



**Qorti Civili
(Sezzjoni tal-Familja)**

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Illum 28 ta' Gunju 2017

Rikors Guramentat Nru. 22 / 16RGM

Kawza fil-lista: 25

**A B
vs
C**

Il-Qorti,

Rat ir-rikors guramentat pprezentat mill-attur li permezz tieghu ppremetta u talab is-segweni:-

1. Illi l-konvenuta hija ta' nazzjonalita' Ciniza u l-partijiet izzewgu fir-Registru taz-Zwieg, Malta fil-11 ta' Ottubru, 2013 kif jirrizulta mill-anness certifikat ta' zwieg MR. No 1993/2013, u miz-zwieg taghhom ma twieldux tfal;
2. Illi filwaqt li qabel iz-zwieg kienu hargu flimkien ghal madwar seba' xhur, il-konvenuta kienet infurmatu illi jekk ma jizzewgux , kien ser ikollha titlaq minn Malta peress illi kienet ser tiskadielha il-viza, b'dana illi kemm il-darba assikuratu qabel iz-zwieg li hija riedet tizzewgu ghax trid lilu bl-iskop uniku li tghix mieghu ghal dejjem, u li kienet lesta jkollha tfal minnu wara zwieg u ghall-ebda skop ulterjuri;

3. Illi in segwitu ghal dan iz-zwieg, il-konvenuta ottjeniet fit-23 ta' Dicembru, 2013 permess ta' residenza Numru MT3892919 bhala membru tal-familja, liema permess huwa validu sat-22 ta' Dicembru, 2018, bir-residenza tkun id-dar tieghu 'Tango House', Triq il-Princep Baziliku, Haz-Zebbug, Malta;
4. Illi kemm qabel iz-zwieg u ghall-ewwel ftit xhur tieghu, ghalih ir-relazzjoni dehret miexja sew;
5. Illi qabel iz-zwieg f'Ottubru, 2013, il-konvenuta kienet impjegata f'hanut tal-massaggi u b' effett minn Jannar - 2014 hija bdiet tahdem ghal rasha dejjem fl-istess linja.
6. Illi huwa kien iwassal bil-vettura lill-konvenuta ghax-xoghol taghha li tibda fid-9.00am , u sa Marzu, 2014, wara li tispicca x-xoghol fis-7.00pm, kienu johorgu flimkien u wara jirritornaw fid-dar matrimonjali Haz-Zebbug;
7. Illi minn wara Marzu 2014, wara li l-konvenuta kienet tispicca minn xoghlha, hija bdiet tohrog kuljum fil-filghaxija ma' shabha ferm aktar milli mieghu, waqt li l-attur kien joqghod jistenniha biex eventwalment bejn il-11.00pm u nofs il-lejl kien imur jigborha u wara l-partijiet kienu jirritornaw id-dar, fejn il-konvenuta kienet tirrinkaza ruhha sempliciment biex torqod u l-ghada terga' tibda din l-istess rutina;
8. Illi l-konvenuta, minn Marzu, 2014, baqghet ghaddejja sena u erba' xhur kuljum b' dan it-tip ta' hrug tard filghaxija ma' shabha u wara x-xoghol, sa ma telqet definitivament mid-dar matrimonjali fil-11 ta' Lulju, 2015.
9. Illi qabel dan it-tluq, ragonevolment l-esponenti beda jilmenta mal-konvenuta dwar din it-tip ta' hajja taghha ta' hrug kuljum wara x-xoghol sa tard filghaxija ma' shabha u dwar dan l-abbandun totali minnha tal-hajja matrimonjali, u filwaqt li rrimarka lill-konvenuta li dan mhuwiex zwieg, hija wiegbet illi hi tiehu pjacir biss ma' shabha tant li qabel ma telqghet kienet ghamlet madwar xahrejn ma tohrog xejn mal-attur ,
10. Illi fl-10 ta' April, 2015 huwa wassalha l-ajruport ghax kellha issiefer lejn ic-Cina u wara li telaq mill-ajruport, billi heggitu biex ma jibqax jistenniha sa ma jitlaq l-ajruplan, il' quddiem irrizultalu li siefret minn Malta fl-14 ta' April, 2015 u mhux fl-10 ta' April;
11. Illi dan l-ingann gieghel lill-attur jissuspetta li l-konvenuta setghet kellha relazzjoni ma' terza persuna u meta ikkonfrontaha dwar dan is-suspett tieghu, hija wiegbet li 'il quddiem hija jkollha wiehed u li hi tmur ma' min trid u hu jista' jaghmel l-istess;

12. Illi in oltre' qaltlu li hija lesta tibqa' biss habiba mieghu u kif jaghlqu il-hames snin miz-zwieg ikunu jistghu jaghmlu s-separazzjoni u wissitu biex ma jaghmel ebda procedura bil-Qorti qabel ma jghaddi dan il-perjodu. (bl-iskop car li tkun eligibbli ghall-otteniment tac-cittadinanza Maltija), u heddithu li jekk jaghmel tali proceduri. hija kienet tpattihelu billi titlaq lura lejn pajjizha u thallilu id-dejn tal-hwienet tal-massaggi li kienet tiggestixxi;

13. Illi is-Sibt 11 ta' Lulju, 2015 hija telqghet definittivament mid-dar matrimonjali, dwar liema fatt tat-tluq, l-attur fil-21 ta' Lulju, 2015 ghamel rapport fl-Ghassa ta' Tas- Sliema;

14. Illi huwa jaf b'dawn il- fatti 'di scientia propria'.

B. Ir-Raguni tat-Talba.

L-esponenti jiddikjara bhala raguni tat-talba :

Illi filwaqt li qabel u fil-mument taz-zwieg huwa kien in assoluta bona fede u ma kienx jaf dwar l-intenzjonijiet tal-konvenuta, wara li zzewwiga fil-11 ta' Ottubru, 2013, irrizulta li l-konvenuta kienet izzewgitu unikament ghall-konvenjenza u cioe' bl-iskop li l-ewwel tottjeni bis-sahha taz-zwieg, kif ghamlet, permess tar-residenza validu sat-22 ta' Dicembru, 2018 u f'gheluq il-hames snin miz-zwieg, cioe' fil-11 ta' Ottubru, 2018 tkun eligibbli ghac-cittadinanza Maltija;

Illi b'hekk min naha unikament tal-konvenuta:

- il-kunsens taghha kien ivvizjat b' difett serju ta' diskrezzjoni tal-gudizzju fuq il-hajja mizzewga jew fuq id-drittijiet u dmiriiet essenzjali taghha;

- u kien anke ivvizjat ghax kien simulat peress li eskluda pozittivament iz-zwieg innifsu.

Illi ghalhekk l-attur kellu jaghmel din il-kawza, sabiex l-Onorabbli Qorti joghghobha tiddikjara iz-zwieg tieghu mal-konvenuta null u bla effett legali u dana ghal ragunjet attribwibbli biss lill-konvenuta.

