

ST. CHRISTOPHER AND NEVIS

IN THE HIGH COURT OF JUSTICE

DIVORCE SUIT NO. SKBHMT2002/0038

BETWEEN:

PANTALEO GIANNOTTI

Respondent/Petitioner

and

ROBERTA DELLE SITE GIANNOTTI

Applicant/Respondent

Mr Vernon Veira for the applicant.

Ms Constance Mitcham for the respondent.

2004: March 5
April 2

JUDGMENT

[1] **BAPTISTE J:** - This is an application by the respondent to dismiss a divorce petition on the ground of want of jurisdiction. None of the parties are domiciled in the Federation of Saint Christopher and Nevis. The issue is whether the court has jurisdiction to entertain the petition.

[2] The parties were married on 13th August 1999 in Saint Christopher. After the marriage they resided in Saint Christopher and in the Netherlands. At the date of the filing of the petition they resided in Italy. The respondent/applicant, in the answer, denied that the parties are domiciled in Saint Christopher and Nevis and stated that there was never an intention for them to be domiciled there for the purpose of jurisdictional control of the marriage. The respondent/applicant asserted that the proper court having jurisdiction over the marriage is the court in Italy.

- [3] Mr Veira submitted that the test for jurisdiction in divorce proceedings remained the domicile of the husband and in a case like the present where the husband was not domicile in Saint Christopher, the court had no jurisdiction in the matter.
- [4] Ms Mitcham submitted that there is no provision in the Matrimonial Causes Act Chapter 50 of the Laws of the Federation to oust the jurisdiction of the court in divorce proceedings for want of domicile. Further, Saint Christopher and Nevis is the proper law of the marriage contract and the court has jurisdiction to adjudicate on its own marriages. Ms Mitcham argued that English courts have assumed jurisdiction to adjudicate on the validity or otherwise of a marriage in cases where England was the place where the marriage was celebrated, although the parties were domiciled elsewhere. Ms Mitcham contended that **Le Mesurier v. Le Mesurier** [1895 – 99] ALL ER Reprint 836 which laid down the strict rule requiring domicile as a condition precedent for divorce jurisdiction, is no longer good law and was criticized in the 1967 case of **Indyka v. Indyka** [1967] 2 ALL ER 689.
- [5] In **Le Mesurier v. Le Mesurier** the Privy Council concluded that “according to international law the domicile for the time being of married persons affords the only true jurisdiction to dissolve their marriage.”
- [6] In **Wall v. Wall** [1949] 2 ALL ER 927 it was held that English courts had accepted the principle that, where the parties were domiciled abroad, the court of domicile had sole jurisdiction in suits for dissolution of marriage. While Ms Mitcham relies on **Indyka v. Indyka**, the editorial note to that case make is quite clear that it was not a decision on what should be the basis in private international law of the divorce jurisdiction of the English courts but only on what should be the basis of recognition by the English courts of decrees of divorce obtained in foreign courts.
- [7] The question of domicile and the court’s jurisdiction in divorce proceedings is not devoid of local authority. In **Robinson v. Robinson**, Suit No. 6 of 1996, Nevis Circuit, in a judgment delivered in February 2000, Smith J. said:
- “The jurisdiction of this Court in matrimonial matters where divorce is sought continues to be based exclusively on the domicile of the husband of the marriage

except where, as is provided by section 19 of the Matrimonial Causes Act, the husband has been deported from the Federation or the wife has deserted and the husband was immediately before the deportation or desertion domiciled here. It does not matter in such a case whether the husband has changed his domicile or not.”

Where divorce proceedings are instituted and the husband is not domiciled in the Federation of Saint Christopher and Nevis, the court in the Federation has no jurisdiction to entertain the matter. The reason being that the court’s jurisdiction, where divorce is sought, is based exclusively on the domicile of the husband. Where parties are domiciled abroad, as in this case, the court of domicile has sole jurisdiction in suits for dissolution of marriage. I accordingly grant the application to dismiss the petition for divorce on the basis of want of jurisdiction.

[8] It is ordered that the divorce petition filed on the 13th of December 2002 is dismissed with costs to the applicant.

Davidson Kelvin Baptiste
High Court Judge