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ABSRACT

Each country has its own culture, which regulates inter-personal relationship in the field of family law. Nevertheless, there is a need for the unification and codification of rules of conflict of laws relating to matrimonial matters so as to discourage forum shopping and thereby prevent limping marriages.

This paper attempts to analyse the term limping marriage, how limping marriages have been reduced under common law and also analyses mutation and conversion of marriage in conflict of laws.

1. INTRODUCTION

The term “limping marriage” developed as a result of marriages being recognised in one country and not in another and so a subsequent Divorce could be recognised in some countries but not in others.

A situation where a court of one country doesn’t recognize the annulment of a marriage, but it is recognized in the court of a foreign country where it was granted is referred to as a Limping Marriage.

This is seen in the case of Padolecchia v. Padolecchia [[1]](#footnote-1) domiciled In Italy, married there in 1943 and later obtained a divorce in Mexico. This was not recognized in Italy. He went to live in Denmark and on a one-day visit to England succeeded in marrying W, domiciled in Denmark; they both returned to Denmark. H petitioned for a decree of nullity in respect of this marriage, alleging that at the time he was still married to his first wife. Danish law was unclear as to whether he had capacity.

The court held that since by the law of his Italian domicile the husband lacked capacity, the English ceremony was bigamous and void. The dual domicile test was applied here.

A situation where the Nigerian court doesn’t recognize the degree of annulment or dissolution but the degree is recognized in a foreign country where it was granted is what is being referred to as a Limping Marriage.

At common law, limping marriages have been reduced due to the test of ‘real and substantial connection’. In the case of Indyka v. Indyka[[2]](#footnote-2)- An English court should recognise a divorce decree granted in a foreign country where there was a real and substantial connection between the petitioner for the divorce and the country exercising the jurisdiction.

Lord Wilberforce said: ‘In my opinion, it would be in accordance with the developments I have mentioned and with the trend of legislation, mainly our own but also that of other countries with similar social systems to recognise divorces given to wives by the courts of their residence wherever a ‘real and substantial connection’ is shown between the petitioner and the country, or territory, exercising jurisdiction.’

2. MUTATION / CONVERSION OF MARRIAGE IN CONFLICT OF LAWS

Courts have consistently held that parties to a polygamous or a potentially polygamous union cannot seek matrimonial relief from the common law. Lord Penzance wrote in Hyde v. Hyde [[3]](#footnote-3)conceive that marriage as understood in Christendom, may for this

purpose be defined as the voluntary union for life of one man and one woman, to the exclusion of all others. Now it is obvious that the matrimonial law of this country is adapted to the Christian marriage, and it is wholly inapplicable to polygamy. We have in England no law framed on the scale of polygamy, or adjusted to its requirements... so This court does not profess to decide upon the rights of succession or legitimacy which it might be proper to accord to the issue of the polygamous unions, nor upon the rights or obligations in relation to third persons which people living under the sanction of such unions may have created for themselves. All that is intended to be here decided is that as

between each other they are not entitled to the remedies, the adjudication, or the relief of the matrimonial law of England.’

At one stage it was thought that a marriage was characterized immutably as at its inception but in recent years it has been conceded that the character of a marriage may be changed from polygamous to monogamous, these are cases of mutation and they are usually by change of domicile. In cases where such a mutation was recognised as in Cheni v. Cheni[[4]](#footnote-4) - the change was in accordance with the law of the place of celebration itself. In this case, the parties were Sephardic Jews domiciled in Egypt. They went through a ceremony of marriage in Jewish form in Cairo in 1924. The husband was the wife’s maternal uncle. By both Jewish and Egyptian law, the marriage was potentially polygamous in the sense that polygamy was only allowed if after 10 years of marriage the wife could not have children, and subject to the approval of both the first wife and the Rabbinical court. In 1926 a child was bom and in 1957 the couple came to England and acquired a domicile there. Some years later, the wife petitioned for a decree of nullity on the ground of the couple being within the prohibited decrees of relationship . The husband argued that the English court had no jurisdiction because the marriage was potentially polygamous and the then machinery of the English matrimonial law was inappropriate and unavailable.

Regarding the issue of polygamy, Sir Jocelyn Simon P. held that although the marriage was potentially polygamous at its inception, the birth of the child rendered it polygamous. He further held that decisive date at which the nature of a marriage would be considered was the date of the inception of the proceedings and not the date of the marriage. Accordingly, the court assumed jurisdiction. Thus, the rule established in this case is that a polygamous marriage may change in nature to become monogamous. The decisive moment is that of the commencement of the proceedings, provided that the marriage is initially valid.

In the case of Parkasho v. Singh[[5]](#footnote-5) - The principle or rule that the English court will not grant matrimonial relief in polygamous and potentially polygamy unions was stated.

In Ali v. Ali[[6]](#footnote-6) - the husband was born in India. At the age of 24 he came to England, obtaining a job and living permanently there. Four years later he returned to India where he married an Indian wife chosen by his father. The ceremony took place according to the rites of the Muslim faith which was the religion of both parties. By Muslim law the husband was permitted to take further wives. The marriage was therefore potentially polygamous at its inception. The husband left for England shortly after the marriage and resumed his employment there. The learned judge Cumming-Bruce, J. decided that by the middle of 1961 he had acquired a domicile of choice in England. The wife followed and cohabited with her husband in England. In 1959 the husband applied for British nationality and in the same year a child was born to the parties, Shortly thereafter the wife left the matrimonial home with the child and returned to India. In 1960 the husband obtained a British passport, continuing to live permanently in England. In 1964 he began living with a woman and a child was born of this relationship. In 1963 the husband petitioned for divorce on the ground of desertion. The wife denied desertion and alleged cruelty. She also alleged that the Court had no jurisdiction on the ground that the marriage was polygamous.

In 1964, when the husband committed adultery, the wife cross-petitioned for a dissolution of the marriage on this ground.

The suits were heard by Cumming-Bruce, J. who held that the Court could not exercise jurisdiction in respect of the offences of desertion and cruelty because they took place, if at all, at a time when the marriage was still polygamous. However, the learned judge granted the wife a decree nisi on the ground of adultery as this offence took place after the character of the marriage had been rendered monogamous by the acquisition of an English domicile of choice by the husband.

It can be drawn from the case of Ali v. Ali that the principle that the lex loci celebrationis immutably determines the character of a marriage has been displaced in favour of a limited recognition of the relevance of lex domicile in this context. The concept of change of domicile affecting the status of parties to a marriage is simply one example of the general principle that the nature of a marriage may be altered by change of circumstances. Other examples are change by religious conversion to monogamous faith and by act of state proscribing polygamy.

CONCLUSION

This paper is an attempt on limping marriage

and convertible marriage which is the mutation or conversion of marriage Limping marriage which can be described as the scandal which arises when a man and woman are held to be husband and wife in one country but strangers in another country [[7]](#footnote-7) and convertible marriage meaning the conversion of polygamous marriage or a potentially polygamous marriage to a monogamous marriage.

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2. (1959) 1 AC .53 [↑](#footnote-ref-2)
3. (1866) LR 1 P&D 130 [↑](#footnote-ref-3)
4. (1965) p.85 [↑](#footnote-ref-4)
5. (1967) 1 All E.R. 737 [↑](#footnote-ref-5)
6. (1966) 1 ALL E.R. 664 [↑](#footnote-ref-6)
7. Per Lord Penzance in Wilson v. Wilson (1872) L.R P&D 435 at 442. [↑](#footnote-ref-7)