



Civil Court – Family Section

**Onor. Abigail Lofaro LL.D., Dip. Stud. Rel.,
Mag. Jur. (Eur. Law)**

Today the 5th May, 2016

Sworn Application No. 105/2015/1 AL

**AB
vs
CD**

The Court,

Having seen the writ of summons by virtue of which plaintiff premised:

1. That the parties married in Amsterdam Holland on the 21st of November 2006, as is evidenced by the marriage certificate presented as document letter “A” with the Sworn Application.
2. That the parties moved permanently to Malta on the 14th June 2013 and established themselves here, whereupon the community of acquests was produced between them in terms of Art. 1316(2) of the Civil Code, Chp. 16 of the Laws of Malta.
3. Applicant has filed for personal separation from respondent and the parties have been living separately ever since December 2013.
4. Applicant is concerned on account of the fact that the respondent is a gambler. Respondent in fact frequently gambles in casinos in Malta and in Holland, where he gambles relatively considerable amounts of money on a regular basis.
5. Respondent denies that he has a gambling problem and prefers to refer to his gambling issue as his part-time work.

6. Applicant is also concerned on account of the very unstable character of the respondent. Applicant has in fact presented her affidavit in which she has chronicled respondent's frequent mood swings, his inability to hold a job for a sustained period of time and his propensity of changing residences from one country to another on a frequent basis.
7. On the 3rd of November, 2015, applicant became aware that respondent had left Malta and moved to Amsterdam. Respondent did not even inform applicant that he was going to move to Holland and applicant only got to know he had moved independently from the respondent.
8. Applicant is also aware that notwithstanding that respondent has moved to Amsterdam, he has retained in Malta a cafeteria (Laparelli Cafe, in South Street, Valletta), the running of which he has entrusted to third parties in his absence.
9. In view of the foregoing, applicant fears that the continued existence for the community of acquests between the parties may be of prejudice to her as it exposes her to potential claims from third parties on account of respondent's actions over which she has control.
10. Additionally, while applicant is in employment and all her income is declared, respondent is self-employed and applicant is aware that he is trying to avoid his obligations towards her and their minor daughter by under-declaring his income. This again might be of prejudice to the applicant should the community of acquests be allowed to continue between the parties.
11. Inversely, the applicant is not aware of any prejudice (let alone disproportionate prejudice) which may be caused to the respondent in the event that this Hon. Court orders the cessation of the community of acquests.

Plaintiff is requesting defendant to state why this Court should not :

Order the cessation of the community of acquests between the parties in terms of art. 55 of Chapter 16 of the Laws of Malta.

Save for such other measures as this Hon. Court may deem opportune in the circumstances.

With costs against the respondent.

Having seen the reply of C D, by virtue of which he states :

1. That in virtue of a decree dated 23rd November 2015 the respondent was granted five working days within which to reply to the application filed by the plaintiff on the 19th November 2015 in virtue of which the plaintiff, *inter alia*, requested this Honourable Court to order the cessation of the community of acquests between the parties in terms of Art. 55 of Chapter 16 of the Laws of Malta.
2. That primarily the respondent respectfully submits that the current proceedings are still in their initial stages so much so that to date no evidence has yet been produced by the plaintiff, other than her own affidavit .
3. That the plaintiff's application contains nothing more than false allegations which are completely unfounded in fact and at law, which are not substantiated in any way or by any documentation, and which the respondent categorically denies.
4. That indeed while the plaintiff has opted to try to mislead this Honourable Court by alleging that the respondent is a gambler, she failed to bring any evidence whatsoever to this effect purely because such allegation is completely false and the respondent hereby confirms that he was never a gambler and certainly isn't one now. This will be confirmed further throughout the course of the proceedings.
5. That while it is certainly not the scope of this reply to rebut all the lies and allegations made by the plaintiff in her affidavit, which the respondent will duly proceed to do once it is his turn to produce his own evidence, once again the respondent respectfully submits that while the plaintiff is claiming that the respondent has a propensity of changing residences, she completely failed to substantiate her allegation in any way, purely because such allegation is untrue.
6. That as a matter of fact throughout their courtship and marriage the parties only resided in Amsterdam and in Malta, and the plaintiff had no problem whatsoever in doing so freely with the respondent. Indeed, the parties always took such decisions together as a couple and the plaintiff also had no problem whatsoever in leaving Malta and moving with the respondent to Amsterdam, notwithstanding the fact that, according to the plaintiff, the respondent allegedly has what the plaintiff

