

# CASES

DECIDED BY

## THE SUPREME COURT OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL  
FROM THE DISTRICT COURTS.

[JOSEPHIDES, J.]

STELIOS TH. THEOCHARIDES

*Petitioner,*

v.

PATRICIA STELIOU THEOCHARIDES  
(OTHERWISE WHITE),

*Respondent.*

1965

Jan. 8

—  
STELIOS TH.  
THEOCHARIDES  
v.  
PATRICIA  
STELIOU  
THEOCHARIDES

(*Matrimonial Petition No. 1/64*)

*Matrimonial Causes—Jurisdiction—Desertion—Husband's change of employment—Social obligations and financial commitments—Unjustified desertion by wife.*

*Matrimonial Causes—Evidence—Admissibility of evidence—Certificate of marriage—Certification by Minister of Interior—Original record temporarily out of Minister's custody—Secondary evidence of contents admitted—Nature and form of secondary evidence—Procedure—Assistance to be given by competent authorities—Marriage Law, Cap. 279, sections 18, 19 and 20.*

*Matrimonial Causes—Petition for divorce—Desertion.*

The parties were married at the Commissioner's Office, Nicosia, on the 30th November, 1955, under the provisions of the Marriage Law, Cap. 116 (now Cap. 279). A religious ceremony in a Greek Orthodox Church followed the aforesaid civil marriage on the same date.

The petitioner husband is a member of the Greek Orthodox Church and the respondent wife is a member of the Church of England.

The petitioner is a Greek Cypriot and although he was born in Sudan in 1932 he has been living in Cyprus since 1946. His father was a Greek Cypriot and his mother a Greek from Greece.

1965

Jan. 8

—  
STELIOS TH.  
THEOCHARIDES  
v.  
PATRICIA  
STELIOU  
THEOCHARIDES

The parties lived happily for about five years until November, 1960. A child was born to them on the 19th September, 1960.

A petition for divorce, on the ground of desertion was filed by the husband on the 27th March, 1964.

The petitioner, being a member of the Greek-Orthodox Church the Court considered also whether the provisions of Article 111 of the Constitution apply.

Article 111 of the Constitution reads as follows :

“ Subject to the provisions of this Constitution any matter relating to betrothal, marriage, divorce, nullity, 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.”

In the course of the hearing of the petition, a question concerning the law of evidence arose. By virtue of the express provisions of section 20 of the Marriage Law, Cap. 279, a certificate of marriage is admissible in evidence.

*(Editorial Note :* The material sections of the Law (Cap. 279) are sections 18, 19 and 20, the full text of which are given in the judgment of the Court (post).

In this case it emerged that the Minister's office in which such certificates are filed (the “ Registration Office ”) is housed in a building in the Konak Square which, owing to the recent events in Cyprus, has not been under the Minister's control since the 21st December, 1963.

In these circumstances, the Court allowed secondary evidence of the contents of the certificate of marriage “ filed in the office of the Administrative Secretary ” under the provisions of Cap. 279.

*Held, (1) on the question of jurisdiction :*

(1) I am satisfied that the petitioner is domiciled in Cyprus, and, consequently, this Court has jurisdiction to deal with the present petition.

1965

Jan. 8

—  
STELIOS TH.  
THEOCHARIDES  
v.  
PATRICIA  
STELIOU  
THEOCHARIDES

(2) Although a religious ceremony was solemnised in the Greek-Orthodox Church, both parties are not members of the Greek-Orthodox Church and this Court is today concerned with the dissolution of the civil marriage which was celebrated prior to the religious marriage, although it was celebrated on the same day. On these facts I am satisfied that the provisions of Article 111 of the Constitution do not apply to these proceedings and that this Court has jurisdiction.

*(II) On the merits :*

I am satisfied that the respondent deserted the petitioner without reasonable cause for a period exceeding three years immediately preceding the presentation of this petition, and the petitioner is, therefore, entitled to a decree *nisi*.

*(III) On the question concerning the law of evidence (i.e. the admissibility of secondary evidence of the contents of the certificate of marriage " filed in the office of the Administrative Secretary " under the provisions of the Marriage Law, Cap. 279) :*

(1) On the evidence given in the Director-General's affidavit I was satisfied that the contents of the certificate produced in evidence in this case reproduce truly the contents of the original record filed in the Minister's Office under the provisions of the Law.

*Per curiam :* It is hoped that in similar cases in future the competent authorities will be willing to assist the legal profession to comply with the procedure laid down in this case.

