



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

**ONOR. IMHALLEF
NOEL CUSCHIERI**

Seduta ta' l-20 ta' Ottubru, 2010

Citazzjoni Numru. 297/2008

**A B
vs
C B**

The Court,

Having seen the application by virtue of which plaintiff premised: that the parties got married on the 29th August 2005; that defendant's matrimonial consent was vitiated in terms of paragraph [d] and [h] of article 19[1] of Chapter 225; that plaintiff's matrimonial consent was vitiated in terms of paragraph [c] and [f] of the said article; and on the strength of the above, plaintiff is requesting that his marriage with defendant be declared null and void at law; with costs;

Having seen the sworn reply by virtue of which defendant submits: that the reason for the failure of the marriage between the parties was plaintiff's extra-marital relationship within a short period from its celebration; that

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plaintiff expelled defendant from the matrimonial home, and wanted her to return back to China; that his matrimonial consent was vitiated in terms of paragraph [f] and [h] afore-mentioned;

Having seen all the records 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 requesting that his marriage to defendant celebrated on the 29th August 2005 be declared null and void at law, on the grounds that the matrimonial consent of both parties was vitiated in terms of the afore-mentioned provisions of law.

On her part, defendant denies plaintiff's allegations made against her, and submits, that if the marriage is null, the blame is totally on plaintiff.

The Facts

That the parties married on the 29th August 2005, after a courtship of about seven [7] months. The marriage took place in China, and was later registered in the Public Registry in Malta. At that time, plaintiff, a Maltese national, was 20 years old, whilst defendant, a Chinese national, was 24 years old. After about a year and three months, the marriage broke down, and the couple separated de facto. At present, both parties have an extra-marital relationship.

No children were born from this marriage.

Plaintiff's Version

In his deposition¹ before this Court, plaintiff states that he had met defendant at a local pub, and soon after they began dating. After about seven months into the

¹ Fol.60 *et seq.*

relationship, defendant, who at that time was staying in Malta as a student, encountered problems with her visa. The couple decided to get married, thereby solving the visa issue, whilst at the same time could continue their relationship in Malta. Plaintiff affirms that he decided to marry defendant because he was in love with her. In fact, he went over to China with her, to meet her parents, and within a month they celebrated their marriage. Subsequently the parties returned to Malta where they established their residence.

Plaintiff recounts that, after some time from their arrival in Malta, defendant found work; however, things started going badly. Defendant did not wash his clothes and did not prepare food, in fact the washing was done by his mother, and also that he used to eat at his mother's house. He complains that defendant used to spend most of her time chatting with her mother on the computer, or sleeping.

Also, defendant used to show reluctance in having intimate relations with plaintiff, very often saying that she was tired after work. She used to tell him that she did not want to have children unless her mother came over to Malta to help her. On his part, he used to respect defendant's wish and during intimacy used to adopt the withdrawal method. This explains why no children were born from this marriage.

In his affidavit² plaintiff states that they decided to get married after nine [9] months of courtship. He admits that it was a rash decision, taken without much thought, and that he was not aware of the consequences of married life. He states that within a short time after the marriage, defendant started showing lack of interest ["birdet"] in having intimate relations with him, maybe because his interest in her started dwindling. In his own words: "Fl-ewwel lok hija dehret li birdet sesswalment minni, forsi anke ghaliex ma bdejtx naghti kazha bhal ma kont naghmel qabel. Fil-fatt meta kont navvicinaha, hija kienet

² Fol.12

tirrifjuta li jkollha x' taqsam mieghi. Anke l-intimita' spiccat malajr Anke jien ma bqajtx inhossni migbud lejha, u fhimt li l-entuzjazmu li kelli ghalha fil-bidu ma kien imhabba xejn.” Plaintiff admits that he had made a big mistake [“gennata”] in marrying defendant when he was not aware of the consequences of married life, and when he only thought that he loved defendant. He describes his decision to marry as immature on his part.

