

1981 November 18

[L. LOIZOU, J.]

RENOS CHRISTODOULOU VENGLIS,

Petitioner,

v.

CHRISTOTHEA VENGLIS THEN CHRISTOTHEA
KYPRIANOU,

Respondent.

(*Matrimonial Petition No. 11/80*).

Marriage—Civil Marriage—Validity—Civil marriage solemnized in a Register Office in London—Parties thereto Greek Gypriots, members of the Greek-Orthodox Church and permanently residing in Cyprus—Religious ceremony is, because of the provisions of Article 111 of the Constitution, not considered as a mere form of marriage but as a condition of the essential validity of the marriage without which the marriage is considered non-existent—Said marriage not valid and void ab initio.

Constitutional Law—Right to marry—Article 22.1 of the Constitution.

10 The sole issue in this petition was the validity of the ceremony of marriage which the parties went through on March 21, 1975 at the Register Office of the District of Paddington in the city of Westminster in England. Both the petitioner and the respondent were citizens of the Republic of Cyprus, members of the
15 Greek Community and of the Greek Orthodox Church; and no religious ceremony in accordance with the rights and ceremonies of that church took place. At all material times both parties were domiciled in Cyprus and were temporarily residing in England for studies.

20 *Held*, that 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 i.e. the law applied by the High Court

of Justice in England in exercise of its Matrimonial Jurisdiction 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; that, therefore, 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 the 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 validity of the marriage without which the marriage is considered non-existent; that although the right to marry is safeguarded by Article 22.1 of the Constitution such right is to a certain degree restricted and has to be exercised in accordance with the law relating to marriage applicable to such person under the provisions of the Constitution; that, therefore, the ceremony of marriage which was performed between the parties to this petition is not a valid marriage and is void ab initio (*Metaxa v. Mita* (1977) 1 C.L.R. 1 followed).
Marriage declared null and void.

Cases referred to:

- Metaxa v. Mita* (1977) 1 C.L.R. 1;
Neophytou v. Neophytou (1979) 1 C.L.R. 685;
Platritis v. Platritis (1980) 1 C.L.R. 324;
Koutsokoumnis v. Christodoulou (1981) 1 C.L.R. 58.

Matrimonial Petition.

Husband's petition for a declaration that the civil marriage the parties had gone through at the Register Office of the District of Paddington in the city of Westminster in England is null and void as being contrary to the law and Constitution of Cyprus.

C. Emilianides, for the petitioner.

A. Magos, for the respondent.

L. LOIZOU J. gave the following judgment. The petitioner husband by the present petition prays that the civil marriage between the parties be declared null and void and of no effect whatsoever.

On the 21st March, 1975, the petitioner and the respondent

went through a ceremony of marriage at the Register Office of the District of Paddington in the city of Westminster in England. They lived in London at various addresses until the 4th August, 1977, when they returned to Cyprus. There
5 is no issue of the said marriage.

It emerges from the undisputed evidence that both the petitioner and the respondent are citizens of the Republic of Cyprus, members of the Greek community and of the Greek Orthodox Church and that no religious ceremony in accordance with the
10 rites and ceremonies of that Church took place. At all material times they were domiciled in Cyprus and were temporarily residing in England for studies but due to the Turkish invasion of Cyprus they had to prolong their stay in London.

The only issue before the Court is that of the validity of the
15 marriage performed at the Register Office in London.

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

“Subject to the provisions of this Constitution any matter relating to betrothal, marriage, divorce, nullity of marriage,
20 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
52 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
30 provisions of such law”.

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 i.e. the law applied by the High Court of Justice
35 in England in exercise of its Matrimonial Jurisdiction 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. The provisions, therefore, 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 the competence of the Court which is to try such a Matrimonial cause. The religious ceremony is not, therefore, considered as a mere form of marriage but as a condition of the essential validity of the marriage without which the marriage is considered non-existent.

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”.

It will be seen from the above that such right is to a certain degree restricted and has to be exercised in accordance with the law relating to marriage applicable to such person under the provisions of the Constitution.

In the light of the above and in the light of the decisions of this Court in *Metaxa v. Mita* (1977) 1 C.L.R. p. 1, *Neophytou v. Neophytou* (1979) 1 C.L.R., 685, *Platritis v. Platritis* (1980) 1 C.L.R. 324, and *Koutsokoummis v. Christodoulou* (1981) 1 C.L.R. 58, I feel bound to hold that the ceremony of marriage performed between the parties to the petition on the 21st March, 1975, is not a valid marriage and is void ab initio. In all the circumstances there will be no order as to costs.

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