

1983 November 24

[PIKIS, J.]

MYRNA DAVID MEDLEJ, NEE MYRNA KONTEATOU,  
*Petitioner,*

v.

DAOUD L. MEDLEJ,  
*Respondent.*

(*Matrimonial Petition No. 22/83*).

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*Matrimonial Causes—Decree of divorce—Recognition—Civil Marriage in Cyprus under the provisions of the Marriage Law, Cap. 279—Between a Cypriot and a Lebanese national, both members of the Greek Orthodox Church—Followed by an ecclesiastical marriage in accordance with the marriage rites of the Greek Orthodox Church—Decree of divorce by the Ecclesiastical Court of the Greek Orthodox Church of Cyprus—Ended the marriage and terminated the marital status notwithstanding the nationality of one of the parties—Marriage validly dissolved—Article 111 of the Constitution.* 5 10

The parties to this petition were members of the Greek Orthodox Church. The petitioner was a Cypriot by birth, residence and domicile and the respondent a Lebanese national. On the 9th October, 1978, they went through a civil marriage at the Office of the District Officer, Nicosia, conducted under the provisions of the Marriage Law, Cap. 279. A few days later, on 12th October, 1978, they were married ecclesiastically at Prodromos Church, Nicosia, in accordance with the marriage rites of the Greek Orthodox Church. On 6th April, 1981, the marriage was dissolved by the Ecclesiastical Court of Nicosia on the ground of desertion. 15 20

Upon a petition by the wife for a declaration that the marriage of the parties has been validly dissolved what the Court had to resolve was whether the nationality of the respondent, not-

withstanding his religious denomination, took the case outside the ambit of Article 111\* of the Constitution

5 *Held*, that the jurisdiction conferred upon Ecclesiastical Courts by Article 111 of the Constitution is not tied either to the nationality of the parties or the Church congregation to which they belong; that exclusive jurisdiction vests in Ecclesiastical Courts under Article 111 in the case of marriages of parties belonging to the Greek Orthodox Church; that, consequently, the marriage of the parties is governed by the provisions of Article 111 and  
10 as a corollary thereof subject to dissolution by the Ecclesiastical Authorities of the Greek Orthodox Church; that, therefore, the decree of dissolution of the marriage of the parties issued by the Archbishopric of Cyprus on 6th April, 1981, ended their marriage and terminated the marital status; and that, accordingly, it is declared that the marriage of the parties was validly  
15 dissolved by the decree of divorce of the Archbishopric of Cyprus of the 6th April, 1981.

*Declaration accordingly.*

Cases referred to:

- 20 *Michael v. Michael* (1971) 1 C.L.R. 211;  
*Charakis v. Loizou* (1972) 1 C.L.R. 102;  
*Savvides v. Skopelitou* (1979) 1 C.L.R. 113;  
*Peters v. Peters*, *The Times*, 20 March, 1968.

**Matrimonial Petition.**

25 Petition for a declaration that the marriage of the parties has been validly dissolved.

*D. Papachrysostomou*, for the petitioner.  
Respondent absent.

*Cur. adv. vult.*

30 PIKIS J. read the following judgment. The petitioner and the respondent are members of the Greek Orthodox Church. The petitioner is a Cypriot by birth, residence and domicile, and the respondent a Lebanese national.

35 On 9th October, 1978, they went through a civil marriage at the Office of the District Officer, Nicosia, conducted under the provisions of the Marriage Law, Cap. 279. A few days

\* Article 111 of the Constitution makes marriage and matters incidental thereto of members of the Greek Orthodox Church a matter amenable to the exclusive jurisdiction of the Church Authorities.

later, on 12th October, 1978, they were married ecclesiastically at Prodomos Church, Nicosia, in accordance with the marriage rites of the Greek Orthodox Church.

Apparently the marriage was a failure; cohabitation did not last for long. On 6th April, 1981, the marriage was dissolved by the Ecclesiastical Court of Nicosia on the ground of desertion. In accordance with expert testimony received from an advocate, A. S. Angelides, a Nicosia practitioner of 12 years standing, qualified in canon law, practising before Ecclesiastical Courts of Cyprus, desertion for a period of two years or longer is a valid ground for divorce under the Charter of the Greek Orthodox Church of Cyprus.

