



**CIVIL COURT
(FAMILY SECTION)**

MADAM JUSTICE

**Onor. Abigail Lofaro LL.D., Dip. Stud. Rel.,
Mag. Jur. (Eur. Law)**

Hearing of Wednesday 26th January 2022

Application Number: 131/2020/2 AL

A B C

VS

D E

(Act of Marriage (French) with Progressive Number 595/2016)

The Court:

Having seen the sworn application filed by A C, dated 1st December 2021,
wherein it was held:¹

¹ Fol. 2.

1. *That from the Parties' relationship they had one (1) child, namely F C E, who was born on the 20th OF December 2014;*
2. *That the parties got married in Paris, France on the 10th of November of the year 2016 as per the marriage certificate already exhibited in the acts of these proceedings;*
3. *That upon the Parties establishing their residence in Malta, on the 28th of June of the year 2017, the community of acquests was established between the parties as the matrimonial regime regulating the property of the parties;*
4. *That although plaintiff filed these proceedings on the 4th of September of the year 2020 the parties' have been de facto separated and living eparately since August of the year 2019;*
5. *That the Parties both work full-time and are not financially dependent on each other;*
6. *That at this stage there is no further scope in retaining the community of acquests between the parties, who possess no immovable property nor any movables of worth;*
7. *That the defendant will not suffer any prejudice and certainly no disproportionate prejudice, in the event that this Honourable Court orders the cessation of the community of acquests;*
8. *That consequently this application is being filed in terms of article 55 of Chapter 16 of the laws of Malta so that this Honourable Court may proceed to order the cessation of the community of acquests existing between the parties;*

For these reasons, applicant requests with respect that this Honourable Court deems it fit to:

- i. *Order the cessation of the community of acquests existing between the parties in terms of article 55 of Chapter sixteen (16) of the laws of Malta;*
- ii. *Order that such judgement be notified to the Director of Public Registry in terms of article 55(5) of the said Chapter 16 of the laws of Malta;*

And this under such provisions that this Honourable Court may deem fit in the circumstances.

Having seen the reply of Maxence Destop, filed on the 9th December 2021, by virtue of which he states:²

Whereas the respondant has been notified with the present application with the faculty of filng a reply within five (5) working days from the effective date of notification which has been served on Tuesday the seventh (7) of December fof 2021.

Whereas the respondent confirms the facts stated in the present application.

Whereas the respondent further submits that throughout the marriage by and large the parties already managed separate incomes despite being married, circumstance which have been cemented over the course of the preceding three (3) years since the parties have lived independently from one another.

Whereas to this end, the respondent submits that he has no objection to the plea contained in the present application, and as such agrees that the Court should proceed by terminating the community of acquests between the parties.

Having seen the acts of the proceedings;

Having seen that the application was put off for judgement today.³

Considers:

CONSIDERATIONS OF THIS COURT:

1. The Current Legal Action

That the application in front of this Court concerns a request on applicant's part, A C, whereby, for the reasons listed in her application, she is asking that, pending the separation proceedings, this court orders the cessation of the community of acquests between the parties in terms of Article 55 of Chapter 16 of the Laws of Malta. On the other hand, the defendant after having confirmed the facts as enlisted in the applicant's application, has submitted his non objection to the

² Fol. 5

³ Fol. 7.

request in question and thus agreed that the Court should indeed proceed with the termination of the community of acquests.

2. *Legal Principles:*

The Court is making reference to Article 55(1) of Chapter 16 of the Laws of Malta, which gives the court the possibility to order the cessation of community of acquests at any time pending separation proceedings. This Court necessarily has to discern and has to evaluate facts, and has to see whether any of the parties will suffer a disproportionate prejudice by reason of this cessation of the community of acquests, as prescribed by Article 55(4) of Chapter 16 of the Laws of Malta.

Article 55 of the Civil Code stipulates the following:

(1) The court may, at any time during the cause for separation, upon the demand of any of the spouses, order the cessation of the community of acquests or of the community of residue under separate administration existing between the spouses.

(2) The order for the cessation of the community as provided in subarticle (1) shall be given by means of a judgement from which every party shall have a right of appeal, without requiring permission from the court for this purpose.

(3) The order of cessation shall have effect between the spouses from the date of the judgement on appeal or, if no appeal is entered, from the date when the time allowed for the appeal lapses, and it shall remain valid even if the cause for separation is discontinued.

(4) 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.

(5) The order of cessation under this article shall, at the expense of the party who demanded such cessation, be notified to the Director of Public Registry and it

shall have effect as if the cessation of the community of acquests or of the community of residue under separate administration were made by public deed.

(6) Unless the court, in its discretion, upon the demand of one of the parties, shall have ordered the cessation of the community of acquests or of the community of residue under separate administration existing between the parties at the time of commencement of the cause for separation, on separation being pronounced, the court shall direct that the community of acquests or the community of residue under separate administration shall cease as from the day on which the judgement becomes res judicata.

