



CIVIL COURT – FAMILY SECTION

Madam Justice

**Onor. Abigail Lofaro LL.D., Dip. Stud. Rel.,
Mag. Jur. (Eur. Law)**

Today 31st May, 2016

Application Number : 27/15 AL

AB

-vs-

CB

The Court,

Having seen the application by virtue of which plaintiff premised:

- 1) That the parties got married in Chesterfield, in England, on the 18 October 1990 and from this marriage no children were born;
- 2) That the plaintiff was duly authorized to file these proceedings by virtue of a court decree delivered in this sense by this Honourable Court on the 19th December 2014 (Document 'A');
- 3) That the parties started experiencing problems a number of years ago which stemmed from a lack of communication which was in turn linked – to a certain extent – to the considerable age-gap between them. Defendant, who is

twelve years younger than plaintiff, became increasingly disinterested in plaintiff and instead dedicated herself exclusively to new pursuits which her husband was not a part of;

- 4) That the lack of communication brought on a lack of intimacy and eventually the combination of all these factors brought on irreconcilable differences which the parties were unable to address;
- 5) That plaintiff began to realize that his wife had grown increasingly cold and eventually began to suspect that his wife was being unfaithful. His suspicions were unfortunately confirmed and defendant is now living with her partner in the parties' matrimonial home at 12, 'Lees Crescent', Whitwick, Leicester LE67 5GS, United Kingdom, which was bought by the parties during their marriage, and that she has been so cohabiting for around a year;
- 6) That unfortunately, all attempts to resolve the differences between them amicably have failed, and plaintiff was forced to initiate these proceedings;

The plaintiff for the reasons above mentioned requests that this Honorable Court:

- i) Declares and pronounces personal separation between the parties for causes attributable to defendant and for purposes of Section 48 (c) of the Civil Code (Chapter 16) establishes the date on which defendant should be considered as being responsible for the separation;
- ii) Authorizes the plaintiff to live separately from defendant his wife;
- iii) Condemns defendant to pay the plaintiff her husband, such just and adequate maintenance allowance which will be established by the Court, having regard to defendant's means and the needs of plaintiff, payable by defendant to plaintiff his wife, weekly or monthly as may be ordered by the Court, or if such appears fit to the Court, orders defendant to pay plaintiff, in lieu of such maintenance or part thereof, a capital sum which in the Court's belief suffices to enable plaintiff to be financially independent or less dependent on defendant;

- iv) Apply against defendant, in whole or in part, the provisions of Section 48 of the Civil Code (Chapter 16);
- v) Condemns defendant to consign unto plaintiff all plaintiff's dotal and paraphernal property and separately orders that plaintiff receives the full administration of the paraphernal property;
- vi) Liquidates paraphernal credits or particular estate of the plaintiff and qualifies such credits held by the said plaintiff against the community of acquests appertaining to the parties and payable to him by the said community;
- vii) Declares dissolves the community of acquests existent between the parties, liquidates the said community and orders that same objects which form part of the community of acquests be divided into two portions composed as may be ordered and established by this Court, regard being had, inter alia, to date of acquisition of the various moveable and immoveable objects forming the said community and the date established by the Court as being the date on which defendant is to be considered as having been responsible for the separation, which portions shall be assigned to the plaintiff and to the defendant, if needs be for purposes of this demand, an expert be appointed to effect the liquidation demanded and to propose a plan of division, a Notary to receive the relative deed and a curator to represent the eventual default of defendant on the said deed;
- viii) Orders that the matrimonial home namely the property 12, Lees Crescent, Whitwick, Leicester LE67 5GS, United Kingdom to be sold and that the proceeds be divided in equal portions among the parties;
- ix) Authorises plaintiff to register in the public registry the judgment eventually delivered by this court;

With costs, comprising those incurred in the mediation proceedings against defendant who is hereby summoned to reply;

Having seen plaintiff's list of witnesses;

