Court Of Appeal

Judges

THE HON. CHIEF JUSTICE MARK CHETCUTI
THE HON. MR. JUSTICE CHRISTIAN FALZON SCERRI
THE HON. MADAM. JUSTICE JOSETTE DEMICOLI

Sitting of Tuesday, 8th April, 2025.

Number: 13

Application Number 198/2023/1 AL

AB

v.

CB

The Court:

1. This is a judgment following an appeal lodged by CB from a partial decision delivered by the Civil Court (Family Section) on the 19th of November, 2024, by which the Court ordered the cessation of the community of acquests.

Introduction

2. The parties are undergoing separation proceedings filed on the 28th of August, 2023.

3. By an application dated 27th August, 2024, the applicant ABi asked the First Court to apply the provisions of **Article 55(1) of the Civil Code** and thus to order the termination of the community of acquests.

4. The applicant filed her reply on the 9th of September, 2024, wherein she stated her reasons for objecting to the request.

5. By means of a judgment dated 19th of November, 2024, the First Court upheld the applicant's request and hence ordered the cessation of the community of acquests existing between the parties, with effect from the day that said judgment becomes *res iudicata*.

6. The reasoning of the Court was as follows:

> ***«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.*
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> *Respondent states that Applicant forms part of the B 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 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 v. 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 fiex tikkonsisti l-komunjoni tal-akkwisti, mhijiex f'pożizzjoni li tikkawtela l-assi tagħha peress li għadhom mhumiex determinati. Però 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 judgment in the names ***Carmen Abela v. Geoffrey Abela***[1] *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*

[1] Decided by this Court on the 25th April 2024 (Applic. No. 4/23/2AL)

(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 t-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 tal-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 v. Julian Cachia***[2]

> *«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 tal-ewwel konjuġi, minkejja li l-ħajja matrimonjali bejniethom tkun spiċċat.»*[3]

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***[4] *"L-argument tal-attriċi li ma tistax 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.*

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[2] Decided by this Court on the 28th February, 2019 (Applic. No. 96/18/2AL).

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

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

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 reġistrata bl-ittra "C" numri tnejn zero disgħa ħamsa sitta (C-20956) u (iii) l-ishma f'kumpaniji fejn l-attur huwa azzjonist, huma proprjetà 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 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 judgment in the names ***Lowell v. Lowell***[5]*, «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-dispożizzjoni tagħha». The Court also refers to the judgment in the names* ***Josephine Mifsud v. Mario Mifsud***[6] *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-dispożizzjoni 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

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

> *tal-komunjoni jirriferi għal futur u mhux għal dawk l-assi li diġà daħlu u qegħdin fil-komunjoni anke jekk ad insaputa tal-attriċi.»*[7]
>
> *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.»*

7. Respondent felt aggrieved by this judgment and filed an appeal on the 9th of December, 2024, by virtue of which she is putting forward three grievances, namely: (i) that the judgment falls foul of **Article 790 of the Code of Organisation and Civil Procedure**; (ii) that she will suffer a disproportionate prejudice by reason of the cessation of the community of acquests before the final judgment; and (iii) the First Court could not proceed to order the cessation of the community of acquests existent between the parties when she had put forward for the First Court's consideration a request that property in her husband's name be declared belonging to the community of acquests.

8. Applicant replied on the 7th of February, 2025 and submitted that the judgment of the First Court should be confirmed in its entirety.

[7] ***Lowell v. Lowell***.

9. This appeal was appointed for hearing so that the parties could put forward their submissions during the sitting of the 13th of March, 2025.

10. The Court heard the parties' submissions, and the appeal was adjourned for judgment for today.

Considerations

11. This Court deems that, first and foremost, it should deal with the **first grievance** put forward by the appellant.

12. She explains that in her reply dated 9th of September, 2024 she had explicitly requested to the First Court to be granted a sitting in order to put forward her evidence, given her objections to the termination of the community of acquests at that stage of the proceedings.

13. Appellant also states that in its judgment, the First Court made reference to a decree dated 10th September, 2024 stating *«that case was put off for judgment for today.»* She denounces this and states that she is aware of a decree dated 10th September, 2024 which states *«Having seen the application orders that it be notified to respondent who is to reply within five working days.»* Defendant states that she was notified with her

husband's application dated 27th August, 2024 and duly complied with the order of the 10th of September, 2024 and filed her reply.

14. Appellant insists that despite asking for a sitting, no such sitting was given, and the Court proceeded with delivering its judgment none the same. Thus, she states that the First Court did not let her put forward her evidence as requested to prove the disproportionate prejudice she was going to suffer should the request for the cessation of the community of acquests be granted. According to the appellant, this falls foul of the requirements of the law, amongst others, **Article 790 of the Code of Organization and Civil Procedure**.

