

HONG KONG / JUDGMENT

L v. E

COURT

Family Court

DECIDED

6 August 2007

CASE / FILE NUMBER

FCMP172/2006

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj FCMP 172 / 2006 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MISCELLANEOUS PROCEEDINGS NUMBER 172 OF 2006

BETWEEN L Petitioner and E Respondent

Coram : Deputy District Judge T Chan in Chambers Date of Hearing : 30 May 2007 Final
Submissions : 26 July 2007 Date of Judgment : 6 August 2007

J U D G M E N T

-
1. By an Originating Summons dated 21 September 2006, the Applicant husband seeks a declaration from this Court that a validated marriage pursuant to sections 8 and 9 (3) of the Marriage Reform Ordinance subsists between him and the Respondent wife herein. The parties would be referred to as Applicant and Respondent respectively.

Background

2. The Applicant is now 66 years old while the Respondent is 56. Parties had been living together since 1968. Out of the relationship 4 children were born in the 70s . The Applicant left the Respondent and the children in or about 1995. The case of the Applicant is that the marriage between them is a validated marriage pursuant to s.8 of Cap 178 as there had been ceremonies carried out accordingly. He therefore seeks a declaration from the Court to that effect. It is his intention that a petition for divorce would be issued and he will make subsequent application for ancillary relief against the Respondent. The application is opposed by the Respondent who maintains that no celebration of marriage had ever taken place as alleged by the Applicant or at all. The Law

3. The validity and validation of marriages is provided in the Marriage Reform Ordinance (Cap 178) : Section 8: Subject to section 14, every marriage celebrated in Hong Kong before the appointed day as a modern marriage by a man and a woman each of whom, at the time of the marriage, was not less than 16 years of age and was not married to any other person shall be a valid marriage, and shall be deemed to have been valid since the time of celebration, notwithstanding
 - (a) that the proper personal law and religion of the parties, or one of them, was Chinese law and custom, and the marriage was prohibited by or failed to comply with the requirements of Chinese law and custom; or
 - (b) that the marriage was not under and in accordance with the Marriage Ordinance (Cap 181) . Section 2 Modern marriage quirements:
 - (a) the marriage was celebrated in Hong Kong by open ceremony and in the presence of 2 or more witnesses;
 - (b) such celebration took place before 7th October 1971;
 - (c) at the material time the parties, a man and a woman, were not less than 16 years of age; and
 - (d) neither of the parties was married to any other person. The Applicant s Case
5. The Applicant s case is that the marriage was celebrated on 15 November 1968 in Hong Kong by open ceremony. There was first ancestor worshipping in the morning in front of relatives and followed by a banquet attended by relatives and friends in the evening. The Applicant gave evidence and called two witnesses, Wing and Cheong on this. The Respondent s Case
6. The Respondent s case is that there was no ceremony to celebrate any marriage, and they were just cohabitants although there were 4 children from the relationship. She called no witnesses to court. Evidence The Applicant
7. The Applicant had filed 3 affirmations and attended court to give evidence and be cross-examined. He said that there were some open ceremonies.
8. He told the Court that by the time of 1965, he had his own small business selling Joss-sticks. He had the business in a small shop at Ground Floor, No. 148 B Kau Kiang Street Kowloon. It is a shop situated at the corner of Kau Kiang Street and Fuk Wing Street. Apart from running his business there, he also lived in cockloft inside the shop. At the same time, he had rented a flat on the 9th Floor of the same building (the Flat). The official address of the Flat reads 9th Floor, No. 172, Fuk Wing Street, Sham Shui Po, Kowloon. The Applicant himself used half of the Flat as warehouse for storage. A Mr. Leung rented the other half and ran a small garment factory there. He said he met the Respondent in about 1966 who was a relative of the said Mr. Leung working at the Flat.

