

**CIVIL COURT
(FAMILY SECTION)**

MADAM JUSTICE

JACQUELINE PADOVANI GRIMA LL.D., LL.M. (IMLI)

Today, Wednesday 15th of July 2020

App. No. : 12/2019/3 JPG

Case No. : 26

OA

Vs

CA

The Court,

Having seen the joint application of the parties dated 4th of June 2020, where it was held:

- 1) *That the lawsuit in caption is regarding parties' requests for separation together with other requests generally put forward together with the said request including the request made by each party that the community of acquests be terminated.*
- 2) *That the parties married on 2nd September 2014 in U, which marriage has been registered at the Public Registry in Valletta, and from this marriage a child, EA, was born on X.*

- 3) *That both parties are professionals in employment and have an independent income and are therefore not financially dependent upon one another.*
- 4) *That there is no reason at law why the community of acquests existent between the parties should continue to operate between them and parties will not suffer any prejudice, certainly not a disproportionate prejudice, in the event that this Honourable Court orders the cessation of the community of acquests.*

For these reasons, parties humbly request that this Honourable Court deems it fit to:

- i. *Order the termination of the community of acquests existent between the parties and this in accordance with Article 55 of Chapter 16 of the Laws of Malta;*
- ii. *Order that when the judgement so delivered be res judicata it be served on the Department of the Public Registry and this in accordance with the dispositions of Article 55(5) of Chapter 16 of the Laws of Malta;*

And this under those conditions that this Honourable Court may impose, including that it provides that the expenses of the eventual judgement be senza tassa between the parties.

Having seen the decree of this Court dated 4th of June 2020;

Having seen the decree of this Court dated 22nd June 2020 to proceed to judgment in parte following a note in the record of the proceedings whereby:

“... Counsel to both parties inform the Court that their respective clients shall not suffer and prejudice regarding the cessation of the community of acquests, that therefore no scheduled hearing is necessary and the Court may proceed to a judgment in parte.”

Having seen all exhibited documents and all the acts of the proceedings;

Considers:

The joint application of the parties concerns a request for a judgment in parte for the cessation of the community of acquests in terms of Article 55 of the Civil Code.

According to sub-section (2) of the abovementioned article, the cessation of the community of acquests can only be effected by means of a judgment and sub-section (3) of the same Article 55 the order of cessation shall have effect between the parties from the date of the judgment on appeal or if no appeal is entered, from the date when the time allowed for the appeal lapses.

Sub-section (4) of Article 55 provides:

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.

According to sub-section (6) of the same Article 55, when the Court in its discretion, would have declined from ordering the cessation of the community of acquests in the early stages of a suit for personal separation, the Court shall direct that the community of acquests shall cease on the day on which the judgment for personal separation become the res judicata.

According to **Article 1320, Chapter 16**, the community of acquests comprises of (a) all that is acquired by each of the spouses by the exercise of his or her work or industry; (b) the fruits of the property of each of the spouses including the fruits of property settled as dowry or subject to entail, whether any one of the spouses possessed the property since before the marriage, or whether the property has come to either of them under any succession, donation, or other title, provided such property shall not have been given or bequeathed on conditions that the fruits thereof shall not form part of the acquests;

In the case in the names “**Desiree Lowell sive Desiree Lowell Borg vs Michael Lowell**” [Cit. 139/12RGM] decided by the Court of Appeal on the 30th of October 2015 confirming a judgment of the Civil Court (Family Section) it was held:

“.....il-Qorti tosserva li l-waqfien tal-komunjoni tal-akkwisti ma jista’ jkun ta’ ebda pregudizzju ghas-sehem tal-attrici mill-assi li talvolta din tiskopri wara li twafqet il-komunjoni, ghax il-waqfien tal-komunjoni jirreferi ghal futur u mhux ghal dawk l-assi li diga’ dahlu u qeghedin fil-komunjoni anke jekk ad insaputa tal-attrici”.

Similarly, in the case in the names “**Daniela Mizzi vs Duncan Peter Mizzi**” decided by the Court of Appeal on the 28th of March 2015, the Court held that the party opposing the cessation of the community of acquests was not going to suffer any disproportionate prejudice, on the contrary, the cessation of the community of acquests was going to be beneficial to both parties:

“In tema legali jinghad illi l-Artikolu 55 tal-Kap. 16 li fuqha hija bbazata t-talba attrici, jaghti l-fakolta’ lil parti jew ohra li “f’kull zmien, matul is-smiegh tal-kawza ta’ firda titlob il-waqfien tal-komunjoni tal-akkwisti jew tal-komunjoni tar-residwu taht amministrazzjoni separata li tkun tezisti bejn il-konjugi.....t-talba ghall-waqfien m’ghandhiex tinghata jekk parti tkun ser issofri “pregudizzju mhux proporzjonat” . Inoltre, l-oneru tal-prova ta’ dan ir-rewizit jirrisjedi fuq min qed jallegah, skont il-principju incumbit ei qui dicit non ei qui negat.”

The Court of Appeal confirmed a decision given by the Civil Court (Family Section) wherein that Court held that not only was the respondent not going to suffer disproportionate prejudice by the cessation of the community of acquests before final judgment but that such an order for cessation was going to be beneficial to both parties since it rules out the possibility that one or other of the parties to a marriage contracts a debt which will thereafter be charged to the community of acquests.

In view of the fact that both parties have requested the Court to effect an order for the cessation of the community of acquests, the Court, knows of no legitimate impediment or obstacle that will barr the upholding of such request.

For these reasons, the Court upholds the joint request and orders the cessation of the community of acquests in terms of Article 55 (1) of Chapter 16 of the Laws of Malta, and orders that this judgment in parte be served on the Director of Public Registry. The expenses of the registration of this judgment in parte shall be equally divided between the parties in terms of Article 55 (5) of Chapter 16 of the Laws of Malta.

Senza tassa.

Read.

Mdm. Justice Jacqueline Padovani Grima LL.D. LL.M. (IMLI)

**Lorraine Dalli
Deputy Registrar**