

**Small Claims Tribunal
(Gozo)**

Adjudicator Dr. Kevin Mompalao

Sitting of the 16th September 2016

Claim Number 6/2016

Ian Gilbert Milroy and Carol Milroy

Vs

Mario Cardona.

The Tribunal;

Having seen the claim of the plaintiffs in which the same are claiming that the defendant be condemned to pay them the sum of three thousand Euro (€ 3000) due to them as refunded for money paid under false pretences, when defendant allegedly exacted the money from plaintiff, purportedly in order to perform occult acts.

Having seen the answer presented by the defendant, in which they are disputing the juridical interest held by the plaintiffs, and secondly that the claims of the plaintiffs are unfounded in law and in fact.

Having heard all the evidence tendered by the parties and seen all the documents submitted by the parties.

Having seen all acts and all its decrees including those of the 22nd June 2016 and 15th July 2016 by virtue of which the case has been adjourned for judgment on the first plea.

Considers

It results that plaintiffs have been divorced prior to the institution of these proceedings. It also results that plaintiff Carol Milroy was not resident in these islands at any time during these proceedings. She was not present when the case was instituted. Notwithstanding this the case was presented in her name – something which is not possible; and something which the lawyer for the plaintiffs should have known, that this was procedurally and also to a certain extent ethically incorrect. Carol Milroy's express

consent should have been sought, and preferably a power of attorney should have been drawn up.

It is evident that the money claimed in this case was paid by Carol Milroy and once that the couple are divorced Ian Milroy had no juridical interest to claim them back himself in the absence of an express provision in the divorce agreement – something which was never brought to the cognizance of this Tribunal.

Strengthening this is the fact that when a police report was lodged it was so lodged by Carol Milroy (vide report at page 56 of the acts), and not by Ian Milroy who was just indicated as a witness.

This Tribunal is convinced that this case was instituted without the consent or even the knowledge of Carol Milroy. Ian Milroy states that he knows that she is in the United Kingdom but does not know her whereabouts. Notwithstanding various opportunities given by the Tribunal to the plaintiffs and their lawyer to regularize their position by means of a power of attorney or any other form of authorisation nothing was done, and Dr. Stellini testified that Carol Milroy failed to make any contact with him.

In view of this the procedures instituted solely by Ian Gilbert Milroy cannot proceed any further since the juridical interest vests in his wife, who in view of the above cannot be considered as a party to the suit.

Thus in view of this, this Tribunal upholds the first plea of the defendant and acquits defendant of all the claims brought against him. The relative costs of this case are to be bourn by plaintiff Ian Gilbert Milroy.

Kevin Mompalao

Adjudicator

Daniel Sacco

D/Registrar