MALTA

COURT OF APPEAL

HIS HONOUR THE CHIEF JUSTICE
SILVIO CAMILLERI

THE HON. MR. JUSTICE
TONIO MALLIA

THE HON. MR. JUSTICE
JOSEPH AZZOPARDI

Sitting of the 25 th October, 2013

Civil Appeal Number. 1291/2002/1

Patricia Horzella in her own name as curator ad litem of her minor daughter Anouchka

v.

Roger Horzella

The Court:

Having seen the writ of summons by virtue of which plaintiff premised:

"… … that the parties contracted marriage on the 15th September 1979, and from this marriage they have three children, of whom, Anouchka is still a minor; that conjugal life between the parties have become impossible for reasons attributable to defendant, and that the marriage has irretrievably broken down; that plaintiff had obtained the necessary authorization according to law to proceed with this case; on the strength of the above, plaintiff is requesting defendant to state why this Court should not: [1] pronounce the personal separation between the parties; [2] declare defendant respsonsible for the separation from a date to be established by this Court; [3] give plaintiff care and custody of the minor child; [4][5][6] order the cessation of the community of acquests, its liquidation, and the division of these acquests between the parties; [7] order defendant to return to plaintiff her dotal and paraphernal property which is still in his possession; [8] apply against defendant articles 48 and 51 of Chapter 16 of the Laws of Malta; [9] order defendant to pay plaintiff periodical maintenance, for herself and for the minor child; with costs;

Having seen the note of pleas by virtue of which defendant, whilst agreeing with the plaintiff's first request, denies any responsibility for the marriage breakdown, attributing it solely and exclusively to plaintiff; opposes to plaintiff's third request, claiming that care and custody should at least be joint; opposes to plaintiff's request number seven as plaintiff is in possession of all her dotal and paraphernal assets; opposes to request number eight, arguing that the articles afore-mentioned should instead be applied to plaintiff; opposes to plaintiff's request for maintenance for herself, on the gounds that she has forfeited this right, also that she is capable of earning income, whilst defendant has no job, also that the expenses relating to the minor child are to be borne by both parties;

Having seen the judgment given by the Civil Court (Family Section) on the 29th May 2012 whereby the Court decided:

"For the above reasons, the Court decides on plaintiff's request by:

"[1] acceding to request numbered one, by pronouncing the personal separation between the parties;

"[2] rejecting request numbered two, and declaring plaintiff to be the party solely responsible for the separation;

"[3] abstaining from deciding further on request numbered three, since the child is no longer a minor;

"[4] acceding to request numbered four, and orders the cessation of the community of acquests as from the 31st December 1996;

"[5] acceding to requests numbered five and six; and orders that the community of acquests be liquidated and assigned to the parties as above established and ordered in the section entitled "Community of Acquests";

"[6] abstaining from deciding further on request numbered seven, since no evidence was produced in this respect;

"[7] rejecting request numbered eight; and instead orders that article 48 of the Civil Code be applied in its entirety against plaintiff;
"[8] abstaining from deciding further on request numbered nine, since the child is no longer a minor;

"All expenses are to be borne by plaintiff."

The Court reached its conclusions thus:

"The Personal Separation

"The parties married on the 15th September 1979, and they have three children from this marriage, the youngest being Anouchka, born in 1992, and who is still a minor.

"Due to marital problems, defendant left the matrimonial home in 1996, whilst plaintiff continued living in the home together with the children.

"Plaintiff's Version

"In her affidavit[1] plaintiff complains of defendant's aggressive and abusive behaviour in her regard, and also in respect of the children.

"She claims that "verbal abuses were the order of the day. I was being treated as a stupid person. Roger used to insult me everyday telling me that I am good for nothing…as time went by he became more and more aggressive, that from verbal abuses he passed to physical abuses on me and the children."[2] However further on in her affidavit she states that he beat her on one occasion, and on another occasion he hit Zoe who was thirteen at the time.

