CIVIL COURT
(FAMILY SECTION)

THE HON. MADAM JUSTICE

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

Today 19th of November, 2024

Application Number: 198/23/2AL

AB

vs.

CBD

(Act of marriage with progressive number 451/1997)

The Court,

Having seen the application filed by Plaintiff AB dated 27th August 2024[1] wherein he stated:

[1] Fol. 2.

1. That the parties are currently entertaining contentious judicial proceedings in order to obtain personal separation from one another, with the applicant currently adducing evidence regularly before the legal referee appointed by this Honourable Court.

2. That the applicant has already submitted into evidence several witnesses and voluminous documents aimed at disclosing the consistency of the assets and liabilities which form part of the community of acquests pertaining to the parties, and this with a view to allowing this court to consider a just and fair liquidation and assignment of the same in its eventual judgement and this in terms of the requests made by the applicant in his sworn application.

3. That, whilst the applicant has every intention of continuing to adduce the remaining evidence in his possession with a view to bringing about the timely resolution of these proceedings, it is nonetheless in the parties mutual best interest to obtain the immediate termination of the community of acquests which exists between them to this day - and this even pending the continuation of proceedings on the merits.

4. That this request is in the parties' mutual interest given that both of them are living de facto separate lives and none of the parties has any control or visibility on any act of administration which the other party is carrying out.

5. That this exposes both parties to unnecessary risk and liability whilst simultaneously unnecessarily hampering each parties interest in administering their own affairs. More so, given the contentious nature of these proceedings, it is unfortunate that the respondent continues to use any inoccuous opportunity which crops up from time to time to manipulate and leverage the applicant wherever he may require her input or cooperation.

6. That in truth there is no legal reason why the community of acquests should continue to operate between spouses who are engaged in heavily adversarial proceedings and such a state of affairs is likely to create fresh sources of dispute or lend itself to abusive behaviour.

7. That the request being made is in no way to be understood as a request for this Honourable Court to take any decision as to the assignment of any asset or liability which already forms part of the community of acquests, but to draw the line from which point onwards the community of acquests shall no longer continue to be applicable - and this entirely without prejudice to the liquidation and reciprocal assignment of all assets and liabilities forming part of the community up until that point in time in a manner to be decided in the eventual final judgement.

8. That whilst the respondent is likely to attempt an objection to this request, undoubtedly doing so under the pretence of vulnerability or some other fanciful allegation of prejudice, the truth is that all the community's assets and liabilities are easily identifiable via paper trail and basic evidentiary sources such that there is no harmful factor which could truly justify the respondent's objections.

9. That indeed, the paraphernal assets pertaining to the applicant as well as those pertaining to the community of acquests (together with the liabilities) are all easily identifiable via bank statements (already in evidence), public deeds, and public company records held at the Malta Business Registry - such that there are no assets or liabilities which are not easily discoverable and which would somehow require the continued operation of the community of acquests for their discovery.

10. That it is also noteworthy that the respondent is herself a qualified professional and has been employed and involved in the applicant's business in senior roles for many years, such that she is perfectly aware of all the intricacies and detail of all assets and liabilities pertinent to the community and/or which are paraphernal to the parties.

11. That insofar as the termination of the community could be argued to have a potential adverse effect on the ability of the respondent and/or the minor daughter of the parties to sustain themselves, such fears in the specific context of this case are entirely unfounded.

12. That the reason for this is that, notwithstanding the adverserial and contentious nature of these proceedings, the applicant has continued to

disburse and provide for all the needs pertaining to his minor daughter, spending large amounts of money on everything and anything necessary to ensure that each and every need of hers is not only seen to, but anticipated and catered for in advance and well beyond what would be ordinarily necessary. Indeed, the respondent's apathy and negligence in seeing to the minor daughter's needs as opposed to the applicant's pro-active dedication is one of the major sources of conflict which has given rise to these proceedings.

13. That moreover, insofar as the respondent's financial means are concerned, she is freely living in the matrimonial home (which is paraphernal to the applicant) and this at no cost or expense (given that the applicant voluntarily chose to distance himself in order not to expose his daughter to the traumatic hysterics occassioned by the respondent's behaviour). This means that the respondent has no concerns as being able to afford a place to live. Moreover, the respondent is a qualified and trained professional, holding multiple tertiary degrees including of a post-graduate nature, and who has worked in senior positions for many years and should have no difficulty in finding lucrative and highly remunerative employment now that the circumstances of the instant proceedings have rendered her continued employment with the applicant untenable.

