



MALTA

**QORTI CIVILI
(SEZZJONI TAL-FAMILJA)
ONOR. IMHALLEF
ABIGAIL LOFARO**

Seduta tal-5 ta' Marzu, 2014

Citazzjoni Numru. 66/2013

A B

-VS-

C T S

The Court,

Having seen the application by virtue of which applicant premised:

1. Whereas the parties got married on the twenty-fourth (24) day of November of the year two thousand and seven (2007) as

- results from the marriage certificate annexed and marked Document A;
2. Whereas no children were born out of this union;
 3. Whereas defendant's consent for this marriage was vitiated by a serious defect of discretion of judgment on the matrimonial life or on its essential rights and duties and / or by a serious psychological anomaly which makes it impossible for that party to fulfill the essential obligations of marriage;
 4. Whereas plaintiff's consent was extorted by fraud about some quality of defendant which could of its nature seriously disrupt matrimonial life;
 5. Whereas for these reasons the marriage celebrated between the parties is null for all effects at law;

The applicant for the reasons above mentioned requests this Honorable Court to declare that the marriage celebrated between the parties of the twenty-fourth (24th) November of the year two thousand and seven (2007) is null and void at law;

With expenses against defendant who is from now referred to the oath;

Having seen plaintiff's list of witnesses;

Having seen the note of defendant, whereby he submits under oath:

That whereas the defendant is agreeing with the sworn application's recitals as stated by the plaintiff, and is also admitting to the third paragraph of the same, he is not opposing to the plaintiff's demands, save for the expenses of the same;

So is what the defendant has to submit at this stage;

Having heard the witnesses who were summoned to give evidence;

Having seen the documents which were exhibited and all the evidence as well as all the acts of the proceedings;

Having seen the plaintiff's note of submissions;

Having seen that the case was put off for today for judgement ;

Considers ;

This court has been requested by the plaintiff to declare that her marriage with defendant dated the 24th of November 2007 is null and void in law in terms of Article 19(1)(c) and 19(1)(d) of the Marriage Act.

The plaintiff's version

By means of her affidavit, the plaintiff declares that she met her husband online. He seemed to be truthful and since he was eager to help with her son (being a single parent) and also seemed to be the family-type (since he claimed to take care of his grandparents), she believed in him. They met personally for the first time in February 2007, when defendant arrived in Malta. For the first few months, their relationship was fine. He had a stable job, helped around and they lived a normal family life. Thus, when the defendant proposed in July of the same year, she didn't hesitate to accept. The parties got married a few months after, precisely in November 2007.

Plaintiff states that things changed drastically, as from their first day as a married couple since after the marriage ceremony, instead of going to bed with her, he stayed up all night and till early morning drinking with his parents. He became more and more reserved and preferred to spend his time online rather than with her. She also states that whenever they had any engagements, he would refuse to go. However, on one special occasion, after he refused to shower which fuelled an argument between them, he did accept to go to the wedding with her only to end up drunk.

She mentions that there were other social occasions where the defendant would make it a point to attend if he knew that booze was free and in fact he would always end up in a drunken state. Plaintiff felt ashamed of her husband, especially when he went up to her boss claiming that he'll always be present when there's free booze. Needless to say this was embarrassing to her just like his encounter with a Fabianne Sant Portanier, a newly graduated pharmacist when the defendant went over-board and passed certain sexually-connotated comments.

His drinking had become a problem and the parties were involved in an accident when they hit the pavement and damaged the car wheel. All this was due to his excessive drinking. Any excuse was a good enough excuse for him to drink. She hated going home with her son to a drunken husband who would not be able to control himself and would often be violent. She goes on to state that phone calls to the Rabat police became a regular occurrence. As his violent temper worsened, she became more afraid of him. Although criminal proceedings were instituted against him, the plaintiff decided to forgive him. Defendant started to attend sessions to treat his drinking problem but did not continue to attend and needless to say, neither did he take the medication that he was needed. Plaintiff sought help by attending sessions at a psychologist who suggested couple's counselling. However, they only attended two sessions.

