MALTA

QORTI CIVILI
(SEZZJONI TAL-FAMILJA)

ONOR. IMHALLEF
RAYMOND C. PACE

Seduta tat-30 ta' Gunju, 2004

Citazzjoni Numru. 24/2001/1

John Bowdler

vs

Philomena Bowdler

Il-Qorti,

I. PRELIMINARI.

Rat ic-citazzjoni attrici datata 8 ta' Jannar 2001 a fol. 1 tal-process fejn gie premess:-

Illi l-attur John Bowdler u l-konvenuta Philomena Bowdler izzewgu fl-24 ta' Gunju 1991 kif jirrizulta mic-certifikat taz-zwieg anness u mmarkat bhala Dok. "JB1";

Illi l-kunsens tal-attur ghaz-zwieg imsemmi nkiseb b'qerq dwar kwalita' tal-konvenuta li mix-xorta taghha fixklet

serjament il-hajja mizzewg kif jigi pruvat waqt it-trattazzjoni tal-kawza;

Illi l-kunsens tal-partijiet ghaz-zwieg imsemmi kien ivizzjat b'difett serju ta' diskrezzjoni ta' gudizzju fuq il-hajja mizzewga, u fuq id-drittijiet u dmirijiet essenzjali taghha li kif ukoll jigi pruvat waqt it-trattazzjoni tal-kawza, ghamlitha mpossibli ghall-istess partijiet li jaqdu l-obbligazzjonijiet essenzjali taz-zwieg;

Illi ghalhekk iz-zwieg bejn il-partijiet kien null u nvalidu fil-ligi;

Illi l-istess attur talab li dan l-Onorabbli Qorti sabiex ghar-ragunijiet premessi;

Tiddeciedi u tiddikjara li z-zwieg bejn il-partijiet tal-24 ta' Gunju 1991 fuq imsemmi kien null u nvalidu ghall-finijiet u effetti kollha tal-ligi;

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

Rat id-dikjarazzjoni tal-attrici, l-lista tax-xhieda w il-lista tad-dokumenti a fol. 3 u 4 tal-process.

Rat id-dokumenti esebiti.

Rat in-nota tal-eccezzjonijiet tal-konvenuta Philomena Bowdler, datata 6 ta' Settembru 2001, a fol 13, fejn eccepit bir-rispett:-

1. Illi filwaqt li taqbel li z-zwieg tal-kontendenti huwa null ma taqbilx li dan hu minhabba xi tortijiet imputabbli lill-istess eccipjenti kif jirrizulta waqt it-trattazzjoni;

2. Illi l-allegat vizzju ta' kunsens tal-attur *stante* xi qerq dwar kwalita tal-eccipjenti qed jigi michud;

3. Illi fic-cirkostanzi l-eccipjenti m'ghandhiex tbaghti ebda spejjez;

4. Illi salv' eccezzjonijiet ulterjuri.

Rat id-dikjarazzjoni tal-konvenuta w il-lista tax-xhieda a fol 14 tal-process.

Rat il-verbal datat 24 ta' Settembru 2001, fejn il-Qorti nominat lil Dr. Audrey Demicoli biex tigbor il-provi u tirrelata.

Rat in-nota tal-attur John Bowdler datata 31 ta' Ottubru 2001, a fol. 16 li permezz taghha esibixxa l-affidavit ta' John Russell Bowdler, ta' Jane Fenech u ta' Joseph Fenech.

Rat l-avviz tal-Qorti datat 25 ta' Marzu 2002, fejn b'ordni tal-Qorti din il-kawza giet differita quddiem din il-Qorti kif diversament presjeduta mill-Onor. Imhallef Raymond C. Pace LL.D. ghat-12 ta' Gunju 2002.

Rat il-verbal datat 12 ta' Gunju 2002.

Rat il-verbal datat 14 ta' Gunju 2002, fejn inghata digriet affidavit tal-partijiet b'terminu ta' erbghin jum kull parti. Il-Qorti ordnat lil Perit Legali biex wara tali terminu tiffissa erba' seduti ghall-provi tal-paritjiet.

