18-8-89

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

BEFORE THE HON. THE CHIEF JUSTICE

ON 18TH AUGUST, 1989 CAUSE D 65 OF 1989

BETWEEN	MERLENE McLEAN	PETITIONER
AND	EDGAR McLEAN	RESPONDENT

Mr. D. Murray of Truman Bodden & Co. for the Petitioner
The Respondent not present nor represented

COLLETT C.J. **REASONS FOR JUDGMENT**

This is a petition by a wife alleging that her marriage is void by reason of her being under the age at which capacity to marry is conferred by the Cayman Islands Law at the date of her marriage to the Respondent. Section 3 (2) of the Marriage Law (Cap.92) renders void a marriage solemnized in the Cayman Islands between persons either of whom was at the time under the age of 16 years and the evidence clearly establishes that the Petitioner here was only 15 years and 3 months old when she married the Respondent on 13th April, 1985.

Section 12 of the Matrimonial Causes Law provides that the effect of a decree of nullity in respect of a void marriage is declaratory that no marriage every existed and the ceremony thereof was void ab initio. I am satisfied on the evidence that such a decree must be pronounced in this case.

The situation is complicated by the birth of a child to the Petitioner after the ceremony of marriage in this case, the Respondent being the father. At common law such a child of a void marriage is considered illegitimate and it is unfortunate that the Legislature here has taken no action such as has been taken in the United Kingdom to ameliorate that rule of common law here in favour of the child.

However, section 21 of the Matrimonial Causes Law does not in terms except decrees of nullity ab initio of any marriage from the enabling provisions which otherwise empower this Court to make orders concerning the custody care and control of "children of the marriage" or for periodic payments to be made for the benefit of such a child. Is the child in this case to be considered 'a child of the marriage' within the meaning of this section even although the marriage is declared never to legally have existed? Two constructions of this particular section are possible, but in my view the proper one for this Court to adopt in the absence on any reliable guide to which of them is correct is that which would be most beneficial to the children concerned, namely, that "child of the marriage" includes a child of the 'marriage' which is the subject matter of the proceedings even if it is declared to have been void ab initio under S.12 (1) and thus never in law existed.

Therefore, I hold that the Court has jurisdiction to make ancillary relief orders in this suit under S 21 even although S 12(5) does not require the postponement of a decree to be made under s. 12 (1) pending the settlement of all ancillary matters between the parties as it does in regard to other decrees.

Accordingly in the result, the decision is as follows:-

1. I pronounce a decree of nullity of marriage pursuant to section 12 (1) of the Matrimonial Causes Law by declaring that the marriage of the petitioner and Respondent was void ab initio;

2. I award custody care and control of the child, Kimberlee Moreta, to the Petitioner, reasonable access to the Respondent.

3. I adjourn the claim by the Petitioner for maintenance for the support of the said child from the Respondent into Chambers.

4. The Respondent must pay the Petitfoner her costs of suit.

Dated the 18th day of August, 1989.

CHIEF JUSTICE.