



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

**ONOR. IMHALLEF
NOEL CUSCHIERI**

Seduta tat-30 ta' Ottubru, 2007

Citazzjoni Numru. 412/2006

Number on List: 41

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

The Court,

Having seen the sworn application wherey plaintiff premises and requests as follows:

1. That the parties contracted marriage on 28th August 2004 as shown from the attached marriage certificate marked Dok A;
2. That the parties had no children from this marriage although the applicant was a widower with children and the respondent was divorced with two children and with

another son from a relationship she had had with a Maltese;

3. That during this marriage the parties never lived together and always lived apart;

4. That the matrimonial home where the respondent lived with her children is paraphernal property of the applicant which is subject to house loan which he still pays till today;

5. That the conjugal life between the parties is no longer possible for reasons attributed to the respondent and particularly because of excesses. Cruelty and greivences from the part of the respondent and in subsidium, because the marriage has irretrievably broken down;

6. That the applicant obtained due authorisation from the Civili Court (Family Section) so that he can proceed with these proceedings (Dok B).

Now therefore, the respondent tells the Court why for the above reasons the Court ought not to:

a) Declare and pronounce the personal seperation between the parties for reasons attributed to the respondent and authorise the applicant to live seperately from the respondent;

b) Apply against the respondent, in toto or in parte, the provisions of articles 48, 51, 53 and 54 of the Civil Code;

c) Declare liquidated the community of acquests existing between the parties and order that the same objects forming part of this community of acquests be divided in two portions in the manner established and ordered by this Court which portions are to be assigned one to the plaintiff and one to the defendant, with technical assistance, if the need arises;

d) Orders the defendant and her children, within a period of time fixed by the Court, to move out of the property that they are presently residing which is paraphernal property of the applicant in view also of the fact that this was never their matrimonial home.

e) Condemns the respondent to return to the applicant all his dowry and paraphernal property and orders that the applicant be given the full administration of his paraphernal property.

The costs of the proceedings be borne by the respondent who is being sued to give evidence with reference to his oath.

Having seen that respondent, though duly notified, failed to file a reply;

Having seen the affidavits presented;

Having considered;

Personal Separation

That the parties contracted a civil marriage on the 28th August 2004. At that time, plaintiff, a medical doctor, was a widower with children all of age, whilst defendant, a nurse, was divorced with two children and with another son from a relationship she had had with a Maltese national. No children were born of this marriage. Notwithstanding that the parties got married they continued living apart due to problems of space. In fact, whilst defendant moved with her three children in an apartment belonging to plaintiff which he had bought prior to the marriage, plaintiff continued to live in the house rented to him by his aunt. Things worked badly for the couple, mainly due to the spending habit and costly tastes of defendant, and as a result plaintiff filed the proceedings in question requesting principally this Court to pronounce a personal separation from his wife; as well as to regulate the matters consequential to the separation.

That on the 20th June of the current year, plaintiff obtained an annulment of the marriage by this court. Consequently, once the marriage between the parties is considered null and void at law, the request for personal separation between the parties is superseded by the declaration of nullity of their marriage. For this reason, the Court will not go into the merits of the separation issue, or its consequences contained in section 48 of the Civil Code

Community of Acquests

In this respect the Court observes that from the evidence, it results that the house accomodating defendant and her children after the marriage, situate at "Swallow Court" flat 4, Birkirkara Hill St.Julians is paraphernal property belonging to plaintiff which he had bought prior to the marriage, against a hefty loan, in virtue of deed published on the 10th September 2003 by Notary Doctor B Falzon¹.

It also results that most of the things contained in the said apartment are paraphernal to plaintiff, whereas the refurbishments effected during the marriage, and listed by plaintiff in a statement of expenses attached to his affidavits² have been paid for by plaintiff against loans which he is still paying back.

Regarding the Panasonic Plasma TV set costing Lm889, plaintiff states in his affidavit that he had bought this as a Christmas present for defendant, and is therefore to be considered to appartain exclusively to her; however since, in the absence of proof to the contrary, the price is to be deemed to have been forked out of the community of acquests, defendant is considered to be debtor of same of half of the said price. Therefore defendant is to pay plaintiff the sum of Lm444.50.

Therefore, the Court assigns to plaintiff all the contents existing in the above mentioned apartment, together with

¹ Doc.JPC1 – fol.37 *et seq.*

² Fol.36

Kopja Informali ta' Sentenza

all debts still due thereon; save for the Plasma TV set which belongs entirely to defendant.

Decide

On the strength of the above considerations, the Court decides on plaintiff's requests by:

[1] abstaining from taking further cognizance of the first and second requests in view of the judicial declaration of nullity of the marriage;

[2] acceding to the third request, and liquidates and assigns the community of acquests in the manner established above in the section titled "Community of Acquests";

[3] acceding to the fourth and fifth request, and orders that within a peremptory period of two months defendant, together with her children, vacates the above mentioned premises, "Swallow Court" Flat 4, Birkirkara Hill St. Julians, and consigns to plaintiff, its keys together with all its contents, save for the Plasma TV;

Expenses are to be borne by both parties in equal shares.

< Sentenza Finali >

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