

**COURT OF MAGISTRATES (GOZO)  
SUPERIOR JURISDICTION**

**MAGISTRATE:  
DR ANTONIO MICALLEF TRIGONA LL.D., MAG.JUR (EU LAW)**

**SITTING OF THE 5<sup>TH</sup> SEPTEMBER 2002**

**Writ of summons no. 169/1998**

Simon Aquilina

vs

Marjan Cornelia Aquilina nee  
Hoogkamer

The Court;

Having seen plaintiff's writ that reproduced in the original Maltese text states:

“illi l-partijiet izzewgu fid-19 ta' Mejju 1995 (dok.A) u minn dan iz-zwieg ma kellhomx ulied;

illi l-konvenuta abbandunat id-dar konjugali f'Gunju/Lulju 1996 u l-attur wara li dahal id-dar haseb li serquh ghax ma sabx l-affarjiet f'posthom u rraporta b'dan lill-Pulizija;

illi l-kunsens tal-attur ghal dan iz-zwieg inkiseb b'qerq dwar kwalita tal-konvenuta li mix-xorta taghha fixklet serjament il-hajja mizzewga;

illi l-kunsens tal-konvenuta ghal dan iz-zwieg kien vizzjat b'difett serju ta' diskrezzjoni ta' gudizzju essenzjali fuq il-hajja mizzewga, fuq id-drittijiet u d-dmirijiet essenzjali taghha u/jew b'anomalija psikologika serja li jaghmlha impossibli ghall-konvenuta li taqdi l-obbligazzjonijiet essenzjali ghaz-zwieg;

illi l-kunsens tal-attur inkiseb bl-eskluzjoni posittiva taz-zwieg innifsu jew ta' xi wiehed jew aktar mill-elementi essenzjali tal-hajja mizzewga da parti tal-konvenuta;

illi l-konvenuta għalkemm mhux interdetta jew marida b'mohha ma kellhiex fiz-  
zmien li sar iz-zwieg, ukoll minhabba raguni temporanja, setgħet intelletwali, jew  
ta' rieda bizzżejded, biex jinholoq kunsens ghaz-zwieg;

TALAB ghaliex dina l-Qorti m'għandhiex:

1. tiddecidi u tiddikjara li z-zwieg bejn il-partijiet huwa null u bla effett għall-  
finijiet u effetti kollha tal-ligi;

Bl-ispejjes kontra l-konvenuta ingunta in subizzjoni.

Having seen plaintiff's sworn declaration comprising the list of witnesses and one  
document (the marriage certificate).

Having seen defendant's note of pleas which reproduced from the original Maltese  
text states:

1. in linja preliminari din il-Qorti mhux is-sede kompetenti għal din il-kawza  
stante li kemm l-attur u l-konvenuta jirrisjedu Malta;
2. ukoll in linja preliminari u bla pregudizzju għas-suespost, il-konvenuta hi ta'  
nazzjonalita Olandiza u ma tifhimx bil-lingwa Maltija u qabel xejn għandha  
tircievi kopja tal-atti kollha bil-lingwa Ingliza u l-proceduri kollha għandhom  
ikunu bil-lingwa Ingliza li jifhmu z-zewg kontendenti;
3. ukoll in linja preliminarja u bla pregudizzju għas-suespost, l-konvenuta irceviet  
avviz ta' smigh ta' kawza fejn id-data tas-smiegh kienet immizzla bhala 10 ta'  
Dicembru 1998 meta din id-data kienet ilha li għaddiet u b'hekk l-istess avviz  
hu invalidu u dana billi l-eccipjenti s'issa ma gietx notifikata bi smigh kif  
għandu jkun;
4. bla pregudizzju għas-suespost, l-esponenti taqbel li z-zwieg ta' bejn il-  
kontendenti kien null u bla effett għall-finijiet tal-ligi izda dan minhabba  
nuqqasijiet imputabbli lill-attur u senjatament peress li l-kunsens tal-attur kien  
vizzjat b'difett serju ta' diskrezzjoni ta' gudizzju fuq il-hajja mizzewga jew fuq  
id-drittijiet u d-dmirijiet essenzjali tagħha jew b'anomalija psikologika serja li  
tagħmilha impossibli għal dik il-parti li taqdi l-obbligazzjonijiet essenzjali taz-  
zwieg.
5. inoltre il-kunsens tal-attur kien inkiseb bl-eskluzjoni positiva taz-zwieg innifsu  
jew ta' xi wiehed mill-elementi essenzjali tal-hajja mizzewga.

