



MALTA

**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
RAYMOND C. PACE**

Seduta tas-7 ta' Ottubru, 2003

Citazzjoni Numru. 1512/2000/1

Charles Demicoli

vs

Anne Demicoli

Il-Qorti,

I. PRELIMINARI.

Rat ic-citazzjoni attrici a fol. 1 fejn gie premiss:-

Illi l-kontendenti zzewgu fil-25 ta' Mejju 1985 kif jindika c-certifikat taz-zwieg anness bhala Dok. "A", u minn dan iz-zwieg ma kellhomx tfal.

Illi l-kunsens tal-kontendenti kien vizzjat b'difett serju ta' diskrezzjoni ta' gudizzju fuq il-hajja mizzewga, u fuq id-drittijiet u d-dmirijiet essenzjali taz-zwieg u dan *ai termini* ta' l-artikolu 19 (1) (d) tal-Kapitolu 255 tal-Ligijiet ta' Malta.

Illi l-kunsens tal-kontendenti kien vizzjat minhabba l-eskluzjoni pozittiva taz-zwieg innifsu jew ta' xi wiehed jew aktar mill-elementi tal-hajja mizzewga, u tad-dritt ghall-att taz-zwieg u dan *ai termini* ta' l-**artikolu 19 (1) (f) tal-Kapitolu 255 tal-Ligijiet ta' Malta**.

Illi l-kontendenti, ghalkemm mhux interdetti jew morda minn mohhom ma kellhomx fiz-zmien li sar iz-zwieg minhabba raguni temporanja setghat intelletwali jew ta' rieda bizzejjed biex jinholoq kunsens ghaz-zwieg u dan *ai termini* ta' l-**artikolu 19 (1) (h) tal-Kapitolu 255 tal-Ligijiet ta' Malta**.

Illi minhabba r-ragunijiet premissi u minhabba ragunijiet ohra kontemplati fl-**Att XXXVII tal-Kapitolu 255 tal-Ligijiet ta' Malta**.

Illi l-istess attrici talbet lil din l-Onorabbli Qorti sabiex ghar-ragunijiet premissi:-

1. Tiddikjara u tiddeciedi illi z-zwieg kuntrattat bejn il-kontendenti fil-25 ta' Mejju 1985 huwa null u bla effett fil-ligi *ai termini* ta' l-**artikolu 19 (1) (d) (f) u (h) ta' l-Att XXXVII ta' l-1975 tal-Ligijiet ta' Malta**.

2. Tordna li din in-nullita` tigi registrata fuq l-att taz-zwieg relattiv fuq indikat.

Bl-ispejjez kontra l-konvenuta li tibqa` ngunta minn issa ghas-subizzjoni.

Rat id-dikjarazzjoni attrici a fol. 3 sa 5 tal-process;

Rat id-dokument esebit a fol. 6 tal-process;

Rat il-verbal tas-seduta ta' din il-Qorti kif diversament presjeduta tas-7 ta' Frar 2001 fejn giet nominata Dr. Veronica Galea Debono bhala Perit Legali;

Rat in-nota ta' l-eccezzjonijiet tal-konvenuta tas-16 ta' Frar 2001 a fol. 11 fejn gie exceptit:-

Kopja Informali ta' Sentenza

1. Illi hija taqbel li z-zwieg taghha ma' l-attur ghandu jigi dikjarat null u bla effett fil-ligi *ai termini* ta' l-**artikolu 19 (1) (d), (f) u (h) tal-Kap 255 tal-Ligijiet ta' Malta** u dan ghar-ragunijiet imsemmija mill-istess attur fic-citazzjoni odjerna , pero` hi ma ghandha tbaghti ebda spejjez.

2. Salvi eccezzjonijiet ulterjuri.

Rat id-dikjarazzjoni u l-lista tax-xhieda tal-konvenuta a fol. 11 tal-process;

Rat in-nota tal-kovnenuta tal-11 ta' Settembru 2001 fejn biha pprezentat l-affidavit taghha stess, ta' Mira Vandeputte u ta' Rita Linstead;

Rat in-nota ta' l-attur tal-31 ta' Awissu 2001 fejn permezz taghha pprezenta l-affidavits ta' Michael De Maria u ta' Dr. Karl German;

Rat il-verbali tat-2 ta' Novembru 2001;

Rat l-avviz tat-22 ta' Frar 2002 fejn il-kawza giet differita quddiem din il-Qorti kif diversament presjeduta mill-Onor. Imhalled Raymond. C. Pace.

Rat il-verbali tas-seduti tat-22 ta' Mejju 2002 fejn il-Qorti ordnat lill-Perit Legali tiffissa tliet seduti ghall-provi kollha tal-partijiet; tas-7 ta' Dicembru 2002 fejn il-Perit Legali ddikjarat li l-provi huma maghluqa.

Rat is-seduti mizmuma quddiem il-Perit Legali tas-7 ta' Marzu 2001 fejn xehed l-attur (a fol. 34); tat-3 ta' April 2001 fejn kompla jixhed l-attur (a fol. 36); tal-11 ta' Mejju 2001 fejn kompla jixhed l-attur (a fol. 38); tas-17 ta' Settembru 2001; tal-5 ta' Gunju 2002 fejn xehedu **Dr. Karl German** (a fol. 40) u **Michael de Maria** (a fol. 40) in kontro-ezami u ta' l-10 ta' Lulju 2002 fejn xehed l-attur in kontro-ezami (a fol. 42).

Rat il-verbali tas-seduti mizmuma quddiem din il-Qorti kif presjeduta tal-5 ta' Dicembru 2002 fejn dehret il-Perit Legali li pprezentat ir-rapport u rritornat il-process; tas-7

Kopja Informali ta' Sentenza

ta' Jannar 2003 fejn dehret il-Perit Legali u halfet ir-rapport;

Rat ir-rapport tal-Perit Legali;

Rat il-verbal tas-seduta tad-19 ta' Frar 2003;

Rat in-nota ta' Charles Demicoli tat-30 ta' Jannar 2002 fejn permezz taghha pprezenta l-affidavit tal-Magistrat Saviour Demicoli LL.D;

Rat id-dokumenti esebiti;

Rat l-atti kollha l-ohra tal-kawza.

II. KONSIDERAZZJONIJIET.

(i) PROVI PRODOTTI.

Illi l-attur xehed viva voce bil-ligwa Ingliza testwalment hekk: *"I met the defendant Anne Demicoli about 23 years ago when I was 20 years old and so was she. The defendant is of Maltese citizenship and Indian origin, and of Hindu religion. Due to the fact that the defendant was of Hindu religion, and her parents were staunch Hindu believers, I was told by Anne that she was promised to wed an Indian and that her parents considered it out of the question that she should date any man who was not Indian. For this reason we spent the first three or four years of our courtship hiding this fact from her parents and not being seen at all costs together. The defendant's sister Mira however knew about our relationship. I remember Anne telling me that she was petrified of her father if he got to know about our relationship because of what she had seen her eldest sister Monica go through. Monica was apparently found out by her father to be having a relationship with a Maltese man, and when this occurred she was severely beaten up by her father and had to spend a month in bed, and thereafter sent to India to marry an Indian which was match married in Malta. The defendant was a young girl when this happened and*

she always told me that she was very frightened of what could happen to her if she was found out.

