



**CIVIL COURT FIRST HALL
THE HON. MADAM JUSTICE ANNA FELICE**

Sitting of the 8th February, 2018

Sworn Application No: 1068/2011 AF

Maria Colombo

vs

Tina Barnett

The Court,

Having seen the sworn application filed by the plaintiff in the Maltese language which reads as follows:

The applicant is the wife of the deceased Rinaldo Colombo who died on the 5th of February 2011, a copy of his death certificate is hereto annexed marked Document "MC1".

The applicant Maria Colombo as well as Rinaldo Colombo were married on the 23rd May 1983 and there was no issue from their marriage.

Rinaldo Colombo was previously married to Sally Jennings and the said Rinaldo Colombo had divorced the said Sally Jennings in February 1983. Rinaldo Colombo during his marital relationship with Sally Jennings had two children namely – i) Mark and ii) Tina.

Mark Colombo died in July of the year 1982 without leaving issue. Therefore Mark Colombo predeceased his father Rinaldo Colombo.

Therefore the only child of Rinaldo Colombo is the defendant Tina Barnett.

During their marriage the plaintiff and Rinaldo Colombo purchased and acquired the apartment in a block called "Trinity Flats", having external number one hundred and seven letter (a), the flat is internally numbered one (1) in Rudolph Street, Sliema.

Rinaldo Colombo and Maria Colombo also purchased and acquired jointly during their marriage a garage internally numbered twenty three (23) in a private alley at 86, Tonna Street, Sliema as well as another garage in a private alley unofficially indicated as number eight (8) which garage abuts onto Rudolph Street, Sliema and Aroha Lane, Sliema.

The plaintiff is hereby filing a copy of a public deed in the records of Notary John Gambin dated the 10th June 1991 relative to the flat in "Trinity Flats" having external number one hundred and seven letter (a) the flat being internally numbered one (1) in Rudolph Street, Sliema, a copy of which is hereto annexed marked as document "MC2".

The plaintiff is also hereby filing copies of the contracts of acquisition of the garages described in paragraph number 7 of this sworn application, which contracts were published by Notary John Gambin on the 28th of November 1992 and by Notary Pierre Cassar on the 25th of 1994, copies of said contracts are hereto being annexed marked as documents "MC3" and "MC4".

The plaintiff is hereby making reference to the last will made by Rinaldo Colombo in the records of Notary Pierre Cassar dated the 2nd March 2005, a copy of which is hereby being annexed marked as document "MC5".

By virtue of this will the plaintiff proceeded to make the declaration "causa mortis" in order to accept the usufruct of all the property movable and immovable belonging to Rinaldo Colombo, a copy of the said deed causa mortis is hereto being annexed marked as document MC6 in the records of Notary Tonio Cauchi dated 30th of August 2011.

The applicant has persistently insisted with the defendant Tina Barnett to resolve the outstanding matters existing between them. Although some progress has been made the defendant Tina Barnett has remained headstrong and is not willing to cooperate with plaintiff and is unwilling to assume her responsibilities and/ or to accept that Maria Colombo is the usufructuary of the property movable and immovable as shall be explained later on hereunder.

Amongst the outstanding matters is the question of the motor vehicle Polo registered RON-333 which vehicle was purchased during the marriage between Maria Colombo and her husband Rinaldo Colombo and is licensed in the name of Rinaldo Colombo, resulting in problems with regard to insurance and registration of the vehicle by ADT, the plaintiff wishing to resolve this problem.

Further the electricity and water accounts relating to the property / residence of the plaintiff are registered in the name of Rinaldo Colombo, the plaintiff wishes that the water and electricity meters be transferred to the name of the said plaintiff.

The problem which has arisen is that Tina Barnett is unwilling to transfer the water and electricity meter accounts from the name of Rinaldo Colombo to the name of Maria Colombo and further refuses to pay the share due by her of the water and electricity bills due by Rinaldo Colombo whose sole heiress is

the said Tina Barnett, the request being that these meters be transferred to the name of Maria Colombo.

Notwithstanding the various letters / e-mails sent by Maria Colombo which are being hereto annexed marked as documents MC7 to MC9 both numbers included and which are dated 21st June 2011, 8th July 2011 and 11th August 2011, the defendant totally ignored the correspondence and refuses to cooperate with the plaintiff Maria Colombo.

As a result the plaintiff was left with no other choice but to institute this lawsuit.

