CIVIL COURT

(FAMILY SECTION)

MR. JUSTICE ANTHONY G. VELLA

Sitting of Tuesday, 27th September 2022

Application number: 185/2020 AGV

JOGL

vs

DL

The Court;

Having seen the application of JOGL , dated 30th October 2020;

Respectfully submits and confirms on oath:

That the parties contracted marriage at the Public Registry, Valletta, Malta on the 18th of May 2014, (Doc. A) from which marriage they do not have any children;

That this marriage has irretrievably broken down with no hope of reconciliation for reasons attributable to the defendant DL and this in terms of Article 40 of

the Civil Code, Chapter 16 of the Laws of Malta as shall be proven throughout the proceedings;

That the matrimonial life between them has also become impossible because the defendant has left the Maltese islands and to the best of the applicant's knowledge, she has no intention of returning to Malta;

That in view of the above the applicant wishes to separate from his wife;

That mediation proceedings have been initiated by the applicant bearing number 475/2020, which mediation proceedings were terminated by virtue of a decree numbered 1660/20 dated the 3rd September 2020, attached and marked as Doc. B, given by this Honourable Court and for these reasons this present case has been instituted;

That the property 38, Triq San Pawl Milqi, Burmarrad, served as the matrimonial home during the marriage between the parties and which property is currently being leased by the applicant as shall be shown during the proceedings;

That the plaintiff knows about these facts personally;

That consequently these proceedings had to be filed;

Now therefore, the applicant humbly asks this Honourable Court to:-

1. Declare that the matrimonial life between the parties is no longer possible and that the marriage broke down irretrievably for reasons attributable to the defendant and for these reasons pronounce the personal separation between the parties;

2. Apply totally or in part, against the defendant, in favour of the plaintiff, the effects and dispositions of Article 48 *et seq*, Chapter 16 of the Laws of Malta;

3. Apply the Articles 51, 52 and 53 of the Civil Code as well as Article 54 of Chapter 16 of the Laws of Malta in favour of the plaintiff, whilst the defendant loses any right which she might have had on the basis of Article 54 sub articles 1 to 7, both sub articles included;

4. Liquidate any credit which the plaintiff might have had towards the community of acquests and towards the defendant;

5. Declare the dissolution of the community of acquests between the parties and liquidate the same;

6. Divide and assign the assets belonging to the community of acquests in shares which are not necessarily equal since the defendant did not contribute towards the community of acquests, and since she should not be entitled to any acquests which were made through the plaintiffs labour, by appointing an architect, notary to receive the opportune acts and curators in order to represent the defaulter on the same deed;

7. Order the defendant to give the plaintiff his paraphernal belongings;

8. In terms of sub article 2 of Article 62 of Chapter 16 of the Laws of Malta, the defendant should change her surname to her maiden surname, that is GW , and lose the right to use the surname of the plaintiff JL because the said use of this surname can be of serious prejudice to the applicant;

9. Authorize the plaintiff to register the judgment of this Honourable Court in the Public Registry for all terms and effects of law.

10. Give any other order which it deems fit and opportune.

With judicial and extra-judicial costs and expenses against the defendant, henceforth summoned to testify under oath.

Having seen the sworn reply of Dr Malcolm Mifsud – 405168 M, for and on behalf of DL.
Respectfully submits;

1. Whereas the claims of the plaintiff are unfounded in fact and in law since the plaintiff is solely responsible for the separation of the parties. Together with this reply, the applicant will be presenting a counter-claim;
2. Whereas as for the first claim of the plaintiff, the applicant confirms that the marriage between the parties has irretrievably broken down however on the contrary of what is being stated by the plaintiff, this has occurred due to serious reasons imputable to the same plaintiff, and this as it will be better explained during the submissions of the case. This claim must therefore be rejected;
3. Whereas with regard to the second and third claims of the plaintiff, the dispositions mentioned by the plaintiff ought to be applied against the said plaintiff, as this Honourable Court deems fit and just;
4. Whereas there is no contestation with regards to the fourth claim, however the defendant contends that this needs to also be applied in relation to any credit that the defendant has towards the community of acquests and towards the plaintiff;