Having seen the note of defendant, whereby she submits under oath:

- I. By means of this reply, the respondent takes herself as notified with the proceedings;
- II. The plaintiff had abandoned the matrimonial home three (3) years ago and the exact date that he abandoned the matrimonial home was the twenty eight (28th) May two thousand and twelve (2012);
- III. The plaintiff had started a relationship with another woman and this will be proved in the course of the proceedings;
- IV. That the relationship between the parties deteriorated and this solely attributed to the plaintiff as will be proved during the proceedings of the case;
- V. That the defendant already instituted proceedings for divorce and the liquidation of assets before the Coventry Court and these proceedings were filed on the fourth (4th) of February of the current year (2015);
- VI. That the property which is situated in the United Kingdom, at number 12, 'Lees Crescent' Whitwick, Leicester LE 67 is registered in both names however there is an amount which was given by the defendant's mother which is registered in the Land Registry Certificate of the property as will be proved during the case;
- VII. That plaintiff already took all his belongings from the matrimonial home contrary to what he declared on oath in his application;

Therefore, in view of the submissions presented above, the respondent humbly asks the court to reject all requests made by applicant and:

1. Stay proceedings since the divorce proceedings have been instituted in the United Kingdom before they were filed in Malta;
2. Stay proceedings since the assets of the parties are in the United Kingdom and mainly the immovable property is situated there and therefore the British Courts will be in a better position to decide and they have jurisdiction over the said immoveable property;
3. In the eventuality that the court does not uphold the first two requests of the defendant, it is requested that it applies against the plaintiff in whole or in part, the provisions of Section 48 of the Civil Code (Chapter 16);

4. Reject all other requests made by the applicant especially but not limited to (vii) (viii) (ix) since these requirements cannot be entertained by the Maltese Courts since these do not have jurisdiction on property situated abroad;

Save other pleas permitted by law;

With costs against the plaintiff who is hereby already summoned in submission;

Having seen defendant's list of witnesses;

Having seen all the documents which were exhibited, all the evidence which was submitted and the acts of the proceedings;

Having seen the parties' notes of submissions regarding defendant's first preliminary plea regarding this Court's jurisdiction or lack of it;

Having seen that the case was put off to today for a preliminary judgement regarding this first plea;

Considers:

That plaintiff has lodged an action in front of this court so that the Court declares and pronounces the personal separation between the parties. However defendant in her reply has requested the court to stay proceedings since divorce proceedings had already been filed in in the United Kingdom and to stay proceedings since the assets of the parties are situated in the United Kingdom, stating that this court does not have jurisdiction over property situated within the said country.

The court is making reference to its note verbale dated 23 of February 2016, where the case has been put off for today, for a judgement to be delivered on the respondent's plea of lack of jurisdiction.

The Facts at issue

The plaintiff has testified by means of an affidavit¹ where he stated that he has been living in Malta for the past five years with his partner, whom he also met in Malta. He says that he holds a Maltese Identity Card and he has a Residence Documentation Certificate, he also is an active member within the community of St Paul's Anglican Cathedral in Valletta. He says that he has ties with Malta and has no intention of re-settling in England and intends to continue residing in Malta.

It also results from the documents presented that the plaintiff filed a letter to start mediation proceedings within the Civil Court, Family Section on the 18th of December 2014². This court case was filed by the plaintiff on the 6th of February of 2015.

On the other hand, defendant filed a case in The Family Court of Coventry, United Kingdom asking the court to grant her a divorce in respect to her marriage with the plaintiff. This case has been filed on the 4th of February of 2015.

Considerations of the Court

The defendant did not, at any point during the proceedings, contest the habitual residence of the plaintiff, not even in the sworn application filed by her. In her sworn application, defendant says that this Court should, "*stay proceedings since the divorce proceedings have been instituted in the United Kingdom before they were filed in Malta; stay proceedings since the assets of the parties are in the United Kingdom and mainly the immovable property is situated there and therefore the British Courts will be in*

¹ Exhibited a fol 119 of the process and marked as document CB1

² Vide a copy of the letter a fol 7 of the process

a better position to decide and they have jurisdiction over the said immovable property”.