14. That thus, in conclusion, there are no cogent legal or factual reasons as to why the community of acquests existing between the parties should not be terminated with immediate effect and, quite the contrary, there are several objective reasons as to why this would be in both the parties' respective interests.

Consequently, the applicant is hereby humbly requesting this Honourable Court to apply the provisions found in inter alia Article 55(1) of the Civil Code, Chapter 16 of the Laws of Malta, and to thus order the termination of the community of acquests currently operating between the parties with effect from the date on which the eventual decision is granted, and to consequently authorise the parties to notify such decision to the Director of the Public Registry, and all this saving any other declaration or provision which this Honourable Court may deem necessary and expedient in the circumstances.

Having seen that the application documents and the decree have been duly notified according to law;

Having seen that Defendant filed her reply on the 9th September 2024[2] wherein she stated:

1. Applicant has asked the Honourable Court to apply the provisions found, inter alia, article 55(1) of the Civil Code, Chapter 16 of the Laws of Malta and to order thus the termination of the community of acquests currently operating between the parties with effect from the date on which the eventual decision is granted, and to consequently authorise the parties to notify such decision to the Director of the Public Registry. All this saving any other declaration or provision which the Honourable Court may deem necessary and expedient in the circumstances.

2. Respondent opposes such a request and states that she will suffer a disproportionate prejudice because of the cessation of the community of acquests before the judgement of separation.

3. Respondent also humbly requests that this Court put this application on its list of cases to enable her to adduce evidence to sustain her objections.

4. Applicant is devious in his claims made using his application to the Honourable Court.

i. It is incorrect of the Applicant to state that he has put forward evidence regarding the community of acquests. Applicant forms part of the Pisani family and is, through his shareholding in VAC Limited, one of the owners of the Corinthia Group of Companies. As such, his assertion that he has put forward evidence consisting of several witnesses and voluminous documents gives the wrong impression that he has also put forward evidence in this regard - with all the legal complexities involved. The voluminous documents are, in reality, bank statements. It is Applicant's humble opinion that Respondent has requested the termination of the Community of Acquests at this stage since vital

[2] Fol. 7.

evidence concerning his shareholding, dividend, income and earnings from the Corinthia Group has not yet been produced by Applicant;

ii. It is incorrect of the Applicant to state in the fourth (4th) paragraph of his application that the parties are living de facto separate lives, and none of the parties has any control or visibility on any act of administration which the other party is carrying out. The Applicant has abandoned his family, including their common child, to live an adulterous life with another woman. He was the person entrusted by his wife, the Respondent, to take care of the property forming part of the community of acquests, and he was the person who administered all the proceeds of such community. So, it is not correct on the part of the Applicant to state that he has no visibility on any act of administration which the Respondent is carrying out. Respondent is not carrying out any act of administration. The only thing that the Respondent is carrying out is taking care of their child, E, who is indeed a unique young girl. E is a child with Down's syndrome, and despite her being nearly of age, she unfortunately cannot take care of herself, and as such, her mother, the Respondent, needs to attend to her 24/7.

Applicant knows this fact and tries to depict a picture of the Respondent as someone who can easily find work, saying that she had worked with Applicant prior to date in various managerial roles. What the Applicant does not state is that Respondent cannot work due to her role, which she has wholeheartedly involved herself in, and that is taking care of their minor daughter. Her employment with the company, if that is what the Applicant wants to call it, gave the Respondent some form of financial stability, for which remuneration was put in the company accounts as an expense. Applicant has indeed terminated this form of remuneration now, and this to continue piling pressure on Respondent to accept his terms, that is, to take nothing from him and continue taking care of their child for him for the rest of her life. Respondent states that that is what is in the best interest of their child, and that is what she will continue doing. However, the Applicant cannot be permitted to terminate the community because she will suffer disproportionate prejudice compared to Applicant.

