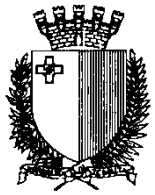

CIVIL COURT

(FAMILY SECTION)

MR JUSTICE HON ANTHONY VELLA

Sitting of Wednesday 19th June 2024

Sworn Application number; 260 /2023 AGV ;

LD

vs

PP

The Court;

Having seen the application of LD ,**dated 24th April 2024;**

Humbly states and on oath confirms:

1) That the parties got married on 18 January 2014 with the civil rite and on 26 April 2014 with the Catholic rite and from this marriage one child, LP , was born on 4 August 2017, and who is therefore still a minor.

2) That today the parties live completely separate lives at separate addresses. The defendant left Malta in September 2022 in order to take up employment in his country of origin, Italy. On the other hand, plaintiff remained in Malta with the minor child where she raises the minor child exclusively other than when the defendant-in-reconvention visits the islands.

3) 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 the cessation of communion brings 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 deferred independence - that they are no longer responsible for the debts that any of them may sometimes incur.

4) That the plaintiff is very worried that the respondent may accumulate debts while overseas which - due to the existence of the community of acquests - she will be responsible for.

5) That therefore the defendant is not going to suffer any prejudice, and certainly will not suffer from any disproportionate prejudice in a case

where the Honorable Court orders the cessation of the community of acquests.

6) 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 Honourable Court please:

i. Ordering 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. It orders that the sentence 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. It states that the matrimonial regime applicable between the parties is that of the separation of assets.

And this under those provisions that our Honourable Court likes to give.

With costs against the defendant.

Having seen the reply of PP ;

Humbly states:

1. That it is true that the parties got married back in two-thousand and fourteen (2014) and from their marriage one child was born, LP on the fourth day of August of the year two-thousand and seventeen (04.08.2017);

2. That it is true that the parties currently live separate lives, however the plaintiff failed to explain that:
    a. the parties freely planned and agreed on their relocation to Italy as family;
    b. the defendant-in-reconvention visits the islands of Malta once a month to exercise physical access while exercises virtual access via a video call whenever he is abroad and this in accordance with this Honourable Courtìs decree;
    c. the defendant-in-reconvention encounters difficulties with regards to his virtual access due to the applicantìs malicious behaviour;

3. That the community of acquests is not posing any difficulties on the parties since the main bone of contention is primarily the habitual residence of the minor child; while with regards to the cessation of the community of acquests, it is very premature for this Honourable Court to order its cessation, in view of the fact that the defendant is yet to start compiling his evidence before this Honourable Court to the extent that only his affidavits were filed containing claims regarding the community of acquests which are yet to be duly proven; the consistency of the community of acquests remains as yet to be discovered and hence the prejudice ensuing if the Court accepts the applicantìs demand.

4. That it is not the plaintiff who needs to worry about the accumulation of debts but the defendant due to the applicantìs character, who is careless and tends to get into serious trouble, as shall be proven in due course;

5. That the defendant will suffer serious and disproportionate prejudice should this Honourable Court orders the cessation of the community of acquests since this was requested at a very premature stage as previously stated and this very well is a valid reason why the community of acquests in existence between the parties should remain in force;

Therefore, in view of the above, the defendant respectfully requests that this Honourable Court kindly rejects the applicantìs claim.

With costs against the applicant.

CONSIDERS:

That applicant has filed a request asking the Court to terminate the community of acquests existent between the parties. Defendant is objecting to this request, on the grounds that such a request is premature, that there is no conflict *between the parties regarding their property, that the consistency of such* property is still unknown to defendant, that there may be unknown debts on

such property arising from plaintiffîs erratic behaviour, and that consequently defendant will suffer serious and disproportionate prejudice if the community of acquests is so terminated.

The effects of such an order are quite simple and straight-forward. From the date of the judgment *in parte* onwards, whatever property purchased by the parties belongs to them personally in their own name. The community of acquests as established up to that moment is frozen in time, so to speak, until it is liquidated in the final judgment, and no new property is added to it. This means that whatever property forming the community of acquests up to that moment remains untouched.