(7) The court may however where in its opinion circumstances so warrant direct that an asset or assets comprised in the community be not partitioned before the lapse of such period after the cessation of the community as it may in its direction determine.

(8) Any direction given by the court in virtue of sub-article (7), may on good cause being shown, be changed or revoked by the court.

The scope behind Article 55 of the Civil Code was delineated in the judgement of **Daniela Mizzi vs Duncan Peter Mizzi**,⁴ whereby it was stated that: *“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 għall-waqfien m’ghandiex tinghata jekk parti tkun ser issofri “pregudizzju mhux proporzjonat”. Inoltre, l-oneru tal-prova ta’ dan ir-rekwizit jirrisjedi fuq min qed jallegah, skont il-principju incumbit ei qui dicit non ei qui negat.”*

This was subsequently confirmed by a more recent judgement, **Claire Pisani vs Joseph Pisani**,⁵ whereby the Court of Appeal reiterated that: *“dak li trid il-ligi huwa li kull parti pendenti l-proceduri tas-separazzjoni jkollha l-fakolta` li jekk trid tista’ titlob il-waqfien tal-komunjoni u li din it-talba m’ghandhiex tintlaqa’ biss jekk il-Qorti tara li bil-waqfien tal-komunjoni parti jew ohra tkun ser issofri pregudizzju mhux proporzjonat. Ghalhekk dak li hu sostanzjalment rilevanti*

⁴ Decided by the Court of Appeal on the 28th March 2014.

⁵ Decided by the Court of Appeal on the 24th October 2019.

huwa d-dritt moghti lill-parti biex jaghmel talba simili u li tali talba ma tintlaqax jekk fic-cirkostanzi tal-kaz il-waqfien ser jikkaguna pregudizzju mhux proporzjonat lil parti l-ohra”.

This Court also avails itself to make reference to the judgement of **Dorianne Sammut vs Charles Sammut**,⁶ whereby it was further confirmed that: *“Fi kliem iehor il-pregudizzju irid ikun sproporzjonat fis-sens li mhux kull pregudizzju jaghti lok ghal cahda ghat-talba in kwistjoni. Huwa evidenti ukoll li l-ghan tal-legislatur, certament konxju kemm jistghu jitwalu vertenzi simili, kien li tieqaf kemm jista’ jkun malajr il-komunjoni tal-akkwisti biex ghall-inqas f’dan l-aspett, il-partijiet ikunu jistghu ikomplu jghixu hajjithom separatament gialadarba l-konvivenza bejniethom mhijiex aktar possibli. L-appellanti gia kellha erba’ snin qabel id-decizjoni appellata (u issa sitt snin) biex tressaq il-provi taghha u din il-Qorti hija konsapevoli ukoll ta’ kemm idumu ghaddejjin dawn il-vertenzi hafna drabi minhabba lusingar tal-partijiet biex iressqu l-provi kollha taghhom”.*

3. Application of the Legal Principles to the Current Action:

By means of Article 55 of the Civil Code, the Court is obliged that prior to pronouncing itself on the request in examination, it has to examine and verify whether one or both parties will suffer any disproportionate prejudice should such request be granted.

In this particular case, the defendant has no objection for such request to be granted. Additionally the Court has examined the acts of the proceedings, and is convinced that no disproportionate prejudice will be caused if the community of acquests will be terminated. The Court opines that the termination of the community of acquests at this stage will be beneficial to both parties. In any case, the Court reiterates that by the termination of the community of acquests at this stage, each party will still have the possibility to put forward his/her evidence to substantiate his/her position during the pending legal proceedings of personal separation, and this due to the fact that *“il-waqfien tal-komunjoni jirreferi ghall-futur u mhux ghal dawk l-assi li diga’ dahlu u qedghin fil-komunjoni anke jekk ad insaputa tal-attribici”* (vide judgement of **Desiree Lowell sive Desiree Lowell Borg vs Michael Lowell**⁷).

⁶ Decided by the Court of Appeal on the 31st May 2019.

⁷ Decided by the Court of Appeal on the 30th October 2015.

In light of the above, the Court believes that the plaintiff's request should be granted.

DECISION:

Therefore, in view of the reasons here above indicated, with regards to this application, the Court believes that the request made by the applicant should be acceded to, and thus the Court is ordering the immediate cessation of the community of acquests between the parties in terms of Article 55 of Chapter 16 of the Laws of Malta and hereby declares that the matrimonial regime which has to apply between the parties from today onwards is that of separation of estates. The Court orders that the Court Registrar notifies the Director of Public Registry with this preliminary judgement within a week from when it is declared *res judicata*.

Without costs.