



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

**ONOR. IMHALLEF
NOEL CUSCHIERI**

Seduta tat-28 ta' Gunju, 2013

Citazzjoni Numru. 105/2005

**Jens Klein by virtue of decree dated 9th September
2011, Ivan Coleiro was appointed as special
mandatory of plaintiff**

Vs

**Dr. Beppe Fenech Adami and PL Mario Mifsud
Bonnici were appointed deputy curators by decree
dated 10th March 2005 to represented the absentee
Antonia Klien which decree was revoked on 27th June
2007 as defendant Antoina Klien now Sultana took on
personally the acts of proceedings and by decree
dated 11th February 2013 the deputy curators Dr.
Beppe Fenech Adami and P.L. Mario Mifsud Bonnici
were reintegrated in the proceedings.**

The Court,

Having seen the writ of summons by virtue of which plaintiff premised: that the parties contracted marriage on the 26th April 1996, and from this marriage they have no children; that defendant is guilty of adultery, abandonment, excesses, cruelty and grievous offences towards plaintiff so as to make the conjugal life between the parties impossible; 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 adultery, abandonment, excesses, cruelty and grievous offences which defendant committed against plaintiff; [2] declare that defendant has forfeited her right to receive maintenance; [3] order the cessation of the community of acquests, its liquidation, and the division of these acquests into two portions to be assigned to each party respectively; [4] apply against defendant articles 48 of Chapter 16 of the Laws of Malta; with costs;

Having seen the note of pleas by virtue of which defendant, whilst agreeing with plaintiff's first request, denies any responsibility for the marriage breakdown, attributing it solely and exclusively to plaintiff; that defendant obtained a divorce from the 7th District Court in and for the County of Lincoln in the State of Nevada in the United States of America which was registered in Malta; that the community of acquests has still not been terminated and liquidated and this notwithstanding the fact that the divorce was registered in Malta; that defendant agrees that the the community of acquests existing between the parties be liquidated and divided in two portions portions not necessarily equally and assigned to the parties; that there exist no circumstances to justify plaintiff's fourth request and that such sanctions should be applied to plaintiff;

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

That 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, and that the marriage has irretrievably broken down; as well as for this Court to regulate matters consequential to the separation, regarding maintenance and the division of the community of acquests.

On her part, defendant is holding plaintiff to be solely and exclusively responsible for the marriage breakdown.

The Personal Separation

The parties married on the 26th April 1996, and they have no children from this marriage.

Plaintiff's Version

In his affidavit¹ plaintiff explains how after a brief engagement the parties got married and defendant's family refused to go to their wedding and this due to the fact that "*Antonia's family disapproved of her lifestyle, particularly her extra marital affairs*"². Plaintiff states that defendant was married and divorced before the parties met and even in that relationship defendant was unfaithful with her then husband's friend. Defendant also had an affair with an African national from which they had a daughter whose name is Nicole Sultana and with whom plaintiff was very close with to the point that, according to plaintiff, all papers were drawn up for him to adopt the child, however defendant never filed the papers.

Plaintiff holds that "*... on the 30th April 1996, Antonia and I came to a business agreement. Based on my qualified education in Germany and her offer to use her house as a security for a Lm15.000 bank loan, we set up a company*

¹ Vol.1 – fol.53 et seq.

² Ibid.

called ELECTRIC VISION STUDIO LIMITED (C20070)... Antonia and I worked together to build our company... Over the course of several years, we built a well-known reputation for quality... On 19th April 2002 , Antonia and I set up another company, MONTION ART LTD (C29601)... This type of industry requires heavy investment into quality equipment. We made the necessary investments and these investments ran into tens of thousands of Maltese liri. This meant that our companies were for a number of years running at a loss. As time passed, we realized that we would soon be breaking even and would be reaping profits in a couple of years time. Unfortunately, this was not to be due to Antonia's actions about which I will elaborate... ”³.

