

**CIVIL COURTS  
(FAMILY SECTION)**

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

**Hearing of the 15<sup>th</sup> of January 2024**

**Application no.: 174/2020 JPG**

**Case no.: 20**

**GG  
Vs  
DC**

**The Court:**

Having seen the application filed by the Plaintiff dated 16<sup>th</sup> of October 2023, at page 1 where in it stated that:

- 1. That the parties contracted marriage on the first (1<sup>st</sup>) of April of the year two thousand and sixteen (2016) as per attached marriage certificate (Dok A).*
- 2. That the consent of the applicant was extorted by fraud about some quality of the other party which could of its nature seriously disrupt matrimonial life. (Art. 19 1 (c) Chap. 255 of the laws of Malta.)*
- 3. That the consent of either of the parties is vitiated by a serious defect of discretion of judgment on the matrimonial life, or on its essential rights and duties, or by a serious psychological anomaly which makes it impossible for that*

*party to fulfil the essential obligations of marriage ; (Art. 19 1 (d) Chap. 255 of the laws of Malta.)*

4. *That the consent of either of the parties is vitiated by the positive exclusion of marriage itself, or of any one or more of the essential elements of matrimonial life, or of the right to the conjugal act; (Art. 19 1 (f) Chap. 255 of the laws of Malta.)*
5. *That after only twenty days of marriage the respondent started with conflicts which demeanor that are commonly known at Maltese Law as 'sevizzi', excesses, injuries, and offences including domestic violence omitted on his wife, threats of death and finally the abandonment of the family home. This made it impossible to continue living as a married couple. (Dok B);*
6. *That it is very clear that the respondent contracted the marriage with the sole purpose of obtaining the work and the residence permit in Malta. (Art. 38 1 (c) Chap. 255 of the laws of Malta.)*
7. *That the respondent knows o these facts personally.*

Having seen that the application together with this Court' decree been duly served according to law;

Having seen the sworn reply of Defendant dated 25<sup>th</sup> of August 2021, at page 20, by virtue of which Defendant stated that he agreed that the marriage contracted between the parties was null according to Art 19 (1) (d) Chapter 255 due to lack of due discretion on the part of the Plaintiff;

Having heard evidence on oath;

Having seen the note of submissions;

Having seen all the acts of the case;

**Considers:**

*Plaintiff testified by means of an affidavit (vide page 30 et seq)* and explained that she decided to come to Malta as she could not find a proper job in Bulgaria, and as a result decided to move to Malta for better job prospects. Plaintiff testified that she met Defendant in April of 2015, and after a whirlwind romance, they moved in together almost immediately since Defendant at the time lived with friends. During that time she explains that they used to divided daily expenses but she would pay the rent.

After ten (10) months of living together, Defendant proposed marriage. The wedding was planned for the 1<sup>st</sup> of April of 2016, however, a month before the wedding, Plaintiff returned to Bulgaria to renew her passport. On her return, Defendant seemed a bit distant, nonetheless the parties married on the 1<sup>st</sup> of April 2016 in the presence of some friends. At the time of the wedding, Defendant had immediately told her that he was happy as he no longer needed to renew his visa. Following their marriage, although Defendant continued working, he had stopped paying for daily expenses, nor did he pay for his share of the rent. A month into the wedding, Plaintiff affirms that Defendant started becoming verbally abusive towards her and shortly after, the lapse of a month from their marriage even started hitting her. After five months, Plaintiff decided to file a report at the Qawra police station, however, he refused to leave the apartment and eventually Plaintiff moved out of her apartment on the 31<sup>st</sup> of August 2016 and have lived separately ever since. Plaintiff confirms that she has not made contact with Defendant again until she initiated proceedings to annul the marriage. Plaintiff contends that it is clear that Defendant used her to be able to stay in Malta and had never loved nor cared for her.

*Plaintiff testified viva voce on the 4<sup>th</sup> of July 2022 (vide fol 29A et seq)*, and explained that she arrived in Malta from Bulgaria in 2014 for work and met Defendant in 2015 as they lived close to each other. Nine (9) months into the relationship, they got married. Plaintiff confirms that they moved in together immediately. Plaintiff recalls that at first the marriage was a happy one however, shortly after, Defendant started becoming physically abusive towards her and started to drink heavily. He also used to be verbally abusive towards her even in front of friends. When she left the matrimonial house in 2016, she went to live with a cousin in Attard for a couple of weeks, and then rented another flat in St Julian's. In the beginning, Defendant came looking for her and demanded that they get back together.

