Judgment 9 1970

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
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No. 35 of 1968

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE GAMBIA COURT OF APPEAL (DIVORCE AND MATRIMONIAL CAUSES)

B E T W E E N :-

ABDOULIE DRAMMEH
Appellant (Respondent in the suit)

- and -

JOYCE DRAMMEH
Respondent (Petitioner in the suit)

C A S E FOR THE APPELLANT

Record

1. This is an Appeal, by leave of the Gambia Court of Appeal, from a Judgment of that Court pronounced on the 24th May 1967, which dismissed the Appeal of the present Appellant from a Judgment of the Chief Justice in the Supreme Court of the Gambia, pronounced on the 12th December 1966 in Divorce & Matrimonial Cause No. 9/66, granting to the Petitioner, the present Respondent, a decree nisi of dissolution of her marriage to the Appellant on the ground of his adultery with Marianna Jallow, named in the Petition as the Co-Respondent. The marriage between the Appellant and Respondent had taken place in England under the Marriage Act 1949 at Trinity Chapel, Grove Street, Liverpool by licence, according to the Rites and Ceremonies of the Methodists, on the 17th September 1956. The Marriage Certificate put in evidence in the Supreme

P.49

P.31 1.35

Record

Court has not been printed in the Record but has been lodged with the certified Record in the Registry of the Privy Council together with the other documents omitted to be printed which are listed on p.43 of Record. (P.43)

2. The principal questions for decision in the present Appeal are (1) whether the Supreme Court could make such decree in consequence of the Appellant, a Moslem, at all material times claiming domicile in the Gambia, having in March or April 1966 contracted a valid Moslem marriage with the said Mariama Jallow at Bathurst, Gambia, before the date on which adultery was held to have been committed with her; (2) whether there was any sufficient or satisfactory evidence from which a finding or inference of adultery before the date of the Petition could properly be made (P.2 1.7; P.40 1.35; Pp.51-52)

3. The Court of Appeal, after referring to certain facts in evidence which hereafter appear, stated the submission of the Appellant upon the first question as follows:- (P.52B 1.12)

> "On these facts, the Appellant submits that his monogamous form of marriage became a potentially polygamous one, which is a legal form of marriage in this country, and that his marriage to the co-respondent was lawful and sexual intercourse with her (which he denied there had been before the Petition) could not have been adultery. Or, to put it another way, he submits that his unilateral reversion to Islam took with it into Islam the Petitioner, whether she willed or not, and changed her personal law so that her status became that of a Mohammedan wife, who has no right of complaint or redress to her husband's taking second wife."

The Court of Appeal treated the second question as one of fact.

4. The Appellant is of the Wolof people, who, as a matter, it is submitted, of judicial knowledge in the Courts of the Gambia, are (P.22 1.15)

Record

aboriginal inhabitants of the Gambia and adjoining parts of West Africa and in general Mohammedans of the Maliki Sect. He was born in the Gambia in or about the year 1920, his full name being stated in the Marriage Certificate as Abdulla Muhammadu Drameh and given by the Petitioner and himself in these proceedings as Abdoulie Mohamed Drammeh. He lived in the Gambia until 1946 when he came to the United Kingdom for study. It is submitted that the presumption is that he was of Moslem parents brought up as a Moslem and was so at the time he left the Gambia and came to England.

P.13, 1.3 &
P.20 1.24
P.20 1.27

His evidence as to his religion was that, before he went to England, he had been studying Islam but that, after his arrival, at some time which was before his marriage to the Petitioner, he had started legal and other studies, which included Christianity and its practice. He thereafter, at some unspecified time, abandoned Islam and "practised" Christianity and was in that state at the time of his marriage and until shortly afterwards when he reverted to his religion Islam. He had become acquainted with the family of the Respondent 3 or 4 years before he married her, (she being then still in her native Jamaica).

P.21 1.15
P.21 1.2
P.21, 1.14-17
P.24 1.19
P.25 1.9
P.20 1.28-34

5. The Petitioner and her parents were Jamaicans and the Respondent had emigrated from Jamaica and joined her mother in Liverpool in or about December 1955, having previously been domiciled in Jamaica. She was before her marriage a Baptist but claimed to have been converted to be a Methodist because the Appellant was.

P.39 1.19
P.20 1.28-32
P.17 1.13-15
P.21 1.10
P.15 1.11

6. (A) After their marriage in September 1956, the Appellant and Respondent cohabited in Exeter, London and Liverpool at each of which places the Appellant was a student until the Appellant came home in March 1964 for good to the Gambia, bringing his then five children with him.

