

Kopja Informali ta' Sentenza



**QORTI TA' L-APPELL**

**S.T.O. PRIM IMHALLEF  
VINCENT DE GAETANO**

**ONOR. IMHALLEF  
ALBERT J. MAGRI**

**ONOR. IMHALLEF  
TONIO MALLIA**

Seduta tat-30 ta' Lulju, 2010

Appell Civili Numru. 181/2007/1

**Yvonne Arqueros**

**v.**

**Luis Emilio Arqueros Moreno**

**Il-Qorti:**

Rat ir-rikors guramentat tal-attrici pprezentat fil-25 ta' April 2007 li jaqra hekk:

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“1. Illi l-partijiet izzewgu fit-tlieta (3) ta' Settembru, tas-sena elf, disa' mija, tmienja u tmenin (1988) fir-Registru Pubbliku<sup>1</sup>, Valletta, Malta (Dok A);

“2. Illi minn dan iz-zwieg kien hemm tliet u cioe` ahwa Arqueros u cioe` Andreas Mattia li twieled fid-disgha ta' Lulju tas-sena elf, disa' mija, disgha u tmenin (1989), Anastasia li twieldet fit-tnax (12) ta' April tas-sena elf, disa' mija, erbgħa u disghin (1994), u Nicholas Maximillian li twieled fil-wiehed u tletin (31) ta' Mejju tas-sena elf, disa' mija, disgha u disghin (1999);

“3. Illi l-partijiet kienu sseparaw permezz ta' kuntratt in atti tan-Nutar Pubbliku Malti Dottor Mariella Mizzi fis-sitta (6) ta' Novembru tas-sena elfejn u wiehed (2001);

“4. Illi l-kunsens tal-partijiet kien vizzjat b'difett serju ta' diskrezzjoni ta' gudizzju fuq il-hajja mizzewga jew fuq id-drittijiet u dmirijiet essenzjali tagħhom;

“5. Illi l-kunsens tal-konvenut nkiseb bl-eskluzjoni pozittiva taz-zwieg innifsu u tal-elementi essenzjali tal-hajja mizzewga;

“6. Illi l-kunsens tal-partijiet issimulaw l-kunsens tagħhom għal dan iz-zwieg.

“Jghid il-konvenut għaliex din l-Onorabbli Qorti m'għandhiex:

“(1) Tiddeciedi u tiddikjara illi z-zwieg bejn il-kontendenti celebrat fit-tlieta (3) ta' Settembru, tas-sena elf, disa' mija, tmienja u tmenin (1988) hawn fuq imsemmi, kien null u invalidu għal-finijiet u effetti kollha tal-ligi u tagħti dawk il-provvedimenti kollha l-oħra illi jkunu opportuni f'dan ir-rigward.

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<sup>1</sup> Fil-fatt iz-zwieg sar bir-rit Kattoliku u ma kienx zwieg civili, kif l-espressjoni “fir-Registru Pubbliku” tista' timplika. Ara c-certifikat taz-zwieg a fol. 4 tal-atti.

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“Bl-ispejjez kontra l-intimat li jibqa’ ngunt minn issa in subizzjoni.”

Rat ir-risposta guramentata tal-intimat tat-3 ta’ Ottubru 2007 li in forza taghha eccepixxa illi:

“1. Illi l-intimat m’huwiex jikkontesta l-fatt li z-zwieg tieghu mar-rikorrenti, iccelebrat fit-tlieta (3) ta’ Settembru tas-sena elf, disa’ mija u tmienja u tmenin (1988) huwa null u invalidu ghall-finijiet u effetti kollha tal-ligi;

“2. Illi l-intimat lanqas ma jikkontesta r-ragunijiet elenkati mir-rikorrenti fir-rikors promotur, ghaliex effettivament dawn ir-ragunijiet huma lkoll minnhom, u dan kif ser jigi ampjament ippruvat fil-mori ta’ dawn il-proceduri.”