She describes her husband as being very sociable and appearing to be proud of her when in the company of his friends but the total opposite when they're alone at home.

Seeing no form of improvement, she filed for separation but was still informed of his behaviour, that is, that he had not changed his ways. However, after their separation was finalised, the parties communicated again online and it was only at this late stage that the defendant opened up to her and confessed that he was suffering from post-traumatic stress disorder due to the missions he has been involved in the Middle East. She claims that defendant explained to her that according to the psychiatrist, this disorder is the reason behind his behaviour during marriage but also claims that she knew nothing about it. She concludes her affidavit by saying that had she been aware of all this, she would have thought twice about being more than a friend to the defendant as she believes that marriage should be based on openness, honesty and trust with open communication.

The defendant's version

The defendant claims to have met the plaintiff over the internet. They got on so well that he decided to come over to Malta for good in February 2007. The parties started living together immediately and after five months of cohabitation, he proposed to her. Plaintiff immediately accepted.

In relation to their online conversations, the defendant claims to have divulged information as to her whereabouts and that he was a soldier but he never told her anything about his background as he was bound by the Official Secrecy Act of his country. She didn't even know that he

served in Afghanistan during the time he was having those online conversations with her.

He declares that when he came to Malta, he decided he wanted to change his life. It was during this period that problems arose since he started to suffer from post traumatic stress disorder as a result of his having to serve in Afghanistan between 1999 and 2007. He turned to alcohol for comfort and was unable to communicate his feelings to his wife. He felt that no one could understand his past in Afghanistan and he just decided not to talk about it and suppress his feelings with drinking.

He concludes his affidavit by saying that although they tried family therapy and medication, these did not resolve any of their problems as they were both very hard headed people and he was not able to express his feelings or communicate with his wife so he simply shut down whenever things got complicated.

The merits of this case

The parties appear to married on the 24th of November 2007 as evidenced by the marriage certificate exhibited in the acts¹.

This court makes reference to Carmel Emanuel Grixti's (plaintiff's uncle) testimony by means of an affidavit² who declares that after the parties' marriage, defendant was always drunk or asleep whenever they met. He also claims that plaintiff rushed into marriage as she did not allow enough time to get to know him better but also states that defendant was very cautious about showing his true character. He claims to have seen a number of bruises which plaintiff claims to have been caused by her husband but claims that whenever he was around, defendant's

¹ See *folio* 5

² See *folio* 19

behaviour was different and never manifested aspects of a violent nature.

This court makes reference as well to Gina B Haber's affidavit³ (plaintiff's mother) who reaffirms the plaintiff's testimony as to how the parties met and as to the defendant's character traits which seemed to be different before their marriage. She claims that his true colours emerged after their marriage when he stopped communicating with her daughter, spent his time on his computer and drank excessively. She further states that her daughter called her a number of times, crying because of her husband's abusive behaviour. In fact she confirms that her son, Hans was petrified of him and dreaded being in the same house with him.

She continues to state that it transpired that defendant had a drinking problem way before they got married but defendant managed to hide his drinking problem well. Even his mother knew about this problem but once again, she did not divulge this information before their marriage took place.

By means of his affidavit⁴, Vincent B Haber confirms what Gina B Haber testifies as to the lack of communication between the couple and further states that defendant lacked communication also with him. He also confirms the defendant's drinking problem and mentions a huge number of alcohol bottles that used to be consumed by the same defendant and confirms as well that Hans, his daughter's son was afraid for his mother's safety due to the defendant's violent behaviour.

Joyce Sciberras, a couple's therapist also gave evidence⁵ and confirms that there were serious problems in the marriage, mainly related to the defendant's alcoholism and his violent temper. She confirms that the

³ See *folio* 20

⁴ See *folio* 22

⁵ See *folio* 33

couple attended a few sessions but they did not follow these up by further appointments. She describes their relationship as not conducive to intimacy and further states that defendant had admitted his alcohol problem. She confirms as well that defendant had spoken to her about his past as a soldier and that she can see a link between his past and his drinking problem since alcohol is sometimes perceived by people as a way of self medication.

