

**CIVIL COURT  
(FAMILY SECTION)**

**THE HON. MADAM JUSTICE  
JACQUELINE PADOVANI GRIMA LL.D., LL.M. (IMLI)**

**Today, 6th October 2021**

**Sworn App. No. : 257/2018 JPG**

**Case No. : 18**

**PM  
Vs  
NC**

**The Court:**

Having seen the application filed by PM dated 5th of October 2018, at page 1, wherein it was held:

- 1. That the parties got to know each other through social media in 2012, when the Applicant was residing in Italy;*
- 2. That subsequently Plaintiff had visited Malta for a holiday;*
- 3. That Plaintiff regularly visited Malta and the parties remained in contact, so much so that the Defendant visited the Applicant in Italy a number of times;*
- 4. That on the 16th April 2016 the parties contracted marriage at the Public Registry, Valletta, Malta (Doc. A);*

5. *That some time after marriage the parties became aware that they were not well acquainted and that they had contracted marriage without due consideration;*
6. *That in fact, after just one year of marriage, Defendant left the matrimonial home and started a new relationship;*
7. *That on the 22nd February 2018 the parties legally separated by means of a contract of separation in the Acts of Notary Dr. Sean Critien (Doc. B);*
8. *That it is clear that this marriage is null considering that the parties' consent for this marriage was vitiated by a serious defect of discretion of judgment on the matrimonial life, or on its essential rights and duties;*
9. *That this marriage is null in that the consent of the parties is vitiated by the positive exclusion of marriage itself, or of any one or more of the essential elements of matrimonial life, or of the right to the conjugal act;*

*Therefore, the Plaintiff requests with respect that this Honourable Court, subject to any declaration required by law,*

1. *Declares that the marriage contracted between the Plaintiff and Defendant on the 16th of April 2016 as indicated in the Acts of Marriage number three eight eight slash two thousand and sixteen (388/2016) is null and void in terms of article 19 (1) (d) and (f) of the Marriage Act (Chapter 255 laws of Malta).*
2. *Consequently to authorise that this nullity is registered on the relative act of marriage.*

*With expenses against the Defendant who is from now being called upon in sufferance.*

Having seen that the application and this Court's decree have been duly notified according to law.

Having seen the reply filed by NC dated 29<sup>th</sup> November 2018, at page 18, wherein was held:

1. *Whereas Defendant agrees that the parties got married on the 16<sup>th</sup> April 2016 and that they are legally separated by means of a public contract in the Acts of Notary Dr. Sean Critien dated the 22<sup>nd</sup> February 2018;*
2. *Whereas Defendant agrees that the parties' marriage should be declared null and void however this for reasons which are solely attributable to the Plaintiff as will be proven during the course of this application;*
3. *Whereas Defendant submits that Plaintiff could only stay in Malta for periods of three (3) months and was not allowed to work in Malta before their marriage since he was a third party national from Nigeria who was in Europe on the basis of his humanitarian status which was issued to him in Italy;*
4. *Whereas Defendant agrees that the parties did not know each other well before the said marriage since though they were together before their marriage, it was only during marriage that Defendant became aware of various aspects of his character including his pathological jealousy, obsessions and fixations and had she known about them before their marriage, she wouldn't have taken such a step;*
5. *Whereas without prejudice to the above, the parties' consent was given upon the positive exclusion of marriage itself and of the essential elements of married life since it's true that the parties excluded the possibility of having children;*
6. *Thus the Defendant should not be ordered to pay the expenses of these proceedings.*

*Save further pleas.*

Having heard all the evidence on oath;

Having seen all the documents exhibited;

Having heard Final Submissions;

**Considers:**

**In his affidavit, Plaintiff PM (*Vide fol 24 et seq*)** explains that he went to Italy in June 2011 and was residing in Matera, Basilicata. He met Defendant on social media in November 2012. He was in Italy as an asylum seeker and Defendant was finishing up her Masters' studies in Belgium. They communicated via social media and Defendant returned to Malta in early 2013.

In early 2013, they decided that he should move to Malta so that they could be together and that they would settle down here in Malta. He explains that when he came to Malta, he could not stay in Malta for more than three months, so he had to leave Malta periodically and, since Italy was his host country. In 2014 he returned to Italy to renew his papers and stayed in Italy for two months. Defendant went for a visit of a week. Plaintiff subsequently returned to Italy in 2015 to renew his papers and Defendant went with him on that occasion where they spent eight days and then returned to Malta together.

