

Judgment 9, 1970

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
6 - DEC 1971
25 RUSSELL SQUARE
LONDON W.C.1

IN THE PRIVY COUNCIL

No. 35 of 1968

O N A P P E A L
FROM THE GAMBIA COURT OF APPEAL

B E T W E E N :

A ABDOLIE DRANMEH Respondent/Appellant
- and -
JOYCE DRANMEH Petitioner/Respondent

C A S E FOR THE RESPONDENT

RECORD

B 1. This is an appeal from a judgment and order of the Gambia Court of Appeal (Ames, P., Dove-Edwin and Marcus-Jones JJ.A.,) given and made on the 24th May, 1967, affirming a judgment and order of the Supreme Court of the Gambia (Wiseham, C.J.,) given and made on the
C 12th December, 1966. Conditional leave to appeal was granted to the Appellant on the 23rd June, 1967, and final leave was granted on the 15th October, 1968. p.51/52C.
p.39/42
p. 31

D 2. The Respondent, by her Petition dated the 11th July, 1966, prayed for an order for dissolution of her marriage to the Appellant, on the grounds of adultery by him, and for consequential relief by way, inter alia, of
E orders for: custody of the children of the marriage; alimony pending suit; and, maintenance for herself and the children of the marriage. The learned Chief Justice of the Gambia, by his aforementioned judgment and
F order of the 12th December, 1966, pronounced a decree nisi for dissolution of the marriage, and this judgment and order was upheld by the

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Gambia Court of Appeal.

3. The relevant statutory provisions are as follows :

Law of England (Application) Act, c.104,
Laws of the Gambia 1966 Edn.

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'Section 19. The jurisdiction hereby 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 which was in force in England immediately before the 18th day of February, 1965.'

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The Courts Act, c. 36, Law of the Gambia
1966 Edn.

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'Section 3 (1). The Supreme Court shall have the jurisdiction and powers 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 the 18th day of February, 1965.'

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'Section 54. There is hereby established a Rules Committee which shall consist of the Chief Justice as chairman, the Attorney-General, and a practising member of the Bar selected by members of the Bar.'

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'Section 55. The Rules Committee may at any time make rules of court for the Supreme Court

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(b) for regulating the pleading, practise and procedure of courts

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The Rules of Court. Schedule II Order 50

provides rules governing pleading,
practice and procedure in Matrimonial
Causes.

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A This Order reflects the rules contained
in the Matrimonial Causes Rules 1957.

B 4. The Respondent, in her Petition, recited:
C that she married the Appellant at Groves
D Street Methodist Church, Liverpool, on the
E 17th September, 1956, this being a formal
F christian marriage; that she and the Appellant
had lived together at various addresses in
England, and finally at 2, Cameron Street,
Bathurst, the Gambia; that there were seven
children of the marriage living; and that she
and the Appellant were domiciled in the Gambia.
She alleged that, on the 31st March, 1966, the
Appellant went through a ceremony of Muslim
marriage with one Marianna Jallow (who was the
woman named in the Petition) and that the
Appellant committed adultery with Mariana
Jallow at the residence of the Appellant at
11A Cotton Street, Bathurst on the 31st March,
1966 and that thereafter the Appellant and the
Mariana Jallow lived and cohabited and
frequently committed adultery at 11A Cotton
Street aforesaid and, between the 14th and the
17th April, 1966, at an hotel in Dakar,
Republic of Senegal. She had not condoned the
adultery, nor had she been an accessory to or
connived at it, and her Petition was not
presented in collusion with the Appellant.

p. 1/2

G 5. The Appellant, by his Answer and Cross-
Petition; asserted that he had always lived
with the Respondent; denied that he had gone
through a ceremony of Muslim marriage with
Mariana Jallow on the 31st March, 1966;
asserted that he was not guilty of the adultery
alleged against him; and, cross-petitioned for
a decree of restitution of conjugal rights.

p. 8/9

H 6. Mariana Jallow, who was referred to in
the proceedings as the Co-Respondent, also
filed an answer to the Respondent's Petition.
She denied that the Appellant had gone through

p. 10/11

RECORD

a ceremony of Muslim marriage on the 31st March, 1966 and she denied adultery.

- p.13.1.2 7. The Respondent, in evidence, said that she married the Appellant at Trinity Methodist Chapel, Grove Street, Liverpool. The marriage was solemnised according to Christian rites by a minister of the Church. After the marriage she had lived with the Appellant at various addresses in England and finally at 2, Cameron Street, Bathurst. Since July, 1966, the Appellant had lived at 11A, Cotton Street, with Mariana Jallow; the Respondent had seen Mariana Jallow for the first time in July, 1966, this being at 11A Cotton Street, and she had seen the Appellant and Mariana Jallow there in October, 1966. In March, 1966 she learnt from her children that the Appellant had taken a woman to Dakar. In cross-examination she denied that she had consented to the Appellant travelling to Dakar with Mariana Jallow. Her domicil prior to marriage was Jamaica, where she knew of no Muslims. She had been a Baptist but changed to Methodist because the Appellant was a Methodist. So far as she was concerned the Appellant was a Christian at the time of the marriage and still remained a Christian.
- p.13.1.6 A
- p.13.1.18 B
- p.14.1.8 D
- p.16.1.1 E
- p.15.1.15 E
8. Among other witnesses for the Respondent were the following:
- a) Mrs. McLunis Biggerstaff, who was the Respondent's mother and said she lived with her at 2 Cameron Street. She had attended the marriage ceremony in Liverpool. The Appellant had never said that he was anything than a Christian. She had never seen the Appellant pray or do anything as a Muslim.
- p.16.1.27 F
- G
- b) Momodou Lamin Bah, who said he was the Imam of Bathurst and the Appellant's brother. The Appellant and Mariana Jallow were husband and wife. In cross-examination he said he had performed the marriage ceremony, on the 7th April, 1966, assuming the Appellant to be Muslim.
- p.17.1.25 H
- p.17.1.33