Plaintiff attributes the cause of the breakdown of his marriage, to defendant's unfaithfulness with Reggie Harris. Plaintiff explains how in December 2003 the parties had agreed and prepared to move to the United States in order to have a good life there, when in March 2004 after a representative of an American company informed them that a colleague was coming to Malta and since plaintiff was going to be in San Francisco on a business trip, defendant offered to help with finding accommodation for him. Plaintiff states that defendant changed *“She talked about us working together rather than our being married. She coldly explained that she may not want to go to the United States after all and instead wants to stay in Malta”*⁴. Although plaintiff was shocked by this sudden change of heart especially since the car was already sold as well as other items and plans were done, he still agreed that they would discuss this and could continue to stay in Malta. However, after his return to Malta plaintiff noticed more changes in the defendant's behaviour becoming more aggressive in his regard for no reason and after a few days defendant moved out of the house with the daughter Nicole and went to live with Reggie Harris. Plaintiff claims that defendant even went on a trip to Sicily, told him that she wanted to

³ Ibid.

⁴ Vol. 1, fol. 54.

think about things and instead he got to know that she was there with Reggie Harris, which trip was paid for by the company and cost over Lm1,000.

Plaintiff alleges that defendant took "*internal papers from the office as well as accounts and databases*"⁵. Defendant also started another company, Phoenix Group Ltd., in direct competition with the parties' company and bearing the same address as Guardian whose owner was Reggie Harris, she also withdrew the funds from the company's account held with Bank of Valletta. Plaintiff states that upon his return from a trip to Turkey he went to the office only to find that "*Every single machine and all production-related tools, equipment, documents, etc. were gone. There was no forced entry and the only other person who had a key to the place was Antonia*"⁶. Plaintiff filed a police report to this effect⁷. According to plaintiff this meant that all the projects were lost and he would need to refund clients for the jobs that he could not finish because all the work was stored in those machines which were missing. Plaintiff further states that defendant stopped a cheque which was payment to the parties' company and asked for it to be deposited directly into the company's account, she transferred USD 16,960 to the Reggies Harris' company Guardian and withdrew Lm6,000 from the company's account. Plaintiff states that defendant took Lm30,000 worth of belongings⁸ which also include the pending jobs which could not be finalised since all the work was on the computers, plaintiff also had to pay Lm2,500 to a client which was a deposit on a job which could not be delivered. Furthermore, defendant redirected the company mail to a post box without plaintiff's consent.

⁵ Vol. 1, fol. 55.

⁶ Vol. 1, fol. 56

⁷ Vol. 1, fol. 81 "...reported that his wife also took with her 8 computers, sony broadcast monitor, digital disc recorder, several libraries, and another computer which held all the company's documents which are confidential. Apart from that his wife also drained the company's bank accounts which had about Lm 10000...from information he obtained from the bank the money from his company's account was transferred to Reggie Harris account in California America".

⁸ Vol. 1, fol. 57, "company equipment, computers, monitors scanners, visual effect station, graphic tablets, audio mixer, remote microphones, computer accessories, various literature and music libraries, DAT Tapes, Digital Disc Recorder".

On the 16th July 2004 a missing person report was filed by defendant's family, according to plaintiff, after defendant and her daughter did not contact anyone for three and a half months, subsequently the Interpol traced them in Las Vegas and close to the border of Mexico. It also resulted to plaintiff, after some research, that Reggie Harris has a criminal record which included fraud, and he was married. Also, after being contacted by the defendant's ex husband Manfred Folie, plaintiff got to know that she was unfaithful in her previous marriage too and also had left home with another man.

In 2004 plaintiff instituted proceedings in order for defendant to be removed from company director and legal representative in their companies⁹. During the same year, plaintiff also set up and registered another company by the name of Motion Art Films Limited in order to be able to settle the debts of the other companies.

