



**CIVIL COURT
(FAMILY SECTION)**

Mr. Justice Anthony G. Vella

Sitting of Thursday, 21st May 2020.

Sworn Application : 215/2017 AGV;

ABCD

(French Passport Number 11CX45497)

-vs-

EFGH

(Panamian Passport Number 001866483)

The Court;

Having seen the sworn application of ABCD

Respectfully submits and declares on oath: -

1. That the parties celebrated their marriage at the Public Registry of Malta, Valletta, on the twenty ninth (29th) day of January of the year two thousand and sixteen (2016), as per marriage certificate attached herewith and marked as **Dok. "A"**.
2. That no children were born of the said marriage.
3. That the parties separated legally just a year later by virtue of a deed of separation dated third (3rd) of March of the year two thousand and seventeen (2017) in the acts of Notary Tonio Cauchi, a copy of which is hereby being attached and marked as **Doc. 'B'**.
4. That the consent of the applicant was extorted by moral violence and by fear in view of the respondent's particular circumstances at the time of their marriage, as shall be proven in the course of these proceedings.
5. That the consent of the parties was vitiated by a serious defect of discretion of judgment on the matrimonial life, and on its essential rights and duties, as well as by reason of a serious psychological anomaly which makes it impossible for that party to fulfil the essential obligations of marriage.
6. That such consent was further vitiated by the respondent's positive exclusion of marriage itself, or of anyone or more of the essential elements of matrimonial life.

7. That for these reasons the said marriage is void and without any effects in terms of article 19(1)(a), (d) and/or (f) of Chapter 255 of the Laws of Malta.
8. That these facts are directly known to the applicant.

Consequently, the applicant humbly requests this Honourable Court to: -

1. Declare and decide that the marriage contracted by the parties on the twenty ninth (29th) of January of the year two thousand and sixteen (2016) is void and without effect in terms of Article 19(1) (a) (d) and/or (f) of Act 255 of the Laws of Malta.
2. Authorise the applicant to register the said judgment in the Public Registry of Malta.

With costs against the respondent from now referred to the oath.

Having seen Defendant's sworn Reply wherein he submits as follows:-

1. That Plaintiff's claims must be rejected since they are unfounded both in fact and in law and as will be proved during the proceedings of the present case, the marriage between the parties is valid and there don't exist at all valid reasons for the marriage to be declared null.
2. Save further pleas against Plaintiff (ingunta minn issa in subizzjoni).

FACTS

1. Plaintiff met Defendant through Tinder and then they started to speak also through Facebook. He had told her that he was from Panama and they had a common friend. She explains that on the 13th September, 2014, when she was out with her flat mate, she met Defendant by chance in a bar at St. Julians and they had a drink altogether. Afterwards she admits to meeting Defendant more regularly, although initially she was more interested in him as a friend. She was in a difficult relationship with a certain IJ and she was at a point in her life, where she wasn't happy. By time, they both started developing feelings towards each other, however she felt confused because she was still in a relationship with IJ and she could not get herself to leave him. As a result she had lost a lot of weight and her mother too had come over to support her. Finally, when she discovered that J was flirting with one of their employees, she found the opportunity to leave him.

Plaintiff explains that Defendant lied to her from the start about his life. He told her that he was working for an import/export company, then he told her that he was unemployed. He mentioned that he had been in prison in Malta for money-laundering and denied being involved in drug-trafficking and that he was not out on bail. She explains that she did not leave him then because she was alone in Malta with no friends and she was also passing through a bad time because her parents were separating.

She started going out definitely with Defendant in July, 2015, but at the time she was still living in the penthouse she shared with her ex-boyfriend and Defendant was pressurizing her to move out. He was very manipulative and controlling, but since she had no one else in Malta except him, she gave in to him and they rented an apartment, although they never lived

together since Defendant ended up in prison for crimes related to money-laundering and drugs. It so happened, that he was sentenced to three months imprisonment, after which he would be deported to Panama. The only way to get him to remain in Malta was by getting married, so Defendant, she explains, talked her into marriage and because she loved him, she accepted, despite the fact that prior to this they had never made plans to get married.

Plaintiff admits that she was very much in love with Defendant, but in hindsight, she could not believe she fell for him, when they had different intentions. Defendant had insisted on the marriage taking place, not because he loved her, but to take advantage of her to stay in Malta, use her, take her money and live off her, whereas she was brought up within a good family with strong values, stating also that she studied hard to be where she was today.

Plaintiff states that she had only mentioned the wedding to her father and his partner, who had happened to come to Malta to meet Defendant, only to find that he was in prison. He had promised her father that he was going to change his ways and he was going to look after her. Just before they were meant to get married, she decided to get in touch with his family, since she had never met them, so she contacted them through Facebook and she also called his brother to ask about him, since she had never lived with Defendant before, neither had they travelled before nor had they met their respective families.