	Before doing so he had asked the Appellant if his wife accepted a second Muslim marriage to another woman, and the Appellant had said that she did. In	<u>RECORD</u> p.17.1.25
A	re-examination he said that it was not until the hearing of the case that he knew where the Appellant and Respondent were married.	p.18.1.10
B	9. The Appellant, in evidence, said that at the time of the Petition he was living at 2, Cameron Street and he still had his chambers there. He left the Gambia in 1946 to study in the United Kingdom, where he met the Respondent's family and, later, the Respondent herself. At the time of the marriage the Respondent was not particularly religious, although he knew she was a Baptist. Around	p.20.1.27
C	December, 1956, he became serious about Islam and reverted to it. Prior to that time he had practised Christianity. From July to September, 1954 he visited the Gambia with the Respondent, and then returned to England. In 1960 he performed a pilgrimage to Mecca and in March, 1964 he returned to the Gambia, with his children, for good. Later the Respondent joined him, but she did not like the Gambia and wanted to return to England. He did not wish his children to return to England; they were Muslims all being born at a time when he was a Muslim. This was when the trouble started. He told the Respondent that she could remain his legal wife, if she returned to England, while he could take another legal wife to care for the children.	p.21.1.10
D	He suggested to the Respondent that he should marry Mariana Jallow, whom the Respondent met on several occasions, and the Respondent agreed. Mariana Jallow's father visited the Respondent and satisfied himself that she agreed to the second marriage. The Islamic marriage to Mariana Jallow was solemnised on the 7th April, 1966, the Imam being told, in the Respondent's presence, that she consented. He (the Appellant) interpreted. During April	p.24.1.32
E	he suggested to the Respondent that they should visit Dakar with some of the children. The	p.27.1.7
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p.23.1.7

Respondent was unable to go, but consented to Mariana Jallow going with him. In Dakar he and Mariana Jallow occupied different rooms, and there was no adultery there or elsewhere.

He had no right to consummate the second marriage without Mariana Jallow's consent

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because he had not paid the dowry. Mariana Jallow moved to 11A, Cotton Street and he used this address as an office, returning to Cameron Street to sleep. In July, 1966, there was

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trouble between himself and the Respondent concerning the religion of the children; the Respondent had taken them to Church and had them christened, and an application was made to Court (this was after the date of presentation of the Petition). On returning home the

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p.23.1.27

Respondent charged him with refusing to send her back to England and committing bigamy with Mariana Jallow. He left the matrimonial home and when he returned he found the Respondent had wrecked his office.

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p.24.1.19

10. In cross-examination the Appellant said that he reverted to Islam in December, 1957. There had been no adultery up to the time of the filing of the Petition, but the second marriage had been consummated since then, and

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p.26.1.38

Mariana Jallow was now pregnant. She had had three children previously and he did not know if her present pregnancy was with his child, but she was not the type of woman to have anything to do with another man. The tenancy of 11A Cotton Street was in his name and Mariana Jallow moved there a week after the marriage.

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p.25.1.18

11. Among other witnesses for the Appellant were the following:

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p.27/28

a) Ahmed Tejan McCauley, who said he was the step-father of Mariana Jallow. The Appellant had visited him in March, 1966, wanting to marry her. The witness had said it was not possible because the Appellant already had a wife. The Appellant had stated that his wife had consented. The witness therefore visited

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	the Respondent in company with the Appellant, and had been introduced as the father 'of the girl I told you about'. The Respondent had said that she had given her consent; that she wanted to go home, and, that the Appellant ought to get someone to look after the children.	<u>RECORD</u> p.72.1.20
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	b) Bakary N'Dong and Marie Cham both of whom spoke of the Respondent, in an angry mood, wrecking the Appellant's office on the 4th July, 1966.	p.28/29
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	c) Inspector John Herbert Thomas, who said that on the 11th July the Appellant came to the police for help. The witness went to 2 Cameron Street and found the Appellant and Respondent in heated argument. The Respondent was refusing to allow the Appellant to sleep in the house, and accusing the Appellant of 'being after Mariana's estate'. In cross-examination the witness said that the Respondent was accused the Appellant of marrying a second wife, and that the Appellant did not dispute this.	p.50.1.24 p.30.1.31
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	12. Mariana Jallow said that she married the Appellant on the 7th April, 1966 and moved to 11A Cotton Street two days later. She visited Dakar with the Appellant and three of his children from the 14th to the 17th April, but they occupied separate rooms. They lived together as man and wife. The Respondent did not know her until after the marriage. In cross-examination she agreed that she was pregnant but said she did not know when she became pregnant.	p.31.1.9 p.31.1.11 p.31.1.14
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	13. The learned Chief Justice, dealing with the evidence found the following facts established. The Respondent, for all purposes, regarded the Appellant as a Christian she stood by her Christian marriage. She frequently asked to return to England, thus demonstrating that, contrary to the Appellant's evidence, she never intended to abide by	p.39.1.17 p.40.1.23
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p.41.1.23
p.41.1.32