The Courts have pronounced themselves several times on this matter. The law allows such a request to be made by either party at any stage during separation proceedings. Plaintiff in this case has chosen the earliest stage during the hearing of the case and the production of evidence. Defendant has raised the various objections as indicated above. However, jurisprudence has shown that the party objecting to the termination of the community of acquests must produce evidence and proof of the prejudice that such termination will bring. In other words, the burden of proof of the prejudice suffered is on the party objecting to the termination.

Furthermore, not any prejudice to that party is sufficient to prevent the termination from taking place. Therefore, although the Courts do not automatically grant the termination as if it is standard in all separation proceedings, not every objection to the termination may be upheld by the

Courts. The party objecting must show what prejudice will be suffered if the community of acquests is terminated.

In this case, defendant is simply objecting on the grounds already mentioned earlier. None of these grounds have been substantiated by evidence, documents, jurisprudence, or by factual arguments.

The Court of Appeal, in its judgment in the names Ryan Mallia vs Johanna Mallia, delivered on the 9 May 2024 (101/23/1), held the following:

> "Fl-ewwel aggravju tal-attur appellant, huwa jgħid illi l-Ewwel Qorti ma kellhiex bżonn ta' kwadru tal-konsistenza tal-komunjoni tal-akkwisti tal-partijiet u dan fid-dawl: (i) li l-effetti legali tal-waqfien tal-komunjoni tal-akkwisti huma għall-futur u mhux għall-passat (ara Claire Pisani v. Joseph Pisani deċiża mill-Qorti tal-Appell fid-29 ta' Ottubru, 2019); u (ii) li talba ta' din in-natura tiġi miċħuda biss jekk parti tkun sejra tbati preġudizzju sproporzjonat. Magħdud ma' dan, l-appellant itenni illi l-ġurisprudenza tgħallem illi f'każijiet ta' firda personali, il-komunjoni tal-akkwisti għandha titwaqqaf kemm jista' jkun malajr, bil-għan illi l-partijiet jkunu jistgħu jkomplu jgħixu b'ħajjithom separatament, ġaladarba l-ħajja matrimonjali ma tkunx għadha aktar possibbli fiċ-ċirkostanzi (ara Dorianne Sammut v. Charles Sammut, deċiża mill-Qorti tal-Appell fil-App. Ċiv.101/23/1 Paġna 8 minn 15 31 ta' Mejju, 2019). Iżid jgħid li huwa irrilevanti jekk il-komunjoni talakkwisti titwaqqafx fi stadju bikri tal-proċeduri tas-separazzjoni jew le, għaliex kull parti jibqagħlha d-dritt li tressaq il-provi tagħha fir-rigward tal-assi tal-partijiet (ara Pierre Darmanin v. Louise Darmanin deċiża millQorti tal-Appell fl-14 ta' Marzu, 2019),

minbarra li kull parti bejn wieħed u ieħor ikollha idea tal-pretensjonijiet tagħhom fuq l-assi komuni u l-valur tal-istess, liema interessi jistgħu jiġu kawtelati (ara Desiree Lowell sive Desiree Lowell Borg v. Michael Lowell deċiża mill-Qorti tal-Appell fit-30 ta' Ottubru, 2015), bħalma għamlet fl-aħħar mill-aħħar il-konvenuta.

Min-naħa l-oħra, il-konvenuta appellata tinsisti illi ġaladarba l-Ewwel Qorti ma kellhiex rendikont tal-assi tal-partijiet, kien għalhekk bil-wisq ovvju illi din kellha tiċħad it-talba tal-attur. Tgħid ukoll illi għalkemm il-ġurisprudenza tgħallem illi talba ta' din in-natura tista' ssir f'kull żmien tal-kawża, dan minnu nnifsu ma jwaqqaf lill-ebda parti milli titlob lill-Qorti sabiex jinstemgħu provi dwar it-talba magħmula (ara Daniela Mizzi v. Peter Duncan Mizzi deċiża mill-Qorti tal-Appell fit-28 ta' Marzu, 2014).

Jibda biex jingħad illi l-Ewwel Qorti ma kinitx siewja meta qalet illi hija ssibha ferm diffiċli tilqa' t-talba għall-waqfien tal-komunjoni tal-akkwisti meta ma tafx din f'hiex tikkonsisti. Jiġi mtenni illi l-fatt li jkunu għadhom ma nġabrux il-provi fuq il-konsistenza tal-komunjoni tal-akkwisti mhuwiex ta' xkiel sabiex tintalab it-terminazzjoni tal-komunjoni tal-akkwisti (ara Bridgette Attard v. Saviour Attard, deċiża mill-Qorti tal-Appell fit-12 ta' Mejju, 2022).