15. Applicant replied that this grievance is unfounded in law and that the appellant failed to refer to any legal provision in virtue of which the Court must grant parties a sitting for the submission of evidence before deciding upon a request to terminate the community of acquests. Moreover, he states that this grievance is also flawed, given that the appellant failed to use of the basic procedural tools at her disposal if she wanted to insist upon being given an opportunity to adduce evidence on the application in question. Moreover, applicant affirms that the First Court had more than enough evidence to be able to assess whether the cessation of the community of acquests would cause the appellant to suffer disproportionate prejudice, thus making the appellant's request for

an opportunity to adduce evidence on the matter, redundant.

16. **Article 790 of the Code of Organization and Civil Procedure** lays down that:

> *«Where before an appellate court the plea of nullity of a judgment appealed from is raised, such plea shall not be entertained if the judgment is found to be substantially just, unless such plea is founded on the want of jurisdiction or default of citation, or the incapacity of the parties, or on the judgment of the court of first instance being extra petita or ultra petita or on any defect which prejudices the right to a fair hearing.»*

17. Thus, the law clearly asserts that the Court of Appeal must thoroughly investigate a plea asserting that a judgment is null, if the appellant can show that the judgment contains a defect that undermines the essential right to a fair hearing. This principle was compellingly illustrated in the case ***Anthony Spiteri v. Shawn Ritchie et*** decided by the Court of Appeal on the 25th May, 2023.

18. First and foremost, this Court must put the facts right. From the acts of the case, it results that:

- AB filed an application requesting the Court to order the cessation of the community of acquests on the 27th of August, 2024;
- On the 29th of August, 2024, the Court issued a decree by means of which it ordered that the application be notified to defendant, who had to reply within five working days;

- Defendant was notified with the application and decree on the 5th of September, 2024;
- A reply was filed on the 9th of September, 2024,
- Then, on the 10th September, 2024 the Court issued another decree which reads that the Court, after having seen the application and reply, *«Puts the application for judgment for the 19th November, 2024 at 9.15am.»*

19. Hence, appellant is incorrect in stating that the decree dated 10th September, 2024 had ordered the notification of the application, so much so that on the 10th of September, 2024 she had already filed her reply to the request.

20. Having said this, it is however true that in her reply to the request, appellant clearly indicated in bold letters that she wanted a sitting to voice her objections and submit evidence. In fact, she specifically asked the First Court for a sitting to put forward her evidence.

21. Now, with regards to this issue, the request put forward by applicant was made on the basis of **Article 55 of the Civil Code**. It has been established that there is no legal requirement for the Court to appoint a hearing for such an application before delivering a judgment (*vide* ***Emanuel sive Noel Ciantar v. Antonia sive Antonella Ciantar***

Lautier decided by the Court of Appeal on the 12th July, 2023). So much so, it has been held by the Court of Appeal in its judgment of the 5th of December, 2019 in the names of ***Dr Amanda Marie Cini v. Dorian Cini*** that there is no specific article in the law requiring an application for the cessation of the community of acquests to be scheduled for a hearing for the parties to submit evidence.

22. It is established that such a request can be put forward by any of the parties at any point in time during separation proceedings (***Daniela Mizzi v. Duncan Peter Mizzi*** decided by the Court of Appeal on the 28th of March, 2015). There is no need for the separation proceedings to be at an advanced stage or that most of the proof has been presented (***Bernard Grima v. Ritianne Grima*** decided by the Court of Appeal on the 3rd of September, 2024).

23. Having said this, in examining a request to order the cessation of the community of acquests the Court must take into consideration what is laid down in **sub-article (4) of Article 55 of the Civil Code**. This lays down 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 judgment of separation.»*

24. The Court of Appeal in its judgment in the names of ***David Martin Briffa v. Blanche Marie Gatt*** decided on the 25th of February, 2025 has stated clearly that the burden of proof lies on the party alleging that he/she will suffer a disproportionate prejudice if the cessation were to be ordered. Hence, in our case, the burden of proof lies squarely on appellant.

25. The Court notes that although the appellant both in her reply and in her appeal application requested a sitting to bring forward her evidence, she failed to mention which evidence she intended to bring forward, or else whether she intended to bring forward any witnesses. She did not even present any documentation by means of a note or an affidavit at least. In addition to this, the Court also notes that two months had lapsed since the First Court issued its decree on the 10th of September, 2024 by which the application was put off for judgment to be delivered on the 19th of November, 2024. During those two months, appellant did not avail herself of the possibility to file an application asking the Court specifically to grant her a sitting as she had pointed out in her reply.