Before the marriage, she explains that she had discovered some photos of a naked woman called K with flirtatious messages and messages that Defendant sent to his brother, telling him that he would get married to a European girl to get the necessary papers. Notwithstanding all this, she still

decided to go ahead with the marriage, hoping that he would change and things would work out, because by this time she had strong feelings for him.

During the three months that Defendant was in prison, she organized the wedding alone and meanwhile her relationship with him was reduced to nothing other than an hour on the phone with him whilst he was in prison and a visit every Sunday. She even spent her Christmas alone here in Malta so as to be able to visit Defendant on Christmas day. She also explains, that Defendant's lawyer took care of the necessary legal documents required for the wedding and he even went as far as to buy them the wedding rings and in fact hers was too small.

Plaintiff states that they got married on the 29th January, 2016 at the Valletta Marriage Registry, during which time Defendant had been for most of the time in prison. For the wedding she explains that she had no particular wedding dress and present for the wedding were the witnesses only and Defendant's best friend and her ex-boyfriend's brother. Defendant was still in prison on the day and he turned up handcuffed and the police prohibited them from hugging or kissing each other. She returned home alone and a few hours later, Defendant appeared as he had been released from prison and despite the fact that she was very happy to have him with her, he wanted to go out with his friend L and they spent their wedding night at a club in Paceville, where she ended up paying for the food and the drinks.

From then onwards, Defendant spent most of the time going out and he would spend long hours away from home. She offered him to work with her company and initially he refused because he felt he needed time to relax after coming out of prison and when he did decide to start working,

Plaintiff admits that she put him on a trial period, but he was only working for two hours a day, spending the rest of his time watching videos, playing on his phone or going out with his friends. At the end she did not give him a contract of employment. She explains that she was the one who was always paying the rent and all their other bills and expenses.

In April, 2016 they had gone to Paris so as to introduce Defendant to her family and she paid all the expenses. She states that she spent most of her day at work and Defendant would make sure to drop her off at work and then pick her, only to go out most of the evenings, leaving her home alone. Although they could not afford it, he insisted that he rents a car and he got his way.

Defendant, according to Plaintiff, didn't make any effort to make things work, he was constantly chatting with girls and liking naked photos of women. He even used the name MN.¹

Having no one to turn to, Plaintiff admits that she had a Maltese acquaintance, who she felt she could confide in about her marital problems and when Defendant found out, they had a whole argument, further to which, he became violent and had injured her.² Plaintiff explains that she did not report him at the time as she was scared, however her neighbours who had heard the shouting and the arguments had reported to the landlord OP, who checked to see that she was fine.

By the 9th of May, 2016 she had decided to forgive him once again, but things did not change, in the sense that Defendant was always out and did

¹ See DOC. MA 3 to MA5.

² See Doc. MA 6 – MA 9

nothing to help himself get employed. Plaintiff explains that even her father, who had come over on holiday to visit her was shocked to see the state of their relationship. At one point, Defendant decided to go to Ecuador because he admitted with Plaintiff that he had too many debts because of the rented car. She states that she threatened she would divorce him if he left. She admits that she was very heart-broken due to the fact that she was aware he was leaving to get involved into some drug deal. His departure left her with severe anxiety, so much so that there was a time that she had to be admitted to hospital and she was in such a state that she couldn't even go to work or eat. He was also asking her for money, but she refused to send him any.

Meanwhile, she had rented out part of the apartment to new flat-mates, who realized her state and encouraged her to go out with them. Defendant only returned after three months, to be more aggressive and he used to insult her constantly calling her names such as "bitch," "a bad woman" and "a bad wife." Plaintiff explains that when he returned at the end of September, 2016 she had his bags packed and she asked him to move out. He went to stay with a friend, but he still went over to their place gradually, but she admits that he used to go to abuse her and have intimate relations with her and because she was too weak, she would give in to him. Throughout this time. she was in and out of hospital because she was getting bad panic attacks. Infact, she admits that once when she was at hospital she had asked for psychological support because she was feeling broken as a result of the abuse, she had been suffering.

Although they were not together, Plaintiff explains that Defendant still wanted to have control over her and there were many scenes he would make when he found out that she had started to go out and she had also

started to attend salsa lessons. This abuse led to her loss of appetite and consequently, loss of weight, with the result that she had been prescribed medication by her doctor and the effects were drowsiness.

Plaintiff decided that it was time to try and get her life back and she went on holiday with a friend of hers to Columbia. At this time she had undergone two pregnancy tests and she wasn't sure whether she was pregnant or not. During her time in Columbia she had tried to communicate with Defendant, but to no avail, until she came to Malta when he turned up with a card and a small gift for the baby. He admitted to her that whilst she was in Columbia he had intimate relations with another woman, QR, who she managed to contact. R told Plaintiff that she had been with Defendant for two months and he had told her that he was undergoing divorce proceedings. R also told her that they were actually living together.³ They had a confrontation altogether with Defendant too, who told Plaintiff that he was in love with R and she ended up getting another panic attack, but once the latter left he told Plaintiff that he only loved her. He was playing with both their emotions, telling R that he wanted to be with her and at the same time, he was still saying the same thing to Plaintiff and sleeping with her.

