



**QORTI CIVILI  
(SEZZJONI TAL-FAMILJA)**

**ONOR. IMHALLEF  
NOEL CUSCHIERI**

Seduta tal-25 ta' Gunju, 2009

Citazzjoni Numru. 181/2007

Number on list: 32

**A B  
vs  
C D B E**

**The Court,**

Having seen the sworn application by virtue of which Plaintiff premised : that the parties got married on the 3<sup>rd</sup>. September 1988 , and that three children were born from this marriage: Andreas [9<sup>th</sup>. July 1989], Anastasia [12<sup>th</sup> April 1994] and Nicholas [31<sup>st</sup>. May 1999]; that on the 6<sup>th</sup> November 2001 the parties signed a deed of personal separation; that the marriage is null, since the matrimonial consent of both parties was vitiated owing to a serious defect of discretion of judgment on the rights and duties essential to marriage, and also that the consent of

Defendant was vitiated due to a positive exclusion of the marriage itself and of the essential obligations arising out of marriage; that the matrimonial consent of both parties was simulated; and on the strength of the above, Plaintiff is requesting this Court to declare her marriage null and void at law, and that the relative expenses be totally borne by Defendant.

Having seen the sworn reply by virtue of which Defendant declared that he is not contesting Plaintiff's claims, and that he agrees that the marriage is null on the grounds indicated by her.

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

Having heard the witnesses on oath;

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 celebrated on the 3<sup>rd</sup> September 1988, on the grounds that the matrimonial consent of both parties was vitiated in terms of paragraphs [d] and [f] of article 19[1] of Chapter 255 of the Laws of Malta. On his part, Defendant does not oppose Plaintiff's request, and agrees that the marriage is null on the above grounds.

### **The Facts**

That from the affidavits produced, and the evidence given by the parties, the following picture emerges.

On the 3<sup>rd</sup> September 1988 the parties contracted marriage, after a brief courtship. At that time, Plaintiff, a Maltese national, was 23 years old, whilst Defendant, a Chilean national was 21 years old. Three children were born from this marriage, on the 9<sup>th</sup> July 1989, 12<sup>th</sup> April 1994 and 31<sup>st</sup> May 1999. After having lived together for about thirteen [13] years, the parties separated after

Plaintiff found out that Defendant was having an extra marital affair with a Russian woman. On the 6<sup>th</sup> November 2001 they signed a contract of personal separation. At present both parties have an extra marital relationship.

*Plaintiff's version*

In her evidence<sup>1</sup> before this Court Plaintiff explains that she got to know Defendant whilst she was studying abroad, and eventually they started a relationship. However, since in Malta, Defendant was having visa problems, and also as Plaintiff's parents would not allow the parties to live in the upper floor of their house unless they were married, the parties decided to get married, as "I didn't want to lose D, and he didn't want to lose me...because we cared about each other."

Plaintiff states that "I don't really believe in marriage, because I believe a relationship is a relationship, marriage is marriage." so, as she states in her affidavit<sup>2</sup> "I proposed marriage jokingly to D ."

She states further that "The period of courtship was very short, but we both cared a lot about each other. There was a lot of affection between us and we never quarrelled or disagreed about anything.....Although the courtship was short, we still managed to discuss our future lives together as husband and wife." However, almost in the same breath she states: "D and I did not intend the marriage to be permanent, as it was rather rushed" and in the same paragraph she continues saying that on separation "Parting was not easy, and we both cried a lot."

In her affidavit Plaintiff says that she "had a basic understanding of the essential qualities and responsibilities inherent to the marriage<sup>3</sup>....[but] my husband had no understanding of any qualities and responsibilities of marriage" as in his country people "do not usually get married, but just cohabit until it suits them." She speaks of the fact that during the marriage she was

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<sup>1</sup> Fols.20 *et seq.*

<sup>2</sup> Fols.15 *et seq.*

<sup>3</sup> Vide also plaintiff's deposition fols.35-36

the main breadwinner and that she was the only party doing all the work and sacrifice throughout the marriage ... I was the exemplary wife and mother, and I had to do everything by myself.” She complains that Defendant “never committed himself to me, and continued to live a bachelor’s life. He never carried any responsibility for the children.” She describes Defendant as “too narcissistic [recte: narcissistic] and selfish to care about anyone else...[and].. he does not know the meaning of faithfulness... He is a compulsive liar, and manages to convince anyone that his lies are true. [sic]”

Regarding the children, Plaintiff says in her evidence that no planning was made “they happened. I don’t regret them”

#### *Defendant’s Version*

Both in his affidavit and in his evidence before this Court Defendant says that he does not believe in the institution of marriage, and that for him marriage “as such is only a document”, “just a paper”.

He explains that when he came to Malta in October 1987 to meet Defendant, and live with her in her parents’ house “We thought it would have been nice to stay together for a year or two.... We thought it was like a holiday, and then it came out, that it would have been a nice thing if we stay together for maybe some longer period....We stayed together, and if it happens that we have sex together it was fine.” On being asked whether they had any plans for “a future together”, Defendant states: “No, not necessary, it wasn’t like a long-term relationship.”

In his affidavit he says that he “does not believe in relationships in the traditional sense, much less in marriage....We never considered ourselves to be in a ‘serious relationship’ and we both knew it, and made it clear to each other. After Plaintiff returned to Malta he missed “the presence of a friend and sexual partner”, so during his stay in Malta “we resumed ‘our relationship’.” He continues saying in his affidavit that “myself and A had always made it clear with each other that we were not

even in a 'relationship' per se..... [but] always considered ourselves [sic] as friends and sexual partners.”