Rat il-verbal datat 20 ta' Novembru 2002, fejn Dr. Lorraine Schembri Orland ghall-konvenuta nfurmat lil Qorti li l-attur ghalaq il-provi u kien hemm seduta ffissata ghall-kontro-ezami tal-attur. Il-Qorti kkonfermat id-digriet taghha tal-14 ta' Gunju 2002 b'dan li terminu tal-affidavit tal-konvenuta kellu jibda jghaddi mid-data tal-verbal. Il-Qorti ordnat lil Perit Legali biex wara tali terminu tiffissa zewg seduti ghall-provi kollha tal-konvenuta, b'dan li r-relazzjoni kellha tigi prezentata mhux aktar tard mit-3 ta' Gunju 2003.

Rat in-nota tal-Perit Legali datata 29 ta' April 2003, a fol. 32 tal-process.

Rat il-verbal datat 3 ta' Gunju 2003, fejn Dr. Stephanie Galea ghall-konvenuta nfurmat lil Qorti li l-provi gew maghluqa.

Rat il-verbal datat 23 ta' Ottubru 2003, fejn Dr. Audrey Demicoli prezentat ir-rapport.

Rat is-seduti mizmuma mill-Perit Legali Dr. Audrey Demicoli minn fol. 38 sa fol. 48 tal-process.

Rat il-verbal datat 26 ta' Novembru 2003.

Rat il-verbal datat 19 ta' Frar 2004, fejn il-Perit Legali Dr. Audrey Demicoli li halfet ir-rapport u d-difensuri qablu li l-kawza tibqa' ghas-sentenza ghat-30 ta' Gunju 2004.

Rat ir-rapport tal-Perit Legali Dr. Audrey Demicoli minn fol. 86 sa fol. 98.

Rat il-provi kollha prodotti.

Rat l-atti kollha tal-kawza.

II. KONSIDERAZZJONIJIET.

i) PROVI PRODOTTI.

Il-provi f'din il-kawza kollha saru bil-procedura tal-affidavit.

L-attur **John Bowdler** xehed li fl-1979 huwa zzewweg lil certu Marlene Fenech u li wara tlett snin, u cioe' fl-1983, twieldet tifla Rachel. Fl-1986 Marlene Fenech sfat maqtula l-Egittu u ghalhekk l-attur irritorna Malta ma' bintu f'Ottubru 1986. L-attur kien jahdem barra minn Malta u ghalhekk halla lil bintu Malta ma' zija materna waqt li huwa kien ikun imsiefer. F'dan il-perjodu huwa ltaqa' mal-konvenuta u bdew johorgu flimkien. L-attur isostni li f'dak il-perjodu l-konvenuta geghlitu jahseb li kienet thobb lil bintu Rachel. Bintu kellha bzonn l-ghajnuna minhabba x-xokk li kienet hadet meta sabet lill-ommha mejta. L-attur dam johrog mal-konvenuta madwar erba' snin u jghid li:

"throughout these years she was always very caring and she appeared to embrace Rachel. It was this affection which Philomena showed for my daughter which

convinced me to marry her so at the same time that I would have a wife, my daughter would have a mother to care for her and love her. At the time my utmost preoccupation was Rachel and being sure that she had a mother who realized her special needs. Therefore for the sake of my daughter Rachel I married Philomena. If Rachel had not needed so desperately a mother figure I would not have got married to Philomena".

L-attur jghid li huwa zzewweg lill-konvenuta fl-24 ta' Gunju 1991 u jsostni li l-attitudni tal-konvenuta lejn bintu nbidlet immedjatament. Dak iz-zmien bintu kellha tmien snin u nofs. L-attur jghid li ghal-ewwel tlett snin taz-zwieg huwa ma ndunax bil-mod kif il-konvenuta kienet qed titratta lil Rachel ghaliex kien ikun imsiefer kwazi l-hin kollu. Kull darba li kien jigi Malta bintu kienet tirrakontalu dwar il-mod kif kienet qed titrattaha l-konvenuta. Ghall-ewwel huwa m'emminhiex peress li l-konvenuta kienet tidher li tirratta lill-bintu sew qabel ma zzewgu. Maz-zmien huwa beda jinduna li l-konvenuta kienet titratta lil bintu hazin u kienet timponilha hafna kastigi anki fil-presenza tieghu. Huwa ghalhekk induna li Philomena ma kinitx thobb lil bintu.

"Rachel was always kept isolated form her brother and sister who had been born by that time. She was not allowed to share any toys with them. Philomena used to not speak to Rachel for days. Whenever Rachel was treated this way she used to cry herself out before sleeping. This bullying was continual. Rachel was often left on the doorstep waiting for her mother to return…….I must say that I had no control over this treatment which Philomena was giving to my daughter, who was being raised as an unwanted child, because of my long periods away from Malta."

