



**CIVIL COURT  
(FAMILY SECTION)**

**MR. JUSTICE ANTHONY G. VELLA**

**Sitting of Tuesday 5th April 2022**

**Application number; 196/2020 AGV**

**G J V M**

**Vs**

**F A G V**

The Court;

**Having seen the application dated 22nd February 2021 filed by G J V M respectfully states;**

- 1.** That by means of this application in terms of article 55 of Chapter 16 of the laws of Malta, applicant is requesting this Honourable Court to order the suspension of the community of acquests existing between the parties.
- 2.** That article 55 stipulates that;
  - 1. The Court may at any time during the cause of separation, upon the demand of any of the spouses, order the cessation of the community of*

*acquests or of the community or residue under separate administration existing between the spouses.*

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

That the parties have been living separately de facto for the past eight months. The assets of the parties, consist sustainably in the matrimonial home, which is burdened by a loan, that is being paid solely by the applicant , and whilst applicant is in full time employment, defendant has not un employed for the past two years.

That the applicant humbly submits that in view of the fact that there is no reasonable possibility of reconciliation between the parties , and since there are no exceptional assets and liabilities, there is no reason why the community of acquests should not be terminated.

That of the community of acquests, does not cease at this stage, applicant will suffer a disproportion prejudice. Since she has been the sole breadwinner for the family for the past two years, whilst defendant has not contributed in any way towards the community of acquests and since the commencement of these proceedings he has not even contributed towards the maintenance of the parties' children. Furthermore, applicant does not want to be exposed to any debts, that defendant might incur without her knowledge and consent.

**Thus, in view of the above applicant humbly request this Honourable Court;**

1. To order the cessation if the community of acquests between the parties and this in terms of article 55 of Chapter 16 of the Laws of Malta;

2. To order that the order of the community of acquests be notified to the director of the Public registry.

With costs against the defendant.

The Court having seen the reply of **F A G V** dated 10<sup>th</sup> March 2021, humbly stated;

1. By means of her application dated 22<sup>Nd</sup> February 2021, applicant is requesting that this Honourable Court, deem it fit to order the cessation of the community of acquests, existing between the parties, inter alia. Respondent disagrees with the reasoning in the application in question and opposes the request for two main reasons.
2. In the first instance, it should be pointed out that as mentioned, by applicant in her application, the applicant has been in charge of the finances of the family for the last couple of years and has therefore the opportunity to manoeuvre as she pleases. Respondent had not had the opportunity to examine bank accounts, and investigate the financial situation of the parties, not only because he has not brought forward any evidence but because no evidence has been brought forward, in this case. Indeed, the parties have not had a single session before the Court-appointed judicial assistant and as such any decision on this point, at this stage of proceedings, would be premature and potentially the cause of serious prejudice to applicant.

3. In the second instance, and without prejudice to the forgoing, the applicant's main argument seems to revolve around the fact that she is currently paying the loan due to her husband's unemployment and that this somehow causes her a disproportionate prejudice. This argument is incorrect for a number of reasons, not least of which that the parties are jointly and severally liable to settle the loan. However more importantly, the parties are still married. And as such have a duty to maintain one another until such right is forfeited by the other party. And to contribute towards the needs of the family. Stating that the duty imposed on a spouse, by law is somehow the case of a disproportionate prejudice is illogical and legally unsustainable. Moreover, by paying for the loan, the applicant in financing an asset which she will ultimately benefit from which, in and of itself, is the antitheses of a disproportionate prejudice.

### **CONSIDERS:**

That applicant is requesting the Court to order the termination of the community of acquests existing between the parties, as per Article 55 of Chapter 16 of the Laws of Malta. Such a plea may be raised at any moment during the course of the case, and respondent may object to that plea on the grounds that such termination may cause a disproportionate prejudice to him.

