



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

**ONOR. IMHALLEF
NOEL CUSCHIERI**

Seduta ta' l-20 ta' Novembru, 2007

Citazzjoni Numru. 333/2006

Number on list: 35

**A B
vs
C D**

The Court,

Having seen the sworn application whereby applicant premised and requested as follows:

1. That she has married defendant on the fourteenth day (14th) of November of the year two thousand and three (2003) at the Public Registry in Valletta Malta (Marriage Certificate hereby attached and marked as Doc. A);

2. That one daughter E, aged two (2) years was born to them on the thirtieth day (30th) of November of the year two thousand and four (2004) (Birth Certificate hereby attached and marked as Doc. B);

3. That the consent of the respondent for the celebration of this marriage was vitiated by a serious defect of discretion of judgement on the matrimonial life, or on its essential rights and duties in terms of Article 19(1) (d) of Chapter 255 of the Laws of Malta, and in fact has never carried the responsibilities brought about by marriage;

4. That the consent of the respondent was vitiated by the positive exclusion of marriage itself, or of any one or more of the essential elements of matrimonial life in terms of Article 19(1) (f) of Chapter 255 of the Laws of Malta;

5. That the respondent has married applicant solely with the intention of obtaining Maltese Citizenship so that he could find a suitable job on the Islands, being unhappy with his situation in his own country, Yugoslavia;

6. That the respondent has exerted violence on plaintiff in the presence of their child, on numerous occasions, being under the influence of drugs and alcohol;

Wherefore, the applicant respectfully requests that this Court:

Declare the marriage celebrated between spouses Nicolic on the fourteenth (14th) of November of the year two thousand and three (2003) at the Public Registry in Valletta, to be null and void and without effect in terms of the law.

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

Having seen the records of the proceedings, including the affidavits presented;

Having heard evidence on oath;

Having considered;

That in virtue of the present action plaintiff is requesting that her marriage with defendant contracted on the 14th of November 2003 be declared null and void at law on the grounds that defendant's matrimonial consent is vitiated in terms of paragraph [f] and the first part of paragraph [d] of article 19[1] of Chapter 255 of the laws of Malta.

From the evidence it results that the parties contracted a civil marriage on the 14th of November 2003, at which time the plaintiff, a maltese national, was 26 years old, whilst defendant, a yugoslav national, was 23 years old, and after the parties had known each other for a period of 1 year during which time they had lived together for the last few months before the marriage. During this marriage a daughter was born to the couple on the 30th November 2004. Unfortunately the couple began experiencing marital problems very early in marriage and after less than 2 years of married life they separated de facto.

Plaintiff explains that the couple decided to get married in so short a time, due to the fact that defendant was experiencing visa problems. At that time there seemed to be no problems between the parties. However, although prior to the marriage defendant used to treat his wife in a gentle manner and was quite respectful, immediately after marriage, his attitude towards her changed radically. He seems to be constantly upset and used to go out and return home drunk in the early hours of the morning. In fact he used to drink quite often and heavily, and for this reason he lost a number of jobs. In fact it was plaintiff who was the financial pillar of the family in that she had kept her job and used to support the whole family including the defendant.

On two occasions defendant left the matrimonial home, and on one occasion he left for a whole week without informing plaintiff of his whereabouts. He used to be violent when drunk, and occasionally used physical

violence on his wife whom he treated with disrespect even when she was pregnant with their daughter. On one occasion she discovered that he had been smoking cannabis in the matrimonial home.

As a result of defendant's abusive behaviour, plaintiff could no longer continue living with her husband, and after a year and a half of married life, the couple separated de facto.

That, from the evidence produced, this Court is of the opinion that defendant, although having gone through a civil ceremony of marriage with plaintiff, never had the intention of leading a married life with her, based on a union directed towards the reciprocal well being of the parties, the procreation and the upbringing of children. It appears evident that defendant's sole aim in marrying plaintiff was to solve his visa problems so that he could stay in Malta. However, he had excluded the intention of leading a married life with his spouse. This being so, once the couple were officially married, defendant did not honour his matrimonial obligations, chiefly that of mutual love and respect between the parties.

On the strength of the above the Court considers that defendant's matrimonial consent was vitiated in terms of paragraph [f] of the above mentioned article.

For the above reasons, the Court decides in favour of applicant's claim and consequently declares null and void the marriage contracted between the parties on the 14th November 2003. All expenses are to be borne by defendant.

< Sentenza Finali >

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