"Plaintiff states that defendant never worked during the marriage, and that he used to receive from abroad a monthly allowance of LM600 from a friend of his mother. He never paid her any alimony; however he used to buy everything for the needs of the family.

"In 1996 defendant "abondoned [sic] the matrimonial home spontaneously" after repeated requests made by her for him to leave.

"During her cross-examination, plaintiff admits that, after defendant left the matrimonial home, she started going out and eventually entered into a relationship with a certain Antoine Chappelle who after two years moved into the matrimonial home where he lived with plaintiff, and the parties' children, for another two years. When this relationship was over, plaintiff entered into a second relationship with another man, Albert sive Steve Palmier. Eventually she entered into a third relationship with

[1] Vol.1 – fol.67 et seq.
[2] Ibid.

another man, Jimmy Busuttil who, according to plaintiff's own testimony, by the 16th March 2007 has already been living with her in the matrimonial home for a period of four years.

"Defendant's Version

"Defendant attributes the cause of the breakdown of his marriage, to plaintiff's constant abuse of alcohol, and also to her friendship with other men. These were the reasons which made him leave the matrimonial home, thereby avoiding unpleasant scenes and arguments in front of the children.

"He explains that plaintiff used to drink from 5.00 pm every evening till 9.00 pm. As her drinking gradually increased, she started becoming dependant on it; and even though he tried to help her, she always denied the problem. Eventually, since plaintiff could no longer take good care of the children, defendant used to spend a lot of time at home taking care of them.

"Defendant claims that plaintiff's relationship with other men began whilst the parties were still living together. Eventually, after the *de facto* separation, plaintiff continued openly having relationships with other men.

"Defendant explains that, due to plaintiff's irresponsible behaviour, he used to spend a lot of time with his daughter Anouchka, at the expense of his worktime with the result that eventually he found himself in financial difficulty when he stopped work in 2000 to take care of his daughter. This notwithstanding, he still paid his share of his daughter's educational and health expenses. On the other hand he has developed a strong bond with his daughter.

"Defendant denies plaintiff's allegations made in his regard: he denies that he was in any way abusive towards his wife or children, and that he ever hit his wife or their daughter Zoe; he denies that he has never worked during the marriage, and affirms that he used to

carry out his practice as a homeopath; he denies that he witheld money from his wife, and explains that he and his wife had joint bank accounts from which plaintiff could withdraw money; finally he denies that he left the matrimonial house "spontaneously" as alleged by plaintiff, and explains that he was constrained to do so by plaintiff.

"Court's Considerations

"The Court observes that, whilst plaintiff's version of facts lacks corroboration, and contrasts with defendant's version, the latter version is supported by various witnesses who testified to plaintiff's abuse of alcohol, her frequenting other men, her irresponsible behaviour as a married woman[3], and also to defendant's caring behaviour towards the youngest daughter, and the strong bond existing between them.

"Given that defendant's version is supported by the preponderance of the evidence produced, the Court is accepting this as the truthful version of the facts; and that consequently conjugal life between the parties is no longer possible, due to plaintiff's abusive behaviour which has rendered cohabitation unbearable for defendant, and which qualify as acts of "cruelty" and "grievious injury" in terms of article 40 of Chapter 16 of the Laws of Malta. Also, the marriage has irretreivably broken down due to the plaintiff's open adulterous relationships with other men, in terms of article 38 of the said Chapter.

"On the other hand, the Court finds no fault with defendant for the separation. The evidence shows that he stepped in to take care of the chidlren when the mother was behaving irresponsibly during the marriage; and he continued to have good care of the minor daughter after the separation, even though the latter continued living with her mother in the matrimonial home.

"As regards plaintiff's allegation of verbal and physical abuse by defendant, the Court observes that, apart from

[3] Vol.1 – fol.91 *et seq.*

the fact that this allegation finds no corroboration in the evidence, defendant has categorically denied this allegation; and moreover, his responsible behaviour towards his children, notwithstanding that he was constrained to leave the matrimonial home, further weakens further plaintiff's version in this respect.

