



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

**ONOR. IMHALLEF
NOEL CUSCHIERI**

Seduta tat-18 ta' Jannar, 2013

Citazzjoni Numru. 61/2003

**A B
vs
C D B**

The Court,

Having seen the writ of summons by virtue of which plaintiff premised: that the parties contracted marriage on the 28th November 1981, and from this marriage they have two children, of whom, Tania Michelle is still a minor; that defendant rendered himself guilty of adultery, excesses, cruelty, threats and grievous injury towards the plaintiff; that plaintiff had obtained the necessary authorization according to law to proceed with this case; on the strength of the above, plaintiff is requesting defendant to state why this Court should not: [1] pronounce the personal separation between the parties due to the adultery, excesses, cruelty, threats and grievous injury committed by the defendant towards his

wife; [2] give plaintiff care and custody of the minor child; [3] order defendant to pay plaintiff periodical maintenance, for herself and for the minor child [4] order the cessation of the community of acquests, its liquidation, and the division of these acquests between the parties; [5] order defendant to return to plaintiff her paraphernal property; [6] apply against defendant articles 48 and 51 of Chapter 16 of the Laws of Malta; with costs;

Having seen the note of pleas by virtue of which defendant, whilst agreeing with the plaintiff's first request, denies any responsibility for the marriage breakdown, attributing it solely and exclusively to plaintiff; does not oppose to plaintiff's second request so long as the plaintiff's behaviour when under the influence of alcohol does not prejudice the upbringing or the best interests of the child; opposes to plaintiff's request for maintenance for herself; as to the fourth request for the liquidation of the community of acquests, said request is not opposed in so far as with reference to the fifth request evidence has to be presented as to which are the items are dotal or paraphernal property of the plaintiff, defendant is not in possession of any of the plaintiff's belongings, also in the event that the plaintiff is declared as having forfeited her rights with regards to the acquests acquired primarily by the defendant's work, said forfeiture is to be applied when the division by identifying the objects acquired after such date as the plaintiff is found as being the party to have been responsible for the breakdown of the marriage; the sixth request is being opposed due to the fact that it was the plaintiff who has caused the marriage breakdown, hence no application of the dispositions at Law cited by the plaintiff apply, also plaintiff has forfeited a substantial portion of the community of acquests;

Having seen the counter claim filed by the defendant found in pages 19 and 20 here annexed [Appendix A].

Having seen the note of pleas to the counter claim of the defendant in pages 36 to 37 here annexed [Appendix B].

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Having seen the reports filed by the legal referee Advocate Doctor Vincent B;

Having seen all the acts of the case, including the sworn declarations of the parties, the list of witnesses, and the affidavits presented;

Having heard evidence on oath;

Having considered;

The Action and the Counter-claim

By virtue of the present action plaintiff is requesting this Court primarily to pronounce the personal separation between the parties for reasons attributable to defendant in terms of Articles 38 and 40 fo Chapter 16 of the Laws of Malta; as well as for this Court to regulate matters consequential to the separation, regarding the parties' minor child, maintenance, and the division of the community of acquests.

On his part, defendant is holding plaintiff to be solely and exclusively responsible for the marriage breakdown, in terms of Article 40 aforementioned.

The Personal Separation

The parties married on the 28th November 1981, and they have two children from this marriage, the youngest being Tania Michelle, who at the time of the filing of these procedures was still a minor.

Plaintiff's Version

The plaintiff alleges that her husband, the defendant, was abusive in her regard and would not give her any money for the housekeeping unless she asked for it. She states that after the birth of her second child the problems between the parties increased, "*he would call me names, infront of my eldest child and would tell her I had murdered my second child*"¹. She further alleges that

¹ Page 32.

defendant was violent both towards her as well as the eldest child, he would also threaten her and *“not giving me money, stopping me getting credit at local grocer refusing to pay phone bills, certain childrens expenses, pulling cable TV out... At first my husband would be verbally abusive usually when he'd been out drinking. He could call me names for hours. He has a bad temper and can lose it over something very small. Then he started pushing me and pulling me by my clothes. He has thrown things at me on many occasions. Once he grabbed me whilst I was holding my small daughter and pushed my head into a sink of water... punched a grandfather clock breaking the door... He would call me names fucking bitch, cow, useless bitch, murderer, dirty bitch, unfit mother... He once pushing me backwards, I sprained my ankle and could not walk on it for two weeks... He would scream and shout for hours... I have been dragged out of bed by my feet. Threatening to push me down the stairs and even trying to do it until my eldest stopped him ”*². This led the plaintiff to seek help from a social worker.

