



**CIVIL COURT
(FAMILY SECTION)**

**THE HON. MR. JUSTICE
NOEL CUSCHIERI**

Sitting of the 28 th October, 2008

Citation Number. 341/2007

**A B
vs
C D**

The Court,

Having seen the sworn application lodged by plaintiff wherein he premised: That he married defendant on the 20 October 2003, and a child was born of this marriage; that the matrimonial consent of both parties was vitiated in terms of paragraphs [d] and [f] of article 19[1] of Chapter 16 of the Laws of Malta. For these reasons, plaintiff is requesting this court to declare null and void his marriage with defendant who is also to bear the costs of these proceedings;

Having seen respondent's reply wherein she declared that the marriage is null and void at law, for reasons imputable

only to plaintiff; and that she should not be condemned to pay any costs;

Having seen all the acts of the case, including the affidavits presented by the parties;

Having heard the evidence on oath;

Having considered:

Action

That by virtue of the these proceedings plaintiff is requesting that his civil marriage to defendant, contracted on the 20 October 2003 be delared null and void on the basis of the afore-mentioned provisions of law, imputable to both parties; whereas defendant, though agreeing with plaintiff that the marriage is null at law, holds plaintiff as the party solely responsible for the nullity.

Facts

From the evidence the following picture emerges. On the 20 October 2003 plaintiff, a turkish national who at the time was 25 years old, married defendant, a maltese national who was then 20 years old; and after they had been frequenting each other for not more than five months. After three months from the date of the marriage, the parties began experiencing problems in their relationship, as a result of which they separated de facto for some time. Subsequently the parties reconciled; however, after three months they began facing the same matrimonial problems, particularly when defendant told plaintiff that she was pregnant. On the 5 February 2006 a son was born to the parties; however, one month later they separated again. Today the plaintiff is in a relationship with another woman from whom he has children; whilst defendant is living with her parents, together with their son.

In his evidence plaintiff submits that he came to Malta in 2002, and that he had an extended visa. He met defendant in 2003, and after three months proposed marriage to her and she accepted. He states that they

experienced marital problems very early in married life, due to differences in culture, and could not go on well together. Plaintiff submits that at that time both parties were immature, and they were not prepared for the consequences of marriage.

Defendant on the other hand was more exhaustive and specific in her evidence, particularly as to the reason behind the matrimonial unrest between the parties. She explains that, before the marriage, plaintiff used to treat her very well and so she believed that he truly loved her. Thus she accepted his marriage proposal, even though she did not have enough time to get to know him well, and notwithstanding the constant opposition of her parents to the relationship. She states, that three months after the marriage, plaintiff's attitude towards her changed, in the sense that he became dominant, aggressive and occasionally used physical force upon her.

As a result of this abusive behaviour on the part of the husband, which was rendering married life very difficult for her, the parties separated de facto for some time. However, after some time, and in view of promises made by plaintiff to change his behaviour, they reconciled and the parties resumed cohabitation.

However, when defendant informed plaintiff that she was pregnant with his child, his attitude towards her resumed its former abusive character. In her evidence she states that *"Kif ghidtlu li jiena pregnant, irvella, mbaghad bdew gejjin il-vendikazzjonijiet. Riedni naghmel abortion, u jien ma accettajt, u bdew gejjin aktar inkwiet imbaghad Tghajjir, vjolenza, kwazi kull gimgha l-vjolenza Swat daqqiet ta' ponn, isabbatni mas-sodda, mas-sufan"*¹ Eventually, a month after the child was born, defendant was at the end of her tether; and she left the matrimonial

¹ Fols.37 – 38. Free translation - "As soon as I told him that I was pregnant, he became very angry and aggressive towards me. He wanted me to make an abortion, however I refused; and the abusive behaviour on his part, consisting in insults and violence committed against me almost every week, increased. He beat me with his fists, he pushed me against the bed and the sofa."

home with their child, to reside with her parents where she is still living to the present day.

Considerations of the Court

After having heard the parties give evidence, and examined the evidence produced, this court has come to the conclusion that the marriage between the parties is null and void in terms of paragraph [f] of the above article, for reasons attributed solely to plaintiff.

The Court deems that it should give more weight to the evidence tendered by defendant, as apart from being more exhaustive, is corroborated by other evidence.

Besides, in his affidavit, plaintiff states “I did not want to get married in the church. Somehow I felt that marrying through the civil way is a lesser bond than getting married in church.”² In the Court’s opinion this shows that the plaintiff did not really want to enter into a permanent bond with defendant. This probably explains why he was very angry when the latter informed him that she was pregnant with his child, to the extent that he suggested abortion.

Furthermore, his behaviour towards the accused during marriage is evidence of the fact that, although externally he went through a civil ceremony of marriage with defendant, yet internally through a positive voluntary act, he excluded obligations essential for married life, namely 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 a psychological cause, incapable of assuming these obligations with these essential characteristics [*Viladrich – citat fis-sentenza PA[VGD]*]

² Fol.22

Anna Galea vs John Walsh deciza 20 ta' Marzu 2000J". Inherent in these obligations is the duty of the parties to give themselves fully to each other with a view to establishing, during marriage, the community of life and love between them.

The Court notes that the plaintiff's behaviour towards his wife, together with his wish to abort their child during the pregnancy, is a far cry from his obligations as indicated above.

On the strength of the above considerations, the Court considers the plaintiff's request for the nullity of the marriage to be justified in fact and in law; however, he is the party solely responsible for the nullity.

Decide

For the above reasons the Court decides this case by accepting in part plaintiff's first request, and consequently declares null and void the marriage contracted by the parties on the 20 October 2003. The Court also accedes to his second request. All costs are to be borne by plaintiff.

< Final Judgement >

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