They subsequently married on the 16<sup>th</sup> of April 2016. They had discussed the idea of having children but it seemed that Defendant never wanted to have children. In 2017, Plaintiff visited Nigeria alone, after many years of being away from his country, as Defendant did not want to join him on this trip. Before departing to Nigeria he had tried to convince Defendant to join him several times, but she refused. He asserts that it was during this time that he had started to notice several changes in her behaviour. He explains that Defendant would spend more time on social media, and started behaving strangely whenever she received a call on her mobile phone, or whenever she received some messages. When using her laptop, she would always turn it away from his view and get nervous. When she received messages during the night, she would move out of the room to reply or check the message. When she went out with her friends, she returned back home very late at night and sometimes even the next morning.

She saw problems and argued about everything. He mentioned an episode, when Defendant returned home wet with stained pants and had gone straight to the bathroom. When he was in Nigeria he used to call her every night and one night he even video called her and heard the door of the room being closed. When he confronted her saying that there was someone else in the house, she insisted that she was alone, however when Plaintiff kept on insisting she dropped the

call. When he was on his way back to Malta, Defendant texted him saying that she was moving out of the apartment. On his return, he found his things packed in his car and saw her driving past him with her sister. Despite trying numerous times to reconcile, it was to no avail. Plaintiff adds that her behaviour convinced him that she was cheating on him and that she was not prepared for marriage.

In **cross-examination on the 22 May 2019**, Plaintiff confirms that he was given asylum in Italy and that he had to attend an interview in Italy. When confronted with the fact that he had lied in his asylum interview about having a girlfriend in Nigeria waiting for him to get married, simply to get a better chance at being awarded asylum, Plaintiff asserts that he did have a girlfriend in Nigeria and that at the time he had not as yet started communicating with Defendant. He confirms that it was in December of 2012 when he met the Defendant on social media when still in Italy. Subsequently he came to Malta and met Defendant in person, who was studying in Brussels. Plaintiff confirms that it was Defendant who had suggested marriage. Confronted with the fact that marriage to Defendant was a good idea since in this manner he would no longer need to leave the country every three months, Plaintiff stated that this is not true. Plaintiff reiterates that their relationship lasted between 2013 and 2016, and as from 2014 he was already working in Malta. He confirms that they were never apart for more than a month, and that during one occasion Defendant went with him to Italy to renew his documents.

Plaintiff states that at one point Defendant's family and friends started interfering in their relationship. In fact after returning from Belgium, Defendant was afraid to tell her family that she had a Nigerian boyfriend and when she finally told them, her mother cried, there were comments from her sister too. When the parties encountered problems, her sister had taken Defendant to Zabbar to rent an apartment there. He confirms that this interference was present before they got married and it was only Defendant's mother who had accepted him to some extent. Asked whether he was jealous of Defendant, Plaintiff asserts that if one is not jealous, than there is no love.

He adds that he tried to protect her from other men but since she only met her male friends when they used to go out as a group, he never had any problem with this. Plaintiff confirms that he was only jealous of those men that he thought were attracted to Defendant or that Defendant was attracted to them, and that in such situations he kept silent and that Defendant understood this. Asked whether he had discussed his suspicions of unfaithfulness with Defendant, Plaintiff confirms that he had but there was never any physical proof. With regards to children, Plaintiff

says that both before and after the marriage, they had used contraception since it was not the ideal time for them to have children but they were planning their life accordingly.

**Defendant in her affidavit a fol 45 et seq** contends that she met Plaintiff on social media in December 2012 when she was working on her Masters' thesis in Belgium. At the time Plaintiff was living in Matera, Italy and after a month of communication, he had told her that he was thinking of going to Malta to find a job there and also to be able to meet her. Defendant asserts that she had informed him that she was not promising any long term of relationship and that she was merely enjoying getting to know him online. Plaintiff had told her that during his interview with the Italian authorities, he had told them that he had a girlfriend in Nigeria who he intended to marry. However, he had told her that this was not in actual fact the truth, but that he had said this to better his chances of asylum.

