



COURT OF APPEAL

**HIS HONOUR THE CHIEF JUSTICE
SILVIO CAMILLERI**

**THE HON. MR. JUSTICE
TONIO MALLIA**

**THE HON. MR. JUSTICE
JOSEPH AZZOPARDI**

Sitting of the 31st January, 2014

Civil Appeal Number. 61/2003/1

Margaret Galea

v.

Mario Valmore Galea

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 behavior 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;

“Having seen the note of pleas to the counter claim of the defendant;

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

“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 of 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.”

Having seen the judgment given by the Civil Court (Family Section) on the 18th January 2013 whereby the Court decided:

“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;

“[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 54¹;

“[8] accedes to request numbered [9];

“[9] rejects request numbered [10].

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

The Court reached its conclusions thus:

“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, in front of my eldest child and would tell her I had murdered my second child”*². She further alleges that 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*

¹ Page 682.

² Page 32.

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 ”³. 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”⁴.*

“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 had an acute drinking problem and then they both of them started to meet during the day and drink lots of wines and spirits”⁵. 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”⁶. 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*

³ Page 33.

⁴ Page 34.

⁵ Page 334.

⁶ Ibid.

their daughter only after a month from childbirth, due to health complications⁷.

“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 Margaret breast feeding Tanya with a cigarette in one hand and a glass of wine in the other”*⁸. 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.

“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”*.⁹

“Court’s Considerations

⁷ “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.

⁸ Page 335.

⁹ Page 337.

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

"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 Court¹⁰, also the parties registered

¹⁰ Page 564.

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”*¹¹.

“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.

“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.¹² 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 Sterling¹³ whilst in another testimony he claims

¹¹ Page 371.

¹² Vol.2 – pages 680-682

¹³ Page 334.

that the amount is of 17,000 Sterling¹⁴. 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."

Having seen the appeal application of plaintiff whereby she is requesting that this Court varies the judgment in the sense that:

"1. It upholds appellant's first ground of appeal and consequently accedes to plaintiff's first request in her writ of summons in its entirety and dismiss defendant's first request in the counter-claim filed by him.

"2. It upholds appellant's second ground of appeal and consequently accedes to plaintiff's third request limitedly and in so far as it relates to the request of maintenance due to her personally whilst refraining from pronouncing itself on maintenance for the child who is now of age, and consequently annul and reverse the decision of the Civil Court (Family Section) wherein it has that decided that the plaintiff has forfeited her right to receive maintenance and where it has ordered the application of article 48 of the Civil Code with respect to the plaintiff;

"3. It upholds appellant's third ground of appeal and consequently reverses the order made by the Civil Court (Family Section) whereby it has decided to reduce the arrears of maintenance due by defendant to plaintiff and instead order defendant to pay unto plaintiff the arrears of maintenance as agreed and minuted between parties;

¹⁴ Page 367.

“4. It upholds appellant’s fourth ground of appeal and consequently varies the fourth part of the Civil Court (Family Section) judgment referable to the fourth request in the writ of summons and to the sixth request in defendant’s counter-claim and instead orders that the debt due to Anthony Gullaimier is to be defendant’s sole responsibility or in default order said alleged debt is to be apportioned only in the eventuality that it is canonized by a court judgment and;

“5. It upholds appellant’s fifth ground of appeal and orders defendant to pay unto plaintiff half the sum of all withdrawals made by him before the institution of the separation proceedings;

“and confirms the remainder of the judgment in its entirety.

“Expenses of both instances are to be borne by defendant.”

Having seen the reply filed by defendant whereby, while rebutting plaintiff’s appeal, he also pointed out two alleged inaccuracies in the part of the judgment relating to the community of acquests although not filing a cross appeal;

Having seen that the case was put off for judgment on the 5th November 2013 after submissions by both counsel;

Having considered:

That appellant feels aggrieved on five grounds as clearly indicated in the appeal application;

The Court shall therefore treat these issues accordingly.

First Ground

The first ground of appeal regards the attribution of fault for the breakdown of the marriage. The Family Court held that both parties were at fault in equal measure; appellant

is asking the Court to attribute the whole fault to defendant.

As already stated above, both parties tried to attribute fault to the other party during the proceedings before the Family Court. The Court, shared the conclusion reached by the legal referee who reported extensively about the matter and had the advantage of hearing the witnesses.