P.13 1.1-5
P.21 1.31
P.1 1.7-23

(B) None was then christened, the Respondent explaining that when she wanted to christen them in England, he told her to wait until he got to (i.e. returned to) Bathurst.

P.15 1.20-23
P.13 1.30
P.15 1.27-29

Record

There is a dispute as to the forenames of some, which the Respondent contended were all English (or Jamaican) but the Appellant contends that some were Gambian or Mohammedan.

P.21 l.18-29
P.15 l.16

(C) During this period the Appellant's brother, the Imam of Bathurst, was their guest in Devon in 1959 and at Liverpool in 1960 and the Appellant and Respondent were his guests from

P.14 l.31

July to September 1959 in his house at Bathurst when the Appellant came to the Gambia to see the Cadi's Court and the "set up" of Islamic Law and to study Islamic Law.

P.21 l.28

(D) In June 1960 the Appellant performed the pilgrimage to Mecca and later (on dates not specified) graduated LL.B. at Liverpool and went to London University and read Islamic Law.

P.17 l.16

(E) During the residence of the Appellant in England he acquired property, some with the

P.26 l.8-12

help of an English Bank, but disposed of it, except one property, before he returned to Gambia, and he also embarked there upon an unsuccessful business.

7. During the whole period of his stay in England he was a student. He obtained during this period a law degree as well as studying Islamic Law at London University and being called

P.20 l.12

to the Bar. On his return to the Gambia he practised in the Courts there and was so doing during the present proceedings, in which he conducted his own case and appeared also as counsel for his Moslem wife, the woman named in the Petition as Co-Respondent.

P.15 l.30-33

8. When the Appellant eventually, in March 1964, returned home for good with all the children of the marriage, the Respondent did not accompany them. She said that she had stayed behind because she was too ill to travel, not because she did not want to come to the Gambia.

P.21 l.33 to
P.22 l.5

The Appellant, however, alleged that her intention, when he left, was not to follow him and that, on his arrival in Bathurst, he received a letter from her in which she said that

Record

she hoped that he would marry and settle down with the children. Nevertheless shortly afterwards she arrived in Bathurst with her step-father.

Thereafter they cohabited at Bathurst, the matrimonial home and his Chambers being at 2 Cameron Street. She frequently asked to return to England and did not like Woloff ways. A child (Pamela) was born to them in May 1965, in view of which Respondent wished to go to England for medical attention and did so, the Appellant providing her fares there and back. In 1965 the Appellant made a second pilgrimage to Mecca.

P.20 1.26
P.22 1.13 to 46
P.40 1.23
P.22 1.19
P.1 1.24
P.18 1.3

9. Evidence was given on behalf of the Petitioner by the Imam of Bathurst, the Appellant's brother, that the Appellant had been validly married according to Mohammedan Law to Mariama Jallow on the 7th April, 1969.

P.17 1.20
P.22 1.30-41

The Appellant alleged that the Respondent consented to this marriage and to Mariama Jallow accompaying him and their children upon a visit made by them to the Negro Arts Festival at Dakar shortly afterwards (at which he alleged, dowry not having been paid, there was not sexual intercourse) but the Respondent denied both these allegations of her consent.

P.22 1.27 to
P.23 1.2
P.18 1.18-28

10. The Co-Respondent, Mariama Jallow, gave evidence in Wolloff (on her own account and not by way of evidence for the Appellant who had closed his case but who was her Counsel and examined her). As translated, she is said to have deposed (inter alia) that she had married the Appellant on the 7th April 1966 and as follows:-

P.31

"After the marriage, I went to Dakar with Mr. Drammeh with three children from the 14th to 17th April -- in separate rooms -- children and I in the bedroom and Drammeh in the parlour. We lived together as husband and wife. Mrs. Drammeh No.1 visited me -- it was after marriage she knew me -- but the summons was taken long after. After summons she visited me." Cross-Examined: "You have seen I am pregnant. I cannot say when

Record

I became pregnant. I am not a police-woman to be examined medically."

P.40 1.28 to 35

11. The Chief Justice rejected the Appellant's evidence that the Respondent consented to a second marriage or to the visit to Dakar with Mariana Jallow and that at "Dakar" no sexual intercourse or adultery took place, holding that Mariana Jallow admitted it, and, as a matter of inference also, that there had been adultery by the Appellant and Mariama having lived together "as husband and wife" during their visit to Dakar in April 1966. The Supreme Court accordingly, on the 12th December 1966, pronounced a decree nisi of dissolution of the marriage of the 17th September 1956 as prayed in the Petition.