Defendant testifies that Plaintiff arrived in Malta on the 5<sup>th</sup> of March 2013 and had immediately asked her to meet in Valletta. On the 8<sup>th</sup> of March they had met for a coffee and had chatted for a long while, where he explained his personal situation in Italy. She had agreed to meet up for a second time. At the time, Defendant holds that she wanted to proceed with caution as she was not sure whether she was ready to engage in a serious relationship with the Plaintiff. During this period, Plaintiff had given her the impression that he was a mature, intelligent and trustworthy person. As they started meeting up more frequently, they had both agreed that their relationship was becoming a serious and stable one and in December of that same year, he had met her family. She contends that her family had liked him since he was a religious person and had strong values, ambition and was hardworking.

Defendant describes their courtship as a complex one, and the cultural differences between them, made the relationship more interesting, however, it made finding a balance somewhat difficult. She adds that what helped them overcome these barriers was due to the fact that they really wanted Plaintiff to be settled in Malta as this would permit them to live a more stable life here. All this stress led to arguments and at times days passed without any communication however, the relationship kept going on as Defendant believed that once Plaintiff's situation eased, this would allow them to lead a happy life like other couples. Defendant asserts that at the time she did not realise that the Plaintiff was hiding aspects of his character, aspects which he only revealed after the marriage.

When Plaintiff could not settle in a job, they decided to expedite the relative procedures regarding their civil marriage as this would mean that Plaintiff could finally settle in Malta and have a stable employment. Marriage for them was the solution to their problems. Defendant confirms that they got married on the 16<sup>th</sup> of April 2016, however the moment they got married and started living together, arguments became even more frequent, and Plaintiff was continuously asserting that she was keeping things from him, and that she was texting other men. These arguments would start off as something trivial but would then escalate. It was then that she realised that this was an aspect of Plaintiff's character which was coming to the fore, together with his paranoia and possessiveness. Defendant contends that had she known that Plaintiff would have treated her in this way, she would not have contracted the marriage. However she asserts that she was faithful to her husband till the end. Whenever Defendant confronted Plaintiff about such accusations and insisted on talking things out, Plaintiff used to remain silent, and when on one occasion Plaintiff had claimed that he has messages which show that Defendant was texting other men, Plaintiff never actually showed her these messages.

Defendant recalls that on one occasion, while they were in an African Bar in Bugibba, Plaintiff at one point simply stopped talking to her and ignored her for the rest of night, only to later tell her that she knew what she was doing and that he knew what was going through her mind. Although Defendant contends that Plaintiff was a bit possessive and jealous at times, it was not extreme and she interpreted it as his way of showing his love for her. However, in reality these were the first signs of his possessive and dominating character, which she failed to see at the time.

In January of 2017, Plaintiff informed her of his wish to go to Nigeria on a holiday for a month. Defendant asserts that she wanted to visit the country and meet his family, however financially it was not possible. After suggesting to her husband to postpone the holiday, he refused and it was then that she told him that it would be best if he went on his own as during that particular year. At the time, her earnings from her work as a freelance translator were not too substantial. Nonetheless, Plaintiff accused her that she had other reasons for not wanting to go with him, but when she had asked him about the dates he had booked for the trip, he had told her that she did not need to know.

Throughout the marriage, Defendant maintains that she never told any of this to her family and friends, as she did not want the opinion her family and friends had of her husband to change. She adds that her husband refused to go out or dine with her parents or to visit her parents as he

would be tired after work. However, he attended every occasion that involved his friends or the Nigerian community. Defendant however admits that the only person who knew what was going on was a priest from Pakistan, in the Jesuit Community where Defendant and her husband used to attend on Sundays, and that any communication between her and the priest happened via Whatsapp.

Defendant contends that she used to go out with her friends very rarely, as her husband would have expected her to inform him beforehand. Although he never forbade to go, she used to deduce that he was not happy about this from his tone of voice and facial expressions. Defendant explains that she used to feel suffocated and was afraid that her husband would have a show down in front of her family. In fact, she even used to start doubting herself. It is only now that she realised that these are the traits of a narcissist personality. While he was in Nigeria, during the first two weeks, they used to communicate via messages, telephone calls and video chats. During these video chats, Plaintiff used to ask her whether she was alone or what she was looking at. Whenever she used to be in bed getting ready to sleep, he used to make her get up and put on the lights, doubting her constantly, slowly destroying her from inside.