During the months of courtship, defendant lived with plaintiff's parents. In her evidence, Mary B, plaintiff's mother, states that she was against the marriage, as plaintiff was still very young, and also because she believed that defendant wanted to marry plaintiff solely to be able to remain in Malta. The witness says that, immediately after the marriage, when the parties started living on their own, she could see that defendant, who at that time was not working, was not doing the family chores; in fact “ibni kien xorta jitla' jiekol, jinhasel u nahsillu hwejjgu ta' kuljum jien, ghax dawn l-affarijiet martu ma kinitx taghmilhom”³. She explains that her son used to confide in her about his problems, the main problem being that defendant used to be reluctant to have intimate relations with plaintiff, her husband. In her own words: “Hi kienet dejjem tirrifjuta lil ibni li jkollhom l-att sesswali fimkien, u meta ibni kien issaqsisjha biex jahsbu ghat-tfal, hi kienet dejjem issib xi skuza banali. Dan kollu kellu l-inizzju tieghu fl-ewwel gimghat taz-zwieg taghhom.” Tikkonferma wkoll li: when her son informed her of his wife's attitude towards him, she spoke to defendant about the matter, and the latter admitted to everything her son had told her. At that time defendant had promised to remedy matters, but this situation between the parties persisted, and it grew worse when defendant, on her own initiative had found a job. The witness also states that when occasionally she used to visit the couples' home, defendant used to be either asleep or using the computer.

Regarding defendant's allegation of plaintiff having an extra-marital affair during the first months of marriage, the

³ Fol.51

witness states that her son used to deny this. However, she agrees that he started having a relationship with another woman, after the separation, during 2009.

Defendant's Version

Defendant states that after two months when they came to Malta, plaintiff lost his job, and subsequently found another job. However, she discovered, or rather, suspected, that he started having an extra-marital relationship with another woman whom she identified by name. She states that her suspicions began when she found a long curly hair on the bed, and later, saw this same woman dancing and drinking with her husband in a pub in Paceville.

Defendant states that, after one year into the marriage, she found a job and started working; and that they encountered no problems in their matrimonial relationship, until plaintiff started to frequent this other woman. Before that, the marriage was normal, and they used to have intimate relations as a married couple. However, subsequently plaintiff began to show a lack of interest in defendant, and also a reluctance to engage in sexual activity with defendant, and two months prior to the separation, he used to refuse her advances. Plaintiff, however, used to deny having an extra-marital affair. Defendant explains that she even spoke to his mother about the situation, but, although things between the parties appeared to be normal again for about a week, later, the situation worsened, and plaintiff told her that he did not want her anymore, and he expelled her from the matrimonial home.

In her affidavit, she states that when she discovered that her husband was having an affair just a few months into the marriage, she "realised that he entered marriage without maturity, and without the concern of the obligations of marriage."⁴ She denies that she had entered into this marriage solely to be able to reside in Malta, affirming that she had married defendant because

⁴ Fol.37

at that time both parties were in love with one another: "Because I love him, and he loves me; that is why we decided to get married, and he shows me that he loves me."⁵

Defendant produced witnesses confirming that, during the time the parties were living together, they had seen plaintiff in the company of a particular woman. However, defendant admits that after the separation, even she started going out with a boyfriend.

Court Considerations

That from the evidence produced in this case, it emerges very clearly that both parties were not emotionally prepared for this marriage which unfortunately had to take place after only a few months of courtship. The Court is inclined to accept defendant's version when she states that the solving of the visa problem was not the only reason for the marriage, and that at the time both parties appeared to love one another. However, evidence of the parties' conduct after the marriage, shows that both parties were unable to fulfil the obligations of marriage, mainly that of living together in an atmosphere of harmony with a view to establishing between them a community of love and life. On the one hand, plaintiff seems to have been too immature to enter into the marriage, whilst defendant's behaviour chiefly, her reluctance to have intimate relations with her husband, shows that at the time the parties gave their matrimonial consent, both of them were effected by a serious lack of judicial discretion on the rights and duties of marriage, and of the consequences of married life.

On the strength of the above, the Court agrees with plaintiff's application on the basis of the first part of paragraph [d] of article 19[1] of Chapter 225.

Decide

⁵ Fol.145

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For the above reasons, this Court accepts plaintiff's request, and declares null and void at law the marriage celebrated between the parties on the 29th August 2005.

Parties are to bear their own costs.

Judge

< Sentenza Finali >

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