



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

**ONOR. IMHALLEF  
NOEL CUSCHIERI**

Seduta tat-28 ta' Ottubru, 2009

Citazzjoni Numru. 25/2009

**A B  
vs  
C D**

**The Court,**

Having seen the sworn application whereby plaintiff premised that: the parties got married on the 18<sup>th</sup> March 2002; that no children were born out of this marriage; that on the 12<sup>th</sup> December 2002 they signed a contract of personal separation; that the matrimonial consent of defendant was vitiated in terms of article 19[1][d] and [f] of Chapter 255 of the Laws of Malta, and that therefore the marriage is null and void at law; that on the strength of the above, plaintiff is requesting that this court declares his marriage to defendant null and void in terms of the above articles of law;

Having seen that defendant, though duly notified, has not filed a sworn reply;

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

Having considered;

### **The Action**

That by virtue of the present action, plaintiff is requesting this court to declare that his civil marriage to defendant, contracted on the 18<sup>th</sup> March 2002 is null in terms of the above articles of law.

### **The Facts**

That from the evidence produced by plaintiff, in no way contradicted by defendant, it results that the parties got married on the 18<sup>th</sup> March 2002 after having frequented one another for about two years, during which period they co habited a few months prior to the marriage. At that time, plaintiff, who is a Maltese citizen, was 32 years old, whilst defendant, a Japanese citizen was 27 years of age.

On the 12<sup>th</sup> December 2002 the parties signed a contract of personal separation; and on the 5<sup>th</sup> February 2003 Defendant obtained a divorce in Japan.

It appears that subsequently defendant re-married, and changed her surname to Nakamura and has a child from this second marriage.

In his affidavit plaintiff explains that a few months after the marriage, defendant began showing that she was unhappy in the relationship, and on the 15<sup>th</sup> September 2002 she informed him that she had decided to leave the conjugal home, telling him that she did not like the idea of becoming "a maltese housewife". After that date, she started going out late at night, on her own, and returning back at about 5.00 am. Subsequently she left Malta for

good, and informed plaintiff that she was meeting her boyfriend in Brussels.

Plaintiff produced a copy of an email sent to him by defendant on the 16<sup>th</sup> October 2002, the contents of which he reproduced in his affidavit. In the email, signed D, defendant informed him that "About marriage, I'm sorry, but I did not really want to, you know. I wanted to continue being boyfriend and girlfriend. That's what I really wanted."

### **Considerations of the Court**

The Court is of the opinion that from the above it emerges quite clearly that defendant did not appreciate the consequences of marriage. It seems that at the time she gave her matrimonial consent, she was unaware of the fact that marriage is based on a union between two persons having the common purpose of living together with a view to respecting and loving each other, and with specific purpose of having children and looking after their upbringing.

From the evidence it seems that defendant was unable or unwilling to live with plaintiff in a community of love and life.

On the strength of the above, the court considers plaintiff's request to be justified in fact, and in law according to the first part of paragraph [d] of article 19[1] of Chapter 255 which *caput nullitatis* exists solely in regard to defendant.

### **Decide**

For the above reasons, the court accedes to plaintiff's request, and declares null and void at law the marriage contracted between the parties on the 18 March 2002.

All costs are to be borne by defendant.

**< Sentenza Finali >**

Kopja Informali ta' Sentenza

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