



**CIVIL COURT
(FAMILY SECTION)**

MR. JUSTICE HON. ANTHONY VELLA

Sitting of Friday 6th January 2023

Application number : 278/2021AGV

CP

Vs

NM P

The Court;

Having seen the Sworn application of C P dated 23rd November 2021;

Humbly submits and on oath confirms:

1. That the parties married on the twelfth (12) of October of the year two thousand and seven (2007) and from this marriage two children were born, CP , on the seventeen (17) of October of the year two thousand and eight(2008) and SP born on the eighteenth (18) of May of the year two thousand and twelve (2012) who are therefore thirteen and nine years old respectively and therefore are still minors;
2. That the marriage between parties has broken down irretrievably due to the fact that defendant rendered the matrimonial life between parties impossible whilst also having rendered herself guilty of excesses, cruelty, threats and grievous injury and other reasons which brought about the breaking down of the marriage between parties;
3. That consequently the marriage of the parties broke down irremediably exclusively due the defendant;
4. That the parties were authorized to proceed with a Court case by virtue of a decree given by this Honorable Court and dated the 23rd September 2021 (DOK A);
5. That the facts hereby declared are known to plaintiff personally;

Therefore, for the above-mentioned reasons, claimant humbly requests this Honorable Court to:

- I. **DECLARE and PRONOUNCE** the personal separation between the parties and this due to grievous reasons which are attributable solely and exclusively to the defendant as has been explained, in consequences of which the marriage broke down irretrievable and therefore **AUTHORISE** applicant to live separately from his wife;
- II. **ORDERS** the defendant to be removed from the rights of parental authority in terms of Article/s 154 of the Civil Code and this in the supreme interest of the minor children;
- III. **TRUSTS** the exclusive care and custody of the minor children C and S exclusively in the hands of the plaintiff and **AUTHORISE** him to take any decision relating the minors including issues of passports, travelling, health, and education of the minors are given those directions which this Court deems fit and opportune which concern the minors in their best interest;
- IV. **ORDERS** the same minors, in their supreme interest to reside with plaintiff and **Fixes** limited access for the defendant in favor of the minor children;
- V. **FIXES AND LIQUIDATES** an adequate sum of maintenance for their minor children, payable, every four (4) weeks and this whilst taking into consideration the needs of the minors;
- VI. **ORDERS** that the maintenance sum fixed by this Honorable Court be administered to the plaintiff;

- VII. **ORDERS** the defendant to provide for half of the health and education expenses which are spent by their minor children after the presentation of receipts;
- VIII. Orders the defendant to administer to the plaintiff that the sum of maintenance as fixed by this Honorable Court, which sum shall be increased yearly according to the cost of living;
- IX. **DECLAIRES** the defendant has forfeited to any right to ask and receive maintenance from plaintiff;
- X. **APPLIES** against the defendant the effects in toto or in parte of Articles 48 to 53 et. Seq. of Cap 16 of the LAWS OF Malta as far as are applicable including that of forfeiting any rights to inherits her husband;
- XI. **DISSOLVES, TERMINATES and LIQUIDATES** the community of acquests existent in the light of the fact that the defendant is solely liable to the personal separation and due also, if the case may be, a date to be established from when the defendant forfeited from any gain made through work of the defendant and **ASSINGS A** portion to the parties ope sententiam, whilst nominating a notary to receive the relevant acts to incorporate the effects of the judgment and curators to represent the eventual contumacia on the same acts
- XII. **DECLARES AND LIQUIDATES** the paraphernal and dotal property of the applicant and consequently **CONDEMES** the defendant to restitute to the plaintiff all the dotal and / or paraphernal property which results from this case , and tis within a short and peremptory time, which should be stipulated by this Court and in default that the defendant does this

CONDEMNNS the defendant to pay the plaintiff the sum which is to be liquidated , occorrendo with the nominations of experts representing the value of dotal and/or paraphernal property;

- XIII. **DIVIDES** all other common property between the parties which does not form part of the community of acquests after taking into consideration the faults, **CONDEMS THE** defendant to restitutes the plaintiff in shorth and peremptory time, which should be provided by this Court and in f=default of the defendant doing so, **CONDEMNNS** her to pay the plaintiff the sum which should be liquidated , occorendo, with nominated experts , representing their value.
- XIV. **ORDERS** the court Register so that, within the time frame allowed for such by the court, notifies the Director of the Public Registry with the separation and the eventual dissolution of marriage so that these may be registered in Public Registry;
- XV. **AUTHORISES** plaintiff to register the eventual judgement in the Public Registry;
- XVI. **GIVES** any other direction which it deems fit and opportune;
- XVII. **WITH COSTS** including those of these proceedings in front of this Honorable Court and meditation expenses against the defendant