L-attur ikompli jghid li dan it-trattament li kienet tircievi bintu wassal biex hija ghamlet hbieb ma' nies hzina u bdiet tabbuza mid-droga. Meta bdew imorru ghand *counsellor* minhabba l-problema ta' Rachel, il-konvenuta ghall-ewwel bdiet tattendi ghal dawn il-laqghat izda meta l-*counsellor* spjegat li riedet tkellem lill-konvenuta wehidha din irrifjutat ghaliex irriteniet li l-problemi kienu ta' Rachel u

mhux taghha. L-attur jghid li huwa kellu jirrikovera lil bintu l-Isptar "Monte Carmeli" ghal tlett xhur minhabba dawn il-problemi. Meta Rachel irritornat lura d-dar il-konvenuta rrifjutat li ssajjar ghal Rachel jew li tahslilha hwejjigha u kienet tinjoraha kompletament.

"The bullying, mental violence and intolerance on the part of Philomena towards Rachel never stopped till the day when Philomena abandoned the house in 1999 taking with her the two younger children".

L-attur jghid ukoll li wara certu zmien ommu u missieru kienu qalulu li huma kienu raw lill-konvenuta titratta lil Rachel hazin u ma kienu qalulu xejn qabel ghaliex kienu qed jisperaw li l-afarijiet jirrangaw maz-zmien. Il-genituri tal-attur kienu qalulu li addirittura tlett gimghat wara li zzewgu, l-konvenuta kienet qaltilhom li huma setghu jiehdu hsieb lil Rachel jekk riedu jaghmlu dan. L-attur jikkonkludi billi jghid li

"had I known that Philomena would change in such a drastic manner I would never have married her because in my decision to get married I had given utmost importance to the fact that my daughter Rachel would be living with her and I considered Philomena the right person at the time to give Rachel the love she needed. However Philomena led me to think that she was a kind considerate person, but she turned out to be very different. Finally, I could no longer tolerate a situation in which every day I had to choose between my wife and my daughter. Married life with Philomena became intolerable and I could not bear to see these events happening to my flesh and blood. I tried my hardest to keep my family together but what I had done for my daughter's sake had turned out to cause Rachel more harm than good, but also it was clear that Philomena had no intention of reconciliation, no desire to help mend fences".

Jane Fenech, omm l-ewwel mara tal-attur, ikkonfermat li qabel ma zzewgu l-konvenuta kienet tiehu hsieb lil Rachel u turi li kienet thobbha u tiirrispettaha. Skond din ix-xhud

“kienu dawn il-kwalitajiet ta’ Philomena li wasslu lil John sabiex huwa jiddeciedi biex jizzewweg. John Bowdler kien spiss jghidli li kien ikun tajjeb li jizzewweg lil Pilomena ghaliex b’hekk Rachel kien ikollha omm”.

Hija tispjega li meta mietet bintha Rachel kienet qed toqghod mat-tifel taghha u martu u li dak iz-zmien hija kellha karattru ferriehi. Din ix-xhud tghid ukoll li l-attitudni tal-konvenuta lejn Rachel inbidlet b’mod drastiku wara z-zwieg, specjalment wara li l-konvenuta kellha t-tfal taghha. Hija tispjega li l-konvenuta bdiet taghti hafna kastigi ghalxejn lit-tifla. Hija tghid ukoll li l-konvenuta ma kinitx thalli lil Rachel tkellem lilha u lil zewgha u hija kien ikollha ghalhekk tistenniha barra t-triq sejra lejn l-iskola sabiex tkellimha. Jane Fenech isostni wkoll li l-konvenuta kienet ta’ spiss thalli lil Rachel bla ikel ghall-iskola u hija ghalhekk kienet tipreparalha l-ikel hi. Din ix-xhud issostni wkoll li Rachel kienet tirreferi ghad-dar bhala l-Vietnam *stante* l-glied kontinwu li kellha mal-konvenuta u anki minhabba l-glied bejn il-partijiet kontendenti.