Plaintiff also states that her husband would stay out all night and that he had relations with another woman, as she was told by her daughter. She states that the defendant would come back home drunk and be abusive. *“Then he started on my eldest daughter he really beat her one evening and gave her a black eye and bruised her arm”*³.

On the 13th February 2003, the plaintiff claims to have left the matrimonial home together with their two daughters after having filed for personal separation in 2001.

Defendant's Version

Defendant claims that his wife had a very severe alcohol problem stating that *“During the last pregnancy she had got very friendly with a woman named Susan Portelli, who*

² Page 33.

³ Page 34.

*had an acute drinking problem and then they both of them started to meet during the day and drink lots of wines and spirits*⁴. Said Susan Portelli died at the age of 42, leaving her two children to be brought up by the defendant's friend Frank Portelli. The defendant felt that his wife's personality would change when she was drunk and hindered her ability to communicate with others. He described the plaintiff as being "*irritable, argumentative and created violence between myself [defendant] and my daughter*"⁵. Defendant states that his wife's problem with alcohol was throughout the whole marriage and continued together with her smoking even during the second pregnancy which, according to him, led to the demise of their daughter only after a month from childbirth, due to health complications⁶.

The plaintiff's drinking problem continued even throughout the pregnancy of their daughter Tanya, according to the defendant, claiming that "*I used to feel sick when I saw A breast feeding Tanya with a cigarette in one hand and a glass of wine in the other*"⁷. Their daughter Tanya is asthmatic and once again defendant blames his wife for the condition which their daughters suffers from. Defendant also states that he called the police on his wife several times and claims that this was so frequent that they finally gave up on going to their house.

The defendant claims that he felt, even during a very difficult time which he was going through due to pressures at work, that he was unable to talk to his wife due to the fact that she was always drunk. He also claims that the plaintiff had left for the United Kingdom with their daughters without his knowledge. In February 2003, when the defendant went home, he found that without his knowledge his family and furniture together with their pet had gone.

⁴ Page 334.

⁵ Ibid.

⁶ "*At the end of July Emma passed away and I kept blaming my wife for her death as A was drinking heavily and smoked 1 cigarette after the other during the pregnancy*". –

Ibid.

⁷ Page 335.

The defendant states that there were a number of attempts to help his wife but none of them proved fruitful, *"I have tried to get her help such as SEDQA or A.A. I also brought home 2 qualified people from A.A. one was Mr. Vivian Gatt and the other was Mr Gerald, but all in vein. I too went to A.A. meeting in Valletta. Even now that she left the matrimonial home, she still gets drunk and phones me at 1.00am to insult me, life is still very sad and lonely for all of us, all because of wine"*.⁸

Court's Considerations

After having examined all the evidence, the Court shares the same conclusion arrived at by the legal referee. Both parties have contributed towards the breakdown of this marriage. Plaintiff had a serious drinking problem which rendered everyday life and the matrimonial relationship extremely difficult, whilst defendant, on his part, was abusive towards his wife by using demeaning and insulting words resulting in a hostile environment. The parties' attitude and behaviour towards one another was abusive, and since this was repetitive, it rendered marital cohabitation unbearable for both of them. These actions qualify as acts of cruelty in terms of Article 40, and are such as to attract the application of Article 48 with regard to both parties, as from the 21 January 2003.

As to plaintiff's accusation of adultery, the Court observes that the evidence in this respect is unsatisfactory, and considers this allegation as not proven

Care and Custody

This aspect of the case is no longer relevant, as Tania Michelle has become of age during these proceedings.

Maintenance

⁸ Page 337.

Since Tania Michelle is no longer a minor, plaintiff's request for the payment of maintenance by defendant in respect of Tania Michelle, then still a minor, is no longer valid.

Regarding parties' request for alimony payable to them, the Court observes that, as above-established, they have forfeited under article 48 their respective right to claim maintenance from each other.

