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DOCTRINE OF DOMICILE AS A PERSONAL CONNECTING FACTOR IN CONFLICT OF LAWS IN TANZANIA: AN EXAMINATION OF ABDALLA HAMID MOHAMED V. JASNENA ZALUDOVA [1982] TZHC 14

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Abstract:
In Tanzania, and all over the world, including Tanzania Zanzibar, courts of laws have considered domicile as an important connecting factor in the determination of various disputes brought before the court of laws in cases relating to conflict of laws, especially on issues relating to jurisdiction of the courts and capacity to marry in various marital disputes. In a most cases, the courts attempt to investigate how far and the extent to which domicile may be considered as the connecting factor in settling issues of validity of marriages or determination of divorce cases between disputants. Legal speaking, when a person files a lawsuit in a court of law relating to a conflict of laws, one of the interesting questions the court would wish to test is how the matter in question is connected or linked with the domicile of the disputant. It is on this basis that this research article discusses domicile as a personal connecting factor in conflict of laws disputes in Tanzania, with special attention to the above-stated case law, as decided by the Zanzibar courts. The decision by the Zanzibar courts, as discussed in this article, has laid a basic foundation on the domicile as the connecting factor in conflict of laws. The article further examines the extent to which domicile was considered as connecting factor by the Zanzibar courts in determining above selected case law in conflict of laws.

Keywords:
Domicile; residence; nationality; connecting factors; permanent home; personal law; conflict of laws; and Tanzania

1. Introduction
The issue of domicile as used in conflict of laws is considered one of the connecting factors usually used in common law judicial systems. A domicile is also considered a permanent place of dwelling of a person, with a lawful connection between an individual and a locality. McClean and Morris, for instance, have considered domicile to be a complex idea to state, although, it gives a unique relationship between some systems of law and a person in conflict of laws disputes. This confirms that no person can be without a domicile, even if they lack a permanent home. Similarly, a person may have more homes, but cannot have more than one domicile at a particular time. A current domicile will be assumed to continue until a change is proven on the balance of probabilities. The onus of changing the domicile of origin is, however, considered a complicated issue in conflict of laws disputes. Domicile as a connecting factor in conflict of laws disputes also adjusts the legal capacity of a person at a particular time. The legality of an individual to marry and the distribution of the property of a deceased are, for instance, determined by the courts of law based on the domicile. The above examples, however, help illustrate a way that a married man domiciled in Tanzania under the jurisdiction of Tanzania to divorce or dissolve his marital relationships. Indeed, in this modern era, people are moving from one state to another. In the process of traveling, an individual is questioning what will apply to him, his marriage, his contracts, and so on. Then passport is generated to connect a person to a legal jurisdiction. Therefore, the domicile as a personal connecting factor and its rationally under private international law is discussed in detail in this research article.
Personal connecting factors are, therefore, considered as the situations that create relationships between events, things, transactions, persons, and countries. Falconbridge states that they are defined by the lex fori. They support courts to identify the choice of law rule to administrate the immovable property of the person. They also assist the

court in deciding under which legal system and within the jurisdiction of which country certain issues are to be determined. Similarly, connecting factors connect legal categories to applicable laws. Moreover, they create a natural connection between the factual situation before the court and particular jurisdiction. In most of the civil law countries, the rule of domicile has been changed to nationality or include the nationality.

2. Conceptualizing Domicile in Conflict of Laws

Domicile has been conceptualized by different eminent scholars in conflict of laws. There is no unique definition of domicile. Stone, to start with, defines that domicile consists of two fundamental elements that must exist simultaneously such as physical presence in the jurisdiction and the intention to stay forever. Dicey and Morris, however, in their book entitled "Conflict of Laws", have stated about domicile as a connecting factor in conflict of laws, to mean a fixed, permanent, and principal home to which an individual always intends to return. From a legal perspective, domicile is the status or attribution of being a permanent dweller in a specific jurisdiction. Domicile can remain in a jurisdiction even after leaving it if the person maintains sufficient links with that jurisdiction or does not display an intention to leave permanently in a particular country.