*Decree nisi granted.*

**Matrimonial Petition.**

Petition by husband for the dissolution of his marriage on the ground of desertion.

*K. Th. Michaelides*, for the petitioner.

Respondent, absent. Not represented.

The following judgment was delivered by :

JOSEPHIDES, J. : This is an undefended husband's petition for divorce on the ground of desertion. The parties were married at the Commissioner's Office, Nicosia, on the 30th November, 1955 (in the morning), under the provisions of the Marriage Law, Cap. 116 (now Cap. 279). The petitioner is a member of the Greek-Orthodox Church

1965  
Jan. 8  
—  
STELIOS TH.  
THEOCHARIDES  
v.  
PATRICIA  
STELIOU  
THEOCHARIDES

and the respondent is a member of the Church of England. In the afternoon of the same day, namely, the 30th November, 1955, a religious ceremony was solemnised in the Greek-Orthodox Phaneromeni Church, Nicosia.

The first question which falls for determination is whether this Court has jurisdiction to deal with the present petition.

The petitioner is a Greek Cypriot and although he was born in the Sudan in 1932 he has been living in Cyprus since 1946. His father was a Greek Cypriot and his mother a Greek from Greece. The father lived and worked in the Sudan but the petitioner, after studying in England, returned to Cyprus where he has been working ever since. Since about March, 1960, he has been the Secretary-Director of the Employers Association in Cyprus. On this evidence I am satisfied that the petitioner is domiciled in Cyprus, and, consequently, this Court has jurisdiction to deal with the present petition.

The petitioner being a member of the Greek-Orthodox Church the Court has to consider also whether the provisions of Article 111 of the Constitution apply. Although a religious ceremony was solemnised in the Greek Orthodox Church, both parties are not members of the Greek Orthodox Church and this Court is today concerned with the dissolution of the civil marriage which was celebrated prior to the religious marriage, although it was celebrated on the same day. On these facts I am satisfied that the provisions of Article 111 of the Constitution do not apply to these proceedings and that this Court has jurisdiction.

Coming now to the facts of the case: The parties, according to the evidence adduced, lived happily for about five years until November 1960. A child was born to them on the 19th September, 1960, and was named Cleri. Apparently there were two factors which influenced both of them and which had a bearing on the ultimate fate of this marriage. These two factors were—

- (a) the social obligations resulting from the new employment of the petitioner since March, 1960; and
- (b) his financial obligations connected with the construction of a house.

For the purposes of this case it is not necessary to enter into great detail with regard to these financial obligations. Suffice it to say that the petitioner being an ambitious

young man wanted to get on in his career, and, at the same time, not unreasonably, he wanted to have a house of his own. He accordingly decided to build a house, which he did, and he contracted a loan of about £5,500 which he hoped to pay off at the time, that is in 1960, by monthly instalments of £60. The wife was opposed to this arrangement as she was also opposed to the social obligations of the petitioner. To be fair to her perhaps by temperament she was not suited to this new kind of life. Eventually her mother arrived in Cyprus on the 29th November, 1960, without having announced this to the petitioner. The wife said that her mother came to Cyprus for a holiday but on the very same day the question of the financial obligations of the petitioner was discussed and the upshot was that there was disagreement. The petitioner asked for some time to make arrangements for the payment of his financial obligations but both the wife and mother-in-law insisted that he should sell the house and pay off the debt at once. He wanted some time to consider his position but they both insisted that he should give up his new post and go back to the Public Service where he held the post of Assistant Labour Officer, at a salary of £60 a month, while the salary in his new post was at the time £120 a month.

Weighing the two conflicting views I think that petitioner was not unreasonable in deciding not to sell the house and not to throw up his new employment. As they did not agree the wife left the matrimonial home secretly on the following day, the 30th November, 1960, never to return.

There is corroborative evidence of this by Costas Vafiades, a family friend. This is indirect evidence that he never saw the wife again in Cyprus, but there is also direct corroborative evidence of another family friend, Angelos Angelides, to whom the wife said early in December, 1960, that she deserted the petitioner for financial reasons and that she was determined to return home in England. The petitioner did his best to persuade the wife to return while she was still in Cyprus and living in an undisclosed address. He came across the wife accidentally one day about a month later, that is about the end of December 1960, he invited her to discuss matters, she went to his office a week later and they discussed matters but she was adamant and she left for England, at about the end of January 1961.