P.41 1.35-37

P.42 1.16-19

P.31 1.35

P.42 A

12. Such decree has not been made absolute, the Appellant appealing therefrom to the Gambia Court of Appeal by Notice of Appeal dated the 13th December 1966.

P.49 1.1

13. By their Judgment, pronounced on the 24th May 1967, the Gambia Court of Appeal dismissed the Appeal with costs.

The Court of Appeal did not dissent from the inference drawn by the Chief Justice as to sexual intercourse having taken place at Dakar in April 1966, which finding the Appellant, by his Amended Grounds of Appeal numbered 1 and 2, had challenged on the grounds (1) that there was no indication on the record that the Chief Justice had considered the need for corroboration of the evidence of the co-respondent, Mariama Jallow, and (2) that her statement was only evidence against her or, alternatively, the Chief Justice should only have acted on it if he had directed himself as to the danger of acting without corroboration.

P.52

The Court of Appeal agreed that the Chief Justice had not in his Judgment directed himself on either of these points but attached no importance to the omission, considering that there was ample corroboration in the evidence of the Appellant. For this opinion, the Court referred

Record

to the evidence of the Appellant that he had entered into a Mohammedan form of marriage on the 7th April 1966, that, with the Respondent's consent, he travelled with Mariama to Dakar, and, not having paid all the dowry, had no right to consummate the marriage without Mariama's consent (but not referring to his immediately sequent evidence that they occupied different rooms and there was no "adultery" (i.e. sexual intercourse) nor considering what "husband and wife" might mean in the evidence of Mariama Jallow.

P.22 1.38-39
P.23 1.5

P.23 1.10

They then referred to the admitted fact that, at the hearing in the Supreme Court, Mariama was pregnant, the Appellant's evidence as to this, that he had said that there was no adultery (sexual intercourse) before and up to the filing of the Petition but that at the time of the hearing his second marriage had been consummated but that he did not know how old her pregnancy was and, under Cross-examination, that it might be that it was in November 1966 when he first knew that Mariama was pregnant and she had told him so, that he could not say whether the child she was carrying was his or not but that she would state this, he had no suspicion that she had had anything to do with another man and, on being asked whether he was satisfied that she was pregnant by him, that he replied "I am satisfied she is a good woman. I am not deviating from that".

The Court of Appeal then dealt with the third ground of Appeal before them, namely (1) that the Chief Justice throughout his Judgment had wrongly maintained that "Christian marriage" referred to Christianity as a religion, (2) that he had wrongly defined the character of the marriage with the Respondent as at the time it was celebrated, (3) that the Chief Justice had wrongly found that there was no consent to the adultery, consent being a matter of Law, and (4) that the evidence of a certain Dr. Mahoney as to having seen the Appellant and Mariama at Dakar was valueless. With regard to this evidence, the Court agreed that it was valueless but there was nothing to indicate that any weight was attached to it. The Court considered that the Chief

P.52A

Record

Justice had used the term Christian monogamous marriage as meaning the marriage of one man to one wife to the exclusion of all others and held that there was ample evidence to support the finding of absence of consent to the adultery.

The Court proceeded to consider the objection, (item (2) of the third ground) that the Chief Justice had defined the character of the marriage with the Respondent as at the time it was celebrated, with the fourth ground of Appeal, namely that the Chief Justice was wrong in Law in finding that the Appellant had committed adultery with the Co-Respondent, Miriama.

As to this the Judgment of the Court, delivered by the President, reads as follows:-

'Item (2) can be considered together with the fourth ground which is:-

"4. Because the learned Chief Justice was wrong in law in finding that I committed adultery with Co-respondent."

'It is here that the unusualness of the case comes in. The petitioner is a Jamaican. In 1956 she was living in Liverpool with her parents, and England was then their domicile of choice. On September 17th of that year she and the appellant were married in a Methodist Church in Liverpool, and so it was a Christian and monogamous form of marriage. The appellant said in evidence that he was then a Christian. The learned Chief Justice found it to be a fact that at that time it was not the intention of both parties to make their home in the Gambia.