I have to say that at the age of 20 I found the situation quite a challenging one which I decided to pursue. Furthermore, I did not accept the situation as a fair one and therefore I questioned the objective situation as it was, and went on with the relationship. Due to the complicated situation there was a sense of excitement everyday, which made me not dwell too much on the actual relationship per se.

Around two years into the relationship I managed to get into Anne's house and meet her family on the pretext that I was an electrician. The family had some electrical problems and Anne called me to help but introduced me only as an electrician friend of hers. I did the work I had to do and did not raise any suspicions.

About six to eight months after this incident, Anne's mother needed some help with the water heater and again I was asked to help by Anne. On this occasion only Anne's mother was present and I know that she had guessed who I was from the look she had. Anne's father of course was not present.

Anne knew my father very well and also my family and she loved and cared for them very much.

When I was 23 years old my father was taken ill and rushed to hospital. Anne nursed him for months before he died. At that point Anne decided to tell her father about us and she even asked him to come and see my father in hospital before he died. This in fact took place and Anne's father came to visit my father just before he died. My father was too sick to talk and he had just come out of an operation, so the two of them simply waved at each other. After that Anne's father just left and we did not speak to each other. I was very close to my father and it took me a very long time to get over his death.

Anne's father was also present at the funeral. Although we didn't talk he came up to me with some words of consolation.

Some time later I started going to Anne's house to pick her up and I used to go in. However, Anne's father was very hostile towards me, and never acknowledged my presence. He simply wouldn't talk to me or look at me and I used to look forward to getting out of the house as quickly as possible. Anne's mother and her sister used to treat me nicely on the other hand and they were very kind to me.

As a young man I was quite lively and had a lot of girlfriends but as time progressed with Anne I realised that she was the right girl for me. As a gesture of what I felt I decided to buy her a pair of diamond earrings, and I spent every penny I had to do this. When I gave them to Anne she was overjoyed and we went up to her parents house to show them the present. When Anne showed her father the earrings he simply looked at them in disgust and said the word 'rubbish', and dismissed us. I was terribly hurt that day and I never forgave him for this."

Illi meta kompli jixhed f'seduta sussegwenti, l-attur xehed testwalment hekk:- "Until Anne's father was alive I would only go and collect Anne from her home and we would not spend much time there. Anne's father passed away on the 4th March 1983, and after that I began to spend a lot of time at Anne's house. Obviously Anne needed me at that point as much as I needed her when my father passed away.

Each time when our fathers passed away it was a great big shock and we never had time to think of our relationship per se because it took so much time first for me and then for Anne to get over the shock. We found each other as a companion to relieve the pain at that point. We decided to get married in these circumstances and also because four and a half years had passed since we began going out with each other. I had bought a

house a year before and we decided to keep it and live there.

For the next two years we concentrated on converting this house, which was an old farmhouse. We were so busy that we would hardly meet each other. I was busy at work, working on the house, and because I was on the volley-ball national team I was very busy with training. All this left hardly any time for the relationship. We only spoke about material things and not really about us. We hardly met each other, and six months before the wedding Anne became very busy with the wedding preparations.

On the eve of the wedding I went to Anne's house to take the presents and apparently Anne was trying on a dress in the front room. So when I arrived Anne's sister in a panic closed the door in my face while I was carrying the presents. I went into a rage and smashed all the presents I was carrying and this is because I was under so much pressure at that point.

After we got married I had a full-time job with Cassar & Cooper and also a part-time job as an electrician. I used to travel twice to three times a week as a courier too. If there was any time left I would try to fit in some sports and if there was time after that I would try to see Anne. The courier job lasted about five years. At the time Anne had a full-time job at Thomas Cook, and she used to leave the house at 7.00am and come back at 7.00pm.

At one point I had to stop doing sports because I was too busy and because Anne quite rightly started complaining. I then started putting on a lot of weight and smoking heavily. As a result of this I started getting bad attacks of 'hiatus hernia', in the sense that every time I ate I would get a severe attack that resembled a heart attack. At this point however, we did not know what it was.

After visiting various doctors I had about six gastroscopies, and I was told what my condition was. I got these attacks every time we ate out, and this was every weekend. I would end up in hospital invariably after

these attacks and so we had to give up on eating out and thus on our social life as such.

This condition created an immense sense of fear in Anne. We basically could not go out any more and we even couldn't eat at Anne's family because of the kind of food. Anne was always tense and fearful of the situation and she wouldn't let me eat anything because of course she couldn't. The situation was more complex because we couldn't even invite anyone over and no-one invited us for that matter. We couldn't even go to weddings.

Every time we went out I would end up at hospital or else I would end up with an ambulance outside our house. It was a totally regular occurrence and this happened every weekend.

All this affected the relationship very negatively because it was all we thought of constantly."

Illi f'seduta ohra sussegwenti, l-attur kompla jixhed hekk kif gej:- *"With reference to my illness, I state that when my medical situation (haitus hernia) became very bad we visited several doctors and surgeons and several tests were carried out on me. The conclusion was that I suffered from a severe 'haitus hernia', and all the surgeons were against me being operated upon, until the surgeon Mr. Dennis Gatt suggested that I underwent laproscopic (keyhole) surgery at St. Philip's hospital.*

This operation which was the first in a series of operations took place on the 21 February 1996 was a successful operation for my haitus hernia, however there were complications due to the fact that my oesophagus was punctured in the process, and I got 'scepriciema' which means that I got poisoning of all my blood system. I was in ITU for 3 weeks and underwent three other operations one of which was a life saving operation, held on the 28 February 1996. I was then put on a life support machine.

On the 3rd March 1996 I underwent an operation on the spleen. On the 3 April 1996 I was dismissed from hospital and I went back in for another operation shortly afterwards.

Two years ago in March 1999 I was back in hospital for another operation in my stomach. Between 1996 and 1997 I was constantly trying to recover and convalescent. I was weighing 58 kilos as opposed to my original weight of 120 kilos.

All this effected my marriage severely. My wife and I spent all our time visiting doctors, carrying out tests and undergoing operations. We had nothing to talk about except my medical condition.

Our sexual life was effected completely in this respect, and it was reduced to nothing. Our sexual life was poor from the very beginning of the marriage, mainly due to my illness and later because we simply grew apart and the marriage became strained. When we discussed this problem, we ended up either blaming each other or being cold about the matter but we never got down to solving it.

Prior to getting married, both Anne and I had the intention of building a family and having children. We even discussed this. At the beginning of the marriage when I brought up the subject of children, Anne would tell me that we were not financially stable and that she wanted to pursue her career. She was also weary of my medical condition and she was fearful of having children due to this.