9. According to the Applicant, at a time close to their marriage, he accompanied the Respondent who was attaining 18 at that time to apply for an ID card for her to stay in Hong Kong. He stood as a sponsor with his business in support. The application was granted and the Respondent stayed in Hong Kong.
10. In regard to the date of the marriage, the Applicant said that he himself chose the date for celebrating the marriage. He said that according to the Tung Sin nd customers asked him to do that for them also. He said that was why he remembered the date. As to the celebration of the marriage, the Applicant said that there were some ceremonies. First the bride was received from a hotel room by him and some friends and was escorted to the Flat which was to be their matrimonial home. At that time, Mr. Leung had already moved away. At the Flat there was ancestor tablet and they worshiped the ancestor tablet there. Such ritual of worshipping was attended and witnessed by the elder relatives. The two also observed the ritual of pouring and serving tea for the elderly relatives.
11. According to the Applicant, in the same evening there was a wedding banquet held at a restaurant named DH Restaurant at 156 Castle Peak Road (the Banquet). Invitation cards had been sent out to the guests for the purpose. The Banquet was attended by 300 odd relatives. There were about 10 odd tables. His two witnesses Wing and Cheung had attended the Banquet. He said the Respondent was wearing a Chinese traditional wedding gown. There was a counter at the entrance of the hall they held the Banquet. Relatives signed their names on a piece of red cloth as they entered. After the Banquet, the Applicant, the Respondent and some other relatives stood at the doorway to see the guests off. After that, the Applicant and the Respondent returned to the Flat and started marriage life with him. She would sometimes help in the shop.
12. When being cross-examined, he said the followings
 - a. at the hotel where the bride (the Respondent) was to be picked up by the bridegroom (the Applicant), there was the sister of the Respondent, but he had no recollection whether there were any elder relative of Respondent at the hotel room,
 - b. when she married him, she did not have an ID card,
 - c. he was sure about the date of the celebrating the marriage, it was 15th November 1968, when he picked the date, he picked it according to lunar calendar, but now he could only remember it in terms of western calendar,
 - d. all the relevant proof of the Banquet including the red-cloth and the photographs were stolen when the Flat was burgled,
 - e. the relatives of the Respondent came to the Flat for tea in the afternoon,
 - f. he could not remember the exact number of tables at the Banquet, about 14 15, there was 1 table for the relatives of the Respondent,

- g. the reason why he mentioned there were 300 guests at the Banquet with only 14-15 tables was that there was actually another banquet in Macau without the bride, no photo, no red cloth, no ritual, the total number of guests for the two banquets was about 300
 - h. he agreed that the years of birth of his children were all wrongly quoted in his Affirmation dated 15 September 2006,
 - i. there was no banquet for the birth of the children. Wing
13. He is the nephew of the Applicant. His late father was the elder brother of the Applicant. He was born in November 1953, now 53 years old. He adopted what he had said in his two affirmations as his evidence in chief. When being cross-examined, he said by the time he attended the Banquet, he was 14 or 15 years old. He could not remember which restaurant he went for the Banquet but he remembered that the year should be 1968. He said he had been to the law firm once for the purpose of signing some documents for this application at the request of the Applicant. He said that the affirmation was prepared for him to sign when he went there. When asked why he said the Banquet was held in 1969 in paragraph 2 of his affirmation but in Court he said it was 1968. He said he could not tell why, it should be roughly 1968 or 1969. He said he came to Hong Kong in 1966, the Banquet was held 2 years after his arrival. When asked why he said the restaurant was DH in paragraph 3 of his affirmation but in court he said he could not tell which restaurant, he said because the Applicant told him the name of the restaurant. He further said that he could not remember whether he had attended any ceremony held at the Flat in the morning. Later he said he remembered going to the Flat before the Banquet, he saw relatives there and he was playing around. He however could not remember whether his father was there. He said he had not been to the banquet held in Macau. Cheong
14. He filed one affirmation and attended court as witness for the Applicant. He said he was a school-mate of the Applicant when both were in primary school. He came to Hong Kong when he studied primary 4 in 1955. He said he got married in 1966 when he was 28 years old. Then within one year after his getting married, he bumped into the Applicant in the street and then another year afterwards he met the Applicant again in the shop of the Applicant in Kau Kiang Street. He said that it was about two years after his getting married the Applicant got married. He got an invitation to attend the Banquet and did go to DH Restaurant by himself and not accompanied by his wife. He could not remember the date, but he remembered that the weather was cold. At the Banquet he saw the Respondent for the first time who was wearing a wedding gown.
15. He said that the restaurant was on the first floor of the building. The hall could hold 16 tables and there were about 13 14 tables. He said he did not count but he had this from his own recollection not being so told by the Applicant. He said he did not pay attention to the sister-in-law of the Applicant. He remembered two brothers in the line of seeing guests off when the feast was over. HYPERLINK "http://www.legislation.gov.hk/blis_ind.nsf/e1bf50c09a33d3dc482564840019d2f4/a02274a6f4f9cb6188256489000ba549?Navigate&To=Prev"

