MALTA

QORTI CIVILI
(SEZZJONI TAL-FAMILJA)

ONOR. IMHALLEF
ANNA FELICE

Seduta tal-11 ta' Jannar, 2011

Citazzjoni Numru. 396/2008

A B C

-vs-

D B

Il-Qorti:

Rat ir-rikors guramentat ta' A B C fejn din, wara li ppremettiet:

Illi r-rikorrenti u l-intimat kienu izzewgu fl-14 ta' Awissu 1999, mil-liema zwieg twieldu tlett itfal, ossia E li llum ghandha hames snin. F li llum ghandu tmien snin, u G li llum ghandha disa' snin;

Illi l-hajja konjugali giet resa impossibli minhabba eccessi, mohqrija, theddid, vjolenza u ngurji gravi kommessi da

parti tal-intimat kif ukoll minhabba li l-hajja konjugali mhix aktar possibli peress li z-zwieg tkisser irremedjabilment;

Illi waqt iz-zwieg, il-konjugi kienu ghazlu li l-patrimonju matrimonjali taghhom jigi sseparat skond l-Art. 1237(2) u b’hekk jeskludu l-Komunjoni tal-Akkwisti miz-zwieg taghhom u konsegwentement l-assi matrimonjali taghhom ghandhom jigu regolati bil-Firda tal-Beni – illum-il gurnata, il-konjugi m’ghandhom l-ebda assi, la mobbli u lanqas immobbli!;

Illi l-intimat mhux qieghed jaghti manteniment lir-rikorrenti u t-tfal;

Illi r-rikorrenti u t-tfal m’ghandhomx post fejn jghixu u fil-prezent qeghdin jirrisjedu ghand omm ir-rikorrenti;

Illi jezistu diversi debiti li l-konjugi jridu jhallsu, fost ohrajn arretrati ta’ kera, kontijiet ta’ utilitajiet varji, u pagamenti dovuti lil terzi.

Ghaldaqstant, jghid il-konvenut ghaliex din l-Onorabbli Qorti m’ghandhiex:

Tiddeciedi ai termini tal-Art. 46A tal-Kap. 16 [pendente lite] retta alimentarja li l-intimat ghandu jhallas lir-rikorrenti ghall-bzonnijiet taghha u tat-tfal;

Tiddeciedi ai termini tal-Art. 47 tal-Kap.16 [pendente lite] liema wahda mill-partijiet tigi fdata lilha l-kura u kustodja tal-minuri;

Tiddikjara u tippronunzja s-separazzjoni personali bejn il-kontendenti u dana minhabba ragunijiet imputabbli lill-intimat kif hawn fuq premessi, u tawtorizza lir-rikorrenti tghix separatament minn mal-intimat;

Takkorda b’mod definittiv lir-rikorrenti l-kura u kustodja tat-tfal minuri hawn fuq imsemmija;

Tiddikjara l-intimat responsabbli sabiex jipprovdi post fejn tghix ir-rikorrenti u t-tfal;

Tikkundanna lill-intimat sabiex jipprovdi post fejn tghix ir-rikorrenti u t-tfal;

Tiddikjara li l-intimat iddekada minn kwalsiasi dritt li jitlob jew jippercepixxi manteniment minghand ir-rikorrenti, mentri hi jibqghalha d-dritt li tesigi minghandu l-hlas ta' manteniment ghaliha;

Tillikwida ammont adegwat ta' manteniment li ghandu jkun pagabbli mill-intimat lir-rikorrenti ghall-bzonnijiet taghha u tat-tfal li tkun fdata bil-kura u kustodja taghhom, filwaqt li tordna u tikkundanna lill-istess intimat sabiex ihallas lir-rikorrenti dik ir-retta alimentarja hekk likwidata, u tordna li dawn l-alimenti jigu direttament imnaqqsa mis-salarju jew qliegh tieghu mill-impjieg jew xoghol li huwa ghandu bi *standing order*, u tipprovdi dwar il-modalitajiet ta' kif l-istess manteniment ghandu jigi rivedut u jawmenta kull sena biex jirrifletti z-zieda fil-gholi tal-hajja;

Tapplika kontra l-intimat is-sanzjonijiet kontemplati fil-Kodici Civili fosthom dawk kontemplati fl-Art. 48 sa Art. 52.