Defendant has not even contested by means of a cross examination the facts contained in the plaintiff's affidavit, therefore the court is concluding that the plaintiff has in fact established his habitual residence in Malta.

Only in the note of submissions does defendant quote Article 3(1)(a) of EC2201/2003 but does not quote it fully. This article says the following:

Article 3

General jurisdiction

1. In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State

(a) in whose territory:

- the spouses are habitually resident, or*
- the spouses were last habitually resident, insofar as one of them still resides there, or*
- the respondent is habitually resident, or*
- in the event of a joint application, either of the spouses is habitually resident, or*
- the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or*
- the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her "domicile" there;*

It is clear that under this article, this court does have jurisdiction because the applicant, in this case the plaintiff, has resided in Malta for the past five years and continues to reside within the same country, as no proof to the contrary was brought by the defendant before this court.

However, the defendant stated that she has filed divorce proceedings first in the United Kingdom and according to Article 19 of the EC Regulation 2201/2003 this court should stay proceedings.

Article 19 of the EC Regulation 2201/2003 states the following:

Article 19

Lis pendens and dependent actions

1. Where proceedings relating to divorce, legal separation or marriage annulment between the same parties are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where proceedings relating to parental responsibility relating to the same child and involving the same cause of action are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

3. Where the jurisdiction of the court first seised is established, the court second seised shall decline jurisdiction in favour of that court.

In that case, the party who brought the relevant action before the court second seised may bring that action before the court first seised.

Then Article 16 of the same regulation states the following;

Article 16

Seising of a Court

1. A court shall be deemed to be seised:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent;

or

(b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

Plaintiff has filed mediation proceedings on the 18th of December 2014 by means of a letter according to Regulation 4(3) of LN397/2003. The court ordered the mediation to be closed due to the circumstances of the case, given that the defendant is not present in Malta and ordered the plaintiff to confirm this fact which he did on the 29th of January 2015. Then the Plaintiff had the authority to proceed with a court case according to Regulation 7 of LN397/2003. The plaintiff was ordered to notify defendant with the court case by means of the appointment of curators. Plaintiff knows defendant's address and has since notified her in England. However, during the filing of mediation, there was no court order to notify the defendant, the order was in respect of the court case. In this regard, Plaintiff has acted correctly and has taken the necessary steps to serve the defendant with the proceedings.

It is true that defendant has filed divorce proceedings in the United Kingdom on the 4th of February of 2015 and plaintiff filed this court

case on the 6th of February of 2015, therefore it seems that the court first seised was the court in the United Kingdom.

However under Maltese Law, separation proceedings have to start by filing a letter in the registry to start the mediation process, which will precede contentious separation proceedings in court if an agreement is not reached between both parties within a fixed time period. After the end of mediation proceedings and where an agreement has not been reached between both parties, either party may file a law suit for marital separation, if the law suit is not filed, then separation proceedings are deemed to have been abandoned. However, if a law suit is filed within the specified time period as per regulation 7 of LN397/2003, then the separation process is considered to be an ongoing one.

The Court makes reference to the case quoted by the plaintiff in his not of submissions which is ABC vs DE (73/2015) where the court stated the following:

“Mill-qari tal-istess Artikolu, jidher car li din il-Qorti fil-vesti taghha giet meqjusa li ghandha pussess fil-mument li l-attrici intavolat l-ittra ta’ medjazzjoni li permezz taghha bdiet il-proceduri ta’ separazzjoni. M’hemm ebda dubju li l-ittra tal-medjazzjoni giet intavolata nhar it-12 ta’ Frar 2015. Sussegwentement ghall-imsemmija ittra, l-attrici (dejjem fit-terminu moghti lilha mil-ligi u cioe’ fi żmien xahrejn mid-data tad-digriet li permezz tieghu giet awtorizzata li tintavola l-kawza odjerna, mexxiet bl-istess kawza). Ghal finijiet ta’ kjarazza, jinghad li l-kawza odjerna giet intavolata nhar is-27 ta’ Marzu 2015, filwaqt li d-digriet li permezz tieghu l-attrici giet awtorizzata tintavola l-istess kawza kien datat it-13 ta’ Frar 2015.”

