



MALTA

**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
RAYMOND C. PACE**

Seduta tas-27 ta' Novembru, 2003

Citazzjoni Numru. 1870/1997/1

Feng Wang

vs

Alexandra Wang

Il-Qorti,

I. PRELIMINARI.

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

Illi l-attur izzewweg lill-konvenuta Alexandra Wang, permezz tar-rit Civili, fis-17 ta' Settembru 1993 u dan skond ma jirrizulta mill-anness dokument "A";

Illi l-kunsens tal-partijiet ghal dan iz-zwieg kien vizzjat b'difett serju ta' diskrezzjoni ta' gudizzju fuq il-hajja mizzewga, jew fuq id-drittijiet u dmirijiet essenzjali taghha kif ser ikun ippruvat waqt it-trattazzjoni tal-kawza;

Kopja Informali ta' Sentenza

Illi wkoll il-kunsens tal-partijiet ghal dan iz-zwieg inghata bl-eskluzjoni pozittiva taz-zwieg innifsu, jew ta' xi wiehed jew aktar mill-elementi essenzjali tal-hajja mizzewga, jew ta' dritt ghall-att taz-zwieg;

Illi l-kontendenti ma kellhomx tfal minn dan iz-zwieg;

Illi ghal dan iz-zwieg, il-partijiet rabtu l-kunsens taghhom ma' kundizzjoni li tirreferi ghall-futur kif ser ikun ampjament ippruvat waqt it-trattazzjoni tal-kawza;

Illi l-kontendenti ghexu flimkien ghal perjodu relattivament qasir fil-hajja matrimonjali taghhom u cjoe' minn meta gie kkontrattat iz-zwieg fis-17 ta' Settembru 1993 sa Frar 1994;

Illi ghalhekk iz-zwieg iccelebrat mill-kontendenti fis-17 ta' Settembru 1993 huwa null u bla effett ghat-termini ta' **I-Att XXXVII tal-1975 li Jirregola z-Zwigijiet**.

Illi l-istess attur talab lil din l-Onorabbli Qorti sabiex ghar-ragunijiet premessi:-

1. Tiddikjara u tiddeciedi illi z-zwieg ikkontrattat bejn l-attur u l-konvenuta Alexandra Wang fis-17 ta' Settembru 1993 bir-rit Civili huwa null u bla effett.
2. Tiddikjara u tiddeciedi ghad-dispost tal-**artikolu 20 (5) tal-Att XXXVII tal-1975 li Jirregola z-Zwigijiet**, illi l-attur ma huwiex responsabbli ghan-nullita' taz-zwieg u ghaldaqstant tezonorah milli b'xi mod obligat li jhallas manteniment lill-konvenuta.

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

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

Rat il-lista ta' xhieda u d-dokumenti eseblti a fol. 4 u 5 tal-process;

Kopja Informali ta' Sentenza

Rat il-verbali tas-seduti tal-4 ta' Marzu 1999 fejn Dr. Vincent Galea ghall-attur ta' ruhu b'notifikat bl-avviz tas-smiegh tal-kawza; tad-29 t'April 1999; tas-6 ta' Mejju 1999; tat-13 ta' Lulju 1999; u tal-2 ta' Settembru 1999.

Rat ir-rikors tal-attur datat 29 t'Ottubru 1999 fejn talab li jigi awtorizzat jinnotifika lill-konvenuta permezz tal-pubblikazzjoni fil-Gazzetta tal-Gvern.

Rat id-digriet sussegwenti tal-Qorti tad-19 ta' Novembru 1999 fejn laqghat it-talba b'dan li jigi esegwit dak indikat fl-**artikolu 187 (3) tal-Kap 12.**

Rat in-nota tal-eccezzjonijiet tal-konvenuta tas-7 ta' Jannar 2000 a fol. 19 fejn gie eccepit:-

1. Illi ghalkemm l-esponenti taqbel illi z-zwieg bejn il-kontendenti kien vizzjat l-esponenti ma hix responsabbli ghal dan in-nuqqas u ghalhekk ma ghandhiex tigi kkundannata thallas l-ispejjez ta' dawn il-proceduri.
2. B'riserva ghal eccezzjonijiet ohra.

Rat id-dikjarazzjoni u l-lista tax-xhieda tal-konvenuta a fol. 20 tal-process.