Termination of the community of acquests will no longer entitle Respondent to the benefits to which the spouses of the shareholders of the Corinthia Group of Companies are entitled. The Respondent uses these benefits for their daughter's benefit and no one else. If the community is terminated, she will not be able to benefit from discounts and stay at the Group's various hotels with her daughter. Only through these benefits can the Respondent and their daughter obtain some form of comfort, especially for the daughter.

iii. It is also incorrect for the Applicant to state that Respondent administers the common property because the common property is administered by a company with the Applicant as its shareholder (the same company that Respondent used to receive remuneration from). Applicant does not give 1 cent to the Respondent from the monies he perceives from the community of acquests. This is abuse of the worst kind. He is willing to continue using the assets of the community of acquests, continues to live a comfortable life, continues using assets pertaining to the community exclusively and let his wife and daughter suffer since Respondent does not have any form of income.

Up until July 2023, the Respondent used to receive every month the sum of two thousand four hundred and fifty euro (Eur2,450) per month - Eur1,700 directly from the Applicant and Eur750 from Persepolis Limited. From August 2023, the Eur750 received from Persepolis was no longer given to the Respondent. As of September 2024, the Applicant has unilaterally terminated the receipt of Eur1,700, and as of now (September 2024) his wife, the Respondent, has no income. The only amount which the Applicant has given to the Respondent this month (September 2024) was the sum of Eur700, which amount was solely for their daughter's needs. The Applicant still gets to enjoy the remainder of the benefits of the community of acquests contrary to the Respondent.

iv. Applicant is correct when he states that his wife and daughter reside in the matrimonial home. However, the rest of the statement in paragraph thirteen (13) shows the true devious nature of Applicant. He uses the words "at no cost or expense". What should Respondent tell Applicant? Thank you. The matrimonial home is an old townhouse which constantly needs maintenance, which maintenance is not being carried

out; there are expenses to be paid, including groceries, health and, water and electricity.

5. Applicant still needs to put forward evidence about his foreign-held investments or dividends he receives, including interest rates, which interest rates and dividends he does not get into his accounts held in Malta.

6. It is shameful and unwarranted on the Applicant's part to state that the Respondent has apathy and is negligent vis-a-vis their daughter's needs. How can the Applicant state this when he knows full well that the Respondent takes care of their child 24/7. This charge is unwarranted and uncalled for. Applicant states that he is dedicated to his daughter. Is it dedication on his part to expose his daughter, who has her own special needs, to his newfound partner? Soraya is not capable of understanding of understanding this due to her situation. Why does the Applicant want to do this? Does he want to cause harm to her? In the end, when Soraya returns home, it will be the Respondent who will have to bear the brunt of the Applicants antics.

7. Moreover, with regards to the disproportionate prejudice, the Respondent refers to her sixth claim in her counterclaim which states, "TIDDIKJARA li (i) il-fond mitejn sitta u erbgħin (246), Triq il-Kbira, Ħaż-Żebbug, (ii) il-kumpanija Persepolis registrata bl-ittra "C" numri tnejn zero disgħa ħamsa sitta (C-20956) u (iii) l-ishma f'kumpaniji fejn l-attur huwa azzjonist, huma proprjeta komuni bejn il-kontendenti". Should the Honourable Court eventually declare that these properties, or to that matter, any one of them, belong to the community of acquests, the parties might potentially be in a situation where the community of acquests be terminated now and at the end of the court proceedings, these properties be declared part of the community of acquests and any income derived therefrom, especially with regard to the shares in Persepolis and any other company in which the Applicant is involved in also form part of the community of acquests. Then we will be in the situation where the Honourable Court will have to declare again that these assets, which will then form part of the community of acquests, would have already been terminated, be liquidated. So, in this particular case, keeping in mind that there are legal issues involved regarding the

community of acquests and the assets forming part of it, any termination of the community prior to the passing of the final judgement will amount to a disproportionate prejudice.

8. Consequently, given the above, Respondent objects to the Applicant's request to terminate their community of acquests and asks the Honourable Court to grant a sitting before it for the Respondent to put forward her evidence given her objections to the termination of the community of acquests at this stage of the proceedings.

Having seen the exhibited documents and all the acts of the case;

Having seen that the case was put off for judgement for today;[3]

Considered:

CONSIDERATIONS:

This is a partial judgment following the request made by the Plaintiff in his application dated 27th August 2024, wherein he requested this Court to order the cessation of the community of acquests which is still *in vigore* between the parties, and this in accordance with article 55(1) of the Civil Code, which provides as follows:

"1) 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."