The same can be said for this case. The request for the start of mediation proceedings was filed on the 18th of December 2014 and within the time period of two months, according to

regulation 7 of LN 397/2003, the plaintiff filed the court case for separation. Hence, the court case on its own cannot exist without the mediation proceedings and therefore this court considers the request for mediation proceedings as the start of the said proceedings, mediation being a compulsory requirement for separation proceedings to take off according to regulation 4(3) of Legal Notice 397.

Therefore, the first court seised is this court which is the Civil Court, Family Section and not the court within the United Kingdom, and therefore this plea is being rejected.

Defendant however mentions Article 24(1) of EC1215/2012 which states the following:

The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:

(1) in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated.

Whilst at face value it may seem that this court has no jurisdiction over this case as it seems that the main asset of both parties is an immovable property in the United Kingdom from a thorough reading of the same EC1215/2012, one can conclude that this regulation does not deal with separation and other marital proceedings, such as those contained within EC2201/2003.

In fact Article 7 of the same EC1215/2012 states the following:

Article 7

A person domiciled in a Member State may be sued in another Member State:

(1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

— in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,

— in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;

(c) if point (b) does not apply then point (a) applies;

(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

(3) as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;

(4) as regards a civil claim for the recovery, based on ownership, of a cultural object as defined in point 1 of Article 1 of Directive 93/7/EEC initiated by the person claiming the right to recover such an object, in the courts for the place where the cultural object is situated at the time when the court is seised;

(5) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place where the branch, agency or other establishment is situated;

(6) as regards a dispute brought against a settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Member State in which the trust is domiciled;

(7) as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question:

(a) has been arrested to secure such payment; or

(b) could have been so arrested, but bail or other security has been given;

provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.

Therefore, one can easily conclude that EC1215/2012 deals with civil and commercial matters, listed specifically in the article hereabove mentioned, and it excludes marital and family law proceedings. Hence, EC1215/2012 is *Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters* and EC 2201/2003 is *Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000*. These two regulations are distinct *lex specialis* which do not overlap in any way or manner.

Article 21 of EC2201/2003 is being quoted here :

Article 21

Recognition of a judgment

1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

2. In particular, and without prejudice to paragraph 3, no special procedure shall be required for updating the civil-status records of a Member State on the basis of a judgment relating to divorce, legal separation or marriage annulment given in another Member State, and against which no further appeal lies under the law of that Member State.

3. Without prejudice to Section 4 of this Chapter, any interested party may, in accordance with the procedures provided for in Section 2 of this Chapter, apply for a decision that the judgment be or not be recognised.

The local jurisdiction of the court appearing in the list notified by each Member State to the Commission pursuant to Article 68 shall be determined by the internal law of the Member State in which proceedings for recognition or non-recognition are brought.

4. Where the recognition of a judgment is raised as an incidental question in a court of a Member State, that court may determine that issue.

Therefore it is clear that this court can give a judgment in this case even though the parties may have immovable property in the United Kingdom, since, as stated in the above mentioned article, a judgment given by the court of a member state shall be recognized by another member state, and therefore this plea is also being rejected.

Conclusion

Hence, for the above reasons this court is rejecting defendant's plea that this court does not have jurisdiction, and declares that this Court does have jurisdiction to hear this case and to decide this action and orders the continuation of the case.

The costs of this judgement are to be paid by the defendant.