"On the strength of the above, the Court concludes that the evidence fully justify the request for personal separation for reasons attributable solely and exclusively to plaintiff; and the Court is establishing the date of the 31st December 1996 as the date of the personal separation.[4] Also, plaintiff's abusive behaviour renders applicable in her regard article 48 in its entirety.

"Care and Custody

"This aspect of the case has been overcome by the fact that Anouchka is today no longer a minor, and so care and custody and access are no longer an issue.

"Maintenance

"Since Anouchka is no longer a minor, and since no evidence has been brought to render applicable article 3B[2][a] of the said Chapter, plaintiff's request for the payment of maintenance by defendant in respect of Anouchka, then still a minor, is no longer valid.

"Regarding plaintiff's request for alimony payable to her, the Court observes that, as above-established, she has forfeited under article 48 her right to claim maintenance from defendant.

"In his note of submissions defendant is claiming a refund of the amount of maintenance paid by him to plaintiff, as his wife, in view of her being the party solely responsible for the separation, primarily having regard to her open adulterous relationships after the *de facto* separation. In

[4] In her affidavit plaintiff states that the de facto separation took place during the year 1996 without specifying the date or month [Vol.1 – fol.67].

this respect, the Court finds this claim fully justified in fact and at law, considering that the forfeiture is applicable from the 31st December 1996, and that article 25 [2] states that where the claim of maintenance made by plaintiff is disallowed defendant shall be entitled to claim from plaintiff the reimbursement of any amount he may have paid, together with interests.

"Community of Acquests and Paraphernal property

"Matrimonial Home

"After the parties had lived in Paris for a period of one year from the marriage, they came to Malta and settled here where they took up residence at "Villa Brigadoon" ir-Rampa ta' Tax-Xbiex, Tax-Xbiex belonging to plaintiff's father to whom they paid a yearly rent. At the time defendant was aware that the villa belonged to plaintiff's father.

"On the 3rd January 1984, by virtue of a deed[5] in the records of Notary Doctor Paul Pullicino, plaintiff's father donated to plaintiff 498 A Ordinary Shares of Patti Limited[6]; whilst retaining 1A Ordinary Share, and a third pary held the remaining 1B Ordinary Share. However, though plaintiff owned practically most of the company's shareholding, she had 49% voting rights, against the 51% retained by her father.

"On the17th February 1984, by virtue of a deed[7] in the records of the same notary, plaintiff's father granted under title of perpetual emphyteusis the above villa to Patti Limited which as a result then started receiving the yearly rent from the parties.

"Defendant claims that he was kept in the dark about these transactions, and he always believed that the villa continued to belong to plaintiff's father.

[5] Vol.2 – fol.607
[6] Mem. Of Ass. Vol2 – fol.320 *et seq.*
[7] Vol.1 – fol.116

"Between March and June of 1984 and in 1987 structural improvements, consisting in the construction of a new storey, and an extension of the bathroom and a kitchenette, were made to the villa. These improvement were valued by the court-appointed expert AIC Mario Cassar at a total of LM9,397.59 [today €21,890.50].

"Regarding these improvements, plaintiff states that "these were made against the consent of the company [Patti Ltd.] But Roger was very stubborn and did these improvements."[8] At a later stage, in her testimony she states that "we remained in the house while the works were being made. Mr. Horzella paid for the works – he wanted to do them. My father took no action."[9]

"On his part, defendant explains that he never knew that the villa was transferred to Patti Limited, and continued to believe that it belonged to plaintiff's father. He states that he had paid for the improvements from the proceeds of the sale of a flat he had in Paris before he got married…. The works lasted for over a year. T always agreed with these alterations. I never did anything against her will."[10]

