



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

**ONOR. IMHALLEF
NOEL CUSCHIERI**

Seduta tad-29 ta' Novembru, 2013

Citazzjoni Numru. 148/2009

**A B
vs
C D**

The Court,

Having seen the writ of summons by virtue of which plaintiff premised: that the parties contracted marriage on the 1st December 2000, and from this marriage they did not have any minor children; that conjugal life between the parties has become impossible for reasons attributable to defendant namely excesses, cruelty, threats and grievous injury against the plaintiff, and that the marriage has irretrievably broken down; that conjugal life between the parties has become impossible due to character incompatibility; 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 for reasons attributable solely to the defendant; [2] declare that the matrimonial home is the paraphernal property of the plaintiff; [3] authorizes the plaintiff to live exclusively in the matrimonial home; [4] order defendant to pay plaintiff periodical maintenance, also providing for cost of living increase [5] apply against defendant sections 48 and 51 of Chapter 16 of the Laws of Malta; [6] apart from declaring that the matrimonial home is the plaintiff's paraphernal property, order the cessation of the community of acquests, its liquidation, and the division of these acquests between the parties by applying the sanctions indicated in the articles above-mentioned mentioned; [7] order defendant to return to plaintiff her paraphernal property including the matrimonial home or its value; with costs;

Having seen the note of pleas by virtue of which defendant, whilst preliminarily stating that he is of English nationality and does not read Maltese, hence all acts notified to him are to be in the English language, agreeing with the plaintiff's first request however denies any responsibility for the marriage breakdown, attributing it to the plaintiff whereby a counter-claim is being filed to this effect; opposes to plaintiff's second and third request, opposes to plaintiff's request for maintenance and this in view of the fact that the reason for the marriage breakdown is to be attributed to the plaintiff and therefore she has forfeited her right to maintenance and also since the plaintiff is capable of working and maintaining herself; opposes to plaintiff's fifth request since the breakdown of this marriage was not is not to be attributed to him and consequently he should not be made to suffer the legal consequences; does not oppose to the sixth request in as far as the liquidation and dissolution of the community of acquests however the defendant opposes to the declaration that the matrimonial home is the plaintiff's paraphernal property and that the sanctions requested are applied to the defendant; opposes the seventh request; opposes to the expenses;

Having seen the counter claim by virtue of which defendant premised: that he wishes to prevail himself of his right to a counter claim; that the parties contracted marriage on the 1st December 2000, and from this marriage they did not have any minor children; that conjugal life between the parties has become impossible for reasons attributable to plaintiff, adultery, excesses, cruelty, threats and grievous injury against the defendant; that defendant had obtained the necessary authorization according to law to proceed with this case; on the strength of the above, defendant is requesting defendant to state why this Court should not: [1] pronounce the personal separation between the parties for reasons attributable solely to the plaintiff due to adultery, excesses, cruelty, threats and grievous injury which made the matrimonial life impossible; [2] order the plaintiff to pay defendant maintenance; [3] order the cessation of the community of acquests and its liquidation, and that a date is to be established from when the plaintiff is to be considered to have forfeited all acquisitions made through the work of the defendant; [4] liquidate the defendant's paraphernal property and assign them to him; [5] authorize the defendant to live in the matrimonial house with the exclusion of the plaintiff; [6] apply against the plaintiff the sanctions as contemplated in Sections 48, 51 and 52 of Chapter 16 of the Laws of Malta; with costs;

Having seen the note of pleas by virtue of which plaintiff, whilst agreeing with the defendant's first request however the faults for the marriage breakdown are to be attributed the defendant; opposes plaintiff's request for maintenance and this in view of the fact that the reason for the marriage breakdown is to be attributed to the defendant and therefore he has forfeited his right to maintenance and also since the defendant is capable of working and maintaining himself; agrees that the community of acquests should be dissolved, liquidated and divided however the sanctions provided in the law are to be applied against defendant; that plaintiff does not possess any paraphernal property pertaining to the defendant; objects that the defendant lives in the

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matrimonial home; that the sanctions provided in the law are to be applied against defendant.

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

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 in terms of article 40 of Chapter 16 to the Laws of Malta, and that the marriage has irretrievably broken down; as well as for this Court of regulate matters consequential to the separation, regarding 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 articles 38 and 40 of the aforementioned Chapter.

The Personal Separation

The parties married on the 1st December 2000, and no children were born of this marriage.

Plaintiff's Version

In her affidavit¹ plaintiff complains of defendant's drinking problem which according to her kept getting worse, and also that "*Chris used to get abusive physically but I quickly put a stop to that. Verbally he continued to be abusive and sometimes he used to threaten me. Once he pulled my handbrake while I was driving and I crashed into a wall*"².