After a year and a half plaintiff claims that defendant asked him for money and he sent her USD1,000, he also went to America to bring her to Malta at her request, he found her living with Reggie Harris and after he helped her leave she wanted to stay in America so he returned to Malta alone, this upset her family who refused to keep helping him with Motion Art and gave him two weeks to leave the office. In 2006, defendant returned to Malta, plaintiff claims that she took more equipment which was held as security with Ivan Coleiro for payment which was owed to him, the value of such equipment was of about Lm5,000.

Plaintiff states that defendant married Reggie Harris, she has all her personal items, the matrimonial home which was paraphernal belonging to her was sold by defendant and the remaining movable property was taken by Antonia's family before the house was sold.

Defendant's Version

⁹ Vol. 1, fol. 84 et seq.

Defendant states that the reason why her parents were not present at the wedding was because she was still married for the Catholic church and her father thought that plaintiff only wanted to get married so he could stay in Malta, she also claims that the other members of her family attended with the exception of her sister who was not in Malta whilst only plaintiff's mother was present from plaintiff's side of the family. Furthermore, defendant denies that her marriage ended due to infidelity but claims that it ended, and also got annulled, because she was not mentally and emotionally prepared for marriage.

Defendant claims that the parties entered into a business agreement prior to marriage and that the marriage was part of this agreement since she was insecure about starting a business on her own and plaintiff did not want to go back to Germany where he had problems with his family and had ended his long term relationship. Also, together with both their expertise, defendant states that both parties worked to build their company, however, had it not been for her property they would not have obtained the bank loan of Lm15,000 to start up the business. Defendant was not favourable to opening the second company and this was plaintiff's idea. She also agrees that the type of business required heavy investments and that they were running at a loss attributing this to plaintiff's shortcomings, poor employees and high rent.

Defendant states that plaintiff "*showed me no respect whatsoever, whatever I suggested or said was not of any value instead he used to continuously verbally abuse me, humiliating me in front of our employees, threatening me to leave me and get me out of my business and blaming me for anything that was not going well*"¹⁰. She also claims that plaintiff had an extra marital relationship with her sister Angele and also that plaintiff's trip to Turkey was "*a romantic getaway for my husband and sister*"¹¹, defendant also claims that there was another woman in London with whom he was having an affair. Defendant

¹⁰ Vol. 1, fol. 107.

¹¹ Vol. 1, fol. 110.

describes plaintiff as “*very domineering and a bitter person who believes that the world owes him something... has to have everything done his way in all areas of his life, irrespective of anyone and anything... it was never good enough and anything that went wrong was always my fault... Jens was never a husband nor a father to my daughter*”¹². Although defendant admits that plaintiff wanted to adopt her daughter however she claims that this was due to plaintiff becoming a Christian and wanting to integrate in the group.

With regards to moving to America, defendant states that this was only plaintiff's will and she felt that she had no choice but to follow. Defendant got to know later that other families had left everything to embark on the same project they were going to take over and lost everything.

Defendant admits that she changed but attributes this to the fact that “*I felt extremely relieved as though a weight had been lifted from my shoulders. Feelings very confused, I spoke to my social worker about my situation and he advised me that if I did decide to leave, not to take my daughter with me as he was aware of abusive nature of Jens. He envisaged that this abuse would escalate due to the fact that my family would but be there to see what was going on*”¹³.

Defendant admits that the expenses for Reginald Harris' car rental and flat was at the expense of their company. She also admits to re-directing the mail of the company and going to Sicily however claims that she never rented a car or payed for a hotel and that their company never had a credit card. She denies that she started up a company in direct competition with their own. She states that she appointed Guardian for consultancy since Reginald Harris was a consultant and admitted to “*I then transferred money in a holding account so that I could take care of myself and my daughter*”¹⁴, defendant confirmed that she transferred Lm5,000 as a payment to

¹² Ibid.

¹³ Vol. 1, fol. 108.

¹⁴ Vol. 1, fol. 110.

