



**FIL-QORTI CIVILI
(SEZZJONI TAL-FAMILJA)**

L-ONOR. IMHALLEF ANTHONY VELLA

Seduta ta' nhar it-Tlieta 27 ta' April 2021.

Rikors nru: 85/2019 AGV;

ABC

vs

DE maghrufa bhala FGC

Il-Qorti,

Rat ir-rikors ta' ABC datat 21 ta' Marzu elfejn u dsatax, fejn espona bir-rispett u bil-gurament tieghu kkonferma dan li gej:-

1. Illi l-kontendenti zzewwgu fis-16 ta' Ottubru 1997, kopja tac-certifikat taz-zwieg hawn anness u mmarkat Dok. A. Illi huma kellhom zewgt ulied HI li tweled fis- 27 ta' Awwissu 1997 u J li twieldet fid- 29 ta' Lulju 1999, ahwa Cu dan skont kopji tac-certifikat tat-twelid hawn annessi u mmarkati Dok. B u C rispettivament;

2. Illi l-hajja mizzewwga bejn il-partijiet ilha li spiccat ghal diversi snin. Illi fil-fatt huma ilhom separati de facto mis-sena 2006 u ghalhekk ilhom tlettax-il sena jghixu separatament minn xulxin. Illi z-zwieg spicca minhabba eccessi, ingurji, sevizzi u offizi gravi da parti tal-intimata kontra tieghu u uliedhom. Illi minn mindu isseperaw *de facto* qatt ma kien hemm tentattivi ta' rikonciljazzjoni la min naha tal-attur u lanqas min-naha tal-intimata.

3. Illi l-problema tal-intimata waslet ghal tkissir taz-zwieg kif ser jigi ppruvat fil-mertu waqt il-kawza, Illi l-problema tal-intimata hija problema psikjatrika fejn ma tistax tirraguna maghha, taghmel azzjonijiet hzienu bhal serq, ghandha problema ta' 'hmieg u hoarding u fejn ukoll wasslet lil-intimata biex taghmel mismanagement kbir tal-assi taghha, Illi dana kollu kif ukoll l-imgieba taghha mal-attur waslet lil-attur biex jitlaq mid-dar matrimonjali fis-sena 2006.

4. Illi l-intimata ghandha problema li tista' tigi mghejjuna jekk tiehu l-kura psikologika izda dejjem irrifjutat kwaunkwe ghajnuna- tant li wasslu ghal problemi finanzjarji bhal kaz tal-Jumbo Lido u The Park Hotel kif ser jigi ppruvat fil-kawza. Illi l-attur irnaxxilu jibni hajtu mil-gdid u ghandu negozju tas-security. Illi kunjomu, 'C' huwa uniku hawn Malta. Illi jekk l-intimata ser tibqa' ggorr kunjomu ser ikun ta' detriment ghalih u ghax-xoghol kif ser jigi ppruvat fil-mertu tal-kawza, u ghalhekk hemm bzonn li hija tigi ordnata sabiex tirreverti ghal kunjom xubitha, 'G', u tigi impedita milli tibqa' tuza' l-kunjom C.

5. Illi l-assi matrimonjali tal-partijiet huma regolati bir-regim tas-separazzjoni tal-beni u ghalhekk ma ghandhom ebda assi in komun u dan skont kuntratt li gie redatt min-nutar Dr. Clyde La Rosa fil-15 ta' Ottubru 1997.
6. Illi m' hemm beda prospett ragjonevoli ghar-rikonciljazzjoni u ghalhekk kellha ssir din il-kawza ta' divorzju li taghha l-esponenti ma ghandux ibati ebda spejjez u cioe' l-ispejjez kollha gudizzjarji ghandhom jigu assunti mill-konvenuta u dan ghaliex il-medjazzjoni ma sehhiex minhabba intransigenzi min-naha tal-intimata.
7. Illi l-esponenti ghal dawn ir-ragunijiet talab u ottjena l-awtorizzazzjoni mehtiega minn din l-Onorabbli Qorti, sabiex jiprocedi f'din l-istanza wara li tterminaw il-medjazzjoni skont il-Ligi, (Dok C).
8. Illi l-esponenti jaf personalment bil-fatti kollha ddikjarati u debitament enumerati.