HYPERLINK "http://www.legislation.gov.hk/blis_ind.nsf/e1bf50c09a33d3dc482564840019d2f4/a02274a6f4f9cb6188256489000ba549?Navigate&To=Next" HYPERLINK "http://www.legislation.gov.hk/blis_ind.nsf/WebSwitchLang?OpenAgent" HYPERLINK "http://203.85.188.32/blisdata/blis.nsf/WebBacktoView?OpenAgent" HYPERLINK "http://203.85.188.32/CltIndex.htm" \t "_parent" HYPERLINK "http://www.legislation.gov.hk/blis_ind.nsf/e1bf50c09a33d3dc482564840019d2f4/a02274a6f4f9cb6188256489000ba549?Navigate&To=Prev"

16. He said that he came to court as requested by the Applicant whom he did not have contact for many years. They accidentally met each other in China weeks before trial and they exchanged correspondence again. Later he received a call from the Applicant asking him to attend court as a witness for him. The Respondent
17. The Respondent also adopted her affirmations as her examination in chief. In Court, she was adamant that there was no ceremony whatsoever. She said the two of them just started cohabitation on 9th January 1969. She produced a copy of ROP 57 issued by the Immigration Department under ss 2 and 10 of Cap 177 in support of what she said. In this ROP 57, it contains a certified statement saying that ,g3u KNT{ N]NmQkQt^AS NAS]N *gZZ &N! qkX1X9e as her sponsor. She was sure at that time she had not started cohabitation with the Applicant. She pointed out to the Court that if, as the Applicant said, they had the Banquet on 15th November 1968, she would not have informed the Immigration that she was single especially if the Applicant was there with her.
18. She said there were dinners held for the birth of the first two children, but there were only 2 tables each time. The guests were all close relatives.
19. She also said that the Applicant left home in 1995 and did not return. When there was a violent conduct by the Applicant in 2003, she went to the Director of Legal Aid with intent to seek assistance in divorcing the Applicant. She was however advised by the lawyer handling her case that there was no marriage between them. Analysis of Evidence
20. The burden of proof is on the Applicant to show that the marriage was celebrated by open ceremony in Hong Kong.
21. I have to decide whether there were any ceremonies and if so whether they were open. Before I embark on the analysis, I must bear in mind the fact that witnesses have to cast their memories back to a time 39-40 years from now when they told the Court what really had happened. I must say that the motive of the Applicant behind this application is not a factor to be considered. The legal advice allegedly given to the Respondent by the Director of Legal Aid is irrelevant.
22. To start with, I see that the Applicant's evidence on the date of marriage is contradicted by the said ROP 57 produced by the Respondent. I accept the position of the Respondent that had there been those ceremonies as alleged by the Applicant, it would be unlikely that when the Respondent applied for an ID card only 2 weeks after the alleged ceremonies being held,

the Applicant did not sponsor her as a husband but only with his business. Further there was no reason why the Respondent would state in the application that she was single. Such status of the Respondent had never been altered by the Respondent even though the address of her had been updated 2 times in 1985 and 1988 respectively before the Applicant left home.

