



**Civil Court
(Family Section)**

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

Today the 27st April 2017

Sworn Application No 142 / 16RGM

Number on list: 30

A B C

vs

L-Avukat Dr Anthony Cutajar u l-Prokuratur Legali Victor Bugeja kuraturi deputati sabiex jirraprezentaw lill-assenti D E F G u permezz ta' digriet datat 27 ta' Settembru 2016 l-Avukat Anthony Cutajar u l-Prokuratur Legali Victor Bugeja ma baqghux meqjusa bhala kuraturi u permezz ta' digriet datat 3 ta' Jannar 2017 l-Avukat Leontine Calleja u l-Prokuratur Legali Nicolette Aquilina gew nominati bhala kuraturi deputati ghall-istess assenti

The Court,

Having seen the sworn application presented by plaintiff which reads as follows:

1. That the parties contracted marriage in Spain (Madrid) on the 9th of February, of the year two thousand and eight [2008];
2. That from this marriage a daughter, Ariadna F B was born;
3. That the parties have been de facto separated for more than five years;
4. That the defendant is absent from Malta and the applicant does not know where he is residing at present;

5. That there is no reasonable prospect of reconciliation between the parties since apart from the fact that they have been de facto separated for a number of years, they now have separate and independent lives;

6. That the abovementioned facts fulfill the conditions for the attainment of divorce in line with Article 668 of the Civil Code, Chapter 16 of the Laws of Malta;

7. That, the applicant is duly authorised to proceed with this case in virtue of decree of this Hon. Court dated the fifteenth [15th] of December 2015;

8. That in these proceedings Dr. Yana Micallef Stafrace and Legal Procurator Alison Wadge were assigned as the lawyer and legal procurator of the applicant who is benefitting from Legal Aid service;

The Defendant should therefore state why this Hon. Court should not:

1. Pronounce the dissolution of the marriage due to the fact that there is no reasonable prospect of reconciliation between the parties;

2. Dissolve the community of acquests between the two parties and liquidate and shares the same community in two portions to be assigned one portion to the applicant and the other to the respondent, through an appointed architect, notary to receive the deed and a curator to represent the defendant in the same act;

3. Apply against the respondent sanctions contemplated in the provisions of Article 48 of the Civil Code [Chapter 16 of the Laws of Malta] ;

4. Orders the Registrar of Courts so wrthin the time allowed for by the Hon. Court notifies the Director of Public Registry with the dissolution of marriage so that it be registered in the Public Registry.

With expenses against defendant, who is summoned for oath.

Having seen the sworn reply presented on the 2nd August 2016 by deputy curators Dr Anthony Cutajar and Dr Victor Bugeja to represent the absent defendant, whereby they pleaded:

“1. Illi f'dan l-istadju l-esponenti mhux edotti mill-fatti u ghalhekk jirrizervaw li jipprezentaw risposta ulterjuri fi stadju iehor tal-proceduri, meta u jekk jirnexxilhom jikkomunikaw mal-assenti minnhom rapprezentat. F'dan ir-rigward minn issa jitolbu lir-rikorrenti sabiex tipprovdilhom kull indirizz inkluz dak

elettroniku w/jew numru tat-telephone tal-assenti sabiex ikunu jistghu jikkomunikaw mieghu.”

Having examined the acts of the case.

Having seen the plaintiff's affidavit (fol 32).

Having seen that on the 3rd January 2017 Dr Leontine Calleja and PL Hilda Nicolette Aquilina were appointed as deputy curators to represent the absent defendant.

Having seen that on the 2st February 2017, plaintiff declared that to date, she has no information regarding the whereabouts of defendant G.

Having seen that the case was adjourned to today for judgment.

Considers:

Legal Provisions Applicable to the Present Case

Article 66A (1) of the Civil Code, Chapter 16 of the Laws of Malta

Each of the spouses shall have the right to demand divorce or dissolution of the marriage as provided in this Sub-Title. It shall not be required that, prior to the demand of divorce, the spouses shall be separated from each other by means of a contractor of a judgement.