When I became severely sick Anne and I completely omitted discussion about children and we concentrated solely on my medical condition.

In 1999 when I finally got cured of my medical condition, Anne started to mention and seriously discuss the matter of having children. She told me that her biological clock was ticking and that she wanted children straight away. At this point I felt that I was set in my ways and I was

already forty years old and so was Anne. I therefore refused categorically to have any children at this point.

I decided that we were too late to change our situation and life style and I felt that it was best for us both that we remain as we were.

Till today I am still adamant about this and I refuse to have children at my age.

Once I made this decision I found I was being put under a lot of pressure from Anne's family with regard to having children. In fact I can safely say that Anne was under even more pressure than I was.

At this point I found that I was as much as possible avoiding staying at home so as not to be confronted with the situation. I would come home late after work and play sports as often as I could.

During this period Anne told me that she was no longer sure of this relationship anymore and she wanted to go to India for about six weeks to find herself. Anne in fact did so and while she was away I decided to have a good time. I held many parties at home and went out everyday till late at night. I was constantly on the go enjoying myself. I came to the conclusion that we would both be happier going our separate ways due to the fact that we were both clearly unhappy together in the situation we were in and I was happier as a single man at that point. I felt that we were both trying to hold onto something that did not exist."

Illi meta xehed in kontro-ezami, l-attur xehed testwalment hekk:- "I refer to my previous testimony when I mentioned that Anne's sister had been severely beaten up by her father on one occasion. I have to clarify once again that I was not present during this incident and I was told about it by Ann in the context when Ann once told me that we had to be careful not to be seen together as otherwise the same thing would happen to as it had happened to her sister, that is that Ann would get a beating from her father, and would be sent back to India.

In the first years of our marriage I have to say that I wanted a family and I wanted children. However Ann felt that we were not ready for this both due to our financial situation and also because Ann was intent on furthering her career. I went along with this because we took a mutual decision not to have children at that point in time and we took a mutual decision on this.

My health condition that emerged later on did not pose any physical obstacles to having children however we were still mutually in agreement not have children.

When my physical condition was resolved, I was about 39 years old and financially quite stable. At this point in time Anne was insisting on having children and she often spoke about it. My answer to her was that I was now 39 years old and totally set in my ways and I felt too old to start a family. Therefore I insisted that we did not have children. My plan was to retire and enjoy my retirement with Anne because she was my family. Anne insisted that now that we had no financial problems and health problems, we should have children.”

Illi l-attur iproduca wkoll bhala xhieda tieghu lill-Michael De Maria li xehed permezz ta' affidavit tieghu Dok. "CD1", u lill-Dr. Karl German li xehed permezz ta' affidavit tieghu Dok. "CD2".

Illi meta xehed viva voce in kontroezami x-xhud **Dr. Karl German** xehed testwalment hekk:- *“Jiena ili naf lil Charles u Anne bejn wiehed u iehor xi hames snin. Fl-affidavit li ghamilt semmejt illi fil-bidu tar-relazzjoni taghhom ma riedux tfal u dan sa fejn naf jien ghaliex il-partijiet kellhom bhala 'priorities' il-business taghhom, u dina kienet impressjoni li kelli dwar ir-relazzjoni taghhom.*

Niftakar illi Anne kienet tahdem f'jewelry shop u meta ma kenitx tkun hemm kien ikun hemm Charles ghaliex dawn kellhom impenn. Naf illi kien hemm zmien qabel ma sirt

nafhom meta Anne kienet qed tahdem u Charles ma kienx u ghalhekk is-salarju stabbli kien ta' Anne.

Dwar il-kundizzjoni medika ta' Charles sirt naf biha meta Charles gie jarani bhala pazjent. Ma nafx id-dettalji ta' meta bdiet il-problema pero` naf illi din kienet taffettwa r-relazzjoni sesswali ta' bejn il-partijiet u dan fis-sens illi bejnithom ir-relazzjoni sesswali taghhom ma kenitx sodisfacenti, u ghalhekk setghet taffettwa l-possibilita` li l-koppja jkollhom it-tfal.

Jiena naf illi Charles ma riedx tfal u dan ili nafu min mindu sirt naf il-koppja. Naf ukoll illi Anne kienet akkanita hafna sabiex tibda familja, pero` Charles assolutament ma riedx ikollu tfal. Dan diga` spjegajtu kollu fl-affidavit tieghi, u cjoe` illi Charles ma riedx tfal minhabba l-eta` tieghu u ta' Anne u minhabba ragunijiet egoistici stante li kien komdu u kien qed igawdi hajtu. Charles ma riedx jintrabat ghal ghoxrin sena jrabbi t-tfal.

Charles kien jghidli ukoll illi Anne kellha hafna pressjoni minghand ommha sabiex ikollha t-tfal. Ghandi nghid pero` illi omm Anne la nafha u lanqas kellimtha.”

U meta xehed in ri-ezami, l-istess xhud qal testwalment hekk:- *“Jiena jidhirli illi l-fatt li Charles ma riedx tfal kienet il-kawza principali li wasslet sabiex il-koppja infirdet. Din kienet problema krucjali u fundamentali fiz-zwieg taghhom. Dan irrizultali minn dak li qaluli kemm Charles u kemm Anne.”*

Illi meta xehed in kontro-ezami x-xhud **Michael De Maria**, huwa qal testwalment hekk:- *“Kif kien qalli Charles stess fil-bidu taz-zwieg Charles kien ried it-tfal izda Ann le. Naf ukoll illi fil-bidu taz-zwieg Anne kienet tahdem u alavolja Charles kien jahdem ma kellux paga daqs ta' Ann. Dan kollu sirt nafu meta beda l-inkwiet bejn il-koppja.*

Meta beda l-inkwiet Anne kienet spjegatli illi f'dak il-perjodu ma kienx ikun ghaqli li jkollhom it-tfal minhabba ragunijiet finanzjarji w medici ta' Charles. Wara li l-kundizzjoni medika ta' Charles kienet ghaddiet, Anne

riedet ikollha t-tfal. Dan ukoll sirt nafu fil-perjodu meta beda l-inkwiet bejn il-partijiet.

Naf ukoll illi Charles f'dan l-istadju meta Anne riedet li jkollha t-tfal, ma riedhomx minhabba li kienu stabbli finanzjarjament, u kienu kbar wisq u la ma kellhomx qabel ma rax raguni sabiex ikollhom tfal f'dan l-istadju.

Meta sirt naf lil Charles, kont nisimghu xi drabi jgorr fuq il-familja tal-mara tieghu. Dan pero` kien normali, fis-sens ta' 'men's talk' regolari.

Jiena naf illi Charles kellu problemi fl-istonku, u Anne wara kienet qaltli li dawn il-problemi kienu affettwaw il-relazzjoni sesswali ta' bejniethom."

Illi l-**konvenuta** min-naha taghha xehedet permezz ta' affidavit taghha "Dok. AD1". Hija pproduciet ukoll bhala xhieda taghha lill-ohtha **Mira Vandeputte** li xhedet permezz ta' affidavit taghha Dok. "AD2", u lill-**Rita Linstead** li xhedet permezz ta' affidavit taghha Dok. "AD3".