*Defendant testified on the 16<sup>th</sup> of October 2023 (vide page 38 et seq)* and confirmed that he met Plaintiff in Bugibba in 2015, and that at the time they used to live in the same block of flats. Defendant contends that Plaintiff had a very jealous disposition however, he always believed that she would change by time. Following their marriage, Defendant testified that they separated shortly after as Plaintiff did not even allow him to continue studying English since he had only managed to find a female English teacher. Defendant stated that Plaintiff wanted to have a child but Defendant was not in agreement. Asked by the Court as to whether these issues were discussed prior to the marriage, Defendant affirmed that they did not talk about children prior to their marriage.

Defendant explained that they both worked on a shift basis; Plaintiff worked a morning shift, whereas he worked the night shift. With the passage of time, Defendant testified that they argued constantly. He added that he did not enjoy staying at home everyday after work, but wanted to go out with friends. He contends that Plaintiff was obsessed with the idea that he would find another woman and was suspicious of every woman who spoke to him.

Defendant confirms that following their marriage, he only lived together with Plaintiff for about two or three months after having decided that he wanted to leave as they were not compatible.

In *cross-examination*, Defendant confirmed that there was an incident wherein the police were involved after he had pushed Plaintiff's hand with his hand during a fight they had had. Defendant adds that Plaintiff's hand turned red and eventually turned blue since she had a bruise. Defendant testified that they had appeared before the Court of Magistrates. Defendant denies that the Police had asked him to leave the matrimonial home.

**Considers:**

By virtue of her sworn application, Plaintiff seeks to annul her marriage to Defendant claiming that that Defendant's consent to the marriage was vitiated on the grounds contemplated in Article 19(1)(c), (d) and (f) of Chapter 255 of the Laws of Malta.

The parties contracted marriage on the first (1<sup>st</sup>) of April of the year two thousand and sixteen (2016) at the Marriage Registry in Valletta as evidenced from the marriage certificate at page 9 of the acts. The parties had no children from said marriage. From the acts of the case it transpires that the parties met in April of 2015, and after a whirlwind romance, they moved in together almost immediately.

According to Maltese legislation, there exists a presumption in favour of the validity of a marriage. An alleged cause for nullity of the marriage must be duly proven by convincing evidence to the satisfaction of the Court notwithstanding any admission that may be made by defendant to the demand for nullity. This principle stems from the fact that marriage is fundamentally an Institute of Public Order and as such, requires that appropriate safeguards are in place to maintain the significance and status of marriage in the general order of society. Nullity is the exception to the rule and must be afforded a restrictive interpretation.<sup>1</sup>

In the judgement in the names *Anna Tonna vs Alexander Tonna*,<sup>2</sup> the Court of Appeal also observed that while the grounds on which a marriage is alleged to be null must result unequivocally, superficial and petty motives do not suffice to show that a marriage was contracted invalidly on any one of the grounds envisaged by Law.

### **Considers:**

Plaintiff is basing her request on the dispositions of article 19(1)(c),(d) and (f) of Chapter 255 of the Laws of Malta.

### ***The relevant text of Article 19 is being reproduced hereunder:-***

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<sup>1</sup> *Vide inter alia Dr A B noe vs ED decided on the 31<sup>st</sup> of January 2018*; “Huwa pacifiku illi z-zwieg huwa istitut ta’ l-ordni pubbliku u bhala tali ghandu jgawdi minn dawk is-salvagwardji li jixraqlu u li huma necessarji biex jiggarrantixxu l-importanza u s-solennita` li dan l-istitut ghandu fis-socjeta`. Appuntu ghal din ir-raguni, il-kuntratt taz-zwieg ma huwiex regolat biddispozizzjoniiet generali in materja ta’ kuntratti li nsibu fil-Kodici Civili izda b’lex specialis taht il-Kap. 255, li ttiprovdi dwar ir-ragunijiet li minhabba fihom zwieg jista’ jigi dikjarat li huwa minghajr effett. Inoltre, tezisti a favur iz-zwieg prezunzjoni ta’ validita` illi tesigi li z-zwieg ma ghandux jigix dikjarat li huwa invalidu, jekk ma jitressqux ghas-sodisfazzjon pjen tal-qorti, provi cari u konkreti li jezistu ragunijiet gravi u serji u eccezzjonali skond kif trid il-Ligi, li jiggustifikaw talba ghan-nullita`... In-nullita` taz-zwieg hija ghalhekk eccezzjoni ghar-regola ta’ validita` u konsegwentement, kull talba biex zwieg jigi dikjarat li qatt ma kien, ghandha titqies b’cirkospezzjoni filwaqt li tinghata wkoll interpretazzjoni ristrettiva...”

