

**CIVIL COURTS
(FAMILY SECTION)**

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

Hearing of the 3rd November 2022

Application no.: 333/2018 JPG

Case no.: 16

LS

Vs

**Advocate Dr. Yanica Camilleri and
Legal Procurator Peter Sammut
who were appointed to represent the
absent CP in virtue of the Decree of
the 29th August 2018. In virtue of a
Decree dated 18th February 2019 Dr.
Fransina Abela was appointed as
Deputy Curators instead of Dr.
Yanica Camilleri.**

The Court:

Having seen the sworn Application filed by LS dated 20th December 2018 and the English translation dated 9th March 2022, at page 115 et seq, wherein it was held:

- 1. That the applicant and the respondent got married on 17 October 2015 at F
(Doc RS1);*

2. *That the parties do not have any children;*
3. *That the conjugal life of the parties became impossible since the marriage was irremediably broken and this due to excessive threats and grave offences of the respondent against the applicant, and other failures by the defendant to commit to the marital obligations;*
4. *That the parties have been de facto separated since 2016, and the applicant did not have any contact with the defendant since the 29th of August 2016, when he started living in Malta;*
5. *That the applicant asked and obtained the necessary authorization to proceed with this cause of personal separation against the defendant after the appointment of deputy curators by the Court Decree dated 29th August 2018, a copy of which is hereby being submitted and marked as Doc RS2;*
6. *That he personally knows all these facts;*

Now therefore the applicant humbly asks this Honorable Court;

1. *To declare the personal separation of the parties;*
2. *To authorize the applicant to live separately from the defendant CP;*
3. *To apply against the defendant the effect and penalties established by Article 48 and 51 of Chapter 16 of the Laws of Malta;*
4. *To liquidate the community of acquests between the parties;*
5. *To liquidate the property forming part of the community of acquests, if needs be by the appointment of court experts, to divide the community of acquests in two portions and to assign one portion to each party;*

With costs and against the defendant who is hereby being summoned.

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

Having seen the decree dated 5th March 2019 whereby Dr Fransina Abela was appointed instead of Dr Yanica Camilleri as Deputy Curator.

Having seen the note in these proceedings dated 18th May 2022 (*Vide Fol 118*) whereby Dr Fransina Abela informed the Court that she has tried to communicate with Defendant on the particular given to her by Plaintiff and she has managed to contact Defendant's lawyers who gave her a telephone number. She has tried to communicate with Defendant on this number but has been unable to do so far and she will try again.

Having seen that since no evidence from the Defendant was proffered, this Court declared closed the stage of evidence to be produced by Defendant (*Vide Fol 122*);

Having seen the exhibited documents and all the case acts;

Considers:

Plaintiff testified by means of an affidavit (*vide fol 23 et seq*) and explained that he met his husband CP, the Defendant, in 2015 in M, since Plaintiff was living there at the time. Plaintiff was only eighteen (18) years old at the time, and they had dated for about a month. After a short time, they moved in together. A month after they moved in together, Plaintiff, asserts that Defendant started showing signs of violence in his behaviour, namely, he started being possessive and sought to control Plaintiff. During this time, Plaintiff discovered that Defendant had a drug addiction. After three months of living together, Plaintiff's visa was about to expire, and Defendant had offered to marry Plaintiff, and so they did on the 3rd of November 2015. This allowed Plaintiff to get a green card and thus could keep living in the A and have a working permit.

After the wedding, the Plaintiff had contacted a lawyer to initiate the process to acquire a green card however, his lawyer had thereafter informed him that he could not continue the process, since Defendant had been in trouble with the police in PR and also had several problems related to drug dealing, and unpaid taxes in the A. At this stage, Plaintiff wanted to break up with Defendant, however, at the time he was feeling unwell. After a couple of weeks, Plaintiff was diagnosed with HIV. This came as a very big shock, since Defendant had never mentioned that he was HIV positive. Before confronting the Defendant, Plaintiff searched the house for any information on the matter, **and in fact he had found out that Defendant was in fact HIV positive and had**

stopped taking medication. At this point, Plaintiff confronted Defendant, who at first denied everything, but when confronted with evidence admitted that he had been living with HIV for the past five years. For the Plaintiff, this meant that he was not entitled to free health care in the A and thus decided to leave the A and instead settle in Malta.

Once in Malta, Plaintiff got to know that Defendant together with his family, was involved in serious drug trafficking cases. Eventually, Plaintiff lost all contact with Defendant and today has no information as to where Defendant is living.

