

1984 April 5

[A. LOIZOU, J.]

CLEO-MARIE CHAHINE,

Petitioner

v.

SEMIR CHAHINE,

Respondent

(*Matrimonial Petition No 13/82*)

5 *Matrimonial Causes—Jurisdiction—Wife ordinarily resident in Cyprus for a period of three years immediately preceding the commencement of the proceedings—Court vested with jurisdiction to deal with a petition for divorce by wife—Section 18(1)(b) of the Matrimonial Causes Act, 1950—Temporary absence of wife from Cyprus—Whether position affected.*

10 *Matrimonial Causes—Divorce—Cruelty—Legal Cruelty—Threats of actual personal violence and persistent false accusations of adultery causing injury to petitioner's health—Legal cruelty proved—Decree nisi to the petitioner*

15 *Constitutional Law—Marriage—Validity—Article 111 of the Constitution—Applies to cases where both parties are members of the Greek Orthodox Church, Cypriot Nationals and members of the Community concerned*

20 The parties to this petition were married on the 5th August, 1978 at a Civil Marriage Register Office in Paris. The petitioner was a member of the Greek Orthodox Church and the respondent a Lebanese National member of the Maronite Church. The marriage has never been celebrated in accordance with the rites of either or any church. The petitioner was born in England on the 25th March 1958, during her father's stay there for studies; and since 1959 when her parents returned to Cyprus she has been ordinarily residing at Ayios Dhometios, Nicosia, Cyprus.

25 Upon a petition for divorce by the wife the ground of divorce relied upon was cruelty which, in essence, consisted of threats of

actual personal violence and false accusations of adultery with such persistence that caused her considerable mental anguish and her health was injuriously affected; and on account of which conduct and threats against her life in the event of her leaving him he forced her to abandon the flat they were residing. 5

Held, (I) on the issue of jurisdiction:

That as the petitioner had been ordinarily resident here for a period of three years immediately preceding the commencement of these proceedings this Court has jurisdiction to entertain the petition (see section 18(1)(b) of the Matrimonial Causes Act, 1950 and *Lewis v. Lewis* [1956] 1 All E.R. 375). 10

Held, further that though she had been temporarily absent from Cyprus her return here, which had previously been her home was in the circumstances a resumption by her of ordinary residence in Cyprus. 15

Held, (II) on the merits of the petition:

That on the facts of this case which establish a persistence in the false accusations, which obviously the respondent did not believe them to be true, and the consequential injury to the petitioner's health and the reasonable apprehension of it, the petitioner has proved a case of legal cruelty and in the exercise of its discretion this Court will pronounce a decree nisi in her favour. 20

Held, further, that there is no merit in the claim that the marriage was not valid in view of the provisions of Article 111 of the Constitution because the application of the provisions of this Article is confined to cases where both parties are members of the Greek Orthodox Church, Cypriot national and members of the Community concerned. 25

Decree nisi granted.

Cases referred to: 30

- Lewis v. Lewis* [1956] 1 All E.R. 375;
- Metaxas v. Mitas* (1977) 1 C.L.R. 1;
- Neophytou v. Neophytou* (1979) 1 C.L.R. 685;
- Platritis v. Platritis* (1980) 1 C.L.R. 324;
- Tooley v. Tooley* (1984) 1 C.L.R. 279; 35
- Papasavvas v. Johnstone* (1984) 1 C.L.R. 38;
- Hjijovanni v. Hjijovanni* (1969) 1 C.L.R. 207.

Matrimonial Petition.

Petition by the wife for the nullity of marriage.

A. Dikigoropoulos, for the petitioner.

Respondent absent.

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Cur. adv. vult.

A. Loizou J. read the following judgment. By the present petition the petitioner wife seeks "a decree (1) that the marriage celebrated between her and the respondent may be declared null and void; (b) further or in the alternative that the said marriage may be dissolved; (3) that the petitioner may have such further and other relief as may be just".

The respondent/husband was duly served, entered an appearance and was represented by counsel. He objected to the jurisdiction of the Court, but in spite of the successive adjournments for the purpose of facilitating his attendance here, once his presence was considered by his counsel essential for the determination of certain factual aspects of the case, he failed to respond to his advocate's repeated communications made, after several adjournments were granted by this Court so that the opportunity would be given to him to be duly informed to attend the hearing if he so wished.