Plaintiff spent Christmas 2016 in France with her family. Defendant did not go because she refused to pay his trip. However, he made her life a misery throughout sending her and her family threatening messages. On her return she discovered that Defendant had moved to an apartment in Paceville, where he was paying €1,500 a month, when he did not work and

³ See Docs. MA 13 to MA 16.

she knew he was dealing in drugs once again. He asked her to go and live with him, but she refused. She states that Defendant was inviting a lot of friends at his apartment and he used to post photos of Facebook, with several girls present.⁴ Once she even went to his apartment and found girls on the sofa in their pyjamas half naked and his bedroom was full of girls' clothes. At the time they were obviously still married.

By this time, Defendant was still expecting Plaintiff to give him money and because she refused he started to threaten her. Since she was getting very scared she asked her father to come over to Malta to be with her and he did. He had also changed the lock to her bedroom door, although on the 14th February, 2017 Defendant had gone into the apartment and destroyed her bedroom, thinking there was a man in her room and all this happened whilst she was at work. After this incident, she had forgiven Defendant once again, but very soon he started his relationship with QR once again.

At this point, Plaintiff was determined to go ahead with the separation and they finalized the separation on the 3rd of March, 2017.⁵ Soon after they reconciled and although they remained living in separate apartments, they met frequently and they used to visit each other too. However, within the same month, she had gone to his apartment, only to find him in bed with another woman.

On the 20th March, 2017, she had decided to seek help from a psychologist since she had decided that she didn't want to see Defendant again. Nonetheless, she kept on going back to him and so did Defendant, but he would leave her again for another woman. From his end, he was very

⁴ See Dok. MA 24.

⁵ See Dok. MA 27.

jealous and possessive and the thought that she would go out with another guy drove him crazy. Episodes of other women, aggression and possessiveness continued because Plaintiff was still in touch with Defendant, until the summer of 2017, when she decided it was the end. She had an argument with Defendant because she discovered that he had a copy of keys to her apartment and as a consequence she blocked him from Facebook, her phone and any other form of contact. To spite her, Defendant posted photos of her in bed and he defamed her. She also started to receive threatening messages from his girlfriends.⁶

She unblocked Defendant and asked him to remove these posts and the whole argument led her to report the matter to the Police.; On investigating, the Police went to his apartment in Paceville and there they discovered Defendant and his friends with drugs. As a result, he was arrested and later sentenced to 15 months in jail. Sometime after he was sent to jail, she went to France to put her life together again and ever since she has not been in contact with Defendant.

Plaintiff explains that Defendant never intended to commit himself to this marriage, his only intentions were to remain in Malta and as a result she ended up being subjected to an abusive and manipulative relationship letting Defendant take advantage of her in every sense.

3. ST, was employed with Plaintiff's company since March 2016. She describes Plaintiff as a very quiet person and very polite. She was the founder of the company and she admits that she always had a very good relationship with her.

⁶⁶ See Docs. MA 30 – Doc. MA 34.

When she started working for Plaintiff she hadn't realized that she was married to Defendant, until she had seen the occasional kiss or hug at the office. Defendant was meant to be her manager and had to train her, though he never did and although they shared the same office she realized that he did not work much, he was either watching you tube or playing games. She would realise when she would go out into the balcony to smoke about three times a day. He had also told her that he was a drug dealer and he also smoked joints at the office. He was also obsessed with the "illuminati."

Witness explained that many a time Plaintiff would tell Defendant to look for another job as he showed no interest. Then he stopped going to the office. She also confirmed that the parties used to argue and there was an incident, when Defendant had broken down her bedroom door.

She also confirmed that Defendant had gone to Ecuador because he was indebted and he had no job here in Malta. She knew he was going to get involved in drug dealings because he had no inhibitions to tell her. She confirmed that he stayed there for three months and Plaintiff was very upset because she did not know when he was coming back and he barely contacted her when he was there. She was emotionally distraught and she had lost a lot of weight because she wasn't eating and she admits that she was very concerned for her. When he returned he wanted to move back in with Plaintiff, but by that time she explains that Plaintiff had lost all her self-esteem and all her dignity and she did not believe in herself anymore.

She had been helping her run the company because she wasn't in a position to take care of herself. She states that the parties' marriage was not a proper marriage, because Plaintiff thought she had found a prince charming, but

all she had found was a drug dealer, who had no sense of commitment and only got married to remain residing in Malta.

In summer 2017, she confirms that Defendant had ended up in prison and this was because he was found in the possession of drugs. After Plaintiff had discovered that Defendant had posted certain photos of her on Facebook, she had gone to report him to the police because he refused to delete them. He was known with the police and after a search at his house, they had arrested him and his friends for drugs. To keep her safe, witness states that she had kept Plaintiff with her for a couple of days.

She explains that from what Plaintiff told her she was brought up in a good environment and within a good family, so for her she couldn't come to terms with what Defendant had done to her and she was in denial for a very long time.