The concept of domicile was well illustrated in the case of Waicker v. Hume, where the appellant, a Scottish went to the East Indies and worked in a company for more than twenty years. He then resumed to Scotland and placed his name on the books of the municipality, acquired a house, married, did business, and became various society members. Later, he left Scotland in wrath, closed business, removed his name from the books and societies, and declared he would never come back. After that, he went to London and worked as a literature and tried to sell some of his books written in the Hindustan language. A few years later, he left London for Paris to avoid some difficulties. However, he never made any declaration concerning London. He died in Paris, having a will in the English form. The Court decided that the appellant had lost his Scottish domicile and acquired an English domicile. Lord Chelmsford in defining domicile, further emphasized as thus:

A place is perfectly the domicile of an individual in which he has willingly fixed the dwelling of himself and his family, not for a mere special or temporary purpose but with a present intention of a permanent home.

The same Lord Cranworth in stating further on domicile, has also defined domicile in that case to further mean as thus:

home, the permanent home; and if you do not understand your permanent home, I am afraid that no illustration drawn from foreign writers or foreign languages will very much help you to it.

A domicile, in general terms, is a place where a person resides permanently without any intention of moving. For jurisdictional purposes, domicile means a legal residence which is the place where a person has a fixed dwelling with the intention of making it his/her permanent home. On the other hand, temporarily residing in a different place does not invalidate having a permanent home in a particular locality. Showing the significance of domicile as a connecting factor in conflict of laws disputes, it is argued that domicile plays a vital role in judicial decision-making in a forum as it provides a pre-requisite presumption of the forum jurisdiction or assumption and acceptance of overseas jurisdiction. Domicile also helps confirm the basic rights of a person such as the right to vote, the right to hold public office, etc. Domicile further stipulates entitlement of numerous supports in respect of various needs such as ill-health or unemployment and liability to various forms of taxation in some states. As argued by some writers such as Falconbridge, domicile helps ascertain the capacity of a person to make contracts, validate a marriage, divorce, a will, matrimonial causes, legitimacy, and succession. In that regard, it is obvious that domicile has become necessary to link the legal relationship of a person to the legal system of a state in several conflicts of law disputes.

3. History and Classification of Domicile

The concept of domicile has a rich history dating back centuries. Historically, it is believed that domicile is originated from the Roman law. The modern usage and consideration of domicile comes through the Canon law. According to a modern Canonist, "The term domicilium is derived from domum colere, meaning thereby to foster or inhabit the home. It is also stated that a domicile is not any place of residence but a place of habitual residence. From the common law history, the Diocese had authority over ordinary men in the Consistory Court in England. The domicile of a man in a Diocese was thus recognized by his habitual residence. The Bishop who was a habitual residence of the Diocese had jurisdiction in religious issues. The jurisdiction included probate and matrimonial

matters even before the Matrimonial Causes Act 1857 and the Court of Probate Act 1857. English statutes therefore characterized the marriage of a man according to the place where he was living. Thus, domicilium is a habitation or a dwelling that came from the Diocese to Roman Canon law and the English Canon law.

3.1. Classification of Domicile

In conflict of laws, domicile is classified into three classifications, namely; domicile of origin, domicile of choice, and lastly, domicile of dependence. Each classification is discussed in detail hereunder.

3.1.1. Domicile of Origin

The domicile of origin is always ascertained by birth. It is certified by law at the birth of every individual. It refers to the domicile of the parent. In this category, it is irrelevant that some family members are living in different places and have different domiciles. This kind of domicile continues from generation to generation. As Lord Cranworth in Whicker v. Hume , stated that a person's domicile is his permanent home. The basic domicile is however a person's domicile of origin. This is always ascribed to the operation of law at his birth. In conflict of laws, it is not mandatory to the country of his family's permanent home at the time of his birth. To a minor, his domicile is always considered as dependent as the same of one or both parents. This is more emphasized by Dicey and Morris stating as thus:
Every person receives at birth a domicile of origin.

