



**FIRST HALL OF CIVIL COURT
HON. JUDGE TONI ABELA LL.D.**

Sitting of Thursday, 10th April 2025

Case number 11

Application number 485/2024

Oxana Yuryevna Ignatova (K.I. 0118020L)

vs

Sergey Borisovich Ignatov (K.I. 338371M) u b'digriet datat 18 ta' Marzu 2025 in-numru ta' identifikazzjoni tal-konvenut għandha taqra MT011640

The Court:

Having seen the sworn application of Oxana Yuryevna Ignatova (the plaintiff) of the 2nd of May 2024 by which she premised and demanded the following:

- 1)** Illi l-kontendenti zzewgu gewwa Moska fir-Russja fis-26 Ottubru 1996 **(DOK A)** u minn dan iz-zwieg kellhom zewgt itfal Savva Ignatov u Anastasia Sergeevna Ignatova illi huma t-tnejn maggorenni.
- 2)** Illi l-partijiet huma t-tnejn cittadini Maltin bis-sahha tal-*Individual Investor Programme* (IIP) b'investimenti ossia propjeta mobbli gewwa Malta liema investimenti kienu necessarji għall-success eventwali tal-applikazzjoni taghhom.
- 3)** Illi l-konvenut applika għal, u akkwista, divorzju gewwa r-Russia fl-24 April 2023 liema divorzju huwa ormai *res judicata* bejn il-partijiet **(DOK B)**.

- 4) Illi minkejja illi z-zwieg gie tterminat, il-partijiet ghandhom diversi propjetajiet u assi (principalment) fl-esteru inkluz gewwa Spanja, Franza, u l-Awstrija li jehtiegu li jigu likwidati.
- 5) Illi ma dan l-att qieghed jigi anness traduzzjoni tal-istess bil-lingwa Ingliza stante illi l-partijiet ma jirkellmex u ma jifmex il-lingwa Maltija **(DOK C)**.

Ghaldaqstant l-attur jitlob bir-rispett li dina l-Onorabbli Qorti joghgobha:

- i. tillikwida l-kreditu parafernali ossija pekunarji tal-attur u tikkwalifika l-istess bhala kreditu tal-istess attur kontra l-komunjonu tal-akkwisti tal-kontendenti.
- ii. tiddikjara xolta l-komunjonu ta' l-akkwisti ezistenti bejn il-kontendenti, tillikwida l-istess komunjonu u tordna li l-istess oggetti formanti il-komunjonu ta' l-akkwisti jigu maqsuma f'zewg porzjonijiet komposti kif jigi ordnat u stabilit minn dina l-Qorti in vista, inter alia, tad-dati tal-akkwist tad-diversi oggetti formanti l-istess komunjonu u tad-data stabilita minn din il-Qorti bhala d-data meta l-istess konvenuta ghandha tkun ikkunsidrata li minnha kienet hatja tal-firda, liema porzjonijiet illi jigu assenjati wahda lill-attur u l-oħra lill-konvenuta billi, okkorrendo għall-finijiet ta' din it-talba, jigi nominat perit biex jagħmel il-likwidazzjoni mitluba u jipproponi pjan ta' divizjoni, nutar sabiex jircievi l-att relattiv u kuratur biex jirrappreżenta lill-eventwali kontumaccja fuq l-istess att. Kontestwalment mal-imsemmija likwidazzjoni u divizjoni, il-Qorti hija ukoll mitluba, sabiex bil-ghan illi l-pretenzjonijiet reciproci tal-kontendenti jigu definittivament likwidati f' gudizzju wiehed tillikwida l-kreditu vantati mill-kontendenti kontra xulxin jew kontra l-komunjonu tal-akkwisti ezistenti bejniethom, ixkolji kull komunjonu ta' propjeta' ezistenti bejn il-konjugi tordna l-qasma skond il-Ligi tal-propjeta hekk komunament posseduta b' mod illi tali likwidazzjonijiet u divizjonijiet ulterjuri jsiru kontestwalment mal-likwidazzjoni u d-divizjoni tal-gid formanti l-istess komunjonu tal-akkwisti.

Bl-ispejjez kontra l-konvenut illi huwa minn issa ngunt ghas-subizzjoni.