(ii) KONSIDERAZZJONIJIET TA' DRITT.

Illi fic-citazzjoni pprezentata minnu, l-attur qed jitlob li z-zwieg li gie celebrat bejnu u bejn il-konvenuta jigi dikjarat null u bla effett, *ai termini* ta' l-**artikolu 19 (1) (d), 19 (1) (f) u 19 (1) (h) tal-Kap. 255 tal-Ligijiet ta' Malta.**

Illi l-**artikoli 19 (1) (d), 19 (1) (f), u 19 (1) (h) tal-Kap. 255 tal-Ligijiet ta' Malta** jiddisponu kif gej:-

19 (1) 'B'zieda mal-kazijiet fejn zwieg ikun null skond xi dispozizzjoni ohra ta' dan l-Att, zwieg ikun null :

(d) jekk il-kunsens ta' xi wahda mill-partijiet ikun vizzjat b'difett serju ta' diskrezzjoni ta' gudizzju fuq il-hajja mizzewga, jew fuq id-drittijiet u d-dmirijiet essenzjali taghha, jew b'anomalija psikologika serja li taghmilha mpossibbli ghal dik il-parti li taqdi l-obbligazzjonijiet essenzjali taz-zwieg.

(f) jekk il-kunsens ta' xi wahda mill-partijiet ikun inkiseb bl-eskluzjoni pozittiva taz-zwieg innifsu, jew ta' xi wiehed jew aktar mill-elementi essenzzjali tal-hajja mizzewga, jew tad-dritt ghall-att taz-zwieg.'

(h) jekk xi wahda mill-partijiet, ghalkemm ma tkunx interdetta jew marida b'mohha, ma kellhiex fi zmien li sar iz-zwieg, ukoll minhabba raguni temporanja, setghat intelletwali jew tar-rieda bizzejjed biex jinholoq kunsens ghaz-zwieg.'

Illi l-Qorti sejra tghaddi biex tezamina n-nullita' taz-zwieg o *meno*, fl-ewwel lok, taht l-**artikolu 19 (1) (d) tal-Kap. 255 tal-Ligijiet ta' Malta**.

Illi l-kunsens ta' zewg persuni fir-rabta taz-zwieg jehtieg att volontarju li wiehed konxjament jinghaqad ma' persuna ohra bl-intenzjoni li jghix hajtu kollha ma' dik il-persuna u bejniethom jikkrejaw shubija fejn jghatu lilhom infushom lil xulxin. Dan l-att jehtieg maturita' ta' hsieb u karattru tali li l-persuna li tidhol ghaz-zwieg taghraf il-*'commitment'* li jikkomporta z-zwieg, u cjoe' *'commitment'* li tinvolvi partecipazzjoni attiva fil-hajja ta' familja.

Illi mill-gurisprudenza kostanti tal-Qrati taghna jidher car illi l-kunsens mghoti fil-kuntratt matrimonjali mhuwix dak il-kunsens simplici rikjest fil-kuntratt in generali ghaliex il-kuntratt taz-zwieg huwa wiehed *sui generis* u ta' ordni pubbliku. Illi ghalhekk il-partijiet f'kuntratt ta' zwieg mhux biss irid ikollhom il-kapacita' li jghatu dak il-kunsens, izda li l-istess irid jigi mghoti bl-iktar mod liberu u xjenti ghal dak kollu li tirrikjedi r-rabta taz-zwieg. Il-kuntratt taz-zwieg ghandu jigi apprezzat mhux biss bl-ghajnejn oggettivi tal-ligi, izda jrid isib s-sinifikat tieghu fir-relazzjonijiet ta' koppja u l-iskop ahhari taz-zwieg, cioe li tnejn min-nies jghatu lilhom nfushom lil xulxin ad eskluzjoni ta' kollox u kullhadd. Meta ghalhekk ghal xi raguni jew ohra dak il-kunsens ma jkunx gie mghoti bil-konoxxenza shiha ta' dak li jgib mieghu z-zwieg, allura jinholoq dubju kemm dak il-kuntratt matrimonjali huwa wiehed validu.

“Il matrimonio, in quanto patto ossia foedus.....richiede una capacita' intellettuale e volitiva al di sopra di ogni altro contratto che e' per lo meno rescindibile, in casi determinati dalla legge, richiede quindi una integrita' di mente e' di liberta' dato che si tratta di assumersi una servitus per tutta la vita.” (Forum 1990. Vol. I, part 1, pg. 72).

Illi l-kuncett tad-*discretio iudicii* ma jirrikjedix maturita' shiha u perfetta fuq dak kollu li jirrikjedi z-zwieg, izda konoxxenza shiha ta' dak kollu li jkunu deklin ghalih il-partijiet u cjoe` ghall-obbligi u drittijiet konjugali kemm fil-prezent kif ukoll fil-futur. *Inoltre* l-partijiet irid ikollhom dik il-maturita' affettiva u cjoe` dak kollu li ghandu x'jaqsam ma' l-emozzjonijiet u s-sentimenti taghhom fil-konfront ta' xulxin. Jekk xi wahda minn dawn l-elementi hija b'xi mod nieqsa, allura hemm difett tad-diskrezzjoni tal-gudizzju kif rikjest mill-ligi.

Illi l-kuncett tad-diskrezzjoni tal-gudizzju fil-ligi civili ivarja xi ftit mill-kuncett kif espost fid-dritt kanoniku ghaliex mentri d-dritt kanoniku jirrikjedi xi forma ta' difett psikologiku serju, fid-dritt civili dan mhuwiex il-kaz.

Illi fis-sentenza moghtija mill-Prim'Awla tal-Qorti Civili fl-ismijiet **'Angela Spiteri Selvaggi vs Joseph Spiteri'** deciza fl-4 ta' Novembru 1994, il-Qorti studjat fil-fond il-kuncett tad-diskrezzjoni tal-gudizzju. F'din is-sentenza l-Qorti dahlet fil-fond f'dak li jghid Bersini fuq il-livell tad-diskrezzjoni tal-gudizzju rikjest biex jinghata kunsens matrimonjali validu:

“La discrezione di giudizio comprende la maturita' di giudizio e la maturita' affettiva.....La maturita' di giudizio comporta una conoscenza critica proporzionata all'atto da compiere, agli obblighi essenziali da assumersi e ai doveri coniugali che ne derivano proiettati nel futuro. La maturita' affettiva comporta generalmente quella adeguata evoluzione degli istinti, degli affetti, dei sentimenti, della emotivita' che se sono turbati o inadeguati intaccano direttamente la volonta' e possono privare della libera scelta interiore.Per dare un valido

consenso, non e' sufficiente il grado di ragione col quale speculativamente uno sappia che cosa e' il matrimonio, e' necessaria la maturita' di giudizio capace di ponderare in concreto i doveri e i diritti che uno deve assumersi per tutta la vita. In altri termini, e' necessaria la discrezione non tanto per l'atto in se, al momento di emettere il consenso, quanto per gli impegni che da quell'atto derivano. Una discrezione che impegni per il futuro.' ('Il-Diritto Canonico Matrimoniale' – Bersini - Torino 1994).