4. IJ used to be Plaintiff's boyfriend. They had set up their business together here in Malta and he described Plaintiff as a smart and creative person, but naïve who only saw the good in people. When their relationship was on the rocks, they had split up and Plaintiff started going out with Defendant sometime later. J states that he had carried out some research on Defendant and he had found out an article on a Maltese newspaper that he had been jailed for money laundering. He felt that he had to warn Plaintiff to be careful, however she believed what Defendant had told her, precisely that he was innocent.

He explains that since they owned a property in common and the business, they took their time to split what they had in common and meanwhile remained living together. At the same time, Defendant used to frequent

their home and he gave the impression of being nice, but because of his criminal past he felt weary about him.

He explains that Plaintiff had told him that Defendant had asked her to marry him because he ended up in prison and was risking being deported.

He warned her to be careful because he was suspicious of him. Soon after they got married, things were not well between them and he states that Plaintiff used to call him crying because of their problems and because she had no one else to speak to. During the marriage, Defendant wasn't nice to Plaintiff any longer. He used to go out alone and despite Plaintiff's efforts to employ him with her, he was not interested.

He explains that Plaintiff used to call him because Defendant was violent with her, he lied to her and he also cheated on her. She called him so many times and he always suggested that she had to do something about the situation, but she was so brainwashed and manipulated and never reacted.

He mentions that Defendant was an unreliable and untrustworthy person, who had once asked him to lend him €400 because he had damaged Plaintiff's car and he spent a year running after him until he paid him. There was also another occasion when he crashed with Plaintiff's car in a hit and run incident and the police came to look for her at his residence, since the car was still registered at his address.

He adds that Defendant promised Plaintiff the world, but instead all he gave her is heartache, he treated her badly and took advantage of her for his own personal reasons.

5. UV, Plaintiff's father's partner met Plaintiff for the first time in 2014, when she came over to Malta with Plaintiff's father. She states that Plaintiff had a very close relationship with her father and she would call him constantly whenever she was upset. She realized that Plaintiff did not have many friends in Malta and her father was her best friend.

She explains that Plaintiff used to open up with her about her relationship with IJ turning sour. She describes Plaintiff as being a very friendly young woman, full of good intentions, kind as well as smart.

When she finally plucked up courage to break up her relationship with J, she eventually told her father that she had met Defendant and he treated her like a princess. She seemed to be madly in love with him. She explains that the first time she had met Defendant was whilst he was in jail in Malta. He was very good at convincing them that he had ended up in jail due to unfortunate circumstances because he was not involved in drug dealing, but had ended there accused of money laundering.

When they visited him in jail, he had asked Plaintiff's father's permission to marry his daughter and he went down on his knees with tears in his eyes. The witness felt that this was too much of a mis en scene. She kept on doubting him even further when after Plaintiff had informed them that Defendant had asked her to marry him, he refused to sign a pre-nuptial agreement, that Plaintiff's father had recommended she does, until he finally gave in.

She explains that whilst he was in jail, they had gone to his apartment to clean it up so that he could get back the deposit he had paid. The place was dirty and in a bad state and she was surprised that Plaintiff was not aware

of what kind of person Defendant was, when she came from a good family and is also well-educated.

She confirms that they got married on the same day he was released from jail and immediately he broke all the promises he had made to Plaintiff, even in front of her when they had gone to visit him in prison. The witness goes on to state that Plaintiff sounded more and more unhappy after the marriage, she used to call them and she cried a lot, stating that Defendant never used to spend time with her and he was out most of the time.

She confirms that Defendant never wanted to work, even though Plaintiff had offered him a job. When they were over in Malta once again, she explains that it was very obvious that Defendant was under the influence of drugs because he behaved erratically. Plaintiff had to convince him to stay for dinner with them and when he did he would go out immediately. Plaintiff was always very upset with his attitude.

She considers the Defendant to have been a liar and he manipulated Plaintiff to the extent that she was no longer herself. She had lost weight and she couldn't focus on her work. When she realized how deceitful Defendant was, the witness states that she refused to speak to him any longer and he took it out on Plaintiff.

After they left, Plaintiff had called them to inform them that Plaintiff had left to another country "to do business" and she had no idea for how long he was going to be away for. When he returned they led the same life and he was also cheating on her as Plaintiff used to call them in tears.

In January 2017 Defendant was threatening Plaintiff and her father came to Malta to spend three weeks with her, where she had to visit a psychologist because of the problems she was passing through. In June, 2017, she confirms that Plaintiff had once again called them because she had reported Defendant to the police because he had put up some posts of her on Facebook and he refused to remove them. He was then arrested together with some of his friends, who began threatening Plaintiff. It was at this point that she decided to go and spend sometime in France with them and when she arrived she was unrecognizable. Physically and emotionally she was destroyed because of Defendant who had manipulated her.

6. WXC, Plaintiff's father explains that his daughter had moved to Malta in 2013. She had a boyfriend IJ with whom she had set up a business and they had also purchased a property together. Eventually they broke up and she started dating Defendant. He admits that he did not know him, but Plaintiff seemed to be very much in love with him. She did however tell him that Defendant had been jailed because of money-laundering.