5. Whereas there is agreement with regards to the fifth claim;
6. Whereas the sixth claim ought to be rejected, provided that the assets that appertain to the community of acquests are to be divided in an equal manner, and this for the reason that the defendent actively and fully contributed towards the plaintiff's work;
7. Whereas there is no contestation vis-a-vis the seventh claim however, the defendent contends that this claim must also apply in her favour with regards to paraphernal property that belongs to her;
8. Whereas in relation to the remaining claims, the defendant does not find any objections.
9. Save for ulterior pleas if necessary;

With all costs against the plaintiff who is henceforth summoned to testify under oath.

Having seen the counter claim of Dr Malcom Mifsud for and on behalf of DL respectfully submits and on oath confirms that ;

1. Whereas the parties have wed in the 18th May 2014 in the Public registry of Malta and from the marriage no children were born;
2. Whereas during the duration of the marrage the applicant used to work with betfinal.com which is an Igaming company owned by Netglenn Limited and Final Enterprises N.V. The plaintiff is one of the major shareholders of this company, as well as its chief executive officer. The applicant had a very active role in the companys' management;
3. Whereas this marriege has irretrivably broken down, with the fault solely being that of the plaintiff JOGL , in terms of Article 40 of the Civil code;
4. Whereas the conjugal life between the parties became impossibile due to the plaintiffs serious dependence on alcohol;

5. Whereas after various tentatives from the applicants part to help the plaintiff overcome his dependance, the applicamt did not have any other choice other then to terminate the relationship;
6. Whereas when this happened, the plaintiff took the unilateral decision to terminate the applicants employment, with immediate effect;
7. Whereas due to this accident, the applicant decided to leave the Maltese islands, to visit family member in Greece, for some time. This happened to be Christmas time in 2019. Following which, the pandemic hit, making it easier for tha applicant to remain living in Greece;
8. Whereas so much so, that the applicant still had personal articfacts in the property with number 38, in Triq San Pawl Milqi, Burmarrad which property served as the matrimonial home of the parties;
9. Whereas the applicant highlights that although the plaintiff instituted mediation proceedings, this was terminated without the applicat having been given a chance to participate therein. This is because since the applicant is living in Greece, the correspondence with which she was notified of the appointment fixed for purposes of mediation, arrived at her address too late;
10. Whereas as a consequence of this, the procedure, of mediation had been closed.
11. Whereas the applicant knows about these facts personally.

Therefore the applicant humlby requests this Hionorable Court to for the premised reasons;

1. Declare that the matrimonal life between the parties is no longer possible and that the marriage has irretrivably broken down for reasons attributable

to the plaintiff, and for these reasons pronounce the personal separation between the parties;

2. Apply totally or in part, against the defendant, in favour of the plaintiff the sactions contemplated at law in terms of Article 48 et seq of the Civil Code;
3. Apply Articles 51, 52 and 53 of the Civil Code, as well as Artcile 54 in favour of the applicant;
4. Dissolve the community of acquests existing between the parties and liquidate the same;
5. Divide and assign the assets appertaining to the community of acquests in equal shares between the parties, including the equal division of the shares held in the plaintiff's name in the companies Netglenn Limited and Final Enterprises N.V. since the applicant used to fully contribute towards the growth and development of these companies which she used to work in together with the plaintiff;
6. Liquidate any credit which the applicant has towards the community of acquests and against the plaintiff;
7. Condemn the plaintiff to reconsign to the applicant the paraphernal property together with other personal artifacts that she had and are in the property no. 38, Triq San Pawl Milqi, Burmarrad.
8. Authorise the plaintiff to revert to her maiden surname, G W ;
9. Give any other order which it deems fit and opportune in the circumstances;

With all costs against the plaintiff who is henceforth summoned to testify under oath.