C. Talbiet

Ghaldaqstant, l-esponenti umilment jitlob illi din l-Onorabbli Qorti joghghobha:

1. Tiddikiara u tiddeciedi , a tenur tal-artikolu 19.(l) (d) u (f) tal-Att dwar iz-Zwieg (Kap 255 tal-Ligijiet ta' Malta). li z-zwieg tal-partijiet fir-Registru taz-

Zwigijiet il-Belt Valletta fil-11 ta' Ottubru, 2013, kien 'ab initio' null u bla effett legali.

2. Tiddikjara, għall-fini tal-artikolu 20.(3) tal-Kap 255. li l-attur biss kien in bona fide.

3. Tiddikjara, għal fini tal-artikolu 20.(5) tal-Kap 255, li l-konvenuta hija responsabbli għan-nullita' taz-zwieg.

Bl-ispejjez tal-prezenti, kontra l-konvenuta minn issa ingunta għas-subizzjoni.

Rat ir-risposta guramentata tal-konvenuta li taqra kif gej:-

1. Illi l-esponenti taqbel li hemm ragunijiet bizzejjed għalfejn dan iz-zwieg għandu jigi dikjarat null u bla effett pero' r-ragunijiet huma imputabbli esklussivament lir-rikorrenti ragel A B;

2. Salv eccezzjonijiet ulterjuri.

Rat il-verbal tal-udjenza tad-9 ta' Gunju 2016 fejn il-Qorti ordnat li l-verbali ossia l-process jitmexxew bil-lingwa Ingliza tenut kont tal-fatt illi l-konvenut ma tifhimx bil-Malti.

Having seen the evidence, documents and all the acts of the case.

Having heard the oral submissions by legal counsel.

Having seen that the case was adjourned for judgment;

Considers:

THE EVIDENCE

In his affidavit (fol 13), **plaintiff** declares the following:

"1. Jiena u l-konvenuta C bdejna nohorgu flimkien għal habta ta' Frar, 2013 u għamilna daqs tmien xhur niltaqghu regolarment darbtejn u għali diet darbiet fil-gimgha qabel ma izzewwigna.

Hi kienet Malta, bis-sahha ta' visa li kienet teggeded kull sena, billi kellha xogħol bhala impjegata f'hanut tal-messaggi, f' San Gwann Triq Birkirkara taht il-pont.

Waqt li konna qed nohorgu flimkien, kienet qaltli li ma' min kienet impjegata kien qallha li f' Ottubru, 2013 huwa ser jaghlqilha il-visa u li b' hekk, jekk ma nizzewgux ser ikollha titlaq minn Malta. Ghalhekk hija bdiet theggigni biex nizzewgu.

2. Jien kont lest u xtaqt li nizzewwigha ; pero' ridt inserrah rasi li jekk nizzewgu , dan hi ma tkunx qed taghmlu sempliciment biex hi tkun tista' tibqa' Malta bhala marti. Ghalhekk mitt darba kont insaqsiha jekk hi tridx tizzewgini sempliciment biex tkun tista' tibqa' Malta.

Hi dejjem assikuratni u serhitli rasi qabel iz-zwieg li hija riedet tizzeweg lili ghax trid lili, tant li qaltli li kellha hafha irgiel ohra li rieduha u hi ma accettatx. Kienet tghidli li trid lili bl-iskop uniku li tghix mieghi ghal dejjem u li ma kellha ebda skop ultejjuri.

Qabel iz-zwieg, gia' kien ikollna x' naqsmu flimkien u kienet tghidli li wara li nizzewgu kienet lesta ikollha tfal minni.

3. Mohhi mistrieh li verament riditni, ahna izzewwigna fir-Registru taz- Zwieg, Malta fil-11 ta' Ottubru, 2013 kif jirrizulta mill- att ta' zwieg MR. No 1993/2013 (anness bhala Dok A mar-rikors guramentat).

Bis-sahha taz-zwieg, il-konvenuta otteniet fit-23 ta' Dicembru , 2013 permess ta' residenza Numru MT3892919 (Dok. B mar-nkors), bhala membru tal- familja u dan il-permess huwa validu sat-22 ta' Dicembru , 2018, bir- residenza tkun id-dar tieghi 'Tango House' , Triq il- Princep Baziliku, Haz- Zebbug , Malta.

4. Kif gia ghidt, qabel iz-zwieg f' Ottubru, 2013, il-konvenuta kienet impjegata f' hanut tal-massaggi San Gwann. Wara iz-zwieg kompliet fl-istess linja ta' xoghol f'hanut iehor f'Tigne Ta' Sliema bhala impjegata sa Mejju 2015.

Waqt li kienet impjegata fil-hanut tal- massaggi f'Tigne, hadet ukoll b' kiri ghal rasha hanut iehor fil-Hamrun f'Settembru tal-2014 fejn kellha anke impjegati maghha u fethet, b'kiri ukoll , hanut iehor tal- massaggi ghal rasha f' Mejju, 2015 fi Gwardamangia.

5. Kemm qabel iz-zwieg u ghall-ewwel ftit xhur tieghu, ghalija ir-relazzjoni taghna dehret miexja sew.

Meta kienet tahdem f'Tigne sa Mejju, 2015, jien kont inwassalha kuljum bil-vettura tieghi ix-xoghol, li jibda fid- 9.00am . Qisu ghall-ewwel sitt xhur taz-zwieg cioe' sa Marzu, 2014, wara li tispicca x-xoghol fis-7.00pm f' Tigne, konna nohorgu flimkien u wara nirritomaw fid-dar matrimonjali Haz- Zebbug.

Kien ikollna x'naqsmu flimkien darbtejn fil-gimgha u ma konniex nuzaw kontraccettivi,, peress illi qabel iz-zwieg kienet qaltli li fiz-zwieg hija lesta li jkollha tfal minni. Pero' kienet tghidli biex noqghod attent, ghaliex ma kinitx ghadha preparata li tohrog tqila u jien kont nirrispetta ix-xewqa taghha.

6. Minn wara Marzu, 2014, wara li ll-konvenuta kienet tispicca minn xogholha f'Tigne, hija bdiet tohrog kuljum fil-filghaxija ma' shabha, ferm aktar milli mieghi.

Aktar ma beda jghaddi iz-zmien, il-hrug mieghi dejjem beda jonqos. Meta kont nghidilha biex nohorgu flimkien u nissuggerrixi li per ezempju imorru xi festa, hi kienet tilqaghli li ma thobbx il-festi, sa ma fl-ahhar qaltli li tippreferi tohrog ma' shabha milli mieghi.

Wara x-xoghol, kienet tmur tinhasel fi flat ghand shabha il-Balluta u wara tohrog magghom tiekol u tixrob, waqt li jien kont naghmel 1-isbah saghtejn nistenniha daqqa hdejn il-Casino jew x'imkien San Giljan . Spiss kienu jarawni nistenniha iz-ziju tieghi Joe Said u gieli anke habib tieghi certu Jason.

Bejn il-ll.OOpm u nofsil-lejl kienet iccempilli biex immur mgborha mill-Balluta jew mill-Casino u konna nirritomaw id-dar, fejn il-konvenuta kienet timnkaza ruhha sempliciment biex torqod u 1-ghada terga' tibda din 1-istess rutina ta' lejliet.