For purposes of more clarity, a few examples are provided in this article. A legitimate child born during the lifetime of his father automatically takes his domicile of origin in the jurisdiction in which his father was domiciled at the time of his birth. Indeed, a legitimate child not born during the lifetime of his father or an illegitimate child takes his domicile of origin in the jurisdiction in which his mother was domiciled at the time of his birth. A foundling also takes his domicile of origin in the jurisdiction in which he is found.
Writers such as North emphasize that it is not necessary to have a connection between the place of birth and the domicile of origin. The issue of domicile of origin was illustrated in the case of Udny v. Udny, where Udny was born and lived in Tuscany. His father resided in England, but his domicile of origin was in Scotland. Udny, therefore, acquired domicile of origin in Scotland by birth. The court opined that domicile by origin is acquired at birth, emphasizing that it stands by operation of law. The domicile of the mother will be taken as the domicile of origin in both cases where a child is born after the death of the father or if an illegitimate child is later legitimated. An adopted child, on the other hand, acquires the domicile of origin of the adoptive parents as born in lawful wedlock. In some scenarios, the domicile of a founding child is determined based on the place where he was found and not based on his parents' as the original domicile is unknown. This principle was established in the case of Re McKenzie, where the domicile of an illegitimate child was determined based on the place where he was found because the domicile of his mother was unknown.

This domicile is considered a powerful concept that even if a person leaves his country of origin with the intention that he will not return, he is still considered to be domiciled there until he obtains a new domicile of choice. In the case of Bell v. Kennedy, Bell had a Jamaican domicile of origin but after leaving Jamaica, he was uncertain whether to settle in Scotland or England. Therefore, the House of Lords held that he had not lost his Jamaican domicile of origin. Lord Westbury stated in the case as thus:
The domicile of origin adheres until a new domicile is acquired.
In a famous case law of Cyganik v. Agulian, Mummery LJ made a clear sentiment regarding the domicile of origin in conflict of laws as thus:
Positioned at the date of death…the court must look back at the whole of the deceased's life, at what he had done with his life, at what life had done to him, and what his inferred intentions to decide whether he had acquired a domicile of choice in England by the date of his death.

It is, therefore, stated that a person who has never even visited a particular country can have the domicile of origin of that place. There are other several cases of laws that in one way or the other, discuss the domicile of origin like Grant v. Grant, Ramsay v. Liverpool Royal Infirmary, Winans v AG, IRC v. Bullock, etc.

3.1.2. Domicile of Choice

In conflict of laws, any person who is legally qualified to change his or her domicile of origin can acquire a domicile of choice. In other words, the person in question established his residence in a certain country to remain there indefinitely. This clearly is stated in Mark v. Mark, that domicile of choice is not a question of law but fact. It requires the combination and coincidence of residence in a country and a bona fide intention to make a home in that country permanently or indefinitely. Therefore, there must be a co-existence of two tests are objective test of residence factum, and a subjective test of intention animus. These two tests are firstly ruled out in the American case of White v. Tennant, the deceased returned his dwelling place from West Virginia to Pennsylvania. However, he went back on the same day to West Virginia to take care of his wife who was suffering from typhoid. Later he caught the same disease and died there. The issue arose regarding which state would have the jurisdiction for intestate succession. The court decided that the succession and distribution of a decedent's estate is controlled by the law of the state where the decedent was domiciled at the time of death. Writers like Westlake are of the view that a domicile is a residence, actual or developing, with the lack of any intent to make a domicile elsewhere. It is also said that domicile of choice can be achieved by residence and intention. The meaning of residence is the physical presence of an inhabitant. Concerning this point, other case laws discuss domicile of choice concerning intention and residence including IRC v. Duchess of Portland, High Tech International v. Deripaska, Bheekhun v. Williams, and Lawrence v. Lawrence.

There has been also another success for HMRC at the First-tier Tax Tribunal regarding a taxpayer's domicile status as observed in the case of Shah v HMRC. Shaw points out that whilst parallels can be drawn with other recent domicile 'wins' for HMRC at the First-tier Tribunal, this matter is particularly interesting as it is a case relevant to individuals wishing to benefit from a UK estate treaty with, for example, India or Pakistan, which overrides the UK's deemed domicile provisions.

The case concerns an appeal against an inheritance tax assessment raised by HMRC about the estate of Mr. Anantrai Shah. The salient facts were that Mr. Shah was born in 1929 in Karachi (part of British India at the time). Between 1929 and 1954, Mr. Shah moved between Karachi and Tanzania for education purposes and to live with a family who had moved to Tanzania. In 1954, at the age of 25, Mr. Shah moved to Sunderland in the UK to study pharmacy. After graduating in 1957, he moved back to Tanzania. Mr. Shah married in 1960 in Mumbai, India. Mr. Shah continued to live in Tanzania with his wife and they had two children. In 1961, Mr. Shah acquired UK citizenship following an offer made to him when Tanzania became independent from the UK. Mr. Shah was required to give up his Indian citizenship as a result of this. In 1972, Mr. Shah with his wife and children moved from Tanzania to Mumbai, India, and obtained a job with ICI. Around a year later, Mr. Shah moved to the UK and his family followed suit a few months later. Mr. Shah worked as a pharmacist from 1973 and owned the freehold of a shop related to the pharmacy business.