Having seen defendant's sworn declaration including the list of witnesses;

Having examined the evidence;

Having seen all acts and records of the proceedings;

Considers:

That plaintiff requests that his marriage contracted with defendant on May 19, 1995, is declared null and having no effects at law. The grounds on which his request for annulment are based are the following:

- a. that his wife abandoned the matrimonial home months only after the marriage;
- b. that plaintiff's consent to the marriage was extorted by fraud about some quality of the other party which could have of its nature seriously disrupted matrimonial life;
- c. that defendant's consent to the marriage was vitiated by a serious defect of discretion of judgment on the matrimonial life, or on its essential rights and duties or by a serious psychological anomaly which made it impossible for her to fulfill the essential obligations of marriage;
- d. that plaintiff's consent was vitiated by the positive exclusion of marriage itself, or of any one or more of the essential elements of matrimonial life due to reasons imputable to defendant;
- e. that defendant, although not interdicted or infirm of mind, did not have at the time of contracting marriage, even on account of a transient cause, sufficient powers of intellect or volition to elicit matrimonial consent;

That the grounds above adduced by plaintiff are those mentioned in Section 19(1)(c)(d) (f)(h) of Chapter 255 excepting the first ground which is not mentioned at all as constituting a ground for annulment under said Chapter 225;

That defendant in her note of pleas does not object to the marriage annulment *ut sic* but contests the grounds imputable to her by plaintiff while adducing other causes imputable to plaintiff;

That from the proceedings it results that prior to the present action taken by plaintiff the parties had entered into a voluntary separation contract (*vide folio 57 dok.MV1*). It also clearly transpires that no children were born from the marriage;

That even though defendant does not contest plaintiff's request to have the marriage between them annulled, the court is not thereby released from the duty of hearing and evaluating the evidence in order to ensure that there is a legal basis for the annulment being requested; it being established case law that a marriage should be annulled only if the court is morally convinced of the existence of the grounds alleged;

that reference the said grounds and examining them piecemeal this court is of the firm opinion, that:

- i. the first mentioned ground does not bring about the annulment of the marriage. At best it can have repercussions on that spouse who has abandoned the matrimonial home in so far as maintenance is concerned, but it is not a ground which the Marriage Act (Chapter 225) contemplates for the annulment of the marriage;
- ii. the second ground, based on plaintiff's consent to the marriage having been extorted by fraud, does not find any justification from the evidence produced. According to the relevant section of the Marriage Act (Section 19) such fraud must relate to "some quality of the other party which could have of its nature seriously disrupted matrimonial life". There is no evidence to show that defendant's deceit consisted in the fact that her sole scope of marriage was that of acquiring the right to remain and work in Malta. The facts do not bear out plaintiff's allegations which are not based on facts but mere suppositions;
- iii. the third ground, based on plaintiff's consent to the marriage being vitiated, is likewise not proven. In the court's opinion the factors that are mentioned at law (Section 19) consisting "in a serious defect of discretion of judgment on the matrimonial life, or on its essential rights and duties, or a serious psychological anomaly" on defendant's part, such as precluded that she fulfils the essential obligations of marriage do not result. There is no evidence to show that defendant lacked the capacity to freely and consciously give her consent to the marriage. This would apply also to plaintiff. Evidence points to other factors which eventually led to the marriage break-down – the main factor which the court discerns is that the couple did not share common interests and each wished to pursue his/her own interests. A serious discretion of judgment does not take place just because of lack of thought or because a wrong decision was taken. Nor does it mean that because an element of indecision existed when deciding to marry, then this brings about a serious discretion of judgment (First Hall 21.11.1995)
- iv. there is absolutely no evidence to sustain the fourth ground based on "the positive exclusion of marriage itself or of any one or more of the essential elements of matrimonial life". Nowhere in the evidence, for instance, is it referred, even by inference, that any one of the spouses intended the exclusion of having children. The fact mentioned by plaintiff that defendant used contraceptives is not on its own sufficient to prove this;
- v. the fifth and final ground finds absolutely no support from the evidence tendered. On the contrary it clearly transpires to this court that defendant wanted and wished to contract marriage with plaintiff as evidence her reaction when plaintiff first proposed and her subsequent reaction to plaintiff's mention of her "freedom of movement".

Therefore and on the strength of the evidence produced the court, after making its own assessment and having examined and evaluated all evidence, is in agreement with the conclusions reached by its nominated judicial referee.

Consequently and in view of the above the court dismisses all plaintiff's requests with costs against him.

A.M.Trigona  
Magistrate.