

HJB (formerly LJB) v. MK deceased

### Judgement

1. Earlier today I gave my ruling that HJB(formerly LJB) (“the Applicant”) was lawfully married to MK(“the deceased”) at the date of the latter’s death.
2. The facts of this case are unusual:
  - a) the Applicant and the deceased started to cohabit in about 1987 and initially the deceased had a name MIC which in 1988 he changed to MIK.
  - b) there can be no doubt that the marriage of LJB and MIK was valid at its inception on 29<sup>th</sup> July 1989. At the time he was a 24 year old bachelor and she an 18 year old spinster (the marriage certificate is at A11 and a typed version at B9 in the bundle).
  - c) There is a potential dispute which is irrelevant to my decision as to whether they lived together or the marriage was not consummated as the deceased said in a Will made in March 2011 or whether, as the Applicant now says, they separated within 3 weeks of the marriage. They certainly did not live together after the end of August 1989 and indeed they appear to have lost touch with each other until he contacted her in or about 1990. She says that was a “one off” occasion and she never heard from him after that.
  - d) On 27<sup>th</sup> March 1996 the Applicant changed her name by Deed Poll from LJB to HJB (B14). By this time she had lost contact with the deceased.
  - e) On 9<sup>th</sup> October 2008 an Interim Gender recognition certificate was issued to the deceased named as MIC and currently known as MK(A 17). I will now refer to the deceased as “she/her.”
  - f) In January 2009, 19 ½ years after the marriage the deceased commenced divorce proceedings based on 5 years separation.
  - g) In February 2009 the deceased filed the interim gender recognition certificate and sought to amend the petition to allege the marriage was voidable under section 12(g) of the Matrimonial Causes Act 1973 which says the marriage is voidable where “an interim gender recognition certificate under the Gender Recognition Act 2004 has been issued to either party to the marriage.”
  - h) In September 2010 service of the amended petition on the Applicant was dispensed with on the ground the Applicant could not be found.
  - i) On 16<sup>th</sup> March 2011 the deceased made a Will (B 20 – 24) in which she referred to her marital status as being “married to LJB.”
  - j) On 23<sup>rd</sup> May 2011 the deceased was granted a decree nisi. The document clearly states “This is Not the Final Decree” and also “Application for this decree to be made absolute must be made not earlier than 6 weeks from the above date.
  - k) On the 5<sup>th</sup> July 2011, the first possible day being 6 weeks and a day after the decree nisi, the deceased applied for the decree to be made Absolute

- l) On 16<sup>th</sup> July 2011 the deceased died in hospital after an operation in the United States of America. There is ongoing litigation in America arising out of the death. The death certificate (A 59) states she was “divorced from marriage.”
  - m) The decree was made absolute on 2<sup>nd</sup> August 2011, some 17 days after the deceased had died.
  - n) In the summer of 2016 arising out of the litigation which was ongoing in America two private detectives contacted the Applicant who was ignorant of all the facts set out in 2(d-k hereof) and informed her of the fact of the deceased’s death and the ongoing litigation. That fact prompted this application.
3. The Applicant as I have already said had no idea what had happened to her husband between 1990 and 2011 when she died until 2016. The deceased was the one aware in 2009 – 2011 that they were still married as was stated in her Will and she was in rather slow and infrequent contact with the Court to progress her divorce/annulment. It is quite likely at the time the deceased died she considered she was divorced because she had made the application for the decree to be made absolute 11 days before the date of death but the process had not been completed by the date of her death. Accordingly, I find that the marriage was valid at its inception and that the Applicant was still married to the deceased on the date of the death and she is entitled therefore to a declaration that the marriage subsisted on the 16<sup>th</sup> July 2011 which was the date of the deceased’s death.
4. I have been asked to consider giving leave for publication of this judgement. I am satisfied from Ms. Syme’s well researched note that whilst these cases are fact specific it has been difficult to find any case exactly on the point and I am satisfied that publication of an anonymised version of this Judgement would be in the public interest. I have not allowed for the costs thereof as this judgement is in written form and can be used for that purpose.

Judith Hughes QC  
Circuit Judge  
19.05.17

Suzanne Syme (instructed by Setfords Solicitors) for the Applicant  
Personal Representatives of MK (instructed by Harcus Sinclair LLP for the Respondent