



Civil Court – Family Section

Mr. Justice Robert G. Mangion LL.D.
Dip.Tax (MIT), P.G.Dip. Mediation (Melit.)

Today the 12th day of July 2016

Sworn Application No. 410 / 06RGM

Number on list: 17

Y S M W
vs
L W

PRELIMINARIES.

Having seen plaintiff's application whereby he submitted and claimed as follows;

1. *Illi fiz-zwieg ta' bejn il-kontendenti twieldet tiffia, D E W li ghandha hames (5) snin;*
2. *Illi l-imsemmija L W irrendiet ruhha hatja kontra r-rikorrent zewgha ta' abbandun tad-dar matrimonjali, sevizzi, eccessi, minaccji u ingurji gravi kommessi kontrih, b' mod li rrendiet impossibli l-hajja konjugali bejniethom;*
3. *Illi sussisdjarjament iz-zwieg ta' bejn il-kontendenti tkisser irrimedjabilment minhabba inkompatibilita' ta' karattru;*
4. *Illi l-partijiet gew awtorizzati jipprocedi ghas-separazzjoni personali permezz ta' digriet tal-Qorti Civili Sezzjoni Familja;*

Ghaldaqstant, l-esponent umilment qed jitlob lil dina l-Onorabli Qorti sabiex ghar-ragunijiet premissi:

1. *Tippronunzja s-separazzjoni personali bejn il-konjugi W minhabba abbandun tad-dar konjugali, sevizzji, eccessi, minaccji u ingurji gravi li l-*

imsemmija L W ikkommattiet fuq zewgha u/jew minhabba li z-zwieg ta' bejn il-partijiet tkisser irrimedjabilment minhabba inkompatibilita' ta' karattru;

2. *Tafda l-kura u l-kustodja tat-tifla minuri D E W f'idejn ir-rikorrent/jew konguntivament f'imekjen mal-intimata bi dritt ta' access adegwat liz-zewg genituri;*

3. *Tikkundanna lill-intimat ihallas lir-rikorrenti ghall-imsemmija tifla minuri dik ir-retta alimentarja li din l-Onorabbli Qorti joghghobha tiffissa skond il-bzonnijiet tar-rikorrenti u l-mezzi ta' l-intimata;*

4. *Ixxolji l-komunjoni ta' l-akkwisti ta' bejn il-partijiet u tillikwida u taqsam l-istess komunjoni f'zewg porzjonijiet li jigu assenjati wahda lir-rikorrent u l-ohra lill-intimata, billi tikkonsidra t-tortijiet komessi mill-intimata b' konsegwenza ta' liema z-zwieg tkisser irrimedjabilment, occorrendo billi jigi nominat perit, nutar biex jircievi l-att opportun u kuratur biex jirraprezenta l-kontumaci fuq l-istess att;*

5. *Tillikwida l-krediti parafernali tar-rikorrent u tikkundanna lill-intimata tirritorna lir-rikorrent l-assi parafernali kollha tieghu;*

6. *Tawtorizza lir-rikorrent jghix fid-dar matrimonjali, Kololo, Triq Anglu Cilia, San Gwann ad esklużjoni tal-intimata;*

7. *Tapplika kontra l-intimata s-sanzjonijiet kontemplati fid-dispozizzjonijiet ta' l-Artikoli 48 u 51 tal-Kodici Civili;*

Bl-ispejjez kontra l-intimata li hi minn issa ngunta ghas-subizzjoni.

Respondent filed her sworn reply which reads as follows:

1. *Illi l-esponenti taqbel mal-ewwel talba tar-rikorrenti fis-sens illi ghandha tigi dikjarata s-separazzjoni personali bejn il-kontendenti pero' mhux ghar-ragunijiet minnu ndikati, izda ghaliex iz-zwieg tal-kontendenti tkisser irrimedjabilment u l-hajja konjugali m' ghadhiex aktar possibbli minhabba li r-rikorrenti rrenda ruhu hati ta' eccessi, sevizzi, theddid, ingurji gravi, u vjolenza psikologika fil-konfront ta' martu l-intimata kif ser jirrizulta waqt it-trattazzjoni tal-kawza;*

2. *Illi l-esponenti ma taqbilx mat-tieni talba rikorrenti ghaliex temmen li huwa fl-ahjar interess ta' l-istess minuri D illi tigi fdata fil-kura u kustodja ta' ommha l-intimata kif dejjem kien de facto b' access xieraq favur ir-rikorrenti kif wara kollox qieghed isir bejn il-kontendenti;*

3. *Illi l-intimata topponi ghat-tielet talba rikorrenti u tistenna li r-rikorrenti zewgha ghandu jkompli jghinha finanzjarjament permezz ta' manteniment adegwat pagabbli lill-intimata favur binthom stante li huwa jgawdi minn introjtu finanzjarju tajjeb hafna mill-impjeg tieghu fiss bhala pilota mal-linja nazzjonali tal-ajru AirMalta plc oltre li jhallas l-ispejjez edukattivi u dawk relatati mas-sahha tal-istess bint minuri;*
4. *Illi l-intimata taqbel safejn huwa talab illi l-komunjoni ta' l-akkwisti ezistenti bejn il-kontendenti tigi xolta;*
5. *Illi l-intimata taqbel ukoll li l-komunjoni ta' l-akkwisti ghandha tigi maqsuma f'zewg porzjonijiet illi jigu assenjati, wahda lir-rikorrenti u wahda lill-intimata, pero' ma taqbilx illi hija ghandha titef il-jedd taghha ghan-nofs jew parti mill-komunjoni tal-akkwisti anzi ghal kuntrarju, fl-opinjoni taghha huwa r-rikorrenti nnifsu li tilef il-jedd tieghu ghall-nofs jew parti mill-komunjoni tal-akkwisti u dan stante l-agir irresponsabbli tieghu fil-konfront tal-intimata u binthom minuri kif ser ikun trattat waqt il-kawza li ghandu jitqies hati tal-firda b'tali mod li r-rikorrenti tilef kull jedd ghal kull akkwist maghmul u jigi dikjarata unikament u esklussivament responsabbli ghad-dejn u obligazzjonijiet minnu assunti minn dik id-data u ghal dejn iehor tieghu;*
6. *Illi fil-fehma tal-intimata huwa r-rikorrenti li huwa unikament responsabbli ghat-tkissir taz-zwieg taghhom speċjaliment minhabba l-attitudini tieghu kemm fil-konfront tal-intimata martu u kemm fil-konfront ta' binthom minuri u dan kif ser jigi ppruvat fit-trattazzjoni tal-kawza;*
7. *Illi r-rikorrenti ghandu jigi ordnat jivvaka d-dar matrimonjali appuntu stante li jezistu l-elementi rikjesti mill-ligi;*
8. *Salv eccezzjonijiet ulterjuri.*