Rat il-verbali tal-10 ta' Jannar 2000; tat-12 ta' Mejju 2000 fejn il-Qorti ordnat li l-partijiet jipprezentaw ix-xhieda kollha taghhom permezz tal-procedura tal-affidavits, filwaqt li gie riservat kull dritt ghall-kontro-ezamijiet; tal-10 ta' Novembru 2000; tal-4 ta' Dicembru 2000 fejn fuq talba tal-attur il-kawza giet differita *sine die*.

Rat ir-rikors tal-istess attur Feng Wang datat 13 ta' Marzu 2001 fejn talab li l-kawza terga' tigi riappuntata sabiex tigi trattata u deciza skond il-ligi.

Rat id-digriet sussegwenti tal-Qorti tal-20 ta' Marzu 2001 fejn laqghat it-talba u appuntat l-istess kawza ghas-smiegh ghat-13 ta' Gunju 2001.

Kopja Informali ta' Sentenza

Rat il-verbali tat-13 ta' Gunju 2001; tat-18 ta' Settembru 2001 fejn Dr. Chris Busietta li assocja ruhu fil-patrocinju tal-attur ta ruhu b'notifikat bl-avviz tar-riappuntament; tas-7 ta' Jannar 2002; tat-18 ta' Frar 2002 fejn il-kawza giet differita biex tkompli tinstema' minn din il-Qorti kif prezentament presjeduta mill-Onor. Imhallel Raymond C. Pace; tat-12 ta' Marzu 2002; tal-5 ta' Gunju 2002; u tas-26 ta' Novembru 2002 fejn rega' nghata digriet tal-affidavit tal-partijiet b'terminu ta' tletin (30) jum kull wiehed.

Rat in-nota tas-27 ta' Dicembru 2002 li permezz taghha pprezenta l-affidavit tieghu stess, ta' Yu Lei, u ta' Grace Bai.

Rat il-verbal tas-26 ta' Marzu 2003 fejn Dr. Christine Bondin ghall-konvenuta nfurmat lill-Qorti li ghalkemm ikkomunikat diversi drabi mal-klijenta taghha dwar l-affidavits dan irrizulta inutilment, u obligat ruhha li tipprezenta nota dwar tali korrispondenza. Il-kawza giet differita ghas-27 ta' Novembru 2003 ghas-sentenza.

Rat id-dokumenti esebiti.

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

II. KONSIDERAZZJONIJIET.

(i) PROVI PRODOTTI.

Illi l-attur ipprezenta x-xhieda tieghu bil-lingwa Ngliza permezz tal-procedura tal-affidavit, fejn sostna:-

“My wife and I got married on the 17th of September 1993. I had known my wife for about six months, before we decided to get married.

In 1993, I used to live in Tarxien and I was working in a factory in Bulebel. My wife also worked here. I remember that once there was a party at the factory where I was working and during this party Alexandra came onto me and asked me whether I wanted to dance. I accepted. After some days, we started going out together.

Alexandra already had a boyfriend who was a mini bus driver at that time. Alexandra started to tell me to go out with her friends. We used to be about six, Alexandra, her boyfriend, some friends of hers and me. Some time later, and I would say about a month after we first met at the party which I have already mentioned, Alexandra left her boyfriend and started to go out with me. At that time neither Alexandra or me knew how to speak English a lot. We went out together and after some time both of us finished working at the above mentioned factory.

In July 1993 we started living together and some months after we got married. At this moment in time, we were living in San Gwann.

Despite the fact that we spent a couple of months living together before we got married, neither of us really discussed the issue of marriage, or the responsibilities, duties and obligations of married couples.

After some time that Alexandra and I were living together, she told me that she was pregnant. Because of this fact alone, we decided that it was in the future child's best interest that it be born in a marriage. So in September 1993 we got married. However, as I later realized, this was just a lie from her part. She was never pregnant. In fact, when we separated in February 1994 I did not see any change in her appearance in the sense that usually, pregnant women's tummy is a bit bigger than usual. To me everything seemed normal.

Moreover, I can say that Alexandra did not want the marriage to be a union for the rest of our lives. In fact, the month after we got married, she started dating another man. After one month she started living the same life she had when she was still single – going out, staying out late, not coming home and having a good time. Even our sexual encounters weren't frequent. It was very rare for us to make love.

This situation persisted even when we moved to Rabat. I used to work from 7:00 a.m. till 6:00 p.m. and when I

returned home, I never used to find her. When I used to tell her why she was acting this way, her answer would be that it was not my business. I used to remain awake, sometimes, at night waiting for Alexandra to come back from wherever she used to go. I sometimes saw her coming back home accompanied with different men.

