application of Article 111 is not confined to members of the Greek Community *stricto sensu*, as defined in Article 2, but extends to all members of the Greek Orthodox Church provided they are domiciled in Cyprus; and that

* Article 217 postulates, as an indispensable prerequisite for the validation of a marriage, the holding of an ecclesiastical ceremony in accordance with the rites and canons of the Greek Orthodox Church.

membership of the Greek Orthodox Church under Article 111 need not of necessity coincide with membership of the Greek Community under Article 2 of the Constitution

(3) That since respondent intended to cease to reside permanently or indefinitely in England and had ceased actual residence in this Country, and that since she has been residing in Cyprus since 1980, with a settled intention to remain here she abandoned her domicile of origin, England, and became a domiciliary of Cyprus as from 1980, that consequently, the parties, being domiciliaries of Cyprus and members of the Greek Orthodox Church, their personal status was governed by the provisions of Article 111: that in the absence of an ecclesiastical marriage, their status remained unaltered, that they could not be validly married except in accordance with the provisions of Article 217 of the Charter of the Autocephalous Church of Cyprus, accordingly their marriage before the Register Office in England is declared as null.

Marriage declared null

Cases referred to

- Christodoulou v. Christodoulou*, 1962 C.L.R. 68. 20
Tillou v. Tillou, 3 R.S.C.C. 21;
Parapano and Others v. Happaz and Others, 111 C.L.R. 69;
Metaxa v. Mita (1977) 1 C.L.R. 1.
Koutsokounnis v. Christodoulou (1981) 1 C.L.R. 58.
Medley v. Medley (1983) 1 C.L.R. 944. 25
Hijovanni v. Hijovanni (1969) 1 C.L.R. 207.
IRC v. Bullock [1976] 3 All E.R. 353 (C.A.).
Udny v. Udny [1869] LR 1 Sc. & Div. 441,
IRC v. Duchess of Portland [1982] 1 All E.R. 784;
Bushwell v. IRC [1974] 2 All E.R. 520 (C.A.), 30
Tee v. Tee [1973] 3 All E.R. 1105 (C.A.).

Matrimonial petition.

Petition by the husband for a decree of nullity of marriage.

A. Zachariou, for the petitioner.

K. Kourtis, for the respondent.

Cur. adv. vult. 35

PIKIS J. read the following judgment. The petitioner prays for a declaration of nullity of his marriage with the respondent, solemnized at a Register Office in England on 23.10.81 (see exhibit 2) under English law, viz. the provisions of the Marriage Act, 1949. The declaration is sought on the ground that the civil marriage, notwithstanding its validity in the country where it was solemnized, offended the law governing the personal status of the parties, namely the Constitution and the Laws of the Republic of Cyprus. Inevitably, the first question to be answered, concerns the jurisdiction of the Court to take cognizance of the proceedings. Reference to the circumstances of the parties and their marriage is necessary, in order to resolve the jurisdictional issue, an inquiry that will also facilitate determination of the substantive issue, that is, the effect of the 1981 marriage, if it is decided there is jurisdiction to heed the petition.

From the evidence adduced before the Court, it has been established that the petitioner is a Greek Cypriot, a member of the Greek Orthodox Church of the country, and a citizen of the Republic throughout his life, save for short periods he spent abroad to study engineering. He met the respondent in 1979 during one of her frequent visits to Cyprus, the country of origin and birth of her Greek Orthodox parents, and established a relationship that later blossomed and led to their 1981 marriage. The parents of the respondent emigrated to the U.K. where they settled, a long time ago.

In 1980, the respondent came to Cyprus with a view to settling in the country. She was born in the U.K. in 1961 and is a British national, the holder of a British passport. The marriage of her parents broke down, it seems, in her childhood. Apparently, she remained in the care of her mother who remarried a certain Johnstone whose name the respondent assumed but she was not adopted and remained in law the child of Mr. Kattos. In evidence she told the Court it was far long within the contemplation of her mother that the family should settle in Cyprus. An attempt to that end was made in 1974 but was shortly afterwards frustrated by the events of 1974 that caused the family to move back to the United Kingdom. In 1980, as mentioned, the respondent came to Cyprus, she rented accommodation and took up a job in furtherance of her intention to settle in this

country. They got married in the U.K. during a holiday in that country, before the mother of the respondent came to Cyprus to settle here like her daughter.

