



**CIVIL COURT
(FAMILY SECTION)**

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

Sitting of the 27 th January, 2009

Citation Number. 135/2008

Number on list: 20

**A B
vs
C D**

The Court,

Having seen the sworn application by virtue of which plaintiff premised: that the parties got married on the 24th January 2004, and that no children were born of this marriage; that the marriage is null in terms of paragraphs [a][c][d] and [f] of article 19[1] of Chapter 255 of the Laws of Malta; and in view of this, plaintiff is requesting this court to declare her marriage with defendant null and void at law, with costs against the latter;

Having seen that defendant, though duly notified with the acts of the case during the court sitting of the 20th November 2008, failed to file a sworn reply;

Having seen the records of the proceedings, including the plaintiff's affidavit;

Having considered:

The Action

That by virtue of the present action plaintiff is requesting this court to declare null and void at law her marriage to defendant, contracted on the 24th January 2004, on the grounds contemplated in the afore-mentioned articles of law.

The Facts

From the evidence it results that plaintiff, a German national, married defendant, a Bosnian national, on the 24th January 2004, after having frequented each other for the past six months. Unfortunately, the couple started experiencing problems from the very start of the marriage, due to defendant's sudden change of attitude after the marriage, with the result that during the summer of 2006 defendant left the matrimonial home for a few weeks. However, matrimonial problems persisted, and eventually the parties separated de facto in April 2007, and on the 31st January 2008 they signed a deed of personal separation.

In her affidavit plaintiff explains that defendant had insisted on marriage because his work permit was about to expire; and she had consented to the marriage though she "felt pressurised to marry him as I did not want to lose this marriage.... and I did not want to remain a single woman." She states further that within months of the marriage defendant "was like a changed man. He started to go out with his male friends after work and come back home even drunk. This happened very often and it became something regular In fact he abandoned me as he was always with his friends, and he used to go out with them on his own."

With regards to the parties' intimate relations plaintiff states that "even though we had a sexual relationship, this was a very sided one as he used to come home drunk, and even though I did not want to have sex with him I used to accept." She also states that defendant did not want to have any children from this marriage, and "he used to make sure that I was never pregnant by using the withdrawal method. This was always the situation. I used to feel used and unhappy."

Plaintiff complains that defendant was "not interested in my life or sharing my life with him." and maintains that he married her only to be able to stay in Malta and have a companion. "He only sought his interests and did not care about my needs or interests."

Considerations of the Court

From the above picture it emerges quite clearly that defendant was incapable of assuming his matrimonial obligations arising from a union directed towards the reciprocal well being of both parties, the procreation of children and their upbringing. He was incapable, or unwilling, to establish a community of love and life with his wife.

From the above, the Court concludes that plaintiff's request is justified in fact and in law in terms of paragraph [d] of article 19[1] of Chapter 255, which *caput nullitatis* exists on the part of defendant who is therefore to bear the costs of these proceedings.

Decide

On the strength of the above, the Court accedes to plaintiff's request and declares her marriage to defendant, contracted on the 24th January 2004 to be null and void at law. All costs are to be borne by defendant.

Informal Copy of Judgement

< Final Judgement >

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