Finally, in February 1994 Alexandra left the matrimonial home. It seems to me that she never wanted to get married. She lied to me about being pregnant, and from the way she was behaving, it seemed very clear that she did not have any intention of getting married to me but wanted just to go out with me and nothing else. After some time, as the facts show, she got fed up, and started living her own life.

I tried to lead a normal life, working and providing food for Alexandra and myself. During the whole time that we were living together, Alexandra never worked and she always used to ask me for money. Even when it come to simple things like cleaning or cooking. It was always I who used to do these things. Rarely did we ever eat together like a family, and even more rarely did we spend time together. I can state that after maybe one month that we got married, our marriage was finished. I tried to do my utmost to save the marriage, I was very patient with Alexandra, and I tried to give her some space and freedom, but she did not want just some space and freedom. She wanted to lead a single person's life.

We have been leading separate lives now for a good number of years”.

Illi gew prezentati wkoll zewg affidavits ohra mill-attur, cjoe' ta' **Yu Lei** u ta' **Grace Bai** li kkonfermaw li huma kienu jafu li l-istess attur zzewweg lill-konvenuta ghaliex hija kienet qaltlu li kienet tqila meta fil-fatt ma kienx veru dan. Qalu wkoll li l-istess konvenuta waqt li kienet qed tghix mal-attur kienet ukoll tohrog ma' rgjel ohra u ssothnew li l-istess partijiet ilhom jghixu separatament minn xulxin mill-mument li nfirdu.

(ii) PRINCIPJI LEGALI.

Illi l-attur qed jitlob l-annullament ta-zwieg mal-konvenuta *stante* li qed jikkontendenti li l-kunsens tal-partijiet ghal dan iz-zwieg kien vizzjat b'difett serju ta' diskrezzjoni fuq il-hajja mizzewga fuq id-drittijiet u dmirijiet essenzjali taghha; li l-kunsens tal-partijiet ghal dan iz-zwieg kien vizzjat peress li nkiseb bl-eskluzjoni pozittiva taz-zwieg inniffsu, jew ta' xi wiehed jew aktar mill-elementi essenzjali tal-hajja mizzewga; u fl-ahharnett peress li qed jallega li l-kontendenti rabtu l-kunsens taghhom ma' kundizzjoni li tirreferi ghall-futur kif ser ikun ppruvat waqt it-trattazzjoni tal-kawza.

Illi dawn il-premessi jwasslu sabiex jinghad li l-attur qed ivanta li l-imsemmi zwieg kien null u bla effett ghat-termini tal-**artikolu 19 (1) (g) u/jew (d) u/jew (f) tal-Att XXXVII tan-1975 li Jirregola z-Zwigijiet.**

Illi fil-premessi tac-citazzjoni l-attur qal li l-kunsens tal-partijiet kien vizzjat b'difett serju ta' diskrezzjoni ta' gudizzju fuq il-hajja mizzewga, jew fuq id-drittijiet u d-dmirijiet essenzjali taghha liema premessa qeghda tirreferi ghall-artikolu **19 (1) (d) tal-Kap 255 tal-Ligijiet ta' Malta.**

Illi fl-istess premessi jinghad, li l-attur sostna li l-kunsens tal-partijiet inkiseb bl-eskluzjoni pozittiva taz-zwieg inniffsu u tal-elementi essenzjali tal-hajja mizzewga jew tad-dritt ghall-att taz-zwieg, liema premessa qeghda tirreferi ghall-artikolu **19 (1) (f) tal-Kap. 255 tal-Ligijiet ta' Malta.**

Illi l-**artikolu 19 (1) (d) u (f) tal-Kap 255 tal-Ligijiet ta' Malta** jinqraw hekk kif gej:

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

(d) jekk il-kunsens ta' xi wahda mill-partijiet ikun vizzjat b'diffett 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 essenzjali tal-hajja mizzewga, jew tad-dritt ghall-att taz-zwieg."

Illi din il-Qorti sejra tghaddi biex tezamina n-nullita` taz-zwieg o meno taht dawn iz-zewg sub-incizi separatament, u fl-ewwel lok, taht **l-artikolu 19(1) (d) tal-Kap 255 tal-Ligijiet ta' Malta.**

Illi **artikolu 19 (1) (d) tal-Kap 255** jghid illi z-zwieg ikun null jekk il-kunsens ta' xi wahda mill-partijiet ikun vizzjat b'diffett 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.

