



**CIVIL COURT
(FAMILY SECTION)**

**HON. MR. JUSTICE
JOSEPH AZZOPARDI**

Sitting of the 20 th June, 2008

Citation Number. 296/2007

A

-vs-

B

The Court;

Examined the plaintiff's sworn application, presented on the 18th July, 2007, whereby she respectfully submits and confirms on oath:

That the parties celebrated their marriage on the 26th June, 1987, as per marriage certificate, attached and marked as Doc. "A".

That three children were born from the said marriage, namely C who has attained majority, and D and E who are seventeen and sixteen years of age, respectively.

That the marriage celebrated between the parties has irretrievably broken down and their matrimonial life is no longer possible as a result of the respondent's abusive and illegal behaviour, consisting in adultery, threats, excesses, cruelty, grievous injury and violence, both towards the applicant and towards the children.

That by virtue of a contract dated 15th March of the year 2005 in the acts of Notary Hugh Grima, attached hereby and marked as Doc. "B", the parties terminated the Community of Acquests, which existed between them, and established the regime of Separation of Estates.

That the applicant has been authorised to file these proceedings for personal separation by this Honourable Court by means of a decree dated 5th March, 2007 and bearing number 363/07 as subsequently extended by another decree dated 6th June, 2007 and bearing number 983/07, a legal copy of which is hereby attached and marked as Doc. "C".

That by means of the last decree above-mentioned and dated 6th June, 2007 the applicant was authorised to file these proceedings in the English language.

That the applicant knows the facts herein declared personally.

Thus, and in view of the above, the applicant respectfully prays this Honourable Court to:-

- 1) Pronounce the personal separation between the parties due to faults solely attributable to the respondent who is exclusively responsible for the breakdown of the marriage;
- 2) Entrust the applicant with the sole and exclusive care and custody of the minor children D and E,

save the right of access of the respondent towards the said minor children;

3) Order the respondent to pay maintenance to the applicant for herself and the minor children, namely D and E;

4) Order the application of the dispositions contained in Articles 48 and 51 of Chapter 16 of the Laws of Malta against the respondent;

5) Order the respondent to return to the applicant all her dotal and paraphernal property, as well as to grant her the full administration of her paraphernal property;

6) Order the respondent to vacate the matrimonial home, namely < address > , which the applicant holds by title of lease / sub-lease even prior to the marriage, and in respect of which the respondent has absolutely no legal title, if necessary even with the intervention and assistance of the police and court marshals, as the case may be, and consequently authorise the applicant to take the necessary measures to reside in the property together with her children to the exclusion of the respondent;

7) Authorise the applicant to register the judgement in the Public Registry of Malta;

With costs against the respondent who is hereby summoned so that a reference to his evidence is made.

Noted the list of witnesses.

Noted that the defendant, although duly notified, did not file a reply and is therefore contumacious according to the law.

Examined plaintiff's affidavit and heard the witnesses.

Noted the records of the case relating to the sitting of the 28th April, 2008, wherein the case was adjourned for judgement.

Noted;

That plaintiff is requesting the Court to pronounce separation between the parties as well as the usual demands in similar cases. From the evidence brought before it, the Court definitely feels that the plaintiff has proved the allegations contained in her application and that her demands deserve to be acceded to. Plaintiff was thrown out of the matrimonial home by defendant despite the fact that the latter has no title to it since it was let to plaintiff before she married defendant. It also appears that all furniture in the matrimonial home pertain to plaintiff who had bought it from her own proceeds from inheritance.

The parties have three children, but only the youngest, E, is still a minor. Therefore defendant is obliged to pay maintenance to plaintiff and the said minor. According to plaintiff he used to earn between five hundred Maltese Liri (Lm500), equivalent to one thousand, one hundred and sixty five Euro (€1,165), and one thousand Maltese Liri (Lm1,000), equivalent to two thousand, three hundred and thirty Euro (€2,330), a month when they were living together. Thus the Court will award maintenance amounting to four hundred Euro (€400) for plaintiff and two hundred and fifty Euro (€250) for the minor.

As the plaintiff mentioned in her application, parties have already established the regime of separation of estates by deed in records of Notary Grima in 2005, but they have a joint account in the Bank which has to be divided equally between them.

The Court therefore decides the case by acceding to all plaintiff's requests and thus:

1. Pronounces personal separation between parties due to faults attributable to defendant;

2. Entrusts to the applicant the sole care and custody of the minor child E;

3. Orders defendant to pay the plaintiff as maintenance as to the sum of four hundred Euro (€400) for plaintiff herself and two hundred and fifty Euro (€250) for the minor child E every month;

4. Orders that Sections 48 and 55 of the Civil Code shall apply to the defendant;

5. As to the fifth demand orders defendant to give back to plaintiff all moveable property in the matrimonial home belonging to her;

6. Orders defendant to vacate the property mentioned in the sixth demand, that is, Flat 6/28, 'Angelus Mansions', Howard Street, Sliema, in favour of the plaintiff within one month;

7. Orders that joint accounts between the parties in local Banks be divided in two equal parts, and each part be assigned to the parties;

8. Authorises the plaintiff to register the judgement in the Public Registry.

Costs to be borne by defendant.

Read.

< Final Judgement >

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