When he met Defendant in jail, he tried to convince him that he was not involved in any crime, but had sent money to his friend in Panama, that was then used for drug dealing. He decided to admit to the accusation of money laundering. He states that Defendant explained to him that the only way to stay in Malta was to marry Plaintiff, otherwise he would be deported. He knew Plaintiff was very much in love with Defendant, but at the same time she had not thought about marriage. He felt he could not advise her and he was happy that she seemed to have found a new love, because she was quite lonely in Malta.

Once Plaintiff agreed to marry Defendant, he states that it was a very difficult time for her because she was having to organize everything herself, whilst Defendant was in prison. Moreover, she was still settling things with her ex. He confirms that he had insisted with Plaintiff that she gets Defendant to sign a contract to separate their assets and although initially he refused, then he got down to signing it.

After the marriage, Plaintiff was not so much in contact, but in May, 2016, she called him crying because Defendant had been aggressive towards her and had pushed her down the stairs of her apartment. In June, 2016, he came to Malta and he admits that he was taken aback when he saw how lazy the Defendant was and whereas Plaintiff used to go out to work, he would spend his time at home playing video games or going out with friends and he used to smoke weed every day. He admits to trying to help Defendant to look for a job, but he showed no interest whatsoever.

He confirms that Defendant had informed that he planned to go to Ecuador to make business and he realized that he was going to be involved in drug dealing. He had warned him not to do this to Plaintiff because it would upset her very much. When she found out that he did leave for Ecuador and Plaintiff called him in tears, he admitted with her that he was not going to have anything to do with Defendant any longer and he recommended that she speak to a lawyer to get a divorce.

Plaintiff had admitted to him that it was difficult to end her marriage and meanwhile she had started taking medication for depression.

In January, 2017 Defendant was involved in an accident with Plaintiff's car and after having paid for the repairs of the car, he then started

threatening her to repay him. On the 11th January, 2017, he decided to come to Malta because he feared Plaintiff's safety. When he left Malta he was aware that Plaintiff was still seeing Defendant, because it was difficult for her to find a way to end the marriage. She was also seeing a psychologist.

Plaintiff's father confirms that in June, 2017, she had reported Defendant to the police and she had gone to spend time with him in France, where he saw a big difference in her.

Plaintiff's father describes his daughter as being a very good girl, who always studied hard to obtain the degrees she achieved. Defendant manipulated her to his advantage. He promised her several things and a good life and he gave her nothing in return.

7. YZ met Plaintiff in September in 2016, when she started attending his dance lessons. Towards October, 2016 he started to realise that Plaintiff was not herself and she stopped attending the sessions. He had confronted Plaintiff, who opened up with him regarding her problems with Defendant and that he was very controlling, He states that Plaintiff had asked him to refuse Defendant from attending the sessions, because it was the only time she enjoyed doing something. Each time that Plaintiff did not attend he knew it was because she would have argued with Defendant.

He confirmed that he had seen Defendant in Paceville with other women and on another occasion whilst he was out with Plaintiff and some other friends, he had gone to check on her and started shouting.

8. 1 CD, Plaintiff's mother had met Defendant when she came to Malta to visit Plaintiff. She could see that her daughter was very much in love with him and he seemed to be very attentive towards Plaintiff.

She confirms that her daughter had made her aware that Defendant had ended up in jail because of money-laundering and she was very surprised when Plaintiff told her that she was not going to spend Christmas with her in France, but she was staying in Malta, since Defendant was in prison. She admits that here she realized that Defendant had a psychological hold on her daughter.

In Spring, 2016 she had met Defendant as they had gone to Paris to visit her. Plaintiff had paid for the trip, since Defendant didn't have a job and did not help out his wife. After they returned to Malta, Plaintiff used to call her crying because Defendant used to go out a lot without her, leaving her at home. When she visited Plaintiff in August, 2016, she found out that Defendant had gone to Ecuador for drug dealing and at that point, she told Plaintiff that she didn't deserve this man as a husband and she had to leave him as she had always been a hard-working, happy and friendly girl. However, she had changed as she lost a lot of weight and lost her motivation to see her company grow.

Then Defendant also started to become violent and he used to threaten Plaintiff and she had experienced this as she had seen several of these messages. She also told her that Defendant was cheating on her and he was abusing of drugs, so he had become more violent and abusive. Since she didn't have the energy to get out of this situation she ended up seeing a psychologist on a weekly basis.

Plaintiff's mother explains that in Summer, 2017 she was checking her Facebook and she came across a post from Defendant which was in Spanish and showed naked photos of Plaintiff and he called her a cheater and a bad woman, amongst other things. Through this post she also discovered that parties had got married, as Plaintiff had never told her so as not to worry her. That same day, Plaintiff called her to tell her she was returning to France for a few weeks. During such time, she had lost a lot of weight and she was very lost and depressed. Following this episode of Facebook, Defendant was arrested and jailed for drug dealing. Whilst Defendant was in jail, he still did not leave Plaintiff in peace, he kept on threatening her and making her feel guilty that he had ended up in jail because she had reported him. He never removed the post and it was only the administrators of Facebook who did so eventually.