Guardian¹⁵, however in her cross examination she states that she never paid Guardian for the services, although she did pay Guardian to give her the money transferred¹⁶. She also admits taking some of the equipment, stating that it was the only way she thought she could get through to plaintiff and that she would return them when he would give her back access to her work station, so when she was contacted by the economic crime unit after a report was filed, she explained the situation.

Defendant claims that plaintiff never paid any bills, she also states that on her return from the United States the on location filming was not with Ivan Coleiro but with Matthew Pullicino and David Farrugia and she did ask them to return it to the office since her father wanted it as security for the debt plaintiff owed him. She also claims that she paid most of the debts with the sale of her house and that plaintiff also received commission on the sale of the house. Defendant admits that *"the equipment arrived as WYS/WYG paid for the freight but our personal belonging never arrived and i believe that they are still in transit as he never paid the shipment"*¹⁷.

Also, defendant claims that what she did was in order to safeguard herself and her daughter from *"personal loss and suffering"*¹⁸. She accused plaintiff of *"starting false and misleading rumors and blocking my access to the company equipment as well as destroying my private residence"*¹⁹. Defendant alleges that plaintiff committed fraud against the directors and shareholders of the companies, of hiding the amount of Lm45,000 together with equipment, using the money to fund Motion Art Films Ltd, tax fraud against herself, the companies, creditors and the government. She states that in her absence plaintiff continued to work earning over Lm45,000 in 2005 alone. She claims that plaintiff refused to pay the bills

¹⁵ Ibid.

¹⁶ Vol. 1, fol. 167 and 168.

¹⁷ Vol. 1, fol. 113.

¹⁸ Vol. 2, fol. 284.

¹⁹ Ibid.

amongst which VAT²⁰ in her absence, however the case with VAT was dropped after defendant made several appointments and submitted the missing returns, although in 2007 the department opened another case against her. She claims that in 2010 she was contacted by the tax department in connection with Motion Art Ltd. with regards to missing documents FSS and SSC where she explained that she was no longer the director. Defendant explained how plaintiff had left for the United States and she is the one left here to face liability on her own, she claims that she does not know the address of plaintiff but only that he resides in Pennsylvania.

Court's Considerations

The Court finds plaintiff's version of facts to be more credible than that of defendant. On the one hand, defendant accuses her husband of being abusive and was scared of him to the point of filing a temporary physical restraining order²¹ in the United States against him, but on the other hand, she called him up so he would send money for rent and was willing to talk things over admitting that "*maybe it was really me who was in the wrong*"²². Defendant's own father supported plaintiff and could see who was at fault in this marriage.

It also transpires through various evidence produced that plaintiff was not an easy character and his behaviour towards defendant was at times undesirable "*He also humiliated Antonia publicly*"²³, another witness stated that "*He treated her very poorly and often humiliated her in front of their employees and their clients*"²⁴. However, in his evidence David Farrugia who worked with the parties for 10 years claims that such incidents only happened twice or three times²⁵.

²⁰ Vol. 2, fol. 299 the sum of €401.31 to Vodafone, fol. 304 the sum of €195.83 to Maltacom and fol. 307 the sum of Lm11,058 as VAT.

²¹ Vol. 1, fol. 121.

²² Vol. 1, fol. 112.

²³ Vol. 1, fol. 127.

²⁴ Vol. 1, fol. 128.

²⁵ Vol. 1, fol. 162.

The Court observes that, whilst plaintiff's version of facts is corroborated by evidence of her defendant's own father, and members who testified to her adulterous relationship. Her father stated "*it-tieni zwieg taghha ma' Jens Klein tfarrak... peress illi fil-fatt Antonia bdiet relazzjoni extra maritali ukoll ma' terza persuna*"²⁶. He also confirmed that apart from having an extra-marital affair, his daughter also took computers and equipment of a substantial amount and that plaintiff did not even have anything to work with. By her own admission, defendant said that she met Reggie Harris in April 2004 and left with him in July 2004²⁷. While defendant stated that she was scared and uneasy to go to America with her husband due to the fact that she did not feel that things were stable enough and that she felt insecure, as a matter of fact she did not find any difficulty in going with a man she had just met when she decided to leave with Reggie Harris only three months after she met him. It is obvious to the Court that defendant had an extra marital relationship with Reggie Harris so much so that eventually they got married.

