



Civil Court – Family Section

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

Today the 31st day of January 2017

Application No. 115 / 15/2RGM

Number on list: 1

**Y J W
vs
O J W**

The Court,

PRELIMINARIES.

Having seen defendant's application filed on the 26th May 2016 whereby he submitted and claimed as follows;

1. That the parties got married in Malta on the twentieth (20th) of May of the year nineteen hundred and ninety-nine (1999) as per marriage certificate already exhibited in the acts of these proceedings.
2. That on the celebration of their marriage the community of acquests was established between the parties as the matrimonial regime regulating the property of the parties.
3. That although the plaintiff filed the current court proceedings in May of the year two thousand fifteen (2015) the parties have been living separately for almost two (2) years and namely since the plaintiff abandoned the matrimonial home in June of the year two thousand and fourteen (2014).
4. That at this stage and as shall be duly explained there is no further scope in retaining the community of acquests between the parties.

5. That consequently this application is being filed in terms of article 55 of Chapter sixteen (16) of the laws of Malta for this Honourable Court to proceed to order the cessation of the community of acquests existing between the parties.

6. That the applicant respectfully submits that as clearly stipulated in article 55(1) 'The court may, at anytime during the course for separation, upon the demand of any of the spouses, order the cessation of the community of acquests or of the community of residue under separate administration existing between the spouses'.

7. That, at this stage, the parties have no immovable property jointly owned between them. Additionally, and throughout the course of the proceedings, considerable evidence has already been produced in relation to the assets of the parties, primarily consisting of bank deposits and investments.

8. That while the defendant is employed and is on a fixed income, the plaintiff is a businessman involved in several companies in which he is either a director and/or a shareholder and in respect of which the defendant has no control and is left completely in the dark by the plaintiff.

9. That as a matter of fact the plaintiff has on several occasions categorically refused to provide any documentation about such companies, whenever such information was requested by the applicant.

10. That, as a result, the defendant fears that the continued existence of the community of acquests between the parties may result in serious prejudice to her as it exposes her to potential claims by third parties on account of the plaintiff's actions or omissions, over which she has no control.

11. That on the contrary the plaintiff will not suffer any prejudice. and certainly no disproportionate prejudice, in the event that this Honourable Court orders the cessation of the community of acquests.

12. That without prejudice to the above the applicant respectfully submits that indeed it was the plaintiff who, on several occasions, insisted with the defendant that everything they hold should be separate and that each party should administer his/her respective finances, clearly because this was to his advantage - him being the higher earner as already shown from the documentation produced to date in the course of these proceedings.

Consequently, and in the light of the above, the applicant respectfully prays this Honourable Court to: -

1. Order the cessation of the community of acquests existing between the parties in terms of article 55 of Chapter sixteen (16) of the laws of Malta;
2. Order that such judgment be notified to the Director of Public Registry in terms of article 55(5) of the said Chapter 16 of the laws of Malta;
3. Declare that the matrimonial regime applicable between the parties is that of separation of estates;

And this under such provisions that this Honourable Court may deem fit in the circumstances.

With costs against the plaintiff.

Plaintiff filed his reply on the 10th June 2016 which reads as follows:

1. On principle plaintiff does not oppose to the demand made in the application of defendant of 26th May 2016 and indeed was minded to file an analogous demand himself.
2. Nonetheless, plaintiff is concerned that once termination of the acquests (recte: community of acquests) is pronounced, assets may be uncovered whose origin or state of acquisition may acquire relevance in the event that the community of acquests is dissolved thereby multiplying the issues that would ultimately have to be decided by the court on a case by case basis.
3. In this vein, plaintiff suggests that the Court orders parties to conclude evidence regarding the community of acquests, and to postpone decision on the demand until such evidence is concluded.

Having appointed the application for a hearing held on the 20th October 2016.

Having heard oral submissions by legal counsel to the parties.

Having examined the acts of the case.

Makes the following considerations.

Article 55 of Chapter 16 of the Laws of Malta provides as follows:-

“(1) The court may, at any time during the cause for separation, upon the demand of any of the spouses, order the cessation of the community of acquests or of the community of residue under separate administration existing between the spouses.

(2) The order for the cessation of the community as provided in subarticle (1) shall be given by means of a judgement from which every party shall have a right of appeal, without requiring permission from the court for this purpose.