This court also makes reference to the police report that was filed by plaintiff and which describes a particular incident where defendant was allegedly abusive. However, this report did not lead to any form of conviction and thus, the report simply proves that plaintiff filed this complaint against her husband but is not proof of his guilt or otherwise since no conviction record was filed or exhibited.

Reference is also made to Dr. Ethel Felice's report⁶ which clearly states that defendant has 'a past history of alcohol dependence and depressive disorder but was never treated with anti-depressants'.

At this stage, this court is going to analyse the all evidence produced by both parties in the light of the relevant Articles being cited. As regards to Article 19(1)(c), that is, that the plaintiff's consent was extorted by fraud about some quality of the other party which could of its nature seriously disrupt their matrimonial life, at this stage, this court makes reference to the suit in the names **Micallef Pierina Vs Bentanfous Amor** wherein it was declared that "**Kwantu ghal "qerq" dan certament hu motiv ta' nullita` tal-ftehim jew tal-kuntratt kif hekk del resto jiddisponi l-Artikolu 981(1) tal-Kodici Civili. L-eghmil doluz pero` ma jista' qatt ikun prezunt u ghandu jigi pruvat (Artikolu 981(2)). Il-qerq irid ikun tali li jkun jista` jbieghed ir-raguni u jeghleb il-volonta`**". In the **Sciberras Stephen Vs Av. Francesco Depasquale Et Nomine** case, the Court also held that "**Sabiex ikun hemm nullita` ta` zwieg fuq il-bazi li l-kunsens ta' xi wahda mill-partijiet ikun inkiseb b'qerq dwar**

⁶ See folio 50

xi kwalita tal-parti l-ohra li tista' mixxorta taghha tfixkel serjament il-hajja mizzewga, huwa mehtieg li tali kwalita`:

1. tkun wahda inerenti ghall-persuna u mhux xi att fil-passat;

2. tkun prezenti fil-mument tac-celebrazzjoni taz-zwieg;

3. tkun gravi jew oggettivament jew soggettivament;

4. ma tkunx maghrufa lill-parti l-ohra;

5. tigi mistura frawdolentement sabiex jigi ottjenut il-kunsens maritali; ***u***

6. trid tipprovoka krizi meta tigi skoperta, ghax inkella jitqies li l-izball ma kienx sostanzjal`.

This court notes with respect to this article that the applicant submits that the before the parties got married, they had a good relationship. However, their relationship went sour after marriage, mainly because of the defendant's alcohol problem (which the defendant confirms). The plaintiff affirms that the defendant deliberately kept such a problem from her but the defendant claims to have resorted to alcohol when he tried to lead a normal family life. Plaintiff did not manage to prove that defendant had a 'fraudulent' intention, although most probably, his problem had been present at the time of their marriage without her being aware of it (this is being said in the light of Dr. E. Felice's report). However, for this court to declare the parties' marriage null of the basis of fraud, it must be truly convinced that the defendant deliberately kept this problem hidden from her which does not seem to be case. It merely transpires that defendant gave in to alcohol as reality seeped in.

Regarding Article 19(1)(d), that is, that the parties' consent was vitiated by a serious defect of discretion of judgment on matrimonial life or its essential rights and duties and / or by a serious psychological anomaly which makes it impossible for that party to fulfill the essential obligations of marriage, this court makes reference to the **Atkins Charles Vs Atkins Matilde**⁷ case whereby the court gave a detailed explanation as to the meaning and definition of this article and what needs to be proven before this court for a judgement in favour of nullity:

“Il-kuncett tad-discretio judicii ma jirrikjediex maturita` shiha u perfetta fuq dak kollu li jirrikjedi z-zwieg, izda konoxxenza shiha ta' dak kollu li jkunu deklin ghalih il-partijiet u cjoe` ghall-obbligi u d-drittijiet konjugali kemm fil-prezent kif ukoll fil-futur. Inoltre l-partijiet irid ikollhom dik il-maturita' affettiva u cjoe` dak kollu li ghandu x'jaqsam ma' l-emozjonijiet u s-sentimenti taghhom fil-konfront ta' xulxin. Jekk xi wahda minn dawn l-elementi hija b'xi mod nieqsa, allura hemm difett tad-diskrezzjoni tal-gudizzju kif rikjest mill-ligi...Il-partijiet irid ikollhom dik il-maturita' li taghmilhom kapaci jirriflettu fuq l-obbligi, id-dmirijiet u r-responsabbiltajiet li ggib maghha il-hajja mizzewga u jkunu ghalhekk kapaci jerfghu u jwettqu l-istess matul il-hajja matrimonjali taghhom”.

Reference is also made to the **Borg Cachia Melanie Vs Borg Joseph**⁸ case where the court stated that ***“Il-persuna li tat il-kunsens trid tkun qed issofri minn immaturita' affettiva jew semplici njoanza. B'dan l-artikolu, il-legislatur ma riedx ifisser semplicement kwalsiasi stat ta' mmaturita' fil-mument li jinghata l-kunsens reciproku, izda dan in-nuqqas tad-discretio judicii huwa kuncett guridiku ntrinsikament marbut mal-kapacita' ta' parti jew ogra fiz-zwieg li taghti kunsens liberu u xjenti taghha ghar-rabta taz-zwieg...Il-gurisprudenza nostrana ssegwi din l-interpretazzjoni - ghalhekk id-difett irid ikun wiehed serju fil-fakolta' kritiko-estimativa tal-parti, difett li wiehed jevalwa u jifhem u jassumi dawh li huma d-drittijiet u dmirijiet essenzjali taz-zwieg, jew li jevalwa u jifhem x'inhu z-zwieg u l-hajja mizzewga”.***

⁷ Deciza nhar it-2 ta' Ottubru 2003 mill-Prim'Awla tal-Qorti Civili

⁸ Deciza nhar id-29 ta' Mejju 2003 mill-Prim'Awla tal-Qorti Civili

In view of the law cited above as well as evidence that was brought forward by both parties, it transpires that the parties got married simply after a few months from their first physical encounter. It is true that they had been chatting online but chatting with someone online does not mean that one is really getting to know the person well. In fact, the defendant admits to have not divulged any information about his background. He did so because he felt duty-bound to do so but did not intend to mislead the plaintiff, especially in relation to his drinking problem, since it does not transpire that at the time of their chatting days, he was dealing with his alcohol problem. This problem surfaced after his moving to Malta and his trying to settle in. However, the defendant was not ready to communicate well with the plaintiff and in fact, she had no idea that he was in Afghanistan when he was chatting online with her.

The question this court must answer is whether the parties' consent was vitiated or not. At this stage, reference is made to the cause in names **MM vs JM** decided on the 9th March 1994 where it was stated that the moment of consent is the determining factor as to the legality or otherwise of consent. From the gathering of evidence it appears that there is sufficient evidence to be said that the respondent did not have the necessary discretion to really understand what marriage is all about since he thought that he could simply decide not to divulge important information about his background and life as a soldier (without having the intention to vitiate his consent by fraud). The parties simply had no chance of ever contracting a legal marriage, first and foremost because they rushed into the marriage and did not allow any time to really get to know each other and secondly because the defendant was not ready to come to terms with reality and with his past and decided to shut down instead of seeking help from his wife. This court cannot help but note that had the parties had a normal courtship which lasted at least a year, the defendant would have shown his true colours and his character would have definitely been known to the plaintiff.

For these reasons , the court hereby decides the case by acceding to the plaintiff's claims and declaring the marriage null and void in law in terms of Article 19(1)(d) of the Marriage Act.

With costs to be borne equally by the parties.

< Sentenza Finali >

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