Sfiq mal-premess, jiġi mfakkar illi: «s-sentenza appellata tirreferi għall-futur u mhux għall-passat u ma taffettwax l-assi tal-kommunjoni tal-akkwisti eżistenti sad-data tal-ordni għall-waqfien» (ara Elizabeth Spiteri v. Carmelo Spiteri deċiża mill-Qorti tal-Appell fl-24 ta' Ottubru, 2019), u «l-ordni tal-waqfien tal-komunjoni tirreferi għall-futur u mhux għall-passat, b'mod li dak li setgħu għamlu ż-żewġ partijiet qabel id-data li fiha tkun ingħatat l-ordni ma jippreġudikax is-sehem tagħhom mill-istess komunjoni. Il-partijiet għandhom id-dritt li jibqgħu jressqu provi dwar l-assi tal-komunjoni eżistenti sa dik id-data, anke wara li tkun ingħatat l-

ordni tal-waqfien» (ara Ronald Asciak v. Antonia Asciak deċiża mill-Qorti tal-Appell fil-5 ta' Diċembru, 2019).

Dan ifisser illi tista' ssir talba għall-waqfien tal-komunjoni tal-akkwisti quddiem il-qorti, fi stadju bikri tal-proċeduri tal-firda personali, u dan anke jekk ma jkunux għadhom inġabru xi provi dwar l-istess komunjoni. F'każ illi l-Qorti ma jkollhiex prova illi xi ħadd mill-partijiet ser isofri minn preġudizzju sproporzjonat, hija għandha tgħaddi sabiex tilqa' tali talba. Madankollu dan kollu jsir mingħajr ebda preġudizzju lejn id-dritt tal-partijiet li wara li tingħata s-sentenza, iressqu l-provi tagħhom dwar dak kollu li jappartjeni lill-komunjoni tal-akkwisti sal-ġurnata li din twaqqfet...

Tassew ħafna huma li joġġezzjonaw għal din it-talba fuq l-argument, li minħabba li l-provi għadhom ma nġabrux, il-Qorti ma għandhiex quddiemha stampa ċara tal-assi kollha, bil-konsegwenza li ser iġarrbu preġudizzju mhux proporzjonat. Indubbjament, tali oġġezzjoni ssir għaliex għal xi partijiet ikun ferm iktar vantaġġuż li tibqa' titħaddem il-komunjoni tal-akkwisti. Madankollu, il-waqfien tal-komunjoni tal-akkwisti huwa ta' benefiċċju kbir għaż-żewġ partijiet, sakemm ebda minnhom ma jbati preġudizzju sproporzjonat. Huwa minnu illi mal-waqfien tal-komunjoni tal-akkwisti, il-partijiet ma jkollhomx iktar il-jedd illi jgawdu mill-frott ta' xulxin, iżda dan minnu nnifsu ma joħloqx preġudizzju sproporzjonat. Anzi fil-fehma ta' din il-Qorti huwa sewwasew fl-ambitu u fl-iskop tal-liġi illi meta l-ħajja miżżewġa tal-partijiet tispiċċa, il-konjuġi m'għandux jibqa' jgawdi mill-frott tal-ħidma tal-konjuġi l-ieħor. Naturalment dan bla ħsara għall-jedd ta' dak il-konjuġi li jitlob il-manteniment f'każ li jkollu bżonnu u jkun intitolat għalih..."

The judgment referred to above rebuts very clearly and succinctly all the points raised by the defendant in her reply. This Court does not need to elaborate any further. On the basis of the arguments outlined in the Court of Appeal's judgment quoted above, and on the objections raised by the defendant in her reply to plaintiff's request for the termination of the community of acquests, it is clear that there are absolutely no grounds at law to refuse and deny plaintiff's request.

DECIDE:

NOW, THEREFORE, FOR THE ABOVE REASONS, THE COURT:

UPHOLDS PLAINTIFF'S DEMANDS.

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. Declares that the matrimonial regime applicable between the parties is that of the separation of assets.

Costs reserved for final judgment.

Judge

Hon Anthony G Vella

Cettina Gauci – DEP REG