

*Judgment*  
58/1964

IN THE PRIVY COUNCIL

No. 18 of 1964

ON APPEAL FROM THE SUPREME COURT OF CEYLON

B E T W E E N : -

THE ATTORNEY GENERAL OF CEYLON

- and -

ALLEN ELLINGTON REID alias  
IBRAHIM REID

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
23 JUN 1965  
25 RUSSELL SQUARE  
LONDON, W.C.1.

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78730

CASE FOR THE RESPONDENT

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HATCHETT JONES & CO.,  
90, Fenchurch Street,  
London, E.C.3.

ON APPEAL FROM THE SUPREME COURT OF CEYLON

B E T W E E N : -

THE ATTORNEY GENERAL OF  
CEYLON

Appellant

- and -

ALLEN ELLINGTON REID  
alias IBRAHIM REID

Respondent

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CASE FOR THE RESPONDENT

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1. This is an appeal by Special Leave from the judgment of the Supreme Court of the Island of Ceylon dated the 11th day of July 1963 whereby the conviction of the Respondent by the District Court of Colombo on the 23rd day of November, 1961 on a charge of bigamy was quashed.

Record

pp.29-30  
pp.25-27

p.21

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2. The only issue for determination is whether a man who, having contracted a marriage under the Marriage Registration Ordinance, which provides for monogamous marriages, is converted to Islam and then contracts a second marriage under the Muslim Marriage and Divorce Act, which provides for polygamous marriages, commits bigamy if the first marriage is still subsisting.

3. The facts which were not in dispute were as follows :-

Record

- (a) The Respondent, then a Roman Catholic, married Edna Margaret Frederica Reid nee De Witt at St. Mary's Church Badulla on the 18th day of September, 1933.
- (b) The said marriage was contracted under the Marriage Registration Ordinance, was not dissolved and the said Edna Margaret Frederica Reid was alive on the 16th day of July, 1959.
- (c) On the 16th July, 1959 the Respondent went through a Muslim ceremony of marriage with one Fatima Pansy Von Hagt at the Muslim Registrar's office in Colombo. 10
- (d) At the time of this marriage the Respondent and the second wife both professed Islam having been converted and accepted as Muslims by the Muslim priest at the Vekanda Mosque on the 13th July, 1964.
- (e) The second marriage was correct in form for the marriage of a second wife under the law applicable to Muslims in Ceylon and was duly registered under the Muslim Marriage and Divorce Act. 20

3. The Respondent was charged with bigamy contrary to Section 362B of the Penal Code, which reads as follows :-

"Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine". 30

pp.13-21 4. The learned District Judge held that monogamy was an unalterable part of the status of every person who married under the Marriages Registration Ordinance and a change of religion could not affect that status. He therefore convicted the Respondent and sentenced him to three months rigorous imprisonment. 40  
p.18, 11.46-49  
p.21, 11.5-6, p.21, 11.21-23

Record

5. On appeal the Supreme Court (Basnayake C.J., Abeyesundere J. and G.P.A. Silva, J.) quashed the conviction holding that the second marriage was not void by reason of its taking place during the life of the first wife.

pp.25-27

6. The Deputy Solicitor-General for the Appellant herein had argued that section 18 of the Marriage Registration Ordinance applied and rendered the second marriage void.

p.26,  
11.21-23

10 Section 18 reads as follows :-

"No marriage shall be valid where either of the parties thereto shall have contracted a prior marriage which shall have not been legally dissolved or declared void."

20 Section 64 of the same ordinance defines marriage as "any marriage, save and except marriages contracted under and by virtue of the Kandyan Marriage Ordinance 1870 or the Kandyan Marriage and Divorce Act, and except marriages between persons professing Islam."

The Supreme Court therefore held that the second marriage, being between persons professing Islam, was not a marriage within section 18 of the Ordinance and was therefore not void and the conviction was quashed.

p.27,  
11.14-17

7. Special leave to appeal to Her Majesty in Council was granted by Order in Council dated the 20th day of December, 1963.

pp.29-30

30 8. The Respondent humbly submits that this Appeal should be dismissed with costs for the following (among other)

R E A S O N S

1. BECAUSE the second marriage was not void by reason of its taking place during the life of the first wife.
2. BECAUSE the second marriage was not

rendered invalid by section 18 of the  
Marriage Registration Ordinance.

3. FOR the reasons given by Basnayake C.J.

E.F.N. GRATIAEN

THOMAS O. KELLOCK

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