Rat is-sentenza moghtija mill-Qorti Civili, Sezzjoni Familja, fil-25 ta’ Gunju 2009, li in forza taghha cahdet it-talbiet tal-attrici, bl-ispejjez jibqghu bla taxxa bejn il-partijiet;

Dik il-Qorti tat is-sentenza taghha wara li ghamlet is-segwenti konsiderazzjonijiet:

### **“The Action**

*“That by virtue of the present action, Plaintiff is requesting this Court to declare null and void at law, her marriage to Defendant celebrated on the 3<sup>rd</sup> September 1988, on the grounds that the matrimonial consent of both parties was vitiated in terms of paragraphs [d] and [f] of Article 19[1] of Chapter 255 of the Laws of Malta. On his part, Defendant does not oppose Plaintiff’s request, and agrees that the marriage is null on the above grounds.*

### **“The Facts**

*“That from the affidavits produced, and the evidence given by the parties, the following picture emerges.*

*“On the 3<sup>rd</sup> September 1988 the parties contracted marriage, after a brief courtship. At that time, Plaintiff, a Maltese national, was 23 years old, whilst Defendant, a Chilean national was 21 years old. Three children were born from this marriage, on the 9<sup>th</sup> July 1989, 12<sup>th</sup> April 1994 and 31<sup>st</sup> May 1999. After having lived together for about thirteen [13] years, the parties separated after Plaintiff found out that Defendant was having an extra marital affair with a Russian woman. On the 6<sup>th</sup> November 2001 they signed a contract of personal separation. At present both parties have an extra marital relationship.*

*“Plaintiff’s version*

*“In her evidence<sup>2</sup> before this Court Plaintiff explains that she got to know Defendant whilst she was studying abroad, and eventually they started a relationship. However, since in Malta, Defendant was having visa problems, and also as Plaintiff’s parents would not allow the parties to live in the upper floor of their house unless they were married, the parties decided to get married, as “I didn’t want to lose Emilio, and he didn’t want to lose me...because we cared about each other.”*

*“Plaintiff states that “I don’t really believe in marriage, because I believe a relationship is a relationship, marriage is marriage” so, as she states in her affidavit<sup>3</sup> “I proposed marriage jokingly to Emilio .”*

*“She states further that “The period of courtship was very short, but we both cared a lot about each other. There was a lot of affection between us and we never quarrelled or disagreed about anything.....Although the courtship was short, we still managed to discuss our future lives together as husband and wife.” However, almost in the same breath she states: “Emilio and I did not intend the marriage to be permanent, as it was rather rushed” and in the same paragraph she continues saying that on separation “Parting was not easy, and we both cried a lot.”*

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<sup>2</sup> Fols.20 *et seq.*

<sup>3</sup> Fols.15 *et seq.*

*"In her affidavit Plaintiff says that she "had a basic understanding of the essential qualities and responsibilities inherent to the marriage"<sup>4</sup>....[but] my husband had no understanding of any qualities and responsibilities of marriage" as in his country people "do not usually get married, but just cohabit until it suits them." She speaks of the fact that during the marriage she was the main breadwinner and that she was the only party doing all the work and sacrifice throughout the marriage ... I was the exemplary wife and mother, and I had to do everything by myself." She complains that Defendant "never committed himself to me, and continued to live a bachelor's life. He never carried any responsibility for the children." She describes Defendant as "too narcissistic [recte: narcissistic] and selfish to care about anyone else....[and].. he does not know the meaning of faithfulness... He is a compulsive liar, and manages to convince anyone that his lies are true. [sic]"*

*"Regarding the children, Plaintiff says in her evidence that no planning was made "they happened. I don't regret them"*

#### *"Defendant's Version*

*"Both in his affidavit and in his evidence before this Court Defendant says that he does not believe in the institution of marriage, and that for him marriage "as such is only a document", "just a paper".*

*"He explains that when he came to Malta in October 1987 to meet Defendant, and live with her in her parents' house "We thought it would have been nice to stay together for a year or two.... We thought it was like a holiday, and then it came out, that it would have been a nice thing if we stay together for maybe some longer period....We stayed together, and if it happens that we have sex together it was fine." On being asked whether they had any plans*

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<sup>4</sup> Vide also plaintiff's deposition fols.35-36

for “a future together”, Defendant states: “No, not necessary, it wasn't like a long-term relationship.”

“In his affidavit he says that he “does not believe in relationships in the traditional sense, much less in marriage.....We never considered ourselves to be in a ‘serious relationship’ and we both knew it, and made it clear to each other. After Plaintiff returned to Malta he missed “the presence of a friend and sexual partner”, so during his stay in Malta “we resumed ‘our relationship’.” He continues saying in his affidavit that “myself and Yvonne had always made it clear with each other that we were not even in a ‘relationship’ per se..... [but] always considered ourselves [sic] as friends and sexual partners.”