Ghaldaqstant, l-esponenti umilment jitlob lil din l-Onorabbli Qorti sabiex :-

1. Tiddikjara s-seperazzjoni personali bejn il-partijiet u dan ghal ragunijiet imputabbli lill-konvenuta ta' mohqrija, theddid, eccessi, minacci u offizi gravi kommessi kontra l-esponent kif fuq premiss, u dan ai termini tal-artikolu 40 tal-Kap. 16 tal-Ligijiet ta' Malta u / jew ghal fatt li l-hajja matrimonjali ta' bejniethom ma hix aktar possibbli ghax iz-zwieg tkisser b' mod irrimedjabbli u dan ai termini tal-artiklu 40 tal-Kap. 16 tal-Ligijiet ta' Malta.

2. Tordna u tiffissa retta alimentarja adegwata ghal HI C u J C u dan dejjem jekk jibqghu jissodisfaw l-artikoli 3 B tal-Kap. 16 tal-Ligijiet ta' Malta.

3. Tapplika kontra l-imsemmija konvenuta l-effetti tad-disposizzjonijiet tal-Artikolu 48 sa 51 tal-Kodici Civili in toto jew in parte.
4. Tordna lill-intimata tirreverti ghal kunjom xubitha u cjoe' G.
5. Tordna lill-intimata milli tibqa' tuza' kunjom ir-ragel ossija C bhala kunjomha.

Bl-ispejjez ta' dawn il-proceduri kif ukoll tal-medjazzjoni kontra l-konvenuta li hija minn issa ingunta in subizzjoni.

Il-Qorti rat ir-risposta guramentata ta' DE C maghrufa bhala FGC datata 31 ta' Mejju 2019 fejn esponiet bir-rispett u bil-gurament taghha kkonfermat :-

1. Illi l-esponenti taqbel mal-ewwel paragrafu tar-rikors tal-attur hlief li t-tifel taghha twieled fit- 22 ta' Awwissu 1997.
2. Illi t-tieni paragrafu huwa kontestat, ghalkemm huwa vera li l-partijiet ilhom de facto separati ghal diversi snin dan gara tort unikament lill-attur li hu hati ta' eccessi, sevizzi, u ingurji u offizi kontra l-esponent.
3. Illi paragrafu tlieta tar-rikors huwa infondat u kontestat, l-allegazzjonijiet malizjuzi huma kollha foloz.
4. Illi l-attur halla hafna dejn u l-esponenti kellha thallas dejn sostanzjali minhabba agir tal-attur illi l-esponenti trid izzomm kunjom li hadet biz-zwieg ghaliex hija omm it-tfal taghha u dan huwa biss tentattiv tal-attur li

jipprova icekken lill-esponenti u jipprova inehhi l-importanza taghha bhala omm.

5. Illi l-paragrafu hamsa mhux kontestat illi hemm paragrafu iehor fir-rikors bin-numru hamsa. Il-konvenuta ma ghandix tbat l-ispejjez tal-proceduri.
6. Illi pararafu sitta mhux kontestat.
7. Illi l-esponent taf b' dawn il-fatti personalment.

Ghaldaqstant l-esponenti ma ghandix oggezzjoni ghas-separazzjoni izda li dan kien tort tal-attur u ghalhekk l-ispejjez ta' dawn il-proceduri ghandhom ikunu kontra l-attur.

Having seen that the parties agreed that the case may be conducted in the English language.

Having seen that defendant failed to submit a copy of her sworn reply in English, which led to the Court having to refer to the sworn application and reply in Maltese.

Having seen plaintiff's application dated 26 September, 2019, whereby he requested that these separation proceedings be converted to divorce proceedings, according to Article 66F of Chapter 16 of the Laws of Malta.

Having seen that defendant, duly notified according to plaintiff's note dated 23 January, 2020, failed to submit a reply.