Illi ghar-rigward tal-istess **artikolu 19 (1) (d)** mill-provi migbura jirrizulta li l-kontendenti, qabel ma zzewgu, ma kkunsidrawx bis-serjeta` l-valuri u l-principji tal-hajja mizzewga. Fil-fatt inghad li l-kuncett ta' d-diskrezzjoni ta' gudizzju "*supposes not only maturity of intellect but also a maturity of the will, that is an ability to take decisions responsibly. A person must possess a critical faculty and internal freedom of choice in order to contract validly*".

*"Psychic disorders which give rise to a defect of due discretion include immature personality, which may be characterised by affective infantilism, immature character, affective immaturity and an emotionally unstable personality. Serious immaturity could very easily constitute a ground of nullity for a marriage. In a Rotal decision of 1961 **Sabattani** held that a person either has or has not sufficient discretion of judgement to marry. If he has not, then he suffers from 'aementia', not in the sense of insanity, but in the sense that he lacks the sufficient maturity of judgement to understand and choose marriage*

... .. Therefore, the weakness which affects the mind can merely result from the lack of maturity”.

Illi **G. Veness**, kif ikkwotat minn **N. Picard** in **‘L’immaturite’ et le consentement matrimonial**” (pg. 54-55) jghid is-segwenti:-

“The judge must consider the overall behaviour of the spouse, taking into account the gravity of the conduct, its continuity throughout the conjugal life, its influence on the couple’s equilibrium, the relation of behavioural disorders to the ‘ius in corpus and also to the right to the community of life and to consider also all the other factors which are relevant to the determination of the gravity of this immaturity with reference to married life.”

Illi dwar dan is-sub-artikolu din il-Qorti kif presjeduta diga` kellha okkazzjoni tezaminah, u ghalhekk taghmel referenza ghas-sentenzi **“Joseph Borg vs Maria Nicolina Cutajar gia` Borg”** (Cit. Nru. 1564/97/RCP deciza fil-21 ta` Ottubru 1999) u **“Kevin Spiteri vs Av. Dr. Renzo Porsella Flores et noe”** (Cit. Nru. 2443/97/RCP deciza fit-18 ta` Jannar, 2000); **“Anthony Gallo vs Dr. Anthony Cutajar et nomine”** (P.A. (RCP) 28 ta` Mejjun 2002); **“Ali Chahid vs Mary Spiteri”** (P.A. (RCP) 5 ta` Gunju 2002); **“Giulio Farrugia vs Raquel Anne Farrugia”** (P.A. (RCP) 29 ta` Mejjun 2002); **“Romina Zammit vs Paul Zammit”** (P.A. (RCP) 30 ta` Mejjun 2002) u ghall-principji hemm enuncjati.

Illi f`dawn is-sentenzi, u fid-decizjoni **“Josette Lungaro vs Jesmond Lauro”** (P.A. (RCP) I-1 ta` Frar 2001) il-Qorti ghamlet referenza ghas-segwenti espozizzjoni ta` **Viladrich** li jghid:-

“Thus, there is grave lack [of discretion of judgment] when it is proven that a contracting party lacks intellectual and volitional maturity necessary to discern, in view of binding oneself in an irrevocable manner, the essential rights and duties of marriage, which are the object of mutual surrender and acceptance. The discretion of judgment refers to that degree of maturity of comprehension and of

will of the contracting parties, which enables them to give and receive each other, through a juridical bond, in a unique community of life and love. This community is indissolubly faithful, ordered to the good of the spouses as well as to the procreation and education of the offspring. (Viladrich, P.J. "Matrimonial Consent in Code of Canon Law Annotated" (Montreal, 1993) p. 686).

Illi fis-sentenza "**Kevin Spiteri vs Av. Dr. Renzo Porsella-Flores et noe**" (Cit. Nru. 2443/97/RCP deciza fit-18 ta' Jannar 2000) il-Qorti spjegat:-

"Kwantu ghall-obbligazzjonijiet essenzjali taz-zwieg, din il-Qorti tifhem li, fin-nuqqas ta' definizzjoni jew indikazzjoni fil-Kap 255, dawn l-obbligazzjonijiet essenzjali huma dawk li fis-socjeta` Maltija dejjem u nvarjabbilment gew ritenuti bhala l-obbligazzjonijiet essenzjali taz-zwieg. Dawn huma "the obligation concerning the conjugal act or carnal union, as bodily union and basis of procreation; the obligation of the community of life and love as an expression of the union between man and woman, mutual well-being, which is inseparable from the provision of an environment conducive to the reception and education of children; and the obligation to receive and bring up children within the context of a conjugal community. It is important to remember that these essential obligations must be mutual, permanent, continuous, exclusive and irrevocable so that there would be incapacity if one of the contracting parties should be, due to a psychological cause, incapable of assuming these obligations with these essential characteristics". (Vidadrich, P.J. op. cit., p. 687).

