



**CIVIL COURT
(FAMILY SECTION)**

**HON. MR. JUSTICE
NOEL CUSCHIERI**

Sitting of the 20th June, 2007

Citation Number. 259/2006

List Number: 19

**A known as A B C
vs
D E C**

The Court,

Having seen the sworn application whereby plaintiff premised and requested as follows: that the parties contracted a civil marriage on the 28th August 2004; that during this marriage the parties always lived separately, as the defendant never allowed him to sleep in the matrimonial home; that the matrimonial consent of the parties is vitiated in terms of paragraph [d] in its entirety of article 19[1] of Chapter 255 of the Laws of Malta, as well as in terms of paragraph [f] of the same article in respect of both parties, and finally in terms of paragraph [c]

Informal Copy of Judgement

attributable to defendant; consequently plaintiff is requesting this Court to declare this marriage null in terms of law;

Having seen that the defendant, duly notified with an English translation of the application, failed to reply;

Having seen the court decree given on the 2nd November 2006 whereby the Court ordered that the proceedings are to continue in the English language;

Having seen all the records of the case, including the affidavits presented;

Having heard the evidence on oath;

Having considered;

Action

That in virtue of this action plaintiff is requesting this Court to declare null and void in terms of law, the marriage contracted by him on the 28th August 2004 with defendant, on the grounds that the consent of the parties is vitiated in terms of paragraph [d] and [f], and that of plaintiff in terms of paragraph [c] of article 19[1] of Chapter 255 of the Laws of Malta.

The defendant failed to present her reply, however, she was produced as witness by plaintiff.

Facts

From the evidence produced, the following picture emerges. The parties got married on the 28th August 2004, at which time plaintiff, a maltese national, was 54 years old, whilst defendant, a Bulgarian national, was in her 38th year; and after they had known each other for nine [9] months.

On the date of the marriage, the defendant, together with her three children [two from her previous marriage, and one from her maltese partner] were still living in an apartment owned by plaintiff who, prior to the marriage,

had offered her accommodation in this place “in order to offset some of her expenses”; whilst plaintiff continued to live with his children [from a previous marriage] in a house which was previously the matrimonial home before his wife passed away. All his children are grown ups.

After the marriage, the parties continued to live separately as before, and defendant continued to live with her children in the said apartment which was quite small. The ultimate aim was to buy a bigger apartment having enough space to accommodate the parties and defendant’s children.

However, this aim was never achieved by the parties, as the financial situation of plaintiff did not permit it, and plaintiff was forced to live separately from his wife. As admitted by both parties intimate relations between them were very rare, and defendant was making huge financial demands on plaintiff thereby making it impossible for him to buy a spacious apartment to accommodate him and defendant and her children.

On the 31st March 2005 defendant, who till then worked as an MMDNA nurse, quit her job for no apparent reason, thereby rendering plaintiff’s financial situation even more difficult and precarious, since all expenses had to be paid from one income, that of plaintiff who works as a doctor, and who as a result of this unilateral decision taken by his wife, has to increase his workload. Consequently, his health began to fail, and in October 2005 he was recovered in hospital in a coma due to extreme stress.

Since defendant was turning 40 in May 2006 she insisted that the plaintiff buys her a Lm20,000 Jaguar as a birthday present. She had been insisting on this present for the past year. This huge financial burden was too much for plaintiff to carry, but this notwithstanding , he still tried to please defendant in this regard as well, and was prepared to take a loan from third parties. However in the meantime he was taken ill again, and eventually in on the 8th of August 2006 he filed the application under review.

The plaintiff is basing his case on the argument that his wife never really intended to cohabit with him after marriage. It seems that she was content living in a small flat, rent free, with her three children sustained totally by plaintiff. This is evidenced from the fact that after marriage the defendant insisted on, and made plaintiff, spend a log of money in redecorating the small flat, making it impossible for plaintiff to buy a more spacious flat.

As a result of this, matrimonial life between the parties, was practically inexistent, and plaintiff's role in this marriage was simply to fork out large sums of money to meet defendant's requests, or rather demands. In fact from a statement presented by plaintiff together with his affidavit, it results that during period beginning from the date of the marriage till May 2006, plaintiff had forked out a total of Lm34,654, with the help of various bank loans which are still pending. Erika C, an accountant by profession, and eldest daughter of plaintiff, stated in her affidavit that given the precarious financial situation of plaintiff, she had personally paid some of her father's outstanding bills which had accumulated, in order to relieve him of his worry. She together with her brother and sister had contributed in all the sum of LM4,670 to relieve plaintiff of the heavy interest on the overdrafts.

As stated above, family life was totally inexistent during this marriage, there was no family life and the parties have never cohabited. Intimate relations were rare and far and between.

In her evidence defendant admitted that since the marriage the parties never cohabited, and that intimate relations between were rare, though she attributed the latter to plaintiff' lack of interest. From her deposition it seems that she was unaware of the difficult financial situation her husband was in due to the great expenses incurred at her request. She also admitted that she insisted on the purchase of the Jaguar since "this was promised to me for my 40th birthday." She also admitted that the place she was living in was too small.

Considerations by the Court

It has been repeatedly stated in our case law that marriage is a union based on cohabitation directed towards the reciprocal well-being of both parties, intended also for the procreation and the upbringing of children. Thus cohabitation by the parties as man and wife is an essential matrimonial obligation, and it cannot be excluded by either party at the moment of marriage, as otherwise the matrimonial consent would be vitiated, by the positive exclusion of an essential requisite of marriage.

In the case in issue, it results that the arrangement, supposedly temporary, made by the parties to live separately after marriage until the plaintiff's financial position permits him to buy a house spacious enough to accommodate him together with his wife and three children, goes against the very essence of matrimonial life ie. living together as husband and wife.

Also the fact that, after marriage defendant starting redecorating and refurnishing the place, which was supposed to be a temporary abode, is evidence of the fact that she had no intention of moving out of that place, and that she was content with living separately from her husband, once the latter continued to maintain her and her children from former relationships. The fact that during the two years of 'married life' she continued to make huge and unnecessary financial demands on her husband, thereby putting him in the impossibility of moving with his wife and her children to a more spacious apartment, is evidence of the fact that the defendant at the time when she gave her matrimonial consent, never really intended to cohabit with her husband, who from the evidence produced was looked upon by her as nothing else than a source of income for herself and her three children. This positive exclusion of one of the essential obligations of marriage constitutes the caput nullitatis contemplated in paragraph [f]. This Court cannot help noting that this was really a marriage of convenience, on the part of defendant, and nothing else.

On his part, plaintiff has affirmed that when he entered into marriage with defendant, he positively excluded having any children from this marriage. In other words whilst giving his matrimonial consent, plaintiff by a positive act of will harboured the intention of not having any children from defendant. Also this, in itself constitutes the caput nullitatis contemplated in paragraph [f] of the above article, since it amounts to the intentional exclusion of one of the essential matrimonial obligations.

On the strength of the above, the Court has arrived at the conclusion that the marriage in question is null in terms of paragraph [f] of article 19[1] of Chapter 255 of the Laws of Malta, and that this caput nullitatis exists in regard to both parties.

Decide

For the above reasons the Court decides this case by acceding to applicant's request, declaring null and void in terms of law the marriage contracted between the parties on the 8th August 2007.

The expenses are to be borne by both parties in equal shares.

< Final Judgement >

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