“Defendant says that when marriage was suggested to him by Plaintiff in an effort to solve their problems, he says that “actually I did not like the idea” and the latter told him that that was the only way he could remain in Malta, and that it was “just a piece of paper.”

“On being asked explicitly by this Court whether he was aware of the matrimonial obligations, that of love, cohabitation and exclusivity, Defendant answers that “These obligations do not exist .. that is why there are divorce and annulments”. On being asked further by this Court whether he loved his wife when they got married, Defendant answers “As girlfriend and boyfriend, yes.”

“Regarding the children, Defendant says that these “are the best thing I have in my life.”

“On the breakdown of the marriage, Defendant, says *inter alia*, that “we both knew that our relationship was a casual one – but it is difficult to maintain a casual relationship once you are married.....There was never any true communication between us [and this] resulted in myself and Yvonne slowly drifting apart.”

### **“Considerations by the Court**

*“After hearing both parties give evidence, the Court is of the opinion that the evidence given by Defendant viva voce, and by affidavit, lacks credibility; and is moreover also weakened by the proven facts of the case, notably the length of the married life during which the parties had three children, spaced at intervals of approximately 1 year, 4 years and 5 years, and that the marriage broke down after Plaintiff became aware of Defendant’s extra-marital affair.*

*“The first legal basis put forward by Plaintiff as one of the grounds for her request, is that the matrimonial consent of both parties was vitiated by a serious defect of discretion of judgment on conjugal life, or its essential rights and duties.*

*“Now, from the evidence it is manifestly clear that, at the time Plaintiff gave her matrimonial consent, she was not labouring under such defect. As her behaviour during the marriage illustrates well enough, Plaintiff was very much aware of her obligations arising out of marriage, both vis-à-vis husband as well as her three children. She married Defendant because she loved him, and wanted to spend the rest of her life with him, and she had intimate relations with her husband, with the result that in a period of ten years of matrimonial life she had three children by her husband. Moreover, the separation was painful to both parties, and she herself states that “parting was not easy, and we both cried a lot.” This, and further evidence, shows that at the time the marriage was contracted Plaintiff was aware of the essential obligations of marriage, and furthermore was capable of assuming them.*

*“As regards the Defendant, the Court considers, that, notwithstanding that in his evidence he constantly reiterates that he does not believe in marriage which to him is only a document, and notwithstanding his constant denial of having had a stable relationship with Plaintiff and stating that their relationship was no more than a casual relationship, still, when faced with the prospect of marrying Plaintiff in order to be able to live in Malta, he*

*overcame his initial reluctance [dato non concesso] to her marriage proposal, and eventually accepted and agreed to marry Plaintiff. As the latter states in her affidavit: "Emilio and I both entered the marriage on our own free will" and also, though their courtship was short "we still managed to discuss our future lives together as husband and wife."*

*"Also, from the evidence produced, it does not result that at the moment when Defendant gave his matrimonial consent, he was incapable of understanding, reflecting on, and deciding freely on the object of the matrimonial consent, or that he was acting under a strong internal impulse which eliminated his freedom of choice, and determined his decision to marry Plaintiff. On the contrary, notwithstanding his denial during his evidence, the proven facts show that at that moment Defendant was sufficiently aware of his rights and obligations arising from his matrimonial consent. In fact he lived with Plaintiff after marriage for a number of years, during which he fathered three children from his wife; and it was only in 1997, when he started having an extra-marital affair with another woman, that the marriage broke down.*

*"Moreover, it is not amiss to point out that the fact that a party to a marriage shows an initial reluctance to a marriage proposal, or that his acceptance is also motivated by material reasons, these facts per se do not give rise to the nullity of the marriage, since that party may, eventually and on further reflection, as is usually the case, and even for material considerations, have consented to the marriage proposal and accepted to marry the other party in the full knowledge of his matrimonial rights and obligations, and with the intention of observing these throughout the marriage. Thus, the fact that Defendant, on further reflection, had arrived at the conclusion that contracting a marriage with Plaintiff was also to his benefit, does not in any way weaken the validity of the marriage, the more so in this case where it results that, notwithstanding the short courtship, both parties loved one another and "still managed to discuss [their] future lives together as husband and wife."*