Towards the end of April 2017, Defendant explains that she had slept at her sister's house, however her husband did not believe her and at one point called her and told her that she might as well not call him anymore. Defendant tried calling him back, asking him to let her explain, but he just ended the call and switched off his mobile. Days passed without any communication. Five days later, Plaintiff texted her telling her to continue enjoying herself, as he knew that this was why she had not wanted to go to Nigeria. He also told her to prepare his things and ended the relationship, amidst a myriad of vulgar words, accusations etc.

Throughout their marriage, Defendant asserts that they were always very cautious as to avoid pregnancy, as they did not have a plan with regards to having children even though they had discussed the issue. Defendant admits that the fact that they did not have children was a positive thing, as she cannot imagine how they could have brought up a child when their relationship had broken down so completely. She confirmed that they excluded the possibility of having children.

Following this that Defendant realised that she did not want to be married to her husband any longer, since she realised that her husband was using her to be able to remain in Malta and to control her completely. On the 11<sup>th</sup> of May 2017, a day before his return, Defendant packed her things and left their apartment. She also packed all Plaintiff's belongings and put them in his



car. She informed him that she had left, and he had replied saying that he was already in Europe. He asked her to contact a lawyer and that he was willing to pay for such expenses. After his arrival in Malta, Defendant explains that Plaintiff had met her at her parents' house and while he apologised for his behaviour asked her to get back together. He also asked her who she was currently seeing. Defendant had told him that she was not involved with anybody, but that she did not want to get back together and wanted to be left alone. The following day he had messaged her, threatening her that if she did not get back together with him, he would do something in front of her parents' house and that his blood will haunt her for life. Following this, Defendant filed a report with the police. Other messages followed. Defendant describes Plaintiff as Dr Jekyll and Mr Hyde, and to this day cannot comprehend how he managed to hoodwink her into thinking that he was the perfect guy.

Defendant contends that Plaintiff never attempted to change his ways, and had sought her and marriage to her, for his own personal reasons. All he wanted was to suffocate Defendant with his jealousy, paranoia and possessiveness. Had she known this, she would not have married him.

When **cross-examined on the 4<sup>th</sup> December 2020, (vide fol 84 et seq) Defendant** confirmed that their courtship lasted for circa three years and that there were times during this courtship where they were physically together in the same country and not simply communicating online. Asked what led her to marry Plaintiff earlier than planned, Defendant asserts that it was not entirely a decision of her own making, but at the time, their relationship had been going on for a number of years, she knew that she loved him and was serious in her intentions towards Plaintiff. When Plaintiff's situation was causing difficulty in their every day life, they considered marriage as being one of the solutions to the difficulties they were encountering. Defendant confirms that both Plaintiff and herself took things slowly in the beginning and that things progressed from there for the both of them. Defendant contends that she considered marriage as a solution to his immigration problems, namely that he did not need to repeatedly travel to and from Malta and Italy and that he could find a permanent job in Malta and because she loved the Plaintiff.

She adds that considering the stressful situation of the Plaintiff, and that all their problems seemed to revolve around this issue, she felt constrained, to a certain an extent, to marry earlier than planned, even though Plaintiff might not have necessarily told her directly that it was the only solution. This, coupled with the fact that she was attracted to him, and loved him pushed her to do that what she thought was needed of her. Defendant also confirms that Plaintiff became

more possessive after their marriage, and she began to feel confined. She began to doubt herself on every decision that she took. Whenever she did not agree with Plaintiff, he used to denigrate her, call her a fool and that she did not know what she was talking about. She confirms that Plaintiff was not this way before their marriage and that before they got married, Plaintiff would only manifest jealousy that she considers as flattering but not possessiveness. Things changed after they got married. Defendant denies that she used to text other people and contends that this was simply something the Plaintiff had become fixated on and would bring it up whenever they used to argue about other issues. She also denies going out without informing the Plaintiff and returning home late after a night out. Confronted with the fact that the two used to utilize contraception to avoid pregnancy, Defendant confirms that there was a mutual agreement between the two since they felt that it was not the right time nor were they financially stable enough to have children. However they discussed the matter both before and after the marriage, but they both wanted to have children eventually. She asserts that she had shared her opinion about having children with the Plaintiff and in fact Plaintiff had agreed.

