



**CIVIL COURT
(FAMILY SECTION)**

**HON. MR. JUSTICE
NOEL CUSCHIERI**

Sitting of the 13 th May, 2008

Citation Number. 207/2007

Number on list: 23

**A B
vs
C B**

The Court,

Having seen the sworn application filed on the 16th of May 2007 in virtue of which applicant premised: that on the 24th February 2001 she had contracted a civil marriage with respondent, after she had become pregnant as a result of her relationship with the latter; that her matrimonial consent was vitiated at law in terms of paragraphs [a][c] and [d], whilst that of respondent was vitiated in terms of paragraphs [d] and [f], of article 19[1] of Chapter 255 of the Laws of Malta. On the strength of the above, applicant is requesting that this court delcares

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null and void in terms of the above article, her marriage to respondent;

Having seen that respondent, though duly notified with the present application, had failed to file a sworn answer according to law; and this, notwithstanding this court's decision given on the 6th of December 2007 authorising him to file a sworn reply within twenty days from that date;

Having seen the decree given during the court sitting of the 15th November 2007 whereby the court ordered that the proceedings are to continue in the English language;

Having seen all the records of the proceedings, including the affidavits filed by the plaintiff;

Having heard evidence on oath;

Having considered;

That in virtue of the present action, plaintiff [applicant] is requesting this court to declare null and void her marriage to defendant [respondent] in terms of the afore mentioned provisions of law.

On his part, defendant though at one stage of the proceedings had expressed his wish to contest plaintiff's request in a formal manner, had failed to do so, and had also failed to attend subsequent court sittings. In fact, he had only attended the sitting of the 15th November 2007, and had failed to produce in this case, any evidence on the merits.

From the facts of the case, it results that on the 24th of February, plaintiff, a Maltese national who at the time was 20 years of age, had married defendant, a national from Ghana who was 25 years old, after a seven month relationship. Plaintiff explains that as a result of this relationship, she got pregnant just after three months; and this fact proved to be the source of a lot of worry on her part, both because she did not want to give birth out of

marriage, and also, because the defendant's working permit based on a one year contract was due to expire in the month of April of that same year. Consequently plaintiff hastened to contract a civil marriage with defendant with a view both to securing the latter's 'freedom of movement' in this country, and for the child to be born and grow up in a family environment.

In these circumstances, and for the above considerations, plaintiff married defendant, and on the 14th of February of that same year she gave birth to a daughter.

Unfortunately, however, married life did not turn out as envisaged by her, and immediately after the marriage the parties began experiencing matrimonial problems having as their root cause the lack of communication and abusive behaviour on the part of her husband who clearly had no intention of participating in married life with his wife.

From the evidence produced, it results that, whilst plaintiff was the main breadwinner, defendant had failed to keep the part time jobs he managed to obtain from time to time. Also, the burden and responsibility of marriage fell totally on plaintiff's shoulders, who apart from necessarily keeping her full time job, had to cater also for the upkeep of the house and her daughter; whilst on his part, defendant proved both irresponsible and insensitive to his wife's needs. In fact, he hardly used to talk to plaintiff, except to quarrel with her for no apparent reason, indulging also in verbal abuse in the process.

After three years of marriage, plaintiff could not bear this situation of moral abuse and indifference by her husband any longer, and so started separation proceedings. However, she eventually withdrew the proceedings, after having been persuaded to do so by defendant who, on his part, had promised to change his lifestyle and treat plaintiff as his wife rather than as his servant and source of income.

Since plaintiff believed that her husband was sincere in his intentions, she agreed to give her marriage a second

chance, also in the interest of their daughter, and in fact during the following six months, another child was born to the parties on the 19th March 2005; but after this period, defendant resumed his previous irresponsible attitude towards his wife, with the result that, the previous situation prevailed; only, this time plaintiff had the added burden of having to care for another child, and in view of this she could not keep her job, and had to start living on social assistance. This increased her hardship since there were loans to be settled.

In the light of this situation, plaintiff instituted these proceedings.

Having considered further;

That from the above picture, it emerges quite clearly that defendant had entered into this marriage solely as a stepping stone to obtaining 'freedom of movement' in this country, which status he had obtained just one month after the marriage.

The evidence shows that defendant had no intention of leading a married life with plaintiff, based on the obligation of life and love as an expression of the union between man and woman, mutual well being, which is inseparable from the provision of an environment conducive to the reception and education of children; and the obligation to receive and bring up children within the context of conjugal community.

It is observed that these obligations must be mutual, permanent, continuous exclusive and irrevocable; and inherent in them is the duty of both parties to give each other reciprocally and unconditionally, with a view to establishing between them the community of life and love.

On the contrary, defendant proved to be a very insensitive husband who treated his wife solely as his source of income, and his guarantee to 'freedom of movement' in this country, and nothing else; and this Court is of the opinion that, though defendant externally went through a

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marriage ceremony, internally and with a positive act of will he had, at the time of giving his matrimonial consent, excluded, the above obligation essential to married life, thereby rendering null and void the marriage in terms of paragraph [f] of article 19[1] afore mentioned.

On the basis of the above considerations, the Court is of the opinion that the plaintiff's request is justified in fact and at law; and consequently accedes to her request; and hereby declares null and void her marriage contracted with defendant on the 24th February 2001. All expenses are to be borne by respondent.

< Final Judgement >

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