CIVIL COURT

(FAMILY SECTION)

THE HON. MADAM JUSTICE

JACQUELINE PADOVANI LL.D., LL.M. (IMLI)

Today, 15th October 2021

Sworn App. No. : 201/2018 JPG

Case No. : 1

CG

Vs

By virtue of the decrees dated 18th September 2018 and 30th June 2018, Dr Benjamin Valenzia and PL Daniel Aquilina were appointed Deputy Curators to represent the absent RV

The Court:

Having seen the application filed by CG, dated Xth July 2018, at page 1 et seqq., and translated to the English Language at page 42, wherein it was stated:

" 1. *That the parties married in the Z on the 23rd of December 1995, as indicated in attached Doc 'CG 1', marriage certificate;*

2. *That the same marriage certificate was registered locally in the Public Registry on the 10th August 2001;*

3. *That the applicant de facto ceased to life and meet her husband as from June of the year 2000, and in one month from this date moved to Malta for good;*

4. *That since when she left her matrimonial home in the Z which was a rented apartment, applicant never had any contact whatsoever again with her husband. This was sworn by applicant during proceedings to obtain separation during mediation sitting (Number 722/18), in which applicant presented every requested documentation ordered by the Family Court and in which as a result deputy curators were appointed to represent the absent husband;*

5. *That the applicant soon after she moved to Malta, attempted to obtain separation through the then Second Hall from her husband who remained incommunicando in the Z, and in which proceedings decree 1068/2002 was obtained from the said Second Hall, copy attached herewith;*

6. *That in so doing, it results that applicant has been over 18 years actually separated from her husband;*

7. *That Marriage Certificate numbered F 804163 is hereby attached marked as Doc 'CG 3', celebrated by Reverend Martin Edwards in London;*

8. *That from such marriage no children were born during applicant's wedlock;*

9. *That as regards to community of acquests, applicant declares that there are no assets whatsoever, and that her rented flat was the property of London's Local Council.*

That applicant is well aware of the veracity of these facts and as such is eligible to apply for divorce according to Article 66B of the Civil Code of Malta.

Thus in view of such premised facts, applicant humbly requests this Honourable Court to:

1. *Pronounce the dissolution of the community of acquests pertinent to the mentioned marriage between the parties;*

2. *Pronounce the divorce from marriage between the parties;*

3. *Direct the Court Registrar that within a prescribed period, informs the Public Registry Director of the said divorce as to have same divorce registered and annotated in applicant's marriage certificate.*

Having seen that the application and documents, the decree and notice of hearing have been duly notified in according to law;

Having seen the reply filed by the Deputy Curator dated 15th of February 2019 (vide page 40A);

Having seen the declaration of the Deputy Curator on the Yth of June 2021 wherein he informed the Court that he had tried to communicate with the BHC regarding AV and received no answer. In fact he had sent two emails to the BHC i.e on 22nd September 2019 and 6th November 2019 and received no reply. That therefore he had no evidence to proffer on behalf of AV. (Vide page 98);

Having heard all the evidence on oath;

Having seen all the documents exhibited;

Having heard Final Submissions;

Considers:

In her affidavit a fol 55 et seq, Plaintiff explains that she was born in the Z and her parents had been living in the Z since their childhood. She recalls meeting Defendant when she was just 13 years old, as he used to reside close to her house in Wandsworth in the outskirts of London. Defendant was 9 years older than her, however, they only started dating around two years after they had met. In fact she explains that she was 15 years old when their relationship started. She asserts that at the time Defendant was unemployed and they got engaged when she was 16 years old. Around two years before their marriage, Defendant had found a clerical job with a private entity and they married in 1995. At the time things were going well. However, things started to take a negative turn, soon after the wedding. Plaintiff contends though, that even prior to their marriage, she had noticed that Defendant was making use of some type of drug and she had pointed this out to him soon after their wedding. The effects of this habit or vice, were being manifested in his behaviour which became violent.

Before they got married, Plaintiff had already given birth two sons, however, Defendant never wanted to register himself as the father. Today, both sons are of age, that is, MG is X years old and BG is Y years old and both came to Malta when Plaintiff decided to leave the Z after their marriage collapsed. Plaintiff explains that after their marriage, she was a housewife whilst Defendant had become a driving instructor after leaving his previous job. There were times when Defendant had become a habitual user of drugs and this made living with him unbearable, since he used to spend his days without resting, and this caused him to be "ultra bad tempered."