¹ Vol.1 – fol.31 et seq.

² Vol. 1 – fol. 32.

She continues by saying that defendant used to belittle her, insult her by calling her names. Plaintiff felt that *“Even going out with him and together with my friends was becoming a trauma as he was constantly belittling me. His behaviour got really bizarre when his daughter came to live in Malta. I saw him several times kissing her on the lips and taking pictures of her breast... Chris started to stay out very late or staying out most nights. He was constantly drunk and reeking of alcohol”*³.

Plaintiff states that she was the one who used to provide mainly for the family and it was through her efforts that the business was set up. She insists that the defendant ran the parties into a lot of debts due to his lifestyle which included the purchase of a motorbike which he got in order to be like his friend, he used to buy *“designer clothes and all the latest gadgets known to mankind”*⁴, and claims, while she was struggling to maintain the family including her two sons of a previous relationship. She maintains that the defendant's debts kept growing. These included not just bank loans, which she felt she had to sign for, but also taxes such as VAT and National Insurance contributions, as well as tax.

Plaintiff describes defendant as being greedy, not only has he kept the money from the items he sold which belonged to the plaintiff such as the TV and the Fiat 127 but she was made to pay him back of any money she had borrowed to buy bread and milk when she had financial difficulties after her business closed down and she had to find a job. She states that she used to buy all the food, clothes for her sons, their schooling, telephone bills as well as half the mortgage.

Plaintiff also claims that the defendant used to boast with his ex-wife that *“he married me for a permit, but that it was all a scheme to live the life of a king and impose everything on us especially his debts”*⁵. She states that

³ Vol. 1 – fol. 33.

⁴ Ibid.

⁵ Vol. 1 – fol. 34.

“the turning point was when he threatened to scar my face and he was ready to do time on my behalf”⁶

Defendant's Version

Defendant states that he met plaintiff while she was having problems with her former husband. They started off as friends and as the problems between the plaintiff and her former husband escalated, the relationship between the parties grew and evolved into a romantic one which eventually led to marriage. He claims that *“after some time A became pregnant and told me that she had to have the unborn child terminated because if her husband got to know he could apply for custody of her two sons on the grounds of adultery so she travelled to England to carry out the termination which was very much against my will”⁷*. Defendant also states how A's parents did not know that their daughter had got remarried and he felt that the plaintiff was ashamed of him.

The defendant denies that he was abusive towards his wife. He describes how there was a time when things were a bit difficult for him, this due to tragic circumstances which happened to his family, he says that *“pressures of running a business, my son taking his own life, my nephew killed in an accident the day after did not make me the happiest person to live with”⁸*. He also denies being abusive towards the plaintiff's children and states that he helped them as much as this was possible to him since they were respectful towards him. With regards to drinking, the defendant claims that *“at the beginning of our relationship I used to like a drink and to socialise and A was aware of this and on many occasions would join me”⁹*.

Regarding plaintiff's allegations about the defendant being inappropriate with his daughter, he states that he had reunited with his daughter after 21 years, she moved to

⁶ Ibid.

⁷ Vol. 3 – fol. 758

⁸ Ibid.

⁹ Vol. 3 – fol. 759.

Malta and they were both very happy to build up their relationship as father and daughter. Defendant states that, *"I tried to make up for a lot of lost time and we got really close, her good morning dad was a peck on my lips as she was so happy to have found her dad again and by no stretch of the imagination was this in any perverse way whatsoever as it was just a closeness between father and daughter...my daughter asked me to take some photos of her for her boyfriend back home so I did, one of which was of her breasts but of course she was wearing a bikini and it was for her boyfriend and not in the unbelievably perverse way A will have people believe"*¹⁰. He says that although things started off well, the relationship with his daughter degenerated to the extent that plaintiff had to call the police to have his daughter removed from the house.

Defendant claims that the breakdown started when he started suspecting that his wife was having an affair *"she became distant which she always denied and blamed our problems on drink which led to many arguments and bad atmosphere around the home until things got considerably worse"*¹¹. Notwithstanding this, he still attempted to salvage the marriage and suggested a dinner for their anniversary which at first was accepted by the plaintiff, but she then changed her mind and an incident followed. Defendant alleges that this led to an incident between him and the plaintiff's sons whereby one of the sons injured him and police reports were filed, however, the defendant claims that he withdrew legal action.