Joseph Fenech, li huwa missier l-ewwel mara tal-attur, essenzjalment ikkonferma u ikkorobora dak kollu li qalet martu Jane Fenech in kwantu jirrigwarda l-komportament tal-konvenuta fil-konfronti ta’ Rachel, bint l-attur mill-ewwel mara. Dan ix-xhud jispjega li qabel ma’ l-attur izzewweg lill-konvenuta din tal-ahhar kienet izzzieghel hafna b’Rachel izda l-attitudni taghha wara z-zwieg inbidlet kompletament. Dan ix-xhud ikompli jghid li l-konvenuta kienet timponi hafna kastigi fuq Rachel u meta huwa kien staqsa r-raguni, l-konvenuta kienet irrispondiet li Rachel kellha rasha iebsa u ghalhekk kien haqqa l-kastigi. Joseph Fenech isostni wkoll li Rachel qatt ma kienet tinghata flus mill-konvenuta u li din tal-ahhar kienet titratta lit-tifla bhala seftura ghaliex kienet tqabbadha tahsel id-dar bl-iskuza li ser taghtiha ghaxar centezmi. Dejjem skond dan ix-xhud, Rachel kienet tigi nsolentata minll-konvenuta u minn ohtha. Huwa jghid ukoll li ghal bidu l-attur ma kienx jaf xejn dwar dan it-trattament hazin li kienet qed tinghata Rachel peress li huwa kien jahdem barra minn Malta...

"Jien u l-mara konna nghidu lil John sabiex jiehu hsieb dak li kienet qed taghmel Philomena lil Rachel. Ghall-bidu John ma kienx jemminna ghaliex huwa kien jisma' zewg verzjonijiet u kien jemmen lil Philomena. Anki l-girien ta' John kienu jghidulu sabiex jiehu hsieb it-tifla ghaliex il-mara tieghu kienet qed tahqarha. Nghid izda li John induna verament x'kien qieghed jigri xi erba' snin wara li zzewweg ghaliex l-affarijiet u l-kastigi bdew isehhu u jinghataw ukoll quddiemu."

Vera Tyson xehdet li hija habiba tal-genturi tal-attur u li hija ghalmet ghal erbatax il-sena fi skola ghal tfal problematici. Hija tghid li segwit l-izvilupp ta' Rachel b'certu nteress. Skond din ix-xhud:

"Rachel was a happy little girl, living her early life with an aunt after the tragic death of her mother. When she was nearly four, she came into contact with her future Stepmother (Philomena Azzopardi) and the relationship seemed good. Rachel was very excited and pleased that she was going to have a 'new mummy'. When she spent time in England after her father's marriage, the situation changed. Rachel became self-willed and resentful. She was under an unreasonable discipline and was sent to her room for minor faults".

Vera Tyson tispjega li hija rat l-attitudni ta' Rachel tinbidel matul is-snin u tatribwixxi dan il-kambjament ghall-fatt li hija ma kellhiex min ihobbha u f'min tikkonfida u li jaghtiha l-attenzjoni.

"It is sad that a relationship that started well should have ended by turning a happy little girl into a confused, unloved (by her stepmother) rebellious teenager.......The above comments are solely my conclusions on the relationship between Rachel and her stepmother from my observations and conversations with Rachel" tikkonkludi din ix-xhud.

Norman Harry Bowdler, missier l-attur, jghid li wara z-zwieg ta' ibnu mal-konvenuta Rachel inbidlet hafna u bdiet tmur hazin l-iskola.

"On my visits during term time she would ask my Wife and I to meet her from school, which we did. It was noticeable that as we neared home she appeared to become tense and her reception by her Stepmother was invariably cold and unwelcoming. There was not the slightest affection shown to her then or at other times, and when Jacob and Emily arrived she was sidelined even more".

Dan ix-xhud jispjega li fl-1995 gie deciz li Rachel kellha tibda tmur l-iskola l-Ingilterra peress li:

"she was desperately unhappy with her life at home",

izda fl-1997 hija ddecidiet li terga' tirritorna lura Malta.

"From then on her behavioural problems increased very considerably. Her presence was obviously not welcome to her Stepmother and a mutual hostility arose between them. One has no desire to apportion blame; Rachel is an extroverted character (or was). By contrast her Stepmother is very introverted, harbouring grudges and appears unable to cope with the ups and downs of family life. My son has always been very supportive of his daughter and has done his best for her in difficult circumstances. However, due to his Wife's lack of co-operation, apart from occasions which she might describe as discipline but which ultimately became complete indifference left much to be desired".

Dan ix-xhud jispjega li ibnu prova jirrimedja din is-sitwazzjoni bejn martu u bintu anki billi telaq ix-xoghol barra minn Malta izda inutilment ghaliex il-konvenuta telqet mid-dar ghal-gharrieda f'Gunju 1999 u hadet maghha liz-zewg uliedha.