With regards to the arrears which are being claimed by the plaintiff, it is being observed that, after the decree dated 31st July 2007 whereby the plaintiff's maintenance was reaffirmed by the Court⁹, also the parties registered a note in the records of the proceedings on the 8 June 2005 whereby at that time they agreed that *"there are arrears of maintenance due by the husband in the amount of Lm2,020 which are going to be paid by the husband to the wife in further monthly instalments of not less than Lm25 each, and the balance due on the date of the final decision will be deducted from any money assigned to the husband from the division of the community of acquests"*¹⁰.

In the final note of submissions, the plaintiff states that only Lm300 have been paid by defendant, and this has not been denied or contested by the defendant in his note of submissions. Therefore, in the circumstances, and in default of any evidence to the contrary, the Court concludes that half of the said amount was maintenance due to the plaintiff for the minor child whilst the other half for maintenance to her as a spouse.

Therefore, in view of the fact that the plaintiff has forfeited her right to claim maintenance, the Court finds that the amount due as arrears by the defendant to the plaintiff is for the amount of Lm860 (Lm2,020 less Lm300, divided by two) equivalent to €2,003.26.

⁹ Page 564.

¹⁰ Page 371.

Community of Acquests and Paraphernal Property

The Court, having seen the evidence concurs with the observations made and the conclusions arrived by the legal referee in this respect in the section entitled "Xoljiment tal-Komunjoni tal-Akkwisti", as contained in pages 52 to 54 and 56 to 58 of his report. A copy of these pages is attached to this judgment and is to form an integral part of same. [Appendix C]¹¹. With the following exceptions and additions:-

1. The Court holds that the defendant did not furnish sufficient evidence with regards to his paraphernal credit in relation to the house he owned before marriage. In fact, even his own versions are conflicting in as far as he claims that the sum due to him in this regard is of 20,000 Sterling¹² whilst in another testimony he claims that the amount is of 17,000 Sterling¹³. Therefore, the defendant's claim is being rejected and is not be subtracted from the partition as suggested in the abovementioned report drawn up by the legal referee.

2. The Court holds that with regard to the loan to Anthony Gullaimier, the plaintiff had ample opportunity to file the appropriate procedure by instituting a case ad hoc as prescribed by the law. However, the he failed to do so and can now no longer contest said grievance in these procedures. Therefore, the Court agrees with the legal referee and confirms the conclusions he came to in this regard.

Correction in the defendant's name

The Court authorizes the correction of the defendant's name as requested by the plaintiff during the sitting of the 5th April 2004 to read C D and not D according to Article 175 of Chapter 12 of the Laws of Malta

¹¹ Vol.2 – pages 680-682

¹² Page 334.

¹³ Page 367.

Decide

For the above reasons, the Court decides on plaintiff's action by:

[1] acceding to request numbered [1], and pronounces the personal separation between the parties, on grounds attributable to both parties in equal portions;

[2] abstaining from deciding further on request numbered [2], since the child is no longer a minor;

[3] decides on request numbered [3], by abstaining from pronouncing itself on the maintenance for the child who is now of age, whilst rejecting the claim for maintenance for the spouses, since both parties have forfeited their respective right to receive maintenance; and instead orders that article 48 of the Civil Code be applied in its entirety to both parties;

[4] acceding to request numbered [4] and [5], and orders the cessation of the community of acquests, and that it be liquidated and assigned to the parties as above established and ordered in the section entitled **"Community of Acquests & Paraphernal Property"** ;

[5] acceding to requests numbered [6] in as far as articles 48 and 51 of Chapter 16 of the Laws of Malta are being applied to both parties;

For the above reasons, the Court decides on defendant's counter-claim as follows:

[1] regarding request numbered [1], as already decided above;

[2] accedes to request numbered [2];

[3] abstaining from deciding further on request numbered [3], since the child is no longer a minor;

[4] rejects request numbered [4];

[5] accedes to request number [5] as already decided above;

[6] accedes to request numbered [6], as already decided above;

[7] rejects numbered [7] for lack of satisfactory evidence in this respect;

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[8] abstaining from request numbered [8], in the light of the agreement reached by both parties referred to in the legal referee's report in page 54¹⁴;
[8] accedes to request numbered [9];
[9] rejects request numbered [10].

All expenses are to be borne by both parties in equal shares.

< Sentenza Finali >

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¹⁴ Page 682.