



**QORTI CIVILI
(SEZZJONI TAL-FAMILJA)**

**ONOR. IMHALLEF
NOEL CUSCHIERI**

Seduta tat-28 ta' Gunju, 2007

Rikors Generali Numru. 114/2006

Number on list: 37

**A B
vs
C D**

The Court,

Having seen the sworn application in virtue of which plaintiff premised and requested that:

1. That the parties were married on the 15th May 2004 as indicated in the certificate annexed as document A; although the plaintiff is a Christian – Roman Catholic the parties only had a civil law marriage.

2. That the consent of the parties is extorted by violence, whether physical or moral, or fear; Art 19(1)(a) Kap 255;

3. That the consent of the parties is excluded by error on the identity of the other party; Art 19(1)(b) Kap 255;

4. That the consent of either of the parties is extorted by fraud about some quality of the other party which could of its nature seriously disrupt matrimonial life; Art 19(1)(c) Kap 255;

5. That the consent was vitiated by a serious defect of discretion of judgement on the matrimonial life, or on its essential rights and duties, or by a serious psychological anomaly which makes it impossible for that party to fulfill the essential obligations of marriage; Art 19(1)(d) Kap 255;

6. That the consent of one of the parties is vitiated by the positive exclusion of marriage itself, or of any one or more of the essential elements of matrimonial life, or of the right to the conjugal act; Art 19(1)(f) Kap 255;

7. That one of the parties, although not interdicted or infirm of mind, did not have at the time of contracting marriage, even on account of a transient cause, sufficient powers of intellect or volition to elicit matrimonial consent. Art 19(1)(h) Kap 255;

8. That about a year after the marriage problems had already begun, the parties exactly following marriage remained living together as if they were not married like a bachelor and a spinster. The defendant had intimate relations with other men even following the marriage.

9. That before the marriage the defendant had asked the plaintiff's mother whether it was possible for her to have a "steady boyfriend" even during the marriage. The plaintiff got to know about this fact after the marriage. The defendant only seven weeks after the marriage, also asked the plaintiff's aunt, Maria Pirotta whether she could

remain working if she separated. It was evident thus that the defendant only married because she wished to keep working freely in Malta. It was because of the doubts that the plaintiff had that he decided not to marry according to the Roman Catholic rights. The plaintiff got married and got married quickly only due to the insistence of the defendant.

10. That the parties reached and signed a consensual separation by means of a contract of the 14th February 2006.

11. That the defendant also had mental problems about which the plaintiff was not aware. Before coming to Malta she took treatment in Norway.

Therefore the plaintiff humbly asks the Honourable Court to:

Declare that the marriage contracted between the parties on the 15th May 2004 is null in terms of Art 19(1) (a)(b)(c)(d)(f)(h) of Chapter 255 of the laws of Malta and for all effects of the law.

With costs. The defendant is called and summoned to appear for the oath of the adversary.

Having seen the sworn reply whereby respondent pleaded that although the defendant agrees that the marriage contracted between the parties be declared null, she submits that the grounds for annulment are only those contemplated by Section 19(1)(d) of Chapter 255 of the Laws of Malta imputable solely to the plaintiff as is explained in the Counter-Claim hereunder being filed and the facts hereunder stated.

Having seen the sworn counter claim filed by respondent, inserted in the records of the proceedings at pages 26 – 27;

Having seen the plaintiff's sworn reply at pages 29 - 33 of the records;

Having the seen all the acts of the case;

Having heard the evidence of the parties;

Having considered;

That in virtue of the present action plaintiff is requesting that his marriage with respondent which took place on the 15th May 2004 be declared null on the grounds that the matrimonial consent is defective in terms of paragraphs [a][b][c][d][f] and [h] of article 19[1] of Chapter 255 of the Laws of Malta.

The Court heard the evidence of the parties.

That from the evidence it results that on the above date, applicant, a Maltese citizen, married respondent, a Norwegian citizen, after having known each other for about four years. After living together for a year and a half, the couple separated.

In his evidence before this Court, the plaintiff admitted and confirmed that, although he married respondent, he excluded the fact of ever having children from this marriage. This affirmation by applicant, which is borne out also by the fact that no children were born of this marriage, militates against the validity of marriage in so much as one of the parties, in this case the applicant, whilst externally proceeding with a marriage ceremony, had excluded a priori and by a voluntary act of his will one of the essential obligations of marriage which is a union directed, inter alia, towards the procreation and upbringing of children.

Thus in view of the above considerations the marriage in question is null at law in terms of paragraph [f] of the said article, which *caput nullitatis* exists in regard to applicant. This being so, there is no further need for this Court to continue examining the rest of the *capita nullitatis* indicated by the parties.

Kopja Informali ta' Sentenza

On the strength of the above, applicant's request is justified in fact and in law.

For the above reasons, the Court decides on the applicant's claim and the respondent's counter claim by acceding to their requests, and declares null and void the marriage which took place between them on the 15th of May 2004.

The expenses are to be borne wholly by applicant.

< Sentenza Finali >

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