Muriel Betty Bowdler, omm l-attur, tghid li fl-ewwel erba' snin li l-konvenuta ltaqghet ma' binha:

"Philomena made a great fuss of Rachel, so when John and Philomena married in 1991 it seemed as if things would be brighter for all of them".

Din ix-xhud tispjega li malli binha u l-konvenuta rritornaw lura mill-*honeymoon* u gew ghal Rachel li kienet qed toqghod ghandhom l-affarijiet inbidlu drastikament u l-konvenuta bdiet tikkastiga lil Rachel ghal kull haga ta' xejn.

"*This amounted to bullying and one day when we were having lunch in a hotel Rachel was threatened by her Stepmother to have the food pushed down her throat. The child was terrified, the other diners were beginning to take notice of all the shouting so with Rachel crying and clinging to him, my Husband paid the hotel bill and left. We drove home where I was insulted in my own home by Philomena and told 'you will be her mummy in future as my authority has been undermined'. For the next three weeks the child was pushed away and not spoken to by Philomena, my Husband and I looking after her completely until John returned home".*

Din ix-xhud ikkoroborat dak kollu li ntqal minn zewgha fl-affidavit tieghu.

Jill Bowdler oht l-attur, wkoll issostni li qabel iz-zwieg il-konvenuta kienet tidher li tmur tajjeb ma' Rachel u li thobbha. Hija tghid li t-tifla kienet kuntenta li missierha kien ser jizzewweg lill-konvenuta izda tispjega li l-affarijiet inbidlu immedjatament wara z-zwieg. Din ix-xhud tirrakkonta li ftit gimghat wara li huha zzewweg lill-konvenuta hija marret ghand ommha ghal *weekend* fejn kien hemm ukoll il-konvenuta u Rachel. Hija tispjega li l-konvenuta:

"seemed very distant and was sending Rachel to her room as a punishment at the slightest thing. Rachel was upset at this sudden change in her mother's attitude and lack of affection towards her. If Rachel ever approached Phil for affection she was pushed away. This concerned me a great deal."

Din ix-xhud tghid ukoll li hija kompliet tirriskontra dan il-komportament tal-konvenuta lejn Rachel kull darba li giet Malta ghal btala.

Il-konvenuta **Philomena Bowdler** xehdet li hija saret taf lill-attur meta kienet impjegata fil-*branch* tar-Rabat tal-Mid Med Bank u l-attur kien imur hemm bhala klijent. Huwa kien staqsiha biex tohrog mieghu. Huwa kien *depress* minhabba l-mewt ta' martu u bintu kienet tghix ma xi qraba ta' din tal-ahhar. Il-konvenuta tghid li meta l-attur kien ikun Malta huma kienu jiltaqghu pjuttost ta' spiss. Hija tghid li kienet tiehu hsieb ta' Rachel waqt li kienet tkun mal-attur u dan tal-ahhar kien iqatta' hafna hin rieqed fuq is-sufan waqt li hija kienet qed tiehu hsieb it-tifla u tghina taghmel il-*homework*. Il-konvenuta tispjega li l-attur kien ikun imsiefer ghal perijodi twal fuq xoghol u tghid li f'dawn il-perjodi hija kienet tmur tara lil Rachel. ...

"I was getting very fond of her and Damian. I always took them something – sometimes books, or toys, or something to eat etc.."

Il-konvenuta tghid li dan l-arrangjament dam ghaddej ghal madwar erba' snin u hija saret thobb lill-attur. Fil-frattemp fuq suggeriment tal-konvenuta Rachel bdiet toqghod ma' missierha meta dan tal-ahhar kien ikun Malta. Il-konvenuta tghid li f'Ottubtu 1990 l-attur kien staqsiha biex tizzewgu izda hija qaltlu le ghaliex hasset li ma kienx lest ghal zwieg iehor. Huwa ghalhekkk talabha tmur tghix mieghu izda hija l'anqas din il-proposta m'accettat. Hija qalet ukoll li kien hemm xi affarijiet li ma tantx kienu joghgbuha. Il-konvenuta tghid li hija kienet issuggeriet li Rachel tittiehed ghand psikolgu izda l-attur kien irrisponda li ma kellhiex bzonn u kien irrifjuta li jerga' jitkellem fuq dan is-suggett. Dejjem skond il-konvenuta, il-gentiuri tal-ewwel mara tal-attur mma kienux hadu gost bir-relazzjoni taghha mieghu.