The petitioner wants to have the marriage annulled because it was held contrary to the laws and rites of the Greek Orthodox Church of Cyprus, particularly Article 217 of the Charter of the Holy Greek Orthodox Autocephalous Church of Cyprus. Article 217 postulates, as an indispensable prerequisite for the validation of a marriage, the holding of an ecclesiastical ceremony in accordance with the rites and canons of the Greek Orthodox Church. In her answer the respondent subscribes, in essence, to the view that the marriage is null for violation of the law bearing on their personal status and ought to be declared invalid.

Undoubtedly, the petitioner was domiciled in Cyprus, a fact that confers by itself jurisdiction upon the Court to examine the validity of the marriage (see, *Christodoulou v. Christodoulou*, 1962 C.L.R. 68).

It is a fundamental precept of private international law that in matters of personal status, the Courts of the country of domicile of the parties have a paramount jurisdiction to settle the status of the parties (see, *Cheshire's Private International Law*, 9th ed., p. 391). In *Christodoulou*, supra, it was pointed out there is nothing in Article 111 or in any other provision of the Constitution preventing the Supreme Court from exercising jurisdiction under s.19(b) of the Courts of Justice Law - 14/60, over the validity of a non ecclesiastical marriage. In that case, as in the present, the marriage was solemnized in the U.K. in circumstances that bear resemblance to those of the parties in the present proceedings. The Court assumed jurisdiction in respect of the validity of a marriage between a domiciliary of Cyprus and a Maronite woman of Cypriot origin, settled in London. It appears that in cases of nullity, where the antenuptial domicile of the wife is different from that of the husband, the Courts of the two countries of domicile of the parties may exercise concurrent jurisdiction over the validity of the marriage.

In the light of the aforesaid, I am of opinion that this Court has jurisdiction to adjudicate upon the validity of the marriage and shall proceed to examine the merits of the declaration

sought. This I shall do in the light of the uncontested and uncontradicted evidence of the parties and the testimony of Mr. D. Papachrysostomou, a Nicosia advocate, accepted as a witness who possesses sufficient expertise to opine on matters of ecclesiastical and canon law of the Greek Orthodox Church, with particular reference to the Autocephalous Church of Cyprus.

It is beyond dispute that the personal status of Greek Orthodox Cypriots is governed by the laws of the Greek Orthodox Church of Cyprus. This is laid down in Article 111 that preserved, it seems, the position prevailing on the subject prior to independence, during the British rule, as well as during the Ottoman occupation of the country (see, the cases of *Tillirou v. Tilliros*, 3 R.S.C.C. 21; and *Parapano And Others v. Happaz And Others*, C.L.R. Vol. III, 69, respectively). The extraordinariness of the position under Cyprus law respecting the personal status of Cypriots, has been recognised by notable textbooks on the subject of private international law (see, inter alia, *Cheshire's Private International Law*, 9th ed., p.318) and given effect to by Cyprus Courts (see, inter alia, *Metaxa v. Mita* (1977) 1 C.L.R. 1; *Koutsokounnis v. Christodoulou* (1981) 1 C.L.R. 58; *Medlej v. Medlej, Matrimonial Petition No. 22/83*, delivered on 24.11.83 - not yet reported).* So, by way of exception to the rule of private international law, laying down that a marriage conducted in accordance with the formalities of *lex loci celebrationis* is regarded as formally valid everywhere, the marriage of Greek Cypriots affected by the provisions of Article 111 of the Constitution is invalid, independently of where it is celebrated, unless conducted in accordance with the canons and rites of the Greek Orthodox Church. The reason is because an ecclesiastical marriage under Cyprus law, in the case of Greek Cypriots, is a prerequisite to the alteration of their status from single to married. The solemnization of marriage is not regarded as a formality but as a substantive consideration, a prerequisite for the change of status of the parties. To the above exposition of the law, one must add that private international law ties personal status to the law of the country of domicile.

Article 111 of the Constitution applies in terms to all marriages between Greek Orthodox. However, its application is made

* Now reported in (1983) 1 C.L.R. 944.

by virtue of the opening words of Article 111, "subject to the provisions of this Constitution", to the remaining provisions of the Constitution, including those of Article 2 purporting to define who is a member of the Greek community. Josephides, J., debated the ambit and limitations to the application of Article 111 of the Constitution in *Hjijovanni v .Hjijovanni* (1969) 1 C.L.R. 207. His observations on the subject, though obiter, are nonetheless a valuable aid to the interpretation of Article 111. In the opinion of the learned Judge, the application of Article 111 is restricted to citizens of the Republic.

