



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

**ONOR. IMHALLEF  
NOEL CUSCHIERI**

Seduta tad-19 ta' Ottubru, 2010

Citazzjoni Numru. 426/2008

Number on list: 16

**A B  
vs  
C B**

**The Court,**

Having seen the sworn application whereby plaintiff premised: that the parties got married in the UK on the 7<sup>th</sup> May 1983, and from this marriage a child was born in 1983; that the parties did not have a normal courtship since at that time defendant lived in the UK whilst plaintiff lived in Malta; that the parties lacked the necessary maturity to contract a marriage, in that they were not fully aware of the implications and consequences of marriage; that the matrimonial consent of the parties was vitiated in terms of paragraph [c], [d], [f] and [g], alternatively or

cumulatively; that on the strength of the above, and other facts stated by him in his sworn application, plaintiff is requesting this Court to declare his marriage with defendant null and void at law, in terms of the aforementioned articles of law; with costs;

Having seen the sworn reply by virtue of which defendant is opposing plaintiff's request, stating that the marriage is valid at law; the parties have known each other of almost three years before the marriage, they had a normal courtship as they corresponded frequently, and the marriage was planned by the parties; that the parties loved one another and had matured in their relationship; that problems began after over twenty [20] years of marriage when defendant started getting suspicious that plaintiff was being unfaithful to her, and in fact, after the separation plaintiff had an affair with a Russian girl;

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

Having heard the evidence on oath;

Having considered;

### **The Action**

That by virtue of the present action plaintiff is seeking to annul his marriage to defendant, contracted on the 7<sup>th</sup> May 1983 on the grounds that the parties' matrimonial consent was vitiated in terms of the afore-mentioned sections of law.

On her part, defendant is opposing plaintiff's request, arguing that the marriage is valid at law.

### **The Facts**

The parties got married in London on the 7<sup>th</sup> May 1983, after having known each other for over a year, during which period they even spent one month living together on their own. At that time plaintiff, a Maltese citizen, was 21 years old, whilst defendant, an English national who was living in the UK, was 22 years old. On the 12<sup>th</sup> June

1985 a baby girl was born to the parties. After more than twenty [20] years of married life, plaintiff left the matrimonial home. He admits to having extra-matrimonial affairs with other women a few months after the separation.

*Plaintiff's Version*

Plaintiff explains that prior to the marriage; the parties did not have the opportunity to know one another well, as at that time they were living in different countries, and therefore had personal contact only at intervals. However, when he went to the UK the parties spent one month living together on their own.

Eventually, defendant proposed marriage to plaintiff who, though not really committed to defendant, ultimately agreed to marry defendant. He says that, during the courtship, when defendant was abroad, he used to date other girls.

Plaintiff says that even during the courtship period, defendant used to be very jealous, and this was the cause of many arguments, even before the marriage. After the marriage, though the parties experienced problems, the situation was acceptable ["accettabbli"], and for about eight [8] or ten [10] years into the marriage, the situation was not bad ["mhux hazin"]. However, eight [8] years into the marriage, defendant started getting very jealous and suspicious of plaintiff who had taken on a new job requiring that he works late hours. This brought about a lot of arguments, as defendant used to constantly assail plaintiff with accusations of infidelity. This had a negative impact on the intimate relations between the parties, and plaintiff complains that his wife used to be reluctant in engaging in sexual activity with him and showed a complete lack of affection in his regard.

As a result of this, he left home on three occasions, the first being in 2005. However, eventually he could not take it any longer; he had reached "breaking point", and finally left home for good. Plaintiff explains that at that time his only reason for remaining in the matrimonial home and

putting up with the unbearable situation he was in, was the consideration of his daughter's welfare.

*Defendant's Version*

Defendant explains that she had first met plaintiff in September 1980, and after a short period the parties started dating. When defendant subsequently left for the UK, they exchanged letters very often, and had weekly conversations on the telephone. During Christmas of 1981 defendant came over to Malta where she stayed with plaintiff's family. She came again at the end of August of 1982 and again stayed at his parents' house.

Then in November 1982 plaintiff went over to the UK where he lived with defendant in a council flat. During this period the parties got to know each other better, they were happy living together, and as a result decided to get married. Defendant states that the decision to get married was "a joint decision, taken voluntarily and with deliberation."<sup>1</sup> In fact, plaintiff was actively involved in the wedding preparations; he was very happy and excited.

After the marriage, plaintiff found work in the UK, and both parties worked hard, but both were happy and were leading a normal family life. They planned to have a baby which was eventually born on the 12<sup>th</sup> June 1985. After four years of living in the UK, the parties, on defendant's suggestion, decided to come over to Malta and settle here, as they believed that their daughter would have a better life here. When in Malta, initially the parties lived for about nine months with plaintiff's parents, but eventually they bought a house and went to live on their own.

After living in Malta for some time, during which period, both parties worked together in various ventures in the catering and food industry, plaintiff decided to take on late night parties, discos and concerts, and this brought him into contact with many young people. It was at this moment in time that plaintiff's attitude towards defendant

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<sup>1</sup> Fol.32

began to change; he no longer involved her in his work, except to clean up the equipment the following morning. He used to come home late at night, and had employed a Bulgarian woman to help him in his work. These circumstances made defendant suspicious, and arguments followed during which plaintiff used to tell defendant that his business comes first. Defendant affirms that this was near the end of the marriage.

Eventually communication between the parties ceased, and plaintiff left home definitely. Defendant states that three weeks after plaintiff had left home, she tried to reconcile with him, however, he told her that he was frequenting a 28 year old Russian woman who he loves.

### **Court Considerations**

This Court, having examined all the evidence, and having heard both parties give evidence, has arrived to the conclusion that it should accept as true defendant's version of facts.

It seems that plaintiff is basing his request chiefly on his alleged immaturity, and lack of commitment, when the decision to marry was taken by the parties. However, the evidence shows otherwise. Plaintiff had known defendant for quite some time, personally and through correspondence and telephone conversations. Also, apart from having cohabited with defendant for a month before the decision was taken, the parties lived together after marriage for more than twenty [20] years, during which period they had planned to have a child, which was in fact born two years into the marriage, and both worked hard to sustain family life.

It results that for a good part of their married life the parties experienced no serious problems. In fact even plaintiff admits that for at least eight [8] years the marriage was normal. It was only later, much later into the marriage that problems began to arise due to plaintiff's work which brought him into contact with young people. Matters worsened when he employed a Bulgarian woman to help him in his work, when previously, and for the most

part of their married life, it was defendant who used to help him.

The Court observes that from the evidence it does not result that at the time the parties gave their matrimonial consent, any one of them was not aware of the rights and duties of marriage, or was incapable of assuming the obligations arising out of marriage. In fact, they lived together after marriage, for more than twenty years, during which period they had a child, which was even planned. Both of them worked hard to sustain the family, and problems arose only after a number of years into the marriage, when defendant began harbouring founded suspicions that her husband was being unfaithful to her.

The above considerations, besides showing very clearly, the inexistence of facts constituting the *caput nullitatis* contemplated in paragraph [d], also exclude the *caput nullitatis* contemplated in paragraph [f]. The evidence shows that when the parties decided to marry, they both loved one another, were happy together and wished to continue living together in a married state, and also have children from their marriage.

Finally regarding plaintiff's claims that the marriage is null in terms of paragraphs [c] and [g], the Court observes that these are manifestly unfounded.

On the strength of the above, the Court is of the opinion that plaintiff has not managed to prove his case satisfactorily.

**Decide**

For the above reasons, the Court rejects plaintiff's requests, with costs.

**< Sentenza Finali >**

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