Illi dan l-impenn ghall-futur jittraduci ruhu fl-obbligazzjonijiet essenzjali ghal hajja taz-zwieg, fosthom il-fedelta' u fiducja, l-permanenza taz-zwieg, u fuq kollox il-benessere reciproku bejn il-mizzewgin, u cjoe`, dawk l-obbligazzjonijiet li minghajrhom unjoni intima bejn il-konjugi fl-aspetti kollha taghha ma tistax issehh.

Illi dan ifisser illi l-partijiet irid ikollhom dik il-maturita' li taghmilhom kapaci jirriflettu fuq l-obbligi, d-dmirijiet u r-responsabbiltajiet li ggib maghha l-hajja mizzewga u jkunu ghalhekk kapaci jerfghu u jwettqu l-istess matul il-hajja matrimonjali taghhom.

Illi ghalkemm il-**Kapitolu 255 tal-Ligijiet ta' Malta** ma jghatix definizzjoni ta' x'inhuma l-obbligazzjonijiet essenzjali taz-zwieg, kif stqarret il-Qorti fis-sentenza fuq imsemmija, dawn huma dawk l-elementi li dejjem gew ritenuti bhala l-obbligazzjonijiet tal-hajja mizzewga u cjoe` dik l-unjoni permanenti, esklussiva u irrevokabbli, diretta ghal komunjoni ta' hajja u prokrejazzjoni u t-trobbija ta' l-ulied.

Illi stabbiliti dawn l-aspetti legali tal-kuncett tad-difett ta' diskrezzjoni tal-gudizzju fuq il-hajja mizzewga u d-dmirijiet essenzjali taghha, l-Qorti ser tghaddi biex taghmel is-segwenti konsiderazzjonijiet fid-dawl tal-provi migbura.

Illi fix-xhieda tieghu, l-attur spjega illi huwa kien iltaqa mal-konvenuta meta kellu l-eta' ta' ghoxrin sena. Il-konvenuta kienet ta' cittadinanza Maltija, izda kienet ta' origini Indjana, u tar-religjon Hindu. Minhabba li l-genituri tal-konvenuta kienu religjuzi hafna, skond huma, l-konvenuta

kellha tizzewweg ragel bl-istess religjon taghha w fil-fatt kienu diga` ghazlu ragel ta' nazjonalita' Indjana ghall-konvenuta. Minhabba dan kollu, l-partijiet kienu ghamlu l-ewwel tlieta jew erba` snin tar-relazzjoni taghhom, jiltaqghu bil-mohbi, sabiex missier il-konvenuta ma jiskoprix b'din ir-relazzjoni. Skond l-attur il-konvenuta kienet tibza` hafna mir-rejazzjoni ta' missierha li kieku kellu jiskopri bir-relazzjoni.

Illi ghall-attur din is-sitwazzjoni kif ukoll ic-cirkostanzi tar-relazzjoni 'per se' kienu ecitanti, u r-relazzjoni kienet tikkostitwixxi *challenge* ghalih, u b'hekk iddecieda li jkompli ghaddej b'din ir-relazzjoni, anki ghaliex hass illi fil-konfront tal-konvenuta, dak li kien qed jigi impost fuqha mill-genituri taghha ma kienx gust.

Illi l-attur dahal id-dar tal-genituri tal-konvenuta snin wara li beda johrog maghha, u l-ewwel darba dahal bi skuza li kien *electrician* u kien ser jaghmel bicca xoghol.

Illi meta l-attur kellu tlieta u ghoxrin (23) sena, missieru kien ma marad, u wara ffit miet. L-attur kien hadha bi kbira hafna, u sab hafna ghajnuna w appogg minghand il-konvenuta f'dak il-perjodu.

Illi wara xi zmien l-attur beda jidhol god-dar tal-genituri tal-konvenuta, izda ma tantx kien idum hemm, u kien imur sempliciment biex jigbor il-konvenuta, dan *stante* l-fatt li missier il-konvenuta kien ostili hafna fil-konfront tieghu, w ghalhekk ma kienx ihossu komdu hemm. Anki darba meta xtara msielet tad-djamanti ghall-konvenuta, u din marret turihom lil-missierha, dan ta' l-ahhar ma ta kaz xejn u sempliciment xejjer idejh u qal il-kliem *rubbish*. L-attur hassu offiz hafna b'din ir-rejazzjoni.

Illi wara ffit miet ukoll missier il-konvenuta, w anki hawn dan kien perjodu ferm difficili ghall-konvenuta, w kellha bzonn hafna l-ghajnuna ta' l-attur, li kien jipprova jghinha kif il-konvenuta kienet tghin lilu meta miet missieru. L-attur jispjega li l-partijiet kienu *companions* li kienu jghinu lil xulxin *to relieve the pain*, f'dawn il-perjodi ferm difficili ghalihom.

Illi l-attur dak iz-zmien kien xtara dar, u peress illi l-partijiet kienu ilhom erba` snin u nofs johorgu flimkien, kienu ddecidew li jizzewwgu. Id-dar li kien xtara l-attur kienet *farmhouse* qadima, w l-partijiet ghamlu sentejn jikkoncentraw fuq il-konverzjoni ta' din id-dar.

Illi fil-perjodu ta' zmien qabel iz-zwieg taghhom, apparti li l-attur kien impenjat hafna fix-xoghol fuq id-dar, kien ukoll jaghmel hafna *sports*, u kien jaghmel hafna *training*, u allura ftit li xejn kien jifdallu hin ghar-relazzjoni tieghu mal-konvenuta. Il-partijiet ftit li xejn kienu jiltaqghu ma' xulxin minhabba li kienu jkunu impenjati f'hafna affarijiet, u meta kienu jiltaqghu kienu jitekllmu principalment fuq affarijiet materjali w mhux fuqhom infushom. Qabel iz-zwieg il-konvenuta kienet wkoll impenjata hafna bil-preparamenti tat-tieg.

Illi wara z-zwieg imbaghad, il-partijiet it-tnejn li huma kienu jahdmu hafna. L-attur kellu *full-time job*, u anki *part-time job*. Kien ukoll jaghmilha ta' *courier*, u b'hekk kien isiefer darbtejn jew tliet darbiet fil-gimgha. Wara x-xoghol tieghu kien jaghmel hafna *sports*. Il-konvenuta min-naha taghha kienet tohrog ghax-xoghol fis-7.00am u tigi lura fis-7.00pm. Il-partijiet ftit li xejn kienu jqattghu hin flimkien. Illi mbaghad gara li l-attur qabditu kundizzjoni medika pjuttost serja, fis-sens illi kellu '*hiatus hernia*' serja, u sakemm sar jaf x'kellu ghadda minn hafna wgieh u hafna attacki ta' ugieh kbir specjalment wara li jkun kiel. Fil-fatt kull darba li kienu johorgu jieklu kien jaqbd u attakk qawwi u kien jispicca l-isptar. B'hekk kellhom jieqfu jieklu barra, u lanqas ma kienu jmorru tigijiet jew jieklu ghand omm il-konvenuta minhabba t-tip ta' tisjir.