Plaintiff contends that two years into the marriage she had filed a police report, however, since she only wished the police to deliver a stern warning to the Defendant, she decided to withdraw the complaint as the police had insisted that they would arraign and press charged against Defendant for domestic violence. Three years into the marriage, plaintiff explains that she could not take it anymore and decided to leave their house with the children and returned to her mother's house. This made Defendant furious so that he argued constantly with the Plaintiff. Soon after, she decided to return to the matrimonial home but this solved nothing as she had to leave soon enough. This time round, Plaintiff went to her uncle's house so as not to show Defendant where they were actually staying. Then in 2000 she moved to Malta with the children for good.

Plaintiff explains that their matrimonial home was a council rented apartment and did not belong to the parties. She recalls having two cars, a Porsche 928 and a Nissan 300ZX, but has no information about the vehicles. She contends that as far as she is aware, Defendant never initiated divorce proceedings in the Z and has no information as to his whereabouts. She recalls that in one letter, he had mentioned that he was evicted from their apartment since he had arrears of unpaid rent, subsequently he had also written that he was being detained in a prison. In 2002, some of her relatives had informed her that they had seen Defendant in Malta and that he had threatened them in order to extract information about the Plaintiff.

Plaintiff confirms that the parties did not have any bank accounts whilst they were living in the Z, and neither did they have any loans. She explains that in 2001 soon after moving to Malta, she had started legal proceedings in the Sekond Awla and tried to obtain legal separation, however, she could not afford to pay for these proceedings at the time. She attests that Defendant has never made contact with their sons ever since she moved out of the matrimonial home the second time. She asserts that today she is in a relationship and lives with her two sons.

Plaintiff CG testified on the 12th April 2019 (*vide fol 50 et seq)* and explained that she had last seen Defendant in 2000 and that they had no contact since. However, he used to send letters to her mother's home and her mother used to forward them to her. Plaintiff holds that the last letter possibly dates back to 2003. Plaintiff asserts that she tried checking whether Defendant has a facebook page and that she basically checked everything to try and find him and also contends that her children who are in Malta have had no contact with their father since he left. She further explains that because of the violence they were subjected to, they had gone into hiding, and that is why they came to Malta to get away from Defendant. Therefore she did not want her children to have anything to do with Defendant.

Plaintiff confirms that they used to rent an apartment in B in Z. Plaintiff also confirms that AV is Defendant's surname, however R is not his real name, as he changed his name by deed poll, and that his actual name is TQ. However on the marriage certificate, the Defendant is indicated as R since he had changed his name before they got married. Plaintiff explains that Defendant's mother is S and his father is P, but Defendant was living in the Z.

During her testimony on the 26th October 2020, confirms that she had initiated annulment proceedings in the Ecclesiastical Tribunal and that she now has a final decision from the said Tribunal. She exhibited the same decision *animo ritirandi.*

Plaintiff also testified on the Yth of June 2021 and confirmed the contents of the note filed on the 26th of March 2021. She confirmed that she lives in rented property and has never owned immovable property in Malta. Plaintiff asserts that besides the second hand vehicle mentioned in her note and the bank accounts indicated in the same note, she does not have any other vehicles nor bank accounts. During her testimony Plaintiff recalls that she left Defendant in 2000 and filed for separation here in Malta a few months after her arrival, however did not have the financial means to go ahead with the proceedings, but has decided to re initiate proceedings now as she'd like to get married again. Plaintiff confirms that there were never any attempts at reconciliation and they have never lived together as husband and wife again. She contends that Defendant had told her to register the birth of her sons under father unknown and therefore she had sole custody, and he never paid any maintenance. Plaintiff confirms that she has no intention of filing for maintenance since he has always managed to maintain herself and the children and she had received financial assistance from her mother.

Considers:

Article 66(A) and article 66 (B) of Chapter 16 of the Laws of Malta stipulate the following:

> ***66A.(1) 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.***
> ***(2) The divorce or dissolution of the marriage shall be granted by virtue of a judgement of the competent civil court, upon the demand of one or the other of the spouses, or by a decree of the same court where the spouses shall have agreed that their marriage should be dissolved.***
> ***(3) All demands for divorce shall be brought before the appropriate section of the civil court as established by regulations made by the Minister, and the provisions of article 37 shall apply mutatis mutandis. The decrees and judgements of divorce shall be pronounced in open court.***

(4) The court shall, in the decree or judgement of divorce, clearly indicate the progressive number of registration of the Act of Marriage and identification number of the parties, and order the Registrar of Courts to notify the divorce of the parties to the Director of Public Registry within the period allowed for this purpose by the same court, so that the same shall be registered in the Public Registry.

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) upon a demand made jointly by the two spouses, on the 30 date of commencement of the divorce proceedings, the spouses shall have lived apart for a period of, or periods that amount to, at least 6 months out of the preceding year: Provided that when the demand is made by one of the spouses against the other spouse, 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 one year out of the preceding two years; or

(b) on the date of commencement of the divorce proceedings, the spouses are separated by means of a contract or court judgment; and

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

(d) 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.

