



**CIVIL COURT
(FAMILY SECTION)**

**THE HON. MR. JUSTICE
NOEL CUSCHIERI**

Sitting of the 28 th October, 2008

Citation Number. 82/2006

**A B
vs
C B**

The Court,

Having seen the sworn application by virtue of which plaintiff premised: that on the 2 September 2004, the parties contracted a civil marriage, and subsequently, on the 8 September they celebrated a catholic marriage in Italy in a church in Assisi; that no children were born from this marriage; that the matrimonial consent of plaintiff was vitiated in terms of paragraphs [a] and [c], and that of defendant in terms of paragraphs [d] and [f] of article 19[1] of Chapter 255 of the Laws of Malta. Plaintiff is requesting that for these reasons the civil marriage between the parties be declared null and void in terms of law;

Having seen the sworn reply by virtue of which defendant, whilst agreeing to plaintiff's request for nullity, is pleading that the nullity is due to a defect in the matrimonial consent of plaintiff in terms of paragraphs [d] and [[f], and that his consent is vitiated in terms of paragraph [c] of the afore mentioned article of law;

Having seen all the acts of the case, including the affidavits presented by the parties;

Having heard the evidence on oath;

Having considered;

Action

That by virtue of the present action, plaintiff is requesting this Court to declare her marriage with defendant null and void in terms of the above cited provisions of law; whilst defendant on his part is agreeing with this request, though for reasons imputable to plaintiff.

Facts

That from the evidence produced, the following picture emerges. The parties contracted a civil marriage on the 2 September 2004, after a courtship lasting for about eighteen months; and six days later they celebrated a catholic wedding in a church at Assisi. At the time plaintiff, a maltese national, was 41 years old, whilst defendant, a rumanian national, was 35 years old. Though the parties began experiencing problems from the early stages of the courtship, they still persisted in their relationship as they both wanted to marry. Unfortunately these problems persisted after the marriage to the extent that married life was no longer possible between the parties; and eventually eleven [11] months after the marriage they separated. No children were born from this marriage.

Plaintiff's version

Plaintiff describes herself as "a genuine person, at times naïve" who grew up with a strong catholic background,

and that her “faith always played a major role in [her] life.”¹ She explains how she met defendant on the 18th March 2003, and “since he showed such an interest in God and in his faith, I automatically felt drawn to him... He was gentle [and well mannered] and seemed so transparent, and I warmed up to his character very easily”². However, after a few days she felt shocked when he seemed to invite her to sleep with him. Though she refused, they still continued the relationship. However, after some time she became aware that defendant started adopting a domineering attitude in her regard, becoming very possessive and very jealous to the extent that she described him as “paranoid”. He had a manifest obsession that she was being unfaithful to him, and that she was seeing other men. Plaintiff describes occasions when he would pass humiliating remarks in front of her family, and he even threatened to leave her if she did not accede to his wishes. He had mood swings of a radical nature.

This notwithstanding, they had “our nice moments”³ and occasionally had sexual intercourse. However, she complains that during these intimate moments there were “a couple of occasions” when she felt physically subdued by defendant, and she felt him to be cold and abusive in her regard. She felt “cheap and used.” as he “was insensitive to my feelings... He was emotionless even when I expressed my hurt to him.”⁴ She accused him of emotional cruelty. In her evidence, she denies that she used to avoid defendant’s sexual advances before the marriage, stating that “we had sex .. and that he penetrated me a number of times, he used physical force with me as well, he used different positions with me, so we did have full penetration and we did have intercourse on more than one occasion before marriage, and after marriage.”⁵

¹ Aff. Fol.18

² Ibid. fol.19

³ Ibid fol.23

⁴ Ibid.

⁵ Dep.fol.150

However, notwithstanding these bad traits in defendant's character, as described by plaintiff, she "still fell for him, as [she] wanted to give him the benefit of the doubt."⁶ Also he started insisting on getting marriage, and he desperately wanted to get married; then she began noticing a change for the better in his behaviour. On one occasion he told her that he needed help, since he had suffered a lot when he was young. He explained to her that, since he was opposing the communist regime of the time in his country, he was falsely accused and convicted of rape due to his political convictions, and he spent three and a half years in jail.

This however did not deter plaintiff from continuing in the relationship, even though, "I still was getting my doubts as to whether he genuinely wanted to marry me, and why he could not wait."⁷ "He was still putting an incredible amount of pressure on me to get engaged and married." Also according to plaintiff, a few months before the marriage, when defendant was preparing his documents for the marriage, it transpired that his work permit had expired.

