

Kopja Informali ta' Sentenza



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

**ONOR. IMHALLEF
NOEL CUSCHIERI**

Seduta tas-16 ta' Novembru, 2010

Citazzjoni Numru. 198/2010

Number on list: 22

**A B
vs
C B**

The Court,

Having seen the sworn application whereby plaintiff premised: that the parties got married on the 11th Mary 2005; that the matrimonial consent of defendant was vitiated in terms of paragraphs [d], [f] and [h] of article 19[1] of Chapter 255 of the Laws of Malta; on the strength of the above, plaintiff is requesting that this marriage be declared null and void at law;

Kopja Informali ta' Sentenza

Having seen that defendant, duly notified, failed to present his reply; however in the sitting of the 26th October, declared that he does not oppose plaintiff's request;

Having seen all the records of the proceedings;

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 the marriage contracted by the parties on the 11th May 2005 on the grounds that the matrimonial consent of defendant was vitiated in terms of the above provisions of law. On his part, defendant is not opposing plaintiff's request.

The Facts

That on the 11th May 2005 the parties contracted marriage in Malta, after a courtship of about nine months. At that time, plaintiff, a Turkish national, was 26 years old, whilst defendant, a British national, was 21 years old.

That at the time of the marriage, plaintiff was in Malta as a student on a sixth monthly visa, whilst defendant worked in a bar. On marriage, plaintiff obtained freedom of movement in Malta.

That after the marriage, the parties' encountered serious problems which deeply effected their conjugal life. Plaintiff explains that she was on the contraceptive pill for one year into the marriage when she decided to stop taking the pill as she wanted to have children. However, defendant disagreed with this decision, since he did not want any children, in fact intimate relations continued with the husband taking precautions from his part.

The issue of children seemed to be a hot issue between the parties; also due to the fact that, whilst plaintiff expressed her wish that they be brought up in the Muslim faith, which she embraces, defendant on his part was

against this, and in case children were born of this marriage, he wanted them to be brought up in the Catholic faith.

That matrimonial problems also arose from the cultural differences existing between the parties, who were in disagreement on the type of food prepared daily, on the days of relaxation, as well as the type of entertainment.

That to make matters worse, defendant decided to stop working after the marriage, with the result that plaintiff had to bear the full financial burden of the marriage. In her affidavit plaintiff explains “that my husband [defendant] does not want to have children, and this is due to the fact that he does not really want the responsibility.”¹

On his part, defendant in his evidence before this Court agreed with plaintiff’s version of facts.

The Considerations

That this Court, after having heard the evidence of both parties, is of the opinion that plaintiff’s version corresponds to the real facts; and has come to the conclusion that defendant has proved to be incapable of assuming the obligations arising from marriage, particularly that of cohabitation between the spouses aimed at the reciprocal well-being of the parties, the procreation of children, and their upbringing. This prevented the parties from forming between them a union based on love and life.

On the strength of the above, the Court is of the opinion that plaintiff’s request is justified in fact, and at law on the basis of the first part of paragraph [d] of article 19[1] of Chapter 255, and that this caput nullitatis exists only in regard to defendant.

Decide

¹ Fol.11

Kopja Informali ta' Sentenza

For the above reasons, the Court accedes to plaintiff's request.

Costs are to be borne by defendant.

< Sentenza Finali >

-----TMIEM-----