26. Now, it has been held that when a party alleges a disproportionate prejudice, that party has the right to ask the Court to take cognisance of the evidence on the matter (***Bernard Grima v. Ritianne Grima*** decided by the Court of Appeal on the 3rd of September, 2024). This Court is also

aware that the Court of Appeal, in the judgment delivered on the 9th of December, 2021 in the case in the names of ***Avv. Nicole Vella de Fremaux v. Avv Adrian Delia,*** declared the judgment of the First Court as null because the applicant was not given the opportunity to bring forward her evidence. It is to be noted that in that case, the applicant had already started to present her evidence, and yet because the Court had not stated that the proof was to be concluded in one sitting, the Court of Appeal deemed that plaintiff had the right to continue with her evidence.

27. In the case decided on the 12th of July, 2023 in the names of ***Emanuel sive Noel Ciantar v. Antonia sive Antonella Ciantar Lautier,*** the appellant had argued that his right to a fair hearing had been violated because there was no hearing before the court delivered judgment. However, the Court of Appeal rejected this argument, for various reasons, amongst which because he never requested (as applicant) the First Court to appoint his application for hearing.

28. Turning back to our case, we have seen that appellant had asked the court to be granted a sitting. On the other hand, it was evident from a reading of the decree dated 10th September, 2024 that the First Court was not going to grant a sitting. Whilst it would have been better if the First Court rejected specifically the request for a sitting, however it is more than evident that it felt that no such sitting was going to be held. So much

so that the application was put off for judgment. Appellant had ample time to file a request asking the Court to reconsider her position, whilst mentioning the evidence and or witnesses she intended to produce. This Court deems that it is not sufficient in such instances to ask for a sitting to produce evidence, leaving it vague and not specifying which kind of evidence will be brought forward.

29. The Court was not obliged at law to schedule the application for hearing. Since applicant remained passive, then she cannot at this stage expect this Court to annul the judgment of the First Court. Particularly, when considering that she even failed in her appeal application to mention which evidence she intended to adduce. Consequently, she cannot argue that this judgment falls foul of **Article 790 of the Code of Organization and Civil Procedure**.

30. Hence, this grievance is being rejected.

31. The **second and third grievances** are very much connected with each other and thus they will be considered jointly.

32. By means of the **second grievance**, appellant is stating that she will suffer a disproportionate prejudice by reason of the cessation of the community of acquests before the judgment of separation.

33. The reasons which appellant is putting forward are: (i) that plaintiff took care of all the financial needs of their family and has the exclusive use of the assets of the community through his company Persepolis; (ii) that she takes care of their daughter who has special needs and contrary to what the First Court stated she cannot go to work, not even on a part-time basis; (iii) that plaintiff is using all the monies belonging to the community to pay, amongst which loans that are paraphernal to him, such as the home loan on the matrimonial home; (iv) that plaintiff has now created a new life with his new partner and can continue to use funds pertaining to the community of acquests through his company Persepolis, whilst she cannot make use of them because the apartments and income generated therefrom are run by the company Persepolis, in which she has no shareholding.

34. The exercise which this Court must carry out can basically be divided into two stages. Firstly, the Court needs to examine whether the objection or objections are objectively relevant in terms of **sub-article (4) of Article 55 of the Civil Code**. If it results that the objection overcomes this first hurdle, then the Court must evaluate the proof and submissions put forward to be able to decide if the objections, which are relevant from an objective point of view, are proven and, hence, whether defendant has proven satisfactorily that he or she is going to suffer prejudice. Secondly,

if the prejudice has resulted, one must decide if that prejudice is proportionate or not (***Desiree Lowell sive Desiree Lowell Borg v. Michael Lowell*** decided by the Civil Court (Family Section) on the 16th of September, 2014).

35. It must also be borne in mind that the appealed judgment refers to the future and not to the past and therefore does not have a bearing on the assets of the community existing till the date of the order of cessation (***Elizabeth Spiteri v. Carmelo Spiteri*** decided by the Court of Appeal on 24th October, 2019). Therefore, whatever the parties had done before the date when the order was given, does not prejudice their share in the said community of acquests. The parties have the right to continue to bring forward evidence with regards to the assets forming part of the community of acquests till the date of the order of cessation of the community, even after that order has been given (***Ronald Asciak v. Antonia Asciak*** decided by the Court of Appeal on the 5th of December, 2019).

36. It has been stated in the judgment in the names of ***Ryan Mallia v. Johanna Mallia,*** decided by the Court of Appeal on the 9th of May, 2024 that the cessation of the community of acquests is of great benefit to both parties, so long as no one suffers a disproportionate prejudice. The Court reiterated that it is true that with the cessation of the community, the

parties do not continue to have the right to enjoy the fruits from each other, but this in itself does not create a disproportionate burden. The Court of Appeal opined that it is in the parameters and scope of the law in itself that when the couple's married life comes to an end, the spouse should not continue to enjoy the fruits of labor of the other spouse. Obviously, this is being said without prejudice to the right of that spouse to ask for maintenance in the eventuality that there is the need and is entitled to it. In any case, the **Code of Organisation and Civil Procedure** under **Title VI** entitled "***On the Precautionary Warrants***" provides the parties with legal remedies to protect their rights *vis-à-vis* the community of acquests.