Given that plaintiff's version is supported by evidence produced, the Court is accepting this as the truthful version of the facts; and that consequently conjugal life between the parties is no longer possible, owing to adultery on the part of defendant in terms of article 38 of Chapter 16 of the Laws of Malta.

On the other hand, the Court finds no fault with plaintiff for the separation. The evidence shows that he kept helping defendant even after she had left for a year and a half.

As regards plaintiff's allegation of verbal abuse by defendant, the Court observes that from the evidence produced it has not been proved sufficiently that this was of a degree severe enough to cause the fear and insecurity which defendant claims. This also in the light of

²⁶ Vol. 1, fol. 147

²⁷ Vol. 1, fol. 165.

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the fact that defendant only sought help once and discontinued the sessions, never talked about it to her family or friends and never filed any police reports.

On the strength of the above, the Court concludes that the evidence fully justify the request for personal separation for reasons attributable solely and exclusively to defendant; and the Court is establishing the date of 31st July 2004 as the date of the personal separation²⁸.

Maintenance

As already explained above the Court has found defendant to have committed adultery and consequently has forfeited her right to claim maintenance. Furthermore, the sanctions contemplated in Article 48 of Chapter 16 of the Laws of Malta are being applied with regards to defendant.

Plaintiff made no request for maintenance.

Community of Acquests and Paraphernal property

In view of the considerations made above, the Court is hereby applying the sanctions contemplated in Article 48 of Chapter 16 of the Laws of Malta to defendant.

Matrimonial Home

It transpires that the matrimonial home was paraphernal property belonging to the wife which has already been sold.

Movables

It results from the evidence given, even by defendant, that all the items pertaining to her and her daughter where either taken by her, her relatives or shipped to her, even if she claims that some never reached her however, even she is convinced that plaintiff shipped said items. The Court orders plaintiff to give any information in his possession regarding the said shipping to defendant so that she may track and retrieve said items at her own expense.

²⁸ The date when defendant stated that she left with Reggie Harris.

Companies

Electric Vision Studio Limited (C20070)²⁹
Motion Art Limited (C29601)³⁰
Cyber Studios Limited (C27599)
Motion Art Films Limited (C34447)³¹

Liquidation and division of the Community of Acquests

Both parties made a claim of circa Lm30,000 towards one another; plaintiff's claim³² is for equipment and pending jobs which could not be finalized, whilst defendant's claim³³ is for the debts belonging to the community of acquests and which were paid for with the proceeds of the sale of her house which was her paraphernal property. Therefore, both claims in this respect extinguished each other.

With regards to the companies, the Court orders that in view of the fact that it has established the separation date to be 31 July 2004 and found defendant to be responsible for the breakdown of the marriage, orders that the companies which have been registered after the said date are to be assigned to plaintiff namely, Motion Arts Film Ltd (C34447).

With regards to the other companies which have been established prior to 31 July 2004, namely Electric Vision Studio Ltd. and Motion Art Ltd., the Court assigns these companies to both parties in equal shares.

As for Cyber Studios Limited, the Court is not in position to liquidate this asset due to insufficient evidence

²⁹ Vol. 1, fol.60.

³⁰ Vol. 1, fol.70.

³¹ Vol. 1, fol. 90.

³² Vol. 1, fols 42 and 57.

³³ Vol. 1, fol 120 and Vol. 2, fol 286.

produced in this regard, the date when it was set up and the relative shares could not be established by the Court since the memorandum and articles of association have not been produced. Also although this company was mentioned in plaintiff's initial note³⁴ as well as in the final note filed by plaintiff³⁵, there was no mention of it in his affidavit and no documentation was produced in this regard.