This Court should not:

1. Declare and decide that the water and electricity meters presently registered in the name of Rinaldo Colombo situate in the premises Trinity Flats, Flat 1, Rudolph Street, Sliema should be transferred to the name of the plaintiff Maria Colombo.
2. Declare and decide that the outstanding bills for waters and electricity meters under reference number 101000238972 due to Arms Limited as well as any payments made by the plaintiff to ARMS from the 5th February 2011 to date should be borne in the proportion of 5/8 by Tina Barnett and 3/8 by Maria Colombo and / or in any other proportion and if the case warrants it a refund made to the same plaintiff.
3. Declare and decide that the sum of Euro2892.25 due to Rinaldo and Maria spouses Colombo for extraordinary works carried out in the block Trinity Flats, Rudolph Street, Sliema be apportioned in the sense that 5/8 be payable by Tina Barnett and 3/8 by Maria Colombo.
4. Declare and decide that the licence of vehicle Volkswagen Polo registered with number RON 333 with Transport Malta should be transferred from the name of Rinaldo Colombo to the name of Maria Colombo, the usufructuary of said vehicle, and if necessary that a Curator be

appointed to represent Tina Barnett on any contracts involving Transport Malta.

5. Declare and decide to vest the plaintiff in possession of the immovable properties 1) apartment internally numbered one (1) in the block "Trinity Flats" in Rudolph Street, Sliema as well as (2 + 3) the garages internally numbered twenty three (23) in a private alley at 86, Tonna Street, Sliema as well as the other garage in a private alley unofficially numbered eight (8) which garage abuts on to Rudolph Street, Sliema and Aroha Lane, Sliema, and in case of need a curator be appointed to represent Tina Barnett on any contract including, and if necessary, to nominate a Notary Public to publish the final deeds.
6. Condemn the defendant to pay the plaintiff any sums of money expended on behalf of the defendant, which sums of money were due by the defendant as shall be proven during the hearing of this law suit.
7. To divide the bank accounts and the funds therein that can be found under Rinaldo Colombo due to the fact that the funds derive from the marriage between Rinaldo Colombo and his wife Maria Colombo.

With costs against the defendant and with legal interests until the date of effective payment.

Having seen the sworn reply filed by the defendant in the English language which reads as follows:

The plaintiff is attaching hereto a copy of the Power of Attorney signed by same and by legal counsel indicated hereunder and marked Doc. KYG.

The plaintiff's allegations and pleas are unfounded in both fact and law and are to be dismissed and denied.

On a preliminary note, and without prejudice to the above, plaintiff failed to indicate defendant's identity card number in

the sworn application notwithstanding that his is required by law, namely article 174(2)(a) of Chapter 12 of the Laws of Malta.

The defendant is the only child of the deceased Rinaldo Colombo and his sole heir as per the deceased's will hereto attached and marked Doc. TBC 1.

The plaintiff's allegations that defendant has tried to stultify the process of resolving pending matters between the parties is completely unfounded in that even before these proceedings were instituted against defendant, which proceedings were filed without defendant being called upon judicially, as required by Law, defendant had done everything in her power to ensure that the said pending issues are resolved.

Following the death of her father, defendant was in contact with plaintiff, and to this end a number of emails are being attached hereto and marked Doc. TBC 2 to TBC 7, which emails reflect a certain familiarity between the parties and, moreover, convey clearly defendant's willingness to get things moving so that any pending issues are resolved.

A simple glance at these emails also conveys plaintiff's general disposition, in that once defendant mentions the valuation of the house, Trinity Flats, Rudolph Street, Sliema, so that she will be able to pay whatever inheritance tax is owed – which house is owned in part by defendant to the tune of five eights undivided share, in that the deceased Colombo had acquired one fourth of the property through inheritance before marriage, as indicated in the contract published in the acts of Notary John Gambin, dated the 10th of June 1991, hereto attached and marked Doc. TBC 8 – not only does plaintiff become somewhat distant, but practically ceases to communicate with defendant.

The defendant ended up communicating with Notary Pierre Cassar since plaintiff was not interested in communicating with defendant, except to pressurize her into paying for her bills, which bills do not concern defendant.

With regard to the expenses incurred by plaintiff on the property in question, these are expenses which are to be carried by plaintiff and plaintiff alone as the usufructuary, and this in accordance with the will indicated above. Moreover, and without prejudice to the above, the works carried out by said plaintiff fall within the ambit of ordinary works and not extraordinary, in line with articles 363 and 364 of Chapter 16 of the Laws of Malta and thus to be incurred by plaintiff alone – as will be proved during the proceedings.

