



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

**ONOR. IMHALLEF
NOEL CUSCHIERI**

Seduta tal-21 ta' Novembru, 2007

Citazzjoni Numru. 72/2006

**AB
vs
C D B nee' E**

The Court,

Having seen the sworn application filed by plaintiff wherein he states that the parties got married in Malta on the 12th of June 2004, and no children were born from this marriage; that defendants marital consent is vitiated in terms of paragraphs [e] and [d] of article 19[1] of Chapter 255 of the Laws of Malta; and for this reason plaintiff requests that his marriage with defendant be declared null and void at law, whilst the judicial expenses are to be borne solely by defendant;

Having seen that defendant, though duly notified, has failed to present a sworn reply, however, during the court sitting of the 8th November 2007, defendant declared that

she agrees with the version of the facts of the case as contained in plaintiff's affidavit;

Having seen all the acts of the case, including the affidavit presented by plaintiff;

Having considered:

That in virtue of these proceedings plaintiff is requesting the Court to declare null and void at law his marriage with defendant on the grounds contained in paragraphs [e] and [d] of the afore mentioned article of law. Defendant is not opposing the demand, and also, agrees with the facts as contained in plaintiff's affidavit.

That from the evidence produced it results that the parties contracted a civil marriage in Malta on the 12th June 2004, whilst postponing a religious marriage for a later undefined date. At that time plaintiff, a maltese national, was 29 years old, whilst defendant, a polish national, was 21 years old, and the latter was staying in Malta temporarily as a student.

That the parties started dating and, after 2 weeks, defendant moved in with plaintiff and they began cohabiting. After nine months they decided to get married. In the meantime, during this period, defendant had gone to Poland for some time; in fact the couple lived together two and a half months in all, whilst during the rest of the period when defendant was abroad they used to communicate via email on a daily basis.

That prior to the marriage defendant had informed plaintiff that she was considering a type of contraception to avoid getting pregnant; and after the marriage, she informed plaintiff that she had inserted a coil in order not to get pregnant, without discussing it with plaintiff who was then her husband.

That a few months after marriage defendant started going out on her own late in the evenings and returning home round about 7.30 am. At times she phoned plaintiff to

inform him that she would not be returning home as she was going to sleep at her friend's house. This style of life on the part of defendant went on for some time, and in May 2005, after the couple had an argument on this issue, defendant informed plaintiff that she wanted her freedom back. In September 2005 defendant left the matrimonial home and went to live elsewhere. In the meantime, plaintiff found out that she had a relationship with another man.

No children were born from this marriage.

From the above picture of the facts of the case, which have been admitted by defendant, the Court has arrived at the inevitable conclusion that when defendant entered into this marriage, she had no intention of leading a family life with plaintiff, based on a union of an exclusive and irrevocable nature. This is evidenced by her lifestyle a few months after the marriage, and her relationships with other men. Besides, the fact that without informing her husband she had inserted a coil in order to avoid getting pregnant, considered in the light of her lifestyle after marriage, is sufficient evidence of the fact that prior to marriage she excluded the possibility of having children from plaintiff.

That in view of the above the court is of the opinion that in this case the existence of the caput nullitatis contemplated in paragraph [f] of article 19[1] of Chapter 255, on the part of defendant, has been satisfactorily proven.

That for the above reasons the Court accedes to plaintiff's request, and declared his marriage with defendant on the 12th June 2004 to be null and void at law. All expenses are to be borne by defendant.

< Sentenza Finali >

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