Having seen the sworn reply of JOGL to the counter-claim of DL , dated 6th January 2021;

States with respect and confirms on oath:

1. That the claims of the defendant counterclaimant are unfounded in fact and in law as it is the counterclaimant herself that is solely responsible for the cause of the personal separation between the parties;

2. That it is untrue that the parties' marriage breakdown occurred due to alcohol dependency on the plaintiff's part, as has been alleged by the defendant counterclaimant.

3. That it is also untrue that the counterclaimant was unable to participate in the mediation proceedings. On the contrary she had every opportunity to participate but chose not to show any interest, as will be amply proven during the hearing of the case;

4. That with respect to the first claim, the plaintiff agrees with the counterclaimant that this Honourable Court should pronounce the personal separation between the parties but does not agree that the parties' irremediable marriage breakdown is attributable to him. Contrary to what the defendant counterclaimant is alleging, the marriage between the parties broke down due to serious reasons attributable solely to the same defendant, as will be shown during the hearing of the case;

5. That with respect to the articles of the law contained in the second and third claim of the defendant counterclaimant, these should apply against the same defendant as this Honourable Court deems appropriate and opportune, after taking into account all the evidence to be brought forward during the present proceedings;

6. That there is no contestation with respect to the fourth claim;

7. That with regard to the fifth claim, this must be rejected in the sense that the assets belonging to the community of acquests must not be assigned equally between the parties. The counterclaimant's allegations that she held an active part in the management of the companies mentioned by her is disputed and in fact she repeatedly stated to the plaintiff that she did not want any share, interest or compensation with respect to the same companies, as shall be amply proven during the hearing of the case;

8. That the seventh claim is not being contested however the plaintiff contends that it should also apply in his favour with respect to his paraphernal property;

9. That with respect to the rest of the claims of the counterclaimant the plaintiff finds no objection;

10. Save further pleas.

With costs and expenses of the case and the counterclaim against the defendant counterclaimant.

Having seen the documents exhibited.

Having heard all the evidence submitted.

Having seen the parties' final note of submissions and heard their oral submissions.

Considerations of the Court

PERSONAL SEPARATION

This case relates to the request filed by both parties to obtain personal separation from each other, following the breakdown of their marriage. Both parties are asking this Court to pronounce their personal separation, even if, both contest the responsibility for such separation, and claim that this is to be attributed to the other party. From the evidence, it results that the parties cohabited for around seven years. They met in 2012 and got married around two years later. No children were born from their marriage. Both parties blame the other party for the failure of their marriage. Plaintiff states that defendant left for Greece in December 2019, and never came back. Defendant states that plaintiff had a drinking problem which left her very lonely, and so she left for Greece and had to remain there under lockdown when the Covid-19 pandemic started. The facts of this case are, very briefly, as described above. The Court has to point out at the outset, however, that the parties do not seem to be concerned about the relationship that failed, but the case revolved entirely on the commercial business they had set up during marriage. Indeed, the parties' sole concern was the share of profits of their company, and the liquidation of such profits to each party.

Refence is made to the decision delivered by the Court of Appeal on the 30th October 2015, in the names of **Susan Armeni vs Leonard Armeni** wherein the Court established that:

> 'Din il-Qorti tosserva li z-zwieg huwa intiz sabiex il-partijiet jizviluppaw bejniethom komunjoni ta' hajja u ta' imhabba kemm lejn xulxin kif ukoll

lejn it-tfal taghhom u l-konjugi ghandhom jagixxu fl-interess tal-familja li ghandha tkun l-ewwel prijorita` fiz-zwieg.

- omissis –

Il-hajja matrimonjali tezigi impenn kontinwu dirett lejn l-interessi tal-familja anke jekk dan ifisser li parti tirrinunzja temporanjament jew anke permanentament ghal xi haga li tkun thobb taghmel u dan b'mod partikolarment fejn fiz-zwieg jitwieldu t-tfal ghax f'dan il-kaz dak li hu ta' priorita` huwa l-obbligu taz-zewg genituri li jiehdu hsieb it-trobbija u l-benessere tat-tfal taghhom, almenu sakemm dawn isiru maggjorenni u indipendenti.'

