



**CIVIL COURT
(FAMILY SECTION)**

**HON. MR. JUSTICE
NOEL CUSCHIERI**

Sitting of the 3rd April, 2008

Citation Number. 187/2006

List Number: 38

**Asive B C
vs
D C**

The Court,

Having seen the sworn application in virtue of which plaintiff premised; that the parties got married in Germany on the 5th of January 1995, and subsequently went through a religious marriage in Malta; that from this marriage the parties have one child born on the 3rd July 2000; that the matrimonial consent of plaintiff was legally defective in terms of paragraph [c] of article 19[1] of Chapter 255 of the Laws of Malta, whilst the matrimonial consent of defendant was also legally defective, though in

terms of the first part of paragraph [d], and in terms of paragraph [f] of that same article of law.

That on the strength of the above, applicant is requesting that the civil marriage contracted on the 5th January 1995 is null and void at law; and that the relative annotation be made in the marriage certificate; and that the expenses of these proceedings be borne totally by defendant;

Having seen that defendant, though duly notified with the acts of the case, decided not to file a sworn reply;

Having seen all the records of the proceedings;

Having heard the parties give evidence on oath;

Having considered;

The Action

That in virtue of this action plaintiff is requesting this Court to declare that the marriage contracted by the parties on the 5th of January 1995 is null in terms of the afore mentioned articles of law

The Facts

That from the evidence produced it results that the parties were married in Germany on the 5th of January 1995 at which time plaintiff, a maltese citizen, was 24 years old, whilst defendant, a German national, was 28 years old, and after they had known each other for intervals of six months over a period of three [3] years since at that time defendant was residing in Germany. On the 3rd July 2000 a son was born to the parties. However, soon afterwards the parties separated de facto after defendant had entered in an extra matrimonial relationship with another woman whom he had known since 1998.

The Considerations of the Court

That is results quite clearly from the evidence of the parties, that the marriage took place on the insistence of plaintiff who wanted to legalize their relationship whilst living in Germany. Plaintiff entered into this marriage,

because she loved defendant dearly, and was fully committed to make this marriage work; in fact she had forgiven the defendant when subsequently she discovered that he was unfaithful to her.

On the other hand, defendant showed a manifest lack of commitment in this marriage evidenced by the fact that he used to leave his wife on her own, whilst being with his friends. Plaintiff explains that when the couple came to Malta a few months after the marriage and defendant got a job, his life seemed to have started afresh and he began to involve himself a lot in sport activities and began to make new friends; and this at the expense of the relationship of the parties, since he was never at home. Plaintiff also explains that, this notwithstanding she wanted children from this marriage hoping that the defendant would change his ways and his lifestyle and show commitment to the marriage. However this seemed to have had the opposite effect on him since after the birth of the child defendant started to refuse having intimate relations with his wife, for the reason as stated by him, that she had gained weight. Soon afterwards, defendant left the matrimonial home, and abandoned his wife and his child.

The Court notes that plaintiff's version of the facts draws comfort from the evidence of the defendant, from where it results that though his wife was committed to the marriage, he was not. Regarding his extra marital affair, defendant confirmed plaintiff's version saying that his wife tried to save the marriage, "after I had this story with my female friend, my wife tried always to bring us back together, it's true and I think [that at the time] I wasn't ready to give more and to go back to the state that we were, but she tried everything." He also confirmed that his wife "always wanted, family, the marriage life and commitment."

On the strength of the above, it is the considered opinion of this Court that this marriage between the parties is null and void in terms of the first part of paragraph [d] of article 19[1] of Chapter 255, and that this ground for nullity exists

solely on the part of defendant who at the moment of contracting the marriage seems to have been unable to understand and appreciate the basic and essential obligations of marriage which accepted case law sums up in the following manner:

“the obligation concerning the conjugal act or carnal union, as bodily union and basis of procreation; the obligation of life and love as an expression of the union between man and woman, mutual well being, which is inseparable from the provision of an environment conducive to the reception and education of children; and the obligation to receive and bring up children within the context of conjugal community. It is important to remember that these obligations must be mutual, permanent, continuous, exclusive and irrevocable so that there would be incapacity if one of the contracting parties should be, due to psychological cause, incapable of assuming these obligations with these essential characteristics [Viladrich].

In view of the above the Court concludes that applicant's request is justified in fact and in law.

Decide

On the strength of the above the Court accedes to plaintiff's requests; and declares that the marriage contracted by the parties on the 5th of January 1995 is null and void in terms of the afore mentioned article of law; and orders that all expenses be borne by defendant.

< Final Judgement >

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