23. One might think that due to the lapse of time, the Applicant might have got the date of the Banquet wrong. But that was not the position of the Applicant. He said in Court that he was sure about the date because he himself picked the date. He left no room for a mistake made by him on the date.
24. The date of celebrating the marriage is important. First, it has to be a date prior to the appointed date, 7th October 1971, for a party to rely on sections 2 and 8 of Cap 178; secondly, for the Court to know that the parties were over 16 at the material time. Most important of all, for the Court to assess the reliabilities of the witness and the quality of the evidence. In this particular case, since the Respondent say that there was no ceremonies and not that the ceremonies were not prior to October 1971 nor that she was not yet 16 at the time of those ceremonies, the significance of the date of the Banquet is relevant to the quality of evidence and the reliabilities of the witnesses.
25. As mentioned earlier, when the Applicant said he was sure about the date of the banquet but there was official document saying otherwise, I prefer the official record in this regard. His evidence on the date for the Banquet was not supported by his own witness Wing who once said that the Banquet was held sometime in 1969, not 1968 as said by the Applicant.
26. Apart from the date of the Banquet, the quality of evidence on other aspects given by the Applicant was poor. His saying that the photo taken at the Banquet and the red-cloth for guests to sign were stolen during a burglary was unconvincing. First, one would wonder why a burglar would be interested in taking away something of no value at all. Secondly, when the Applicant gave an account for the loss of these items, he said that he was told by the Respondent that these were stolen in a burglary as if he had no personal knowledge of the same. I find that he was making up a convenient answer in a faint hope to support his case.
27. Wing's evidence could not assist the Applicant either. He said in his affirmation that the dinner was held sometime in 1969, then he changed his version in the Court by saying that it was 1968. He however could not give a reason for his change of stance. He said he could not recall the name of the restaurant in Court but he said in his affirmation that the name of the Restaurant was DH. He explained to the Court that it was because he was informed by the Applicant of that. On these two very important aspects of information concerning the Banquet he changed his position without good cause. Further, I am also concerned about the way his Affirmation was made. According to him, he went to the law firm only once and was asked to sign a document. Apparently, the content of the Affirmation did not come from him. That may explain why he could not tell the Court the name of the restaurant although apparently he had no problem stating it in his affirmation. He said less than little about the

alleged ceremony in the morning. I do not find that I could rely on his evidence to find there was a banquet nor any ceremony in the Flat.

28. Cheung could not tell much about the particulars of the Banquet except some very standard features of a wedding banquet such as that guests would have to sign at the entrance to the dinning hall, the newly-weds would toast from table to table and there would be a line of hosts seeing guests off at the conclusion of the banquet. These could well be fit into any wedding or birthday banquet. He had no recollection of other people at the banquet except vaguely mentioned two brothers of the Applicant in the line seeing guests off. He could not recall the sister-in-law of the Applicant who was supposed to be in charge of the ceremonies. Another point I find him not reliable is that he said according to his recollection there were 14 tables but he did not count. If he did not count, there was no basis for his recollection apart from being told to corroborate the version of the Applicant. The version of the Applicant himself on the number of guests is far from being satisfactory. He said in his Affirmation and Second Affirmation that there were 300 guests, then in Court he said he could not remember the number of tables at DH, but should be around 14 15 tables. When he learned that the two figures could not tally, he said that there was another banquet in Macau. That was the first time he mentioned about another banquet. Moreover, Mr. Cheong never mentioned any date or month for the Banquet. If it were a date other than 15th November 1986, he was contradicted by the Applicant's evidence. If it were 15th November 1986, such evidence would again be contradicted by the ROP 57 and would not be accepted by me for same reasons set out above. I do not accept his evidence.
29. The evidence of the Respondent was simple. There were no open ceremonies to celebrate the marriage. They just cohabited and gave birth to 4 children. She was not shaken under cross-examination. Her saying was supported by an official document issued by the Immigration Department. The Applicant did not take issue on the content and the reliability of this document. I see no reason why I should not attach weight to it.
30. For reasons set out in the above I do not find that the Applicant has proved on balance of probabilities that there were open ceremonies celebrating the marriage on 15th November 1986 in Hong Kong. Presumptions
31. On the point of presumption on the validity of marriage, it is submitted on behalf of the Applicant that there are two types of presumptions. The first one is the presumption of ceremony followed by cohabitation. In *Rayden and Jackson on Divorce* 18Ed., paragraph 7.12, it states as follows : Where there is evidence of a ceremony of marriage having been gone through, followed by the cohabitation of the parties, everything necessary for the validity of the marriage will be presumed, in the absence of decisive evidence to the contrary, even though it may be necessary to presume the granting of a special license, or the death of a former spouse .