Muslim Law. Her desire to return to England coupled with her violent reaction to the second marriage also demonstrated that she never consented to the Appellant's second marriage. Wiseham, C.J., noted the admission by Mariana Jallow that she was married to the Appellant by Muslim rites and lived with him as man and wife. He rejected the evidence that the Respondent had consented to the Appellant going to Dakar with Mariana Jallow and he rejected entirely the evidence of Tejan McCauley. He also rejected the Appellant's evidence that there had been no sexual intercourse in Dakar and found, as a matter of inference, that there had been sexual intercourse there. His Lordship held that the marriage was monogamous and remained so, and that the Respondent never had any intention of following the Appellant's reversion to Islam. He found adultery proved and he found also that there had been no consent thereto or connivance thereat or condonation thereof. He pronounced a decree nisi. It would appear that no order was ever made on the Appellant's cross-prayer

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p.46.1.30
p.41.1.20

p.40.1.34

p.42.1.12
p.42.1.14

p.51/52C

14. The judgment of the Court of Appeal was given by Ames P., with whom Dove-Edwin and Marcus-Jones, JJ.A., agreed. The learned President said it had been argued that the admission by Mariana Jallow was evidence against her alone and that the learned Chief Justice had failed to direct himself as to the need for corroboration. There was no substance in this argument. The learned Chief Justice had not expressly referred to this point but it was clearly before him and not overlooked, because it was raised in the written argument the Appellant had submitted to the Court. In any event, there was ample corroboration because the Appellant had, in effect, admitted that Mariana Jallow was pregnant by him. Ames, P., after rejecting other submissions by the Appellant then turned to what appeared to be the main contention of the Appellant. This was that, having contracted a monogamous marriage, he had, by his subsequent reversion to Islam, taken the Respondent with him into

p.51.1.32

p.52.1.33

p.52A.1.13

p.52A.1.17

A the Islamic faith, thereby changing her status
to that of a Mohammedan wife who was unable to
complain upon the Appellant taking a second
Mohammedan wife. The learned President said
that the Appellant had placed reliance upon
Attorney-General for Ceylon v. Reid (1965)
L.C. 720. That case, however, raised the
question as to whether the offence of bigamy
was committed when a man, after contracting a
B monogamous Christian marriage, which still
subsisted, and later embracing Mohammedanism,
contracted a second Islamic marriage. What
was not in controversy in Reid's case was that
C the first wife, if she so desired, could treat
the second marriage as an adulterous association
by her husband upon which she could found a
petition for divorce. If the Respondent had
followed the Appellant into the Islamic faith
D it might be the case that she could not treat
the second marriage as an adulterous
association, but, in the learned President's
opinion, agreeing with the finding of the
Chief Justice, she had not so followed the
Appellant and, so far as she was concerned,
E the second marriage was an adulterous
association. He would therefore dismiss the
appeal.

p.52.1.19

p.52.1.21

F The Respondent respectfully submits that,
on the evidence, the learned Chief Justice,
in the Supreme Court, and the learned
President, in the Court of Appeal, were fully
entitled to hold that the Respondent had not
followed the Appellant in his conversion to
Islam. Further, if their Lordships,
G respectively, erred in accepting the evidence
of the Respondent on this score, the evidence
of the Appellant, at best, did no more than
show that the Respondent accepted the reversion
of the Appellant to Islam. In the premises,
H it is submitted, the learned President was
correct in finding that the Respondent was
entitled to stand by her Christian marriage
and treat the Appellant's second, Islamic
marriage, as an adulterous association. There
I was, it is submitted, ample evidence to support
the concurrent findings in the Courts below

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that there had been sexual intercourse between the Appellant and Mariana Jallow, and that the Respondent had not connived at, consented to, or condoned the same. The Respondent therefore respectfully submits that the decision of the Court of Appeal ought to be affirmed, the cross-prayer of the Appellant for restitution of conjugal rights rejected, and the appeal dismissed, with costs, for the following, among other

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REASONS

1. BECAUSE the Respondent had contracted a Christian, monogamous marriage; and during the subsistence of the marriage, the Appellant had had sexual intercourse with another woman. C
2. BECAUSE the Respondent neither embracing Islam herself or otherwise, had not consented to, or condoned, or connived at the adulterous association between the Appellant and Mariana Jallow. D
3. BECAUSE the decision of the Court of Appeal was right and ought to be affirmed.

GERALD DAVIES