Having seen the Sworn Reply by NMP

Respectfully pleads;-

1. That she agrees that a legal separation should be pronounced, though this is the result of failures imputable solely to the plaintiff.
2. That it is absolutely not true that it is in their minor children's interests that defendant be divested of all her rights over their children, and that section 54 of the Civil Code be applied against her.
3. That it is not in the minors interest that the Court accedes to the third request and that the children be under the total control of their father; after all he has always expected his children and his wife to be under his absolute control, irrespective of what really is in their interest.
4. That the fourth request should not be acceded to in so far as plaintiff's demand to have his children residing with him only to be able to control them according to his own interest.
5. The request related to the maintenance of the children shall be determined according to this honourable Court provisions in respect of with whom it most responsible that the children reside.
6. That the eight request should not be acceded to insofar as plaintiff has always opted to hide the source of his income, and not only he should not be entitled to be maintained, but even if he would be in need, his behavior has been such as to divest him of the right to receive maintenance as it will be better shown during the hearing of the case.
7. That the ninth request should not be acceded to in so far as defendant has not committed any act that is conducive to the forfeiture of her right to be maintained.
8. That sections 48 to 53 are not to be applied against defendant.
9. That the community of acquests should be liquidated and rescinded and should be assigned according to the applicable law governing situations where the husband has been the cause of the separation.

10. That defendant has nothing to give back to plaintiff in as much as he has always left her without any possession except her clothing, she was even constrained to beg for charity to make ends meet for herself and her children.

Having seen the Courter Claims by ta' NMP ;

Respectfully expounds:-

1. That she had got married to the plaintiff on the 12th October 2007 and from this marriage they had two children, C and S.
2. That plaintiff has always treated his wife and even his children as his puppets, and they had to do whatever he orders to them to do, and if they do not comply, he gets violent. For example, when recently exponent took the children to reside with her as ordered by an interlocutory decree of the honorable Court, CP went to her residence to take back his minor children and he gained access by forcing her door down.
3. That plaintiff has committed excesses, cruelty and grievous injuries against his wife, and has also abandoned her and committed adultery. Actually, plaintiff has been living with his mistress for a good number of years, and defendant didn't commence separation proceedings before only out of fear from him. Moreover, he was not flexible at all when they were negotiating an amicable contract of separation, and they could never agree.

Therefore in view of the reasons brought above, exponent humbly requests this honorable Court to:-

1. Declare and pronounce the legal separation as between the parties which is imputable to CP only, and for the purpose of section 48(1)(c) of the Civil Code this Court shall established the date from which it shall be deemed that plaintiff caused the breakdown of marriage.
2. Authorises exponents to live separately from her husband and a mensa et thoro;
3. Declare the community of acquests between the parties rescinded, as per Section 55 of the Civil Code.
4. Liquidate all the assets making up the community of acquests, or which in any other way are common property of the parties, divides them into two portions so that one be assigned to exponent and one to be assigned to plaintiff, as this Honorable Court deems fit in the light of Section 48 subsection (1)(C) and of section 53 of the Civil Code.
5. Authorize exponent to recover her paraphernal property;
6. Puts the minor C and S under her care and custody;
7. Order plaintiff to pay exponent such rate of maintenance that it deems suitable for her well as for their minor children Constantine And Sofia, as per Section 54 of the Civil Code, which maintenance should be deducted

directly from any salary or benefits payable to plaintiff, and subsequently from his pension.

8. Declares the plaintiff forfeited his rights listed under actions 48 subsection (1) of the civil code, and this by the application of section 51 of same Civil Code.

9. Order that exponent reverts to her maiden surname 'S'.

Expenses for this procedure shall be at the charge of plaintiff, who is immediately being put under sub poena

Having seen the documents exhibited.

Having heard all the evidence.

Having seen the acts of these proceedings.

CONSIDERS:

The case concerns the demand for separation from marriage, which demand has been filed by both parties. Whereas defendant has submitted all her evidence, plaintiff failed to produce any evidence on his part and moreover failed even to appear in Court. The only version of events that the Court has at its disposal, therefore, is that produced by defendant, which the Court is taking as proven and factual, given that there was no cross-examination or any other evidence to the contrary. Moreover, plaintiff even failed to reply to defendant's counterclaim, in which respect, therefore, plaintiff is deemed to be in default. The Court had, in

fact, declared plaintiff's evidence as closed on the 5 October 2022, after having seen that he had failed to submit his affidavit and any other evidence up to that date. As declared earlier, plaintiff even failed to appear before this Court, let alone submit any evidence whatsoever. To the Court, this is a clear indication that he abandoned all interest in the case.