Deliberates:

The Court has seen that the parties were married in Oratory of St Mary Magdalene Wandsworth England, on the 23rd of December 1993, prior to their marriage the Plaintiff had given birth to two children; MG is X years old and BG is Y years old, who however, were never acknowledged by the Defendant as his sons. This marriage was subsequently registered at the Public Registry in Valletta with number 19X/2001. The parties had established the matrimonial home in Bondsworth. Today, the applicant is in a relationship with a third person and has lost all contact with the Defendant.

The Court notes that despite diverse attempts on the part of Dr Benjamin Valenzia to make contact with Defendant, this was to no avail.

Request to Dissolve the Community of Acquests:

The Court notes that although it appears that the parties have been *de facto* separated since 2000, when Plaintiff left the matrimonial home and travelled to Malta, wherein she has established her home, the parties are not legally separated. Thus, the community of acquests regime is still operative between the parties. After having heard the testimony on oath of the Plaintiff and after having seen the note exhibited by the same Plaintiff *a fol 89*, it is this Court's considered opinion, that the community of acquests is devoid of any common assets and that there are no claims relating to the same. The Court notes that the Plaintiff owns a vehicle that is registered in her own name, as it transpires from the documents exhibited *a fol 90* issued by Transport Malta and holds two bank accounts with local commercial banks, in her name.

Additionally, the Court orders that any assets, bank accounts, vehicles, which belong to the respective parties, are to be assigned to that party to whom the said assets, bank accounts, vehicles belong. In the event that either of the parties have contracted any debt or entered into any other obligations, the responsibility ensuing from any said debt and/or obligations, is being assigned to the party who so contracted the debt and/or obligation.

Request for the Dissolution of the Marriage:

The Court notes that in the *interim*, the parties' marriage was annulled by the Ecclesiastical Tribunal here in Malta, following an application made by the Plaintiff *(Vide Dok CG1 and CG2).* The Court observes that the registration of the said decision in the Court of Appeal has not as yet been affected in terms of article 23 and Y of the Marriage Act, Chapter X5 of the Laws of Malta:

> ***23. A decision which has become executive, given by a tribunal, and declaring the nullity of a catholic marriage shall, where one of the parties is domiciled in, or a citizen of, Malta, and subject to the provisions of article Y be recognised and upon its registration in accordance with the said article Y shall have effect as if it were a decision by a court and which has become res judicata.***
>
> ***Y.(1) Registration of a decision as is referred to in article 23 shall be effected by the Court of Appeal.***
>
> ***(2) A request for such registration shall be made by application filed in the registry of the said court, and which shall be served on the Director of the Public Registry and where it is presented by one only of the spouses, on the other spouse.***
>
> ***(3) The respondents shall have a right to file a reply within twelve working days of the service upon them of the application.***
>
> ***(4) Together with the application, the applicant shall file:(a) an authentic copy of the decision;(b) a declaration of executivity according to Canon Law issued by the Tribunal that has given the decision.***
>
> ***(5) The Court of Appeal registers that decision by giving a decree declaring the decision enforceable in Malta; such decree shall not be given unless the Court of Appeal is satisfied that:***
>
> ***(i) the Tribunal was competent to judge the case of nullity of the marriage insofar as the marriage was a catholic marriage; and***
>
> ***(ii) during and in the proceedings before the Tribunal there was assured to the parties the right of action and defence in a manner substantially not dissimilar to the principles of the Constitution of Malta; and***

(iii) there does not exist a contrary judgement binding the parties pronounced by a court, and which has become res judicata, based on the same grounds of nullity; and

(iv) in the case of a marriage celebrated in Malta after the 11th August, 1975, there has been delivered or transmitted to the Public Registry the act of marriage laid down by this Act; and

(v) in the case of a decision delivered on or after the16th July, 1975, but before the coming into force of this article, the request for recognition is presented by both spouses; or where it is presented only by one of the spouses it is satisfied that the other spouse does not oppose the registration of the decision.

(6) Notwithstanding the provisions of sub-article (5)(v) where a request for the registration of a decision as is referred to in article23(1) issued by a tribunal on or alter the 16th July, 1975 but before the coming into force of this article, is made by one only of the spouses, and the other spouse opposes such registration, the Court of Appeal shall give the spouse opposing such registration a term not exceeding two months within which the spouse opposing such registration may present a plea, in accordance with Canon Law applicable, before the competent Tribunal to have the decision revoked; and the Court of Appeal shall only register that decision where the party opposing the registration has not entered the plea in the term established, or has entered the plea but the same was rejected or the decision declaring the marriage null was confirmed by the Tribunal.

