

**CIVIL COURTS
(FAMILY SECTION)**

**MADAM JUSTICE
JACQUELINE PADOVANI GRIMA LL.D., LL.M. (IMLI)**

Hearing of 1st July 2022

Application no. : 76/2021/1

Case no. : 4

**SC
Vs
BC**

The Court:

Having seen the application filed by SC dated 8th July 2021, at page 2 et seqq., wherein it was stated that:

- 1. That the parties married on the 5th of July 2013, from which marriage they had two children, namely NC who was born on X and JC born on Y;*
- 2. That the community of acquests is the matrimonial regime regulating their marriage;*
- 3. That the parties have been living separately from one another since October 2019 and have been in separation proceedings for almost two years. That being separated de facto, means that the spouses could incur debts which would be chargeable to the community of acquests and thus they could be exposed to such risks or consequences;*

4. *That the termination of the Community of Acquests should be beneficial to both parties since it will not only avoid the possibility of any of the parties incurring debts attributable to the Community, but the parties would also acquire the right to do all the acts of civil and commercial life without the need of the other party's consent, assistance or court intervention;*
5. *That this application is being made in terms of Article 55(1) of the Civil Code and the parties hold that this will not create any disproportionate prejudice to each other;*

That for these reasons, the parties humbly requests this Honourable Court to:

1. *Order the cessation of the community of acquests between the parties in terms of Article 55(1) of the Civil Code;*
2. *Consequently, authorise the parties to register the judgment given by this Honourable Court in the Public Registry;*

Having seen the decree dated 19th July 2021;

Having seen the minute of the hearing dated 18th May 2022, wherein Defendant's counsel informed the Court that Defendant has no objection to the termination of the community of acquests.

Having seen the exhibited documents and all the case acts;

Considers:

This is a judgement following a request made by Plaintiff on the basis of Article 55 (1) of the Civil Code for the cessation of the community of acquests existing between the parties. This Article provides that:

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

spouses.”

The fourth sub-Article of Article 55 then provides that:

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

The Court make reference to the judgement handed down by the Court of Appeal on the 28th of March 2015 in the names **Daniela Mizzi vs Duncan Peter Mizzi**, wherein it was stated that:

“In tema legali jinghad illi l-Artikolu 55 tal-Kap.16 li fuqha hija bbazata t-talba attrici jaghti l-fakolta’ lil parti jew ohra li “f’kull zmien matul is-smiegh tal-kawza ta’ firda titlob il-waqfien tal-komunjoni tal-akkwisti jew tal-komunjoni tar-residwu taht amministrazzjoni separata li tkun tezisti bejn il-konjugi.....t-talba ghall-waqfien m’ghandhiex tinghata jekk parti tkun ser issofri “pregudizzju mhux proporzjonat.” Inoltre, l-oneru tal-prova ta’ dan ir-rekwizit jirrisjedi fuq min qed jallegah, skond il-principju incumbit ei qui dicit non ei qui nega.”

The Court makes reference to the judgement handed down by the Court of Appeal on the 14th of March 2019 in the case **Pierre Darmanin vs Louise Darminin** where it was decided that:

“...l-kwistjoni tal-qligh tal-attur minn negozju, flimkien mal-allegazzjoni gratuwita` tal-konvenuta li hu qed jahbi parti minn dan il-qligh, hija materja li ghandha tigi ezaminata fl-ambitu tas-separazzjoni personali u huwa irrelevantu jekk il-komunjoni tal-akkwisti titwaqqafx f’dan l-istadju jew le ghax il-konvenuta ghad ghandha l-opportunita` li tressaq provi fir-rigward fil-proceduri tas-separazzjoni. Din il-Qorti tirribadixxi li l-waqfien tal-komunjoni tal-akkwisti jirreferi ghall-futur u mhux ghal passat u, minkejja li dak li z-zewg partijiet qed idahhlu mix-xoghol taghhom s’issa hu tal-komunjoni, l-istess huwa tal-komunjoni kull dejn li talvolata jistghu jaghmlu. Ghalhekk anke minn din il-perspettiva ta’ dejn, il-waqfien tal-komunjoni tal-akkwisti mhux talli ma jipprejudikax lill-konvenuta talli jaf ikun ta’ beneficcju ghaliha ghax mid-data tal-waqfien tal-komunjoni ‘l quddiem hi ma tkunx responsabbli ghad-dejn li

talvolta jista' jaghmel l-attur."

The Court understands that Defendant registered no objection to the cessation of the community of acquests existing between the parties. Therefore, the Court deems that there is no obstacle for upholding Plaintiff's demands.

For these reasons, the Court orders the cessation of the community of acquests existing between the parties in terms of Article 55 (1) of the Civil Code, and orders that this judgement be notified to the Director of the Public Registry at the expense of the Plaintiff in terms of Article 55 (4) of the Civil Code.

Costs Reserved for Final Judgment.

Read.

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

**Christabelle Cassar
Deputy Registrar**