F' dan 1-istess zmien li bdiet tohrog ferm aktar spiss ma' shabha milli mieghi, cioe' minn Marzu, 2014 , xorta kien hemm drabi fejn kien ikollna x' naqsmu. Pero', flok bhal qabel fl-ewwel sitt xhur taz- zwieg kienet tghidli biss biex noqghod attent, f dawn id-drabi kienet tinsiti mieghi li nuza il-'condom' , ghaliex assolutament ma ridthiex tinqabad tqila, kontra dak li kienet tghidli qabel iz-zwieg. Il-hsieb li jkollha tfal minni tanielha kompletament.

7. Bejn bix-xoghol taghha miz-zwieg fit- 13 ta' Ottubru 2013, aggravat bis-sieghat li kienet tqatta' ma' shabha barra wara ix-xoghol minn Marzu ,2014 sa ma telqghet mid-dar fil- 11 ta' Lulju, 2015 (kif nispjega il- quddiem) , cioe' f sena u disa' xhur taht 1-istes saqaf, hi kiolet fid-dar mhux aktar minn tmien darbiet.

Anke qabel ma kont inwassalha x-xoghol, kont nghidilha sabiex tiehu 'breakfast' u cafe' izda hi kienet tippreferi tiehdu mal-hbieb taghha f cafe' Tas- Sliema , qabel ma tmur fil-hanut tal- massaggi f'Tigne. Id-dar kienet isserviha sempliciment biex torqod.

8. Sakemm telqghet fil- 11 ta' Lulju, 2015, jiena kont nilmenta maghha dwar din it-tip ta' hajja taghha ta' hrug kuljum wara x-xoghol sa lard filghaxija ma' shaba u dwar dan 1-abbandun totali minnha tal-hajja matrimonjali, u filwaqt li

rrimarkajthielha li dan mhuwiex zwieg, hija kompliet bl-istess skuza illi hi tiehu pjacir biss ma' shabha.

9. Hi xorta baqghet tohrog b' dan il-mod bla qies, kontra ix-xewqat tieghi u jien pero xorta bqajt imur nigborha tard filghaxija. Niftakar li fl-ahhar ta' Gunju, 2015, qaltli biex ma nigborhiex ghaliex kienet ser torqod ghand il-hbieb. Jiena opponejt li torqod ghand shabha u xorta raqdet u fil- fatt ghamlet xi ftit jiem ma tigix id-dar Haz- Zebbug.

Giet lura filghaxija tal-Gimgha 10 ta' Lulju, 2015 u 1-ghada is-Sibt 11 ta' Lulju, 2015 hija telqghet definittivament mid-dar taz-zwieg b'zewg bagalji hwejjeg u zraben. Dwar dan it-tluq fil- 21 ta' Lulju, 2015 jiena ghamilt rapport fl- Ghasa ta' Tas- Sliema.

10. Apparti dan il-hrug taghha wahidha ma' shabha u ftit li xejn mieghi sa minn Marzu, 2014 sa ma telqghet mid-dar fil- 11 ta' Lulju, 2015, kien hemm bosta drabi fejn hija dahqet bija.

11. Niftakar li dwar il- hanut tal-massaggi li ghandha il- Hamrun, bl-isem 'Sun Chinese Massage' li jmsab fi Triq Anglu Mallia , qabel ma krietu , kienet urietni bl-intenzjoni taghha li tibda tahdem ghal rasha fix-xoghol tal-masaggi u semmietli dan il- post li kien jinteressaha.

Jiena kont ghidtilha li qabel ma tiffirma il-kuntratt , xtaqt li jigi iffirmat bejnietna kuntratt tas-separazzjoni tal-beni u b' hekk tigi ukoll ittermmata il- komunjoni tal- akkwisti u kont anke ipprezentajt rikors fil-Qorti , biex nigu awtorizzati niffirmaw kuntratt ta' separazzjoni tal-beni.

Pero' dan il-kuntratt tas-separazzjoni tal-beni qatt ma sehh ghax hi ma riditx.

Il- quddiem hi stess infurmatni li fis-sajf tal-2014 kienet iffirmat wahidha il- kuntratt ta' kiri tal-fond il-Hamrun, bhala inkwlina ghal hames snin ' di rispetto' , bir-rata ta' ghaxar euro (Eur10) kuljum , minghajr ma jien qatt ma iffirmajt.

12. Ghal darba ohra minghajr il-firma u 1-kunsens tieghi u assolutament minghajr ma biss avzatni jew tatni hjiel ta' x' ser taghmel, ghall-habta tal-bidu tal-2015, hija wahidha bhala inkwlina iffirmat it-tieni kuntratt ta' kiri tal- hanut tal-massaggi li ghandha il- Gwardamangia , bl-isem ' Xinqi Massage Salon' fi Triq Mimosa, din id-darba ' di fermo' ghal hames snin , bir-rata ta' tlieta u ghoxrin euro (Eur 23) kuljum. Kien biss wara li iffirmatu wahidha. li hija avzatni bih.

13. Fil- fatt appartu il-kawza odjema ghal- annullament li ipprezentajt fit- 28 ta' Jannar, 2016, fl-istess gumata pprezentajt ukoll kawza ohra quddiem 1-Onorabbli Prim' Awla tal- Qorti Civili ghas-seprazzjoni gudizzjaija tal-beni,

peress illi bl-attitudni taghha wara iz-zwieg , bil-habi taghha dwar dawn iz- zewg kuntratti u bil-fatt li telqghet definitivament mid-dar taz-zwieg fil-11 ta' Lulju, 2015 , nibza' wisq li tipperikola il-komunjoni tal- akkwisti u anke 1-assi tieghi.

14. Okazzjonijiet ohra fejn hbiet minni, ghandhom x' jaqsmu mas-safar.

Il- Gimgha, 10 ta' April, 2015 jien wassaltha 1-ajruport ghax kellha issiefer lejn ic-Cina. Meta konna fid-'departure lounge', niftakar li hin minnhom kienet cemptlet li xi hadd minn fuq ll-mobile taghha u qaltli li jien m' ghandix ghalfejn noqghod mstenna' sakemm titlaq; ghal hekk jiena tlaqt mill-ajruport.

L-ghada s-Sibt, 11 ta' April, 2015 iltqajt ma' habib tieghi Joe Portelli, u dan qalli li kien ghadu kif ra lil mara tiela' mill-Hamrun lejn il- Lyceum, cioe' fi triqitha ghall-hanut ta' Gwardamangia. Jien ghidtlu li ma jistghax ikun ghaliex hi qieghda ic-Cina , billi il- gumata ta' qabel kont wassaltha 1-ajruport.

Hi giet lura mic-Cina fis-16 ta' Mejju, 2015 u ma kinitx qaltli biex imur nigborha mill-ajruport. Meta giet lura id-dar, jien qomt bil-lejl u rajtilha il- passaport taghha li kien juri li siefret fl-14 ta' April, u mhux fl-10 ta' April, meta jien wassaltha 1-ajruport.

Niftakar li meta kienet ghadha c-Cina, jien kont cempiltilha fuq il-mobile taghha u wegibni ragel, li instema' barrani u meta staqsejthu min hu, huwa wegibni “ I am her guy”. Dan il-loghob taghha bid-dati ta tluq lejn ic-Cina, sahhahli il-fehma li hi kellha relazzjoni ma' haddiehor.