Defendant filed for separation on the 1st December 2008, he states that he did this after *"I spoke to my wife to see if we could put all this behind us but she was adamant that she did not wish to be with me any longer"*¹². He also states that he had to leave the matrimonial home due to the fact that *"the situation in our home became intolerable"*¹³.

¹⁰ Ibid.

¹¹ Vol. 3 – fol. 760.

¹² Ibid.

¹³ Vol. 3 – fol. 761.

Court's Considerations

The Court observes that the evidence produced is scarce, the versions of the parties and the plaintiff's two sons have been produced with no cross-examination to any of the witnesses, whilst defendant's version of facts lacks corroboration, and contrasts with plaintiff's version, the latter version is supported by plaintiff's sons who testified to defendant's abuse of alcohol, abusive behaviour towards them and their mother, the plaintiff as well as regarding the financial situation.

Given that defendant did not produce any evidence to sustain any of his allegations with regards to the breakdown of the marriage other than his own version of events, on a balance of probability the Court is accepting the plaintiff's version as the truthful version; and that consequently conjugal life between the parties is no longer possible, due to defendant's abusive behaviour which has rendered cohabitation unbearable for plaintiff, and which qualify as acts of "cruelty" and "threats" in terms of article 40 of Chapter 16 of the Laws of Malta. Also, the marriage has irretrievably broken down.

On the other hand, the Court finds no fault on the part of the plaintiff for the separation. The evidence, included that given by the defendant, shows that plaintiff has always made efforts even with his family "*my own mother came to Malta several times to see us and A always made her feel welcome... A made her stay a happy one and took her out paid for most of the things she needed etc. Which I admitted that this was wrong of me for putting all the responsibility on A*"¹⁴. Also, regarding his daughter, defendant admits that "*A welcomed her with open arms and they got on really well... she came to stay in our home and things were just fine and I was really happy and my daughter Sarrina got along with my wife*"¹⁵

¹⁴ Vol. 3 – fol. 759.

¹⁵ Ibid.

As regards defendant's allegation of plaintiff's adultery, the Court observes that this allegation finds no corroboration in the evidence.

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 the 14th May 2009 as the date of the personal separation. Also, defendant's abusive behaviour renders applicable in his regard article 48 in its entirety.

Maintenance

Regarding plaintiff's request for maintenance the Court holds that, since plaintiff is gainfully employed, *rebus sic stantibus* no alimony is being established. However, considering that the separation is attributed solely to defendant, and that the Court has found no fault on the part of plaintiff, the Court is affirming plaintiff's right to request of defendant the payment of maintenance to her, in the event that, for reasons beyond her control, she would be unable to provide for her own maintenance.

On the other hand, defendant has forfeited his right to request from plaintiff the payment of any maintenance, in terms of aforementioned article 48.

Community of Acquests and Paraphernal property

Matrimonial Home

The plaintiff purchased the matrimonial home "Tulip One", Etna Street, Mellieha by virtue of a deed in the acts of Notary Dr. Tonio Cachia dated 3 May 1999¹⁶, hence prior to the parties' marriage.

Subsequently, by virtue of a deed in the acts of Notary Dr. Tonio Cachia dated 19 January 2006 the parties agreed

¹⁶ Vol. 3 – fol. 766.

that “*in the case that the appearers legally separate, or divorce, or their marriage is annulled than the property is to be transferred unto third parties and appearer C D is to receive fifty per centum of the sale price from which there shall be deducted fifty per centum of all the expenses incurred in the sale*”¹⁷.

In this regard the parties' intentions were very clear, so much so that they went as far as to draw up a deed whereby they specifically catered for the eventuality of a separation. Therefore, according to their agreement, the matrimonial home is to be put up for sale, and the proceeds are to be divided equally between the parties after all relative expenses have been deducted therefrom and paid. Having seen the sworn note filed by the plaintiff dated 1 August 2013¹⁸ whereby the value given to the matrimonial home is of the sum of €160,000; having seen the note filed by the defendant whereby the matrimonial home is being valued at €209,643; having seen that during the hearing of the 25 October 2013 the parties agreed that the value of the said house is €186,350. the Court orders that the matrimonial home be sold on the open market for a price of not less than €186,350 within a year, and in the event that the sale is not effected, either party has the right to request a judicial sale by auction according to law.