Having seen all the acts and documents exhibited in the case.

Having heard all the evidence and witnesses summoned by the parties.

Having heard the submissions.

FACTS

1. **Plaintiff** states that he had met Defendant when he had come to Malta to take part in some filming, since he was an actor. He had stayed at the Park Hotel in Sliema, which belongs to Defendant's family. He had stayed here for one month.

When he was leaving Defendant asked him to go with him because she was pregnant and she went up with him for a week, after which they returned to Malta, since Plaintiff insists that he wanted to give the child his surname. However, he insists that Defendant had informed him that this was not possible since they had to be married for him to do so.

Before the marriage, he admits to having signed a separation of assets and this was on Defendant's request, since her family were financially well off and they wanted to ensure that he was not marrying her for her money.

After their son was born they married on the 16th November. They also had a daughter. During their marriage, Defendant had rented out a restaurant in her name called Jumbo Lido and he used to work with her and used to pass on the money. He then found out that she was not paying the bills. They ended up with ten court cases, that lasted around 20 years. He explains that Defendant never took care of the house and it was never clean.

He explains also that around twenty years ago, Defendant had opened a company without him knowing and in all probability, she had forged the

signatures. He states that the company was called Tur. Another time she had stolen his cheque book and issued cheques to herself.

At one point in time Defendant left for Germany and her family tried to throw him out of the house, but he had nowhere where to go and he financially he could not afford it and besides he couldn't leave the children alone.

The final incident was when Defendant threatened him with a knife and her family came for him and threw him out of the house. Although Defendant wanted him back, he refused to go back.

Plaintiff is also asking for Defendant to stop using his surname and this was mainly because he works with a security company Dem Company Limited (Security system) and he was doing well, and he didn't want to taint his reputation. He insists that she used his surname when she is involved in something criminal, such as when she was caught stealing from Tower supermarket and when she was caught using fake tickets to board the Captain Morgan.

His company supplies security for offices, houses, casinos and ministers' offices. He states that with reference to the documents that he exhibited he is Kartal Malta and he is the main shareholder and director of the company.¹

¹ Dok. EM 1

Today Plaintiff adds that he is helping Defendant set up the hotel once again, since her father passed away and this was because it was closed down by the Tourism Authority, because it was in a bad state.

2. **Defendant** explains that they had bought two cars in their marriage, both BMW's with registration numbers ABL 256 and EBH 045, but she insists that they were both bought with her money and she occasionally drove both cars.

Regarding Mazda F8599 she states that this has been garaged for about ten years.

3. **Dr Alexia Aquilina**, in representation of the Registrar of Civil Courts, exhibited a list of judgements², a list of warrants and relative details³ as well as an application in connection with a judicial sale by auction.⁴ She also exhibited a legal copy of proceedings before the Court of Voluntary Jurisdiction.⁵
4. **Inspector Jonathan Ransley** exhibited a list of police reports⁶ filed against the Defendant and reports that have been filed by third parties.⁷
5. **Dr Sonia Consiglio**, in representation of the Director of Public Registry confirms that from their records and on the Court's request she was exhibiting the transfers and liabilities from 1994 to date of Defendant.⁸

² Dok. AA1

³ Dok. AA 2

⁴ Dok. AA 3

⁵ Dok. AA 4 (1) and AA4(2).

⁶ Dok. RJ1 to RJ 18

⁷ Dok. JR 1

⁸ Doks SC 1 and SC 2

6. **Stephen Cachia**, in representation of Transport Malta confirms that there was one car in Defendant's name which was scrapped. Her licence had expired in June 2016 and there exist no penalty points on her driving lesson.⁹

Vehicle bearing registration number JBM 131 is registered in the name of Esther Camilleri and so is the vehicle CBB 721.¹⁰

7. **Joseph Rivans**, in representation of Identity Malta confirmed that Defendant had done her identity card on the 21st July, 2015. She added that if Defendant had to make a new id card today, she would carry the surname C.

