



MALTA

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

**ONOR. IMHALLEF
ROBERT G MANGION**

Seduta tas-26 ta' Gunju, 2014

Citazzjoni Numru. 74/2013

Sworn Application No. 74 / 13RGM

Number on list: 23

A B

vs

Dr Simon Micallef Stafrace and Legal Procurator Peter Sammut

**appointed deputy curators to represent C B who is absent from the island as per decree dated
25th April 2014**

Preamble.

Kopja Informali ta' Sentenza

On the 16th April 2013 plaintiff filed a sworn application and premised the following:

That the parties got married on the 18th February 2002 and there were no children from such marriage;

That due to lack of compatibility between the parties' characters, their marriage has irretrievably broken down;

That plaintiff was duly authorised to proceed with the filing of a personal separation suit by the Civil Court (Family Section), by means of a decree dated 28th February 2013;

That there is no chance of reconciliation and thus, this suit had to be pursued;

Plaintiffs requests the Court:-

To pronounce and declare the personal separation between the parties for reasons attributable to the defendant, which rendered the matrimonial life between the parties impossible;

To apply entirely, or in part, against the defendant the sanctions established in articles 48 up to 53 of Chapter 16 of the Laws of Malta.

To condemn defendant to pay plaintiff an adequate alimony in accordance with the law, with such modalities the court deems fit to order, including the provision for periodical increases so as make good for the rise of living; and in case that the defendant returns to Malta and finds employment, with an order for direct payment from his wage, which are to be established by this Honourably Court; To dissolve and extinguish the community of acquests between the parties and liquidate the same in such a way as to establish the portions in division and assign to the parties, and also to establish a date since when the defendant is considered to have forfeited any acquisition made by the work and ability of the plaintiff; and this with appointed experts to estimate the property involved and with the appointment of a notary public so as to publish the appropriate act and curators to represent the defendant on the same act;

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To divide any other goods held in common between the parties which aren't part of the community of acquests;

To order defendant to return to plaintiff her paraphernal assets and credits;

To liquidate and assign to plaintiff her paraphernal assets.

Curators for the absent defendant filed a reply declaring that they were not cognisant of the facts of the case. However during the sitting of the 22nd November 2013 Dr Simon Micallef Stafrace, curator for defendant, filed an affidavit prepared by defendant.

The Factual Background.

Plaintiff, a German citizen, and defendant, an Irish citizen, met in Germany way back in 1999 and got married in 2002. They eventually moved to Ireland and a year later defendant's father committed suicide and they moved in with his mother in Dublin. However in 2006 his mother died suddenly. Plaintiff explains that defendant could not cope with the situation and in 2009 they decided to relocate to Malta and start afresh. They settled in Malta, opened a bar together but shortly afterwards defendant stopped participating in the running of the business.

Eventually the bar was closed and plaintiff found a job. On his part defendant spent much of the time without a job, and when he found one he left the job soon after.

Defendant periodically left the matrimonial home without saying where he would be staying and return whenever he decided. Plaintiff claims that he had a drinking problem, which defendant denies. During Christmas of 2012 defendant left again for days without informing plaintiff of his whereabouts. That is when plaintiff informed defendant that she could not take it any more and told him they should take a break. Defendant's reaction was to leave Malta for good and since then parties have not met each other again.

Irretrievable breakdown of Marriage.

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In her sworn application plaintiff contends that the marriage between the parties has irretrievably broken down due to incompatibility of the parties' respective character. This is the only premise in the sworn application referring to the causes leading to personal separation.

According to **Article 40 of Chapter 16 of the Laws of Malta**:-

*“Either of the spouses may demand separation on the grounds of excesses, cruelty, threats or grievous injury on the part of the other against the plaintiff, or against any of his or her children, or **on the ground that the spouses cannot reasonably be expected to live together as the marriage has irretrievably broken down:***

Provided that separation on the ground that the marriage has irretrievably broken down may not be demanded before the expiration of the period of four years from the date of the marriage, and provided further, that the court may pronounce separation on such ground notwithstanding that, whether previously to or after the coming into force of this article, none of the spouses had made a demand on such ground.”*

From the evidence tendered by both parties, it clearly results that the marriage has irretrievably broken down and that the main cause of such breakdown is defendant's behaviour towards plaintiff. His frequent unannounced absences created an intolerable situation for plaintiff. The death knell for the marriage was rung when defendant left the matrimonial home, left the island and returned to Ireland leaving plaintiff behind here in Malta.

The Court is of the opinion that in terms of Article 40 the marriage of the parties has irretrievably broken down due partly to incompatibility of character but also due to defendant's excesses and to abandonment of the matrimonial home on the part of defendant.

However, the Court is bound by the terms of the sworn application. Plaintiff's only premise regarding the reasons why she asks for personal separation is that the marriage has broken down due to incompatibility of characters. Incompatibility of character does not carry the same legal consequences that other causes carry like adultery, domestic violence and excesses. It is a principal of procedural law that the Courts are bound by the terms of the acts filed. Since plaintiff chose to ask for personal separation specifically and only in respect of the parties' incompatible character, then the Court may not find fault on the part of defendant for other reasons not mentioned in the premises of the sworn application.

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In terms of the second part of Article 40 marriage breakdown due to incompatible characters leads to practically a no fault personal separation. That is why the law specifically provides that one may not proceed for personal separation on such a ground in less than four years from the celebration of marriage; unlike say if the cause is adultery.

However the Court is taking its findings into consideration in awarding costs against defendant.

Community of Acquests.

There is agreement between the parties that the only common asset is an immovable property in Ireland which property the parties mortgaged towards the bank. Representatives of local banks gave evidence to the effect that plaintiff has three local bank accounts with a total balance of approximately €6,300 whilst defendant had one local bank account with a balance of approximately €15,000 which he closed shortly before leaving the island. In his affidavit defendant states that the money withdrawn by him "has long gone"

It also results that defendant took all his personal belongings from the matrimonial home.

The parties also agree that this Court should not pronounce itself regarding their common immovable property in Ireland which most probably will be sold by court order on the bank's request..

For these reasons the Court declares that any funds or deposits in the name of plaintiff are to be assigned to her and any funds or deposits in the name of defendant are to be assigned to him.

Maintenance.

Since plaintiff is gainfully occupied she formally renounced to her claim for maintenance.¹

Conclusion.

¹ See page 201

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For these reasons the Court decides as follows:-

1. Declares the personal separation between the parties on the ground that the marriage has irretrievably broken down due to incompatibility of characters.
2. Plaintiff's second and third claims are dismissed.
3. Orders the termination of the community of acquests existing between the parties. For the purposes of its liquidation the Court orders that any assets in the name of plaintiff are being assigned to her and any assets in the name of defendant are being assigned to him.
4. Since no proof was provided regarding plaintiffs claims in respect of paraphernal property, the remaining claims are dismissed.

With costs against defendant.

< Sentenza Finali >

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