The petition aims at an order declaring the marriage of the parties to have been validly dissolved. Arguably if the marriage was validly terminated under Cyprus Law by the decree of the Ecclesiastical Authorities, a declaratory judgment of a Civil Court would be superfluous. Nevertheless, Courts incline to make declaratory judgments on the subsistence or termination of marriage because it affects the status of the parties and consequently a matter of interest to the world at large. Therefore, the proceedings cannot be procedurally faulted.

In the opinion of Mr. Angelides, to my comprehension well founded, on a consideration of the relevant provisions of the Charter of the Cyprus Church, a decree of divorce of an Ecclesiastical Court dissolves the marriage and reseals the status of the parties. The only question that must be determined in these proceedings is whether the marital status of the parties was validly terminated by the ecclesiastical decree, an exhibit before me, having regard to the nationality of the respondent. There is authority establishing that where the marital status of the parties is a matter cognizable by the Greek Orthodox Church, a decree of dissolution brings the marriage to an end with a corresponding impact upon the status of the parties. See *Androulla Antoniou Michael v. Antonios Michael* (1971) 1 C.L.R., p. 211; *Charakis v. Loizou* (1972) 1 C.L.R. 102; *Savvides v. Skopelitou* (1979) 1 C.L.R. 113. To these cases one must add the English decision of *Peters v. Peters*, "The Times" March 20, 1968; Solicitors Journal 1968, Vol. 112, p. 311, reporting a judgment of Wranghan, J., on the effects

of a decree of dissolution of an Ecclesiastical Court of the Greek Orthodox Church, a decree terminating the marital status.

5 In each one of the above Cyprus cases, it was common ground that the matter was governed by the provisions of Article 111 of the Constitution that makes marriage and matters incidental thereto of members of the Greek Orthodox Church a matter amenable to the exclusive jurisdiction of the Church Authorities. Both parties in all three cases were Cypriots. What I must resolve is whether the nationality of the respondent, 10 notwithstanding his religious denomination, takes the case outside the ambit of Article 111 of the Constitution. The answer is in the negative on a review of the provisions of Article 111. The jurisdiction conferred upon Ecclesiastical Courts by this article of the Constitution is not tied either to the nationality of the parties or the Church congregation to which they belong. Exclusive jurisdiction vests in Ecclesiastical Courts 15 under Article 111 in the case of marriages of parties belonging to the Greek Orthodox Church. Consequently, the marriage of the parties is governed by the provisions of Article 111 and as a corollary thereof subject to dissolution by the Ecclesiastical Authorities of the Greek Orthodox Church. I cannot envisage any procedural obstacles to the dissolution of the marriage by an Ecclesiastical Court of the Greek Orthodox Church of Cyprus in view of the fact that the marriage was solemnized 20 in Cyprus. I need not debate in these proceedings, the implications of a civil marriage between non Cypriots, members of the Greek Orthodox Church, formalized abroad and the extent to which such marriages are recognized as valid by the Cyprus State. I confine my decision to the facts of the case, 25 particularly the fact that both parties are members of the Greek Orthodox Church, their marriage was solemnized by the Greek Orthodox Church of Cyprus and the fact that the petitioner is a Cypriot. 30

35 In my judgment the of decree of dissolution of the marriage of the parties issued by the Archbishopric of Cyprus on 6th April, 1981, ended their marriage and terminated the marital status. The marriage was dissolved. As the marriage of the parties was governed by Article 111 and solely amenable to the jurisdiction of the Ecclesiastical Courts, it appears that the civil 40 marriage that preceded the ecclesiastical wedding left the status

of the parties unaltered. Nevertheless for the reasons earlier explained, particularly the need for certainty in matters of status, the Court is justified to make a declaration in the form asked. The same course was followed for similar reasons, I believe, in *Charakis* and *Savvides* (supra).

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I declare that the marriage of the parties was validly dissolved by the decree of divorce of the Archbishopric of Cyprus of 6th April, 1981. Order accordingly.

*Order accordingly.*