Jiena ghalhekk ikkonfrontajtha dwar x' kont qed nahseb u hi wegbitni li il-quddiem hija jkollha wiehed u li hi tmur ma' min trid u jien nista' naghmel 1-istess.

15. Ftit wara li giet mic-Cina fis-16 ta' Mejju, 2015 , regghet qarqet dwar suppost safra ohra fil-vicin . Kienet qaltli li ghandha bzonn issiefer erbat ijiem 1-Italia, biex tixtri xi pilloli ghal missierha.

Dakinhar li suppost kienet imsiefra 1-Italia mort fejn il-hanut taghha Gwardamangia, biex nara hijiex hemm. Wara xi ghaxar minuti cemplitli mill-mobile taghha u qaltli biex nitlaq minn quddiem il-hanut.

Ghalhekk regghet gidbitli ghax kienet ghadha Malta meta skond hi kellha tkun 1-Italia. Mieghi dakinhar quddiem il- hanut, kien hemm iz-ziju tieghi Joe Said.

16. L-ahhar ingann relatat ma' safar ghandu x' jaqsam mal-Inghilterra u sehh ftit qabel ma telqghet mid-dar matrimonjali fil-11 ta' Lulju, 2015.

Konna miftehmin li hi u jien imorru ghal- vakanza u peress li biex hi tkun tista' isiefer lejn 1-Inghilterra, kien mehtieg li jien niffirmalha xi dokumenti ghall-visa , jiena iffirmajtilha u ghamilt kull ma kien hemm bzonn mal-awtoritajiet rigward il-passaport. Kont anke iffirmajt ukoll xi dokumenti biex anke bintha zaghzugha, tkun ukoll tista titla' 1-Inghilterra.

Dan kollu jiena ghamiltu, bl-idea dejjem f mohhi kif ftehmna, li jien ukoll ser insiefer mal-konvenuta .

Kien kif appena il-konvenuta kellha il-karti kollha mehtiega biex tkun tista' isiefer 1-Inghilterra ma' bintha, li ftit wara cioe' fil- 11 ta' Lulju, 2015, hi telqghet mid-dar taz-zwieg. Fil-fatt wara li telqghet mid-dar, hija siefret ma' bintha 1-Inghilterra.

17. Tul iz-zmien li ghamlet fid-dar matrimonjali minn Ottubru 2013 sa Lulju, 2015, kwazi assolutament ma ghamlet ebda xoghol tad-dar. Qatt ma hadet interess fid-dar. L-iktar li qatt sajret kienu tliet darbiet u jien kien ikolli insajjar ghalija. Tul dan iz-zmien forsi haslet 1-art darbtejn . Jien kont anke dejjem nahsel il-hwejjeg tieghi u gieli taghha ukoll.

Ghalkemm hija kienet tahdem, kif ghada sa issa , miz-zwieg fit-13 ta' Ottubru, 2013 sakemm teqghet mid-dar fil- 11 ta' Lulju, 2015, hi ma ikkontribwiet xejn fil-hlas tal-ispejjez tad-dar . Il-kontijiet tad-dar, bhal dawl u ilma u gas , hallasthom kollha jien.

Kont anke xtrajtilha curkett taz-zwieg li kien jiswa elfejn u tliet mitt (Eur 2,300) u hi wegħditni curkett mic-Cina, li qatt ma gie. Qabel iz-zwieg kont anke xtratilha kompjuter li hadet magħha meta telqghet mid-dar.

Għal safar iehor fl-2014, f Jannar lejn ic-Cina u f'April lejn 1-Italia u għat-tieni safra għac-Cina f April, 2015 meta ingannatni dwar id-data tat-tluq, b' kollox halllastilha madwar disa' mitt euro (Eur900). Kont anke xtrajthileha b' madwar (Eur 80) tmenin euro whisky għal familja tagħha fic-Cina, meta telghet it-tieni darba.

18. Niftakar li lejliet li telqghet mid-dar fil-11 ta' Lulju, 2015, kienet qaltli li hija lesta tibqa' biss habiba mieghi u kif jagħlqu il-hames snin miz-zwieg inkunu nistghu naghmlu s-separazzjoni u wissietni biex ma naghmel ebda procedure bil-Qorti qabel ma jghaddi dan il-peqodu.

Wissietni ukoll li jekk naghmel tali proceduri, hij a kienet tpattihieli billi titlaq lura lejn pajjizha u thallili id-dejn tal-hwienet tal-massaggi li kienet tiggestixxi. Kienet qaltli ukoll li jekk jiena rrid, hija tista' tqabbani ma' ciniza armla, li għandha sittin sena u li għandha il-visa.

Is-Sibt 11 ta' Lulju, 2015 hija telqgħet definittivament mid-dar matrimonjali u dwar dan it-tluq, fil-21 ta' Lulju, 2015 jiena għamilt rapport fl-Għassa ta' Tas-Sliema.

19. Għalhekk f'dawn ic-cirkostanzi, jiena inhoss illi 1-unika raguni għalfejn il-konvenuta izzewgiti fit-13 ta' Ottubru, 2013, kienet sabiex hi tkun tista' tibqa' Malta bla problemi u f'għeluq il-hames snin tkun tista' tikseb ic-cittadinanza."

In the written correction to his affidavit, plaintiff explains:

"B' referenza għall-paragrafu numru 14 tal-affidavit tiegħi tas-16 ta' Marzu, 2016, u specifikkament it-tieni paragrafu fejn għidt illi :

*"L-għada s-Sibt, 11 ta' April, 2015 iltqajt ma' habib tiegħi Joe Portelli, u dan qalli li kien għadu kif ra lil mara tiegħi mill-Hamrun lejn il- Lyceum, cioe' ft triqitha għall-hanut ta' Gwardamangia. Jien għidtlu li ma jistgħax ikun għaliex hi qiegħda ic-Cina, billi il- gurnata ta' qabel kont wassaltha l-ajruport. " ---
----- ngħid illi dan għandu jigi ipprecizat u sostitwit kif gejj :*

" It-Tlieta ta' wara li wassaltha l-ajruport il-Gimgha 10 ta' April, 2015, kien gie jarani fil-hanut tiegħi tal-haxix f' Birkirkara, certu Joseph Portelli li ilu habib tiegħi għal hafsa snin. Qabel iz-zwieg kont gie' introducejtu ma' C, billi hi u jien hrigna flimkien miegħu u ma' mara oħra ciniza. Konna morna nieklu fir-restaurant 'Sofra Kebab', 1-Imsida.

Eventwalment meta izzewwig, Joe kien anke ix-xhud tiegħi u s' intendi kien anke gie għal ikla li għamilna f' Bay Street bħala celebrazzjoni taz-zwieg.

F' okkazzjoni oħra, wara iz-zwieg, kont anke hadtu fi flat il-Balluta, fejn qabel iz-zwieg C kienet toqgħod ma' shabha, sabiex C minfuq il-'lap-top' tagħha turih habiba li kellha c-Cina, biex forsi jithajjar jibda relazzjoni. Pero' Joe ma kienx interessat.

