

**CIVIL COURT
(FAMILY SECTION)**

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

Today, 23rd of February 2022

Application no. : 124/2020/3 JPG

Case no. : 29

**AC
Vs
AGJ**

The Court:

Having seen the application filed by Defendant AGJ dated 18th January 2022, at *fol 2 et seq*, wherein he requested this Honourable Court to:

That for these reasons, the parties humbly requests this Honourable Court to:

- (1) Order the cessation of the community of acquests between the parties in terms of article 55(1) of the Civil Code;*
- (2) Consequently, authorises the parties to register the judgment given by this Honourable Court in the Public Registry.*

Having seen that the application documents and the decree have been duly notified according to law;

Having seen that Plaintiff filed a note on the 31st January 2022 *a fol 6 et seq* which states that Plaintiff has no objection to the termination of community of acquests;

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

Considers:

This is a partial judgment following the request made by the Defendant in his application dated 18th January 2022, wherein he requested this Court to order the cessation of the community of acquests which is still *in vigore* between the parties, and this in accordance with article 55(1) of the Civil Code, which provides:

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

According to sub-article (2) of the same article, the order authorising the cessation of the community of acquests, is to be given by means of a judgement as per sub-article (3), and this order of cessation shall have effect between the spouses from the date the judgement becomes a *res judicata*.

Sub-article 4 stipulates:

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.

In the judgement in the names *Daniela Mizzi vs Duncan Peter Mizzi*, decided by the Court of Appeal on the 28th March 2015, held 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 ghall-waqfien m'ghandhiex tinghata jekk parti tkun ser issofri "pregudizzju mhux proporzjonat." Inoltre, l-oneru tal-prova ta' dan ir-rekwizit jirrisjedi fuq min qed jallegah, skond il-principju incumbit ei qui dicit non ei qui negat."

The Court of Appeal confirmed a decision delivered by the Family Court, wherein it stated that the Defendant did not suffer a disproportionate prejudice by reason of the cessation of the community of acquests during the pendency of the proceedings. On the contrary, the Court of Appeal held that the cessation of the community of acquests brings about an advantage in so far as it avoids that either one of the parties becomes responsible for any debt which may be debited to the community of acquests.

In *Desiree Lowell sive Desiree Lowell Borg vs Michael Lowell*, decided by the Court of Appeal on the 30th October 2015, the Court of Appeal confirmed a decision handed down by the Civil Court (Family Section):

"...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".

By means of the note filed on the 31st January 2022, the Plaintiff declared that she has no objections to the request for the cessation of the community of acquests brought by the Defendant.

In light of Plaintiff's acquiescence to Defendant's request, this Court considers that there are no further obstacles which bars the Court from upholding Defendant's request.

For these reasons, the Court upholds Defendant's requests and consequently orders the cessation of the community of acquests existent between the parties in accordance with Article 55 of Chapter 16 of the Laws of Malta and orders that the Director of Public Registry be notified of this judgment at the expense of the Defendant.

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Costs are reserved for Final Judgement.

Read.

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

Christabelle Cassar

Deputy Registrar