

**CIVIL COURTS  
(FAMILY SECTION)**

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

**Hearing of the 30<sup>th</sup> March 2023**

**Application no. : 36/2022**

**Case no. : 16**

**DA**

**Vs**

**UA**

**The Court:**

Having seen the application of Plaintiff dated 2<sup>nd</sup> February 2023 at page 199 et seqq., wherein respectfully she requested the Court to terminate the community of acquests pendente lite;

Having seen that on the 2<sup>nd</sup> of February 2023, the Curator accepted service according to law and declared that he has no objection for the cessation of community acquests as requested;

Having seen that parties declared seduta stante that they do not require oral submissions and requested the Court to proceed to judgment;

Having seen the exhibited documents and all the case acts;

**Considers:**

This is a judgement following a request made by Plaintiff on the basis of article 55 (1) of the Civil Code for the cessation of the community of acquests existing between the parties. This article provides that:

*“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.”*

The fourth sub-article of Article 55 of the Civil Code then provides that:

*“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.”*

The Court make reference to the judgement handed down by the Court of Appeal on the 28th of March 2015 in the names **Daniela Mizzi vs Duncan Peter Mizzi**, wherein 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 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 nega.”*

The Court also makes reference to the judgement handed down by the Court of Appeal on the 14<sup>th</sup> of March 2019 in the case **Pierre Darmanin vs Louise Darmanin** where it was decided that:

*“...l-kwistjoni tal-qligh tal-attur minn negozju, flimkien mal-allegazzjoni gratuwita` tal-konvenuta li hu qed jahbi parti minn dan il-qligh, hija materja li ghandha tigi ezaminata fl-ambitu tas-separazzjoni personali u huwa irrelevantu jekk il-komunjoni tal-akkwisti titwaqqafx f’dan l-istadju jew le ghax il-konvenuta ghad ghandha l-opportunita` li tressaq provi fir-rigward fil-proceduri tas-separazzjoni. Din il-Qorti tirribadixxi li l-waqfien tal-komunjoni tal-akkwisti jirreferi ghall-futur u mhux ghal passat u, minkejja li dak li z-zewg partijiet qed idahhlu mix-xoghol taghhom s’issa hu tal-komunjoni, l-istess huwa tal-komunjoni kull dejn li talvolata jistghu*

*jaghmlu. Ghalhekk anke minn din il-perspettiva ta' dejn, il-waqfien tal-komunjoni tal-akkwisti mhux talli ma jippregudikax lill-konvenuta talli jaf ikun ta' beneficju ghalha ghax mid-data tal-waqfien tal-komunjoni 'l quddiem hi ma tkunx responsabbli ghad-dejn li talvolta jista' jaghmel l-attur."*

Having seen that Defendant has no objection for the cessation of the community of acquests, it is this Court's considered opinion that the cessation of the community of acquests shall not cause disproportionate prejudice to Defendant.

**For these reasons, the Court orders the cessation of the community of acquests existing between the parties in terms of Article 55 (1) of the Civil Code, and orders that this judgement be notified to the Director of the Public Registry at the expense of the Plaintiff in terms of article 55 (4) of the Civil Code.**

**Costs Reserved for Final Judgment .**

**Read.**

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

**Lorraine Dalli  
Deputy Registrar**