Plaintiff also testified viva voce on the 2nd March 2022 (*vide fol 84 et seq*) and explained that he is originally from V and is also part I, and has now been living in Malta for more than five (5) years. Plaintiff confirms that he got married to Defendant, who is originally from PR, in M. Plaintiff affirms that they had been together for circa 8 months before they got married. Plaintiff adds that they moved to Malta, around 2018 and 2019, however, Defendant only stayed here for four days. Plaintiff testifies that he already had family in Malta, and came to study English since it was much cheaper to study here in Malta than in the A. He also managed to find a job here and in the mean time applied to continue his studies. Plaintiff confirms that he works as a supervisor at Costa Coffee. Plaintiff also explained that he has no family in V and that his family is scattered between Malta and the A.

Considers:

This is a judgement following a request on the part of the Plaintiff asking this Court to pronounce the personal separation of the parties on the grounds of excessive threats and grave offences of the part of the respondent and other failures by the defendant to commit to the marital obligations.

Article 40 of the Civil Code provides:

Either of the spouses may demand separation on the grounds of excesses, cruelty, threats or grievous injury on the part of the other against the plaintiff, or against any of his or her children, or on the ground that the spouses cannot reasonably be expected to live together as the marriage has irretrievably broken down:

Provided that the court may pronounce separation on the ground that the marriage has irretrievably broken down notwithstanding that, whether previously to or after the coming into force of this article, none of the spouses had made a demand on such ground.

Article 2(2) of the Civil Code provides that:

The spouses shall have equal rights and shall assume equal responsibilities during marriage. They owe each other fidelity and moral and material support.

Deliberates:

The parties were married on the 17th of October 2015 in F and have no children from this marriage. It appears that Plaintiff lost all contact with the Defendant, when Defendant left Malta after the parties had originally moved to Malta back in 2016, and thus have been *de facto* separated since. The parties met in M and were in a relationship for circa eight (8) months before getting married. Very early on in their relationship, the parties moved in together. At the time Plaintiff was only eighteen (18) years old.

As afore mentioned, despite the fact that the Deputy Curators managed to successfully contact Defendant's foreign counsel, Defendant, has failed to tender any evidence. The Court has no alternative but to determine the merits of the case on the evidence produced by the Plaintiff.

The Court notes that Plaintiff *inter alia* cites excessive threats as one of the reasons leading up to the breakdown of their marriage. It is this Court's considered opinion that the Plaintiff failed to tender sufficient proof in this regard. However, the Court has observed that Defendant withheld considerable and potentially life-threatening medical information from Plaintiff, information which Plaintiff had every right to know about since he became Defendant's spouse. In particular Defendant withheld information that he was HIV positive with dire consequences on the Plaintiff who soon became HIV positive soon after marriage. Indeed, the withholding of such vital information, apart from the dire consequences on the health of Plaintiff, destroyed the parties' marriage. Thus, after having seen article 40 of Chapter 16 of the Laws of Malta and in light of these serious non-disclosures on the part of the Defendant, it is the Court's considered opinion that there are grave reasons to ground for the pronouncement of the parties' personal separation.

In light of the circumstances contemplated above which caused the breakdown of the parties' marriage, the Court holds that the dispositions of Article 48 be applied *in toto* against Defendant.

Regarding the community of acquests, the Court has seen the documentation exhibited in the acts of the case by the Plaintiff. However, it also notes that Plaintiff failed to provide any evidence regarding the applicable matrimonial regimes when the parties lived in the A. The Court may therefore only take into consideration any debts or assets accumulated by the parties when they moved to Malta to settle here, at which point it is clear and unequivocal that the regime of community of acquests became applicable. From the evidence produced by Plaintiff, it appears that the parties had no property or vehicles in Malta and that they had no joint bank accounts, but Plaintiff simply has a separate bank account in his own name. The Court therefore considers that each party should retain full ownership of the bank account in his name.

For these reasons, the Court:

- 1. Upholds the first request and pronounces the personal separation of the parties;**
- 2. Upholds the second request and authorizes the Plaintiff to live separately from the Defendant;**
- 3. Upholds the third request and applies against Defendant the provisions of Article 48 in toto;**
- 4. Upholds the fourth request and orders the cessation of the community of acquests between the parties;**
- 5. Upholds the fifth request and liquidates the same community and orders that each party shall retain full ownership of the bank accounts in his individual name, having seen that from the evidence adduced, it appears the parties have no other assets or liabilities in Malta;**
- 6. Authorizes Plaintiff to register the final judgment of personal separation in the Public Registry of Malta, or have the annotations duly inserted, as the case may be.**

Costs shall be borne entirely by Defendant but are to be provisionally paid by the Plaintiff.

Read.

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

**Lorraine Dalli
Deputy Registrar**