



**CIVIL COURT
(FAMILY SECTION)
JUDGE**

**Hon. Abigail Lofaro LL.D., Dip. Stud. Rel.,
Mag. Jur. (Eur. Law)**

Today, 16th November, 2023

Application Number: 25/2023/2 AL

A B C

Vs

**D E C and by virtue of a decree dated 23rd February, 2023 Dr Sue
Mercieca and I- PL Hilda Ellul Mercer were nominated as deputy curators
to represent the respondent D E C**

The Court;

Having seen the application filed by A B C on the 19th of May 2023 which states:

- 1) That the parties got married on the 27th of July of the year 2018 and from this marriage the parties had one child, F, on the 29th of June of the year 2019 and that he is therefore three years old;*
- 2) That the parties have been living separately at separate addresses since 8 January 2022. Furthermore, in February 2023 he left Malta and in fact he is being represented by deputy curators;*
- 3) That the parties do not depend on each other financially;*

- 4) *That the cessation of the community of acquests is in the interest of both parties and consequently in the best interest of their minor child because the purpose of the dispute between them is reduced. Despite the fact that today the parties live independently from each other, both financially and emotionally, the cessation of communion brings about the benefit that the parties will be able to act in civil acts without the consent of each other and as well - a fortiori in view of the independence, that they are no longer responsible for the debts that any of them may incur from time to time;*
- 5) *That the exponent is very worried that the respondent - who has several vices - will accumulate some debts which - due to the existence of the community of acquests - she will be responsible for;*
- 6) *That therefore the defendant is not going to suffer any prejudice, and certainly will not suffer from any disproportionate prejudice if the Court orders the cessation of the community of acquests;*
- 7) *That there is no reason why the community of acquests existing between the parties should remain in force.*

Therefore, the exponent respectfully requests that this Court:

- i. *Orders the cessation of the community of acquests existing between the parties and this in accordance with article 55 of Chapter 16 of the Laws of Malta;*
- ii. *Orders that the judgment thus given be notified to the Director of the Public Registry and this is in accordance with article 55(5) of the same Chapter 16 of the laws of Malta;*
- iii. *States that the matrimonial regime applicable between the parties is that of the separation of assets.*

And this under those provisions that the Court may wish to give.

With costs against the defendant.

Having seen the decree of the 22nd May 2023 whereby the Court ordered the notification of the application to respondent providing him with five working days to file his reply;

Having seen the reply of the deputy curators nominated to represent the respondent, dated 23rd May 2023, by virtue of which no objection to the demand of the applicant for the cessation of the community of acquests was registered;

Having seen the decree of the 26th May, 2023 whereby this application was adjourned for judgment for today.

Considers:

Considerations:

Presently, this Court has a request to order the cessation of the Community of Acquests existent between the parties during the pendency of their cause for personal separation and this on the basis of Article 55 of the Civil Code, Chapter 16 of the Laws of Malta.

The applicant contends that there is nothing preventing this Court from acceding to such a demand since neither of the parties will suffer any prejudice upon the said cessation of the Community of Acquests.

The deputy curators representing the respondent filed a reply stating that they have no objection to the cessation of the community of acquests.

The Court makes reference to Article 55(1) of Chapter 16 of the Laws of Malta which gives the Court the discretion to order the cessation of the community of acquests or the community of residue, when a demand is made by one of the spouses at any stage of the proceedings for personal separation. This Article states:

“(1)The Court may at any time during the cause of 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.”

Prior to pronouncing itself on the matter, the Court must first consider whether any of the parties will suffer a disproportionate prejudice with the cessation of the community of acquests and this on the basis of Article 55(4) of Chapter 16 which provides:

“(4) 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.”

Therefore as a rule the court shall order such cessation except for those exceptional circumstances where it is proven in a satisfactory manner that the cessation would bring about a disproportionate prejudice to one party or the other.

In this case, the applicant contends that neither party will suffer any prejudice upon the cessation of the community of acquests. The deputy curators nominated to represent the respondent stated that they have no objection to the applicant's demand for cessation of the community of acquests. On the basis of this declaration, the Court cannot foresee that either party may suffer any disproportionate prejudice with the cessation of the community of acquests between the parties.

The Court does not consider that there is the need for the community of acquests existent between the parties to remain in force. On the contrary, it is in the interest of both parties not to burden the community with any debts without the knowledge of the other party. As the Court of Appeal held in the case Daniela Mizzi vs. Duncan Peter Mizzi¹, the cessation of the community of acquests would bring about a benefit as it would prevent either party from incurring debts that could end up burdening the community.

On the basis of the above the Court considers that in the circumstances of these proceedings, neither party can suffer from a disproportionate prejudice upon the cessation of the community of acquests at this stage of the proceedings. Consequently, the Court believes that the applicant's demand should be acceded to.

This is without prejudice to the parties' reciprocal claims against each other which form the merits of the cause for personal separation.

DECIDES

For these reasons, the Court declares that it accedes to the applicant's demands, as outlined in her application dated 19th May 2023, and consequently on the basis of Article 55 of Chapter 16 of the Laws of Malta, orders the cessation of the community of acquests existing between the parties, spouses Tannock, with effect from the day that this judgment becomes a *res judicata*. For all intents and purposes, this Court declares that from the same date the applicable matrimonial regime between the parties shall be that of Separation of Estates

¹ Decided by the Court of Appeal on the 28th March 2014 (Appell Ċivili Numru. 257/2011/1)

The costs of this judgment will be decided in the final judgement.

The applicant shall notify the Director of the Public Registry with this Judgment at her expense within one month from today.