On the 30th September, 1983 his counsel made the following statement:

"*Karides*: My client, in spite of requests that I made in writing with copy to his French lawyer to give me further instructions and supply me with the necessary information and whether he would be coming to Cyprus to be present at the hearing of the case or not, he has failed to do so so far and to respond to them.

I request a last adjournment so that I will inform him that my intention is to withdraw from the case and stop acting on his behalf and also inform him of the date of hearing that Your Honour will fix, so that if he wishes he can attend himself on that date or make any other arrangements that he deems necessary in his interest".

On the 6th December, his counsel withdrew from the case by leave of the Court as he had written to him informing him

of the date of hearing as well as his intention to withdraw from the case in view of his failure to give him the necessary instructions or reply to his letters. He had in fact sent him a double register letter and receipt of same was acknowledged by the respondent but without communicating with him. The position being so and after all those adjournments of the case and being myself certain that the respondent was duly informed and having witnessed his disinterestness in the matter I proceeded to hear the whole case and consider also the issue of jurisdiction raised as part of it, in order to avoid multiplicity of proceedings and rulings.

On the uncontested evidence of the petitioner and bearing in mind the authority of *Lewis v. Lewis* [1956] 1 All E.R. 375, in which the expression "ordinarily resident" to be found in the Matrimonial Causes Act 1950 section 18(1)(b) was judicially considered, I find that I have jurisdiction in the matter as the petitioner had been ordinarily resident here for a period of three years immediately preceding the commencement of the proceedings. She had been temporarily absent from Cyprus and her return here, which had previously been her home was in the circumstances a resumption by her of ordinary residence in Cyprus.

Having come to the conclusion that I have jurisdiction in the matter I turn now to the facts of the case.

The petitioner was born in England on the 25th March 1958, during her father's stay there for studies. Since 1959 when her parents returned to Cyprus she has been ordinarily residing at Ayios Dhometios, Nicosia, Cyprus. She is a member of the Greek Orthodox Church, whilst the respondent is a Lebanese National, member of the Maronite Church. The parties were married on the 5th August 1978 at a Civil Marriage Register Office in the 19th District of the Paris Municipality in France where both parties were university students at the time. Their marriage has never been celebrated in accordance with the rites of either or any Church.

The ground of divorce relied upon is cruelty. In essence it consisted of threats of actual personal violence and false accusations of adultery with such persistence that caused her considerable mental anguish and the petitioner's health was

injuriously affected and on account of which conduct and threats against the petitioner's life in the event of her leaving him he forced her to abandon the flat they were residing.

As stated in Rayden on Divorce 8th edition p. 134 paragraph 91, by reference to decided cases:

“Threats: vulgar abuse: false accusations.— Threats of actual personal violence sometimes constitute cruelty (the Court does not wait to act until such threats are carried into effect); but not mere vulgar, or even obscene, abuse, or false accusations of adultery, incestuous adultery, or of unnatural practices, unless the persistence in such false charges gives rise to injury to health, or reasonable apprehension of it”.

On the facts of the case which establish a persistence in the false accusations and which obviously the respondent did not believe them to be true and the consequential injury to the petitioner's health and to say the least, the reasonable apprehension of it, I find that the petitioner has proved a case of legal cruelty and in the exercise of my discretion I pronounce a decree nisi in her favour.

I have not dealt in the first place with the claim that the marriage between the parties was not valid in view of the provisions of Article 111 of the Constitution, because there is no merit in it. There has been established by numerous decided cases that the application of the provisions of Article 111.1 of the Constitution is confined to cases where both parties are members of the Greek Orthodox Church, Cypriot nationals and members of the Community concerned. (See, *inter alia*, *Metaxas v. Mitas* (1977) 1 C.L.R. p. 1, followed in *Neophytou v. Neophytou* (1979) 1 C.L.R. p. 685; in *Platritis v. Platritis* (1980) 1 C.L.R. 324, and more recently see *Tooley v. Tooley*, not reported, delivered on the 24th March, 1984*, following *Papasavva v. Jonestone*, and referring also to *Hjijovanni v. Hjijovanni* (1969) 1 C.L.R. 207).

In the result a decree nisi is granted in favour of the petitioner. In the circumstances, however, there will be no order as to costs.

Decree nisi granted. No order as to costs.

* Now reported in (1984) 1 C.L.R. 279.