Tinnomina Nutar Pubbliku sabiex jircievi l-att opportun li jinkorpora l-effetti kollha tas-sentenza u kuraturi sabiex jirrapprezentaw l-eventwali kontumacja tal-intimat f'kaz ta' bzonn;

Tiddikjara li l-intimat ghandu fil-pussess tieghu beni kollha totali u/jew parafernali tar-rikorrenti, u tikkundanna lill-intimat sabiex jirrestitwixxi lir-rikorrenti l-beni kollha dotali u/jew parafernali taghha li jirrizultaw waqt is-smiegh tal-kawza, u dana fi zmien qasir u perentorju li ghandu jigi lilu prefiss minn din il-Qorti u fin-nuqqas li l-intimat jaghmel dan tikkundannah ihallas lir-rikorrenti dik is-somma li ghandha tigi likwidata, okkorrendo bl-opera ta' perit nominandi rapprezentanti l-valur tal-beni dotali u/jew parafernali sudetti;

Bl-ispejjez kontra l-intimat li minn issa huwa ngunt ghas-subizzjoni.

Rat li, ghalkemm debitament notifikat, D B baqa’ ma rrispondiex ghall-kawza.

Rat id-dokumenti esibiti.

Rat l-affidavit prezentati.

Semghet ix-xhieda prodotti.

Rat l-atti kollha tal-kawza.

Rat li l-kawza thalliet ghal-lum ghas-sentenza.

Ikkunsidrat illi l-attrici qed taghmel it-talba taghha lil din il-Qorti minhabba eccessi, mohqrija, theddid u ngurji gravi min-naha ta’ zewgha fil-konfront taghha. Biex issostni l-allegazzjonijiet taghha, l-attrici xehdet hi u xehdu wkoll viva voce, membri tal-familja taghha.

L-attrici tirrakkonta diversi incidenti ta’ vjolenza kommessa fuqha minn zewgha.

“*When I was five months pregnant with my second child, he pushed me down the stairs. I went back to my parent’s house for a few days. Once again he came for me, always promising that he would not do it again, and once again I forgave him and went back.*

F was born in November 1999. Following one month from his birth, there was an incident where my husband turned violent and bit me. Since then, things did not improve but started getting worse.

He then started to use the children against me, and on a regular basis told them that I was not a good mother and that I did not care about them. He never missed the occasion to make me feel “nothing” in front of relatives and friends.

On various occasions he would push the kids down the chairs they sat on, dragged them through the corridor, and

also threw a pair of scissors at them. He also threw their books and copybooks out of the window and sometimes he used to hide their books so that they could'nt do their homework and he used to tell them that they had to do the homework with him because I was not able to help them. More than once he tore their homework just before going to school. He called his nine year old daughter a whore and also blamed her for the whole situation".

Omm l-attrici tikkonferma hekk fix-xhieda taghha:

"Kont nipprova nghinha kif stajt. Kont naf li kien hemm problemi ta' vjolenza domestika ukoll fil-konfront tat-tifla tieghi, l-ewwel darba li refa' idejh fuqha kienu ghadhom joqoghdu ghandna. Skuza ruhu mieghi u qalli li ma kinitx se terga' tigri l-bicca xoghol. Darba cemplitli meta kienet tqila, kien se jkollha t-tieni tarbija, u qaltli biex immur ghaliha malajr ghaliex kien imbuttaha t-tarag.

F'Gunju tal-2008, anke fuqi refa' idejh. Kien qalghali sinna u kelli mmur l-isptar. Kont rajtu jaqbadha minn rasha u jsabbatielha mal-art. Il-Pulizija kienu hadu proceduri kontrih u dawn huma decizi. Hu kien jerfa' idejh anke fuq it-tfal. Kont inkun jien li nehodhom il-polyclinic. It-tfal kien jabbuza minnhom anke psikologikament".

Il-Qorti ghalhekk, tqis li l-vjolenza da parti tal-konvenut giet ben pruvata ghas-sodisfazzjon taghha, ukoll tenut kont tal-principju dejjem stabbilit minn dawn il-Qrati li mhux incidenti sporadici minuri jirrendu gustifikata l-firda. L-incidenti rakkontati mill-attrici u ommha jixhdu pattern ta' vjolenza morali u fizika fil-konfront tal-mara u t-tfal tal-konvenut li ma jhallu ebda dubbju f'mohh din il-Qorti.