Bl-ispejjez kontra r-rikorrenti li huwa ngunt minn issa stess in subizzjoni.

Having seen the minute registered at the sitting of the 8th March 2007 where the Court ordered that proceedings are to continue in the English language as respondent is English speaking.

At the same sitting defendant declared that she was not claiming maintenance for herself as she had a job;

Also at the same sitting the Court ordered that 'pendente lite' the care and custody of the child is to be joint but the child is to live with her mother and that maintenance payable to the mother in favour of the child is to be deducted directly from plaintiff's monthly salary with Air Malta;

Having seen plaintiff's affidavit annexed to a note filed on the 5th June 2007;

Having seen the report submitted by the Social Worker Josette Camilleri filed on the 13th July 2007 and the Court's decree dated 17th July 2007 confirming that the parent's right of access to their minor child D are to be regulated as established in the said report;

Having seen the evidence of Ilario Zammit, who gave evidence in connection with plaintiff's employment and of Christine Mercieca a Social Worker and co-ordinator at Ghabex Centre given at the sitting of the 3rd April 2009 held by the Judicial Assistant;

Having seen the evidence of Amanda Cordina, a Social Worker at the Domestic Violence Unit;

Having seen the evidence of Nathasha Bernek, plaintiff's former wife, who gave evidence at the sitting of the 30th October 2009 held by the Judicial Assistant;

Having seen the evidence of Jeanette Lepre, for Lombard Bank, David Galea for APS Bank Limited, and Joseph Borg Cardona for Bank of Valletta plc. who gave evidence at the sitting held by the Judicial Assistant held on the 14th December 2009;

Having seen the evidence of Claudine Ancilleri for Travel Trade Ltd, Robin Oakes for Aeros Ltd formerly Tui Malta and Audrey Ghigo for HSBC (Malta)Plc. who gave evidence at the sitting of the 14th April 2010 held by the Judicial Assistant;

Having seen the affidavit of Professor Emeritus Edwin W, plaintiff's father, and of Pearl W, his mother, filed on the 10th May 2010;

Having seen the evidence of Gian Franco Selvaggi formerly a manager of Tui Malta who gave evidence at the sitting of the 14th May 2010 held by the judicial Assistant;

Having seen the evidence of Dr. Edward Curmi who gave evidence at the sitting of the 4th October 2010, held by the Judicial Assistant;

Having seen plaintiff's cross examination held at the sittings of the 14th December 2010 , 28th January 2011 , 6th May 2011 and 20th October 2011 by the Judicial Assistant;

Having seen defendant's cross examination at the sitting of the 14th November 2011 held by the Judicial Assistant;

Having seen the minute registered at the sitting of the 8th March 2007 in the case number 400/06 NC in the names L W vs Y W whereby the Court ordered that proceedings continue in the English language and parties agreed that the evidence gathered in case number 410/06 NC be considered as evidence produced in case number 400/06 NC and vice-versa;

Having seen the acts of both cases.

Having considered that both cases have been heard concurrently, and that a detailed judgement is being delivered today in the case between the same parties bearing number 400/06 RGM.

Now therefore the Court refers to all its reasonings and deliberations in case number 400/2006RGM and adopts them in the present case which is being decided in conformity with the cited case.

DECIDE

For the reasons given by this Court in the case Number 400/06 NC in the names L W vs Y W, decides the present case as follows:-

1. Plaintiff's first claim is being acceded to in part, declares the personal separation between spouses W, plaintiff being burdened with 4/5 of the responsibility of the marriage breakdown. with the remaining 1/5 of the responsibility on Defendant as she partly contributed to the marriage breakdown;
2. Dismisses in part, Plaintiff's second claim and declares that the care and custody of their minor daughter D E is to be joint between both parents;
3. Dismisses plaintiff's third claim for maintenance from defendant;
4. Accedes to, in part, to plaintiff's fourth claim as decided in case number 400/06RGM. and dismisses the latter part of the claim as the assets of the community to be divided do not include immovable property;
5. Dismisses plaintiff's fifth claim in that plaintiff has not proved that defendant is in possession of assets which are plaintiff's parafernial property;

6. Accedes to plaintiff's sixth claim and authorizes plaintiff to reside, at their former matrimonial home, Kololo, Triq Anglu Cilia San Gwann, defendant being excluded from residing thereat;

7. Dismisses plaintiff's seventh claim, in that the case does not warrant the application of the sanctions indicated in Articles 48 et seq. of Chapter 16 of the Laws of Malta, against the defendant.

Costs are to be paid 4/5 by plaintiff and the remaining 1/5 by defendant.

Judge

Deputy Registrar