Having sold the business in 1994, he worked as a locum pharmacist before retiring completely in 1997. Mr. Shah's daughter and wife died in 2010 and 2011 respectively. Mr. Shah died in the UK in 2016, aged 87 years old. Mr. Shah's executors claimed that the taxpayer had not acquired a domicile of choice in the UK as he had always intended to return to India. HMRC's task, being the party asserting the change in domicile, was to prove its case based on the balance of probabilities. Mr. Shah's son, as executor for his father, contended that Mr. Shah had originally left India because he was unable to find secure employment there and that he had always intended to return to India at the end of his working life. Such a return was delayed by the deaths of his daughter and wife, and his poor health. The return was then further delayed pending the completion of his grandson's education in the UK. Overseas citizenship from India was acquired in 2014, and Mr. Shah sent gifts to family members in India and remained in contact with them. Considering all of the evidence into account across the course of Mr. Shah's life, the tribunal concluded that he had settled and intended to remain in England permanently, such that he had acquired a domicile of choice in England and had not abandoned that domicile of choice before his death. Mr. Shah's intention of moving to India was described as a 'vague and floating idea'. It is clear from recently reviewing the judgments from the recent domicile cases of Henkes v. HMRC, and Coller v. HMRC, that the courts are increasingly applying a multi-factorial approach. This means that the court is arriving at its decision following consideration of a wide range of factors and critically looking at the evidence available.

3.1.3 Domicile of Dependence

One of the writers in Conflict of Laws, North, states that a dependent person's domicile goes to the domicile of another person. It is a kind of domicile that is essentially concerned with dependent persons. A married woman's domicile was considered with the domicile of her husband in common law. A legally dependent person's domicile is also surrendered to the domicile on whom he is. It is further stated that when a child reaches maturity and becomes independent, he may change his domicile to his domicile of choice at any time he finds appropriate. It should be taken into consideration that a child receives two domiciles at his birth which are domicile of origin and dependence at the same time. The domicile of origin will however overlap with the domicile of dependence since the same child depends on the father. In later life, the child may obtain a domicile of choice when he becomes independent if he decides to do so. However, if there is an abandonment of a new domicile, the domicile of origin will be revived automatically as per conflict of laws rules. The domicile of dependent persons is, therefore, considered in two categories as domicile of children, and the domicile of married women in conflict of laws across the world and that is how the practice is.

4. The Rules Governing Domicile in Conflict of Laws

Generally, domicile is always governed by several principles in conflict of laws. These principles play a significant role in the determination of various disputes in conflict of laws, domicile being a connecting factor. The first principle states that every individual must have a domicile at all times. The law simply ascribes a domicile to those individuals it regards as lacking the capacity to choose one. This essentially relates to the domicile of origin, which is acquired by birth. Domicile of origin is established by the law at the time of birth. Therefore, a legitimate child has the domicile of his father and an illegitimate child has the domicile of his mother. A foundling person has the domicile of the place where he is found. In principle, the domicile of origin remains until a new domicile is acquired by law. The second principle states that an individual cannot have more than one domicile at the same time for the same purpose. Here, a person may have more than one residence but one domicile will be established by looking at linking factors. The third principle states that an existing domicile is presumed to continue until it is proven that a new domicile has been acquired. Fourthly, domicile is mandatory and compulsory. It is a well-established rule in private international law that there can be no person without a domicile since a domicile connects an individual to the legal system. The last principle states that no person can have two domiciles at the same time. No individual can have two domiciles at a time. These principles are supported by several case laws in conflict of laws as decided by the courts of law. The cases include, but are not limited to, Re Annesley, Mark v. Mark, Whicker v. Hume, Ramsay v. Liverpool Royal Infirmary, and Winans v. AG.