Reference is made to article 40 of the Civil Code, Chapter 16 of the Laws of Malta which states:

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.

In the case in the names **Scicluna Maria Dolores Sive Doris Vs Scicluna Anthony** decided on the 27th November 2003 by the First Hall, Civil Court in which it was established that:

"Sabiex tintalab is-separazzjoni personali mhux meħtieġ li jikkonkorru l-eċċessi, is-sevizzji, it-theddid u l-inġurji gravi, iżda kull waħda minn dawn ir-raġunijiet waħedha hija suffiċjenti" u żżid tgħid li "Il-liġi tqiegħed bħala motivi li jiġġustifikaw l-azzjoni l-episodji saljenti tal-ħajja konjugali u mhux inċidenti minuri…..Għal dak li jirrigwarda theddid u vjolenzi l-liġi

tikkontenta ruħha bil-persistenza f'ċerta mġieba ħażina u mhux b'xi atti iżolati waqt xi tilwima".

In the judgment **Jayne Margaret Chetcuti vs Lawrence Chetcuti** delived by the Court of Appeal on the 15th December 2015 it was declared that;

> "... mhux kull nuqqas da parti ta' konjuġi versu l-konjuġi l-ieħor jwassal għal sevizzi, minaċċi jew inġurja gravi fit-termini tal-Artikolu 40 tal-Kodiċi Ċivili u huma biss dawk in-nuqqasijiet li, magħmula ripetutament u abitwalment, iweġgħu u jferu lill-konjuġi sal-grad li l-konvivenza matrimonjali ssir waħda diffiċli u insapportabbli. Kif jinsab ritenut fil-ġurisprudenza patria: "Per sevizie nel senso della legge s'intendono atti abituali di crudelta' che offendono la persona o l' animo di colui e sono diretti al punto da ingenerare in lui perturbazione, un dolore ed un aversione verso chi commette tali atti. [PA **Camilleri utrinque**, 16 Marzu 1898]."

As also observed in **Catherina Agius v Benedict Agius**, decided on the 13th June 1967 the factors contemplated in article 40 have to be such which create a situation wherein the parties end up living in a "sistema costante di vessazione e di disprezzo, di oltraggio e di umiliazione che rendono almeno insopportabili l' abitazione e la vita comune".

In the judgment in the names of **Maria Mifsud vs. Vincenzo Mifsud** decide by the First Hall of the Civil Court on the 30th June 1961, it was stated that "Ċerti fatti, kliem u modi ta' azzjoni jew atteġġjamenti illi jistgħu irendu l-ħajja komuni insapportabbli, huma ritenuti mid-dottrina bħala sevizzi".

The Court is convinced that the parties have reached a stage where cohabitation is no longer possible, and as a matter of fact they have been living apart for five years and therefore personal separation is, for them, the only way forward. In the

opinion of the Court, it has been proven that there is a basis for separation in line with Article 40 of Chapter 16 of the Laws of Malta, in that the parties "cannot reasonably be expected to live together as the marriage has irretrievably broken down."

Article 41 of the Civil Code, Chapter 16 of the Laws of Malta, refers to desertion and reads as follows:

> *"Either of the spouses may also demand separation if, for two years or more, he or she shall have been deserted by the other without good grounds."*

THE RESPONSIBILITY OF SEPARATION

Through his evidence, including his testimony, plaintiff insists that defendant was a liability to the business mainly because she was impulsive in spending money and cared more for her reputation than the company's success. He also contends that in the more recent times, before she left for Greece, her contribution towards the company was non-existent. He also sustains that she somewhat had an attitude problem with those around her, be it friends, colleagues, business partners or helping personnel.