Article 66B

Without prejudice to the following provisions of this article, divorce shall not be granted except upon a demand made jointly by the two spouses or by one of them against the other spouse, and unless the Court is satisfied that:

(a) on the date of commencement of the divorce proceedings, the spouses shall have lived apart for a period of, or periods that amount to, at least four years out of the immediately preceding five years, or at least four years have lapsed from the date of legal separation; and

(b) there is no reasonable prospect of reconciliation between the spouses; and

(c) the spouses and all of their children are receiving adequate maintenance, where this is due, according to their particular circumstances, as provided in article 57:

*Provided that the spouses may, at any time, renounce their right to maintenance:
Provided further that for purposes of this paragraph, maintenance ordered by the court by a judgement of separation or agreed to between the spouses in a contract of separation, shall be deemed to be adequate maintenance:*

Provided further that a divorce pronounced between spouses who were separated by a contract or by a judgement shall not bring about any change in what was ordered or agreed to between them, except for the effects of divorce resulting from the law.

Article 66C

After the court considers the requirements of article 66B to have been satisfied, the court shall hear and decide on the demands made by the parties as provided in this Sub-Title and it shall proceed to pronounce the divorce of the parties.

Article 66E

Without prejudice to the other provisions of this Sub-Title, where the court, on the demand of one of the parties, finds the other party responsible for causing the breakdown of the marriage for the reasons provided in articles 38, 40 and 41, the court may apply mutatis mutandis the provisions of article 48 against that party.

Article 48

(1) The spouse who shall have given cause to the separation on any of the grounds referred to in articles 38 and 41, shall forfeit -

(a) the rights established in articles 631, 633, 825, 826 and 827 of this Code;

(b) the things which he or she may have acquired from the other spouse by a donation in contemplation of marriage, or during marriage, or under any other gratuitous title;

(c) any right which he or she may have to one moiety of the acquets which may have been made by the industry chiefly of the other spouse after a date to be established by the court as corresponding to the date when the spouse is to be considered as having given sufficient cause to the separation. For the purposes of this paragraph in order to determine whether an acquet has been made by the industry chiefly of one party, regard shall be had to the contributions in any form of both spouses in accordance with article 3 of this Code;

(d) the right to compel, under any circumstances, the other spouse to supply maintenance to him or her in virtue of the obligation arising from marriage.

(2) The things mentioned in paragraph (b) of sub-article (1) of this article shall revert to the other spouse, and the acquets mentioned in paragraph (c) of the said sub-article shall remain entirely in favour of such spouse, saving any right

which the children or other third parties may have acquired thereon prior to the registration of the judgment of separation in the Public Registry.

Further considers:

The Court notes that that the parties were married on the 9th February 2008 in Madrid, Spain and have a daughter who was born on the 21st June 2008. According to plaintiff's affidavit, which has not been contested, it results that she was abused by defendant both before and after their marriage. He was convicted to a suspended sentence, spent some time under preventive arrest and also electronically controlled. She also reported him to the Police after her daughter from her first marriage told her that she had been sexually abused by him, however defendant had already fled from Madrid and the Police did not find him. She states that she has not seen defendant since 2009 when they were in the Criminal Court. The personal separation took place on the 15th June 2009, date on which she reported him to the Police following the brutal aggression. In 2011, she moved to Malta with her daughter Ariadna and has since been living here.

From the acts of the case it thus results that the parties have been de facto separated for more than five years; that there is no reasonable prospect of reconciliation between them, and that there is no dispute between the parties regarding alimony.

The above premises satisfy the conditions for a request of divorce in terms of Article 66B of the Civil Code, Chapter 16 of the Laws of Malta.

The court also considers that the brutal aggression committed by defendant upon plaintiff merits the sanctions contemplated in Article 48 of the Civil Code.

Decision

For these reasons the Court:

1. Declares that the marriage of the parties broke down through the exclusive fault of defendant D E F G and consequently pronounces the dissolution of the marriage between the parties.
2. Dissolves the community of acquests between them but abstains from liquidating same in view of the absence of any proof in this regard.
3. Applies against defendant the sanctions contemplated in Article 48 of the Civil Code, with effect from the 15th June 2009.

4. Orders the Court Registrar to notify, by not later than ten days from when this judgment becomes res judicata, the Director of the Public Registry with a copy of this judgment so that it be registered in the Public Registry.

The costs should not be taxed between the parties, with the exception of those relating to the deputy curators which should be borne by plaintiff.

Judge

Deputy Registrar