Moreover, and without prejudice to the above, if these works were in fact of an extraordinary nature, then plaintiff was duty bound to inform defendant as the sole universal heir, that she intended to carry out the said works and not take the decision unilaterally, especially if she intended to have defendant pay for same. That defendant's consent was required both as the heir as well as a co-owner. That defendant was not even aware that the works had been carried out.

Moreover, plaintiff, as a usufructuary and as a resident of the property in question, has no right to demand that defendant pay for the utility bills. The fact that plaintiff's husband passed away, does not give her a right at law to demand that his offspring namely defendant, maintain her.

Without prejudice to the above, the parties had actually agreed on how the pending issues were to be resolved, and thus how the property was to be divided, so much so that they had engaged an Italian lawyer to draw up a contract, hereto attached and marked Doc. TBC 9. That plaintiff was given a copy of the said contract in August of the year 2011, after having agreed to and accepted the content thereof.

Moreover, around one or two months after the death of her husband, plaintiff contacted the agent of the berth in the Port of Cala Galera, a certain Roanna Pianelli, to collect the monies due in rent, without so much as mentioning the death of her husband, and this notwithstanding that the Italian will, published by Notary Dr. Renato Carraffa on the 3rd January 2006, a copy of which is hereto attached and marked Doc. TBC 10, indicates in an ample manner that the said berth was to

devolve on defendant, not to mention, also, that the said berth was purchased during the deceased's first marriage to Sally Colombo.

When defendant realised what plaintiff had done, she had spoken to Roberto Ramella, a close friend her father's and plaintiff, and on his insistence half the rent monies plaintiff misappropriated, were deposited, with the same Roberta Ramella, with the intention that the said monies be released once the Italian agreement referred to above (Doc. TBC 9) is finalized.

The defendant never received any sum of money from plaintiff, contrary to what is being alleged by the latter; that being said, since the death of defendant's father it has been plaintiff who has tried everything in her power to scrounge off defendant, so much so that she even misappropriated the monies due to defendant as rent for the berth in the Port of Cala Galera, as explained above, from which monies plaintiff has today refunded only half, which half have been placed in the hands of third parties, that is Roberto Ramella, who in turn had assured the parties that the monies would only be released in favour of defendant once the agreement indicated above (Doc. TBC 9) is finalized, which agreement has today been sidelined by plaintiff.

With regard to the seventh plea out forth by plaintiff, that is that the Court divide the monies which exist in the bank accounts of Rinaldo Colombo, defendant agrees that these should be divided according to law.

Save any further pleas and with costs against plaintiff.

Having seen that during the sitting of the 23rd May 2012, the Court ordered that the proceedings were to be conducted in the English language.

Having seen and examined all the proof, acts and documents submitted by both parties.

Having seen the parties final note of submissions.

Having seen the decree whereby the cause was adjourned for judgment for today.

Having seen the acts of the proceedings.

Having considered that the plaintiff is the wife of the deceased Rinaldo Colombo who died on 5th February 2011. The spouses Colombo were married on the 23rd May 1983, some time after Rinaldo Colombo divorced his first wife, with whom he had two children, Mark and Tina Colombo. Mark Colombo predeceased his father and since Rinaldo Colombo did not have any more children, the defendant Tina Colombo remained the only child of Rinaldo Colombo at the time of his death.

During their marriage, Maria and Rinaldo Colombo acquired $\frac{3}{4}$ share of the apartment internally numbered '1' which forms part of a block called 'Trinity Flats', externally numbered '107A' in Rudolph Street, Sliema, and also two garages. Rinaldo Colombo had previously inherited the remaining $\frac{1}{4}$ share of the above mentioned apartment, prior to his marriage to the plaintiff.

According to Rinaldo Colombo's last will and testament drawn up and regulating his property in Malta, he bequeathed to his wife the plaintiff Maria Colombo the usufruct over all of his estate situate in Malta, movable and immovable, whilst nominating his daughter the defendant Tina Colombo as the universal heir to his property, movable and immovable, situate in Malta. Rinaldo Colombo also drew up a separate will regulating his property in Italy. For the purposes of this cause, the relevant part of this will stipulates that Rinaldo Colombo bequeathed to his daughter Tina Colombo the berth situate in Cala Galera Marina, Italy.

