

Kopja Informali ta' Sentenza



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

**ONOR. IMHALLEF
NOEL CUSCHIERI**

Seduta tad-29 ta' Ottubru, 2009

Citazzjoni Numru. 158/2007

Number on list: 11

**A B
vs
C D**

The Court,

Having seen the sworn application by virtue of which Plaintiff premised: that the parties got married on the 25th October 2005, and that no children were born from this marriage; that the matrimonial consent of Defendant was vitiated in terms of paragraphs [f] and [d] of article 19[1] of Chapter 255 of the Laws of Malta; that on the strength of the above, Plaintiff is requesting this court to declare null and void his marriage to Defendant, together with costs;

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Having seen the sworn reply whereby Defendant rejected Plaintiff's allegations in her regard, holding them to be factually and legally unfounded;

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

Having heard the evidence on oath;

Having considered:

The Action

That by virtue of the above action, Plaintiff is requesting this court to declare null and void at law his marriage with Defendant, contracted on the 25th October 2005, on the grounds that her matrimonial consent was vitiated in terms of paragraphs [d] and [f] of the afore-mentioned article of law. On her part, Defendant submits that Plaintiff's claim is factually and legally unfounded.

The Facts

That from the evidence produced it results that the parties got married on the 25th October 2005. At that time, Plaintiff, a Maltese national was 41 years old, whilst Defendant, a Chinese national was 40 years old. Both parties have children from their previous marriage¹. After a very short and turbulent period of married life, the parties separated de facto in December 2006 when Defendant left definitely the matrimonial home.

Plaintiff's Version

Plaintiff met Defendant, who has been in Malta since July 2004, in September of that same year, and in October they started a relationship. At that time Defendant was in Malta as a student of English. The parties had started discussing marriage, and Plaintiff states that Defendant was determined to get marriage. However, in May 2005 she went back to China, because her visa had expired,

¹ Plaintiff had obtained an annulment of his marriage, whilst Defendant had obtained a divorce.

and she wanted to see her family, promising to return to Malta.

Subsequently, Plaintiff had arranged the necessary documents, and had also found a job for Defendant enabling the latter to stay in Malta, Defendant returned, and eventually they got married. At that time, there appeared to be no radical problems between the parties, who already had intimate relations prior to the marriage; however, after five or six months into the marriage, problems arose resulting in constant quarrelling between the parties.

Plaintiff explains that, although Defendant never refused the marital act, she showed that she was unhappy because she was obsessed with the idea of living near Sliema where her friends lived. Eventually, Plaintiff found her a job in a catering establishment, and as she began to earn money, she became more insistent in her demands. She also wanted Plaintiff to open a business, but he could not afford to, and this continued to give rise to much quarrelling between them. Plaintiff says that on five occasions Defendant left the matrimonial home 'voluntarily', at his request, but then he would call her back and arrange matters temporarily.

In December 2006 Defendant left the matrimonial home for good, and refused to return, telling Plaintiff that she did not love him any more. In his evidence Plaintiff speaks of Defendant's interest in acquiring Maltese citizenship; he states that: "qisu ftit qabel ma zzewwigna [hi] bdiet tinsisti kemm se ddum biex taqleb ic-cittadinanza Maltija."²

Defendant's Version

Defendant confirms the contents of the first two paragraphs of Plaintiff's version.

She denies that she could not have anymore children because of a surgical intervention, stating that it was

² Pg.49 " some time close to the date of the marriage, Defendant began asking in an insistent manner as to how long will it take her to acquire Maltese citizenship."

Plaintiff who did not want to have children from this marriage.

Her chief complaint was the bad temper and dominant character of Plaintiff who, during their short-lived marriage expected to be obeyed leaving no room for discussion. She accused him of beating her many times, and of “kicking” her out of the matrimonial home eight times when she would have to stay with friends. Defendant mentions one particular occasion when she found two condoms in Plaintiff’s jeans, arousing her suspicions that he was cheating on her with other women. On this occasion he started beating her.

In these cases, after a few days, Plaintiff would phone her, asking her, at times tearfully, to return to the matrimonial home. Finally, on December 2006, after one of these rows, she left for good.

Defendant explains that Plaintiff’s bad side came out immediately after marriage. She states: “First when we got to know each other, he was very kind, and I was moved by his behaviour. He was so kind, and so we fell in love. After marriage he changed a lot, he was not kind to me anymore.”³ He used to take all the money she earned, and as stated above used to beat her, and occasionally throw her out of the house.

In her evidence Defendant says that she wanted to have children from this marriage, and that she was aware of her obligation as a married woman to live with her husband. “I do my best to take care of the family, to do most of the home [house] work. I think I did very well.

Consideration of the Court

The Court considers the following observations to be relevant in the determination of this case:

First, the Plaintiff is basing his request for the annulment of his marriage to Defendant, on the two legal basis

³ Fol.62

contemplated in paragraphs [d] and [f] of article 19[1] maintaining that these exist in regard to the latter. These are the judicial parameters of this action.

Secondly, the burden of proving the facts supporting his claim lies on the Plaintiff alleging these facts. On him lies the onus of proving that at the time Defendant gave her matrimonial consent she was lacking in the *discretio iudici* in terms of the first part of paragraph [d]; or that her consent was simulated in terms of paragraph [f].

On the merits of the case, the Court observes that the only evidence produced by Plaintiff in support of his claim are the bare assertions contained in his testimony which in substance has been contradicted by that given by Defendant. Besides, the Court is more inclined to accept the version of facts as given by the latter rather than that given by the former, and in particular is more inclined to accept as truthful Defendant's assertion that the marriage broke down due to Plaintiff's abusive behaviour.

The Court observes that on the part of Defendant, even though the latter may have had further motives in accepting to marry Plaintiff, there is no evidence, even from his testimony alone, supportive of his claim that at the time of the marriage she was unaware of, or incapable of assuming, the matrimonial rights and obligations. In her evidence she states quite clearly that she was aware of her obligation to live with her husband and to help in the running of the family. In fact, even Plaintiff admits that Defendant never refused the conjugal act, and lived with Plaintiff as husband and wife. Besides, though Plaintiff says that when she used to leave the matrimonial home she did so voluntarily, he admits that it was he who used to 'tell' her to leave. In this respect, Defendant's version that she used to be kicked out of the matrimonial home, is more acceptable to this court.

Plaintiff says that Defendant was keen in trying to open a business in Malta, and that this gave rise to quarrelling between the parties, and that she wished to live in the Sliema area; and he seems to imply that Defendant

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through marriage wanted to obtain Maltese citizenship. The Court observes that even if these were true, as they most probably are, still the evidence shows that Defendant did not simulate her matrimonial consent in terms of paragraph [f]. In fact, on marriage the parties lived together and for the first few months, there appeared to be no problems; and it was Plaintiff who in fits of bad temper used to throw Defendant out of the matrimonial home.

On the strength of the above, the Court is of the opinion that Plaintiff has failed to prove his case in terms of the afore-mentioned paragraphs and article of law.

Decide

For the above reasons, the Court is hereby rejecting Plaintiff's request, with costs.

< Sentenza Finali >

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