



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

**ONOR. IMHALLEF
NOEL CUSCHIERI**

Seduta tal-25 ta' Gunju, 2008

Citazzjoni Numru. 36/2008

Number on list: 41

**AB
vs
CD**

The Court,

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

1. That the plaintiff AB and the respondent CD were born in China.
2. That the parties, with the aim of leaving China and entering Malta, contracted a civil marriage in The People's Republic of China on 1st February 1995 in Tiedong District, Anshan City, which marriage results from the

Notarial Certificate of Marriage attached and marked Doc. A.

3. That following their arrival in Malta, the parties led separate lives as they went their separate ways. No conjugal acts took place between them.

4. That on 30th April 2004 the applicant AB was granted the status of permanent resident by the Principal Immigration Officer in terms of Article 7 of Chapter 217 of the Laws of Malta, which status results from the attached copy of the authorisation attached and marked Doc. B.

5. That the applicant AB encountered a man in Malta, Etienne Camoin, and wishes to marry him. They have been together for two and a half years. In fact, AB is residing at his parents' home.

6. That the marriage between the applicant AB and the respondent CD was simulated. It was contracted for the sole purpose of their leaving China and entering Malta.

7. That according to Article 18 of the Marriage Act (Chapter 255), a marriage entered into outside Malta is only valid for all purposes of law in Malta if –

(a) as regards the formalities thereof, the formalities required for its validity by the law of the country where the marriage is celebrated are observed; and

(b) as regards the capacity of the parties, each of the persons to be married is, by the law of the country of his or her respective domicile, capable of contracting marriage.

8. That the consent of both parties was obtained by the positive exclusion of marriage itself, or of all the essential elements of matrimonial life, or of the right to the conjugal act, and therefore this marriage can never be considered a valid one – neither according to the law of the country of their domicile at that time (i.e. China), nor according to the law of any other country or according to the principles of international law.

9. That the laws of Malta prohibit marriages of convenience as clearly stated in Article 38 of Chapter 255.

10. That, as will be proved in the course of the proceedings, both parties were in bad faith and therefore the marriage contracted in China on 1st February 1995 was simulated and consequently null and void from its commencement.

11. That the applicant and Etienne Camoin requested the Emigrants' Commission for assistance with the aim of marrying and forming a family.

12. Therefore, the applicant respectfully requests this Honourable Court to declare, for the aforementioned reasons, that the marriage contracted in The People's Republic of China on 1st February 1995 in Tiedong District, Anshan City, between the plaintiff AB and the respondent CD (Doc. A) was simulated and is therefore null and void for all purposes of law.

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

Having seen all the acts of the case, including the affidavits filed;

Having heard applicant on oath;

Having considered;

That in virtue of the present action, plaintiff is requesting this Court to declare null and void at law, her marriage with respondent, contracted in China on the 1st. February 1995 on the grounds that the matrimonial consent of both parties was simulated in terms of paragraph [f] of article 19[1] of Chapter 255 of the laws of Malta. On his part respondent failed to respond to this request.

From the evidence adduced it results that both parties got married in China on the 1st February 1995, and immediately came over to Malta. On arriving in Malta, the

parties went separate ways and they never lived together. No children were born out of this marriage.

Plaintiff explains that her sole aim in contracting marriage with respondent was to be able to come and live in Malta. In fact she had contacted an "Agency" where she was informed that "if I wanted to go to Malta, I should marry a Chinese man who is willing to come to Malta. The Agency put me in contact with CD and we met at the Agency. The Agency gave us a certificate regarding our marriage status and with that we were able to leave China and emigrate to Malta."

Plaintiff affirms categorically that the parties never lived together, and that they got married without knowing each other. She states that the parties never had any sexual relations, neither before nor after the marriage.

From the above version of the facts, which have not been in any way contradicted, it emerges quite clearly that the marriage in question was purely one of convenience, and that the parties never had the intention of living together as husband and wife. In fact, after the marriage, on their arrival to Malta, they parted. The Court observes that in these circumstances there is no doubt that the marriage in question is null at law in terms of the above article of law, since the parties, though externally they went through a marriage ceremony, yet internally, by a positive act of will, they had excluded obligations essential to married life, principally the duty of living together as husband and wife forming a union directed towards the procreation and upbringing of children.

On the strength of the above, the Court accedes to plaintiff's request, and declares null and void the marriage contracted with defendant on the 1st February 1995. Judicial expenses are to be borne by both parties in equal shares.

< Sentenza Finali >

Kopja Informali ta' Sentenza

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