

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(*Civil*)

SAINT LUCIA

Petition No. SLUHCV 2004/0970

IN THE MATTER OF AN
APPLICATION FOR THE
CANCELLATION OF ALL
RECORDS OF MARRIAGE OF
JULIAN DANZIQUE AND
MARGARET POLIUS.

AND

IN THE MATTER OF ARTICLES
45 TO 47 AND ARTICLE 84 OF
THE CIVIL CODE, CHAPTER
242 RESPECTIVELY OF THE
REVISED LAWS OF SAINT
LUCIA.

BETWEEN:

JULIAN DANZIQUE

Petitioner

AND

MARGARET POLIUS

Respondent

Appearances:

Mr. Stephen Julien for Petitioner
Respondent unrepresented and absent
Petitioner present

2005: February 2

RULING

- [1] **EDWARDS J:** By this Petition filed on the 9th December 2004, Mr. Danzique a welder, is seeking a Declaration of the Court that the Marriage celebrated on the 15th April 2001 between himself and the Respondent Ms. Margaret Polius be deemed void as it was contracted before the dissolution of his marriage to Judith A. Gittens celebrated on the 19th September 1991.
- [2] Mr. Danzique is further seeking a Judgment pursuant to **Articles 45 and 84 of The Civil Code of St. Lucia**, ordering that a Rectification of the Records of Civil Status be made by the inscription of the said Declaration upon the entry in the Civil Status Register by the depositary of the Register.
- [3] In my view, **Articles 45 to 47 of The Civil Code** do not address the circumstances of this case. **Article 84** states that "***A second marriage cannot be contracted before the dissolution of the first***". **Article 45** merely specifies that the Court can order rectification of an error in the entry of the record of Civil Status, or the insertion of an omission upon a petition being presented by an interested party. **Article 45A** deals with the content of the Judgment. **Article 46** deals with how the correction is to be made. **Article 47** specifies who will be affected by the Judgment of Rectification.
- [4] It appears from the Petition that Mr. Danzique a St. Lucian national of Dennerly, ordinarily resident in New York, USA had married Ms. Gittens a citizen of the USA on the 19th September 1991 in a Civil ceremony in New York.
- [5] There is no evidence before me that this marriage was conducted according to the forms required by the law of the USA. In the absence of such evidence I ought not to assume that Mr. Danzique was precluded from marrying any other woman during the subsistence of this marriage.
- [6] At least I would have expected to see a copy of the relevant law for New York and/or opinion evidence of an expert on the relevant law **SEE PART 31.2 of The**

Civil Procedure Rules 2000 which deals with evidence on questions of foreign law.

- [7] Assuming the **Divorce Rules 1976** applied, **Rule 32 of the Divorce Rules 1976** states that a marriage outside of St. Lucia and its validity under the laws of the country where it is celebrated may on any matrimonial proceedings *in which the existence and validity of the marriage is not disputed*, be proved by the evidence of the parties to the marriage and the production of the document purporting to be a marriage certification issued under the law in force in the country; or a certified copy of an entry in a register of marriages kept under the law in force in that country.
- [8] In my view, **Rule 32** cannot apply in these proceedings, since Ms. Gittens is not a party, and the validity of her marriage is what first has to be proven in order to declare the marriage to Ms. Polius Null and Void. The Court has to be vigilant in making assumptions, in light of the allegations amounting to deception, forgery and fraud which have surfaced in these proceedings.
- [9] It appears from the Petition that Ms. Gittens procured a forged Summons with Notice and Judgment of Divorce, dated 14th January 2001, marked "**EXD 2**" falsely showing that they were issued out of the office of the New York State Supreme Court. These were served on Mr. Danzique who did not question their validity.
- [10] Mr. Danzique subsequently married Ms. Polius at the Seventh Day Adventist Church in Castries. The ceremony was conducted by Pastor St. Clair Alexander, a Minister of Religion on the 15th April 2001. Ms. Polius then was a registered nurse from La Croix, Maingot in St. Lucia.
- [11] Ms. Polius deposed in her Affidavit filed on the 9th December 2004 that she returned to the USA with Mr. Danzique believing she was his wife.
- [12] Mr. Danzique thereafter filed an application for United States citizenship on her behalf she deposed. It was then that they discovered that Mr. Danzique had not been divorced.
- [13] It appears that Ms. Gittens subsequently divorced Mr. Danzique lawfully on the 26th February 2002. A copy of the **Order of Divorce No. 318123/01** purportedly issued out of the New York State Supreme Court has been exhibited as Exhibit "**D4**".
- [14] However, there has been noncompliance with **Article 1152 of The Civil Code** which requires copies of any judgment or other judicial proceeding of any Court outside of St. Lucia, to be under the seal of such Court or under the signature of the officer having legal custody of the record of such judgment or other judicial proceedings, before they can be prima facie evidence of the contents thereof, without any proof of the seal or signature upon them, or of the authority of the officer granting the same.