According to sub-article (2) of the same article, the order authorising the cessation of the community of acquests, is to be given by means of a judgement and this order of cessation shall have effect between the spouses from the date the judgement becomes a *res judicata*.

Sub-article 4 states:

[3] Decree of the 10th September 2024.

"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.*"

In the judgement in the names **Daniela Mizzi vs Duncan Peter Mizzi**, decided by the Court of Appeal on the 28th March 2015, the Court held 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 negat*." The Court of Appeal confirmed a decision delivered by the Family Court, wherein it stated that the Defendant did not suffer a disproportionate prejudice by reason of the cessation of the community of acquests during the pendency of the proceedings. On the contrary, the Court of Appeal held that the cessation of the community of acquests brings about an advantage in so far as it avoids that either one of the parties becomes responsible for any debt which may be debited to the community of acquests.

In **Desiree Lowell sive Desiree Lowell Borg vs Michael Lowell**, decided by the Court of Appeal on the 30th October 2015, the Court of Appeal confirmed a decision handed down by the Civil Court (Family Section): *"...il-Qorti tosserva li l-waqfien tal-komunjoni tal-akkwisti ma jista' jkun ta' ebda pregudizzju ghas-sehem tal-attrici mill-assi li talvolta din tiskopri wara li twafqet il-komunjoni, ghax* ***il-waqfien tal-komunjoni jirreferi ghal futur u mhux ghal dawk l-assi li diga' dahlu u qeghedin fil-komunjoni*** *anke jekk ad insaputa tal-attrici"*

Even if any party may, at any time during the separation proceedings request the cessation of the community of acquests, the Court needs to evaluate whether, from the evidence brought forward by the respondent, it results that that party will suffer disproportionate prejudice by reason of the cessation of the community during the pendency of the proceedings.

Therefore it is the respondent who must convince the Court that it will suffer disproportionate prejudice.

In the judgement in the names **Desiree Lowell *sive* Desiree Lowell Borg vs Michael Lowell**[4] the Court lays down the foundation of these proceedings and states that *"Fil-fehma tal-Qorti l-ezercizzju li trid taghmel il-Qorti huwa maqsum primarjament f'zewg stadji. Fl-ewwel stadju l-Qorti tezamina jekk l-oggezzjoni jew l-oggezzjonijiet imressqa humiex oggettivament rilevanti ghall-finijiet stretti tal-artikolu 55 sub-inciz 4. F'kaz li l-oggezzjoni tissupera l-ewwel gharbiel jehtieg li l-Qorti tghaddi sabiex tevalwa l-provi u s-sottomissjonijiet imressqa sabiex tiddeciedi jekk l-oggezzjoni, oggettivament rilevanti, hiex sorretta mill-provi u allura jekk l-intimata ippruvatx sodisfacentement illi fl-ewwel lok ser tbati pregudizzju u fit-tieni lok, dejjem jekk jirrizulta pregudizzju, jekk tali pregudizzju hux proporzjonat jew le."*

Therefore, when such a request is made by one of the parties pending a separation dispute, the Court shall uphold the request, **save in exceptional cases** where it is satisfied that disproportionate prejudice would result from such termination. As the Courts have explained time and again "*Dan il-preġudizzju mhux proporzjonat, oltre li għandu jkun ippruvat minn min jallegah, irid ikun abbastanza gravi biex il-Qorti tiżvija mir-regola ġenerali u tabbraċċja l-eċċezzjoni."* [5]

On the other hand, the law does not impose on the applicant to motivate the request for the cessation of the community of acquests: *"Hija l-fehma tal-Qorti illi f'rikorsi simili mhux mehtieg li r-rikorrent jimmotiva t-talba tieghu. L-artikolu 55 tal-Kap 16 ma jistipula l-ebda obbligu da parti tar-rikorrent li jimmotiva t-talba tieghu. It-talba ghat-terminazzjoni fil-mori ta' kawza hija motivata bizzejjed fiha innifisha peress li l-hsieb tal-Legislatur kien li pendenti l-kawza tas-separazzjoni il-partijiet ikunu jistghu jibdew jaghmlu atti civili minghajr il-htiega tal-kunsens tal-parti l-ohra u minghajr il-possibilita` li jghabbu l-komunjoni tal-akkwisti b'dejn addizzjonali.*

[4] Decided by the Civil Court (Family Section) on the 16th September 2014 (Sworn Applic. No. 139/12/RGM).
[5] Claire Pisani vs Joseph Pisani, decided by this Court on the 23rd October 2018 (Sworn Applic. No. 2/15AL).