Illi dan l-animu tal-istess partijiet manifestat fl-azzjonijiet taghhom, huwa ghal kollox distint u differenti minn dawk li gew skond il-gurisprudenza nostrali konsiderati bhala d-drittijiet u dmirijiet u l-elementi essenzjali taz-zwieg, tant li fis-sentenza "**Mary Mustefa Al Muhamed vs Mustefa Mustefa Al Muhammed**" (P.A. (NA) 27 ta' Lulju 1999) inghad li:-

“Fil-kawza “**Haidin vs Haidin**” (PA. (Q.K) 7 ta’ Lulju 1994), il-qorti qalet illi m’ghandu jkun hemm ebda motivazzjoni li ggieghel persuna tersaq ghaz-zwieg ghajr l-imhabba lejn persuna ohra w ix-xewqa li tqatta’ l-kumplament ta’ hajjitha fil-kumpanija taghha. Fiz-zwieg wiehed irid ikun lest li jaghtiha t-totalita’ tieghu nnifsu esklussivament lill-persuna l-ohra, u din l-ghotja trid tkun mhux biss reciproka izda motivata bi hsieb genwin li vermament ikun irid johloq ‘a partnership for life’.

Mill-gurisprudenza nostrana, jista’ jinghad illi d-dmirijiet u drittijiet tal-mizzewgin fiz-zwieg huma dawk li komunament wiehed jistenna fi zwieg normali fis-socjeta’ taghna. Fost dawn, wiehed isemmi l-fedelta` u l-assistenza, l-unita` u l-indossolubbilta’ taz-zwieg, l-hajja komuni flimkien, id-dritt u d-dmir illi jittiehdu decizionijiet flimkien intizi fl-ahjar interess tal-familja w il-prokreazzjoni ta’ l-ulied. Il-hajja mizzewga timporta li l-mizzewgin jaqsmu kollox flimkien u li jkunu ta’ ghajnuna u ta’ assistenza lil xulxin, b’impenn shih a favur ta’ xulxin u taz-zwieg taghhom l-element tal-‘communio vitae’. Fil-kawza “**Micallef vs Micallef**” deciza fl-4 ta’ Meju 1993, il-Prim’ Awla tal-Qorti Civili enuncjat illi ‘element essenzjali tal-hajja mizzewga skond il-ligi taghna huwa d-dritt tal-mizzewgin ghall-komunjoni tal-hajja (‘communio vitae’) bejniethom”.

Illi rigward l-artikolu 19 (1) (f) tal-Kap 255 tal-Ligijiet ta’ Malta, dan l-artikolu jikkonsidra kemm is-simulazzjoni totali (“*colorem habens, substantiam vero nullam*”) kif ukoll dak parzjali (*colorem habens, substantiam vero alteram*) tal-kunsens.

Illi rigward it-tifsira tal-frasi “*eskluzjoni pozittiva taz-zwieg innifsu*”, jew kif maghruf ukoll bhala simulazzjoni totali, il-Qorti fil-kawza “**Bonnici vs Bonnici**” (P.A. 30 ta’ Lulju 1982) qalet illi biex ikun hemm simulazzjoni totali jrid jigi ppruvat il-‘*finis operis*’ taz-zwieg gie effettivament eskluż mill-vera rieda ta’ parti jew ohra, ghalkemm formalment tkun sehhet ic-celebrazzjoni taz-zwieg.