Il-konvenuta ssostni li aktar ma bdiet tikber Rachel bdiet issir aktar u aktar vizzjata, dejjem riedet tkun ic-centru tal-attenzjoni u hadd ma kien iwaqqafha. Missierha kien ihalliha taghmel li trid u l-konvenuta tghid li ghalkemm hija

ma kinitx tapprova, ma kien hemm xejn li setghat taghmel. F'Marzu 1991 il-konvenuta hasbet li l-affarijiet bejnha u bejn l-attur kienu sejrin ghall-ahjar u ghalhekk hija staqsietu jekk kienx ghadu jrid jizzewwigha u huma fil-fatt izzewgu f'Gunju ta' dik is-sena. Hija tghid li wara l-*honeymoon* qattghet xi zmien id-dar tal-genituri tal-attur flimkien ma' Rachel waqt li l-attur siefer fuq xoghol. Hija pruvat tezercita xi forma ta' dixxiplina fuq Rachel izda ndunat li l-genturi tar-ragel ma kienux qed jaghtuha appogg f'dan ir-rigward, anzi kienu pronti jugzawha lill-attur meta dan irritorna lura. Hija tghid li *nonostante* cio' baqghet tirrispetta lil genituri tal-attur u ospitathom f'darha kull darba li huma gew Malta ghal btala.

Il-konvenuta tirrakkonta li meta hija qalet lill-attur li kienet tqila huwa staqsa *"Why?"*. Meta twieldet it-tarbija l-konvenuta kienet tqatta' aktar hin mat-tarbija u hija tghid li l-attur kien jirrabja ghaliex skond hu kienet qed tittraskura lil Rachel, huwa akkuzaha wkoll li kienet toboghdha u li ma kinitx omm tajba fil-konfronti ta' Rachel. Il-konvenuta tispjega wkoll li l-attur kien iqatta' hafna zmien barra minn Malta fuq xoghol u kien ihalli r-responsabilita' tal-familja kollha f'idejha. Meta huwa kien jirritorna lura Malta kien juri li jrid jerga' jitlaq u kien iqatta' hafna hin il-bar. Il-konvenuta tghid li hija kien ihossha qisha *caretaker*. Dejjem skond il-konvenuta ma kienx hemm komunikazzjoni bejnha u bejn l-attur, kien ikollhom argumenti kontinwi u huwa kien jirrifjuta li jaffronta l-argument ta' Rachel. Il-konvenuta tghid li din tal-ahhar bdiet tikkomporta ruhha dejjem aghar, kienu saru tentativi ta' *counselling* u fl-1995 gie deciz li tintbghat skola l-Ingilterra izda wara li giet sospiza u/jew espulsa minn xi tlett iskejjel, Rachel irritornat lura Malta. Dejjem skond il-konvenuta Rachel bdiet tifrekwenta nies xejn pjacevoli u bdiet tabbuza minn u titraffika d-droga. Il-konvenuta ssostni li l-attur qatt ma ried jezercita ebda forma ta' dixxiplina fuq Rachel *nonostante* li kien jdher li hija kellha problemi serji u li kellha bzonn ta' ghajnuna prfessjonali. Il-konvenuta tghid li l-affarijiet komplew imorru ghall-aghar bejnha u bejn l-attur sakemm fl-1999 hija kienet kostretta titlaq mid-dar matrimonjali akkompanjata miz-zewg uliedha.

II) PRINCIPJI LEGALI W APPREZZAMENT TAL-PROVI.

Illi l-attur qed jibbaza t-talba tieghu fuq zewg kawzali. L-ewwel nett qed jallega li l-kunsens tieghu gie karpit b'qerq fit-termini tal-paragrafu **(c) tas-sub-artikolu (1) ta' l-artikolu 19 tal-Kap. 255** u qed jallega wkoll li l-kunsens tal-partijiet kien vizzjat bid-difetti kontemplati fil-**paragrafu (d) ta' l-imsemmi subartikolu.**