On the other hand, defendant objects to her husband's allegations and insists not only that she worked hard in the company, but also that the marital breakdown was a result of plaintiff's drinking problem because of which, she felt depressed and very lonely until she left for Greece, where she remains to this date.

The Court notes that both parties chose not to cross-examine the witnesses produced by the other party, save for the parties themselves.

This Court, after having seen the acts of the case and the evidence brought forward by both parties, has come to the conclusion that the responsibility of marital breakdown lies equally with both parties.

The Parties entered into this marriage as if it were a business partnership first and foremost, and only on a second consideration or afterthought as a romantic relationship. They surrounded themselves with a team of people, in both their professional and personal lives, which left no time and space for their conjugal life to take off.

The Court is convinced that for most years, the machine behind the business was in fact plaintiff and not defendant, even though she did contribute in her own way towards the same. All the testimonies that plaintiff brought forward, including that of people who worked, and cohabited, with them, corroborated the version that he worked long hours and did most of the house chores, whilst defendant often slept in late, especially towards the end of their cohabitation. They all confirmed that defendant was self-absorbed and quite impulsive in her decisions.

Similarly, the Court is also convinced that plaintiff did in fact have a drinking problem. In his cross-examination he remarked that ‘from my eyes, no’ there was no drinking problem; however, this does not mean that this did not exist. In her testimony AW , a friend of both parties, details a series of occasions wherein plaintiff was inebriated. Although for most of the incidents she was not present and she narrates what defendant told her, the witness also gives evidence as to what she experienced first-hand, including the phone call plaintiff made to her after his meeting at AA and his admission that he was an alcoholic.

The Court has reached the conclusion that marital breakdown was in fact an accumulation of things; the stress of the business which was not doing well for a long time, plaintiff's drinking problem, and the consequential incompatibility of character, with both parties deciding to speak to third parties but not to each other.

In her statement, defendant states that in the beginning their relationship was very fuelled by partying; she also admits that her partner (at the time) being 31 years of age and still partying like her (a 19-year-old) should have been a warning sign. The Court shares that sentiment and concludes that DL must also carry responsibilty in her decision to marry plaintiff JOGL despite knowing that he had a drinking problem.

It must be noted that plaintiff brought forward evidence relating to his wife's adultery. Although it is not right that a spouse breaches the obligation of fidelity, it does not however lead to an automatic declaration that the fault for the marital breakdown is of the spouse who committed adultery, and each case has its own circumstances and is to be decided on its own merits.

Although the Court does not justify the relationship that DL started with her ex-boyfriend, the parties' marital breakdown is not attributable to such relationship which started in late 2019 when defendant travelled to Greece to never return to Malta. From the evidence produced by both parties it is evident that the marriage of the parties was in a dire situation for a very long time, long before this relationship started.

Although adultery is not one of the causes for the marital breakdown but a consequence thereof, this however does not exonerate DL from the responsibility of the separation since pending proceedings one of the factors contemplated in article 40 has been proved.

Plaintiff also alleges that his defendant has deserted him. Article 41 of the Civil Code, Chapter 16 of the Laws of Malta, refers to desertion and reads as follows:

> *"Either of the spouses may also demand separation if, for two years or more, he or she shall have been deserted by the other without good grounds."*

It is quite evident, from both the words of the law and jurisprudence that the criteria for such an action to be successful to succeed are two, and that is, desertion for a period of two years or more, and that the desertion happens without a valid reason. In the case of **Andrea Avellino vs. Regina Avellino** decided on the 16th December 1949, the Court gave a clear definition of these criteria:

> "Illi dwar l-abbandun, jingħad li l-istess, biex jista' jikkostitwixxi kawżali tas-separazzjoni, irid, apparti ż-żmien, li fil-każ se maj jikkonkorri, illi jkun sar bla ġusta kawża. Huwa fatt li l-apprezzament taċ-ċirkustanzi "di fatto" li l-abbandun mid-dar ikun sar volontarjament (ċjoe bla kawża ġusta), b'mod li jkun jista' jagħti lok għas-separazzjoni personali għall-ħtija ta' min jirrikorri għalih, huwa mħolli fil-kriterju tal-maġistrat deċidenti; kif ukoll ġie deċiż illi mhux kwalunkwe allontanament ta' konjuġi mid-domiċilju konjugali jikkostitwixxi l-prova ta' l-abbandun volontarju: imma jrid ikun jirriżulta minn fattijiet li juri l-intenzjoni żgura, ferma u pożittiva, ta' min jabbanduna, li ma jerġax imur jgħammar mal-parti l-oħra. U biex ikun kundannabbli, l-abbandun irid ikun kapriccuz u mhux gustifikat minn xi motiv ragjonevoli."

There is agreement between the parties that defendant left the matrimonial home and Malta in December 2019, only six months prior to plaintiff filing mediation proceedings and subsequently these proceedings. Therefore, the two-year period

warranted by law does not subsist, and therefore this argument is hereby being rejected.

The Court is of the view that responsibility for the marriage breakdown should be apportioned as to one half on Defendant and one half on Plaintiff.

The sanctions contemplated in Article 48 are mandatory only in the case of proven adultery and desertion of the matrimonial home without just cause. In the absence of these two situations, it is in the Court's discretion to apply the Article 48 sanction, in part or in toto.

> ***48.****(1) The spouse who shall have given cause to the separation on any of the grounds referred to in articles 38 and 41, shall forfeit –*
> *(a) the rights established in articles 631, 633, 825, 826 and 827 of this Code;*
> *(b) the things which he or she may have acquired from the other spouse by a donation in contemplation of marriage, or during marriage, or under any other gratuitous title;*
> *(c) any right which he or she may have to one moiety of the acquests which may have been made by the industry chiefly of the other spouse after a date to be established by the court as corresponding to the date when the spouse is to be considered as having given sufficient cause to the separation. For the purposes of this paragraph in order to determine whether an acquest has been made by the industry chiefly of one party, regard shall be had to the contributions in any form of both spouses in accordance with article 3 of this Code;*
> *(d) the right to compel, under any circumstances, the other spouse to supply maintenance to him or her in virtue of the obligation arising from marriage.*

(2) The things mentioned in paragraph (b) of sub-article (1) of this article shall revert to the other spouse, and the acquests mentioned in paragraph (c) of the said sub-article shall remain entirely in favour of such spouse, saving any right which the children or other third parties may have acquired thereon prior to the registration of the judgment of separation in the Public Registry.

51. *Where separation is granted on any of the grounds mentioned in article 40, it may produce any of the effects mentioned in article 48, if the court, having regard to the circumstances of the case, deems it proper to apply the provisions of that article, in whole or in part.*

52*. It shall also be in the discretion of the court to determine, according to circumstances, whether the provisions of article 48 shall be applied, wholly or in part, in regard to both spouses or to one of them, or whether they shall not be applied at all in regard to either of them, if both spouses shall have been guilty of acts constituting good grounds for separation.*

In the case **Francis Bugelli -vs- Josephine Borg ġa Bugelli** decided by the Court of Appeal on the 26th March 1996, the Court stated:

"...Il-Qorti tissottolineja li l-konsegwenzi li jissemmew fl-artikoli 48 u 52 huma proprjament applikabbli f'kawża fejn ikun hemm talba ad hoc sabiex tiġi pronunzjata l-firda bejn il-konjuġi. Din ir-regola toħroġ mil-lokuzzjoni ċara tal-liġi stess, billi hija proprja f'kawża bħal din li jiġi determinat liema parti "tkun il-ħtija tal-firda" (artikolu 48) u "jekk il-wieħed u l-oħra jkunu ħtija ta' egħmil li jagħti lok għal firda" (artikolu 52). Din ir-regola toħroġ ukoll mill-insenjament kontenut fid-dottrina u fil-ġurisprudenza tat-tribunali tagħna."