32. The second type of presumption is the presumption from cohabitation and reputation. Again in Rayden and Jackson on Divorce, Supra, says that : Where a man and a woman have cohabited for such a length of time, and in such circumstances, as to have acquired the reputation of being man and wife, a lawful marriage between them will be presumed, though there may be no positive evidence of any marriage having taken place, particularly where the relevant facts have occurred outside the jurisdiction; and this presumption can be rebutted only by strong and weighty evidence to the contrary .
33. However I note that in paragraph 86 of L v L CACV 169/2006 it is stated that : it is material to note, first, that the presumption comes into play only there is insufficient proof that the parties underwent a ceremony of marriage and second, that many of the cases in which the issue arises are cases where the parties have died or where records have been lost, the most typical of which concern rights of succession .
34. In the present case, I find it not a case for the operation of this presumption as both parties are still alive and they both gave evidence in Court for factual issues to be determined. Further, as there are provisions in Cap 178 squarely and clearly prescribing the validation of modern marriages, the above common law presumptions do not apply.

Conclusion

35. For reasons aforementioned, the application is refused and the Originating Summons of the Applicant is hereby dismissed. Costs
36. Costs should follow the event and I order that the Applicant should bear the Respondent s costs. This is an order nisi which should become absolute in 14 days. (Tracy Chan) Deputy District Judge Mr Lam and Ms Chan of Messrs Chan & Chan for the Applicant Ms B Hung of Messrs. Chaine, Chow & Barbara Hung for the Respondent PAGE - PAGE - &`#\$ ~!P] j% Td #-p 6<z% ,f@- sy \$ he~"Td c(#\$ 0kJ\$\$ @P\$\$ vRs&r 1 #' :L- E{k' XW(\$ s ` ()H/0 -3*\$ 43*\$ c7*+ :p . {^2\ (\$p2\$ 4g3\$ 4QQ4 4lp4 0b50p M|;\$ wzO?p= H#@ \$ 3i@\$ nSDH lEFE 5)GTd HHzbr kxL\$ / eNH S\$O\$ y<00 vuWOTd c;R\$ Y CR G%9UT Zk_UR z` Uf RW!W C:~W x% X\$ x8Y\$ L}YH (Yq[*n\T #b2^\$ Q^f ""T_ Y6xc\$ e>tD ?Dep= ZJg\$ hx;r N)/h vCip= T{sk kRIZ0 %i?l TCn\ ZorB "hsTd gsTu\$ r7Fv, 4xv\$ 2wx^ x4ah xDs\ *y\$ Yay~_ __z4w {6=P# | >\$> C? } R\$ ~\$ f!\$- C:~W N)/h E{k' 4QQ4 lEFE C? } wzO? gsTu x% X (\$p2 0kJ\$ #b2^ Y6xc R\$ ~ he~" G%9U (Yq[:p . s ` (vuWO c7*+ Y CR T{sk 1 #' RW!W %i?l r7Fv Zk_U vRs& y<00 #-p ""T_ 6}H @\\Hc-oa-ws-656\HP LaserJet 1200 Series PCL 6 Ne00: winspool HP LaserJet 1200 Series PCL 6 \\Hc-oa-ws-656\HP LaserJet 1200 Letter HP LaserJet 1200 Series PCL 6 Hjc)b 97wfj B]gT)Yn@{i9Z -9]pVvr) \\Hc-oa-ws-656\HP LaserJet 1200 Letter HP LaserJet 1200 Series PCL 6 Hjc)b 97wfj B]gT)Yn@{i9Z -9]pVvr) Normal.dot setup Microsoft Word 9.0 Title _PID_HLINKS Microsoft Word Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=58449

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/l-v-e-2007>

Prepared on 27 October 2026 · Esheria