It appears that the parties to this cause could not reach an agreement regarding the liabilities of the estate of the late Rinaldo Colombo, in that the defendant, as Rinaldo Colombo's sole heir, is refusing to refund the plaintiff the deceased's share of the water and electricity bill for consumption which refers to the period before Rinaldo Colombo passed away, and for his share of those works carried out on the facade and common

parts of 'Trinity Flats', which works were carried out before Rinaldo Colombo passed away, but were only paid for by Maria Colombo after his death. As a result of this disagreement, the defendant is also refusing to sign the relevant paperwork for the plaintiff to proceed to transfer onto her name the utility meter of the apartment as well as the Volkswagen Polo bought by Maria and Rinaldo Colombo during their marriage, both of which currently remain registered in the name of Rinaldo Colombo but of which the plaintiff is the usufructuary. It appears also that the parties are also in dispute over the rent due for the berth in Cala Galera Marina, Italy which berth belonged to Rinaldo Colombo but was bequeathed to the defendant.

The Court considers the defendant's first plea to be unjustified. The defendant did not suffer any prejudice as a result of the fact that the plaintiff did not include the defendant's Identity Card Number in the sworn application and this omission does not in anyway nullify the same sworn application. As a result, this plea is being dismissed.

The defendant pleads that she was not called upon judicially by the plaintiff before this cause was filed. The defendant does not say on which article of the law she bases her plea. Consequently, the Court considers that this plea is also unfounded and therefore also being dismissed.

As to the merits of the case, the Court shall begin by examining the plaintiff's demands regarding the transfer of the utility meter and licence of the Volkswagen Polo onto her name. By way of legal considerations, according to article 328 of the Civil Code:

"Usufruct is the real right to enjoy things of which another has the ownership, subject to the obligation of preserving their substance with regard both to matter and to form."

As explained by the First Hall, Civil Court in the case of **Maria Sammut vs Lawrence Sammut et**, of the 28th January 2004:

"Tibqa' ghalhekk dejjem valida l-osservazzjoni tal-Laurent ("Principii di Diritto Civile", Vol. VII para. 38) "a rigor di principio il nudo proprietario non puo` usare della cosa, ne` goderla, poiche il diritto di usare e di godere e` staccato dalla proprieta` ed appartiene all' usufruttuario"."

From the acts of the case it does not appear that the defendant is in principle objecting to the plaintiff's request for transfer of the utility meter and vehicle license onto her name, but is refusing to cooperate because the plaintiff is demanding payment for the debts of the inheritance.

The Court considers that the plaintiff is justified in her demands regarding the transfer of the utility meter and vehicle licence. As usufructuary of her deceased husband's property, the plaintiff has the right of enjoyment over the apartment to which the utility meter refers and also over the car registered in the name of the deceased. As regards the utility meter, the transfer onto her name should take place for reasons of practicality, in that the Court sees no reason why it should be otherwise when the plaintiff is the usufructuary of the apartment in question. The car licence should be transferred onto the plaintiff's name since she is currently being hindered from making use of it due to the lack of cooperation on the part of the defendant. Since the plaintiff has been unable to transfer the vehicle licence onto her name, she is effectively being prevented from taking out insurance cover and making changes for tax registration purposes. It has been established by our Courts time and time again that the name under which a vehicle licence is registered does not necessarily equate to proof of ownership of that vehicle. In the circumstances of this case and in view of the policies adopted by the relevant authorities, the Court feels that the only way for the plaintiff to make use of the vehicle in question, as she has every right to do at law, is by upholding her demand regarding the transfer of licence.

During the sitting of the 16th October 2013, the plaintiff withdrew her fifth demand against the defendant. The Court shall therefore abstain from taking further notice of this demand. In her sworn reply, the defendant explained that with

reference to the seventh and last demand of the plaintiff, she is in agreement that the money deposited in any bank accounts in the name of Rinaldo Colombo should be divided according to law. This means that the remaining demands of the plaintiff which are being contested by the defendant are those related to the debts of Rinaldo Colombo's inheritance.

The defendant rebuts the plaintiff's allegations by pleading that she had tried to reach an agreement with the plaintiff over all pending issues regarding her late father's estate, but that she should not be obliged to provide maintenance for the plaintiff or pay for extraordinary maintenance carried out in the apartment by the plaintiff without her consent after her father passed away.