Illi fis-sentenza “**Cali vs Dr. Albert S. Grech nomine**”. (P.A. 22 ta' Gunju 1988) il-Qorti qalet illi jekk tmur għaccerimonja tat-tieg u nternament tissostitwixxi l-ideat tieghek fuq x'inhu zwieg jew inkella xort'ohra teskludi l-veru kuncett taz-zwieg, hi forma ta' simulazzjoni totali. Fid-decizjoni “**Galea vs Walsh**” (P.A. 30 ta' Marzu 1995) il-Qorti spjegat simulazzjoni bhala “*meta l-atti, gesti jew kliem esterni ma jikkorrispondux għall-kunsens intern li jkun inghata*”. Illi fis-sentenza “**Muscat vs Borg Grech**” (P.A. 14 ta' Awissu 1995) il-Qorti spjegat il-kuncett ta' simulazzjoni b'dawn il-kliem:-

“Għalhekk min esternament ikun wera li qed jaghti l-kunsens matrimonjali izda jkun internament u b'att pozittiv tal-volonta' tieghu qed jichad il-kunsens għal dak iz-zwieg ikun qed jissimula l-kunsens tieghu”.

Illi kif gie insenjat fid-decizjoni fl-ismijiet “**Francesco Teuma vs Liugi Camilleri et**”, (K. 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 yenta, ma una simulazione, cioe' 'fictio seu ostensio falsi pro vero'.

Illi fil-kawza “**Anthony Gallo vs Dr. Anthony Cutajar et nomine**” (P.A. (RCP) 28 ta' Mejju 2002) inghad li “*meta wiehed jitkellem dwar l-eskluzjoni taz-zwieg jew wiehed mill-elementi essenzjali tieghu, wiehed irid jifli jekk il-kontendenti jew wiehed minnhom, allavolja hu kapaci jaghti l-kunsens validu taz-zwieg, pero' bl-att 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 filwaqt il-kunsens hu jew hi eskludew xi wahda jew aktar mill-elementi essenzjali tal-hajja mizzewga, u cjoe' saret simulazzjoni parzjali”.*

Illi fil-fatt din il-Qorti taqbel mal-istess definizzjoni u fil-fatt fis-sentenza “**Al Chahid vs Mary Spiteri**” (P.A. (RCP) 5 ta' Gunju 2002 inghad li “*wiehed jinnota li 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 wiehed mill-partijiet minn qabel ma ta' l-kunsens tieghu kien gja' mentalment dispost li ma jottemperax ruhu ma' xi wahda jew aktar mill-obbligi matrimonjali. Fl-ewwel ipotesi hemm ir-ragunijiet li jaghtu lok ghas-separazzjoni u fit-tieni ipotesi hemm l-estremi tal-annullament taz-zwieg*".

Illi fil-fatt ghal dak li jolqot l-kuncett ta' "l-eskluzjoni pozittiva ta' xi wiehed jew aktar mill-elementi essenzjali tal-hajja mizzewga", u cjoe' simulazzjoni parzjali, il-Prim' Awla tal-Qorti Civili fil-kawza "**Abdel Wahed vs Dr. Yana Micallef Stafrace et**" (P.A. (NA) 14 ta' Lulju 1994) elenkat l-elementi essenzjali taz-zwieg bhala li jikkonsistu fil-"kommunjoni tal-hajja konjugali, l-indissolubilta' tar-rabta taz-zwieg, id-dritt ghall-fedelta' u d-dritt ghall-prokreazzjoni ta' l-ulied". L-istess elementi gew ikkonfermati wkoll fil-kawza "**Aquilina vs Aquilina**" (P.A. (NA) 30 ta' Jannar 1991) u fis-sentenza "**Grech vs Grech**" (P.A. (NA) 9 ta' Ottubru 1990). Dawn huma wkoll l-elementi fil-ligi kanonika.

Illi l-komunjoni tal-hajja konjugali u l-"*consortium vitae*" tikkomprendi zewg elementi u cjoe' l-imhabba konjugali u r-responsabbilta' tal-familja. Kif qalet il-Prim' Awla tal-Qorti Civili fid-decizjoni "**Magri vs Magri**" (14 ta' Lulju 1994):-

"Jekk din il-"consortium vitae" hija nieqsa, l-oggett innifsu tal-kunsens taz-zwieg huwa wkoll nieqes. Din il-"Consortium Vitae" tikkomprendi zewg elementi li huma l-imhabba konjugali u r-responsabbilita' tal-familja."

Illi fil-fatt l-element ta' l-indossolubilta' taz-zwieg jehtieg li l-kunsens ikun ibbazat fuq rabta dejjiema bejn ragel u mara wahda, mibnija fuq il-fedelta' u formazzjoni tal-familja. L-ligi Maltija tippresuponi '*uris tantum*' dan l-element ta' indossolubilta' fiz-zwieg.