Confronted with the fact that she had terminated their lease and packed all his belongings whilst in Nigeria, Defendant contends that this was the direct result of a message she had received from the Plaintiff, telling her in obscene language that the relationship was over, and to pack his belongings and move on. After this message, she had done decided that this was the best solution for her at the time. She explains that while Plaintiff was in Nigeria she had sought advice and then realised that she did not want to remain in that situation. She adds that Plaintiff used to tell her to go and have relations with other men, while at the same time, telling her that he still loved her.

**Considers:**

By virtue of the proceedings de quo Plaintiff is requesting a declaration of nullity of the parties' marriage, contracted on the 16<sup>th</sup> of April 2016 as evidence in the act of marriage with number 388/2016.

From the acts of the case it appears that in June 2011 Plaintiff, a Nigerian national was given the status of an asylum seeker, and was living in Matera Italy. Subsequently, in December of the year 2012, the parties met Plaintiff on social media. At the time, Defendant, of Maltese nationality was doing her Masters thesis in Belgium. Plaintiff had expressed his wish to move

to Malta to better his employment prospects and also wished to meet the Defendant personally after having communicated on social media for a number of months. Plaintiff arrived in Malta on the 5<sup>th</sup> of March 2013 and asked Defendant to meet. A few days later, the parties met in Valletta for a coffee, where Plaintiff explained his personal situation in Italy to the Defendant. With time, their courtship progressed and evolved into a serious and stable relationship, and Plaintiff even met Defendant's family.

Their three-four year courtship was characterised with bureaucratic issues relating to Plaintiff's residency permits. Plaintiff had to go back to Italy every three months and also had to renew his documents regularly. This did not permit him to have a stable job in Malta. This rushed the parties into finalising the relative documents for their civil marriage, as it would enable the Plaintiff to finally settle in Malta. Following the celebration of their marriage, the parties' relationship degenerated rapidly. In 2017 Plaintiff travelled to his home country in Nigeria alone. On his return, Defendant had moved out of their apartment, while the Plaintiff's belongings were placed in his car.

It also transpires that the parties formally separated on the 22 of February 2018 by means of a public contract in the acts of Notary Dr Sean Critien (*Vide Dok B a fol 6 et seq*), following authorisation from the Family Court in accordance with a decree dated 2 December 2017.

### **Considers:**

The presumption of the validity of a marriage has always and constantly been underscored in local jurisprudence. In *L-Avukat A B noe vs ED*, decided on the 31<sup>st</sup> of January 2018 by the Family Court differently presided, it was held that:

*Huwa pacifiku illi z-zwieg huwa istitut ta' l-ordni pubbliku u bhala tali ghandu jgawdi minn dawk is-salvagwardji li jixraqlu u li huma necessarji biex jiggarrantixxu l-importanza u s-solennita` li dan l-istitut ghandu fis-socjeta`. Appuntu ghal din ir-raguni, il-kuntratt taz-zwieg ma huwiex regolat bid-dispozizzjoniet generali in materja ta' kuntratti li nsibu fil-Kodici Civili izda b'lex specialis taht il-Kap. 255, li tipprovdi dwar ir-ragunijiet li minhabba fihom zwieg jista' jigi dikjarat li huwa minghajr effett. Inoltre, tezisti a favur iz-zwieg prezunzjoni ta' validita` illi tesigi li z-zwieg ma ghandux jigix dikjarat li huwa invalidu, jekk ma jitressqux ghas-*

*sodisfazzjon pjen tal-qorti, provi cari u konkreti li jezistu ragunijiet gravi u serji u eccezzjonali skond kif trid il-Ligi, li jiggustifikaw talba ghan-nullita`...*

*In-nullita` taz-zwieg hija ghalhekk eccezzjoni ghar-regola ta' validita` u konsegwentement, kull talba biex zwieg jigi dikjarat li qatt ma kien, ghandha titqies b'cirkospezzjoni filwaqt li tinghata wkoll interpretazzjoni ristrettiva...*

In *Carmel Farrugia vs Pauline Farrugia* decided on the 12<sup>th</sup> July 1987, the Court of Appeal held:

*Iz-zwieg huwa wiehed mill-kuntratti l-aktar essenzjali ghas-socjeta' u bla dubju ta' xejn huwa ta' ordni pubbliku li l-Qorti trid tersaq lejha bl-aktar rispettt... Ghall-Qorti n-nullita' hija haga serjissima u eccezzjonali bbazata fuq ir-rekwiziti legali, u bhala materja eccezzjonali trid tkun interpretata restrittivament.*

Similary in *Joseph Zammit vs Bernardette Zammit* decided on the 27<sup>th</sup> January 2006:

*Irid mill-ewwel jigi senjalat prinċipju fundamentali fil-ligi ċivili u cioe' li żżwieg bejn il-kontendenti għandu jkun prezunt li jkun wiehed validu. Ghalhekk huwa dover assolut ta' kull parti fil-kawża li tagħmel prova sodisfaċenti ta' lallegazzjonijiet rispettivi tagħha dwar l-allegazzjoni u cioe' li ż-żwieg huwa null ghaliex l-oneru tal-prova huwa dejjem fuq spallejn min jallega.*

Therefore the Court must proceed to examine the causes raised by the Plaintiff on their merits.

#### **Deliberates:**

Plaintiff is requesting the nullity of the marriage on the basis of Article 19 (1d) and Article 19(1)(f) of the Marriage Act:

***19 (1) In addition to the cases in which a marriage is void in accordance with any other provision of this Act, a marriage shall be void***

***(d) 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 fulfill the essential obligations of marriage.”***

***f) 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;***

Jurisprudence has established that Articles 19 (1)(d) and (1)(f) are in conflict with each other and therefore contradictory. Whilst the citation of these two contradictory grounds does not invalidate the action, their simultaneous invocation debilitate their efficacy:

***“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 inevitabbilment idghajfu lil xulxin.***

***Dwar l-inkompatibilita` bejn dawn iz-zewg sub-incizi intqal hekk fis-sentenza Kenneth Cefai vs Louise Cefai Deciza mill-Qorti talAppell 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.***

***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.”*

Article 19(1)(f):

With regards to the application of article 19(1)(f) in the judgment *Anthony Gallo vs Dr Anthony Cutajar et nomine*, the Court held:

*"Meta wiehed jittellem dwar l-eskluzjoni taz-zwieg jew wiehed mill-elementi essenzjali tieghu, wiehed irid jifli jekk il-kontendenti jew wiehed (jew wahda) minnhom, allavolja hu kapaci jaghti l-kunsens validu taz-zwieg, pero` bl-att tieghu hu qabel u fil-hajja mizzewga, jew bl-ommissjoni tieghu, eskluda a priori z-zwieg.....hu jew hi eskludew xi wahda jew aktar mill-elementi essenzjali tal-hajja mizzewga.”*

Furthermore, in the judgment *Al Chahid vs Mary Spiteri* the Court there reiterated that:-

*"... wiehed jinnota li taht l-artikolu 19 (1) (f) trid issir distinzjoni cara bejn zwieg li jfalli minhabba cirkostanzi li jirrizultaw waqt iz-zwieg, u zwieg li jfalli ghax wiehed mill-partijiet minn qabel ma' ta l-kunsens tieghu, kien gja mentalment dispost li ma jottemperax ruhu ma' xi wahda jew aktar mill-obbligi matrimonjali. Fl-ewwel ipotesis hemm ir-ragunijiet li jaghtu lok ghas-separazzjoni u fit-tieni ipotesis hemm l-estremi tal-annullament taz-zwieg".*

Established Jurisprudence is to the effect that for this ground to subsist, one of the parties has to excluded marriage itself or one of its essential elements together with the simulation of consent to the marriage by that party.