While I agree that the application of Article 111 is subject to the provisions of the Constitution - and that includes the provisions of Article 2 to whatever extent relevant to the application of Article 111 - I am of opinion, on a consideration of the wording of Article 111, particularly the expression "... members of the Greek Orthodox Church ...", that its application is not confined to members of the Greek community stricto sensu, as defined in Article 2, but extends to all members of the Greek Orthodox Church, provided they are domiciled in Cyprus. Membership of the Greek Orthodox Church under Article 111, need not of necessity coincide with membership of the Greek community under Article 2 of the Constitution. The division of the citizens of the Republic into communities, under Article 2 of the Constitution, is directly relevant to the composition, functions and jurisdiction of Communal Chambers. The application of Article 111 extends to every member of the Greek Orthodox Church of Cyprus, provided they are domiciled in Cyprus. Any other interpretation would defy the rule of private international law that the laws of the country of domicile define personal status, and offend in this regard the comity of nations. It can be argued that only domiciliaries of the Greek Orthodox faith may properly be regarded as members of the Greek Orthodox Church of Cyprus. But I need not probe into this aspect of the case further, provided I find that respondent, a professed member of the Greek Orthodox Church of Cyprus, is a domiciliary of the country.

We can fairly infer, from evidence before the Court that, England was the domicile of origin of the respondent. From what one may gather, at the time of her birth her parents had permanently settled in England and intended to stay there

indefinitely. Consequently, the relevant question is whether respondent changed her domicile of origin and acquired a new domicile by her own choice. The authorities establish a clear and concise test to determine abandonment of one's domicile and the acquisition of a new one. In *IRC v. Bullock* [1976] 3 All E.R. 353 (CA), the following test was suggested to determine the question: Whether a person intends to make his home in a new country until the end of his days, unless and until something happens to make him change his mind. It was pointed out that domicile is a concept distinct from that of citizenship, although citizenship may be relevant in determining one's domicile. Abandonment of a given domicile requires -

- (a) An intention to cease to reside permanently or indefinitely in a given country and,
- (b) cessation of actual residence in that country.

This test was propounded with relation to the abandonment of a domicile of choice but applies by the same logic to the abandonment of the domicile of origin. "Residence" in this context, connotes, as suggested by the authorities, physical presence in a country as an inhabitant of that country (see, *Udny v. Udny* [1869] LR 1 Sc. & Div. 441; *IRC v. Duchess of Portland* [1982] 1 All E.R. 784). In general, domicile is only consistent with a settled intention to remain in a country - *Bushwell v. IRC* [1974] 2 All E.R. 520 (CA). Lastly, it must be stressed that the intention to make a new country one's home must be accompanied by physical presence in that country, taking the form of residence therein (see, *Tee v. Tee* [1973] 3 All E.R. 1105 (CA)). Applying these principles to the facts of the case, I conclude that respondent abandoned the domicile of her origin, England, and became a domiciliary of Cyprus, as from 1980.

All the evidence before me, is consistent with her proclaimed intention to settle in Cyprus. She took out an identity card under the provisions of the Registration of Residents Law - Cap. 85, that records her as a resident of Cyprus. In her passport, there is an entry of the Immigration Authorities, signifying that she is of Cypriot origin, designed to lift entry restrictions. The collapse of her marriage to the petitioner had no effect upon her residence in this country or her future plans. Since she settled in Cyprus in 1980, she was joined by her mother who has apparently, like herself, made Cyprus her home.

In the light of the totality of the evidence before me, I conclude that respondent acquired a Cyprus domicile. Consequently, the parties, being domiciliaries of Cyprus and members of the Greek Orthodox Church, their personal status was governed by the provisions of Article 111. In the absence of an ecclesiastical marriage, their status remained unaltered. They could not be validly married except in accordance with the provisions of Article 217 of the Charter of the Autocephalous Church of Cyprus. 5

I declare their marriage before the Register Office in England, as null. Order accordingly. 10

Marriage declared null.