Għalhekk lil C, Joe Portelli kien jafha sew minn wiccha.

Meta gie il-hanut Joe, cioe' it-Tlieta ta' wara il- Gimgha 10 ta' April, 2015 meta jien kont wassaltha l-ajruport biex issiefer lejn ic-Cina, hin minnhom Joe qalli li s-Sibt li għadda cioe' l-11 ta' April, kien ra lil C tiegħi mill-Imsida għall-Hamrun.

Jien għidtlu li ma jistax ikun għaliex hi qiegħda c-Cina, billi il-gurnata ta' qabel kont wassaltha l-ajruport."

Joseph Saliba, ETC representative, testified on the 9th June 2016 and presented a copy of the work history of defendant marked DOC ETC1. He also stated that she has no pending applications, and when he checked about any reports regarding any illegal work, nothing showed on their records.

Inspector Mario Haber testified on the 9th June 2016 and described defendant's movements between 2013 and 2016, as follows: “5th January 2013 to Cairo, arrival. Departure 22nd January 2014 to Istanbul. Arrival 22nd February 2014 from Istanbul. Departure 4th June 2014 to Istanbul. Arrival 20th June 2014 from Istanbul. Departure 13th April 2015 with EK most probably to Larnaca, Dubai via Larnaca. Arrival 14th May 2015 from Dubai Larnaca, departure 5th October 2015 to Luton. 10th October 2015 arrival from Luton. 12th January 2016 departure Dubai via Larnaca and 2nd March 2016 arrival from Dubai Larnaca.”

Joseph Portelli testified by affidavit and stated the following:

“Jiena ili naf lill-attur A B madwar erbghin sena u kont xhud fit-tieg tieghu mal-konvenuta C fit- 11 ta' Ottubru, 2013.

Fis-sajf ta' qabel ma izzewgu , jiena u habiba tieghi, mara ukoll ciniza , konna hrigna nieklu ma' A u C f post 1-Imsida bl-isem ' Sofra Kebab'.

Xi ftit granet wara iz-zwieg, kienu ghamlu ikla b'celebrazzjoni taz-zwieg f restaurant tac-cinizi f Bay Street, Paceville, fejn kien hemm hafna hbieb taghha cinizi . Bhala Maltin konna biss A u jien u Malti iehor, habib ta' A Konna b' kollox xi mejda ta hamsa ghoxrin ruh.

Darba ohra wara iz-zwieg, jiena kont mort fi flat il-Balluta , fejn C skont ma kien qalli A , kienet toqghod flimkien ma' shabha, qabel ma izzewgu.

Kont mort f dan il- flat flimkien ma' A u C, biex C minfuq il-lap-top taghha turini habiba li kellha ic-Cina, biex forsi jien nithajjar nibda relazzjoni. Pero 'jien ma kontx interesat u qatt ma ikkomunikajt maghha.

Niftakar li is-Sibt 11 ta' April, 2015, f xi hin bejn id-disgha u 1-hdax ta' filghodu, jien kont wieqaf qed nitkellem ma' xi hbieb fi Qrejten Street, 1-Imsida fejn il-Junior College.

Jien rajt lil C tiela' mal-hajt tal-iskola fid-direzzjoni lejn il- Hamrun. A kien qalli li hi ghandha il-hanut tal-massaggi fi Triq Mimosa, Gwardamangia. Meta rajtha, assumejt li kienet tiela' lejn dan il-hanut.

Jien cert li kienet hi, ghaliex gejna wicc imb wicc f distanza ta' ftit metri. Hi gharfitni pero' baqghet ghaddejha bla tislum.

It-Tlieta ta' wara cioe' 1-14 ta' April, 2015, jiena mort il-hanut tal-haxix li ghandu A f Birkirkara, biex nghaddi siegha zmien nitkellmu . Waqt id-diskors, ghidtlu li kont rajt lil C is-Sibt ta' qabel, tiela mill-Imsida ghall- Hamrun.

A ma riedx jemmini u beda jmerini li ma jistghax ikun h rajtha, ghaliex, kif qalli hu , kien wassalha 1-airport lejliet cioe ll Gimgha 10 ta' April, biex tmur ic-Cina.

Jien nikkonferma bla ebda dubbju li is-Sibt 11 ta' April, 2015, rajt lill- konvenuta tiela' mill-Imsida. ”

Joseph Said testified by affidavit as follows:

“L-attur A B huwa in-neputi tieghi, cioe' ommu Carmela B xebba Said , ilium mejta, tigi ohti.

Niftakar illi zmien mhux ilu hafna, meta jien kont inkun daqqa Ta' Sliema jew San Giljan , diversi drabi inzertajtu wahdu .

Kont narah daqqa lejn ic-Chalet f' Ta' Sliema u daqqa San Giljan hdejn 1- istage quddiem il-Wembley Garage. Dan kien ikun dejjem bejn 1-ghaxra (10.00pm) u 1-hdax ta' filghaxija (11.00pm).

Jiena kont nieqaf inkellmu u kien jghidli li qiegħed jistenna' lill-mara, il-konvenuta C.

Qabel ma kont ninzertah f dawn il-postjiet jiena kont gia' hadt 1-impressjoni li seta' kien hemm xi problemi bejniethom peress li darba kien qalli li meta kien għadu kemm izzewweg , kienu f' xi post ta' divertiment fejn ikun hemm hafna nies u qabdet tizfen ma' haddiehor . Kien qalli li kien urtat hafna.

Darba ohra A kien talabni immur vicin fejn C ghandha hanut fi Gwardamangia . Kif konna barra 1-hanut kien talabni biex immur niehu in-numru tat-telefon jew mobile li kien hemm mat-tabella tal-hanut u fil-fatt jien għaddejtulu.

Niftakar li f'dik l-okkazjoni kien qalli li C kellha tkun imsiefra l-Italija.

Darba ohra A kien qalli wkoll li qabel iz-zwieg, il-konvenuta kienet qaltlu li lesta jkollha it-tfal minnu u wara li zzewgu qaltlu li ma tridx ikollha tfal u li hi thobb biss lil bintha. ”

Ryan Spagnol in representation of the Department of Citizenship and Expatriates stated that:

“I am appearing in representation of the Department of Citizenship and Expatriates. I am testifying about the residence permit issued to C with details 3892919 and the Identity Card number of the subject is 400485(A). The permit is usually issued on the basis of marriage with a Maltese citizen. The date of the marriage was Friday 11th October 2013.

The residence permit is valid for five years and this particular residence permit was issued to C on the 23rd December 2013 and at that point in time it was decided that the validity would be till 22nd December 2018. The applicant as an exempt person is entitled to reside in Malta and has free movement in the whole Shengen area on the basis of her permit and the document serves for the purposes of identity as an identity document.

The procedure is as follows. The applicant a Maltese citizen accompanies the husband or wife in the section of citizenship and an interview is held and if the result of the interview is satisfactory the citizen section would stamp or endorse the residence permit application. The residence permit is only issued on the basis of marriage with a Maltese national.