The judgment *Simon Cusens vs. Romina Cusens*, considered that:

*“sabiex zwieg jigi kkunsidrat null ai termini ta’ dan is-subinciz, irid jirrizulta ppruvat li entrambi l-partijiet jew xi hadd mill-partijiet tkun hadet decizjoni li ghalkemm ser tippartecipa fic-cerimonja taz-zwieg, hija tkun qieghda teskludi xi wiehed mill-elementi essenzjali taz-zwieg. Fi kliem iehor, filwaqt li esternament tidher li qed taghti l-kunsens ghar rabta matrimonjali, dik il-parti tkun fl-istess hin u minn qabel ma tat il kunsens taghha, diga` mentalment eskludiet a priori d-dispozizzjoni taghha li tottempera ruhha ma’ xi wahda jew aktar mill-obbligi matrimonjali.”*

The case *Alfred Tonna vs Maria Tonna* explained that:

*“ikun hemm simulazzjoni meta fil-mument tal-ghoti tal-kunsens matrimonjali parti jew ohra (jew it-tnejn) esternament turi li qed taghti l-kunsens matrimonjali izda internament u b’att pozittiv tal-volonta’ taghha tkun qed tichad il-kunsens ghal dak iz-zwieg (simulazzjoni totali jew dejjem b’dak l-att pozittiv tal-volonta’, tkun qed teskludi xi element jew proprjeta’ essenzjali ghaz-zwieg (simulazzjoni parzjali).”*

Of the same opinion was the Court in the case *Charles Atkins vs Matilde Atkins* :-

*“Tezisti simulazzjoni parzjali meta persuna teskludi biss wahda jew aktar mill-elementi essenzjali rikjesti biex jigi stabbilit iz-zwieg bhal per ezempju, l-eskluzjoni tal-prokreezzjoni u trobbija ta’ l-ulied, jew l-eskluzjoni ta’ l-obbligu tal-fedelta` lejn il-parti l-ohra”.*

The Court went on to state:-

*“... rigward x’inhuma l-obbligazzjonijiet essenzjali taz-zwieg, dawn huma dawk l-elementi li dejjem gew ritenuti bhala l-obbligazzjonijiet tal-hajja mizzewga u cioe` dik ta’ unjoni permanenti, esklussiva u irrevokabbli, diretta ghall-komunjoni ta’ hajja u l-prokreezzjoni u t-trobbija ta’ l-ulied.”*

In *L-Avukat A B noe vs ED*, the Court held that:

*Illi gie konsistentement ritenut illi dan is-subinciz (f) jirreferi ghal dawk ic-cirkostanzi fejn xi hadd mill-partijiet ikun ha decizjoni li ghalkemm ser jippartecipa fic-cerimonja taz-zwieg, hija tkun qieghda teskludi jew iz-zwieg innifsu, jew xi wiehed mill-elementi essenzjali taz-zwieg b'tali mod li z-zwieg ikun qieghed jigi eskluż. Fi kliem iehor, biex zwieg ikun null ai termini ta' dan is-sub inciz, xi hadd mill-partijiet ma jkollux intenzjoni li jizzewweg u jghix hajja konjugali, izda jkun resaq ghac-celebrazzjoni taz-zwieg sabiex jilhaq xi ghan ulterjuri.*

The *onus probandi* of the facts supporting the claim, lies on the Plaintiff alleging these facts. The Court observes that the only evidence produced by Plaintiff in support of his claim is limited to his testimony which, in substance, has been contradicted by that given by the Defendant. The Court also notes that in her testimony and submissions, the Defendant contends that the marriage contracted by the parties was only entered into to solve the Defendant's problems with his residence permit. Plaintiff categorically denies this.

On the matter Italian jurist Francesco Bersini held that:

*Chi ad esempio intende un fine estrinseco al matrimonio in modo tale da escludere con atto positivo di volonta' lo stesso matrimonio, che per lui e` una pura formalita' vuota e senza senso, evidentemente fa del matrimonio un rito vano. In tal modo contrae invalidamente colui che, escludendo con atto positivo di volonta', almeno implicito, lo stesso matrimonio, si sposa unicamente ed esclusivamente per un fine estrinseco, cioe' diverso dal matrimonio, fine che egli intende come oggetto esclusivo del consenso. Per esempio: avere una dote, evitare il servizio militare, adire una eredita', scopi di libidine, ecc...*

Local Jurisprudence on the subject denotes that a marriage of convenience involves a simulation of that contract, and therefore a marriage that is based on this premise is null in the eyes of the



law, particularly in cases where one of the parties contracted the marriage in order to be able to reside or work in Malta:

*Meta l-uniku skop tal-kontraent jkun li jibqa' Malta biex jahdem u eventwalment jikseb ic-cittadinanza, hu jkun qieghed posittivament jeskludi z-zwieg innifsu, b'mod li jkun hemm simulazzjoni totali. Naturalment, f'dawn il-kazijiet wiehed ma ghandhux jistenna li jsib prova diretta tassimulazzjoni, fis-sens ta' xi dikjarazzjoni esplicita tal-intenzjoni ta' dak li jkun, pero' tali intenzjoni tista' tigi manifesta wkoll implicitament. (Vide Miriam Ramadan Mabrouk vs Lovay Ramadan Mabrouk decided on the 16<sup>th</sup> January 1998)*

After having thoroughly examined the testimony of the parties, this Court is more inclined to accept the version of facts as given by the Defendant rather than that given by the Plaintiff, especially in light of the fact that the Plaintiff's is predisposed to lie in order to better his position. In this regard, the Court draws attention to the fact that during his interview with the Italian Territorial Commission for the Recognition of International Protection of Crotona within the Ministry of the Interior, the Plaintiff stated that: *Se non avessi lasciato il paese mi sarei sposato quest'anno. La mia fidanzata e ancora in Nigeria- If I hadn't left the country, I would have married this year. My fiancée is still in Nigeria.* When confronted during cross-examination, Plaintiff palpably downplays the seriousness of this supposed relationship and simply states that:

*" No. I said I have a friend in Nigeria which is like I have a girlfriend not like going back. I wasn't married before. I didn't say that in the chance of having for the asylum to be granted." (Vide fol 37)*

The Courts notes that from the parties' testimony, it appears that although Plaintiff was granted asylum in Italy, which in turn permitted him to leave Italy for *circa* three months at a time, and to travel within the European Union, Plaintiff was not entirely satisfied with his job prospects in Italy. In fact, had told the Defendant that he wished to come to Malta for this purpose. However, he was aware of the fact that he would need to return back to his host country close to the lapse of the three months, whereas marriage with a Maltese citizen would resolve this.

This Court notes that in spite of the fact that the parties courted for around three year/four years, it is this Court's considered opinion that the parties' courtship lasted for such a long period of time *solely because* the Defendant was adamant not to rush the relationship. In fact, Defendant testified that the procedures relating to their civil marriage were then expedited due to the difficulties the couple was facing as a result of the Plaintiff's constant travelling to validate his residence permit. In fact, when cross-examined, Defendant states that she felt pressurised to hasten the relative documentation relating to the civil marriage.

The Court notes that despite the fact that the Plaintiff *ex admissis* declares himself to be a Roman Catholic (Vide interview with Italian Commission a fol 54), nonetheless he opted for a civil marriage which also sheds light on his true intentions about this marriage.

Moreover, the Court also notes that the Plaintiff's sudden transformation following the marriage, coupled with his total disinterest to communicate with the Defendant to ameliorate the situation of their relationship, the constant unfounded allegations of Defendant's unfaithfulness, his avoidance of Defendant's family and his insistence to travel to Nigeria despite the fact that the couple at the time was not financially stable, corroborates Defendant's positions that the Plaintiff contracted the marriage for personal gain, namely that to acquire Maltese citizenship, and all the benefits linked to such citizenship, benefits the Plaintiff knew, would not subsist in an eventual separation. Hence Plaintiff's threats and insistence to reconcile following his return from Nigeria.

On the strength of the above, the Court is of the opinion that Plaintiff simulated his consent at the time of the celebration of marriage, and that his marriage to the Defendant was merely one of convenience aimed at residing in Malta, acquiring freedom of movement and eventually obtaining Maltese citizenship.

**For the abovementioned reasons, whilst upholding the pleas of the Defendant, the Court declares and holds that the marriage contracted between Plaintiff and Defendant on the 16<sup>th</sup> April 2016 is null and void in terms of Article 19(1)(f) of the Marriage Act, Chapter 255 of the Laws of Malta for reasons solely attributable to the Plaintiff who**

Sworn. App. No.: 257/2018 JPG

**positively excluded the marriage itself, or of any one or more of the essential elements of matrimonial life.**

**The costs are to be borne by Plaintiff.**

**Read.**

**Madame Justice Jacqueline Padovani Grima LL.D. LL.M. (IMLI)**

**Lorraine Dalli  
Deputy Registrar**