Illi fil-qosor, minhabba l-kundizzjoni ta' l-attur, il-konvenuta qabditha paniku w sens ta' biza` kbira. Hija dejjem kienet thossha mbezzgha u *tense*. Fil-fatt dan kollu kellu effett negattiv fuq ir-relazzjoni bejn il-partijiet, u kienu l-hin kollu mohhom f'din il-bicca tax-xoghol, u xejn aktar. Skond l-attur, il-partijiet ma kellhom xejn fuq xiex jitekllmu hliet ghall-kundizzjoni medika tal-attur. Il-hajja socjali tal-koppja giet fix-xejn, u r-relazzjoni sesswali taghhom

spiccat fix-xejn ukoll. L-attur kellu jghaddi minn hafna interventi kirurgici sabiex isolvi l-kundzzjoni medika tieghu, w anki dam hafna zmien konvalexenti. Dan kollu kellu impatt enormi fuq iz-zwieg tal-partijiet.

Illi min-naha taghha, l-konvenuta tispjega fl-affidavit taghha (Dok. "AD1"), illi hija kellha trobbija ferm differenti minn dik tal-attur fis-sens illi l-familja taghha kienet maqghuda hafna. Hi kienet l-izghar wahda fost erba` ahwa. Ommha w missierha kienu ta' origini Indjani, w religjuzi hafna. Il-familja tal-konvenuta kienu jqattghu hafna zmien flimkien, jilghabu, jirkellmu, jikkomunikaw ecc. Il-genituri tal-konvenuta kienu jridu li t-tfal taghhom jippreservaw il-kultura Indjana taghhom, u dana fis-sens illi kienu jridu t-tfal taghhom joqoghdu biss ma' tfal ohra ta' origini Indjana jew almenu ma tfajliet ohra biss mill-iskola.

Illi meta l-konvenuta xtaqet tistudja sabiex issir tabib wara li harget mill-iskola, missierha ma kienx riedha taghmel hekk, ghaliex dan kien ifisser illi kienet tibqa' tghix Malta. Meta missier il-konvenuta kien skopra li ohtha kienet qed tiffrekwenta ragel Malti, kien irrabbja maghha sew, u kien baghtha l-Indja sabiex tizzewweg Indjan u tibqa tghix hemm.

Illi l-konvenuta tispjega kif meta kellha ghoxrin (20) sena hija ltaqghet ma' l-attur. Hija tispjega illi mill-ewwel kienet taf illi bejn il-karattru taghha w tal-attur kien hemm bahar jaqsam, izda dan kien *smooth talker*, u kien ikkonvinciha sabiex tohrog mieghu. Skond il-konvenuta l-attur kien bniedem dinamiku, sportiv, dejjem fic-centru tal-attenzjoni, ambizzjuz, attiv immens, dominanti w dejjem imdawwar bin-nies u hbieb. Apparti dan hija tghid li l-attur ma tantx kien jghati mportanza kbira lill-familja.

Illi min-naha taghha, hija kienet bniedma kwietta, *subservient* minhabba l-*background* kulturali taghha, semplici, u kuntenta bl-affarijiet zghar.

Illi hija tikkonferma li d-decizjoni li l-partijiet jizzewgu ttiehdet wara li kienu mietu kemm missier l-attur kif ukoll missierha. Il-problemi ta' sahha tal-attur kienu bdew

qabel iz-zwieg izda wara li zzewgu l-affarijiet marru mill-hazin ghall-aghaz fir-rigward tal-problemi ta' sahha tal-attur u dawn il-problemi kellhom effett hazin hafna fuq iz-zwieg.

Illi wara li zzewgu l-partijiet it-tnejn kienu jahdmu hafna, u kellhom il-*business ventures* taghhom li sakemm irnaxxew kienu jiehdu hafna hin u energija lill-partijiet. Wara ftit ta' zmien l-attur ghamel operazzjoni u spicca biex kwazi miet, u dan hafna zmien sakemm rega' rpija. Il-konvenuta kienet ghamlet mill-ahjar li setghet biex tiehu hsieb l-attur. Wara li gie f'tieghu, l-konvenuta wriet ix-xewqa li tibda familja w li jkollha t-tfal, izda l-attur ghamilha cara li ma kienx interessat li jkollu familja u li issa kien wasal iz-zmien li l-partijiet igawdu l-hajja, u jghixu hajja izjed lussuza, u skond hu kien kbir wisq fl-eta' biex jibda jahseb li jifforma familja. Il-konvenuta kienet hassitha dizappuntata b'dan l-atteggjament, u skond hi, kellha valuri differenti taz-zwieg u tal-familja. L-attur min-naha tieghu sar mohhu fil-hrug, divertiment u *sports*.

Illi skond il-konvenuta, l-attur ma kienx matur u ma kienx japprezza u jifhem il-valuri taz-zwieg. Skond hi, l-attur ma kienx jaf il-vera sinifikat ta' l-imhabba u ma kellux konnoxxenza tad-doveri reciproki fiz-zwieg.

Illi l-konvenuta tispjega illi ppruvat tispjega diversi drabi lill-attur dak li kienet qed thoss, izda dan kien kollu ghalxejn ghaliex l-attur kien webbes rasu li ma riedx tfal. Skond hi, tul iz-zwieg kollu l-attur qatt ma kien jaghmel sforz biex jasal nofs triq fil-konfront tax-xewqat tal-konvenuta, u anki fir-rigward tar-religjon tal-konvenuta, allavolja din ghamlet sforz kbir biex tifhem u tippartecipa fir-religjon ta' l-attur, dan qatt ma ghamel l-istess ghaliha.

Illi tenut kont ta' dan kollu, l-Qorti hija tal-fehma illi l-partijiet ma kienux hejjew ruhhom sew ghal dak li kienu deklin ghalih fiz-zwieg fis-sens illi kull wiehed minnhom, ghal ragunijiet diversi kien nieqes minn dik il-maturita u konsapevolezza li kien hemm bzonn li jkollhom meta dahhlu ghall-kuntratt taz-zwieg.

Illi jidher car li l-attur kien dahal f'din ir-relazzjoni mall-konvenuta purament b'sens ta' *challenge*. Huwa kien donnu rribella kontra l-kultura, t-tradizzjonijiet u l-*punto di vista* ta' missier il-konvenuta u peress illi ma kienx jaqbel mall-fatt li l-konvenuta ma setghetx taghzel *boyfriend* Malti ghaliex kellha bilfors, skond missierha w'ommha, ssib ragel ta' origini Indjana, u tar-Religjon Hindu, kienet qisha sfida kemm kontra missier il-konvenuta kif ukoll sfida mieghu nniffsu li jirnexxilu johrog mall-konvenuta bil-mohbi u kontra x-xewqat ta' missier il-konvenuta.