If it results that the couple are no longer together and are living in the same matrimonial home, or it results that the marriage is a marriage of convenience, the applicant is brought again to the department and another interview is held and if grounds are found for the freedom of movement to be removed then it would be removed. This would mean that the residence permit would be revoked. The applicant C has a residence permit in her hand issued on the basis of marriage with Mr.A B. The address is Tango, Triq Princep Baziliku, Haz-Zebbug Malta.

In this particular case the permit was issued on the basis of the marriage of C with A B. In fact on the residence permit amongst other details there is the reason for which the permit was issued and in this case the exempt person was a member of the family and there is also the remark that she does not require an employment license or any authorisation to live in Malta.

I am being shown Dok. B at Fol.7 of the Court file (process) and I confirm that the card holder has the documents exhibited in Dok.B and which tally with the documents in our departmental file. I confirm the authenticity of the document exhibited as Dok.B at Fol.7 of the Court file (process).”

Defendant testified on the 2nd February 2017:

“I married my husband on the 11/10/2013. I met my husband after I was living and working in Malta and someone introduced us. We started going out with each other for nine (9) months. He respected me and I respected him.

I know that he was older than me however we had a good relationship with each other. We used to go out for dinner very often and in fact we were seeing each other regularly. I even slept sometimes at his house before we got married.

As time was passing and we were together he asked me to marry him and I accepted.

The life after the marriage was satisfactory. I continued working in my previous job as usual and we lived together.

However we had several problems during the marriage. One of the problems was that he never gave me a key for the house. In fact it was not the first time that I had to wait outside the house waiting for him.

Apart from this problem I could not take his attitude that I did not have the key of the house and he was arrogant with me. This was very degrading for me therefore I decided to leave the matrimonial house. I left after two years of marriage. Also we had problems with our sexual relationship.

I had a valid working permit before I married him and I was legally living in Malta.

I am not objecting for the annulment case as I do not love him.”

In cross-examination, **defendant** stated that:

“In the year 2013 A B agreed to marry me. I am being asked whether I remember A B having told me that I am not to marry him because of the visa and my answer is no because I already had the visa. I am being asked whether I married on the 11th October 2013 and my answer is yes I married on that date. Before I married I was working in a massage shop in San Gwann. The name of the shop in San Gwann is Xin Yuan. I left the home in Zebbug in July 2015. I am being asked whether from the beginning of the marriage until the time when I left the home in Zebbug, A B used to take me to work in the morning and bring me back home from work late in the evening. My answer to this is that I have to correct what is being said to me, in the sense that A B used to drive me to Msida and then from Msida I used to get a bus to go to the shop in Sliema. After work we did not go straight home but we used to go for instance to the Casino or to friends. I used to

go to the Casino with A B himself, and sometimes I used to go with my friends. I am being asked that since I married till I left home, I used to be only for some time at home and my answer to this is that yes I was always working. I am being asked that in the beginning of the marriage A gave me the key and my answer is that he gave me the key for only a week in the beginning of the marriage. After a week I asked him for the key again and I could not open any door in the house. Then it was only one year later that he gave me the key with which I could enter the house. In the first week I do not know whether it was the right key that he gave me for the simple reason that we always used to go home together and it was he who was opening the door to the house and not me.

I left the home in Zebbug in July 2015 and I went to a place in Balluta. For the first six months I confirm as I am being asked that the sexual relationship between us was good. He introduced me to his daughters but when his daughters used to come to the house in Zebbug he used to hide our photos in the cupboards. I am being asked whether I ever made a Police report about the keys and my answer is that no I never made a Police report.”

THE LEGAL CONTEXT

Plaintiff is requesting the Court to declare the marriage of the parties celebrated on the 11th October 2013, null and void without any effect at law in terms of Article 19(1)(d) and 19(1)(f) of the Marriage Act, Chapter 255 of the Laws of Malta.

The said sub-articles read as follows;

“19. (1) In addition to the cases in which a marriage is void in accordance with any other provision of this Act, a marriage shall be void:

- Omissis -

(d) if the consent of either of the parties is vitiated by a serious defect of discretion of judgement on the matrimonial life, or on its essential rights and duties, or by a serious psychological anomaly which makes it impossible for that party to fulfil the essential obligations of marriage;

- Omissis -

(f) if the consent of either of the parties is vitiated by the positive exclusion of marriage itself, or of any or more of the essential elements of matrimonial life, or of the right to the conjugal act;”

Our Courts have consistently stated that marriage is a contract of public order, and therefore any actions requesting the nullity of a marriage have to be supported by sufficient, adequate and clear proof that can convince a Judge that such a claim is legally justified.

The Incompatibility between Article 19 (1) (d) and Art 19 (1) (f)

Our Courts have often held that there exists an incompatibility between the two sub-articles here-above quoted, which although does not warrant the nullity of the acts, may however weaken plaintiff's claims.

In the Court of Appeal judgment **Kenneth Cefai vs Louise Cefai** dated 11 November 2011, the Court held:

“Ghar-rigward tal-kompatibilita’ tas-sub-artikoli (d) u (f) imsemmija, din il-Qorti, ghal ennesima darba, tirrabadixxi li talba bazata fuq dawn iz-zewg kawzali ma tistax teknikament treggi.”

In its judgment of the 3rd December 2010 **George Baldacchino vs Yingchun Duan**, the Court of Appeal held:

“It should be noted from the outset that, technically, this case should not have been discussed on its merits, as the two grounds put forward to support a claim for nullity cannot stand together and mutually exclude each other. While claiming that the spouses had sufficient discretion to exclude an intention to marry(simulation), plaintiff is automatically excluding the grounds of lack of discretion; similarly, while claiming a lack of discretion, he is automatically rebutting the ground under paragraph (f), as this implies a positive act of discretion to exclude marriage”.

In a judgment delivered by this Court on the 27 October 2016 **Etienne Avallone vs L-Avukat Patrick Valentino u l-Prokuratur Legali Nadine Farrugia li permezz tad-digriet 7 ta’ Jannar 2016 gew nominati bhala kuraturi deputati sabiex jirraprezenta lill-assenti Tatiana Avallone**, this Court explained that:

“Ghalkemm kif inghad iktar 'l fuq, dan il-kontradittorju fil-premessi u t-talbiet tal-attur ma jwasslux ghan-nullita` tal-att, immankabilment idghajfu l-azzjoni attrici ghaliex donnu l-attur stess ma hux cert fuq liema binarju qed isejjes il-kawza minnu promossa.”

ARTICLE 19(1)(d)

Article 19 (1) (d) provides that a marriage is null if the consent of either of the parties is vitiated by a serious defect of discretion of judgement on the matrimonial life, or on its essential rights and duties, or by a serious psychological anomaly which makes it impossible for that party to fulfil the essential obligations of marriage.

In its judgment **Briffa Emmanuel vs Briffa Veronica et** of the 2nd April 2003, the First Hall of the Civil Court stated:

“Meta parti tkun qed taghti l-kunsens taghha ghaz-zwieg hi ghandha tgawdi grad ta' liberta` psikologika li tkun necessarja u sufficjenti li tassigura l-poteri bazici ta' l-ghazla”.