Plaintiff's mother confirms that Defendant played with her daughter's emotions and he made her pass through a very hard time, both from a physical, emotional and also a financial point of view.

CONSIDERATIONS

ARTICLE 19 (1)(a)

Plaintiff is requesting the nullity of the marriage in terms of Article 19(1)(a) of the Marriage Act (Chapter 255) which states that a marriage shall be void if:-

“The consent of either of the parties is extorted by violence, whether physical or moral, or fear.”

In the case **Tanya Curmi vs Charles Curmi**⁷ the Court stated that :-

“in order to be considered as a vice of consent, regard must be had not only to the gravity of such fear, but also to the character and condition of the person subjected to the fear.”

Furthermore, in another judgment in the names **Mary wife of Gaetano Bilocca vs Gaetano Bilocca**⁸ the Court reiterated that fear is *“the effect, which force, whether physical or moral, induces in the mind of the future spouse.”*

A pre-condition for this ground to subsist necessitates that the fear can be absolute or relative, depending on the state of mind of the part being subjected to such fear. This was emphasized in the judgement **“Lorenza sive Luara Muscat xebba Borg vs Av.Dr.Paul Micallef u PL John Privitera noe.**, wherein the Court stated:-

“Il-biza’ jrid ikun ta’ certu gravita’, pero’ jista’ jkun assolut meta tkun tant gravi illi ggieghel bniedem normali jibza’ tant illi jidhol fiz-zwieg kontra l-volonta’ tieghu. Ezempji ta’ dan hu meta jkun hemm theddid ta’ qtil. Il-biza’ tkun relattiva meta tkun tali li jekk imposta fuq persuna timida jirrizulta f’biza’ li hija relattivament gravi u dan ghaliex kollox jiddependi fuq il-karattru tal-istess persuna.”

Plaintiff believes that her consent was extorted by fear. She was emerging from a broken relationship, she was splitting up her business with her ex-

⁷ First Hall of the Civil Court, 18th May, 1988

⁸ First Hall of the Civil Court, 16th May, 1990

boyfriend and meanwhile, she had met Defendant. It was a period during which Plaintiff was feeling very lonely, because she had very few friends and no family here in Malta. It was under these circumstances that she met Defendant, who found her very vulnerable.

Some time after they had been dating, Plaintiff ended up in prison accused of money laundering. He was sentenced to three months and was risking being deported out of Malta. It was in this scenario that Defendant asked Plaintiff to marry him, because it was the only way he could remain in Malta and they could continue their relationship.

Plaintiff interprets her fear as being related to the fact that if she did not marry Defendant, then she would lose him forever. The reality was that she had only been dating Defendant for a short while and obviously she had not given any thought on marriage or even more so, they never even discussed it between them.

Plaintiff's father, who was made fully aware of the circumstances, did not want to interfere in his daughter's decisions, but he could sense that she was very happy and in love and he did not want to see her upset. In his own words:-

“My daughter felt completely lost in the circumstances as she clearly was in love with him and didn't want to lose him.. But at the same time she hadn't thought of marriage yet. I didn't know what to advise her, as in a way I was happy for her that she had fallen in love again and had found someone to share her life with and support her, as she seemed to be very lonely in Malta.”

Plaintiff's dilemma was that everything was happening too fast and she also had other things on her mind, related to her previous relationship. Her love for Defendant and his capacity to be manipulative and deceitful over her rather weak and naïve character, instilled in her that fear of losing a person she loved and who promised her the world. Both Plaintiff's father WXC and his partner UV corroborate their evidence, that Defendant led them to think that he was going to make Plaintiff happy. He was good with twisting his words around. UV in describing Defendant's reaction, when they went to meet him for the first time in jail, reiterates that it was all too much and was not so convincing. She states as follows:-

***“When we went to meet him, E asked AB’s dad to marry his daughter and he went down on his knees and kissed AB’s hands. When he came to leave he had tears in his eyes and he was complimenting me all the time. I felt it was all too much and I had my doubts about E. For AB marriage was a big step which she considered important. Although she seemed to be in love with E, his marriage proposal came as a surprise and I don’t think AB was so sure about this decision.*”**

V also believed that Plaintiff was blinded by Defendant and lonely here in Malta, so these must have been determining factors in her consenting to the marriage. This is also corroborated by Plaintiff herself, who states that ***“I was completely blinded and I did not want to lose E. I felt that with the way E proposed to marry me I had no option but to accept.”***

Plaintiff also tried to seek reassurance from Defendant's lawyer, who made it clear that marriage was the only option, if she wanted to spare Defendant a deportation. This is confirmed by several witnesses produced by Plaintiff.