8. **Ghislane Bongailas**, in representation of the Passport Office, confirmed that Defendant had applied for a passport in 2005.¹¹ According to their records, this passport had not been renewed by Defendant since it expired in 2015. She stated that she was not in a position to confirm why the surname G had been cancelled and by whom. She was also concluding that the signature was Defendant's.

9. **Defendant** also exhibited her affidavit on the 12 January 2021 and was subsequently cross-examined. In her affidavit she states that she has been in business for 36 years and that there may have been allegations of wrongdoing in her regard, but these were all unfounded and did not

⁹ Dok. SC1 – SC2

¹⁰ Dok. TM 1 – TM 2

prejudice plaintiff in any way. She also states that plaintiff simply married her to remain in Malta and not return to Turkey, as he had some problems with his not having served in the Turkish military forces. In fact, once he obtained Maltese citizenship his attitude towards her changed. She states that she had to pay around one million Euro in debts to creditors of the Jumbo Lido because of plaintiff's poor management. In conclusion she states that she brought their children up without his help. She paid for his work permits and for those of his family members. She paid for his father's funeral, and all utility bills and expenses herself.

In cross-examination, she claims that plaintiff still made her take certain business decisions, even though legally he was in no way involved in her family's business affairs. She claims plaintiff made her employ Turkish nationals in her hotel, and made her run huge commercial debts.

HAVING CONSIDERED

The parties had signed a separation of assets between and for the said purposes, the Court has no reason to determine the liquidation and assignment of the community of acquests.

RESPONSIBILITY

Plaintiff has been de facto separated from Defendant for the last 14 years of their lives. He acknowledges that the main problems in their marriage, were Defendant's hoarding and he also believed that she needed psychological help, although she resisted this.

Plaintiff also produced evidence to show that Defendant was involved in criminal activity, such as being caught stealing from a supermarket, as well as stealing cheques from Plaintiff. She had also run a restaurant Jumbo Lido, which she had rented out in her name and after two years she wanted Plaintiff to appear with regards to the restaurant, who found out that Defendant wasn't paying her creditors and they were running after them. Defendant failed to provide her evidence to contest this, excepting that she confirmed that she had around ten cases related to the said restaurant.

Defendant once again did not reject Plaintiff's version that she had abandoned the matrimonial home and left for Germany and that after an incident at home, Defendant threatened him with a knife, after which he was thrown out of the house by her family.

Plaintiff is also requesting that Defendant no longer uses his surname and this because each time she is involved in some wrongdoing such as stealing from a supermarket, whereas he was trying to run a company offering security services and this was earning him a bad reputation. Plaintiff had in fact exhibited two judgments issued by the Magistrates' Court where defendant was found guilty of committing crimes.

In the light of all the evidence produced, there leaves little doubt that the Defendant was responsible for the breakdown of the marriage because of excesses, cruelty and threats.

MAINTENANCE

The parties' children are all over the age of majority. JC is the only child who would have not reached the age of 23 years by the time of the

judgement and in this case, despite the fact that no evidence was produced whether she is still studying, nevertheless, until she reaches 23 years of age, the parties are to divide equally between them all maintenance expenses, as well as education and health expenses, and this in accordance with Article 3B of Chapter 16 of the Laws of Malta.

DECIDE

Having considered all the above, for the said reasons the said Court decides as follows:-

In the first instance, upholds plaintiff's request to have these proceedings converted from separation to divorce proceedings, in terms of Article 66F of Chapter 16 of the Laws of Malta.

1. Upholds Plaintiff's request and declares Defendant to be responsible for the separation because of excesses, cruelty and insults.
2. Upholds Plaintiff's second request and orders that all maintenance, education and health expenses for their child J are to be divided between the parties.
3. Rejects Plaintiff's third request.
4. Upholds the fourth and fifth requests.
5. Declares the marriage between the parties to be dissolved, and consequently orders the Registrar to inform the Director of Public Registry

with the divorce of the parties within ten (10) days of this judgment becoming *res judicata*.

All costs are to be borne by Defendant.

Hon. Mr. Justice Anthony J. Vella

Registrar