<sup>2</sup> Decided on the 6 th November 1991.

***19(1) In addition to the cases in which a marriage is void in accordance with any other provision of this Act, a marriage shall be void:-***

***(c) if the consent of either of the parties is extorted by fraud about some quality of the other party which could of its nature seriously disrupt matrimonial life;***

***omissis***

***(d) if the consent of either of the parties is vitiated by a serious defect of discretion of judgement on the matrimonial or on its essential rights and duties; or by a serious psychological anomaly which makes it impossible for that party to fulfill the essential obligations of marriage;***

***omissis***

***(f) if the consent of either of the parties is vitiated by the positive exclusion of marriage itself, or of anyone or more of the essential elements of matrimonial life, or of the right to the conjugal act.”***

**Article 19(1)(c):**

With regards to sub article 19(1)(c), Chapter 255 in *John Borg vs Paula sive Polly Borg*<sup>3</sup> the Court held:-

***“The object of deceit must be a quality of the other contracting party which, in itself, will have to cause serious disturbance in the partnership of conjugal life; with this formula, the legislator intends that the quality must be objectively grave and establishes the partnership of conjugal life as an objective point of reference for the gravity of the quality so that the qualities are related to the essence, properties and ends of marriage. Therefore, those subjective qualities which cannot be objectively reconciled with conjugal partnership are irrelevant and, in this sense, they are merely arbitrary or***

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<sup>3</sup> Decided by the First Hall, Civil Court on 22 of May 1995.

*trivial”.* (Viladrich P.J. *Matrimonial Consent. Code of Canon Law Annot.- Caparros, E. et al. ed*)1993, Wilson and Lafleur, Montreal).

Jurisprudence has highlighted that for this ground for annulment to succeed. it is not necessary for married life to be actually disrupted, but it suffices where there exists a real possibility that married life could be disrupted, as a result of this quality on the part of one of the spouses. The Court have always maintained that a marriage is void in accordance with this sub article when one of the parties gives his or her consent as a result of the deceit practiced by the other party with regards to some quality pertaining to the other party such as infertility, insanity, addiction to drugs, gambling and alcohol, or a quality relating to the other party’s sexual orientation which is not to be expected in the particular relationship.<sup>4</sup>

#### **Article 19(1)(d) and 19(1)(f) of Chapter of 255 of the Laws of Malta:**

With regards to Article 19(1)(d) and Article 19(1)(f), our Courts have often held that there exists an incompatibility between the two abovementioned ground for annulment, which although may not warrant the nullity of the proceedings, may nevertheless, weaken Plaintiff’s claims.

In the Court of Appeal judgment *Kenneth Cefai vs Louise Cefai* dated 11 November 2011, the Court held:

*“Ghar-rigward tal-kompatibilita’ tas-sub-artikoli (d) u (f) imsemmija, din il-Qorti, ghal ennesima darba, tirradixxi li talba bazata fuq dawn iz-zewg kawzali ma tistax teknikament treggi.”*

In its judgment of the 3rd December 2010 *George Baldacchino vs Yingchun Duan*, the Court of Appeal held:

*“It should be noted from the outset that, technically, this case should not have been discussed on its merits, as the two grounds put forward to support a claim for nullity cannot stand together and mutually exclude each other. While claiming that the spouses had sufficient discretion to exclude an*

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<sup>4</sup> Vide David Buhagiar vs. Roseanne nee Maile, decided by the First Hall Civil Court on the 24<sup>th</sup> of April 1995 (Cit:1584/94VGD)

*intention to marry (simulation), plaintiff is automatically excluding the grounds of lack of discretion; similarly, while claiming a lack of discretion, he is automatically rebutting the ground under paragraph (f), as this implies a positive act of discretion to exclude marriage”.*

**Article 19(1)(d):**

Article 19 (1) (d), of Chapter 255 provides that a marriage is null if the consent of either of the parties is vitiated by a serious defect of discretion of judgement on the matrimonial life, or on its essential rights and duties, or by a serious psychological anomaly, which makes it impossible for that party to fulfil the essential obligations of marriage.