Ghalhekk ghandha tapplika l-massima legali "ubi lex voluit dixit, ubi noluit tacuit".[6]

The aim of the legislator here was that explained in the case already cited in the names **Daniela Mizzi vs Duncan Peter Mizzi,** where the Court of Appeal explained that it is in the interest of both parties that the community of acquests be terminated and in that manner the parties cannot burden the community with debts without the consent or knowledge of the other party. The Court also explains in the case in the names **Dorianne Sammut vs Charles Sammut**[7] that "*Huwa evidenti ukoll li l-ghan tal-legislatur, certament konxju kemm jistghu jitwalu vertenzi simili, kien li tieqaf kemm jista' jkun malajr il-komunjoni tal-akkwisti biex ghall-inqas f'dan l-aspett, il-partijiet ikunu jistghu ikomplu jghixu hajjithom separatament gialadarba l-konvivenza bejniethom mhijiex aktar possibli."*

It is finally vital to point out that it results from Article 55 that when a request is made in this regard, the Court is not authorised to partition and assign the assets forming part of the community of acquests to the parties but is only ordering that the community of acquests shall cease from the day on which the judgement becomes *res judicata.* The partitioning and assignment of the assets remain for the Court to decide about, on the final judgement.

Considered

The Court therefore needs to here evaluate whether the objections brought forward by Respondent are valid in relation to this Article in the sense that a disproportionate prejudice will result by reason of the cessation of the community of acquests.

Respondent states that Applicant forms part of the Pisani family and is, through his shareholding in VAC Limited, one of the owners of the Corinthia Group of Companies. She states that his assertion that he has already submitted into evidence several witnesses and voluminous

[6] Desiree Lowell sive Desiree Lowell Borg vs Michael Lowell, decided by the Court of Appeal on the 30th October 2015.
[7] Decided by the Court of Appeal on the 31st May 2019.

documents gives the wrong impression as in reality the evidence brought forward to date is mostly bank statements and at this stage vital evidence concerning his shareholding, dividend, income and earnings from the Corinthia Group has not yet been produced by Applicant. The Court does not believe that the fact that evidence is still at early stages is a hindrance to Applicant's request. This applies also to the foreign investments which Respondent alleges that Applicant holds, including interest rates and dividends which she states he does not receive in his accounts held in Malta.

The law itself states that the demand may be made at any time during the cause for separation and therefore does not impose on the parties to first exhaust all evidence. In fact the whole scope of the Article is to terminate the community of acquests at an early stage especially given that separation cases can drag on for years. The Court of Appeal in the case **Bridgette Attard vs Saviour Attard** on the 12th May 2022 states clearly that *"7. Il-fatt li jkunu għadhom ma nġabrux il-provi fuq il-konsistenza tal-komunjoni tal-akkwisti mhuwiex ta' ostakolu sabiex jintalab it-terminazzjoni tal-komunjoni tal-akkwisti. Għalkemm il-konvenuta tgħid li żewġha dejjem ħeba l-assi tiegħu, din għadha biss allegazzjoni. Ukoll jekk dik l-allegazzjoni tiġi ppruvata, ma jfissirx li t-terminazzjoni tal-komunjoni f'dan l-istadju ser twassal għal xi preġudizzju sproporzjonat għall-attriċi. L-attriċi tilmenta li peress li ma tafx f'hix tikkonsisti l-komunjoni tal-akkwisti, mhijiex f'pożizzjoni li tikkawtela l-assi tagħha peress li għadhom mhumiex determinati. Pero' jekk ma tafx, il-problema xorta teżisti f'każ li t-terminazzjoni tal-komunjoni tal-akkwisti ma ssirx issa."*

Respondent also laments the fact that given that she has taken up the role of taking care of her minor daughter, it is not easy for her to find work. At the same time she states that it was Applicant who has terminated her employment with him and whilst the employment with the company gave her some form of financial stability, she is now in a state where if the community of acquests is terminated she will suffer from the financial burden. The Court observes that Respondent states that she was terminated against her will from her employment with Applicant where she had several managerial roles. At the same time she states that she cannot find work as she has to take care of their minor daughter

who is a child with Down's Syndrome. Respondent did not want to stop working when she was working with Applicant and somehow she was still taking care of their daughter therefore her argument that she cannot now find work does not hold water.