In its judgment of the 2nd July 2003, **Charles Atkins vs Matilde Atkins**, the First Hall Civil Court declared:

“Il-kuncett tad- ‘discretio judici’ ma jirrekjedhiex maturita’ shiha u perfetta fuq dak kollu li jirrikjedi z-zwieg, izda konoxxenza shiha ta’ dak kollu li jkunu deklin ghalih il-partijiet u cioe’ ghall-obbligi u drittijiet konjugali kemm fil-prezent kif ukoll fil-futur. Inoltre l-partijiet irid ikollhom dik il-maturita’ affettiva u cioe’ dak kollu li ghandu x’jaqsam ma’ l-emozzjonijiet u s-sentimenti taghhom fil-konfront ta’ xulxin. Jekk xi wahda minn dawn l-elementi hija b’xi mod nieqsa, allura hemm difett ta’ diskrezzjoni tal-giudizzju kif rikjest mill-ligi....Il-partijiet irid ikollhom dik il-maturita’ li taghmilhom kapaci jirriflettu fuq l-obbligi, id-drittijiet u ir-responsabilitajiet li jgib maghha l-hajja mizzewwga u jkunu ghalhekk kapaci jerfghu u jwettqu l-istess matul il-hajja matrimonjali taghhom.”

In the judgment of the 26th October 2000 **Melanie Borg Cachia vs Joseph Borg** the First Hall of the Civil Court stated:

“Id-difett irid ikun wiehed serju fil-fakolta’ kritiko-estimativa tal-parti, difett li wiehed jevalwa u jifhem u jassumi dawk li huma d-drittijiet u d-dmirijiet essenzjali taz-zwieg, jew li jevalwa u jifhem x’inhu z-zwieg u l-hajja mizzewwga.”

More recently, in its judgment **Simon Cusens vs Romina Cusens** of the 12th February 2016 the Court of Appeal held that:

“40. In propozitu jinsab ritenut fil-kawza Appell Civili Josette Spiteri v George Spiteri [Vol.LXXXV.II.81] li fil-gurisprudenza patria jkun hemm difett serju ta’ diskrezzjoni ta’ gudizzju kemm-il darba jirrizulta li, fil-mument tal-ghoti tal-kunsens, parti jew ohra, tkun priva b’mod sostanzjali, jew ahjar “gravi”, minn dik il-fakolta’ kritiko-estimattiva jew kritikovalutattiva dwar l-oggett tal-kunsens taz-zwieg; jew minn dik il-maturita’ affettiva li hija presuppost ghal ghazla libera

dwar l-imsemmi oggett. Li parti fiz-zwieg ma tkunx fehmet sufficientement, fis-sens li ma tkunx hasbet bizzejjed jew ma tkunx irriflettiet bizzejjed fuq il-hajja mizzewga, jew fuq id-drittijiet u d-dmirijiet essenzjali tal-hajja mizzewga ma jammontax necessarjament ghal difett [serju] ta' diskrezzjoni ta' gudizzju [Prim'Awla Selina CVella Haber v. Joseph Gatt – 15.4.1996].

41. Biex ikun hemm in-nuqqas jew difett serju ta' diskrezzjoni ta' gudizzju kif ravvizat fl-Artikolu 19[1][d] irid ikun hemm l-inkapacita` psikika [mhux necessarjament anomalija psikologika fis-sens mediku/psikjatriku] (emfasis ta' din il-Qorti) jew konstituzzjonali li wiehed jaghraf u jirrifletti, u li jiddeciedi liberament fuq l-oggett tal-kunsens matrimonjali li tkun mahkuma minn impulsi nterni li “nehhewlha” l-liberta` tal-ghazla, li kienu determinanti ghal ghazla u mhux semplicement akkumpanjawha.

42. Konformament mal-premess sabiex l-azzjoni attrici tirnexxi fuq din il-kawzali, jehtieg li jigi pprovat sodifacentement li fil-mument tal-ghoti tal-kunsens matrimonjali, il-partijiet jew wiehed minnhom, kien affett minn difett serju ta' diskrezzjoni ta' gudizzju fuq il-hajja matrimonjali u fuq id-drittijiet u dmirijiet essenzjali li din timporta.

43. “In altri termini e' necessaria la discrezione non tanto per l'atto in se al momento di emettere il consenso, quanto per gli impegni che da quell'atto derivano. Una discrezione che impegni per il futuro.” [Bersini - citat fil-kawza Prim'Awla Angela Spiteri Selvaggi v. Joseph Spiteri deciza 4.11.1994]. L-obbligazzjonijiet essenzjali fil-hajja matrimonjali huma bazati fuq il-kuncett ta' unjoni permanenti, esklussiva u irrevokabbli diretta ghall-komunjoni ta' hajja u l-prokreazzjoni u t-trobbija tal-ulied. Din il-kapacita` li jassumi dawn l-obbligi ghandha tezisti fiz-zewg partijiet. [Prim'Awla Charles Atkins v. Matilde Atkins deciza 2.10.2003].

44. Izda la decizjoni zbaljata u lanqas kull stat ta' immaturita` ma huma sufficienti sabiex jintegraw din il-caput nullitatis. Ma hemmx bzonn li parti jkollha xi livell gholi ta' maturita` jew edukazzjoni, izda talanqas il-livell irid ikun tali li dik l-istess parti tkun kapaci taghmel valutazzjoni shiha, ponderata u libera dwar iz-zwieg u dwar id-drittijiet u dmirijiet essenzjali taz-zwieg [Prim'Awla Melanie Borg Cardona v. Joseph Borg deciza 29.10.2003] [vide ukoll Appell Civili Caroline Grech v. Ian Borg, deciza fis-27 ta' Jannar 2006, u l-awturi u kazistika hemm citati].

45. L-immaturita` jew difett serju ta' diskrezzjoni “non si riferiscono ad una piena e terminali maturita`, non esigono nei nubenti una conoscenza perfetta ed esaustiva di cio che comporta il matrimonio, non richiedono una preveggenza chiara ed assoluta di cio' che puo' comportare la vita coniugale, ne' un perfetto

equilibrio volitivo- affettivo, ne' infine una coscienza perfetta delle motivazione della scelta matrimoniale. Ecco perche' riesce piu' appropriato l'uso del termine discrezione di gudizzju, che fa riferimento ad un certo discernimento, ma non implica il raggiungimento di una maturita' piena" [Pompedda – Il Consenso Matrimoniale, u awturi ohrajn citati fil-kawza *Prim'Awla Nicholas Agius v. Rita Agius* deciza 25 Mejju 1995, citata fil-kawza *Appell Civili Caroline Grech v. Ian Borg* deciza fis-27 ta' Jannar 2006, [2006] supra].

46. Inoltre, jinsab ritenut fil-gurisprudenza li l-kuncett ta' maturita' affettiva li jimporta "generalmente quella adeguata evoluzione degli istinti, degli affetti, dei sentimenti, della emotivita' che se sono turbati o inadeguati intaccano direttamente la volonta' e possono privare della libera scelta interiore. Abbiamo cosi' una mancanza di consenso libero [immaturita' affettiva] e ponderato [immaturita' di giudizio]" [Il Diritto Canonico Matrimoniale – Bersini; citat fil-kawza *Appell Civili Raymond Theuma v. Carmen Theuma* deciza 27 ta' Jannar 2006]."