'It would seem consequently that England was then the appellant's domicile of choice, but there was no finding on the point. The evidence, however, was that he had been there since 1946, and had acquired eight properties, and had a business with two shops and also got called to the bar. Some of their seven children were born there. They were in Jamaica for some time (how long is not clear).

Record

'In March, 1963, the appellant returned to the Gambia, which was his domicile of origin and is his present domicile. His wife necessarily has likewise been domiciled here since then.

'It is disputed when exactly he reverted to the Muslim faith, in which he had been born, but it was before 7th April, 1966, when he was married to the co-respondent at Brikama, in the Mohammedan form of marriage, which of course can be polygamous. His reversion was genuine, and in fact he is an alhaji.

"The Petitioner never had the slightest intention of ever following the respondent's reversion to Islam; she never even knew he was a Muslim at any material time to this case" -- (from the judgment).

'On these facts, the appellant submits that his monogamous form of marriage in England became a potentially polygamous one, which is a legal form of marriage in this country and that his marriage to the co-respondent was lawful and sexual intercourse with her (which he denied there had been before the petition) could not have been adultery.

'Or, to put it in another way, he submits that his unilateral reversion to Islam took with it into Islam the petitioner whether she willed or not and changed her personal law so that her status became that of a Mohammedan wife, who has no right of complaint or redress to her husband's taking second wife.

'Can this be the law of The Gambia?

'This case is one of reversion to Islam; but the argument would be no different if the husband in a valid monogamous married had in this country under the Christian Marriage Act (Cap.119) or the Civil Marriage Act (Cap.120) was unilaterally genuinely converted to Islam during the continuance of the marriage.

'The appellant cited a number of cases to us, including some Indian ones, of which there are

Record

no reports here. Others were:-

1. Cheni (orse Rodriguez) v. Cheni (1963: 2 W.L.R. 17).

2. Ali v. Ali (1966 1. All E.R.664)

3. Mirza v. Mirza (The Times, July 23, 1966, noted in 1966: 7 Current Law Note 332a).

4. Attorney-General of Ceylon v. Reid (1965: 1 All E.R.812). The first three concerned marriages which started off as potentially polygamous but became monogamous, in (1) owing to the happening of a certain event and in (2) and (3) owing to a change from domicile of origin to a domicile of choice in England. None of these help the argument.

'The fourth, from Ceylon, is a decision of the Privy Council. In Ceylon a man could then make a monogamous marriage under the Marriage Registration Ordinance, which could be according to Christian Rites: or if he was a person professing Islam he could make a Mohammedan and therefore potentially polygamous marriage. It is probably still so. The situation here is the same.

'Reid and a woman, both domiciled in Ceylon, made there a Christian form of monogamous marriage. Twenty four years later the wife deserted him. Two years later Reid and another woman were genuinely converted to the Muslim faith, and a month later again were married under the Muslim Marriage and Divorce Act, 1951, of Ceylon. Reid was prosecuted for bigamy, and convicted. The Privy Council held that the second marriage was not bigamous. The Privy Council were not called to decide whether the second marriage was adulterous or not. In the argument before them, however, one of the matters which was not in controversy between the parties was, ".... the first wife can if she so desires treat the second marriage as an adulterous association by her

Record

husband on which she can found a petition for divorce...."

'That is exactly what the appellant argues cannot be done. Had the petitioner been converted to the Muslim faith with her husband the appellant, it might well be so. But as she was not, in my opinion, it was as far as she is concerned, an adulterous association.

I would dismiss the appeal.'

14. On the 13th October 1968 the Appellant duly obtained final leave from the Gambia Court of Appeal under section 100 of the Constitution of the Gambia, 1965 to appeal to the Judicial Committee of the Privy Council.

15. The Appellant respectfully submits that this Appeal should be allowed for the following among other

REASONS

1. BECAUSE the Appellant was entitled to and did contract a valid second marriage to Mariama Jallow on a date prior to any adultery found proved.

2. BECAUSE there was no or no satisfactory or sufficient evidence from which a finding or inference of adultery before the date of the Petition could properly be made.

M~~ICHAEL~~ ~~PEARSON~~.

ROGER DAVIES

No. 35 of 1968

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE GAMBIA COURT OF APPEAL
(DIVORCE AND MATRIMONIAL CAUSES)

BETWEEN:

ABDOULIE DRAMMEH
(Respondent in the suit)
Appellant

- and -

JOYCE DRAMMEH
(Petitioner in the suit)
Respondent

CASE FOR THE APPELLANT

LODGED the January 1970

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