5. Domicile of Specific Groups of Persons

In the conflict of laws, there is a question also on some categories of the person regarding their domiciles about how they are. This is because certain people are living in different categories in different communities. In conflict of laws rules, the rules indicate different categories, and this can be separated into different groups as well. The first category is, for instance, prisoners who may be in custody for either a while or a long time. The rules state that they are allowed to maintain their domicile, though they are equally allowed to make a new domicile if they wish to stay in a place where they are put in custody permanently. This was observed in a celebrated case of Dunston v. Paterson.

The second category which is also essential in understanding their domicile is persons liable to deportation. Once again Dicey and Morris, are of the view that deportation is such a person whose residence is so precarious and such the person cannot stay there anymore even with perfect intention. Such a person must in some situations choose for a new domicile of choice. His domicile will therefore remain until he is deported to another country. This was also evidenced in the celebrated case of Cruh v. Cruh, where in this matter a man of Austrian or German origin was recommended for deportation for conspiracy to another state. In a similar point, Lord Denning J., for instance, emphasized that the domicile of choice remains until actual deportation takes place for a person who is intended to be deported.

Another category of persons whose domiciles must also be known in conflict of laws are refugees and fugitives. It is said that a political refugee can take a new domicile of choice if he has no intention to return to his native land. However, if the political refugee intends to come back after the political situation changes, then he can remain in his domicile of origin as directed. This was observed in the case of Re Martin, where a French professor ran from France to England to escape from France law. The court held that he got the domicile of choice in England as he

had the intention to live there permanently after escaping from France. Other case laws concerning this point are, for instance, Re Benko, and Moynihan v. Moynihan.

Another category of person whose domicile must also be determined in conflict of laws are invalids. A person may reside in a state for health purposes or some other places for reasons acceptable. In such circumstances, such an invalid person will not get the domicile of choice since there are two reasons such as the dwelling is for a special motive and no free choice. This was also observed in the famous case of Hoskins v. Matthews.

Another category of persons whose domicile should be determined is mentally disordered persons. In this category, once again, McClean and Morris, think that mentally ill persons are incapable of acquiring a domicile of choice. This category of a person's domicile can normally be considered in two different ways, namely; firstly, when the person is confirmed mentally ill when he reaches adulthood; and in this, this person's domicile is automatically frozen at the domicile where he was until recovers from the mental illness he was suffering from. Similarly, when the person has been mentally disabled since his childhood, the person automatically takes his parents' or parent's domicile.

Another important category whose domicile is important to be highlighted in this research article is employees and students. It is a general rule that a person who goes to work or study abroad (another country) will not acquire a new domicile of choice save such a person shows willingness and readiness to settle permanently and indefinitely in a foreign country where he has gone for work or studies. This was evidenced in the case AG v. Rowe, where the here a barrister who had an English domicile went to Ceylon to get a pension. In this matter, the court ruled that his domicile of origin remained as he had no intention to stay in Ceylon permanently. Similarly, a student also can get a new domicile if he wants to stay in a country permanently. This was clearly illustrated in the case of Kapur v. Kapur.

Another important person whose domicile Is paramount in this research article is Diplomats. Usually, a diplomat is like other independent persons' domicile in conflict of laws. This person will not acquire a domicile according to his place of office. The diplomats however have the liberty to choose and settle permanently in a particular place. This has been further emphasized by Dicey and Morris, who are of the view that diplomats have the freedom to remain in countries they happen to serve as diplomats if they choose to do so. In general terms, diplomats are not expected to form the intention of settling in the country to which they have served. In the occasion that they form the intention of residing permanently or indefinitely, just like other individuals, acquire a domicile of choice in that state serving as diplomats. This was evidenced in the celebrated South African case of Naville v. Naville, the Court held that a foreign diplomat can acquire a domicile of choice in South Africa when continuing his service in the place where he serves as the diplomat.

Members of the armed forces are another category of persons whose domicile should also be discussed in this work. A person will get or lose a domicile after entering into armed forces. In the previous, the armed personality could not acquire a new domicile. Based on the case law Donaldson v. Donaldson, it was stated in this case that the armed forces can acquire a domicile of choice with their free intention. The same principle was also discussed in the case of Baker v Baker.