Il-qaghda finanzjarja tal-familja mbaghad hija mera cara tal-eccessi da parti tar-ragel fuq il-familja tieghu. Dan deher bic-car mill-bidu nett tal-hajja mizzewga.

Il-genituri tal-attrici kienu taw lill-attrici flus, dan fl-ammont ta' Lm20,000 biex tinxtara dar matrimonjali. Il-konvenut, wara ftit zmien, ghazel li jbieghha. L-attrici tghid:

“After two years that we have been living in Siggiewi, he made me sign a Power of Attorney so that he could sell the house. When I asked him where was the money he said that the sum was no longer available and that he was not going to give any explanations”.

Minn hemm ‘il quddiem, id-djun baqghu jizdiedu. Ziju tal-attrici jixhed illi kien sellef lill-konvenut.

“L-attrici tigi n-neputija tieghi. Hija t-tifla t’ohti. Ir-ragel taghha, D B, f’Novembru tas-sena 2004, talabni Lm5,000. Tajthomlu, kellu jaghtihomli lura fi zmien 3 gimghat. Qatt ma gew lura. F’Lulju tal-2007 tani Lm1,500 minnhom. Talabni garanzija bankarja u ghamiltlu garanzija ta’ Lm12,000. Bil-garanzija spiccajt inhallas €14,100. Talabni garanzija ohra, u meta gejt biex niccekkja kien lahaq gibed €27,400 li spiccajt kelli nhallas jiena ukoll. Issa ghandu 19-il mandat ta’ sekwestru pendenti fuqu. Naf illi ghandu problemi ma’ ex-employer tieghu, Foster Clarks, dwar flus ukoll fl-ammont ta’ 12,000. L-affarijiet nafhom ghaliex qabbadt lin-Nutara jaghmlu r-ricerki tieghu. Nispjega li mir-ricerki kien irrizulta illi l-flat illi hallset ghalih ohti, effettivament, inxtara minn loan u l-flus li tathom ohti ma nafx fejn spiccaw. Meta xtraw it-tieni dar, kienet dar tas-Sliema li xtara b’31,000. Naf li bis-sahha ta’ din id-dar huwa kien ghamel negozju ma’ zviluppaturi li kellhom jizviluppaw l-area kollha u ha flat ta’ Lm42,000, bieghu, 3 garage spaces li inbieghu Lm9,500 u hu biegh l-arja Lm20,000. Id-dar ma nbeghitx”.

Ghal dak li jirrigwarda l-kura u kustodja tal-ulied, il-Qorti hija sodisfatta li l-attrici hija l-genitur l-aktar idoneju biex ikollha l-kura u kustodja tat-tfal. Il-Qorti tirreferi ghar-rapport tal-Agenzija Appogg, ipprezentat in atti a fol. 43 et seq.

Fic-cirkostanzi, ghaldaqstant, il-Qorti taqta’ u tiddeciedi billi:

1. Tippronunzja s-separazzjoni personali bejn il-partijiet minhabba ragunijiet imputabbli esklussivament lill-konvenut.

2. Takkorda l-kura u kustodja tal-minuri E, F u G esklussivament lil ommhom.

3. Tiddikjara li l-konvenut iddekada minn kull dritt li jepercepixxi manteniment minghand l-attrici.

4. Tapplika kontra l-intimat is-sanzjonijiet kollha kontemplati fl-Art. 48 tal-Kap. 16 tal-Ligijiet ta' Malta.

5. Tikkundanna lill-konvenut irodd lura lil martu, is-somma ta' sitta u erbghin elf hames mija u sebgha u tmenin Ewro (€46,587), ekwivalenti ghal ghoxrin elf Lira Maltin (Lm20,000), li huma parafernali ghar-rikorrenti.

6. Tikkundanna lill-konvenut jghaddi lil martu, ghaliha, is-somma ta' mija u hamsin Ewro (€150) kull erba' gimghat u ghall-minuri, mitejn u hamsin Ewro (€250) kull erba' gimghat.

L-ispejjez tal-kawza jithallsu mill-konvenut.

< Sentenza Finali >

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