Illi sa certu punt dan gara wkoll lill-konvenuta, li alavolja kienet konxja hafna tal-fatt illi jekk tohrog ma' guvni Malti kienet ser tmur kontra r-rieda ta' missierha u setghet tbaghti konsegwenzi serji bhal dawk li graw lil ohtha l-kbira, hija xorta wahda webset rasha u hadet ir-riskju.

Illi l-konvenuta spjegat fl-affidavit taghha illi bejn il-karattru taghha u l-karattru ta' l-attur kien hemm bahar jaqsam. Tista' tghid illi kellhom personalitajiet opposti, izda probabbilment in-*novelty* ta' dan kollu ghamietha mic-cirkostanzi rejali u baqghet ghaddejja bir-relazzjoni.

Illi l-karattru tal-konvenuta kien wiehed dejjem *subservient* fil-konfront tal-karattru qawwi ta' l-attur, u hija kienet ta' spiss taghmel dak li kien jitlob jew jesigi l-attur u tipprova takkomodah f'dak li kien jixtieq.

Illi l-attur min-naha tieghu kien jghati mportanza kbira lis-success tieghu fil-*business*, u forsi l-affarijiet izjed materjali tal-hajja. Huwa kien jidhirlu li jekk izomm il-konvenuta kuntenta f'affarijiet materjali, kien qieghed jaghmel id-doveri tieghu ta' ragel, u dan specjalment wara z-zwieg.

Illi l-partijiet zgur li ma kellhomx *courtship* regolari fis-sens illi kollox kellu jsir bil-mohbi tant hu hekk li l-attur kellu jidhol id-dar tal-konvenuta taht identita` falza. Apparti minn dan waqt il-perjodu li damu johorgu flimkien mietu kemm missier l-attur kif ukoll missier il-konvenuta u huma spickaw biex izzewgu kwazi ezatt wara dawn iz-zewg dizgrazzji, bhallikieku issa li l-pressjoni fuqhom kien spicca setghu jaghmlu li jridu. Dan pero` skond il-Qorti

jindika li l-partijiet dahlu ghaz-zwieg purament minhabba c-cirkostanzi partikolari taghhom imbuttawhom f'dik id-direzzjoni, u mhux ghax kienet tezisti dik il-maturita' emotiva u b'dik il-konoxxenza li l-iskop ahhari taz-zwieg huwa li tnejn min-nies jghatu lilhom nfushom lil xulxin ad esklużjoni ta' kollox u kullhadd. Lanqas ma jidher li l-partijiet kienu konsapevoli tad-drittijiet u d-dmirijiet li kienu qeghdin jassumu ghal ajjithom meta taw il-kunsens taghhom ghaz-zwieg.

Illi ghal dawn ir-ragunijiet il-Qorti hija tal-fehma illi l-kunsens taz-zewg partijiet kien vizzjat b'difett serju ta' diskrezzjoni tal-gudizzju fuq il-hajja mizzewga u fuq id-drittijiet u d-dmirijiet essenzjali taghha.

(iii) PRINCIPJI LEGALI.

Illi rigward l-**artikolu 19 (1) (f) tal-Kap. 255 tal-Ligijiet ta' Malta** citat mill-attur fic-citazzjoni minnu pprezentata, dan l-Artikolu jikkunsidra kemm is-simulazzjoni totali (*colorem habens, substantiam vero nullam*) kif ukoll dak parzjali (*colorem habens, substantiam vero alteram*) tal-kunsens.

Illi kif gie spjegat minn din il-Qorti diversament presjeduta fil-kaz **Alfred Tonna vs Maria Tonna**, 31 ta' Jannar 1996, u fil-kaz **Muscat vs Borg Grech**, 14 ta' Awissu 1995, *'ikun hemm simulazzjoni meta, fil-mument tal-ghoti tal-kunsens matrimonjali parti jew ohra (jew it-tnejn) esternament turi li qed tghati l-kunsens matrimonjali izda internament u b'att pozittiv tal-volonta' taghha tkun qed tichad il-kunsens ghal dak iz-zwieg (simulazzjoni totali) jew, dejjem b'dak l-att pozittiv tal-volonta', tkun qed teskludi xi element jew proprjeta' essenzjali ghaz-zwieg (simulazzjoni parzjali).'*

Illi kif gie insenjat fid-decizjonijiet fl-ismijiet **'Francesco Teuma vs Luigi Camilleri et**, Qorti tal-Kummerc, 1 ta' Ottubru 1884, Vol. X p. 912 *'a poter dedursi la invalidita' dell'atto e' necessario che risulti chiaro, che cio' che si contrattava non era la verita', ma una simulazione, cioe' 'fictio seu ostensio falsi pro vero.'*

Illi meta wiehed jittellem dwar l-eskluzjoni taz-zwieg jew wiehed mill-elementi essenzjali tieghu, wiehed irid jifli jekk il-kontendenti jew wiehed minnhom, alavolja hu kapaci jghati kunsens validu ghaz-zwieg, pero` bl-atti tieghu qabel u fil-hajja mizzewga, jew bl-ommissjoni tieghu, eskluda a priori certu obbligi essenzjali tal-hajja mizzewga, cjoe`, issimula l-kunsens tieghu totalment fejn eskluda a priori z-zwieg, jew inkella fejn waqt il-kunsens hu jew hi eskcludew xi wahda jew aktar mill-elementi essenzjali tal-hajja mizzewga, u cjoe` saret simulazzjoni parzjali.

Illi taht l-**artikolu 19 (1) (f)** trid issir distinzjoni cara bejn zwieg li jfalli minhabba cirkostanzi li jirrizultaw waqt iz-zwieg, u zwieg li jfalli ghax xi wiehed mill-partijiet minn qabel ma ta l-kunsens tieghu, kien gja mentalment dispost li ma jottemprax ruhu ma' xi wahda jew aktar mill-obbligi matrimonjali. Fl-ewwel ipotesi hemm ir-ragunijiet li jghatu lok ghal separazzjoni u fit-tieni ipotesi hemm l-istremi tal-annullament.