Companies or corporations are another type of persons whose domicile should also be determined. The Domicile of a company or a corporation is always according to the place of incorporation where the corporation is situated. This was put forward in the case of the National Bank of Greece and Athens SA v. Metliss, which has been an important illustration where the Greek court governed the rule of corporations. According to this case, it was ruled by the court that the company or corporation has the obligation in that place where it is incorporated in conflict of laws disputes. Generally, the conflict of law rules recognize and help determine several classes of persons about the domicile they belong as one of the important connecting factors in conflict of laws.

6. Discussion of the Abdalla Hamid Mohamed v. Jasnena Zaludova [1982] TZHC 14

Domicile as a connecting factor was used in above named case law. In this case, the petitioner is a citizen of Tanzania whereas the respondent is a citizen of Czechoslovakia. On 19th September 1974 they contracted a civil marriage at Prague, Czechoslovakia. A few months after the marriage they came to Tanzania and lived in Dar es Salaam and shortly afterwards they shifted to Zanzibar. While in Dar es Salaam the respondent changed her Christian religion and became a Muslim. Her conversion into Islam was solemnized by a BAKWATA Sheikh one Abdallah Chaurembo, and consequent to it the respondent assumed a new name of Salama. Soon after the respondent's conversion into Islam, the parties went through a second marriage ceremony.

While the parties were still living together here, the petitioner decided to get married to another wife. The respondent decided to leave for her home country where she is still living now. In some of her letters to the petitioner, the respondent informed him that she was not going to resume cohabitation with him unless he divorced his second wife and then joined her in Czechoslovakia. The petitioner contends that the respondent has been guilty of desertion since 1979 and thus requests the court to grant him a decree of divorce.
It was further observed in this case that the respondent is a citizen of Czechoslovakia and that the parties first acquired their marital status through a civil marriage performed in Prague, Czechoslovakia. It is also an undisputable fact that at the time when this suit was filed in the court, the respondent had already left the country for about three years. The immediate legal question is then whether the court has jurisdiction to entertain the suit. Put it in another form, the issue here is whether the respondent falls within the jurisdiction of this court. It is an internationally recognized principle of law that a woman acquires the domicile of her husband on marriage. In this case, the petitioner is domiciled in Zanzibar, it, therefore, follows that the respondent is also domiciled here. Generally, parties in a matrimonial suit are subject to the jurisdiction of the court of the country of their domicile. On this basis, therefore, it was proper for this suit to be filed in Zanzibar. It was further stated that since the matrimonial home of these parties is still in Zanzibar adds more weight to the propriety of this court assuming jurisdiction over this suit.

Apart from the above-mentioned general principles of Private International Law, there is a local statute that deals with the question of jurisdiction in civil suits which contains foreign elements like the present one. The Civil Procedure Decree gives jurisdiction in civil matters to a court in whose territory the cause of action arose. In the case of Dedhor v. Janmohamed, the parties were husband and wife married in Zanzibar under Islamic Law. Soon after their marriage, they went to live in Tanganyika which was the domicile of the husband. Later on, the wife left the husband in Tanganyika and came to live in Zanzibar. She then filed a suit in this court for maintenance alleging that due to her husband's acts of cruelty, she was forced to leave the matrimonial home. This court, while being presided over by my learned brother Chief Justice Robinson held that since the cause of action since the alleged acts of cruelty by the husband, occurred in Tanganyika, in terms of section 15(c) of Civil Procedure Decree, this court lacked jurisdiction to entertain the suit. In the present case, however, the petitioner's prayer for divorce is based on the allegation that the respondent has deserted him. The alleged desertion consists of the respondent's act of leaving the matrimonial home in Zanzibar and her refusal to return. This means that the cause of action arose in Zanzibar. By section 15(c) of the Civil Procedure Decree, as rightly interpreted in the case of Dedhor v. Janmohamed, this court, therefore, has jurisdiction to entertain the suit.
The legal effect of a contract of marriage is to bestow upon the parties the status of husband and wife. It is noted that in this case after the parties had contracted a civil marriage they later purported to contract another marriage by Islamic ceremony and rites. From the petitioner's testimony, it is evident that that second ceremony aimed to convert their civil marriage into an Islamic one.
In common law, the general view is that a second marriage ceremony after the parties have validly married is of no legal importance. The main argument advanced in favor of this view is that since the parties have already acquired the marital status, which is the purpose of a marriage contract, any subsequent ceremony purporting to do what has already been accomplished is legally redundant. In the case of Thynne v. Thynne, the parties after secretly but validly being married subsequently went through another marriage ceremony. After long cohabitation, the wife petitioned for divorce, and in her petition, she referred to the second marriage ceremony. The court granted a decree of divorce on the understanding that it was dissolving the marriage celebrated on the day shown in the petition.
However, when the court discovered this fact, it amended the divorce decree to indicate that the dissolved marriage was the one contracted before the second ceremony.
But in the present case, the parties here did more than just go through another ceremony of marriage. Before undergoing the second ceremony the wife willingly changed her religion and became a Muslim. A religious ceremony was conducted by one Sheikh Abdallah Chaurembo and subsequently, she assumed an Islamic maiden name of Salama. It appears that the ceremonies of conversion and the Islamic marriage rites were done simultaneously. These ceremonies were aimed at formalizing the religious and marital status of the parties. So far it would appear that at common law the question of whether a change of religion by a spouse after marriage has any legal effect on their marriage is still an open issue. Thus in the case of Skinner v. Skinner, Lord Watson said:

Whether a change of religion made honestly after marriage with the assent of both spouses, B without any intent to commit fraud upon the law, will have the effect of altering rights incidental to the marriage such as that of divorce, is a question of importance and may be nicety.

However, in East Africa, some decisive pronouncements had been made by the courts on this question. In the case of Rattansey v. Rattansey, the petitioner a member of the Khoja Ithna-asheri community married the respondent who was a Christian by a civil ceremony under the Marriage Ordinance. The respondent soon became a convert to Islam and was admitted to the Ithn-their community. On the same day, the petitioner and the respondent went through a ceremony of marriage according to Muslim law. Subsequently, the petitioner having divorced the respondent by renouncement of talak according to Islamic law applied to the court for a declaration that the divorce pronounced by talak be recognized by the law. One of the grounds of objection raised against the petition was that when the parties went through the purported marriage under Islamic law, they were already husband and wife; and so the second ceremony did not confer on them any additional marital status. Since their marital status was acquired through civil marriage, the same could not be dissolved by Islamic law procedure in the form of issuing a talak. This argument was dismissed and the court was of the view that the respondent's conversion to Islam had the effect of subjecting the parties' rights and obligations incidental to their marital status to Islamic law. In his judgment Spry Ag. J as he then was, quoted with approval the observations of Blackwell, J in the case of Khambatta v. Khambatta. where his lordship said:

It has been argued for the appellant that the status imposed by the operation of law upon persons who marry in Christian form cannot be altered by the voluntary act of the parties. But, if a change of domicile, which is a voluntary act, may result in a change of status because of the application of a different system of law, it is difficult to see why a change of religion, the domicile remaining unchanged, may not also result in a change of status if the law to be I applied is then different because of the difference of religion.

In his judgment Spry Ag. J went to the extent of saying that a marriage contracted according to one system of law could be dissolved according to another system of law:

There is no principle of law that a marriage must be dissolved under the same system as that under which it was contracted.

It is highly tempting to hold that the learned judge's view as expressed in Rattansey v. B Rattansey was in conflict with what he said in the case of Ayoob v Ayoob. Fortunately, the honorable judge himself foresaw this danger. In short, he distinguished the two cases mainly on the ground that the decision in the Rattansey case was influenced by the existence of local statutes in Tanganyika by then. Zanzibar is de facto an Islamic state. Over 90 percent of the population profess Islamic religion. This means that the personal matters of the majority of Zanzibaris are governed by the rules of Islamic law. Generally, it can be said that all Moslems in Zanzibar are subject to Islamic law in matters related to their status.

7. Conclusion

From the above discussion, it is obvious that domicile is an important connecting factor in helping the courts of law determine disputes in conflict of law across the globe. This indicates that without consideration of domicile, it would be challenging for disputes relating to the jurisdiction of the courts or issues relating to capacity in marriage in conflict of laws to be peacefully and amicably resolved in courts. It is evidence that domicile as a personal connecting factor has helped the court in Zanzibar to determine the jurisdiction of the court in above discussed case law. Moreover, domicile as a connecting factor has been considered by the court in the determination of the matter brought to court, and finally, justice was made. The courts in Zanzibar in establishing the importance of domicile as connecting have also attempted to show how domicile was considered as the connecting factor in various previous case laws.

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