Having seen the sworn answer of Sergey Borisovich Ignatov (the defendant) of the 15th of July 2024 by which he pleaded the following:

1. Illi in linea preliminarj, l-eccepjenti jissolleva n-nuqqas ta' gurisdizzjoni ta' din l-Onorabbli Qorti sabiex tisma' u tiddeciedi l-azzjoni odjerna, u dan in bazi tal-provvedimenti tal-Artikolu 741 (c) u 742 (a) tal-Kap 12 tal-Ligijiet ta' Malta. Illi ghalkemm huwa minnu illi l-partijiet kontendenti huma cittadini Maltin, u dan in bazi tal-*Individual Investor Programme* msemmi mir-rikorrenti fir-rikors promotur tar-rikorrenti, **madanakollu**, la r-rikorrenti u wisq anqas l-eccepjenti m' huma domiciljati hawn Malta. Illi da parti tieghu l-eccepjenti jirrisjedi l-Portugal, tant illi l-atti

relattivi għall-kawza odjerna gew notifikati lilu fir-residenza tiegħu l-Portugal, u għal skopjiet ta' taxxa huwa wkoll rreġistrat fi hdan is-*Central Taxpayer Registry* tal-Portugal, u dan kif jirrizulta mic-certifikat rilaxxjat mill-awtorita' kompetenti, li kopja tiegħu tinsab hawn meħmuza (**Dok. A**). Illi l-eccepjenti kien precedentement jirrisjedi għewwa l-Ingilterra, u kien irreġistrat għal skopjiet ta' taxxa fir-Renju Unit, u dan kif jirrizulta minn dokumentazzjoni ulterjuri, hawn meħmuza (**Dok. B**). Illi l-eccepjenti, għalkemm cittadin Malti b' effett minn Frar 2020, **qatt** ma rrisjeda hawn Malta u lanqas m' huwa rreġistat, għal skopjiet ta' taxxa, hawn Malta. Illi dan oltre l-fatt illi l-partijiet kontendenti m' għandhom ebda proprjeta' immobbli rreġistrata f' isimhom hawn Malta, in kwantu huma ma akkwistaw ebda proprjeta' immobbli hawn Malta u l-eccepjenti għandu biss kuntratt ta' kera f' ismu; illi għalhekk, u b' applikazzjoni tal-provvedimenti tal-Ligi hawn fuq citati, din l-Onorabbli Qorti għandha tiddikjara illi hija prekluzja milli tkompli tisma' u tiddeciedi l-kawza odjerna.

2. Illi mingħajr pregudizzju għas-sueccepiet, u wkoll in linea preliminarj, l-eccepjenti jirrileva wkoll illi z-zwieg celebrat bejn il-partijiet kontendenti gie originarjament iccelebrat u rreġistrat għewwa l-Federazzjoni Russa, u anke d-divorzju sussegwenti – li in forza tiegħu l-Qorti kompetenti tal-Federazzjoni Russa ddikjarat il-hall taz-zwieg bejn il-partijiet kontendenti – sehh u huwa wkoll irreġistrat għewwa l-Federazzjoni Russa. Illi għalhekk, u għaladarba r-rikorrenti qieghdha titlob illi tigi dikjarata **xjolta** l-komunjoni tal-akkwisti ezistenti bejn il-kontendenti, illi allura jsegwi illi tali pronunzjament u dikjarazzjoni tispetta u tista' tingħata biss mill-Qrati kompetenti fit-territorju Russu, oltre li għall-konsegwenti process ta' likwidazzjoni tal-komunjoni tal-akkwisti, għandha tigi applikata wkoll il-ligi tal-Federazzjoni Russa.

3. Illi mingħajr pregudizzju għas-sueccepiet, u wkoll in linea preliminarj, jigi eccepiet illi għaladarba l-partijiet kontendenti ma jippossjedu ebda proprjeta' immobbli u mobbli hawn Malta, la taht titolu ta' proprjeta' u lanqas taht xi titolu ieħor – hlief għal-lokazzjoni ta' fond, liema kirja dahlet fis-sehh fl-1 ta' Ottubru 2023 u ser tiskadi fit-28 ta' Frar 2025 – illi allura jsegwi illi n-ness legali u guridiku tal-partijiet kontendenti mat-territorju Malti huwa dgħajjef, u certament il-Qrati Civili ta' Malta m' għandhomx il-kompetenza li jordnaw il-likwidazzjoni u divizjoni ta' assi – formanti parti mill-komunjoni tal-akkwisti ezistenti bejn il-partijiet kontendenti – sitwati 'l hemm mit-territorju Malti. Illi f' dan ir-rigward jigi rilevat illi r-rikorrenti 'gia ttentat proceduri gudizzjarji għewwa l-Qrati ta' Spanja, senjatament quddiem l-Onorabbli Qorti tal-Magistrati ta' Figueres, fejn il-partijiet kontendenti huma proprjetarji ta' proprjeta' immobbli; madanakollu, dik il-Qorti ddikjarat ruhha mhux kompetenti sabiex tagħti l-provvedimenti rikjesti mir-rikorrenti in rigward kwistjonijiet marimonjali. Illi għalhekk huwa evidenti illi r-rikorrenti qed tittenta process ta' *forum shopping* f' diversi gurisdizzjonijiet – fosthom Malta, permezz ta' din l-azzjoni – meta hija ben konsapevoli illi l-Qrati kompetenti sabiex jiddeterminaw x-xoljiment, likwidazzjoni u divizjoni tal-komunjoni tal-akkwisti ezistenti bejn il-partijiet kontendenti, huma l-Qrati fi hdan il-Federazzjoni Russa.