(3) The order of cessation shall have effect between the spouses from the date of the judgement on appeal or, if no appeal is entered, from the date when the time allowed for the appeal lapses, and it shall remain valid even if the cause for separation is discontinued.

(4) Prior to ordering the cessation of the community as provided in this article, the court shall consider whether any of the parties shall suffer a disproportionate prejudice by reason of the cessation of the community before the judgement of separation.

(5) The order of cessation under this article shall, at the expense of the party who demanded such cessation, be notified to the Director of Public Registry and it shall have effect as if the cessation of the community of acquests or of the community of residue under separate administration were made by public deed.

- omissis -

(7) The court may however where in its opinion circumstances so warrant direct that an asset or assets comprised in the community be not partitioned before the lapse of such period after the cessation of the community as it may in its direction determine.

(8) Any direction given by the court in virtue of sub-article (7), may on good cause being shown, be changed or revoked by the court.”

Therefore by virtue of Article 55(1) of Chapter 16 of the Laws of Malta the Court has the authority to order the cessation of community of acquests at any time pending separation proceedings if it results that **none of the parties will suffer a disproportionate prejudice by reason of the cessation of the community of acquests**, as prescribed by Article 55(4) of Chapter 16 of the Laws of Malta.

In his reply to the application the subject of this judgment, plaintiff declares that in principle he has no objection to the cessation during the course of these proceedings. He even declares that he was planning to file such an application himself.

However Plaintiff shows concern that in the event that the cessation of the community of acquests is ordered prior to the final judgment, subsequent to such a judgment “assets may be uncovered whose origin or state of acquisition may acquire relevance in the event that the community of acquests is dissolved” thereby multiplying the issues which need to be decided. He therefore requests that the community of acquests does not seize before the compilation of evidence is concluded.

While the Court appreciates that Plaintiff’s concern is probably a genuine one, however it does not qualify as a valid line of defence in terms of Article 55 cited above.

Reference is made to the judgment in the names “**Desiree Lowell sive Desiree Lowell Borg vs Michael Lowell**” pronounced by the Court of Appeal on the 30th October 2015: “.....il-Qorti tosserva li l-waqfien tal-komunjoni tal-akkwisti ma jista’ jkun ta’ ebda pregudizzju ghas-sehem tal-attrici mill-assi li talvolta din tiskopri wara li twaqqfet il-komunjoni, ghax il-waqfien tal-komunjoni jirriferti ghal futur u mhux ghal dawk l-assi li diga` dahlu u qeghdin fil-komunjoni anke jekk ad insaputa tal-attrici.”

In the case “**Daniela Mizzi vs Duncan Peter Mizzi**” decided by the Court of Appeal on the 28th March 2015, it was held that not only the party who was opposing a declaration of cessation was not going to suffer “a disproportionate prejudice” by reason of the cessation; on the contrary the Court of Appeal held that such a cessation was going to be beneficial to both parties. Reference is also made to a recent judgment delivered by the Court of Appeal on the 30th September 2016 in the names **Josette Gatesy Lewis, wife of Imre Gatsey, in her own name as well as a curator ad litem on behalf of the minor child, Alexander Gatesy v. Andy Imre Gatesy.**

This Court declares without any hesitation that none of the parties shall suffer a disproportionate prejudice by reason alone of the cessation of the community of acquests at this stage of the proceedings. On the contrary, it is the considered opinion of this Court that such an order is beneficial to both parties on their way to a complete personal separation.

In her third request Defendant asks this Court to declare that once cessation of the community of acquests is declared the Court should also declare that “the matrimonial regime applicable between the parties is that of separation of estates”. Having examined Article 55 of Chapter 16 the Court is of the opinion that it should limit its decision strictly with what Article 55 dictates ie. ordering the

cessation of the community of acquests without any other declaration regarding the resultant patrimonial regime of the parties.

Decide.

In view of the above the Courts decides as follows:-

1. In terms of Article 55 of Chapter 16 of the Laws of Malta, the Court orders the cessation of the community of acquests existing between the parties
2. In terms of sub-article 5 of Article 55 of Chapter 16 of the Laws of Malta, the Court orders that, at the charge of applicant, a copy of this judgement be notified to the Director of the Public Registry.
3. Third request is rejected.

The costs of this judgement are being reserved for final judgment.

Judge

Deputy Registrar