Had Plaintiff been stronger, not so lonely and confused, not so vulnerable, in all probability she would have been more lucid and in a better frame of mind to refuse Defendant's proposal, but having only him left in Malta as a point of reference, a person for whom she had feelings and whom she feared by refusing marriage, she would lose forever, left her no option, but to accept the marriage. This fear, relative to her state of mind at the time, is circumstantial to her giving consent as Plaintiff herself admits:-

“With hindsight, I do not even understand why I accepted to marry him. The fear and the pressure were surely stronger than my own logical reasoning.”

Therefore, Plaintiff has succeeded to prove that there exist grounds for nullity on the basis of Article 19 (1)(a).

ARTICLE 19 (1)(d) and ARTICLE 19(1)(f)

Plaintiff is requesting the nullity of the marriage in terms of Article 19 (1d) which states that:-

“The consent of the parties was vitiated by a serious defect of discretion of judgement on the matrimonial life and on its essential rights and duties, or by reason of a serious psychological anomaly which makes it impossible for that party to fulfil the essential obligations of marriage.”

She is also requesting the nullity of the marriage in terms of Article 19(1)(f) which states that:-

“if the consent of either of the parties is vitiated by the positive exclusion of the marriage itself, or of any one or more of the essential elements of matrimonial life, or of the right to the conjugal act;”

It was established that these Articles 19 (1)(d) and (1)(f) are in conflict with each other.

“Qabel xejn, peress illi r-rikorrent ibbaza t-talba tieghu ghan-nullita` taz-zwieg sew fuq is-subinciz (1)(d) kif ukoll fuq is-subinciz (1)(f) tal-Artikolu 19 tal-Kap. 255, ghandu jinghad illi diversi drabi gie dikjarat mill-Qrati taghna illi kawza dwar annullament ta’ zwieg imsejsa fuq is-subinciz (1)(f) u fl-istess waqt ukoll fuq is-subinciz (1)(d), ghandha titqies li tikkontjeni talbiet kontradittorji. Ghalkemm ma jidhirx li tali kontradizzjoni twassal ghan-nullita’ tal-att, pero` min-natura taghhom dawn iz-zewg kawzali flimkien inevitabilment idghajfu lil xulxin.

Dwar l-inkompatibilita’ bejn dawn iz-zewg sub-incizi intqal hekk fis-sentenza Kenneth Cefai vs Louise Cefai ⁹Deciza mill-Qorti tal-Appell fil-11 ta’ Novembru 2011:-

“Ghar-rigward tal-kompatibilita` tas-sub-artikoli (d) u (f) imsemmija, din il-Qorti, ghal ennesima darba, tirribadixxi li talba bazata fuq dawn iz-zewg kawzali ma tistax, teknikament, treggi.

⁹ Decided by the Court of Appeal on the 11th, November, 2011

Fil-kawza Baldacchino v. Duan, deciza minn din il-Qorti fit-3 ta' Dicembru 2010, kien intqal hekk fir-rigward:- "It should be noted from the outset that, technically, this case should not have been discussed on its merits, as the two grounds put forward to support a claim for nullity cannot stand together and mutually exclude each other. While claiming that the spouses had sufficient discretion to exclude an intention to marry (simulation), plaintiff is automatically excluding the grounds of lack of discretion; similarly, while claiming a lack of discretion, he is automatically rebutting the ground under paragraph (f), as this implies a positive act of discretion to exclude marriage."

It is of significance that jurisprudence has established that by affective immaturity, it did not refer to simply to lack of affection towards the other party, or lack of attraction or lack of love. Neither is it sufficient to prove that a party to the marriage has a serious defect of discretion of judgement if he/she lacks a full understanding or has failed to evaluate the true meaning of married life, since the defect must be serious and grave and not limited to one simple incident.

In the judgment **Alessandra sive Sandra Mc Monagle gia' Mamo vs Mario Mamo**¹⁰, the Court reiterated that for the consent to be vitiated in terms of Article 19 (1d) it necessitates that:-

¹⁰ Deciza mill-Prim' Awla tal-Qorti Civili fl-20 ta' Ottubru, 2000

“fil-mument ta’ l-ghoti tal-kunsens matrimonjali, parti jew ohra tkun priva b’mod sostanzjali ossia gravi, minn dik il-fakolta’ kritiko estimattiva jew kritko valutativa dwar l-oggett tal-kunsens taz-zwieg, jew minn dik il-maturita’ affettiva li hija presuppost ghal ghazla libera dwar l-imsemmi oggett.” [sottolinejar ta’ din il-Qorti]

Local jurisprudence related to the interpretation of discretion of judgement states that the defect by which one evaluates, understands and assumes the essential rights and obligations of marriage or by which he/she tried to understand the meaning of marriage must be grave. Not every state of immaturity at the time of giving consent leads to the nullity of marriage.