Illi s-**sub-inciz (c) tal-artikolu 19** jistabbilixxi li l-kunsens ta' xi wiehed mill-partijiet ghaz-zwieg ikun vizzjat jekk ikun inkiseb b'qerq dwar xi kwalita' tal-parti l-ohra li tista' mix-xorta taghha tfixkel serjament il-hajja mizzewga. Dana d-difett tal-kunsens matrimonjali gie ezaminat f'certu dettal f'sentenza tal-Qorti tal-Appell tal-15 ta' Jannar 2002 fil-kawza fl-ismijiet **"Alexandra sive Sandra Farrugia vs Raymond Farrugia"** kif ukoll f'sentenzi ta' din l-Onorabbli Qorti kif diverament presjeduta u cioe' fil-kawzi fl-ismijiet **"David Buhagiar vs Roseanne nee Maile"** (Deciza fil-24 ta' April 1995) u **"Samuela Lea Pavia vs John Pavia"** (Deciza fl-20 ta' Mejju 1996). F'dawn is-sentenzi jissemmew erba' affarijiet li jridu jikkonkorru sabiex jissussisti l-qerq ravvizat fil-**paragrafu (c)** tal-ligi taghna, u cioe' (i) il-qerq perpetrat bil-hsieb li wiehed jikseb il-kunsens tal-parti; (ii) li l-qerq ikun incida fuq il-kunsens tal-parti; (iii) li l-qerq ikun jirrigwarda xi kwalita' tal-parti l-ohra; u (iv) li din il-kwalita' tkun tista' mix-xorta taghha tfixkel serjament il-hajja mizzewga.

Illi l-attur jirritjeni li l-konvenuta qarrqet bih meta hija wriet wicc b'iehor in kwantu jirrigwarda bintu Rachel, u cioe' it-tifla li kienet twieldet mill-ewwel zwieg tal-attur, u dan peress li qabel iz-zwieg hija kienet taghti hafna attenzjoni lil Rachel u turi sinjali ta' affezzjoni kbira lejha mentri mmedjatament wara z-zwieg hija bidlet kompletament l-attitudni taghha lejn Rachel u bdiet titrattaha hazin, timponilha hafna kastigi u f'certi istanzi addirittura tinjoraha. L-attur isostni li dan l-atteggjament tal-attrici lejn

bintu, li huwa skopra wara z-zwieg, serjament affettwa r-relazzjonijiet konjugali bejniethom u ppregudika z-zwieg taghhom.

Illi mix-xhieda tal-attur, kif ukoll mix-xhieda ta’ Jane u Joseph Fenech, jirrizulta minghajr ombra ta’ dubju li l-attur ta hafna mportanza lir-relazzjoni bejn il-konvenuta ma’ bintu meta kkontempla z-zwieg mal-konvenuta u dan minhabba diversi fatturi, fosthom it-trawma li kienet ghaddiet minnu t-tifla meta sabet lil ommha mejta, il-fatt li hija kellha bzonn omm u l-fatt li l-attur kien jahdem barra minn Malta u ghalhekk ried li bintu jkollha persuna tiehu hsiebha b’mod stabbli. L-attur fil-fatt jghid hekk:-

“It was this affection which Philomena showed for my daughter which convinced me to marry her so that at the same time that I would have a wife, my daughter would have a mother to care for her and love her. At the time my utmost preoccupation was Rachel and being sure that she had a mother who realized her special needs. Therefore for the sake of my daughter Rachel I married Philomena. If Rachel had not needed so desperately to have a mother figure I would not have got married to Philomena”.

Illi mill-provi, u senjatament mix-xhieda tal-attur, tal-genituri tal-ewwel mara tieghu, tal-genituri tieghu, ta’ ohtu Jill Bowdler u ta’ Vera Tyson, irrizulta li kien hemm kambjament drastiku u fl-atteggjament tal-konvenuta lejn Rachel immedjatament wara z-zwieg u li dan il-kambjament effetwa konsiderevolment u negattivament lil din tal-ahhar u sussegwentement il-hajja matrimonjali bejn iz-zewg kontendenti. Dan jirrizulta parzjalment anki mix-xhieda tal-istess konvenuta li pero’ tatribwixxi l-problemi li nqaghlu ghall-karattru difficli tat-tifla.

Illi l-Qorti jidrilha li effettivament il-konvenuta qarrqet bl-attur meta fl-gherusija hija wriet li kienet disposta thobb u taghmilha ta’ omm ghal bintu izda mmedjatament wara z-zwieg hija bdiet turi bic-car li ma riditx tiehu hsieb Rachel bil-mod li ried l-attur u bil-mod li huwa fehem li kienet disposta li taghmel qabel iz-zwieg.