The Courts have also time and again pronounced themselves on this point. The Court in the judgement in the names **Carmen Abela vs Geoffrey Abela**[8] stated that "*Il-Qorti hawn tosserva illi jirriżulta mill-atti li bint il-partijiet li tirrisjedi mal-konvenut illum għandha l-età ta' tmintax-il (18) sena u għalhekk il-konvenut ma jistax jattenta juża lilha bħala skuża li ma jistax jagħmel xi xogħol. Lil hinn minn dan il-punt, jekk hawn il-konvenut qiegħed jgħid li sakemm il-komunjoni tibqa' viġenti huwa jista jibqa' jibbenifika mid-dħul tal-attriċi billi r-residwu mis-salarju jifforma parti mill-komunjoni, il-Qorti hi tal-fehma, kif pronunzjat mill-Qrati tagħna diversi drabi, li tali raġunament ma jikkwalifikax bħala preġudizzju mhux proporzjonat li jżomm il-Qorti milli takkolta t-tali talba għal waqfien tal-komunjoni. Fil-kawża odjerna fil-fatt, intavolata mill-istess attriċi, waħda mit-talbiet tagħha hija proprju it-terminazzjoni tal-komunjoni tal-akkwisti.*

Il-Qorti tifhem li jkun iktar vantaġġuż għall-konvenut li l-komunjoni tal-akkwisti tibqa' viġenti, sabiex huwa jibqa' jgawdi l-frott tal-ħidma ta' l-attriċi għal iktar tul taż-żmien, madankollu r-riskju jkun illi dak li jkun jista' jieħu vantaġġ mill-fatt illi qiegħed igawdi l-frott tal-ħidma tal-parti l-oħra u jtawwal il-proċeduri inutilment. Kif jingħad fis-sentenza fl-ismijiet ***Annabelle Cachia vs Julian Cachia***[9]

"*meta parti f'separazzjoni tieqaf tgawdi l-frott tal-ħidma jew tal-assi li jappartjenu lill-parti l-oħra, dan ma jikkostitwixxiex preġudizzju iżda huwa konsegwenza naturali tal-firda.*

Din il-Qorti dejjem uriet il-fehma li huwa propju fl-ambitu u fl-iskop tal-liġi illi meta l-ħajja miżżewġa tal-partijiet tispiċċa, konjuġi ma jibqax igawdi l-frott tal-ħidma tal-konjuġi l-ieħor. Huwa dan l-iskop, jew wieħed mill-iskopijiet, għall-waqfien tal-komunjoni fi stadju bikri tal-proċeduri tal-firda, għaliex jista' jkun ta' preġudizzju għal konjuġi wieħed jekk il-komunjoni tal-akkwisti tibqa' viġenti u l-konjuġi l-ieħor jibqa' jgawdi l-frott tal-ħidma

[8] Decided by this Court on the 25th April 2024 (Applic. No. 4/23/2AL)
[9] Decided by this Court on the 28th February, 2019 (Applic. No. 96/18/2AL).

tal-ewwel konjuġi, minkejja li l-ħajja matrimonjali bejniethom tkun spiċċat."[10]*"*

Furthermore the argument that Respondent cannot work is relevant in relation to maintenance but not in relation to the cessation of the community of acquests. In fact the Court stated in the case **AB vs CB**[11] "*L-argument tal-attriċi li ma tistgħax taħdem iktar minħabba l-problemi ta' saħħa, jekk xejn, jista' jitqies bħala motiv għall-awment fil-manteniment pagabbli għaliha nnifisha, milli bħala raġuni għaliex il-komunjoni tal-akkwisti għandha tibqa' viġenti bejn il-partijiet".* Also, any argument in relation to the needs of the child will need to be addressed in a request for maintenance and proof of needs brought before the Courts in relation to that and not in this regard. This applies also in relation to Respondent's argument with regards to the benefits to which the spouses of the shareholders of the Corinthia Group are entitled. If these benefits are beneficial to the child then there should be a request by Respondent in this regard, however it is not relevant when it comes to considering the cessation of the community of acquests.