Illi fil-fatt, **J. Edwards Hudson** (pg. 164-165), jispjega car li: "*indissolubility can be excluded from consent in two different ways: either because the spouse, knowing the*

true nature of marriage, nevertheless contract with the understanding that he will have the option of dissolving the bond and recovering his former free status, or because the spouse formulates his own doctrine on marriage, from which the idea of indissolubility is absent and to which he adheres totally with both intelligence and will power”.

Illi wkoll, **D.J. Burns**, fil-kummentarju tieghu (**D.J. Burns**, **“Matrimonial Indissolubility: Contrary Conditions - A Historical Synopsis and Commentary”**. pg.151) jghid li *“it is not necessary that this intention (i.e. li teskludi l-indossolubbilta’) was formulated as an express agreement, it can be inferred either from an explicit declaration of one or both parties, or consequent on certain words or actions implying that effect, or as a result of the narration of the circumstances of the contract.”*

Illi hawn ukoll il-Qorti tirreferi ghal dak li inghad fis-sentenza **“Sharon Lanzon mart Francis Attard vs Francis Attard”** (P.A. (RCP) 15 ta’ Marzu 2000) u cjoe’:-

“Meta wiehed jitkellem dwar l-eskluzjoni taz-zwieg jew wiehed mil-elementi essenzjali tieghu, wiehed irid jifli jekk il-kontendenti jew wiehed minnhom, allavolja huwa kapaci li jaghti kunsens validu taz-zwieg, pero’ fl-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 iz-zwieg, jew inkella fejn waqt li l-kunsens hu jew hi eskludew xi wahda jew aktar mill-elementi essenzjali tal-hajja mizzewga, u cjoe’ saret simulazzjoni parzjali”.

Illi hawn qed issir referenza ghal dak li nghad fid-decizjoni **“Mary Mustefa Al Muhamed vs Mustefa Mustefa Al Muhamed”** (P.A. (NA) 27 ta’ Lulju 1999) li ghaliha qed issir referenza.

(ii) APPREZZAMENT TAL-PROVI.

Illi mill-provi prodotti jidher li l-konvenuta ghal xi raguni li ma hijiex cara mix-xhieda migjuba riedet tizzewweg lill-

attur izda dan ghamlitu b'ingann ukoll ghaliex sabiex tikkonvincih sabiex jizzewwigha, wara li hija gja' kienet tabita mieghu, hija qaltlu li kienet tqila minnu, haga li wara rrizulta li ma kenitx vera; ghalkemm l-**artikolu 19 (1) (c) tal-Kap 255 tal-Ligijiet ta' Malta** ma jissemmiex mill-attur fic-citazzjoni, skond il-gurisprudenza nostrali ma hemm xejn f'izomm il-Qorti milli tippronunzja n-nullita' taz-zwieg anke abbazi tal-artikoli jew ahjar subartikoli li ma jigux indikati mill-partijiet, *stante* li l-kawza tibqa' xorta wahda unika ta' nullita' taz-zwieg.

Illi fil-fatt abbazi tal-**artikolu 19 (1) (c)** imsemmi jidher li l-legislatur Malti llimita l-qerq fuq *"xi kwalita tal-parti l-ohra li tista' mix-xorta taghha tfixkel serjament il-hajja mizzewga"*. Din il-kawzali giet ikkonsidrata minn din il-Qorti diversament presjeduta fil-kaz **"John Borg vs Paula sive Polly Borg"** (P.A. (VDG) 22 ta' Meju 1995 - Cit. Nru. 591/94VDG) fejn gie osservat li:-

"kieku dak il-paragrafu 19 (1) (c) gie formulat b'mod differenti, wiehed ikun jista' jghid li japplika ghaz-zwieg civili l-art. 981 tal-Kodici Civili li evidentement hu aktar wiesgha fil-portata tieghu. Il-legislatur Malti, izda, ghazel li jillimita l-qerq, bhala kawza ta' nullita' ta' zwieg, ghall-qerq dwar dawk il-kwalitajiet, oggettivament gravi, li jincidu fuq l-essenza, il-proprjetajiet u l-ghanijiet taz-zwieg.

The object of deceit must be a quality of the other contracting party which, in itself, will have to cause serious disturbance in the partnership of conjugal life; with this formula, the legislator intends that the quality must be objectively grave and establishes the partnership of conjugal life as an objective point of reference for the gravity of the quality so that the qualities are related to the essence, proeprties and ends of marriage. Therefore, those subjective qualities which cannot be objectively reconciled with conjugal partnership are irrelevant and, in this sense, they are merely arbitrary or trivial". (Viladrich P.J. Matrimonial Consent. Code of Canon Law Annot. - Caparros, E. et al. ed)1993, Wilson and Lafleur, Montreal).