- describes as *'frequent mood swings'* which incidentally never bothered her for years, so much so that she spent over ten (10) years with the respondent, prior to proceedings with this separation. That what the plaintiff now describes as frequent mood swings are nothing more than the evident frustration and hurt of a father who is being deprived of his own daughter for absolutely no valid reason.
7. That while the plaintiff is alleging that the respondent is unable to hold a job, she failed to mention that throughout their stay in Amsterdam the respondent had a very good job with Alitalia, which he held until the company offered him early retirement in view of the financial crisis it was facing, and another job as station manager with Olympic Air which the respondent only lost because the company ceased its operation and thus was made redundant. Consequently, the change in the respondent's employment was in no way attributable to any fault on his part but purely for reasons which were evidently beyond his control.
 8. That the plaintiff is refusing to have decent communications with the respondent and all the respondent's attempts to do so have been futile. The respondent has only moved to Amsterdam temporarily for work purposes and although he did in fact try to inform the plaintiff, as usual, she failed to communicate with the respondent.
 9. That prior to leaving Malta, albeit temporarily, the respondent took all the necessary measures to ensure that neither party would be exposed to any risks and/or debts and the respondent is indeed not even involved in the management of the cafeteria the plaintiff is referring to.
 10. That clearly the only aim of the plaintiff to terminate the community of acquests is to use funds belonging to the community of acquests, which she has failed and has refused to disclose, for her own benefit.
 11. That while the plaintiff is claiming that the respondent is trying to avoid his obligations such a statement once again is totally untrue as the respondent is making regular contributions towards the maintenance of his minor child.
 12. That the fact that the respondent is currently self-employed certainly is not a reason to declare the cessation of the community of acquests. Furthermore, and contrary to what the plaintiff is claiming, the respondent never exposed the plaintiff to any debts, as shall be duly confirmed throughout the proceedings.

13. That the plaintiff has been very deceiving in her allegations which have not been substantiated in any way. Terminating the community of acquests at such an early stage of proceedings would only serve to give her more control to do whatever she pleases with possible funds and assets which she has yet failed and refused to disclose, for her own personal benefit, causing serious prejudice to the respondent.

Consequently, and in the light of the above, the respondent humbly prays this Honourable Court to reject *in toto* the plaintiff's plea for the cessation of the community of acquests, as stipulated in her application of the 19th November 2015, and this in the interest of justice and subject to such dispositions that this Honourable Court may deem fit in the circumstances.

Having considered :

That the application in front of this court concerns a request on applicant's part, A B, whereby, for the reasons listed in her application, she is asking that, pending the separation proceedings, this court orders the cessation of the community of acquests between the parties in terms of Article 55 of Chapter 16 of the Laws of Malta. However, on his part, the respondent is contesting applicant's request for the reasons mentioned in his response.

The Court is making reference to Article 55(1) of Chapter 16 of the Laws of Malta, which gives the court the possibility to order the cessation of community of acquests at any time pending separation proceedings. This court necessarily has to discern and has to evaluate facts, and has to see whether any of the parties will suffer a disproportionate prejudice by reason of this cessation of the community of acquests, as prescribed by Article 55(4) of Chapter 16 of the Laws of Malta. In this case, the respondent is contesting the request of the applicant, so the court has to examine the facts at issue.

Considerations of this Court

Article 55 of Chapter 16 of the Laws of Malta says the following:

55 (1) The court may, at any time during the cause for separation, upon the demand of any of the spouses, order the cessation of the community of acquests or of the community of residue under separate administration existing between the spouses.

(2) The order for the cessation of the community as provided in sub-article (1) shall be given by means of a judgement from which every party shall have a right of appeal, without requiring permission from the court for this purpose.

(3) The order of cessation shall have effect between the spouses from the date of the judgement on appeal or, if no appeal is entered, from the date when the time allowed for the appeal lapses, and it shall remain valid even if the cause for separation is discontinued.