In this regard, the Court makes reference to a previous judgment delivered by this Court as presided, ***MM vs FM*** decided on the 13th of March 2019, wherein this Court had held that:

Il-Qorti rat illi l-partijiet inoltre ottjenew l-annullament taz-zwieg religjuz taghhom permezz ta' decizjoni tat-Tribunal Metropolitan tat-30 ta' Settembru 2016 (vide fol 33 sa fol 43), liema decizjoni ma gietx appellata. Il-Qorti rat pero illi din id-decizjoni ma gietx irregistrata mal-Istat permezz tal-proceduri idoneji quddiem il-Qorti tal-Appell Civili, u ghalhekk, peress illi ghallfinijiet tal-ligi, iz-zwieg civili ta' bejn il-partijiet ghadu validu u vigenti, ghadu possibli ghall-partijiet illi jipprocedu ghall-ottjeniment tad-divorzju sabiex ixxolju z-zwieg taghhom

Similarly, since the registration of the decision of the Ecclesiastical Tribunal has not as yet been registered in terms of article 23 and Y of the Marriage Act, in the eyes of the state, the civil marriage between the parties is still valid and thus it is still possible to proceed with the pronouncement of the divorce.

However, the Court notes that Subsidiary Legislation 12.20 requires that, in cases where the parties are not already separated, proceedings are initiated by means of an application requesting the appointment of mediation proceedings. In this case Plaintiff did not file an application, but a letter. Mediation proceedings commence by means of a letter ***only*** in the case of proceedings for personal separation. The Court notes that the Family Court's decree, dated 12th June 2018 *(vide fol 18)* authorizing the plaintiff to proceed with the filing for judicial separation, had requested the Plaintiff to confirm the contents of the said letter on oath, however, it appears that the plaintiff failed to confirm the said content on oath.

Additionally, the Court has seen that according to article 66G (2) of the Civil Code:

> "***The application for the commencement of divorce proceedings shall: (a) where the spouses are not separated by means of a contract or a court judgement, be accompanied by a note in which the advocate confirms that he has observed the requirements of sub-article (1);"***

The Court has also seen that according to the first proviso to article 66G (2),

> ***"Provided that where the advocate assisting a client in a cause for divorce shall not have presented the said note, the copy of the judgement of separation or of the contract of consensual separation, as the case may be, the advocate shall present these documents not later than, or during, the first sitting in the cause:"***

The Court notes that from the acts of these proceedings it results that plaintiff's lawyer had not filed the note required according to article 66(2) of the Civil Code with the application for the commencement of these proceedings, which note has never been filed till the present day.

On this matter the Court makes reference to the judgement in the names ***JM vs FM*** decided by this Court on the 2nd of July 2020 wherein on this issue it was stated that:

> ***"Il-Qorti tqis illi galadarba l-Legislatur ghazel illi jimponi dan ir-rekwizit fi proceduri ta' divorzju, m'huwiex possibli ghal din il-Qorti illi tinjora r-rieda tal-***

Legislatur u taghlaq ghajneja ghal dan in-nuqqas. Dan specjalment ikkonsidrat illi l-Legislatur inkluda wkoll zmien perentorju entro liema ghandha tigi prezentata din in-nota, u cioe sa mhux aktar tard mill-ewwel dehra, u ghaldaqstant lanqas ma kien possibli ghal din il-Qorti illi taghti lir-rikorrenti aktar zmien sabiex tottempera ruhha ma' dan ir-rekwizit."

Therefore, it is evident that plaintiff has failed to satisfy not merely one, but two procedural requirements necessary in order to enable this Court to take cognizance of her demands. The Court has no alternative other than to abstain from taking further cognizance of plaintiff's second and third requests.

For these reasons, the Court declares that it upholds Plaintiff's first request and orders the dissolution and termination of the community of acquests existing between the parties such that each party is to be assigned all assets, bank accounts, vehicles or moveable assets that belong to them or are assigned in their respective names. In the event that either of the parties shall have contracted any debt or entered into any other obligations, the responsibility ensuing from any said debt and/or obligations, is being assigned to the party who so contracted the debt and/or obligation;

With regard to the second and third request, the Court having seen that Plaintiff has failed to satisfy the conditions imposed by this Court as differently presided in its decree dated 12th June 2018 (vide fol 18) in terms of S.L. 12.20 and those set out in article 66G (2) (a) of the Civil Code, abstains from taking further cognizance of the second and third request of Plaintiff.

Costs to be borne by Plaintiff.

Read.

Madame Justice Jacqueline Padovani LL.D. LL.M. (IMLI)

Lorraine Dalli
Deputy Registrar