In its judgment *Briffa Emmanuel vs Briffa Veronica et* of the 2nd April 2003, the First Hall of the Civil Court stated:

*“Meta parti tkun qed taghti l-kunsens taghha ghaz-zwieg hi ghandha tgawdi grad ta' liberta` psikologika li tkun necessarja u sufficjenti li tassigura l-poteri bazici ta' l-ghazla”.*<sup>5</sup>

In its judgment of the 2nd July 2003, *Charles Atkins vs Matilde Atkins*, the First Hall Civil Court declared:

*“Il-kuncett tad-‘discretio judici’ ma jirrekjedhiex maturita’ shiha u perfetta fuq dak kollu li jirrikjedi z-zwieg, izda konoxxenza shiha ta’ dak kollu li jkunu deklin ghalih il-partijiet u cioe’ ghall-obbligi u drittijiet konjugali kemm fil-prezent kif ukoll fil-futur. Inoltre l-partijiet irid ikollhom dik il-maturita’ affettiva u cioe’ dak kollu li ghandu x’jaqsam ma’ l-emozzjonijiet u s-sentimenti taghhom fil-konfront ta’ xulxin. Jekk xi wahda minn dawn l-elementi hija b’xi mod nieqsa, allura hemm difett ta’ diskrezzjoni tal-giudizzju kif rikjest mill-ligi....Il-partijiet irid ikollhom dik il-maturita’ li taghmilhom kapaci jirriflettu fuq l-obbligi, id-drittijiet u ir-*

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<sup>5</sup> The Court held that when one gives one’s consent to the marriage, one must enjoy full possession of his or her psychological faculties.



*responsabilitajiet li jgib maghha l-hajja mizzewwga u jkunu ghalhekk kapaci jerfghu u jwettqu l-istess matul il-hajja matrimonjali taghom.”<sup>6</sup>*

In the judgment of the 26th October 2000 *Melanie Borg Cachia vs Joseph Borg* the First Hall of the Civil Court stated:

*“Id-difett irid ikun wiehed serju fil-fakolta’ kritiko-estimativa tal-parti, difett li wiehed jevalwa u jifhem u jassumi dawk li huma d-drittijiet u d-dmirijiet essenzjali taz-zwieg, jew li jevalwa u jifhem x’inhu z-zwieg u l-hajja mizzewwga.”<sup>7</sup>*

It is thus clear that whenever a party to the marriage has not comprehensively understood, the implications of married life, or the duties and obligations arising therefrom, this does not necessarily bring about the nullity of consent due to a serious defect of discretion of judgment

**Article 19(1)(f):**

Article 19(1)(f) provides that a marriage is null if the consent of either of the parties is vitiated by the positive exclusion of marriage itself, or of any or more of the essential elements of matrimonial life, or of the right to the conjugal act.

In other words, one of the parties must have made a positive decision, that although he or she is to participate in the marriage ceremony, he or she is excluding a priori, the marriage itself, or one or more of its essential elements, in such a way as to exclude the marriage itself.

In its judgment of the 28th May 2002 *Anthony Gallo vs Dr Anthony Cutajar et noe* the First Hall Civil Court stated:

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<sup>6</sup> The concept of ‘discretio judicii’ does not require a maturity which is complete and perfect as to what a marriage entails, but a complete knowledge as to what the parties are entering into, that is, the obligations and rights of spouses, both in the present and in the future. The parties must also have an emotional maturity which permits them to be knowledgeable of the emotions they have towards one another. If one of these elements is to an extent missing, then there is a defect of discretion of judgment as envisaged in the law. The parties must possess a maturity which enables them, to reflect on the obligations, rights and responsibilities that are part and parcel of matrimonial life and must be able to shoulder said burdens and carry them out.

<sup>7</sup> The defect must be serious which precludes the party from having the ability to evaluate, understand and assume the essential rights and obligations of marriage, or to evaluate and understand what is marriage and what is matrimonial life.