Illi ghar-rigward tas-simulazzjoni totali, Il-Qorti fil-kaz '**Bonnici vs Bonnici**' (Qorti Civili Prim' Awla, 30/07/1982) qalet illi biex ikun hemm simulazzjoni totali jrid jigi ppruvat li l-'finis operis' taz-zwieg gie effettivamente eskluż mill-vera rieda ta' parti jew ohra, ghalkemm formalment tkun sehhet ic-celebrazzjoni taz-zwieg. Il-Qorti f'decizzjoni ohra taghha "**Cali vs Dr. Albert S. Geech**" (Prim' Awla 22/06/1988) qalet illi jekk tmur ghac-cerimonja tat-tieg u internament tissostitwixxi l-idejat tieghek fuq x'inhu zwieg jew inkella xort'ohra teskludi l-veru kuncett taz-zwieg, hi forma ta' simulazzjoni totali. Mbaghad fil-kaz 'Galea vs Walsh (Prim' Awla 30/03/ 1995), il-Qorti spjegat is-simulazzjoni bhala '*meta l-atti, gesti jew kliem esterni ma jikkorrispondux ghall-kunsens intern li jkun inghata.*' Fil-kaz "**Muscat vs Borg Grech**" (Prim' Awla 14/08/1995) il-Qorti spjegat is-simulazzjoni totali hekk:- "*Ghalhekk min esternament ikun wera li qed jghati l-kunsens matrimonjali izda jkun internament u b'att pozittiv tal-volonta' tieghu*

qed jichad il-kunsens ghal dak iz-zwieg ikun qed jissimula l-kunsens tieghu."

Illi mill-banda l-ohra, meta nigu ghas-simulazzjoni parzjali, u cjoe` ghall-eskluzzjoni pozittiva ta' xi wiehed jew aktar mill-elementi essenzjali tal-hajja mizzewga, il-Prim' Awla tal-Qorti Civili fil-kaz "**Adel Wahed vs Dr. Yana Micallef Stafrace et noe**" (14/07/1994) elenkat l-elementi essenzjali taz-zwieg bhala l-kommunjoni tal-hajja konjugali, l-indissolubilita' tar-rabta taz-zwieg, id-dritt ghall-fedelta' u d-dritt ghall-prokrejazzjoni ta' l-ulied. L-istess elementi gew ikkonfermati wkoll fil-kawzi "**Grech vs Grech**" (Prim' Awla 09/10/1990), u "**Aquilina vs Aquilina**" (Prim' Awla 30/01/1991).

Illi ma hemmx dubju li l-kwistjoni ta' tfal kienet wahda serja w problematika fiz-zwieg tal-partijiet. Jidher li ghall-bidu taz-zwieg, il-konvenuta kienet ta' l-opinjoni li l-partijiet ma kienux finanzjarjament preparati biex ikollhom it-tfal. It-tnejn kienu jahdmu hafna u t-tnejn kienu dahhlu ghall-impenji kbar fl-ambitu tal-*business* tagghom.

Illi mbaghad ftit wara z-zwieg, fil-perjodu meta l-attur kellu problemi serji b'sahhtu u kellu jaghmel diversi operazzjonijiet, il-partijiet kienu qeghdin jikkoncentraw purament fuq din il-problema u xejn izjed. Ghaldaqstant l-ideja li jipprovaw ghat-tfal kienet `l boghod minn mohhhom.

Illi izda wara li l-attur kien ghadda minn dak il-perjodu ferm difficili w rega` gie f'tieghu, kien donnu nbidel fl-atteggjament tieghu. Dana fis-sens illi kien kwazi ghalaq l-erbghin sena u gietu bhal obsessjoni ghal dak li jissejjah *to live life to the full*, u cjoe` biex jiddeverti w jgawdi. Ghalhekk ma decizjoni cara w inekwivoka li ma riedx tfal ghaliex kien tard wisq u kien kbir wisq biex issa jibda jbenen. F'dan l-istadju pero` l-konvenuta bdiet turi xewqa serja li l-koppja jkollhom it-tfal u bdiet thoss li kienet qed tikber u li issa kien wasal il-waqt li jiffurmaw familja.

Illi allavolja ma hemmx dubju li l-ghazla li ghamel l-attur wara li ghaddew xi snin fiz-zwieg taghhom kien li taht l-ebda cirkostanzi ma jkollhom it-tfal, taht l-**artikolu 19(1) (f)**, kif gie hawn fuq spjegat, ikun hemm simulazzjoni meta fil-mument tal-ghoti tal-kunsens matrimonjali parti jew ohra (jew it-tnejn) esternament turi li qed taghti l-kunsens matrimonjali izda internament b'att pozittiv ta' volonta' taghha tkun qed tichad il-kunsens ghal dak iz-zwieg, jew tkun qed teskludi xi element jew proprjeta' essenzjali ghaz-zwieg.

Illi rrizulta lill-Qorti li qabel ma zzewgu l-partijiet kienu favur li jkollhom it-tfal, u ma giex ippruvat illi fil-mument tal-ghoti tal-kunsens l-attur jew il-konvenuta kienu eskludew dan l-element essenzjali taz-zwieg. Allavolja l-konvenuta xtaqet tistenna ffit wara z-zwieg sakemm il-partijiet kienu finanzjarjament izjed stabbli, w alavolja l-attur wara li ghaddietlu l-kundizzjoni medika tieghu bl-ebda mod ma ried ikollu t-tfal, xorta wahda ma jistax jinghad li fil-mument ta' l-ghoti tal-kunsens kienu eskludew dan l-element essenzjali taz-zwieg.

Illi ghalhekk wara li hadet in konsiderazzjoni l-provi kollha prodotti, il-Qorti hija tal-fehma li ma giex ippruvat li l-kunsens tal-kontendenti nkiseb bl-eskluzzjoni pozittiva ta' wiehed jew aktar mill-elementi essenzjali tal-hajja mizzewga, w ghalhekk iz-zwieg ma jistax jigi dikjarat null u bla effett a bazi ta' dan l-**artikolu 19 (1) (f)**.

Illi rigward l-**artikolu 19 (1) (h) tal-Kap. 255 tal-Ligijiet ta' Malta**, citata mill-attur fic-citazzjoni minnu pprezentata, l-Qorti thoss illi mill-provi kollha prodotti, ma jirrizultax illi z-zwieg bejn il-kontendenti jista' jigi dikjarat null u bla effett *ai termini* ta' dan l-artikolu.

Illi ghalhekk, abbazi tal-premess, it-talbiet attrici ghandhom jigu milqugha abbazi ta' l-**artikolu 19 (1) (d) tal-Kap 255 tal-Ligijiet ta' Malta** ghar-ragunijiet imputabbli liz-zewg partijiet.

III. KONKLUZJONI.

Kopja Informali ta' Sentenza

Illi ghalhekk ghal dawn il-motivi, din il-Qorti, **taqta' u tiddeciedi**, billi filwaqt li tichad l-eccezzjonijiet tal-konvenuta biss, in kwantu l-istess huma nkompatibbli ma' dak hawn deciz, **tilqa' t-talbiet attrici** b'dan illi:-

1. Tiddikjara u tiddeciedi illi z-zwieg kuntrattat bejn il-kontendenti fil-25 ta' Mejju 1985 huwa null u bla effett fil-ligi *ai termini* ta' l-**artikolu 19 (1) (d) tal-Kap 255 tal-Ligijiet ta' Malta**.

2. Tordna li din in-nullita` tigi registrata fuq l-att taz-zwieg relattiv tal-partijiet.

Bl-ispejjez jinqasmu bin-nofs bejn il-partijiet.

Moqrija.

< Sentenza Finali >

-----TMIEM-----