Eventually the parties got engaged on the 8th December 2003. This was followed by a marriage and got civilly married on the 2nd September 2004, and a catholic marriage on the 8th September 2004. "Both dates [8th December and 8th September] fell on feasts of Our Lady."

Plaintiff states that "the fact that he got married civilly seemed enough to him. To me, it was the civil marriage which was a formality."⁸ She then describes her stay in Assisi, even before the church ceremony, as being "dominated by tension, anxiety and fear." His jealousy and paranoia seemed to increased; and that he even threatened her at the altar when she refused to kiss him on the lips.

She says that on the wedding night in Rome, defendant was very cold and emotionless, and was emotionally cruel

⁶ Aff.. fol.25

⁷ Ibid. fol.26

⁸ Ibid. fol.30

to her. Regarding their intimate relationship, she says “That night I felt like some play object in his hands, and I didn’t feel he was expressing any love. It was just a mechanical exercise. There was no emotion.”⁹

He even threatened her that he would leave her after a week. His attitude towards her “changed from day to night”, and she became aware that he harboured a deep hatred towards her. This had a devastating effect on the marriage.

Unfortunately, things got worse, even though she tried her best to be a dedicated wife. She accepted to continue having intimate relations with defendant, even though this was painful due to a medical condition she was suffering from, at the time. Eventually, defendant became obsessed with the new job he had obtained, and he started trying to exclude plaintiff from his life. He refused communication with her, and spent most of his time at the hotel where he worked. However, intimate relations between them did not cease, though defendant used to take precautions so that plaintiff would not become pregnant, since, as he told her, he did not want to have children from her.

Eventually, after the incident which followed his mother’s visit to Malta, things got too bad; and defendant, together with his mother, left the matrimonial home. Plaintiff explains that “when his mother arrived he ignored me totally. I couldn’t take it anymore, and asked him to leave.”¹⁰

She also states, that even after the separation, “occasionally, we used to meet up and he used to sleep over. We used to have sex.”

Plaintiff’s belief is that she was used by defendant as a stepping stone to obtain his freedom of movement, and

⁹ Ibid.fol.32

¹⁰ Ibid.39

that he was not interested in having a married life with her.

Defendant's version

Defendant describes himself as “ very patient, very compassionate, sensitive [kind and genuine] and very balanced emotionally”¹¹ Though not brought up in the catholic faith, he became a “very happy Catholic ”¹² due to great help which he found from a Salesian father with whom he came into contact owing to his situation.

He explained that when he met plaintiff “I was so much in love that I felt it was natural for me to be submissive and accept everything.” even though her behaviour fell short of what was expected from her during courtship. She was reluctant to let him kiss and hug her before marriage, and “on a few occasions she mentioned to me that she is still a virgin, and that she is thinking of having a chastity marriage.” “She did not allow any signs of affection between us.” Defendant explains that, even though her behaviour caused him frustration, “I was always a considerate person, I always kept calm and gentle with her.” “In fact our outings and time spent together consisted in attending Mass once or even twice a day, and praying the rosary at times, even between three or four times a day.” She used to reject his physical advances and tell him “that she has Jesus, and that Jesus was physical to her, and that she actually made love to Jesus.”¹³

However, this notwithstanding “a few months after our engagement we moved together to her apartment [for economical reasons]”¹⁴ but their relationship “deteriorated drastically because we were living together like brother and sister.”¹⁵ He says that “every time I told her that her feelings are abnormal, she used to tell me that after we get married she will change.”¹⁶

¹¹ Aff. Fol.67

¹² Ibid. fol.66

¹³ Ibid. fol.70

¹⁴ Ibid. fol.68

¹⁵ Ibid.

¹⁶ Ibid. fol.69

Plaintiff further states that “Before and after our marriage there were several instances during the day when she seemed kind towards me, and told me how much she cared and loved me, then suddenly her mood would change without any reason.”