*“On the strength of the above, the Court is of the opinion that Plaintiff did not successfully prove her claim based on the first part of paragraph [d] of the afore-mentioned article; and this applies also to the second legal basis, based on simulation and paragraph [f], since, from the evidence produced in this case, the Court is not satisfied that at the moment when the parties gave their matrimonial consent, they, or either of them, had excluded by a positive act of will, any of the essential obligations of marriage, including that of permanence; and that from the evidence of Plaintiff, the Court is led to believe that at that moment, both parties had, on entering marriage, consented to form a union which is exclusive and permanent in nature, based on marital cohabitation and the procreation and upbringing of children.*

*“Finally it is relevant to observe that, even though Defendant’s role during married life, from the point of view of responsibility, may be considered marginal when compared to the pro-active attitude of his wife, who seems to have been the main pillar throughout the marriage, this fact does not militate against the above conclusion, though it may be one of the reasons, which together with his extra-marital affair, rendered their separation legally valid; as these two concepts of law are based on different norms prescribing different requisites for separation and annulment.”*

Rat ir-rikors tal-appell tal-attrici li in forza tieghu, ghar-ragunijiet minnha premissi, talbet li din il-Qorti joghgobha tilqa' l-appell u thassar, tirrevoka u tikkancella s-sentenza moghtija mill-ewwel Qorti u tilqa' t-talbiet attrici;

Semghet lid-difensur tal-attrici; rat ukoll il-verbal tal-15 ta' Gunju 2010 mnejn jirrizulta li din il-Qorti ordnat li l-proceduri kellhom isiru – u dan skond il-ligi – bil-Malti;

Rat l-atti kollha tal-kawza u d-dokumenti esebiti;

Ikkunsidrat:

Illi din hi kawza ta' annullament ta' zwieg civili li sehh bejn il-partijiet fit-3 ta' Settembru 1988. Minn dan iz-zwieg il-partijiet kellhom tliet itfal; il-partijiet isseparaw formalment fis-6 ta' Novembru 2001. B'din il-kawza, l-attrici qed tallega li z-zwieg taghha hu null peress li l-kunsens tal-partijiet kien vizzjat b'difett serju ta' diskrezzjoni ta' gudizzju, peress illi l-konvenut, fl-ghoti tal-kunsens, eskluda z-zwieg innifsu u l-elementi essenzjali taz-zwieg, u peress illi l-kunsens taz-zewg partijiet kien simulat. L-ewwel Qorti semghet il-provi li ressqu l-partijiet u cahdet it-talba tal-attrici peress li ma rrizultalhiex li kien hemm xi nuqqas jew vizzju tal-kunsens. L-attrici appellat bl-aggravji jkunu li l-ewwel Qorti ma qiesitx sew il-fatti li ghandhom iwasslu ghal dikjarazzjoni ta' nullita` ta' zwieg fuq bazi ta' simulazzjoni u fuq bazi ta' nuqqas ta' diskrezzjoni ta' gudizzju. Il-konvenut, ghalkemm notifikat, anke b'kopja bl-Ingiliz tar-rikors tal-appell u tal-avviz tas-smigh, baqa' ma deherx.

L-attrici ma apprezzatx, pero`, li l-kawzali li resqet bhala bazi ghat-talba taghha huma kontradittorji. Jekk, kif qed tallega, il-partijiet ma kellhomx diskrezzjoni biex jgharfu x'inhuma l-elementi essenzjali taz-zwieg, ma jistax jinghad, fl-istess nifs, li huma kienu maturi bizzejjed tant li uzaw id-diskrezzjoni taghhom biex, b'att pozittiv, jeskludu z-zwieg innifsu jew xi elementi tieghu. Din il-kontradizzjoni apparenti fit-tezi tal-attrici ddghajjed mhux ftit it-tezi taghha, ghax bl-argumenti taghha favur dawn iz-zewg kawzali qed twaqqa l-argumenti kollha taghha stess. Hi, fil-fatt, tghid li hi u zewgha, b'att pozittiv u b'impenn tal-volonta`, eskludew z-zwieg u l-elementi tieghu, u dan ifisser, oqvjament li huma gharfu x'inhuma dawn l-elementi u riedu jwarbuhom. Fl-istess hin, tghid li fil-mument li fih huma kkuntrattaw iz-zwieg ma kellhomx apprezzament sufficjenti tal-portata tal-kuntratt ta' zwieg! Din il-Qorti tista' tieqaf hawn fit-trattazzjoni ta' dan il-kaz, ghax bl-argumenti taghha stess, l-attrici waqghet kull argument favur l-applikazzjoni ta' wahda jew l-ohra mill-kawzali.