This Court having examined the records of the case has no reason to disagree with the conclusions of the Family Court. Appellant feels aggrieved that the First Court found her equally responsible for the breakdown of the marriage mainly because she claims that defendant was responsible for this owing to adultery committed by him. However the First Court agreed with the legal referee and held that this was not proved although defendant was guilty of other abusive behavior thus rendering him equally responsible for the breakdown of the marriage; appellant's drinking problems however, were also responsible. It is quite clear that the parties ended up living in a '*sistema costante di vessazione e di disprezzo, di oltraggio e di umiliazioni che rendono almeno insopportabile l'abitazione e la vita comune*'. (**Caterina Agius v. Benedict Agius** – Prim'Awla 13 ta' Gunju 1967).

Therefore the first ground is rejected.

The Second Ground

Appellant feels aggrieved that the Family Court refused her request for maintenance, holding that she forfeited her right thereby applying the provisions of Article 48 of the Civil Code. This reads as follows:

"48. (1) The spouse who shall have given cause to the separation on any of the grounds referred to in articles 38 and 41, shall forfeit –

"(a) the rights established in articles 631, 633, 825, 826 and 827 of this Code;

“(b) the things which he or she may have acquired from the other spouse by a donation in contemplation of marriage, or during marriage, or under any other gratuitous title;

“(c) any right which he or she may have to one moiety of the acquets which may have been made by the industry chiefly of the other spouse after a date to be established by the court as corresponding to the date when the spouse is to be considered as having given sufficient cause to the separation. For the purposes of this paragraph in order to determine whether an acquet has been made by the industry chiefly of one party, regard shall be had to the contributions in any form of both spouses in accordance with article 3 of this Code;

“(d) the right to compel, under any circumstances, the other spouse to supply maintenance to him or her in virtue of the obligation arising from marriage.”

Article 51 however grants the Court discretion whether to apply this section in the event that the separation is granted on the ground mentioned in section 40 (excesses, cruelty, threats, grievous injury):

“51. Where separation is granted on any of the grounds mentioned in article 40, it may produce any of the effects mentioned in article 48, if the court, having regard to the circumstances of the case, deems it proper to apply the provisions of that article, in whole or in part.

“52. It shall also be in the discretion of the court to determine, according to circumstances, whether the provisions of article 48 shall be applied, wholly or in part, in regard to both spouses or to one of them, or whether they shall not be applied at all in regard to either of them, if both spouses shall have been guilty of acts constituting good grounds for separation.”

In the circumstances the Court agrees that applicant should not forfeit her right of maintenance mainly because despite her proven drinking problem she was not helped by respondent in her predicament and the problem itself was aggravated by the problems she encountered in her marriage.

However, in the present scenario, there is no reason to order defendant to pay her maintenance since now he is a pensioner, and applicant has a job. Therefore there is no **need** as indicated in section 20 of the Civil Code; as this Court held in the case **Catherine Mifsud v. Louis Mifsud** decided on the 25th October 2013. *Il-manteniment ma huwiex xi dritt sagrosant ta' min jissepara izda jigi ordnat il-hlas tieghu meta **hemm il-bzonn** (L-Artiklu 20.1 tal-Kodici Civili jghid li l-manteniment ikun dovut skond **il-bzonn ta' min qed jitolbu**).*

Therefore this Court while declaring that applicant has not lost her right to claim maintenance decides it has no reason to award such maintenance, *rebus sic standibus*.

The Third Ground

Appellant feels aggrieved that the Family Court ordered her to refund maintenance arrears she had received *pendente lite* on the ground that the Court refused her demand for maintenance in the final judgment.

This Court feels that this ground is well founded. Independently of whether appellant is entitled to maintenance, a legal copy of an agreement (registered in a minute recorded in the records of that case) reached during a criminal case between the parties on the 2nd June 2005 was exhibited in the records of this case.

As appellant rightly says in her application, that such an agreement is binding on the parties; it was held in the case **Bartolo v. Caruana** (11th December 1992 – Civil Court) that:

“... il-verbal mismum mir-registratur b’ordni tal-Qorti jorbot lill-kontendenti b’sahha ta’ kwazi kuntratt gudizzjarju.