This separation has been pending before this Court for around two years, and for whatever reason neither one of the parties asked the Court to terminate the community of acquests pending proceedings.

It results that in fact it the parties have been living a totally separate life since December 2019. In the circumstances, and considering that defendant chose to leave Malta whereas plaintiff stayed on and worked in the business without her help - and it appears that he also managed to save the business - the Court is hereby declaring that the relative date for the sake of forfeiture should be the date when defendant returned to Greece, that is, December 2019.

COMMUNITY OF ACQUESTS

The parties got married, in Malta, on the 18th May 2014 and thus that is the date when the community of acquests started between them.

The only assets pertaining to the Community of Acquests are:

1. 1,600,000 shares in Finanstipset A.S at a value of 2.567NOK;
2. Shares in Netglenn Limited, which is now in liquidation and will soon be struck off;
3. Shareholdings in the company Final Enterprises (also referred to as Betfinal);

Whilst there seems to be no contention about the shares in Finanstipset A.S and Netglenn Limited, the parties disagree about the shareholdings in Final Enterprises. Plaintiff sustains that the defendant did not contribute towards the business and argues that she was in fact a liability to the same, also because of her impulsivity in spending money. On the other hand, defendant submits that she

worked hard in the company too and for a long period of time, did not even receive a wage.

The Court is convinced that both parties contributed towards this company, which unfortunately led to their matrimonial breakdown. From the evidence, it transpires that whereas defendant took care of publicity and getting contacts, plaintiff was the machine who worked behind the scene. The Court is also convinced that when things got particularly difficult, around August 2018, plaintiff took over a bigger role together with his partner MNS to keep the company afloat.

From the evidence produced by plaintiff himself, he owned 1,000 shares in Final Enterprises, of which he transferred 500 shares to Mehmet Nuri Sevgin on the 17th January 2017 when the parties were still together. He then transferred 175 shares to CJ and 150 shares to M NS on the 12th August 2020, when the parties were already living apart, albeit still being married.

Given the circumstances of the case, and given the fact that defendant left Malta in December 2019, the Court is hereby deciding that defendant is to receive half the value of the shares plaintiff transferred onto CJ and MNS in 2020, shortly after she left (and the date closest to the date of forfeiture). It results that plaintiff transferred a total of 325 shares worth €145.83 each to a total of **€46,744.75** and therefore the Court is ordering that defendant receives half of that amount, that is, **€23,372.38** from her husband. The remaining 175 remaining shares which are still in plaintiff's name are hereby being assigned to him together with the shares the parties hold in Netglenn Limited. Whereas each one of them is to keep the shares s/he holds in her/his name in Finanstipset A.S.

The Court is rejecting defendant's demand for compensation for the work she carried out in the company during the marriage.

MAINTENANCE FOR THE PARTIES

Article 3 of the Civil Code states that *"Both spouses are bound, each in proportion to his or her means and of his or her ability to work whether in the home or outside the home as the interest of the family requires, to maintain each other and to contribute towards the needs of the family.*

In the cases before this Court, both parties are claiming maintenance for themselves from one another.

The undersigned submits that both jurisprudence and our Courts are, today, giving weight to the fact the legislative reform has put both spouses on the same level and acknowledge that the woman has the capability to work and therefore, should not look at marriage, more so during separation proceedings, as a form of guarantee of an income or as an insurance.

Reference is made to **Rosanna sive Roxanne Rizzo pro et noe -vs- Adrian Rizzo** decided by the Court of Appeal on the 31st October 2014 wherein it has been established that:

> "L-obbligu tal-manteniment hu tal-koppja miżżewwġa, u mhux taċ-ċittadini Maltin. Mara miżżewwġa m'għandhiex tkun ta' piż fuq il-Gvern [li jkollu jagħmel tajjeb għal dan, minn flus il-poplu] iżda ta' l-istess koppja."