While the wife was living in England the petitioner tried repeatedly to persuade her to come back home but

1965  
Jan. 8  
—  
STELIOS TH.  
THEOCHARIDES  
v.  
PATRICIA  
STELIOU  
THEOCHARIDES

1965  
Jan. 8  
—  
STELIOS TH.  
THEOCHARIDES  
v.  
PATRICIA  
STELIOU  
THEOCHARIDES

every time she refused. He went there in July 1961 on business. In June 1962 he suggested that they should meet at Geneva offering to pay her passages there. In February 1964 he was in London on business and he went to see his wife and child in Birmingham. She again refused to return to the matrimonial home. The net result of all this is that the parties have not lived as husband and wife since the 30th November, 1960.

On this evidence I am satisfied that the respondent deserted the petitioner without reasonable cause for a period exceeding three years immediately preceding the presentation of this petition, and the petitioner is, therefore, entitled to a decree *nisi*.

As to the custody of the child, although not included in the prayer, it is the duty of the Court to look into this matter having in mind the question of the welfare of the child. In evidence the petitioner stated that when the wife left for England in January 1961 she took with her their only child Cleri, who is now aged four. The petitioner is satisfied that the child is well looked after by the mother in Birmingham and he assists them financially by sending a sum of about £150 or £160 a year. On this evidence the Court is content to leave the matter as it stands allowing the child to live with the mother in Birmingham.

Having dealt with the substance of the petition I think that I should also deal with a question concerning the law of evidence which arose in the course of the hearing. A certificate of marriage is admissible in evidence by virtue of the express provisions of section 20 of the Marriage Law, Cap. 279. It is admissible because it is extracted from a record in the custody of the Minister of Interior kept under the provisions of the Marriage Law and certified by him as a true copy of such record. The following are the material sections of that Law :

“ 18. Immediately upon the celebration of a marriage under this Law, a certificate in duplicate, as near as may be according to the form D in the First Schedule, shall be signed by the Registered Minister or Marriage Officer who celebrates the marriage, and by the parties to the marriage, and by two or more witnesses to the same, one of which certificates shall be delivered to the parties to the marriage, and the other shall, within seven days thereafter, be transmitted by the Registered Minister or Marriage Officer to the Administrative Secretary, who shall file and record the same in his office.

19. The Administrative Secretary shall register all certificates of marriage filed in his office in such order and manner as he thinks most convenient for easy reference thereto.

20. Any certificate of a marriage under this Law filed in the office of the Administrative Secretary or a copy thereof purporting to be signed and certified as a true copy by the Administrative Secretary, shall be admissible as evidence of the marriage to which it relates in any Court of Justice or before any person authorized by law or by consent of parties to hear, receive and examine evidence."

The concluding part of Form "D" which is referred to in section 18 runs as follows: "The above is a true copy of the Marriage Register, the said Register being legally in my custody".

The aforesaid provisions show that a copy of the certificate of marriage is admissible in evidence only when—

- (a) it purports "to be signed and certified as a true copy by the Administrative Secretary" (now the Minister of Interior); and
- (b) it is a true copy of a certificate of marriage *filed* in the office of the Administrative Secretary (now the Minister of Interior) and actually in his custody at the time of the issue of such copy.

It, therefore, follows that if the above conditions are not fulfilled the copy of the certificate of marriage is not admissible in evidence.

In this case it emerged that the Minister's office in which such certificates are filed (the "Registration Office") is housed in a building in the Konak Square which, owing to the recent events, has not been under the Minister's control since the 21st December, 1963. In these circumstances, the Court allowed secondary evidence of the contents of the certificate of marriage "filed in the office of the Administrative Secretary" under the provisions of the aforesaid Law. Leave was given for such evidence to be given in the form of an affidavit sworn by the Director-General of the Ministry of Interior, which was done. On the evidence given in the Director-General's affidavit I was satisfied that the contents of the certificate

1965

Jan. 8

—  
STELIOS TH.  
THEOCHARIDES

v.  
PATRICIA  
STELIOU  
THEOCHARIDES

1965  
Jan. 8

—  
STELIOS TH.  
THEOCHARIDES  
v.

PATRICIA  
STELIOU  
THEOCHARIDES

produced in evidence in this case reproduce truly the contents of the original record filed in the Minister's Office under the provisions of the Law.

It is hoped that in similar cases in future the competent authorities will be willing to assist the legal profession to comply with the procedure laid down in this case.

In the result a decree *nisi* is granted to the petitioner. No costs claimed. No order as to costs.

*Decree nisi granted. No order as to costs.*