Movables and Vehicles

In her note of submissions, plaintiff states that “*tordna lill-konvenut jirirona lura id-dar dawk l-oggetti li ittiehdu minnu fil-mori ta' dawn il-proceduri. Dwar dan illum il-gurnata ma tant hemm x'inghad u ghalhekk huwa l-opinjoni tal-attrici li l-konvenut ghandu jibqa' b'dak li ha mid-dar matrimonjali bhala sehmu mill-komunjoni tal-akkwisti u dan ghas-saldu ta' kull pretensjoni li seta' kellu kontra id-dar matrimonjal*”¹⁹. She also states that, “*jirrizulta skont in-nota pprezentata mill-attrici nhar it-28 ta' Mejju 2009 li mhjiex kontestata mill-konvenut li huwa*

¹⁷ Vol. 3 – fol. 771.

¹⁸ Vol. 4 page 824.

¹⁹ Vol. 4 – fol. 798.

*ghandu fil-pussess tieghu stante li dawn gew mehuda minnu arbitrarjament Plasma screen 32 inch tal-marka Philips, Surround system tal-marka Panasonic, stereo tal-marka Aiwa, Laptop tal-marka Toshiba, zewg digital cameras tal-marka HP u Canon rispettivament, DVD player tal-marka Panasonic, decoder tal-Melita u radio tal-
kcina. Naturalment l-attrici hija intitolata ghal sehma minn dawn l-oggetti pero' din il-Qorti ghandha arbitrio e boni viris tiddikjara li dawn l-oggetti ghandhom jibqghu f'idejn l-konvenut filwaqt li l-attrici izzomm l-oggetti kollha li jinsabu illum fid-dar matrimonjali inkluz l-ghamara*²⁰.

The defendant in this note of submission states that he “does not object that plaintiff be assigned the furniture on condition that he is assigned the motorcycle CWP 001 and all movables in his possession”²¹. However, the plaintiff demands compensation for the motorcycle CWP 001²².

Both parties agree that the motor vehicle with registration number TAN-013 is to be retained by the plaintiff²³, while the BMW CAC 026 is to be assigned to the defendant²⁴.

The Court holds that having regard to the parties' submissions as above stated and in view of the fact that the defendant is being found solely responsible for the breakdown of the marriage, orders that each party be assigned all the objects which at present are in their respective possession, whilst the motorcycle CWP 001 is being assigned to the defendant and orders the latter to pay plaintiff half of the current market value of the said motorcycle.

In the case of failure of the parties to agree on the value of this motorcycle, the Court orders that it be valued by Mr. Joseph Zammit who is being hereby appointed court-

²⁰ Vol. 4 – fol. 799.

²¹ Vol. 4 – fol. 812.

²² Vol. 4 – fol. 799.

²³ Vol. 4 – fol. 799 & 811.

²⁴ Vol. 4 – fol. 798 & 811.

expert for this purpose, at the equal expense of both parties.

Business

Having seen the sworn note filed by plaintiff dated 1 August 2013²⁵ whereby the value given to the business is of the sum of €93,175; having seen the note filed by the defendant whereby the business is being valued at a deficit of €34,643; having seen that during the hearing of the 25 October 2013 the parties were unable to reach an agreement on the value of the defendant's business, the Court holds that, since the value of the business has not been satisfactorily established in these proceedings, the liquidation of this business is being reserved to separate judicial proceedings, whilst at the same time this Court affirms the parties' equal share therein.

Bank Deposits and other Monies

The Court holds that each party is to retain all bank accounts in their respective names whilst joint accounts in both parties' names, if any, should be closed and divided equally between the parties.

Loans

The Court holds that all loans related to the business are to be dealt in appropriate proceedings to be instituted by the parties, whilst any other debts burdening the community of acquests which are not connected with the business and have been done with the knowledge of both parties are to be borne by both parties in equal shares. Any contention regarding loans which were done not with the consent of either of the parties should be dealt with in the separate proceedings.

Decide

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

²⁵ Vol. 4 page 824.

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[1] acceding to request numbered one, by pronouncing the personal separation between the parties and declaring defendant solely responsible for the separation;

[2] acceding to request numbered two, without prejudice to defendant's rights as per deed dated 19th January 2006, in the records of Notary Doctor Tonio Cachia;

[3] rejecting request number three;

[4] rejecting, at this stage, request number four in terms of the section entitled "Maintenance";

[5] acceding to request number five;

[6] acceding to requests numbered six and seven limitedly by ordering 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**";

Decides on defendant's counter-claim as follows:

[1] accedes to the first request limitedly, and in the sense decided above;

[2] rejects request numbered two;

[3] accedes to request numbered three limitedly, and in the sense decided above;

[4] rejects request numbered four, since no evidence was produced in this respect;

[5] rejects request numbered five;

[6] rejects request numbered six;

All expenses are to be borne by defendant.

< **Sentenza Finali** >

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