4. Illi minghajr pregudizzju ghas-sueccepiet, l-ecceppjenti jissollewa wkoll in-nuqqas ta' kompetenza ta' din l-Onorabbli Qorti sabiex tiddeciedi dwar it-talbiet tar-rikorrenti in kwantu r-rikorrenti qed titlob dikjarazzjoni minghand din l-Onorabbli Qorti dwar "... *id-data meta l-istess konvenuta (sic) ghandha tkun ikkunsidrata li minnha kienet hatja tal-firda ...*"; illi tali dikjarazzjoni dwar ir-responsabbilita' ta' parti jew ohra ghall-firda li wasslet sabiex iz-zwieg bejn il-partijiet gie terminat, certament ma tinkwadrawx ruhha fil-kompetenza ta' din l-Onorabbli Qorti, izda tal-Onorabbli Qorti Civili (Sezzjoni tal-Familja), oltre illi gialadarba ma saritx talba specifika in rigward tali pronunzjament, allura l-azzjoni kif proposta u postulata mir-rikorrenti, ma tistax tirnexxi. Illi jsegwi, ghalhekk illi t-talbiet tar-rikorrenti, ma jinkwadrawx ruhhom fil-kompetenza ta' din l-Onorabbli Qorti, oltre illi jirrizulta illi l-azzjoni kif proposta mir-rikorrenti hija monka u irrita. Illi ghalhekk din l-azzjoni ghandha tigi respinta bl-ispejjez kontra r-rikorrenti.

5. Illi minghajr pregudizzju ghas-sueccepiet, u fil-mertu, b' referenza ghall-ewwel (1) talba tar-rikorrenti, l-attrici (sic) ghandha tipprova a sodisfazzjon ta' din l-Onorabbli Qorti l-allegati krediti parafernali li r-rikorrenti qed tallega illi ghandhom jigu refuzi lilha mill-assi tal-komunjoni tal-akkwisti, oltre illi b' referenza ghat-tieni (2) talba tar-rikorrenti, kwalunkwe likwidazzjoni tal-komunjoni tal-akkwisti ezistenzi bejn il-partijiet kontendenti ghandha tiehu in konsiderazzjoni daww l-assi mobbli kollha – inkluz depoziti bankarji u oggetti ta' valur – illi r-rikorrenti arbitrarjament hadet, gibdet minn kontijiet bankarji u approprjat ruhha minnhom, minghajr il-kunsens u awtorizzazzjoni tal-ecceppjenti.

6. B' riserva ta' eccezzjonijiet ulterjuri permessi mil-Ligi.

Having seen the documents and acts of this case.

Having heard the witnesses produced by the parties during the proceedings.

Having seen that with the consent of the parties, matter to be decided today is the preliminary plea of jurisdiction raised by the respondent.

Having heard the submissions of the respective legal counsels to the parties on this matter.

Having seen that the matter has been adjourned for today to be decided.

Points of fact

Parties were married in Moscow Russia on the 26th of October 1996. They had two children, Savva and Anastasia, siblings Ignatova. On the 17th of February 2020, they both acquired Maltese citizenship through the Individual Investor Programme (IIP) which meant that they had to have investments in Malta.

On the 24th of April 2023 the plaintiff obtained divorce in Russia consequently their marriage was annulled. This, notwithstanding they still own between them a number of properties which are to be found in Spain, France, and Austria.

By the present procedure the Plaintiff is requesting that this Court terminate the community of property between them and to assign to each party his share of the said property.

