



MALTA

**QORTI CIVILI
(SEZZJONI TAL-FAMILJA)
ONOR. IMHALLEF
ROBERT G MANGION**

Seduta ta' l-20 ta' Marzu, 2014

Citazzjoni Numru. 161/2013



Civil Court – Family Section

Mr. Justice Robert G. Mangion LL.D.

Today the 20th March 2014

Sworn Application No. 161 / 13RGM

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Number on list: 23

A Aic

vs

B C Aic

The Court,

Preliminaries.

Having seen plaintiff's sworn application filed on the 12th August 2013 requesting the Court for reasons put forward in the sworn application, (1) to give plaintiff sole care and custody of the minor children; (2) to order that visits by the mother to her children be supervised; (3) to suspend or reduce the payment of maintenance and direct that children's allowance be paid to plaintiff; and (4) to order defendant to start paying plaintiff maintenance for the children.

Having seen defendant's sworn reply and counter-claim filed on the 18th September 2013 where defendant contests all plaintiff's claims and for reasons put forward in the sworn reply and counter-claim she requests the Court (1) to amend Clause 6 of the separation contract and increase child alimony to be paid by plaintiff; (2) to establish the amount of arrears of child alimony due by plaintiff and to order plaintiff to pay the arrears so established; (3) to order plaintiff to pay defendant the sum of €3,640.30 and any other sums due representing plaintiff's unpaid share of the educational, extra-curricular, and medical expenses of the minor children since 2007 to date; (4) to order plaintiff to provide a health insurance policy in favour of the two minor children as per Clause 6 viii of the contract; (5) and to appoint a notary public to publish the relative public deed.

Plaintiff filed a sworn reply¹ to defendant's counter claim including a preliminary plea claiming the lack of competence *ratione materiae* of this Court in respect of the second, the third and the fourth counter-claim.

Having seen the respective notes of submissions filed by both parties.

¹ Fol. 88

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Having seen that by a Court decree of the 4th October 2013 these proceedings are to be conducted in the English language.

Having seen that the case was adjourned for today for judgment on plaintiff's preliminary plea to defendant's counter claim claiming the lack of competence *ratione materiae* of this Court in respect of the second, the third and the fourth counter-claim.

Having examined the acts of the case, shall now proceed to summarise the events leading to the present court case.

Summary of events leading to the present court case.

On the 9th January 2007 plaintiff and defendant spouses Aic appeared on a consensual separation contract. According to Clause 5 of said contract both parents share care and custody of their two minor children; the children to reside with their mother with visitation rights to the father as stipulated.

According to Clause 6 plaintiff is to pay defendant the sum of €582.34 per month as child alimony, apart from the expenses relative to the initial annual expense to purchase stationary and uniforms for the children as well as half the expenses relative to the extra-curricular activities, external exams, and health expenses of the children. Both parties renounced to their respective right to claim maintenance from the other party as per Clause 2 of the contract.

Plaintiff filed the present court case putting forward the claims mentioned above while defendant filed a reply accompanied by a counter-claim putting forward the counter-claims above mentioned. Plaintiff claims that part of the counter-claim cannot be decided by this court as the merits fall outside its competence *ratione materiae*.

In his note of submissions filed on the 4th November 2013 plaintiff explains that the Civil Court (Family Section) is not competent *ratione materiae* to hear requests for court orders to enforce rights and obligations arising from a separation contract. He submits that such claims should be brought before the Civil Court, First Hall. Defendant contests plaintiff's submissions and in her note of submissions filed on the 18th February 2014 puts forward submissions in favour of her claim that

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the Civil Court (Family Section) can be seized by way of a counter-claim with requests to enforce obligations arising from a deed of consensual separation.

Considerations of this Court.

The competence of the Civil Court, Family Section, is established by Regulations promulgated by **Legal Notice 9 of the year 2004.**

Regulation 4 of the Schedule therein contained provides that:-

“To the Civil Court (Family Section) shall be assigned those cases falling within the competence of the Civil Court and which relate to matters regulated by:

- (a) Titles I, and II and IV of Book First of the Civil Code;
- (b) The Maintenance Orders (Facilities for Enforcement) Ordinance;
- (c) The Maintenance Orders (Reciprocal Enforcement) Act;
- (d) The Marriage Act; and
- (e) The Child Abduction and Child Custody Act.”