(4) Prior to ordering the cessation of the community as provided in this article, the court shall consider whether any of the parties shall suffer a disproportionate prejudice by reason of the cessation of the community before the judgement of separation.

(5) The order of cessation under this article shall, at the expense of the party who demanded such cessation, be notified to the Director of Public Registry and it shall have effect as if the cessation of the community of acquests or of the community of residue under separate administration were made by public deed.

(6) Unless the court, in its discretion, upon the demand of one of the parties, shall have ordered the cessation of the community of acquests or of the community of residue under separate administration existing between the parties at the time of commencement of the cause for separation, on separation being pronounced, the court shall direct that the community of acquests or the community of residue under separate administration shall cease as from the day on which the judgement becomes res judicata.

(7) The court may however where in its opinion circumstances so warrant direct that an asset or assets comprised in the community be not partitioned before the lapse of such period after the cessation of the community as it may in its direction determine.

(8) Any direction given by the court in virtue of sub-article (7), may on good cause being shown, be changed or revoked by the court.

The court has duly read the application of the applicant and the response of the respondent and has duly heard in detail the oral submissions of the legal representatives of both parties.

On her part the applicant says that this Court should order the cessation of the community of acquests since the respondent is a gambler, also because he is of unstable character, and also because he is involved in legal disputes, namely one which has been mentioned to this court, in the Rent and Regulation Board.

On the other hand, the Respondent largely tries to rebut the claims alleged by the applicant and whilst this court has taken into account all that has been observed by both parties, it will not delve into the merits of the case as yet, since this is not a judgement which concerns the merits of the case. But this court has to see whether a party or the other is going to suffer a disproportionate prejudice in case this court orders the cessation of the community of acquests.

Respondent in his response does not submit any tangible reason which leads this court to believe that he will suffer a disproportionate prejudice if this court orders the cessation of the community of acquests. The response in fact is an answer regarding the merits of the case, issues which largely concern the fault of the parties with respect to the separation and not the community of acquests *per se*, other than two main facts, the fact that this case is still being heard and evidence is still being collected and therefore that this court does not have a definite picture of what is contained in the community of

acquests between the parties, and the other being, as quoted in the Respondent's response, *"that clearly the only aim of the plaintiff to terminate the community of acquests is to use funds belonging to the community of acquests, which she has failed and has refused to disclose, for her own benefit"*. However the Respondent did not submit any evidence to substantiate this claim and neither has proved, exactly which is the disproportionate prejudice that he might suffer. In fact this Court posed a direct question during the oral submissions¹ to the legal representative of the Respondent, as to what is the prejudice which the Respondent might suffer, and this Court has not been given a definitive answer. The only reason given is that this Court still does not know exactly what forms part of the community of acquests, and he quoted case law, one of which was decided by this Court.

However, whilst it is true that this Court does not have a clear picture of what exactly constitutes the community of acquests between the parties, as the evidence in this case is still being heard, this is not a valid reason for this court to deny a request filed under Article 55 of the Laws of Malta, because had that been the case, Article 55 of the Laws of Malta would not have been drafted in the first place. Regarding the case which was quoted, in one particular case there was a specific reason why this type of request was not acceded to and it was not merely because the court did not have a clear picture of what constituted the community of acquests between the parties at the time.

Hence, this Court is not convinced that the Respondent is going to suffer from a disproportionate prejudice once the cessation of the community of acquests is ordered.

Decision:

Therefore, in view of the reasons here above indicated, with regards to this application, the Court believes that the request made by the

¹ Vide fol 23 of the process of this application

applicant should be acceded to, and, after a thorough examination of the facts of the case, considers that it does not result that the parties are going to suffer from a disproportionate prejudice once the community of acquests is terminated, therefore the Court is ordering the immediate cessation of the community of acquests between the parties in terms of Article 55 of Chapter 16 of the Laws of Malta and hereby declares that the matrimonial regime which has to apply between the parties from today onwards is that of separation of estates. The Court orders that the Court Registrar notifies the Director of Public Registry with this preliminary judgement within a week from when it is declared *res judicata*.

The costs of this judgement are to be borne equally by both parties.