It is thus clear that whenever a party to the marriage has not understood sufficiently, in that one has not pondered enough on the implications of married life, or on the duties and obligations arising therefrom, this does not necessarily bring about the nullity of consent due to a serious defect of discretion of judgment.

From the evidence produced during these proceedings, there results no defect of discretion of judgment or psychological anomaly on the part of either one of the parties, that might have rendered null the consent given during the marriage vows. It may be that both parties, having frequented each other for just a few months, went through with the marriage without giving it enough thought, and possibly without knowing each other well, but this scenario does not give rise to the requisites imposed by law under Article 19(1)(d). The ground for nullity of marriage can neither be presumed nor taken lightly, but needs to be proven in satisfaction of the level of proof required at law. In this case, the Court is of the firm opinion that this particular ground for nullity did not result, and thus plaintiff's request under such clause may not be upheld.

ARTICLE 19(1)(f)

Article 19(1)(f) provides that a marriage is null *if the consent of either of the parties is vitiated by the positive exclusion of marriage itself, or of any or more of the essential elements of matrimonial life, or of the right to the conjugal act.*

In other words, one of the parties must have made a positive decision, that although he or she is to participate in the marriage ceremony, he or she is excluding a priori, the marriage itself, or one or more of its essential elements, in such a way as to exclude the marriage itself.

In its judgment of the 28th May 2002 **Anthony Gallo vs Dr Anthony Cutajar et noe** the First Hall Civil Court stated:

“... [l-]perit legali sostniet li “meta wiehed jitkellem dwar l-eskluzjoni taz-zwieg jew wiehed mill-elementi essenzjali tieghu, wiehed irid jifli jekk il-kontendenti jew wiehed minnhom, alavolja hu kapaci jghati l-kunsens validu taz-zwieg, pero’ bl-att tieghu qabel u fil-hajja mizzewga, jew bl-ommissjoni tieghu, eskluda a priori certu obbligi essenzjali tal-hajja mizzewga, cioe’, issimula l-kunsens tieghu totalment fejn eskluda a priori z-zwieg, jew inkella fejn filwaqt il-kunsens hu jew hi eskludew xi wahda jew aktar mill-elementi essenzjali tal-hajja mizzewga, u cioe’ saret simulazzjoni parzjali”.

Illi fil-fatt din il-Qorti taqbel mal-istess definizzjoni u fil-fatt wiehed jinnota li taht l-artikolu 19 (1) (f) trid issir distinzjoni cara bejn zwieg li jfalli minhabba cirkostanzi li jirrizultaw waqt iz-zwieg, u zwieg li jfalli ghax wiehed mill-partijiet minn qabel ma ta’ l-kunsens tieghu kien gja mentalment dispost li ma jottemprax ruhu ma xi wahda jew aktar mill-obbligi matrimonjali. Fl-ewwel ipotesi hemm ir-ragunijiet li jaghtu lok ghas-separazzjoni u fit-tieni ipotesi hemm l-estremi tal-annullament taz-zwieg.”

In the interpretation of this clause, our Courts have stated that the positive exclusion of the marriage or of one of its essential elements need not result from something expressly stated by the party, but it may be inferred from the behaviour of the party concerned immediately preceding or following the marriage vows.

This Court is of the opinion that there are many factors pointing to the fact that this was a marriage of pure convenience for defendant. The plaintiff's unchallenged testimony indicates that the defendant was after permanency in Malta. He testifies how she had confided in him that her Visa would expire in October 2013 (the month in which they eventually got married) and how she started encouraging him to marry her. He sought reassurance from her that she wanted to marry him to be with him and not to be able to live in Malta, and she always put his mind at rest. She also told him that after they married, she was ready to have kids and this further put his mind at rest. For the first few months, things seemed to go well. They would go out together, and their intimate relationship went well, even though she told him that she was not yet ready to have kids.

Around March 2014, plaintiff states that defendant started going out with her friends everyday and returning home late. During this period, she would ask him to wear a condom during their sexual relations. This was an indication that the wish she had expressed with him before marriage to have kids was not materialising. When he complained to her about the lifestyle she was leading, she used to tell him that she enjoyed herself only with her friends. She also entered into 2 rental contracts for massage parlours without plaintiff's knowledge. He also relates of various instances when he caught her lying to him and during one instance he called her on her mobile phone and a male voice answered "I am her guy." She also never contributed to housework or expenses. Before leaving, she warned him not to open proceedings against her before the lapse of 5 years, otherwise she would make sure that her burdens from the rented parlours would fall on him.¹ She also offered to set him up with a Chinese 60-year old widow who had a VISA.

On the other hand, defendant's testimony focuses on the fact that plaintiff never gave her a key to the house and that he was arrogant with her, even though she doesn't explain in what ways he manifested his arrogance towards her. Upon being cross-examined she explains that he had given her the key for a week at the beginning of the marriage, but when after a week she asked him for the key again she could not open the door with it. However she did not file a police report about this. She states that it was only after a year that he gave her the key to the house.

All of the above, coupled with the 20-year age difference between them, together with the testimony of the representative from the Citizenship Department, who stated that her 5 year residence permits emanates from her marriage to plaintiff, and also in the light of the testimony of witnesses Joseph Portelli and Joseph Said who corroborate plaintiff's recount of some of the lies which defendant used to tell him, convince the Court that for defendant this was purely a marriage of convenience, and that defendant never really had the intention of establishing a community of life and love with plaintiff.

Defendant's true intention is highlighted by the fact that very shortly after the celebration of the marriage, defendant started neglecting her husband, openly telling him that she preferred her friends and that she didn't love him, until she finally abandoned the matrimonial home after merely one and a half years of marriage. All these particular circumstances show that at the moment of the celebration of the marriage, the defendant was excluding a priori the thought of building a 'consortio familiaris' with plaintiff. This amounts to a total simulation of marital consent on the basis of Article 19(1)(f) of Chapter 255 of the Laws of Malta.

¹ Plaintiff filed a Police Report to this effect at the relative time (vide copy of police report Dok PA 1 exhibited with plaintiff's note dated 9th June 2016).

The Court concludes that plaintiff successfully proves that there was simulation on the part of the defendant at the time of the celebration of marriage, and that for defendant the marriage was merely one of convenience aimed at residing in Malta, acquiring freedom of movement and eventually obtaining Maltese citizenship.

DECIDE

For the reasons outlined above the Court rejects defendant's pleas, and accedes to plaintiff's claims:

1. Upholds the second part of plaintiff's first request and declares the marriage of the parties celebrated on the 11th October 2013 is null and void in terms of Article 19 (1) (f) of Chapter 255 of the Laws of Malta.
2. Upholds plaintiff's second request and declares that by virtue of Article 20(3) of Chapter 255 of the Laws of Malta, plaintiff was in good faith.
3. Upholds plaintiff's third request and declares that by virtue of Article 20(5) of Chapter 255 of the Laws of Malta, the defendant is solely responsible for the nullity of the marriage.

With costs to be borne by defendant.

Judge

Deputy Registrar