Illi din il-Qorti jidrilha wkoll li l-attur kien zbaljat lli jippercepixxi z-zwieg bhala soluzzjoni ghas-sitwazzjoni familjari li sab ruhu fiha meta safa armel b'tifla zghira hafna li ma setghax irabbi sew anki minhabba xogholu barra minn Malta u dan jirritjeni li dan il-fatt ghandu jittiehed in konsiderazzjoni, kif ser jittiehed ghall-apporzjonament ta' l-ispejjez ta' din il-kawza, kif di piu' tajjeb issugeriet l-istess brava perit legali.

Illi l-Qorti izda hija tal-fehma li mill-ottika tal-gurisprudenza nostrana kienu jokkorru dawk l-elementi necessarji sabiex jigi stabbilit li l-kunsens tal-attur gie ottenut b'qerq. Il-konvenuta kienet indubbjament konsapevoli mill-fatt li l-attur ried isib soluzzjoni ghas-sitwazzjoni familjari li kien jinsab fiha u ried omm ghal bintu u hija tatu x'jifhem li setghet toffri soluzzjoni ghal din il-problema u ghalhekk hbiet il-fatt li effettivament ma kinitx daqshekk disposta taghmilha ta' omm ghal bintu. Li kieku kellha titwemmen il-verzjoni tal-konvenuta li Rachel kellha karattru difficli wiehed jistaqsi ghalfejn il-konvenuta ma kellhiex problemi mat-tifla qabel iz-zwieg? Il-Qorti jidrilha li l-konvenuta kienet hatja ta' qerq fil-konfronti tal-attur ghaliex wriet wicc b'iehor qabel iz-zwieg in kwantu kien jirrigwarda s-sentimenti taghha lejn bintu u li kien b'dan il-qerq li kisbet il-kunsens tieghu. Dan il-qerq kien dwar kwalita' tal-parti l-ohra fis-sens illi l-attur kien konvint li l-konvenuta kienet thobb lil bintu u li hija kienet disposta trabbija bhala ommha u thobbha bhal li kieku kienet it-tifla taghha. Konsegwentement dan in-nuqqas da parti tal-konvenuta kien tali li seta' jfixkel serjament il-hajja mizzewga, kif fil-fatt gara.

Illi l-Qorti hija sodisfatta illi mill-assjem ta' dak illi gie konsiderat aktar il-fuq jemergu it-tlett elementi principali biex zwieg ikun dikjarat null u cioe': (1) illi l-izball kien jikkoncerna l-kwalita' tal-persuna, (2) li l-kwalita' ta' dik il-persuna tkun direttament u principalment intiza minn naha l-ohra qabel iz-zwieg, jigifieri li dik il-parti li tkun ghamlet l-izball, cioe' l-attur, tkun izzewget lil dik il-parti l-ohra, cioe' lill-konvenuta principalment minhabba dik il-kwalita'; (3) li

x-xorta ta' l-izball fuq il-kwalita' tal-konvenuta kienet serjament iddisturbat il-hajja matrimonjali.

Illi kif diga ntqal aktar il-fuq l-attur talab ukoll li z-zwieg tieghu mal-konvenuta jigi dikjarat null u bla effett *ai termini* tas-**subartikolu (d) tal-artikolu 19 (1)** izda fil-fehma tal-Qorti ma ngabux provi sufficjenti sabiex iz-zwieg celebrat bejn il-partijiet jigi dikjarat null u bla effett *ai termini* ta' dan is-**subartikolu.**

Ghal dawn il-motivi, il-Qorti jidrilha li din l-Qorti ghandha tilqa' t-talbiet attrici u konsegwentement tiddikjara li z-zwieg celebrat bejn il-partijiet fl-24 ta' Gunju, 1991, huwa null u bla effett *ai termini* tal- **artikolu 19 (1) (c) tal-Kap. 255 tal-Ligijiet ta' Malta.**

III. KONKLUZJONI.

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 fuq premess u hawn deciz, **tilqa' t-talba attrici** b'dan illi:-

1. Tiddeciedi u tiddikjara li z-zwieg bejn il-partijiet tal-24 ta' Gunju 1991 fuq imsemmi kien null u nvalidu ghall-finijiet u effetti kollha tal-ligi u dan abbazi ta' l-**artikolu 19 (1) (c) tal-Kap 255** *stante* li l-kunsens ta' l-attur kien hekk vizzjat ghar-ragunijiet imputabbli lill-konvenuta.

BI-ispejjez jinqassmu bin-nofs bejn il-partijiet.

Moqrija.

< Sentenza Finali >

--------------------------------TMIEM--------------------------------