Plaintiff explains the motive for his insistence not to delay the marriage as being that he wanted to have children, and “since her age was against us, we had to rush things a little bit.”¹⁷ He denies that he wanted to marry her in order to get freedom of movement stating that “I never needed it because I always had a steady job..”¹⁸ “I was working. I was just looking for a family, I was looking for something stable. My intention was to have a family, to settle down, like everyone else to have a future.”¹⁹

He explains that on their way to Assisi she cried constantly, on the plane and when they arrived at the hotel. When before the marriage he used to accompany her to the main church of Assisi, “she would go up the aisle and position herself almost lying on the floor face down. She remained this way for two whole hours, completely forgetting about me”.²⁰

On the wedding day in Assisi “when the priest declared us husband and wife and told us to kiss, her kiss was a very distant one.” During the three day stay in Assisi after the ceremony “we did not have any sexual intercourse as she refused.”²¹ Defendant states that he never had sexual intercourse with plaintiff, neither before nor after the marriage when she started complaining about a medical condition in her abdomen which she brought as an excuse. When she had decided to give it a try she used to start to cry during the attempts; “she would suddenly start to cry and she used to look at the cross of Jesus Christ.”²²

¹⁷ Ibid.fol.69

¹⁸ Ibid.foll.70

¹⁹ Dep.fol.170

²⁰ Aff..fol.72

²¹ Ibid.fol.72

²² Ibid.fol.72

On the occasion of his mother's visit to their matrimonial home, plaintiff began shouting at him and at his mother, and told them to leave the house. In fact, it was at that stage that defendant left the matrimonial home, accompanied by his mother who had come all the way from Rumania to visit her son and her daughter in law. He says that on the night in question they had to sleep in the car; until eventually they found accomodation elsewhere with the help of his salesian 'family.'

Considerations of the Court

The Court notes that both parties have been categoric, assertive and eloquent in their evidence before this court. They appeared to be manifestly hurt by the situation, and accused each other of deceit before the marriage, as well as irrational and abusive behaviour after the marriage. They produced affidavits directed to proving good faith on their part, and bad faith on the other's part.

In this regard, the following observations are very relevant:

[1] that even though plaintiff asserts that, as far as she could understand, defendant's work permit was not in order prior to the marriage, no further evidence has been produced to corroborate this fact alleged by her; and this notwithstanding that defendant in his affidavit stated that at the time he was working in Malta, and he had no problems regarding his freedom of movement. Therefore her allegation that the defendant married her solely as a stepping stone to gain freedom of movement has not been proved.

[2] that, although defendant depicts a very negative picture of plaintiff regarding their intimate relations before and after marriage, the photographs produced in evidence tend to weaken his allegation that she used to reject his advances for intimacy. Also, he failed to produce as witness the gyneacologist who had examined plaintiff after marriage; and this notwithstanding the fact that plaintiff had categorically stated that they had intercourse also before marriage;

[3] that there is common ground in the version of the facts given by the parties, in that both of them were unhappy with each other's behaviour before the engagement, and also before the marriage. As expected, nothing changed for the better after marriage, and the situation deteriorated to the extent that married life had become unbearable within the first year of marriage.

In the case, the conclusion of this court is that both parties, though mature in age, had failed to appreciate the consequences of married life, and its essential obligations, namely "the obligation concerning the conjugal act or carnal union, as bodily union and basis of procreation; 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 important to remember that these obligations must be mutual, permanent, continuous exclusive and irrevocable so that there would be incapacity if one of the contracting parties should be, due to psychological cause, incapable of assuming these obligations with these essential characteristics [Viladrich – citat fis-sentenza PA[VGD] Anna Galea vs John Walsh deciza 20 ta' Marzu 2000]. Inherent in these essential obligations of marriage, is the duty of the spouses to freely give themselves totally to one another with a view to establishing a community of life and love between them.

Dato non concesso that the version of facts as stated by plaintiff is true, then she should have realised that defendant's behaviour was not conducive to a happy and successful marriage. This is vice versa applicable to defendant, who should have been aware that plaintiff's obsession with religion and her constant sexual rejection, as alleged by him, were ingrained in plaintiff to the extent that married life with her would be practically inexistent. In short, both parties were well aware of the grave shortcomings of each other, as alleged by them, and this

should have led mature adults to realise that fulfilling the essential obligations of marriage was going to be very difficult, if not unattainable. This failure on their part is manifest of a serious lack of judicial discretion on the rights and obligations essential to marriage.

On the strength of the above, the Court is of the opinion that this marriage is null and void in terms of the first part of paragraph [d] of article 19[1] of Chapter 255; and that this caput nullitatis exits with regard to both parties.

Decide

For the above reasons, the Court accedes to applicant's request, and declares null and void the marriage contracted between the parties on the 2 September 2004. Costs are to be borne equally by both parties.

< Final Judgement >

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