Din il-Qorti, ghal kull boun fini, ezaminat il-provi prodotti u assolutament ma tarax kif l-attrici tista' tibqa' ssostni li z-

zwieg taghha kien null. Hu ammess li l-partijiet, qabel ma zzewgu, kienu jghixu fi stat ta' konkubinagg, u zzewgu biex jaghtu *status* ta' formalita` lil dak l-istat li kienu jinsabu fih. Huma "*both cared a lot about each other*", kellhom affezzjoni lejn xulxin u kienu anke iddiskutew bejniethom "*our future lives as husband and wife*". L-attrici tghid li zzewgu biex il-konvenut, li hu mic-Chile, ikollu fejn joqghod, ghax ommha ma rieditx tibqa' toffrilhom akkomodazzjoni fl-istat li kienu qed jghixu fih. Dan jista' jkun minnu, pero`, bhala fatt huma ma riedux jinfirdu u riedu jibqghu jirrisjedu flimkien. Ghalihom kienu diga` fi "stat ta' zwieg" (sejjahlu "*common law marriage*" jew zwieg "*per verba de praesenti*"), izda gharfu li l-karta taz-zwieg kienet bzonnjuza ghal formalita` biex ma jkollhomx aktar indhil fir-relazzjoni taghhom. Huma riedu jibqghu flimkien u kienu jafu li kienu qed jifformalizzaw stat ta' hajja li riedu jkomplu jghixuha. Ma jistax jinghad li ma riedux dik il-"formalita`"; it-tnejn kienu jafu x'konsegwenzi jitnizzlu minn dik il-"karta taz-zwieg", u gharfu l-pass li kienu se jiehdu. Fil-fatt, wara z-zwieg mill-ewwel hasbu biex jibnu familja b'ulied tant li kellhom tliet itfal. Dan kien il-hsieb taghhom, cioe`, li joholqu familja tradizzjonali b'ulied jitrabbew flimkien mill-genituri, u jekk dan il-hsieb fallielhom, ma jfissirx la li ma riedux il-kuncett u lanqas li ma kienux kapaci jifmuh.

Il-konvenut jghid li ma jemminx fi zwieg permanenti, pero`, l-ewwel Qorti li semghet id-deposizzjoni tieghu *viva-voce* osservat li x-xhieda tieghu "*lacks credibility*". Din il-Qorti tapprezza hafna l-analizi ta' xhud li tkun ghamlet Qorti waqt li x-xhud ikun qed jiddeponi quddiemha, u waqt li hi tkun qed taqra x-xhieda registrata, trid bilfors taghti affidament lill-ewwel Qorti li tkun f'posizzjoni tajba tapprezza l-komportament tal-istess xhud. Il-konvenut hu bniedem matur u ta' certa inteligenza; kien jaf x'inhu zwieg u kien jaf f'hiex kien diehel. L-attrici tghid li huma t-tnejn dahlu fiz-zwieg "*on our own free will*" u, fil-fehma ta' din il-Qorti, it-tnejn riedu li jqattghu hajjithom flimkien. Sa ma l-konvenut tefa' ghajnejh fuq tfajla ohra ta' nazzjonalita` Russa, kollox kien miexi sew u l-partijiet kienu qed iwettqu fil-fatt dak li xtaqu li jirrizulta mir-relazzjoni taghhom.

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Huma stess taw prova tal-fatt li kienu jafu xi tisser li tizzewweg u x'kien mistenni minnhom meta jidhlu f'dak l-istat. Il-fatt li wara diversi snin, il-konvenut beda jitfa' ghajnejh band'ohra ma jfissirx li z-zwieg kien *ab initio* null.

Ghal dawn ir-ragunijiet u ghall-konsiderazzjonijiet maghmula mill-ewwel Qorti, ma jirrizultax provat li z-zwieg ta' bejn il-kontendenti hu null.

Ghaldaqstant, ghar-ragunijiet premissi, tiddisponi mill-appell mressaq mill-attrici billi tichad l-istess u tikkonferma s-sentenza tal-ewwel Qorti *in toto*.

L-ispejjez in prim istanza jibqghu kif decizi mill-ewwel Qorti, waqt li dawk ta' din it-tieni istanza jithallsu mill-attrici appellanti.

**< Sentenza Finali >**

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