Finally Respondent refers to the sixth claim in her counterclaim which states *"TIDDIKJARA li (i) il-fond mitejn sitta u erbgħin (246), Triq il-Kbira, Ħaż-Żebbug, (ii) il-kumpanija Persepolis registrata bl-ittra "C" numri tnejn zero disgħa ħamsa sitta (C-20956) u (iii) l-ishma f'kumpaniji fejn l-attur huwa azzjonist, huma proprjeta komuni bejn il-kontendenti".* She states that should the Honourable Court eventually declare that these properties, or for that matter, any one of them, belong to the community of acquests, the parties might potentially be in a situation where the community of acquests be terminated now and not at the end of the court proceedings, these properties be declared part of the community of acquests and any income derived therefrom, especially with regard to the shares in Persepolis and any other company in which the Applicant is involved in also form part of the community of acquests. Then we will be in the situation where the Court will have to declare again that these assets, which will then form part of the community of acquests, would

[10] Decision of this Court in the names Stephanie Attard vs Kenneth Attard, Applic. No: 188/15/2AL, decided on the 26th October 2016; as well as Pierre Darmanin vs Louise Darmanin, Applic. No.: 176/16/1AL, decided on the 30 th January 2017.

[11] Decided by this Court on the 18th March 2021 (Applic. No. 107/17/1AL)

have already been terminated, be liquidated. While the Court appreciates that Respondent's concern is probably a genuine one, however it does not qualify as a valid line of defence in terms of Article 55 cited above.

The Court reiterates the principle which has been repeated time and again in these proceedings, that the assets which form part of the community acquests to date will remain held in common. On the contrary, the Court of Appeal has held that the cessation of the community of acquests brings about an advantage in so far as it avoids that either one of the parties becomes responsible for any debt which may burden the community of acquests.

Reference is made to the judgement in the names **Lowell vs Lowell**[12], *"Appena huwa neċessarju jingħad illi l-pretensjonijiet tal-intimata fil-konfront tar-rikorrent dwar fondi li allegatament żamm moħbija minnha mhux ser ikunu kawtelati billi l-partijiet jinżammu marbutin b'reġim ta' komunjoni tal-akkwisti iżda billi tieħu dawk ir-rimedji kawtelatorji li l-liġi tpoġġi għad-disposizzjoni tagħha".* The Court also refers to the judgement in the names **Josephine Mifsud vs Mario Mifsud**[13] where the Court stated that the fear that with the cessation of the community of acquests Applicant would be in a better position to hide certain assets *"ma jikkwalifikax bħala preġudizzju mhux proporzjonat. Il-biża' tal-attriċi jista' jiġi indirizzat b'atti kawtelatorji li hija għandha għad-disposizzjoni tagħha.*"

Even if Respondent discovers that Applicant has hidden assets which were part of the community of acquests this does not mean that Respondent would be prejudiced as *"Il-waqfien tal-komunjoni tal-akkwisti ma jista' jkun ta' ebda preġudizzju għas-sehem tal-attriċi mill-assi li talvolta din tiskopri wara li twaqqfet il-komunjoni, għax il-waqfien tal-komunjoni jirriferi għal futur u mhux għal dawk l-assi li diġa` daħlu u qegħdin fil-komunjoni anke jekk ad insaputa tal-attriċi*."[14]

[12] Decided by the Court of Appeal (Superior Jurisdiction) on the 20th October 2015.
[13] Decided by the Civil Court (Family Section) on the 30th October 2014 (Sworn applic. No. 133/2012/3RGM).
[14] Lowell vs Lowell.

It is the Respondent who should consider whether there is need of any precautionary warrants in this regard, however this does not mean that the community of acquests should not be terminated.

This Court believes that none of the parties shall suffer a disproportionate prejudice by reason alone of the cessation of the community of acquests at this stage of the proceedings. On the contrary, it is the considered opinion of this Court that such an order is beneficial to both parties on their way to a complete personal separation.

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 upholds Applicant's demands, as outlined in his application dated 27th August 2024, 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, with effect from the day that this judgement becomes *res judicata*.

The Applicant shall notify the Director of the Public Registry with this judgement at his expense within one week from the date that this judgement becomes *res judicata*.

Costs are reserved for final judgement.