The Court refers with approval to the judgments, quoted by plaintiff in his note of submissions, declaring that requests for the enforcement of rights and obligations arising from a contract of personal separation pertain to the competence of the Civil Court, First Hall and not of the Civil Court (Family Section). A Court of Appeal (inferior jurisdiction) judgment in the names “**Anne Marie Galea Naudi vs Juan Carlos Galea Naudi**” decided on the 3rd October 2008 states that:-

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“Hawnhekk ghandna sitwazzjoni fejn is-separazzjoni, konsenswalment maqbula, kienet gja definita u dak li qed jintalab bl-azzjoni ntentata kien biss u semplicement l-ottemperanza ta’ l-obbligu kontrattwali assunt mill-konvenut tal-hlas ta’ nofs l-ispiza nkorsa.....Ghal dan il-ghan, il-parti ma tmurx quddiem il-Qorti tal-Familja, ammenocche non si tratta minn domanda ghall-varjazzjoni jew kancellament ta’ dawk l-istess obligazzjonijiet , izda quddiem il-foro idoneju skont il-materja jew il-valur tat-talba....Fil-kaz prezenti l-**foro esklussiv** kien it-Tribunal u mhux xi qorti ohra. L-eccezzjoni ta’ l-inkompetenza qiegħda għaldaqstant tigi rigettata.” (emphasis by this Court). (Vide also: “**Luisa Pedroni vs Pietro Blasina**” - Civil Court, First Hall – 19th January 2012)

This Court concurs, and declares that the Civil Court, First Hall, and not the Civil Court (Family Section), is the proper forum to sue for the enforcement of an obligation arising from a deed of personal separation.

However, as defendant correctly submits in her note of submissions, the matter needs to be examined further since the present judgment concerns the admissibility or otherwise of a counter-claim.

Article 396 of Chapter 12 of the Laws of Malta provides that:-

“In any action, it shall be lawful for the defendant to set up a counter-claim against the plaintiff, provided the claim of the defendant be connected with the claim of the plaintiff as stated hereunder:

(a) if the claim of the defendant arises from the same fact or from the same contract or title giving rise to the claim of the plaintiff; or

(b) if the object of the claim of the defendant is to set-off”

The Court of Appeal referred to Article 396 in a judgment delivered on the 22nd November 2002 in the names **Gasam Insurance Agency Limited vs Simon Soler et** where it made reference to an earlier judgment on this matter:-

“Effettivament l-estremi rikjesti għar-rikonvenzjoni skont l-imsemmi artikolu jikkonsistu fl-ispjega elokwenti li nsibu fid-decizzjoni klassika fuq din il-materja, riportata fil-Volum XXVII I p 895:

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- (i) nella comunanza di origine delle due cause, ovvero,
- (ii) nella eliminazione reciproca delle due domande.”

In the case **Joseph Scerri vs Anna Fenech et** decided by the Civil Court, First Hall² it was held that:-

“Ma kien qatt il-hsieb tal-legislatur li jirrendi l-azzjoni rikonvenzjonali bhala strument ordinarju li bih kull kawza tfaqqs fi tnejn. Kemm hu hekk, ir-rikonvenzjoni hija rimedju straordinarju procedurali li ghandu hsieb u ghan specifiku, u kemm hu hekk hija wahda minn dawk il-proceduri li l-Kodici ssejjah ‘specjali’”.

It has also been held that for a court to be competent to hear a counter-claim, such counter-claim should be able to stand alone independently of the original claim. Hence, if the merits of the counter-claim fall outside the competence of the court before which it has been filed, it is not admissible. (Vide **Air Malta p.l.c. vs. Lawrence Borg nomine** – Civil Court, First Hall – 30th June 2004).

Decide.

The Court declares that by virtue of **Regulation 4 of Legal Notice 9 of the year 2004**, as interpreted by the prevailing jurisprudence, the enforcement of rights and obligations emanating from a deed of consensual separation is the competence of the Civil Court, First Hall and not of the Civil Court (Family Section). It further declares that if the subject matter of the counter-claim is outside the competence of the Family Court seized with plaintiff's claim *ratione materiae*, then such counter-claim is not admissible before the Civil Court (Family Section).

For these reasons plaintiff's second plea against defendant's second, third and fourth counter-claim is being upheld and the Court shall not take further cognizance of said counter-claims.

² 3rd July 2003

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Decision on the judicial expenses relative to this partial judgment shall be pronounced together with the final judgment.

Judge

Deputy Registr

< Sentenza In Parte >

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