Furthermore, in **Saadia Vella El Bazza -vs- George Vella**[1] decided by the Court of Appeal on the 24th April 2015, the Court observed;

> "li tassew li llum li l-pożizzjoni legali tal-mara llum tbidlet fis-sens li l-mara bħala konjugi għandha l-obbligu li taħdem barra mid-dar, jekk possibbli, fejn meħtieġ u li hi wkoll għandha tikkontribwixxi għall-ħtiġijiet tal-familja. Kif osservat fil-każ **PA Marthese Vella v. John Vella**, deċiż fit-**28 ta' Frar 2003**: "Il-fatt li l-mara ma taħdimx ma jfissirx li din m'għandhiex il-potenzjal li taħdem u tiġġenera introjtu: it-tibdil leġislattiv filwaqt li rrikonoxxa l-avvanz tal-mara ġab miegħu wkoll responsabbiltajiet fuq il-mara miżżewwġa ferm aktar milli kellha qabel. Dawn i-responsabbiltjiet huma rifless wkoll anke fejn jirrigwarda l-manteniment li jfisser li hi wkoll trid terfa' bħal żewġha r-responsabbilita` għal dak li jirrigwarda l-manteniment tal-familja [ara **App.S Doris Tabone vs Carmelo Tabone, 15 Diċembru 1997**]" Kif qalet din il-Qorti fil-każ **Catherine Mifsud v. Louis Mifsud, 25 ta' Ottubru 2013**: "Il-manteniment mhux xi dritt sagrosant ta' min jissepara iżda jiġi ordnat il-ħlas tiegħu meta hemm il-bżonn."

From the evidence brought forward throughout the case, it results that in fact, not only do both parties have the capability to work and generate an income, but that they are actually both in employment.

Furthermore, considering that both parties are in a relationship with third parties, and considering that as stated before, sanctions are to be applied against both spouses (including the sanction relating to maintenance), the Court is rejecting their demands in terms of article 54 of Chapter 16 of the Laws of Malta.

[1] Decided on the by the Court of Appeal

DECIDE

In view of the above reasons the Court,

1. Upholds the first demand put forward by plaintiff and the first demand put forward by defendant in her counterclaim, and declares the personal separation of spouses L for reasons attributable to both parties in equal measure as explained above;

2. Limitedly upholds the second demand put forward by plaintiff and the second demand put forward by defendant in her counterclaim, as explained above, and sets the 1st December 2019 as a cut off date for such forfeiture;

3. Upholds the third demand put forward by plaintiff and the third demand put forward by defendant in her counterclaim, and applies articles 51, 52 and 53 against both parties, and declares that neither one of the parties has the right to claim and/or obtain maintenance from the other;

4. Upholds the fourth and sixth demands[2] put forward by plaintiff and the fourth and fifth demands put forward by defendant in her counterclaim, and orders the dissolution and liquidation of the community of acquest as set out above, under the sub-title "Termination, Liquidation and Division of the Community of Acquests";

5. Rejects the fifth demand put forward by plaintiff and the sixth demand put forward by defendant in her counterclaim, as no evidence has been brought

[2] In the MALTESE version of the sworn application, as in the English version these demands have a different numbering

to this effect;

6. Rejects the seventh demand put forward by plaintiff as no evidence has been brought to this effect, and in his cross-examination plaintiff declared that defendant held no assets which belonged to him; and rejects the seventh demand put forward by defendant since in her note of submission she is no longer insisting on the same;

7. Upholds the eighth demand put forward by plaintiff and the eighth demand put forward by defendant in her counterclaim and authorises the wife to revert back to her maiden surname ‘G W ’;

8. Upholds the ninth demand and orders that the judgment be registered in the Public Registry of Malta, in termin of Article 62A of Chapter 16 of the Laws of Malta.

9. Abstains from the tenth demand put forward by plaintiff and the ninth demand put forward by defendant in her counterclaim.

Costs are to be borne in equal shares by both parties.

Anthony G Vella

Judge **Cettina Gauci- Dep Reg**