

IN THE HIGH COURT OF JUSTICE FEDERATION OF SAINT CHRISTOPHER AND NEVIS

SAINT CHRISTOPHER CIRCUIT A. D. 1995

DIVORCE SUIT NO. 17 OF 1994 BETWEEN:

JOHNDY ANTHONY MYERS

PETITIONER

AND

ADMOREE MOLINE MYERS

RESPONDENT

Appearances: Messrs. Bryant and Liburd for the Petitioner (June 16, 2, L 1995)

DECISION

VELMA L. HYLTON, Q.C. J

) I

The Petitioner and Respondent were both born and married in St. Vincent and the Grenadines is therefore their Domicil of Origin.

In the Petition presented on 8th June, 1994 the Petitioner gives his domicile as St. Kitts and Nevis and that of his Wife the Respondent as St. Vincent even though she works in the United States of America and he works in St. Kitts. The first issue in this regard is that a Wife has the same domicile as her

husband while the marriage subsists and even afterwards until she reverts to her domicile of origin or acquires a domicile of choice.

Consequently if the Petitioner's Domicil of choice is St. Kitts that of his Wife would on a balance of probabilities at least also be St. Kitts.

In his evidence the Petitioner said "I am domiciled in St. Kitts and Nevis I acquired domicile by choice. Respondent is domiciled in St. Vincent. I have been living here 4 years and 2 months.

I recall 15th April, 1991 I moved to St. Kitts. I moved here to work in the Royal St. Kitts and Nevis Police Force" prior to this he had testified that he now works at the Eastern Caribbean Central Bank.

I asked Counsel for the Petitioner to advise the Court how the Petitioner acquired this domicile of choice and adjourned for this purpose. On the adjourned date Counsel addressed the Court as follows:-

"The Petitioner was born in St. Vincent. (He) left St. Vincent a little over 4 years ago to come to St. Kitts to work as a Police Officer. He has lived here for last 4 years and 2 months. Lives in rented premises by himself at Bird Rock. (He) is employed as Security Officer at Eastern Caribbean Central Bank'.

When Petitioner came to St. Kitts he came with intention of living here indefinitely. He is even a registered voter and at present his present intention is to make here his home. In the circumstances I humbly submit that the Petitioner has established domicile for purposes of this Petition.

Counsel has said more than the Petitioner said and I am required to decide not on the address of Counsel but on the evidence adduced before me and the reasonable inferences therefrom.

Rayden on Divorce - Part 1 Fourth Edition paragraph 16 Change of domicile provides as follows:

"Any person not under disability may, at any time, acquire a new domicile by residing in another country with the intention of continuing to reside there for an indefinite time coupled with the absence of genuine intention of returning to reside permanently in the country in which he was hitherto domiciled: the word 'indefinite' in its ordinary meaning covers the position in which a person intends to reside in a given country for the time being without limit of time, but has not yet any intention as to the more distant future. In this context, residence only means personal presence in a locality, and, if accompanied by the required state of mind, neither its character nor its duration is material; to constitute an animus manendi, a settled purpose is necessary of making the principal or sole permanent home in the country of residence. There must be an

intention to settle in one particular country; a particular choice must be made and

residence there effected with the necessary intention: residence without the necessary intention is not enough. If the foregoing requirements are satisfied, the motive for

the change of domicile is irrelevant: so a man is entitled to change his domicile in order to be able to obtain a divorce in the courts of his new domicile. No man can have more than one domicile; so that once a new domicile is acquired, an intention also to retain the old one is nugatory. A domicile of origin is not lost until a domicile of choice is acquired: a domicile of choice may be abandoned without acquiring another domicile of choice, in which case the domicile of origin revives until a new domicile of choice, if any, is acquired.

*A man may change his domicil as often as he
pleases".*

Underlining mine for emphasis.

Lord Scarman in "In the **Estate of Fuld (dec'd) (No.3) (1966)**

2 W.L.R. at p.726 applied the standard of proof on a balance of probabilities in determining a Domicil of Choice and **Megarry J in Re Flynn (dec'd) (1968) 1 A.E.R. 49** agreed with this, subject to the overriding consideration that "so serious a matter as the acquisition of a domicil of choice (or for that matter I think the abandonment of a domicile is not to be lightly inferred from slight indications or casual words"

I am cognizant of the fact that a man may change his domicil in order to be able to obtain a divorce in the Courts of his new domicil but on the evidence of the Petitioner I am not satisfied on a balance of probabilities that he had acquired a domicil of choice in St. Kitts and Nevis and the Petition is therefore dismissed.

21st June, 1995

Velma L. Hylton, Q.C.

Puisne Judge