

**CIVIL COURTS  
(FAMILY SECTION)**

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

**Hearing of the 9<sup>th</sup> May 2024**

**Application no. : 85/2020 JPG**

**Case no. : 24**

**ZM**

**Vs**

**Dr Mark Mifsud Cutajar and  
Legal Procurator Katrina  
Zammit Cuomo who by virtue of  
a decree of this Honourable  
Court dated 13 September 2019  
were appointed to represent the  
absent DZ**

**The Court:**

Having seen the application filed by Plaintiff MZ dated 1<sup>st</sup> July 2021 at *fol 2 et seqq*, wherein he requested this Court to:

- 1. Order the cessation of the community of acquests between the parties in terms of Article 55 of the Civil Code, Chapter 16 of the Laws of Malta;*
- 2. Declare that the matrimonial regime which should apply between the parties be that of the separation of estates;*
- 3. Consequently to authorise the Applicant to register the judgment given by this*

*Honourable Court in the Public Registry;*

Having seen the decree dated 1<sup>st</sup> July 2021 *at fol 4* of the acts 85/2020/2;

Having seen that the application was appointed for hearing on the 6<sup>th</sup> of October 2021;

Having seen that in the reply filed by the Deputy Curators on the 7<sup>th</sup> of July 2022 *at fol 22* of the acts, and with regards to Plaintiff's request for the cessation of the community of acquests, the Deputy Curators contended that the intention of the Plaintiff is to restrain the Respondent to the gains of the community of acquest rather than the protection of his assets. In fact there is no shred of evidence indicated that the Respondent is in an way generating debts as it is being alleged and therefore objects to the request.

Having seen this Court's decree dated 6<sup>th</sup> July 2023 grounding the Jurisdiction of this Court, at page 136 acts 85/2020;

Having heard the relative testimony on oath;

Having heard oral submissions;

**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.

Article 55 of the Civil Code 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 irrelevantu jekk il-komunjoni tal-akkwisti titwaqqafx f’dan l-istadju jew le ghax il-konvenuta ghad ghandha l-opportunita` 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.”*

**Considers:**

From the acts of the case it appears that the parties contracted marriage on the 24<sup>th</sup> October 1993 in New South Wales, Australia. Two children were born from this marriage, MO who was born on the X and has now attained the age of majority and MJ, who was born on the Y and is now also Y years old. It appears that Defendant has relocated to C together with the younger child, and is living in a property that is co-owned by the parties. Defendant is living in this property together with her partner and former ex-fiancée. The parties, together with their children had chosen to reside in Malta in January 2016. Plaintiff has resided here in Malta ever since.

The Court observes that notwithstanding the fact that Defendant made contact with its Deputy Registrar via email, Defendant has failed to correspond or communicate with the Curator Dr Mark Mifsud Cutajar, who was appointed to represent her interests, in these judicial proceedings.

The Court is faced with two individuals who are living total separate lives in *two different jurisdictions*. Of relevance are the considerations made by the Court in *Lowell vs Lowell* cited above:

*“ommissis*

*Ghall-kuntrarju, kif stqarret l-Onorabbli Qorti tal-Appell fil-kawza citata supra, huwa fl-interess tal-istess attrici illi ma jkunx possibbli ghall-partijiet illi jghabbu l-komunjoni bi djun minghajr il-konsapevolezza tal-parti l-ohra. [enfazi ta' din il-Qorti] Appena huwa necessarju jinghad illi l-pretensjonijiet tal-attrici fil-konfront tal-konvenut dwar fondi li allegatament zamm mohbija minnha mhux ser ikunu kawtelati billi l-partijiet jinzammu marbutin b'regim ta' komunjoni tal-akkwisti izda billi tiehu dawk ir-rimedji kawtelatorji li l-ligi tpoggi ghad-disposizzjoni taghha.”*

Defendant has adduced no evidence to prove that she would suffer a disproportionate prejudice should the community of acquests be terminated before the final judgment. On the contrary, there is considerable evidence produced by Plaintiff to show that a considerable amount of money forming part of the community of acquests was transferred by Defendant to her personal foreign

bank accounts just before leaving Malta to set up residence in C.

It is this Court's considered opinion that in light of the above cited teachings and the factual situation of the parties, it would be in the interests of both parties to order the cessation of the community of acquests, and authorise the parties to regulate their financial affairs by means of the separation of estates regime.

**For these reasons, the Court upholds Plaintiff's demands and 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 are reserved for Final Judgment.**

**Read.**

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

**Lorraine Dalli  
Deputy Registrar**