Illi l-Qrati taghna dejjem sostnew li z-zwieg ikun null skond dan is-sub-artikolu jekk wahda mill-partijiet taghti l-kunsens taghha ghax tkun giet imqarrqa jew mill-parti l-ohra jew minn xi haddiehor dwar xi kwalita` tal-parti l-ohra (“**Fattah xebba Perry vs Dr.A. Mifsud et**” (P.A. 22 ta Novembru 1982) Skond il-gurisprudenza fuq citata, element importanti ta’ dan is-subartikolu hu li l-qerq irid ikun serju bizzejjed li fixkel serjament il-hajja mizzewga.

Illi fl-opinjoni ta’ din il-Qorti hemm bazi sabiex l-istess zwieg jigi ddikjarat null abbazi tal-**artikolu 19 (1) (c) tal-Kap 255**, izda wkoll mill-provi prodotti jirrizulta li l-konvenuta *a priori* eskludiet elementi essenzjali taz-zwieg mill-kunsens taghha moghti sabiex tinghaqad mal-attur u dan peress li minn kif agixxiet hija qatt ma kienet intenzjonata li tghix fedelement mal-attur izda riedet tkompli tghix ghal rasha, u fil-fatt fil-ftit xhur li l-istess partijiet damu jghixu flimkien l-istess konvenuta jidher li komplet ikollha relazzjonijiet ma’ rgjel ohra u fl-ebda mument ta’ hajjitha mal-attur ma ghexet jew ippruvat tghix ta’ hajja mizzewga, u ghalhekk il-kunsens tal-konvenuta kien ukoll ivvizjat *ai termini* tal-**artikolu 19 (1) (f) tal-Kap 255 tal-Ligijiet ta’ Malta**.

Illi ghalhekk din il-Qorti wara li hadet in konsiderazzjoni l-provi kollha prodotti thoss li anke fuq din il-bazi hemm ragunijiet sabiex tintlaqa’ t-talba attrici abbazi tal-**artikolu 19 (1) (c) u (f) tal-Kap 255** ghar-ragunijiet imputabbli lill-konvenuta.

Illi l-**artikolu 19 (1) (g)** jipprovdi li z-zwieg huwa null:-

“(g) jekk xi wahda mill-partijiet torbot il-kunsens taghha ma’ kondizzjoni li tirreferi ghall-futur”.

Illi dwar l-**artikolu 19 (1) (g)** jinghad skond **J. Edward Hudson** “*a condition could either be suspensive or resolute. It is suspensive if it delays the entry in effect of the obligation of an act until the condition itself is fulfilled. It is resolute if it dissolves the obligation only if it verifies itself and therefore renders it null. e.g. “I will live in*

marriage with you until I find someone who is more wealthy than you" (“**Handbook II for Marriage Nullity Cases**” pg. 107). Illi huwa mportanti li wiehed jinnota li din il-kundizzjoni tapplika biss ghall-kaz ta' annullament taz-zwieg jekk din il-kundizzjoni tirreferi ghall-avveniment fil-futur, u mill-provi prodotti jirrizulta li ma hemmx bazi ghall-annullament taz-zwieg bejn il-kontendenti fuq dan il-kap ghalkemm din *ormai in vista* ta' dak deciz hija kwistjoni biss akkademika.

III. KONKLUZJONI.

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

1. Tiddikjara u tiddeciedi illi z-zwieg ikkuntrattat bejn l-attur u l-konvenuta Alexandra Wang fis-17 ta' Settembru 1993 bir-rit civili huwa null u bla effett u dan *ai termini* tal-**artikolu 19 (1) (c) u (f) tal-Kap 255 tal-Ligijiet ta' Malta.**

2. Tiddikjara u tiddeciedi ghad-dispost tal-**artikolu 20 (5) tal-Att XXXVII tal-1975 li Jirregola z-Zwigijiet**, illi l-attur ma huwiex responsabbli ghan-nullita' taz-zwieg u ghaldaqstant tezonorah milli b'xi mod obligat li jhallas manteniment lill-konvenuta.

Bl-ispejjez kollha kontra l-konvenuta.

Moqrija.

< Sentenza Finali >

-----TMIEM-----