- [15] I wish to refer also to **PART 72.2 of the Civil Procedure Rules 2000** which provides that in applying to have a foreign judgment registered in the High Court the judgment or a verified, certified or otherwise duly authenticated copy of it must be exhibited.
- [16] In the absence of any statutory provisions or rules in St. Lucia governing these sorts of matters, I look to **Section 11 of the West Indies Associated States Supreme Court (Saint Lucia) Act**.
- [17] SECTION 11 provides -
"The jurisdiction of the High Court in civil proceedings including matrimonial causes and in probate causes shall be exercised in accordance with the provisions of the Act, the Civil Code, the Code of Civil Procedure, any other law in force in the State and rules of Court, and where no special provision is therein contained; jurisdiction shall be exercised as nearly as may be administered for the time being in the High Court of Justice in England."(My emphasis)
- [18] The Jurisdiction of the High Court of Justice in England in such matters was reviewed by Lord Denning in Har-Shefi -vs- Har-Shefi [1953] 1 ALL E.R. 783.
- [19] It was held in this case that the High Court has jurisdiction to make a declaration order even though no other relief was sought, and it therefore had jurisdiction to entertain a petition seeking a declaration that a foreign decree of divorce is valid.
- [20] At page 787 of the Judgment Lord Denning observed –
*"The ecclesiastical Courts habitually entertained suits for declarations only. For instance they entertained nullity suits, that is suits of which the sole object was to obtain a declaration that what purported to be a valid marriage was in law a nullity. They did this not only in the case of a marriage which was void from the beginning, such as a bigamous marriage, but also in the case of a marriage which was voidable as for instance a marriage voidable for impotence: SEE SHELFORD ON MARRIAGE, 1841, pp 565 to 572. The reason why the ecclesiastical courts exercised this declaratory jurisdiction was-
"on the ground that it is material for their own sakes and that of the public that their status should be known and the object of the proceedings is to have the status of the parties to the marriage defined by the sentence of a competent court. . ."
Whatever be the reason why the ecclesiastical courts did not grant declarations of validity, however, there can be no doubt that they granted declarations of nullity when marriages were voided, and the reasoning on which these declarations were based supports the view that the ecclesiastical court had a general jurisdiction to make*

declaratory orders as to the existence or non-existence of a marriage, even though no other relief was sought. If this is so, it follows that the Divorce Courts have inherited a like jurisdiction under S.22 of the Matrimonial Causes Act 1857 . . . Since 1924 they [the Divorce Courts] have acquired under RSC, Order 25 r. 5, a jurisdiction to make declaratory orders in the High Court. . . under the modern rules the Divorce Courts have jurisdiction to make a declaratory order even though no other relief is sought". (My emphasis)

- [21] It was held in Eneogue –vs- Eneogue [1976] 120 SOL. JO 300 C.A. that the High Court's power to make declarations as to the validity of marriage was now governed by the Matrimonial Causes Act 1973 (UK) Section 45.
- [22] Section 45 states that "*Any person who is a British Subject. . .may, if he is domiciled in England or claims any real or personal estate situated in England. . .apply by petition to the High Court for a decree declaring that. . .his own marriage was a valid marriage".*
- [23] I have deduced from the statutory provisions in the 1973 Act, that a declaration as to the validity of a marriage includes a declaration that the marriage is invalid.
- [24] Section 45 of this Act also provides the procedure for dealing with this petition.

Procedure for Making Petition

- [25] Upon the Petition being filed in the High Court, pursuant to Section 45 (5) of the Matrimonial Causes Act 1973 (UK) –
- . . .the High Court. . .shall make such decree as it thinks just, and the decree shall be binding on Her Majesty and all other persons whatsoever, so however that the decree shall not prejudice any person –*
- (a) if it is subsequently proved to have been obtained by fraud or collusion; or*
 - (b) unless that person has been given notice of the application in the manner prescribed by rules of court or made a party to the proceedings or claims through a person so given notice or made a party".*
- [26] Section 45 (6) provides that –
- "A copy of every application under this section and of any Affidavit accompanying it shall be delivered to the Attorney General at least one month before the application is made, and the Attorney General shall be a Respondent on the hearing of the Application and on any subsequent proceedings relating thereto".*

- [27] Section 45 (7) states that –
“Where any application is made under this section, such persons as the Court hearing the application thinks fit shall, subject to rules of court, be given notice of the application in the manner prescribed by rules of Court, and any such persons may be permitted to become parties to the proceedings and to oppose the application”.
- [28] Section 45 (8) provides that “No proceedings under this Section shall affect any final judgment or decree already pronounced or made by any Court of competent jurisdiction”.
- [29] Finally, Section 45 (9) states that –
“The Court hearing an application under this section may direct that the whole or any part of the proceedings shall be heard in camera, and an application for a direction under this subsection shall be heard in camera unless the Court otherwise directs”.
- [30] In light of this procedure prescribed by Section 45, it is evident that the Attorney General must be added as a Respondent to the proceedings and all relevant documents must be served on him.
- [31] I consider Ms. Gittens to be an interested party to these proceedings and **Article 45** provides that the Judge may on a petition presented direct that the petition be served on other interested parties.
- [32] **Article 45** also requires service upon the depository of the Civil Status Register.
- [33] My Order is therefore as follows:-
- (1) The Attorney General shall be added as a Respondent to the proceedings and hereafter all documents filed must reflect that the Attorney General is a party.
 - (2) The Petition and supporting Affidavit and documentary exhibits already filed are to be served on the Attorney General, Ms. Judith A. Gittens, and the depository of the marriage Register at the Civil Status Registry, and Ms. Margaret Polius.
 - (3) The documentary exhibits marked “D4” are to be duly - authenticated by the relevant officer in accordance with Article 1152 of the Civil Code or PART 72.2 of The Civil Procedure Rules 2000 and refiled and served with a supplemental Affidavit by Friday 8th April 2005.
 - (4) Affidavit of Service showing compliance with this Order to be filed and served by Friday, the 22nd April 2005.
 - (5) A copy of the relevant Law of New York to be filed and served by Counsel for the Petitioner by Friday 22nd April 2005.

- (6) The persons to be served pursuant to this Order, may file and serve Affidavits in response where necessary by Friday 22nd April 2005.
- (7) This Petition will be heard by Edwards J. on Friday 29th April 2005.

Dated this 4th of February, 2005

OLA MAE EDWARDS
High Court Judge