

**CIVIL COURTS  
(FAMILY SECTION)**

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

**Hearing of the 6<sup>th</sup> of July 2022**

**Application no. : 211/2020/2**

**Case no. : 16**

**MSH**

**Vs**

**RMH**

**The Court:**

Having seen the application dated 23<sup>rd</sup> of November 2020, at page 2 et seqq., wherein it was stated:

*Whereas the parties celebrated their marriage on the sixth (6th) of January 2000 (Doc MSH1) and that they have two children, namely SMH, born on the X and FWH, born on the Y, the latter still a minor.*

*Whereas the marriage between the parties suffered irretrievable breakdown, and therefore marital life between parties was no longer possible.*

*Whereas further to mediation proceedings, plaintiff has been authorized to proceed with a personal separation lawsuit, bearing the names and reference number quoted above.*

*Whereas the parties are de facto separated and the defendant resides in Scotland with their children in a property belonging to the said parties, whilst the applicant resides in Malta.*

*Whereas the applicant would like and is to this effect requesting the termination of the Community of Acquests existing between the parties in terms of Article 55 of Chapter 16 of the Laws of Malta.*

*Whereas such request will in no manner prejudice the interests of the parties who may plan their respective lives ahead, independently.*

*Whereas moreover, there no longer exists any scope for the marriage of the parties to remain being regulated by the Community of Acquests given that there are pending personal separation proceedings.*

*Consequently and for the above mentioned reasons the applicant humbly requests that this Honorable Court, saving any opportune direction, proceeds to;*

- 1) Order by means of a separate judgment, the termination of the Community of Acquests between the parties in terms of Article 55(1) et seq of Chapter 16 of the Laws of Malta;*
- 2) Order that this judgment be notified to the Director of Public Registry in terms of Article 55(5) of Chapter 16 of the Laws of Malta.*

*With costs.*

Having seen that Defendant duly notified, failed to file a reply and also failed to attend to hearings scheduled, therefore she is contumacious at law;

Having seen that Defendant was given the faculty to file written submissions in terms of Art 158 (10) of Chapter 12 of the Laws of Malta. (vide page 37);

Having seen that this notwithstanding, the Defendant failed to file any written submissions;

Having seen the judgment in parte of this Court dated 10<sup>th</sup> March 2022;

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 14<sup>th</sup> 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 irrelevanti jekk il-komunjoni tal-akkwisti titwaqqafx f'dan l-istadju jew le ghax il-konvenuta ghad ghandha l-oppportunita` 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' beneficju ghalha ghax mid-data tal-waqfien tal-komunjoni 'l quddiem hi ma tkunx responsabbli ghad-dejn li talvolta jista' jaghmel l-attur."*

Defendant is contumacious and has also failed to submit a note of submissions in accordance with the minute of the hearing of the 16<sup>th</sup> May 2022. The Court notes that Plaintiff has testified and filed documentation in relation to the contents of the Community of Acquests. It is this Court's considered opinion that the cessation of the community of acquests will not cause disproportionate prejudice to Defendant.

**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)**

**Lorraine Dalli**

**Deputy Registrar**