Points of Law

Had it not been because of the circumstances, the matter would have been quite plain and simple. However the respondent has pleaded that this Court cannot seize jurisdiction notwithstanding that both parties are today citizens of Malta. The respondent's contention is to the effect that according to article 742(1)(a) that he is not domiciled in Malta. Said article lays down the following principle:

“(1) Save as otherwise expressly provided by law, the civil courts of Malta shall have jurisdiction to try and determine all actions, without any distinction or privilege, concerning the persons hereinafter mentioned:

(a) *citizens of Malta, provided they have not fixed their domicile elsewhere”*

Considerations of this Court

Private international law recognizes two modes of acquisition of domicile. There is domicile of origin and domicile of choice.

Authoritative writings on this matter state that :- *“the domicile of origin that is communicated by operation of law to each person at birth i.e. the domicile of his father or his mother, according he is legitimate or illegitimate ; and the domicile of choice which every person of full age is free to acquire in substitution for that which he at present possesses.”* (Vide **Cheshire and North pg 139 : Private International Law ” 12th Edition – Butterworths** Emphasis of the Court). It is the second domicile that is at stake in these proceedings.

These authors further explain that :- *“The two requisites for the acquisition of a fresh domicile are residence and intention. It must be proved that the person in question established the residence in a certain country with the intention of remaining there permanently ... These two elements of residence and intention must concur, but this is not to say that there need be unity of time in their concurrence. The intention may either precede or succeed the establishment of the residence. The emigrant forms his intention before he leaves ... the émigré who flees from persecution may not form it until years later.”* (Vide **Cheshire and North page 142 of Private International Law, op. cit.)**

As regards to intention, these authors continue to explain that *“As has already been mentioned, the acquisition of a domicile of choice requires an intention by the propositus to remain permanently in the territory in which he resides. This is not difficult to understand if the word ‘permanent’ is used in its correct sense as signifying /the opposite of ‘temporary’. According to the Shorter Oxford English Dictionary, it means ‘lasting or designed to last indefinitely without change’, and this indeed is the definition that most of the judges have recognized when required to consider the nature of the intention necessary for a change of domicile. In ‘Udny v Udny’, for instance, Lord Westbury described the intention as being one to reside ‘for an unlimited time’. A more modern statement to the same effect is that of Scarman J who referred to an intention to reside indefinitely.”* (Vide **Cheshire and North op. cit. pg. 144**).

It seems to this Court that local decisions concur with the above definitions and they even go further. A case in point is the decision of the **5th of October 2011 in the names of Xerri pro et noe -vs- Sladden noe et**, decision in Maltese which states the following. :-

“Dwar l-aspett ta` domicilju hemm id-domicilju ta` l-origini u dak ta` l ghazla. Id-domicilju ta` l-origini jibqa` jissussisti sakemm ma jigix akkwistat domicilju gdid, liema domicilju gdid jigi akkwistat permezz ta` zewg rekwiżiti, u cioe` r-residenza f` pajjiz kif ukoll l-intenzjoni tal-persuna u cioe` li tibqa` fil-pajjiz il-gdid b`mod permanenti.

Ma hemm ebda ordni kronologika ta` dawn iz-zewg elementi u wahda tista` tipprevedi jew tissuccedi l-ohra. It-tul tar-residenza mhux kriterju konklussiv ghax iridu jitqiesu c-cirkostanzi kollha rilevanti biex temergi l-konkluzjoni tad-tibdil o meno tad-domicilju.

It-tieni element, u cioe` dak ta` l-intenzjoni, jabbraccja zewg principji u cioe` n-natura ta` l-intenzjoni u l-evidenza ta` tali intenzjoni. In-natura ghandha tkun tali li f`mohh il-persuna jkun hemm l-intenzjoni ta` residenza permanenti (Udny vs Udny, 1896). L-evidenza ta` l-intenzjoni tigi manifestata minn pregudizzji, religjon, sahha, impulsi, imhabbiet, kondotta, aspettattivi finanzjarji u elementi ohra, liema indizji ta` l-intenzjoni tal-persuna jwasslu ghall-evidenza ta` l-intenzjoni taghha dwar l-aspett ta` domicilju.

L-intenzjoni tal-bdil ta` domicilju tista` temergi min-nuqqas ta` animus manendi, ossija l-intenzjoni li wiehed jibqa` f`pajjiz jew ghall-kuntrarju mill animus non redeundi, ossija l-intenzjoni li wiehed ma jirritornax lejn id domicilju precedenti ... Fil-kawza Mary Debattista vs George Debattista, Appell, 16/10/1961, (XLV.i.318) inghad : 'Bhala regola jidher li hu principju affermat diversi drabi mill-Qrati Taghna illi l-Malti li jemigra, avolja jdum hafna zmien, ma jitlefx id-domicilju tal-origini tieghu meta jkun mar ghax-xoghol, anke jekk jjehu l-familja mieghu, sakemm ma jkunx hemm provi precizi li huwa ma ghandux ebda intenzjoni li jigi lura ...' Infatti, anke l-akkwist ta` proprjeta` immobbli barra minn Malta u kuntrattazzjoni ta` zwieg barra minn Malta ma humiex bizzzejjed biex wiehed jitlef id-domicilju

