Privy Council Appeal No. 35 of 1968

Abdoulie Drammeh – – – – – – – – *Appellant*

v.

Joyce Drammeh – – – – – – – – *Respondent*

FROM

THE GAMBIA COURT OF APPEAL (DIVORCE AND MATRIMONIAL CAUSES)

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 7TH APRIL 1970

Present at the Hearing:

LORD MORRIS OF BORTH-Y-GEST
LORD PEARSON
LORD DIPLOCK

[*Delivered by* LORD MORRIS OF BORTH-Y-GEST]

The appellant (the husband) was lawfully married to the respondent (the wife) on 17th September 1956. Both parties then professed the Christian religion. The marriage took place at Grove Street Methodist Church in the City of Liverpool. In July 1966, when both parties were living in and were domiciled in The Gambia, the wife presented a petition, in The Supreme Court of The Gambia, for the dissolution of the marriage. Her petition (dated 11th July) was on the ground that her husband had committed adultery with Mariama Jallow (who was referred to in the proceedings as the co-respondent). The husband and the co-respondent had gone through a ceremony of Muslim marriage on 7th April 1966. The case was heard by the Chief Justice who held that the wife was entitled to have her marriage dissolved on the ground of her husband's adultery committed before the date of the petition. A decree nisi was pronounced. The husband appealed to The Gambia Court of Appeal. The appeal was dismissed. Appeal from the judgment of the Court of Appeal is now brought by the husband.

Before referring to the contentions which have been raised it becomes necessary to recite some further facts.

The wife is a Jamaican of Jamaican parents. She came to England in about 1955 and joined her relatives in Liverpool where they were living and where they intend to remain. The husband was born in The Gambia. He came to England in 1946 in order to pursue law studies. These took him among other places to Liverpool. He met the wife's mother some time before the wife came to England.

Following upon the wedding which took place on 17th September 1956 and which was undoubtedly a monogamous marriage between two professing Christians the parties lived together at various places in Liverpool and in London and in Devonshire. There are six surviving children of the marriage. They were all born in England. There

was a seventh child who was born in The Gambia on 25th April 1966 and who died in November 1966. The learned judge found that at the time of the Christian marriage "it was never the intention of both parties to make their home in The Gambia". There was however no finding that the husband had acquired a domicile of choice in England. In their Lordships' view nothing turns upon any question as to the domicile of the parties while they lived in England. This appeal may be decided on an assumption merely for the purposes of the case that the husband never abandoned his domicile of origin in The Gambia.

The husband returned to his native Gambia in March 1963. The children accompanied him. The wife who was unwell when the husband left England followed him shortly afterwards and joined him in Bathurst where he practises as a Barrister and a Solicitor. He had become a member of the English Bar in 1963.

The husband said in his evidence that in December 1957 he reverted to what had been his original faith and again became a Muslim. The learned judge held that the wife never knew that he was a Muslim at any time that was material in the case and held that she never had the slightest intention of following him into the faith of Islam. On 7th April 1966 the husband went through a ceremony of Muslim marriage with the co-respondent. The learned judge rejected a suggestion that the wife had consented to this second marriage. After the second marriage the husband (taking the children with him) went with the co-respondent to stay in Dakar. They stayed there between 14th and 17th April 1966. The learned judge rejected a suggestion that this visit had been made with the wife's consent. The husband gave evidence to the effect that no sexual intercourse took place between him and the co-respondent at Dakar. The learned judge disbelieved him. The husband further said that prior to the date of the petition he had not had intercourse with the co-respondent. The co-respondent gave evidence. At the time of the hearing in December 1966 she was pregnant. The learned judge held that the co-respondent had admitted intercourse and he said that as a matter of inference he drew the conclusion that immediately after the second marriage the husband and the co-respondent lived together at Dakar as husband and wife. There was considerable evidence supporting the conclusion that not only did the wife not consent to the second marriage but that before the date of her petition she registered violent protest.

After the conclusion of the evidence at the trial the husband presented his arguments in the form of a written address for the Court to consider. Among his contentions was that the co-respondent was in the position of an accomplice and that corroboration of her evidence was needed and was lacking.

In his judgment the learned judge expressed the following conclusion "The respondent (*i.e.*, the husband) may contend that his second marriage is lawful in Islamic Law, but it is still adultery within the meaning of a Christian monogamous marriage—one man, one wife—to the exclusion of all others. I have considered the evidence very carefully and I am quite satisfied that there has been no consent to adultery or any connivance or condonation thereof."

On the husband's appeal to The Gambia Court of Appeal he took the point that the learned judge had failed to have the need of corroboration of the evidence of the co-respondent in mind and of the danger of acting without corroboration. The court held that the learned judge had not overlooked that matter and further that there was ample corroboration.

Apart from certain other points which the Court of Appeal rejected the main contention of the husband in the Court of Appeal was thus summarised in the judgment of the Court of Appeal:

> " 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."

Having stated these contentions the Court put the trenchant question " Can this be the law of The Gambia?"

Upon appeal from the Court of Appeal one contention that was raised was that 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. The point in regard to corroboration taken in The Gambia Court of Appeal was repeated. In this connection it is to be noted that the learned judge at the trial had apart from the evidence of the co-respondent drawn the inference from the facts that adultery had been committed. He was fully entitled to do so. To any such extent as corroboration of the evidence of the co-respondent was needed—their Lordships agree with the Court of Appeal that the learned judge did not overlook the matter and that there was ample corroborative evidence.