It appears that the defendant has not fully understood the plaintiff's demands in this regard. The Court is not interpreting plaintiff's claims as being a claim for maintenance. The claim towards defendant in this regard is for payment of debts of her late father's inheritance by the father's sole heir. Due to the fact that the plaintiff claims she paid the debts out of her own pocket (and no proof was brought forward to the contrary), she is requesting the defendant, as sole heir, to refund what was paid, in proportion to Rinaldo Colombo's share of the property, in that such expenses were incurred when Rinaldo Colombo was still alive.

An inheritance may be accepted unconditionally or under the benefit of inventory, as provided in article 847 of the Civil Code. It does not result from the acts of the case that the defendant accepted her father's inheritance under the benefit of inventory. Neither does it appear that the defendant has renounced to her father's inheritance. Accordingly, the defendant is liable for the debts of her father's inheritance.

The defendant inherited 5/8 share of the apartment in Sliema. Consequently, the Court finds that the defendant must reimburse the plaintiff that which she paid out of her own pocket amounting to 5/8 share of the water and electricity bill up to the date of Rinaldo Colombo's death (€1522.62), and 5/8 share of the work done by third parties on the common parts of

'Trinity Flats' which works took place during Rinaldo Colombo's lifetime but which were paid for by the plaintiff after his death (€1609.36).

The plaintiff is also demanding payment of the ground rent of the above mentioned property from the defendant. However, article 370 of the Civil Code provides that '*The usufructuary is bound to pay the ground-rent and all other annual charges upon the tenement.*' In view of the fact that the plaintiff's demand refers to ground rent due after Rinaldo Colombo's death, her demand to be reimbursed for ground rent paid is unjustified.

Regarding the berth situate in Cala Galera Marina, Italy, the plaintiff is requesting the defendant to reimburse her the amount of €999.81 which is the amount paid by the plaintiff for lease of the berth from the date of Rinaldo Colombo's death up to 30th June 2011. In view of the fact that according to the deceased's last will and testament which regulates his property in Italy, the berth was bequeathed solely to the defendant, the plaintiff's demand in this regard is also justified.

However, the Court does not agree with the plaintiff's demand that the defendant should refund her the money she paid to Roberto Rammella, to be passed on to the defendant for the rent of the above mentioned berth for the six months prior to Rinaldo Colombo's death. The money in question rightfully belongs to the defendant and the plaintiff does not contest this. The plaintiff only argues that since the defendant did not uphold her end of the bargain, that is, by signing for the transfer of the utility meter and car licence and pay her share of outstanding dues in accordance to the share she inherited from her father's estate, the money for the rent of the berth should be returned to her. However, the Court does not agree with the plaintiff's reasoning. The money in question is due to the defendant irrespective of the parties' disagreement regarding the debts of Rinaldo Colombo's inheritance and so the Court finds no reason why it should be returned to the plaintiff.

Regarding the plaintiff's last demand, as has already been stated, the defendant pleaded that she is in agreement with the plaintiff that the money deposited in the bank accounts in question should be divided between the parties. Therefore, the Court finds no reason not to uphold the plaintiff's last demand that the money deposited in any bank account registered in the name of Rinaldo Colombo should be divided equally between the parties.

For these reasons the Court is hereby deciding the cause between the parties as follows:

1. Upholds the plaintiff's first demand;
2. Upholds the plaintiff's second demand and consequently orders the defendant to refund the plaintiff the amount of one thousand five hundred and twenty-two Euros and sixty-two cents (€1,522.62) with legal interest from the date of this decision;
3. Upholds the plaintiff's third demand and consequently orders the defendant to also refund the plaintiff the amount of one thousand six hundred and nine Euro and thirty-six cents (€1,609.36) with legal interest from the date of this decision;
4. Upholds the plaintiff's fourth demand;
5. Abstains from taking further cognisance of the plaintiff's fifth demand following its withdrawal in the course of these proceedings;
6. Upholds the plaintiff's sixth demand and orders the defendant to refund the plaintiff the additional amount of nine hundred and ninety-nine euro and eighty-one cents (€999.81) for the lease of the berth in Cala Galera Marina, Italy, from the date of Rinaldo Colombo's death up to the 30th June 2011, with legal interest from the date of this decision;

7. Upholds the plaintiff's seventh demand and consequently orders that the money deposited in any bank account in the name of Rinaldo Colombo is to be divided equally between the parties.

Costs of the proceedings are to be borne by the defendant.

JUDGE

DEP/REG