*“... [l-]perit legali sostniet li “meta wiehed jitkellem dwar l-eskluzjoni taz-zwieg jew wiehed mill-elementi essenzjali tieghu, wiehed irid jifli jekk il-kontendenti jew wiehed minnhom, alavolja hu kapaci jghati l-kunsens validu taz-zwieg, pero’ bl-att tieghu qabel u fil-hajja mizzewga, jew bl-ommissjoni tieghu, eskluda a priori certu obbligi essenzjali tal-hajja mizzewga, cioe’, issimula l-kunsens tieghu totalment fejn eskluda a priori z-zwieg, jew inkella fejn filwaqt il-kunsens hu jew hi eskludew xi wahda jew aktar mill-elementi essenzjali tal-hajja mizzewga, u cioe’ saret simulazzjoni parzjali”.*

*Illi fil-fatt din il-Qorti taqbel mal-istess definizzjoni u fil-fatt wiehed jinnota li taht l-artikolu 19 (1) (f) trid issir distinzjoni cara bejn zwieg li jfalli minhabba cirkostanzi li jirrizultaw waqt iz-zwieg, u zwieg li jfalli ghax wiehed mill-partijiet minn qabel ma ta’ l-kunsens tieghu kien gja mentalment dispost li ma jottemprax ruhu ma xi wahda jew aktar mill-obbligi matrimonjali. Fl-ewwel ipotesi hemm ir-ragunijiet li jaghtu lok ghas-separazzjoni u fit-tieni ipotesi hemm l-estremi tal-annullament taz-zwieg.”<sup>8</sup>*

In the interpretation of this clause, our Courts have stated that the positive exclusion of the marriage or of one of its essential elements need not result from something expressly stated by the party, but it may be inferred from the behaviour of the party concerned immediately preceding or following the marriage vows.

### **Considers:**

Grounds for the nullity of marriage can neither be presumed nor taken lightly, and thus, the Court must thoroughly evaluate the evidence submitted by the parties during the course of the proceedings. The evidence adduced must be concrete, and convincing.

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<sup>8</sup> The legal referee held that when one is discussing the positive exclusion of marriage itself, or of anyone or more of the essential elements of matrimonial life, one must examine whether the parties or either one, irrespective of the fact that the parties are capable of giving valid consent to the marriage, one’s acts, prior to and during matrimonial life, or by means of his omission, excluded a priori anyone or more of the essential elements of matrimonial life, and thus either simulated his consent or partially simulated said consent. The Court agrees with said definition and notes that in accordance with article 19(1)(f), a clear distinction must be made between a marriage that fails as a result of circumstances which ensue during the marriage, and a marriage that fails because one of the parties, prior to giving his or her consent, was already psychologically inclined not to adhere to one or more of the matrimonial obligations. In the first hypothesis, there are grounds for separation, whereas in the second there exist grounds for the annulment of the marriage.

Although this Court underscores that the evidence produced is quite scant, it is this Court's considered opinion that Defendant's marriage to Plaintiff was simply a marriage of convenience. Plaintiff testified about their whirlwind romance, and how after ten (10) months of living together, Defendant had proposed marriage. Plaintiff testified that at the time of the wedding, **Defendant had immediately confided in her that he was happy since he no longer needed to renew his visa.**

This Court heard how following their marriage, Defendant had stopped paying for daily expenses and nor did he continue to pay his share of the rent. Moreover, Plaintiff testified that a month into the wedding, Defendant also started becoming verbally abusive towards her and shortly after, the lapse of a month from their marriage was also physically abusive. Plaintiff and Defendant parted ways on the 31<sup>st</sup> of August 2016, after only circa four (4) months of marriage. From Defendant's testimony, it is evident that Defendant was not interested in married life at all, and was accustomed to earning a living as a single male, to be able to enjoy life as a single man who desired to enjoy a night life drinking with friends regularly after work. He had no intention on embarking on a conjugal life or starting a family. This is very evident from the manner in which Defendant immediately stopped paying his share of everyday expenses, refused to share a rent and refused to start a family.

**For these reasons, the Court, whilst rejecting Defendant's pleas, upholds Plaintiff's request and declares that the marriage held on the 1<sup>st</sup> of April 2016 bearing registration number 524/2016, is null and void, in accordance with the dispositions of Article 19(1)(f) of Chapter 255 of the Laws of Malta.**

**Costs are to be borne by Defendant.**

**Read.**

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

**Lorraine Dalli  
Deputy Registrar**