“Il-verbal li jsir f’isem il-partijiet quddiem il-Qorti bhala transazzjoni ta’ kontroversja ta’ bejnithom jikkostitwixxi att pubbliku u bhala tali huwa kuntratt ... il-verbal jikkostitwixxi transazzjoni validament maghmula b’att pubbliku bhal ma huwa verbal tal-Qorti peress li f’verbal simili r-Registratur huwa appuntu ufficjal pubbliku... (artiklu 940 tal-Kodici Civili)”

Consequently the Court accepts this ground and will revoke this part of the judgment.

The Fourth Ground

This ground refers to that part of the judgment whereby the Family Court held that appellant was co-responsible with defendant for the repayment of a loan made to defendant by Anthony Guillaumier.

The Court also agrees with this ground; Mr. Guillaumier is not a party to the case and has never instituted legal proceedings to recover the loan despite filing a judicial letter way back in 2001. Naturally, should he institute a law suit it would be up to the Court hearing the case to decide whether both parties are liable to repay the loan.

Appellant is also right in this regard to refer to section 1326 (4) and (5) of the Civil Code which clearly apply in this case:

“(4) The spouse who has not instituted the action for annulment within the stipulated time and who has not expressly or tacitly ratified the act, shall nevertheless have an action to compel the other spouse to reintegrate the community of acquests or, where this is not possible, to make good the loss suffered.

“(5) Saving the preceding provisions of this article, where in any act which requires the consent of the other spouse and which relates to movables, a spouse has

acted unilaterally, there shall be no right competent to the other spouse to demand the annulment of the act; where however, the other spouse has not ratified such act, whether expressly or tacitly, such spouse shall have an action to compel the spouse who has acted unilaterally to reintegrate the community of acquests, or where this is not possible, to make good the loss suffered.”

Therefore the Court accepts this ground as it is well founded.

The Fifth Ground

Through this ground appellant is requesting the Court to order defendant to repay monies which according to her were siphoned off before the Court case. Appellant refers specifically to the sum of circa seventy eight thousand Sterling (£78,000) which was withdrawn from Halifax Deposit International and fourty seven thousand Sterling (£47,000) from National Savings.

Defendant replies with regard to latter by claiming that this amount was withdrawn in 1996 and transferred to a joint account in Halifax Bank in which appellant also had a cheque book. These funds, according to him, were used for their business and everyday needs; at this point they were running a hotel and paying a substantial sum for rent. As for the seventy eight thousand Sterling (£78,000) aforementioned, he claims that these were deposited with Calamatta and Cuschieri and therefore are part of the estate which was divided and assigned to them by the Family Court.

As regards the amount deposited with Halifax Deposit International the Court agrees with defendant that from the records of the case it appears that these were then deposited in an account to which appellant had access and it is probable that they were used for their needs.

Regarding the other sum defendant is correct in replying that in actual fact it results quite clearly that in fact this was withdrawn in 1993 and not in 1998 as applicant

claims in her appeal application. Consequently it was not withdrawn in view of an approaching law suit but well before this case was instituted. Therefore, as respondent rightly says in his reply to the appeal application, this amount was then deposited with Calamatta and Cuschieri for reinvestment and thus forms part of the community of acquests as liquidated by the Family Court in its judgment. Therefore this ground is also rejected.

Respondent's Claims

As already mentioned respondent felt the need to clarify certain facts mentioned in the judgment which he felt needed correction. However since he did not file a cross appeal, this Court cannot enter in the issues he referred to; this is a Court of revision and can only deal with matters which the parties ask her to annul, revoke or vary in the prescribed manner.

Decision

For all these reasons, this Court rejects the first and fifth grounds of the appeal application; upholds the second ground in the sense that the Court declares that applicant shall not forfeit her right of maintenance but refrains from ordering payment of such maintenance *rebus sic standibus*; upholds the third ground and revokes the order made in the appealed judgment whereby it was decided to reduce the arrears of maintenance due and instead orders defendant to pay plaintiff the arrears of maintenance as agreed and minuted between the parties in the Court *verbal* abovementioned – up to the date of the judgment of the Family Court appealed from; upholds the fourth ground and thus varies the fourth part of the judgment and orders that the debt allegedly due to Anthony Guillaumier is to be apportioned only if so decided by a Court's final judgment; otherwise confirms the judgment of Civil Court (Family Section) given on the 18th January 2013. All expenses both of first instance and appeal are to be borne equally between the parties.

< Final Judgement >

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