In the judgement **Mario Mizzi vs Maris Mizzi**, decided by the Court of Appeal on the 15th November 2005, the Court stated as follows:-

“Biex ikun hemm in-nuqqas jew difett serju ta’ diskrezzjoni ta’ gudizzju jrid ikun hemm l-inkapacita’ psikika jew kostituzzjonali (mhux necessarjament anomalija psikologika fis-sens mediku) li wiehed jagħraf u jirrifletti jew li jiddeciedi liberament (jigifieri mingħajr impulsi nterni li jkunu neħhew il-liberta’ ta’ l-għazla tal-persuna li tkun) fuq l-oggett tal-kunsens matrimonjali.”

The lack of a serious discretion of judgment is thus a juridical concept that bears a close affinity with one of the party’s capacity or both to give a free and willing consent to a binding marriage. Reference is being made to a judgement **Charles Atkins v. Matilde Atkins**¹¹, whereby a detailed

¹¹ Decided by the First Hall of the Civil Court on the 2nd October, 2003

explanation in relation to the interpretation of Article 19 (1)(d) was given as follows:-

“Il-kuncett tad-discretio judicii ma jirrikjediex maturita' shiha u perfetta fuq dak kollu li jirrikjedi z-zwieg, izda konoxzenza shiha ta' dak kollu li jkunu deklin ghalih il-partijiet u cioe` ghall-obbligi u d-drittijiet konjugali kemm fil-prezent kif ukoll fil-futur. Inoltre l-partijiet irid ikollhom dik il-maturita' affettiva u cioe` dak kollu li ghandu x'jaqsam ma' l-emozzjonijiet u s-sentimenti taghhom fil-konfront ta' xulxin. Jekk xi wahda minn dawn l-elementi hija b'xi mod nieqsa, allura hemm difett tad-diskrezzjoni tal-gudizzju kif rikjest mill-ligi. ... Il-partijiet irid ikollhom dik il-maturita' li taghmilhom kapaci jirriflettu fuq l-obbligi, id-drittijiet u r-responsabbilitajiet li ggib maghha l-hajja mizzewga u jkunu ghalhekk kapaci jerfghu u jwettqu l-istess matul il-hajja matrimonjali taghhom.”

This marriage started off on a wrong footstep. The parties had barely known each other, when Defendant ended up in prison for three months where he pleaded guilty to money-laundering. With his sweet talk, he managed to convince Plaintiff to get married, after he was risking being deported from Malta. Several witnesses produced by Plaintiff, including her parents, all confirmed that Defendant was very manipulative and overpowering over Plaintiff, who was blinded by him and to serve his own purpose of remaining in Malta, he crowned his victory with a marriage. The evidence produced reflects nothing more than selfish and egoistic motives for Defendant behind his proposal for marriage, which Plaintiff's father partner describes as having been very artificial and incredulous.

Understandably, Plaintiff had to organize all the wedding preparations since Defendant was in prison and the same day that they got married, he

was released, only to return home for a while and instead of spending the evening with his wife, after being apart for so long, he dragged her out to meet his friends.

After his release from prison, their married life did not change much. Defendant spent a lot of time out of the house. Plaintiff tried to employ him with her, but there was no motivation and he spent most of this time playing video games or watching you tube videos. This is confirmed by Eva Lahoz who worked with Plaintiff and Defendant was meant to be her manager and he had to train her, but he never did. She also confirms that Defendant used to smoke joints at work, and she knew that he was involved in drug deals, as he had no inhibitions and had admitted with her. This version is corroborated by Plaintiff herself.

There were also problems with extra-marital affairs and these relationships started off very early in their marriage. Plaintiff even mentions a certain Q, with whom both she and Defendant had a confrontation. It so happened that Defendant was playing with both these women's emotions.

Defendant knew that he had Plaintiff totally trapped within his manipulations and emotionally and psychologically he had worn her out to the extent that she had to resort to psychological help. She had lost weight and was not focusing at work and she wasn't even eating. Defendant failed to offer further support to his wife, but instead chose to leave for Ecuador for three whole months, making himself rarely available to his wife. To seek further drug deals because he had no money and had made a considerable number of debts.

Plaintiff's flaws lie in the fact, that she always hoped he would change, and she kept on falling into his arms, when she was aware that he was not worth it and he only meant trouble because he was too controlling.

All these circumstances definitely do not reflect that Defendant was interested into entering into a marriage and even more so, he lacked the required maturity to assume his rights and obligations as a husband. His sole and main goal behind this marriage was for Defendant to avoid a deportation, Defendant failed to produce any evidence to rebut Plaintiff's claims, thereby strengthening her case and confirming this ground of nullity.

Once it has been proved that there is nullity in terms of Article 19 (1d) because Defendant lacked a serious discretion of judgement, there stands no ground for the nullity in terms of Article 19 (1f) for the reasons aforementioned.

DECIDE

For the above reasons, the Court decides as follows:-

1. Hereby declares the nullity of the marriage celebrated between the parties on the 29th January, 2016 under Articles 19(1)(a) and Articles 19(1)(d) of Chapter 255 of the Laws of Malta.
2. Hereby authorizes Plaintiff to register the said judgement at the Public Registry.

All costs are to be borne by Defendant.

Mr. Justice Anthony. J. Vella

Registrar