

1979 December 14

[A. LOIZOU, J.]

EVGENIOS AVRAAM,

*Petitioner.*

v.

LILIAN AVRAAM THEN LILJANA JOLENTA WALERYSISK,

*Respondent.*

(*Matrimonial Petition No. 9/78*).

*Matrimonial Causes—Jurisdiction—Husband domiciled in Cyprus—  
Court vested with jurisdiction to hear and determine the petition—  
Law applicable.*

5 *Matrimonial Causes—Divorce—Desertion—Meaning—Wife leaving  
conjugal home, without reasonable cause, for a period exceeding  
three years prior to presentation of petition and refusing to return—  
Her refusal to return showing an intention to bring matrimonial  
consortium to an end—Which was not merely presumed to continue  
10 but clearly evidenced to be so by her unwillingness to contest the  
proceedings—Guilty of desertion.*

The parties to this petition went through a ceremony of civil  
marriage on the 1st September, 1956 at the Registry of the City  
of Liege in Belgium; and on the 27th October, 1956 they cele-  
brated their marriage in accordance with the rites of the Greek-  
15 Orthodox Church, at Jadotville in Zaire. They lived in this  
country until their return to Cyprus in 1967 where they lived  
together until 1974. The petitioner was a member of the Greek-  
Orthodox Church, who was born from Cypriot parents on the  
21st September, 1930 at Zaire and acquired the British  
20 nationality. The respondent was a stateless person and a  
member of the Roman Catholic Church.

The respondent left the matrimonial home some time in 1974  
and has ever since been living in Athens; and although the peti-  
tioner has been ready and willing to have her back the respondent  
25 has refused to return to the conjugal home in spite of efforts  
made by the petitioner and another person.

*Upon the husband's undefended petition for divorce on the ground of the wife's desertion:*

*Held, (1) (on the question of jurisdiction) that the petitioner is domiciled in Cyprus and consequently this Court has jurisdiction to hear and determine this case; and that the law applicable is the English Law in force on the day prior to Independence Day (see section 19(b) of the Courts of Justice Law, 1960).* 5

(2) That the desertion is the separation of one spouse from the other with the intention on the part of the deserting spouse of bringing cohabitation permanently to an end, without reasonable cause, and without the consent of the other spouse; that the respondent refused to return to the conjugal home, thus showing her intention to bring the matrimonial consortium to an end, an intention not merely presumed to continue but clearly evidenced to be so by her unwillingness to contest these proceedings; that, moreover, she did desert the petitioner without reasonable cause for a period exceeding three years prior to the presentation of this petition; and that, accordingly, the case has been proved and a decree nisi in favour of the petitioner will be granted. 10 15 20

*Decree nisi granted.*

Cases referred to:

*Hadjiyiannis v. Hadjiyiannis* (1979) 1 C.L.R. 227.

**Matrimonial Petition.** 25

Husband's petition for divorce on the ground of the wife's desertion.

*L. Pelekanos*, for the petitioner.

A. LOZOU J. gave the following judgment. This is a husband's petition for divorce on the ground of desertion. The respondent-wife, was duly served. Although an appearance was entered on her behalf through counsel, she has not contested the proceedings as by letter dated the 21st November, 1979 addressed to the Registrar of this Court the said counsel informed the Court that the respondent wife was not interested in contesting the said matrimonial cause and asked him to cease acting for her, so he withdrew from the case. 30 35

The petitioner a member of the Greek-Orthodox Church was born from Cypriot parents on the 21st September, 1930, at Zaire, then known as the Belgian Congo and acquired the British nationality.

5 Whilst studying in Belgium he met the respondent-wife who was a stateless person of Polish origin and a member of the Roman Catholic Church. They went through a ceremony of civil marriage on the 1st September, 1956, at the Registry of the City of Liege in Belgium. Later on the 27th October,  
10 1956 at Jadotville in Zaire they celebrated their marriage in accordance with the rites of the Greek-Orthodox Church. They then lived in that country until their return to Cyprus in 1967 where they lived together until 1974.

15 From this marriage there were two children, Alexandra born on the 10th February, 1960 and Demetrios, born on the 23rd May, 1964 at Zaire.

As regards the question of jurisdiction I am satisfied on the evidence adduced that the petitioner is domiciled in Cyprus and consequently this Court has jurisdiction to hear and determine  
20 the present case. Moreover the Law applicable on the matter is the English Law in force on the day prior to Independence Day, according to section 19(b) of the Courts of Justice Law 1960 (Law No. 14 of 1960).

25 The ground upon which the dissolution of this marriage is sought is continued desertion for over three years immediately preceding the presentation of this petition. Desertion as has been stated more than once, is the separation of one spouse from the other with the intention on the part of the deserting spouse of bringing cohabitation permanently to an end and  
30 without reasonable cause and of course without the consent of the other spouse. (See *Hadjiyannis v. Hadjiyannis* (1979) 1 C.L.R. 227 and the authorities therein mentioned).

35 According to the evidence before me, which I accept, the respondent-wife left the conjugal home some time in 1974 and has been living ever since in Athens, Greece. Although the petitioner has been ready and willing to have her back and in spite of the efforts made by himself and through witness Panayiotou, the respondent-wife has refused to return to the conjugal home,

thus showing her intention to bring the matrimonial consortium to an end, an intention not merely presumed to continue but clearly evidenced to be so by her unwillingness to contest the present proceedings. Moreover she did desert the husband without reasonable cause for a period exceeding three years prior to the presentation of this petition and accordingly I find the case proved and I grant a decree nisi in favour of the petitioner.

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There will be, however, no order as to costs as none have been claimed.

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*Decree nisi granted.*