From the evidence submitted by defendant, it appears that their relationship was, to say the least, tumultuous from the very beginning. Her testimony in her affidavit is clearly indicative of plaintiff's violent behaviour towards her and the children. She also refers to an extra-marital relationship that plaintiff had with a certain MF , from which relationship he even has a child. The Court need not repeat the various incidents that are so vividly described by her, since there is no evidence to the contrary. It is indeed hard to imagine that anyone could have survived in those conditions, let alone brought up two children and maintained employment. Plaintiff's Police conduct certificate is proof enough in this regard.

Responsibility for the marriage breakdown

Defendant has submitted ample evidence to show that plaintiff was solely responsible for the breakdown of their marriage. Not only are the incidents mentioned in her affidavit not contradicted by plaintiff, but some incidents are also actually substantiated and corroborated by other documentary evidence, namely plaintiff's Police conduct certificate (fedina penali) and other Police reports filed by defendant against plaintiff. The responsibility of the marital breakdown is being solely attributed to plaintiff, due to his violent behaviour, his adulterous relationship with Maria Falzon, and his abandonment of the family.

Community of acquests

The community of acquests between the parties only has moveable property. These may be divided according to in whose name such property is registered. No other evidence was submitted with regard to the parties' paraphernal property. The Court may assume that both parties are in possession of their respective belongings. The community of acquests may therefore be liquidated, and each party may retain any belongings in his or her possession. Any bank accounts are to be kept by the party in whose name such account is registered, and the same shall apply to any motor vehicles so registered with Transport Malta.

Maintenance

The Court had ordered, *pendente lite*, that plaintiff was to pay defendant the sum of €200 per month by way of maintenance for her, as well as the sum of €400 per month as maintenance for the two children, that is €200 per child, which sum includes plaintiff's share of half the expenses incurred in the minors' health and education. The Court sees that these amounts are justified. Moreover, the maintenance for the children shall increase by a further €25 per month per child, that is €225, when the elder child Constantine turns 18 years of age. This maintenance shall remain so payable until the children reach the age of 23, if they are still studying full time and do not have a full-time employment.

Care and custody

The Court had also ordered, *pendente lite*, that defendant be awarded full care and custody of the two minor children, which order is being hereby confirmed. Plaintiff had requested full care and custody of his children, but failed to bring any evidence, as aforesaid. He also failed to request access to his children as a

subordinate demand. In view of the fact that plaintiff abandoned the case, the Court will not be ordering any access to the minor children, all the more so since from the documentation exhibited, it appears that plaintiff is awaiting trial on serious criminal charges. They shall reside with defendant, and the Court is also granting her full parental rights to the exclusion of plaintiff, who is hereby forfeiting such rights. This order is being given in accordance with Article 149 of Chapter 16 of the Laws of Malta, as it is the Court's opinion that such order be given in the best interests of the children themselves.

DECIDE:

For these reasons, therefore, the Court:

UPHOLDS in parte plaintiff's first demand and pronounces the separation between the parties, but for reasons solely attributable to plaintiff himself.

DENIES plaintiff's second, third, fourth, fifth, sixth, seventh, eighth, ninth and tenth demands.

UPHOLDS plaintiff's eleventh demand and liquidates the community of acquests as described in the judgment.

DENIES the twelfth and thirteenth demands, as no evidence was produced to this effect.

UPHOLDS plaintiff's fourteenth and fifteenth demands.

DENIES plaintiff's sixteenth and seventeenth demands.

With regard to defendant's counterclaims, the Court:

UPHOLDS defendant's demands:

1. Declares and pronounces the legal separation between the parties which is imputable solely to plaintiff CP , and for the purpose of section 48(1)(c) the Court establishes the 12 October 2007 as the date from which it is deemed that plaintiff caused the breakdown of marriage.
2. Authorises defendant to live separately from her husband 'a mensa et thoro';
3. Declares the community of acquests between the parties rescinded, as per Section 55 of the Civil Code.
4. Liquidates all the assets making up the community of acquests, or which in any other way are common property of the parties, divides them into two portions so that one be assigned to exponent and one to be assigned to plaintiff, as described in the judgment.
5. Authorizes defendant to recover her paraphernal property;
6. Places the minor children C and S under her care and custody, and furthermore grants defendant full parental authority over the children, to the exclusion of plaintiff. Defendant may therefore apply for any document on behalf of the children, including their passport, identity card, e-ID, with the Maltese authorities, without the need to obtain plaintiff's prior consent.
7. Orders plaintiff to pay defendant the sum of maintenance as described in the judgment, for her as well as for their minor children C and S, as per

Section 54 of the Civil Code, which maintenance shall be deducted directly from any salary or benefits payable to plaintiff, and subsequently from his pension.

8. Declares the plaintiff forfeited his rights listed under actions 48 subsection (1) of the civil code, and this by the application of section 51 of same Civil Code.
9. Abstains from taking further cognisance of defendant's ninth demand, as this was withdrawn by her by means of a note dated 11 November 2022.

All costs are to be borne by plaintiff.

Judge

Hon Anthony G Vella

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