The other contention which was raised was expressed as being that the husband was entitled to and did contract a valid second marriage with the co-respondent on a date prior to any adultery found proved. The result, it was contended, was that the wife could not complain for the reason that intercourse between the husband and the co-respondent after their marriage could not be said by the wife to be adultery.

Before examining this contention further it is relevant to note that by the law of The Gambia there may be valid marriages governed by the provisions of the Christian Marriage Act Cap. 119 and the Civil Marriage Act Cap. 120 and there may also be valid marriages governed by the Mohammedan Law Recognition Act and the Mohammedan Marriage and Divorce Act. There can be no doubt that when the husband and wife went to live in The Gambia in 1963 they were lawfully wedded in a monogamous union which the law of The Gambia fully recognised. Indeed it was pointed out in the Court of Appeal that the argument on behalf of the husband would have been no different had the valid monogamous marriage taken place in The Gambia and if the husband had thereafter during the continuance of the marriage been unilaterally converted to Islam. By s. 19 of the Law of England (Application) Act c. 104 the jurisdiction conferred upon the Supreme Court in probate, divorce and matrimonial causes and proceedings may (subject to the provisions of the Courts Act and rules of Court) be exercised by the Court in conformity with the law and practice in force in England immediately before 18th February 1965. By s. 3(1) of The Courts Act c. 36 the Supreme Court has the jurisdiction provided by the Constitution and all the jurisdiction powers and authorities which were vested in or capable of being exercised by Her Majesty's High Court of Judicature in England immediately before 18th February 1965.

Upon proof therefore that the husband had had intercourse with someone other than his wife without her connivance or condonation what reason, it may be asked, could there be for denying to the wife the dissolution of her marriage for which she prayed? No question could arise as to the jurisdiction of the Court in The Gambia to entertain the suit.

It is important to remember that their Lordships are here concerned with the Law of The Gambia. It is important also to remember that the wife has not been converted to the Muslim faith. The learned judge held that the wife never had the slightest intention of embracing the Muslim faith. It therefore becomes quite unnecessary to consider whether had she been so converted there would or could have been any resultant effect of altering the rights incidental to the marriage into which she had entered. Nor can it be that her husband's change of religion can deprive her of the protection of freedom of conscience for which the Constitution (see s. 19) provides.

Their Lordships are concerned with the marriage that existed between the wife and her husband. It is not necessary for their Lordships to consider whether the second marriage (*i.e.*, that between the husband and the co-respondent) is or is not a valid marriage in The Gambia. Nor is it necessary to consider whether that marriage was or was not "void" for the purposes of s. 154 of the Criminal Code. Accordingly their Lordships express no opinion in regard to those questions.

Even if the second marriage was not void there can be no reason for denying to the wife the rights that are hers if she finds that her husband who has all the obligations to her which result from a validly subsisting monogamous marriage, has had intercourse with some other woman. She never accepted him on the basis that she would be one of two or more wives. She went to The Gambia with the rights which her marriage gave to her. Unless there is some compelling authority requiring a different view it would seem most unjust and unreasonable if the wife could be compelled to accept a relationship wholly different from that which both she and her husband assumed. The learned judges in The Gambia knew of no such authority. On behalf of the husband some support was claimed from the judgment of Denning L J (as he then was) at pages 144 and 145 in *Kenward v. Kenward* [1951] P. 124. Their Lordships do not find it necessary to express any comment on those passages beyond that they would not seem to apply to the facts of the present case where the parties being validly married in a monogamous union went to a country which recognises such unions. Reliance was also placed upon a sentence in the judgment in the Indian case of *Datta v. Sen* (1939) *I. L. R.* 2 Cal. 12. In that case there was a marriage between two Indian Christians. The husband was subsequently converted to Mohammedanism and married a Mohammedan woman. There was a daughter by that second marriage. The case raised questions as to the succession to property and in that connection it became necessary for the Court to decide whether the second marriage was or was not valid. The case proceeded on the footing that the first wife had not been converted to Mohammedanism but the case did not raise any question as to whether she could have divorced her husband. In *Attorney-General of Ceylon v. Reid* [1965] A.C. 720 there was a marriage in Ceylon between two Christians. The marriage was according to Christian rites under the Marriage Registration Ordinance of Ceylon. Subsequently the husband and another woman were converted to the Muslim faith and were married. There was legislative provision which enabled a male Muslim inhabitant of Ceylon to contract more than one marriage provided that certain notices were given. The question under consideration was whether the husband was or was not guilty of bigamy. The importance of the case for present purposes is that in their judgment (see p. 729) the Board noted that it was not in controversy between the parties that the first marriage remained valid and subsisting notwithstanding the second marriage (for there had been no divorce under the Marriage Registration Ordinance) and that the first wife could, if she so desired, treat the second marriage as an adulterous association by her husband on which she could found a petition for divorce. In

comparable circumstances in the present case the courts in The Gambia have held that the wife could assert that the relationship between her husband and the co-respondent was so far as she was concerned an adulterous one. Their Lordships see no reason to hold that the decision was erroneous. Accordingly their Lordships dismiss the appeal. The appellant (the husband) must pay the costs.

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In the Privy Council

ABDOULIE DRAMMEH

v.

JOYCE DRAMMEH

DELIVERED BY
LORD MORRIS OF BORTH-Y-GEST

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