Under Maltese law, it has been established that not all forms of prejudice are sufficient for a successful objection. The prejudice claimed by the objector has to be 'disproportionate', and over the years the Courts have given several examples of such a disproportionate prejudice. In the case in question, as can be seen from the reply filed by Mr V, the objection is twofold. On the one hand, he states that Ms VM handled all the finances in the marriage, and therefore he does not know the exact consistency of the community of acquests existing between them.

Furthermore, hardly any evidence has been produced to date, and therefore no details as to the parties' assets and liabilities have been brought. Since respondent has not been made aware of the extent of the community of acquests, the termination will obviously be prejudicial to him. Secondly, respondent disagrees with applicant whereby she stated that she, in her turn, would suffer a disproportionate prejudice if the community of acquests is not terminated, due to the fact that she is paying for the house loan all by herself.

The Court agrees with respondent on this second objection. It is not applicant who can claim a disproportionate prejudice in the refusal to order the termination of the community of acquests, but it is respondent who may so object to that request. In other words, applicant's reason for upholding the termination is not based on any legal requirement. Indeed, applicant need not even give a reason for the request to be made. The law allows for the termination of the community of acquests to be requested and granted at any time during the case, rather than having to wait until the case is heard, tried and finally decided. The law's reasoning behind this is simple. More often than not, particularly where parties in a separation suit have been living separately for some time, and they both wish to get on with their lives, the Court may order that the community of acquests is terminated, without having yet pronounced its final judgment on the merits. This order would allow both parties to buy and sell new property from that moment forward, while keeping the property already forming part of the community of acquests untouched and unliquidated. In other words, the consistency of the existing community of acquests remains unchanged with the upholding of such an order. What changes is simply the right for both parties to acquire and dispose of property in their own personal name, without such property going on to form part of the already existing community of acquests.

It is for this reason, therefore, that the law allows respondent to object to such termination, and it is then up to respondent to explain and justify the reason behind such objection, which has to be grounded within the meaning of 'disproportionate prejudice' stated in the law and explained in case-law. From the reply filed by respondent, the only reason given that falls within this definition is the first, whereby respondent claims that since he has no information as to the consistency of the community of acquests, and since no evidence has been brought before the Court giving details in this regard, the termination would be prejudicial to respondent.

Nonetheless, it is not for the Court to presume what type of prejudice such an order would cause to respondent. It is up to him to explain why the termination would cause him a disproportionate prejudice. By simply stating that it would be not enough for the Court to uphold his defence and reject applicant's request. The Court reminds respondent that the termination does not liquidate or change the substance of the community of acquests. Rather, it consolidates the patrimony contained in the community of acquests, until it is eventually liquidated at a later date upon final judgment being given. The simple fact of not knowing, or declaring to not know, what the community is made of, will not alter its consistency. That can be discovered at a later stage, and if it results that applicant had disposed of a part of the community of acquests, she would still be liable to civil proceedings to recover that part of the patrimony. In other words, respondent's rights are still safeguarded at law, and any subsequent disposal of part of the patrimony would still be wrongful and may be reversed. As outlined earlier, however, it is not up to the Court to find reasons for respondent's objection. There either is a real possibility that he may suffer a disproportionate prejudice, or there is not. The Court cannot and will not speculate on what these reasons may be. It was up to respondent to explain what his reasons were for objecting to applicant's plea, failing to do so simply allows applicant to have her

request upheld. Given that the Court is of the opinion that respondent failed to show in what manner such an order would be disproportionately prejudicial to him, applicant's request is being upheld.

**DECIDE:**

Now, therefore, for the above reasons, The Court;

UPHOLDS the request.

1. Orders the cessation of the community of acquests between the parties and this in terms of Article 55 of Chapter 16 of the Laws of Malta;
2. Orders that this judgment ordering the termination of the community of acquests be notified to the Director of Public Registry.

Costs are being reserved until final judgment.

**Judge**

**Hon Anthony G Vella**

**Cettina Gauci**

**Dep Reg**