Plaintiff also claims that defendant transferred the amount of USD 16, 960. This has not been contested by defendant³⁶, hence defendant is ordered to reimburse plaintiff half of that amount, that is, the sum of USD 8,480.

Regarding the following amounts the evidence presented is conflicting, and the Court is therefore unable to establish the correct amounts, whether they were due and whether they were referring to the same transaction:-

1. Lm6,100 misappropriation from accounts of Motion Art Ltd. listed in plaintiff's note³⁷.
2. Lm6,000 cheque which Farsons paid for a job done by Motion Art³⁸,
3. Lm6,000 which plaintiff claims that defendant withdrew from the company account³⁹.
4. While being cross examined defendant was asked "Do you confirm withdrawing Lm6,000 from the company's account before leaving Malta? Answer: It is the same money that we are talking about. As director of the company I have to explain that I was dealing with the funds throughout our business. Question: I am being asked whether repayments were effected to Guardian or withdrawn by me Antonia Klein namely US Dollars 16,960 directly through an American Bank account in the name of Guardian, a cheque payment issued by Farsons plc which was transferred to Guardian Account of Lm6,000 and a further withdrawal from the company of another Lm6,000.

³⁴ Vol. 1, fol. 44.

³⁵ Vol. 2, fol. 357.

³⁶ admitted to transferring said amount Vol. 1, fol 168.

³⁷ Vol. 1, fol. 42.

³⁸ Vol. 1, fol. 56, plaintiff's affidavit.

³⁹ Vol. 1, fol. 57, plaintiff's affidavit

Is this correct? Answer: I do not recall these 3 separate payments. I do remember the 16, 000 US Dollars. At the moment I do not recall that the sum of Lm5500 in the Farsons cheque whether it formed part of the 16,000 or not”⁴⁰.

5. In his final note, plaintiff lists the following:-

“L-istess konvenuta zvojtat il-kontijiet kollha tas-socjeta Motion Art Films Limited u ttrasferiet is-somma ta' USD16,960 L-Amerika fuq kont ta' ditta bl-isem ta' Guardian.

Fl-affidavit taghha il-konvenuta tghid “I appointed ‘Guardian’ for consultancy. I then transferred money in a holding account so that I could take care of myself and my daughter”. U “ I did transfer the amount of Lm5,000 as a payment to Guardian”

Il-konvenuta sarrfet cekk ta' hames t'elef u mitt lira Maltin (Lm5,100) mahrug mis-socjeta' Simonds Farsons Cisk plc lil Motion Art Ltd.”⁴¹.

As is evident from the above, not only are there inconsistencies from the evidence produced but the sums indicated keep changing when referring to the same transaction such as the amount of the cheque issued by Farsons.

With regards to Middles Sea Valletta funds⁴², no evidence has been produced.

With regards to the 's claim to “Liquidated Damages”⁴³, the Court finds that this has no basis.

Debts

All debts which are still pending are to be borne by both parties in equal shares, while plaintiff will be solely

⁴⁰ Vol. 1, fol. 168 and 169.

⁴¹ Vol. 2, fol. 358.

⁴² Vol. 1 fol. 104.

⁴³ Vol. 1, fol. 105.

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responsible for the debts in connection with Motion Arts Film Ltd. (C34447).

Decide

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

[1] abstaining in part from deciding on the first request since the parties have obtained a divorce, but attributes the breakdown of the marriage to the defendant's adultery;

[2] acceding to request number two and four and orders that Article 48 of Chapter 16 of the Civil Code be applied in its entirety against defendant;

[3] acceding to request numbered three, and orders the cessation of the community of acquests as from July 2004 and orders that the community of acquests be liquidated and assigned to the parties as above established and ordered in the section entitled "Community of Acquests and Paraphernal Property";

All expenses are to be borne by defendant.

< Sentenza Finali >

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