37. Turning back to our case and to the second grievance, this Court finds that the arguments put forward by the appellant in no manner can be deemed as being founded at law. As correctly stated by the First Court, the fact that the evidence is still at early stages cannot pose a hindrance to the applicant's request. As has already been pointed out, the parties enjoy the right to continue adducing their evidence to establish which are the assets which formed part of the community until the date of the order of termination (***Bernard Grima v. Ritianne Grima*** decided by the Court of Appeal on 3rd September, 2024). Any bank statements, proof of shareholding in a company, dividends and earnings from the Corinthia Group and proof in relation to foreign investments will not vanish simply

because the community of acquests would have been terminated. They can be presented in the acts of the case just the same.

38. Furthermore, appellant stresses that she cannot possibly work (though it seems that she used to work but quitted her position) due to the fact that she must care for her daughter who needs constant care due to her being of unique capabilities. Appellant also points out that whilst plaintiff used to pay her himself or through a company substantial amounts of money on a monthly basis, the amount which she perceived from the company has stopped and the amount was reduced by her husband. On his part, plaintiff lists various payments and obligations which he says that he pays regularly and obliges himself to continue paying to make sure that their daughter is well-cared for.

39. Now, this Court does not deem that these reasons suffice to hinder applicant's request. If the appellant believes that she has a right to maintenance and/or that her daughter has certain needs, then nothing stops her from filing an application to ask for maintenance and for payment of any needs/expenses incurred. This reasoning also applies in relation to respondent's argument with regards to the benefits to which the spouses of the shareholders of the Corinthia Group are entitled to, which frankly is quite a futile argument. These last reasons being put forward are not relevant when it comes to considering the termination of

the community of acquests, but would be relevant in an application asking for maintenance.

40. With regards to the **third grievance**, appellant affirms that the First Court could not proceed to order the cessation of the community of acquests existent between the parties when she has put forward for the First Court's consideration a request that property in plaintiff's name be declared belonging to the community of acquests. She refers to her sixth claim in her counter-claim whereby she asked the Court to declare that: (i) the immovable bearing number 246, Triq il-Kbira, Żebbuġ; (ii) the company Persepolis (C-20956); and (iii) the shares in companies in which plaintiff is a shareholder, are common property between the parties.

41. She argues that should the First 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 regards to the shares in Persepolis and any other company in which the applicant is involved. She argues that she will be in a situation where the First Court will have to declare again that these assets, which will then form part of the community of acquests, which 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 forming part of it, any termination of the community prior to the passing of the final judgment will amount to a disproportionate prejudice.

42. This Court deems that appellant is missing the woods for the trees. As has already been stated in this judgment, the assets which are known at this stage to form part of the community of acquests will remain to be held in common. With regards to the declaration being sought by means of the sixth claim, the First Court will not be precluded to delve into the matter and decide upon it. After all, the examination which must be carried out will pre-date the day when the order of cessation was given. This argument cannot be of any hindrance to applicant's request, because the cessation of the community of acquests refers to the future and has no bearing on the status of assets which were acquired (paraphernally or during marriage) prior to the termination. The Court can still ascertain and determine whether the mentioned assets should be considered as pertaining to the community of acquests.

43. If the appellant truly deems that she has a right to these assets, then she may decide to avail herself of the relevant precautionary warrants. Most definitely, her claim to these assets does not lie in stopping the cessation of the community which as laid down clearly in the

jurisprudence should be the rule not the exception.

44. It is evident that a party may feel aggrieved with such a cessation because he or she will not continue to enjoy the fruits of labor of the other spouse, particularly when there is a discrepancy in the income of the parties. This is the situation in our case since defendant is not employed at the moment. However, this does not mean that the cessation constitutes a disproportionate prejudice as we have seen. On the contrary, it makes sense that once the spouses have partied ways, then they should live independently from each other as much as possible and as long as such an order does not cause a disproportionate prejudice.

45. Consequently, this Court finds that these grievances are also unfounded.

Decision

For the above-mentioned reasons, the Court **rejects** the defendant's appeal and confirms the judgment delivered by the First Court.

Expenses of this appeal are to be borne by appellant.

Orders that the acts of the case be sent immediately to the Civil Court (Family Section) so that the case continues.

Mark Chetcuti Chief Justice	Christian Falzon Scerri Judge	Josette Demicoli Judge

Deputy Registrar
ss