Defendant says that when marriage was suggested to him by Plaintiff in an effort to solve their problems, he says that “actually I did not like the idea” and the latter told him that that was the only way he could remain in Malta, and that it was “just a piece of paper.”

On being asked explicitly by this Court whether he was aware of the matrimonial obligations, that of love, cohabitation and exclusivity, Defendant answers that “These obligations do not exist .. that is why there are divorce and annulments”. On being asked further by this Court whether he loved his wife when they got married, Defendant answers “As girlfriend and boyfriend, yes.”

Regarding the children, Defendant says that these “are the best thing I have in my life.”

On the breakdown of the marriage, Defendant, says inter alia, that “we both knew that our relationship was a casual one – but it is difficult to maintain a casual relationship once you are married.....There was never any true communication between us [and this] resulted in myself and A slowly drifting apart.”

### **Considerations by the Court**

After hearing both parties give evidence, the Court is of the opinion that the evidence given by Defendant viva voce, and by affidavit, lacks credibility; and is moreover also weakened by the proven facts of the case, notably the length of the married life during which the parties had three children, spaced at intervals of approximately 1year, 4years and 5 years, and that the marriage broke down after Plaintiff became aware of Defendant's extra-marital affair.

The first legal basis put forward by Plaintiff as one of the grounds for her request, is that the matrimonial consent of both parties was vitiated by a serious defect of discretion

of judgment on conjugal life, or its essential rights and duties.

Now, from the evidence it is manifestly clear that, at the time Plaintiff gave her matrimonial consent, she was not labouring under such defect. As her behaviour during the marriage illustrates well enough, Plaintiff was very much aware of her s husband as well as her s-a-vi obligations arising out of marriage, both vi three children. She married Defendant because she loved him, and wanted to spend the rest of her life with him, and she had intimate relations with her husband, with the result that in a period of ten years of matrimonial life she had three children by her husband. Moreover, the separation was painful to both parties, and she herself states that "parting was not easy, and we both cried a lot." This, and further evidence, shows that at the time the marriage was contracted Plaintiff was aware of the essential obligations of marriage, and furthermore was capable of assuming them.

As regards the Defendant, the Court considers, that, notwithstanding that in his evidence he constantly reiterates that he does not believe in marriage which to him is only a document, and notwithstanding his constant denial of having had a stable relationship with Plaintiff and stating that their relationship was no more than a casual relationship, still, when faced with the prospect of marrying Plaintiff in order to be able to live in Malta, he overcame his initial reluctance [dato non concessio] to her marriage proposal, and eventually accepted and agreed to marry Plaintiff. As the latter states in her affidavit: "D and I both entered the marriage on our own free will" and also, though their courtship was short "we still managed to discuss our future lives together as husband and wife."

Also, from the evidence produced, it does not result that at the moment when Defendant gave his matrimonial consent, he was incapable of understanding, reflecting on, and deciding freely on the object of the matrimonial consent, or that he was acting under a strong internal impulse which eliminated his freedom of choice, and

determined his decision to marry Plaintiff. On the contrary, notwithstanding his denial during his evidence, the proven facts show that at that moment Defendant was sufficiently aware of his rights and obligations arising from his matrimonial consent. In fact he lived with Plaintiff after marriage for a number of years, during which he fathered three children from his wife; and it was only in 1997, when he started having an extra-marital affair with another woman, that the marriage broke down.

Moreover, it is not amiss to point out that the fact that a party to a marriage shows an initial reluctance to a marriage proposal, or that his acceptance is also motivated by material reasons, these facts per se do not give rise to the nullity of the marriage, since that party may, eventually and on further reflection, as is usually the case, and even for material considerations, have consented to the marriage proposal and accepted to marry the other party in the full knowledge of his matrimonial rights and obligations, and with the intention of observing these throughout the marriage. Thus, the fact that Defendant, on further reflection, had arrived at the conclusion that contracting a marriage with Plaintiff was also to his benefit, does not in any way weaken the validity of the marriage, the more so in this case where it results that, notwithstanding the short courtship, both parties loved one another and “still managed to discuss [their] future lives together as husband and wife.”

On the strength of the above, the Court is of the opinion that Plaintiff did not successfully prove her claim based on the first part of paragraph [d] of the afore-mentioned article; and this applies also to the second legal basis, based on simulation and paragraph [f], since, from the evidence produced in this case, the Court is not satisfied that at the moment when the parties gave their matrimonial consent, they, or either of them, had excluded by a positive act of will, any of the essential obligations of marriage, including that of permanence; and that from the evidence of Plaintiff, the Court is led to believe that at that moment, both parties had, on entering marriage, consented to form a union which is exclusive and

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permanent in nature, based on marital cohabitation and the procreation and upbringing of children.

Finally it is relevant to observe that, even though Defendant's role during married life, from the point of view of responsibility, may be considered marginal when compared to the pro-active attitude of his wife, who seems to have been the main pillar throughout the marriage, this fact does not militate against the above conclusion, though it may be one of the reasons, which together with his extra-marital affair, rendered their separation legally valid; as these two concepts of law are based on different norms prescribing different requisites for separation and annulment.

**Decide**

For the above reasons, the Court is rejecting Plaintiff's request. Parties are to bear their own costs.

**< Sentenza Finali >**

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