originali - ara f' dan ir-rigward Virginia Fenech vs Avukat Dr. Giuseppe Borg Olivier et noe, Prim`Awla 07/09/1964 (XLVIII.ii.1147). Rinunzja ghal domicilju jrid jirrizulta minn cirkostanzi gravi, precizi u konkordanti, ara Carmela Frendo vs Dr. Rene` Cremona et noe, (Prim`Awla 21/04/1961 - XLV.ii. 623). Bl-istess mod, il-permanenza, anke ghal zmien twil hafna, mhux bizzzejjed minnu nnifsu biex jikkostitwixxi prova ta` l-intenzjoni li 16 wiehed jichad id-domicilju ta` origini tieghu - ara Romeo Sammut noe vs Dr. Emmanuele Albanese et noe, Qorti tal-Kummerc 17/02/1936 (XXIX.iii.232), Achille Dagata vs Marchesa Luisa Drago, Prim`Awla 16/06/1884, u Alfred Cassar vs Dr. Gerald Montanaro Gauci, Prim`Awla, 3/12/1962, (XLVI.ii. 727).

Tibdil f' domicilju jrid jirrizulta minn provi cari konklusivi li persuna ma kellhiex l-intenzjoni li tirritorna lura. Domicilju ta` l-origini jibqa` jsehh sakemm ma jigix assunt domicilju iehor, u ghalhekk li persuna ma tirritornax lura izjed fid-domicilju precedenti b`mod permanenti. Irid jirrizulta li l-persuna ma kellhiex l-intenzjoni li tirritorna u li anzi kellha l-intenzjoni tistabbilixxi ruhha fil-post il-gdid. Fil-kawza Lepre vs Dr. Joseph Tabone Adami noe, Prim`Awla 28/3/1960, (XLIV.ii.576), gie ikkwotat Halsbury fejn inghad : ‘every person at birth becomes a member both of a political and of a civili society. The former determines his political status or nationality, on which depends his allegiance to a sovveraign; the latter governs the latter determines his civil status. This means that the law which governs the civil society into which he is born, the law of his domicil of origin, is

attached to his person and remains so attached wherever he goes, unless and until he ceases to be a member of that society, or changing hi domicil; upon which the law of the new domicil becomes attached to him in the same manner (Laws of England, Vol. VI, no. 242, Hailsham Edition)'.

Having analysed the evidence produced by both parties the Court makes the following observation. The plaintiff emphasises that having opted to purchase a Maltese passport, the plaintiff must have property in Malta because he was obliged to do so to succeed in the acquisition. Amongst which a lease that expired after the presentation of the present writ, the acquisition of a number of Maltese Bonds to the tune of €150,000 and a donation to a charitable Institution. However there is a fine distinction to be made, whether these acquisitions were made out of intention of residing in Malta or otherwise.

On the other hand, most of the valuable property that they hold between them is to be found in three different European Countries. The Court has no proof as to whether these were acquired after the obtainment of Maltese citizenship. The Court cannot presume that it was.

The plaintiff presented documents that he is presently residing in Spain. However this may itself does not proof that he acquired Spanish domicile, because as we have seen, the concept of domicile goes far more than residence. But there is one particular passage in the deposition of the Plaintiff that the Court considers as important:

“Dr. Robert Thake: *What was the purpose of receiving the Maltese Citizenship.*

Plaintiff: *Well ... to be a European Citizen.”*

Now the Court does understand, that the plaintiff is arguing that having obtained Maltese citizenship under the scheme. The respondent was obliged to reside in Malta. However, that is not necessarily so. The most, it can amount to a breach of one of the conditions under the scheme, but not that the plaintiff possessed the *animus manendi*.

In the light of the above teachings, and after having considered all the circumstances of the Case, the Court concludes that the plaintiff never acquired domicile in Malta. From the moment he applied for Maltese citizenship he never had this intention. The Court is of the strong belief, that his only intention was that of becoming, in his own words, a European Citizen. He was only formally attached to Malta and in reality he never renounced his Russian domicile.

Decide

In view of the above, the Court is refuting jurisdiction and abstains from further taking cognizance of the case.

Expenses to be borne by the plaintiff.

Judge Toni Abela

Deputy Registrar