Case No: B4/2008/1488

Neutral Citation Number: [2008] EWCA Civ 1548
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE PRINCIPAL REGISTRY OF THE FAMILY DIVISION
(MR JUSTICE MUNBY)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday, 17th December 2008

Before:

LORD JUSTICE WARD
and
LORD JUSTICE AIKENS

Between:

SEIDEN **Applicant**

- and -

FULARON **Respondent**

- -

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THE APPLICANT APPEARED IN PERSON.

Mr D Merrigan (instructed by Ronald Fletcher & Co) appeared on behalf of the **Respondent**.

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Judgment

Lord Justice Ward:

1. This is an application being brought by Mr Seiden for permission to appeal against the grant of a *decree nisi* of nullity pronounced by Munby J on 26 June 2006. The application is, I regret to say, wholly misconceived, but working one's way through the procedural morass is not an easy task and Mr Seiden is not to be blamed for not understanding the procedure.

2. What has happened in this very sad case is this: the parties went through a ceremony of marriage on 10 November 1991. They lived together but the relationship broke down and the applicant, Mr Seiden, petitioned for divorce and was granted a *decree nisi* of divorce on 27 April 2005. That decree was made absolute on 9 June 2005. By then, proceedings for ancillary relief were under way, and in the course of his enquiries, hoping to find, no doubt, that the respondent possessed funds in the Philippines (which is the land of her birth) he discovered instead to his surprise that she had been married in the Philippines. He therefore made an application on 15 August 2005 in which he asked for the decree absolute of divorce to be set aside; for the *decree nisi* to be rescinded; and by paragraph 4 sought an order that:

> "The marriage of the petitioner and the respondent be declared void on the ground of the respondent's bigamy and a decree of nullity be granted."

3. On 9 November 2005 he made a further application that, in the event of the divorce being set aside, he had permission to amend the petition in accordance with the draft annexed to that application. That draft is a perfectly conventional draft. It was exhibited to his affidavit sworn on 11 November, and by that draft he sought to amend, deleting the allegation that they were lawfully married and substituting the fact that they went through a ceremony of marriage and seeking, in perfectly conventional form, a decree of nullity on the grounds of the respondent's bigamy.

4. That application was heard by Mr Andrew Moylan QC, sitting then as a deputy judge of the High Court. He duly set aside the divorce decrees, granted leave to amend the petition, but dispensed with the service of that amended petition and all other requirements, and ordered by paragraph 4 of that order, as it was amended:

> "Upon the court being satisfied that the petitioner has sufficiently proved the contents of the petition and is entitled to a decree
>
> The suit be listed for pronouncement of decree nullity in open court on Monday 26 June at 10:30 at the Royal Courts of Justice."

5. In his judgment, which, it should be said, followed a four-day hearing when the parties appeared in person, Mr Moylan was satisfied that it was proper to give leave to amend and he expressed himself satisfied that the grounds had

been duly established. As was perfectly appropriate, this grant of the decree had to be listed because it is a formal step and it needs to be pronounced in open court. There was not time for that listing to be effective, it seems, at the conclusion of that hearing.

6. So, on Monday 26 June, it apparently came before Munby J. It is true to say that what happened on 26 June is somewhat shrouded in mystery so far as the documents before me reveal. When the court opened, the short transcript of the proceedings records the judge running down the list to ascertain how effective or ineffective the cases were. He asked whether anyone was in the matrimonial cause called Seiden v Seiden. There was no response. The judge began hearing other matters. At 10.20 am he observed:

> "The first case is said to be a pronouncement of *decree nisi* in a case called *Seiden v Seiden*. I have got no papers, no file; I am baffled as to why the pronouncement of a *decree* should be in front of a High Court Judge. Could you check it up because presumably somebody somewhere is expecting their decree through. Perhaps if you would check that out?"

7. And that is all that we have on the transcript placed before us. Something else must have, however, have happened because a *decree nisi* of nullity was drawn by the court as a matter which had come before Munby J on that day. Also in the papers before me is the Certificate of Satisfaction the judge granted under s.41 of the Matrimonial Causes Act dealing with the children of the family.

8. Next followed an application by Mr Seiden to appeal another provision of the order of Mr Moylan, which dismissed the petitioner's application for an order striking out the respondent's application for ancillary relief. That was dismissed by Wilson LJ on 14 November. In the course of that judgment, Wilson LJ referred to the proceedings before Mr Moylan, observing that: "I believe it [that is to say the decree nisi of nullity] was so pronounced on 26 June." The decree of nullity was made absolute on 14 December. My recollection is that Kirkwood J allowed Mr Seiden to inspect the court file in order to get a copy of the *decree nisi*. Whether that is accurate or not matters not a jot. The decree was made absolute on 12 December.

9. The insuperable difficulty facing Mr Seiden is this: he cannot appeal against the *decree nisi* because that decree has been made absolute. It is not possible to appeal a *decree nisi* that has been made absolute. He cannot appeal the decree absolute nor has he in fact sought to do so, it has to be said, but he cannot do that and appeal to this court because section 18(1)(d) of the Supreme Court Act 1981 provides:

> "No appeal shall lie to the Court of Appeal:
>
> …

> from a decree absolute of divorce or nullity of marriage, by a party who, having had time and opportunity to appeal from the decree nisi on which that decree was founded, has not appealed from the decree nisi."

10. The Rules provide by 2.4(2) that the appropriate way to proceed is to seek a rehearing from the judge who granted the *decree nisi* for a declaration that he did not have the time or the opportunity to appeal from the *decree nisi*. I do not want to pre-empt any application that may be made but I do emphasise again that Wilson LJ made it perfectly plain in November that a decree had been granted. Mr Seiden was perfectly well aware by then of the fact that a decree had been granted. He and no-one else, presumably, applied for the decree to be made absolute. If he does apply it may be he has a hugely difficult road to climb.

11. Those facts therefore render this application utterly hopeless. There is another matter which we have not even addressed, and that is his delay for nearly two years to the day between 26 June 2006 and 25 June 2008, which is the date on which he sought to bring this appeal. There is no good explanation for that delay. All in all it is utterly without merit and must be dismissed.

12. But can I just say this, for the third time, in the hope that the court time is not wasted by a useless application to set aside the *decree nisi* and it is this (I will say it slowly for Mr Seiden to try and understand it): he has many complaints about the conduct of the respondent in the course of her deception of him and her entry into this bigamous marriage; he has the opportunity to voice those complaints when the ancillary relief hearing is heard and determined on a date, I believe, set for 13 January. It is to the judge dealing with the ancillary relief claims that he must address his anger, his bitterness and his deep sense of injustice. It is to that court and only that court that he should make those complaints. Whether he will succeed or not, I do not know, but it is there that he should look. He could refer to the case of S-T v J [1998] Fam 103 as an example of how to put those matters before the court. That said, this is hopeless and I dismiss the application.

Lord Justice Aikens:

13. I agree.

Order: Application refused