"Plaintiff's father states that the alterations were made without his consent, and without the consent of Patti Limited. "In fact I denied him permission to do the structural alterations, but he did them all the same."[11] In his evidence given at a later stage, this witness states that "I got to know about these structural changes because my daugther told me about them. I strongly objected on behalf of Patti Limited because they went against the conditions of the contract of acquisition……I used to vist my daughter more than once a month to see my grandchildren. I took no action to stop the works."[12]

"On the matter of consent, the Court observes that whilst the works were in progress, that is from March 1984

[8] Vol.1 – fol.68 para.11
[9] Vol.11 – fol.683
[10] Vol.1 – fol.81
[11] Vol.1 – fol.70
[12] Vol.2 – fol.609

onwards, the property was in fact held under title of perpetual emphyteusis by Patti limited, a company practically owned by plaintiff. Under these circumstances, the Court is inclined to accept defendant's version that the improvements, though wanted by him, were made with the consent of plaintiff who in her affidavit states that "During our marriage we[13] did some structural improvements to the matrimonial home against the consent of the company."

"Regarding her father's consent the Court observes that it results quite clearly that, though plaintiff's father used to go to the house monthly, and though he was told of the works, he took no action to stop them notwithstanding that he states that he strongly objected to the works; also he failed to produce any sort of evidence corroborating his testimony that he "strongly objected on behalf of Patti Limited."[14]

"On the strength of the above, this Court is of the opinion that the works in question were carried out with the consent of plaintiff and the tacit consent of her father, both shareholders in Patti Limited. Also, since plaintiff is the major shareholder in the company who in turn owns the house, then these improvements, done during the marriage, have been in effect been done to her benefit.

"In these circumstances the community of acquests is to be considered as having a credit against Patti Limited for the amount of €21,890.50 [LM9,397.59] afore-mentioned.

"Regarding defendant's claim that the works were paid by him from the sale of paraphernal property, the Court observes that though it results that the works were paid by him, this does not necessarily mean that that the funds were paraphernal. After all, the works were carried out between four and seven years into the marriage during with period defendant, apart from receiving money from abroad, used to practise his profession in Malta[15].

[13] Underligned by the court
[14] Vol.2 – fol.609
[15] Vol.2 – fol.711

Therefore, in default of other evidence showing that the funds were paraphernal, the legal presumption in favour of the community of acquests should prevail.

"Regarding plaintiff's claim for compensation for the increase in the value of the proprerty as a result of the works, the Court observes that, apart from the fact that some of the works were carried out without the necessary permit, defendant knew that the works, which he wanted to make, were carried out on property belonging to third parties, and therefore he is only entitled to the value of the works[16] made by him; and no compensation is due represening the increase in the value of the proprerty as a result of the works.

"Movables

"In this regard the Court observes that both parties have failed to present a list of the movables forming part of the community of acquests.

"Moreover, whilst plaintiff is claiming that when defendant left the matrimonial home "we divided everything we had"[17], defendant maintains that "the furniture in the matrimonial home hasn't been divided yet" and that plaintiff had stolen some of his belongings and locked them up in the garage in Swieqi.[18]

"In this respect, the evidence is very scarce, and, in the cirumstances, this Court can only conclude that the effects which still exist in the matrimonial home are to he divided equally between the parties, and in case of disagreement as to their value, Mr.Vincent Ciliberti is being appointed court-expert, at the expense of both parties in equal shares, to value the items in question; should the parties fail to agree on the partition of the items within one year, then these are to be sold by auction under the authority of the Court and the proceeds be distributed to the parties in equal shares.

[16] Civil Code – Art.1564
[17] Vol.1 – fol.69
[18] Vol.1 – fol.81

"Shares in Patti Limited[19]

"It appears that the parties are in agreement on the following facts regarding this company. On the 2nd January 1984 Eric Pace Bonello, plaintiff's father, had registered the afore-mentioned company, with the latter having 498A Ordinary Shares and 1B Ordinary Shares, whilst a second party having only 1A Ordinary Share. On the 3rd January of the same year, plaintiff's father donated to plaintiff his 498 A Ordinary Shares in the company, as per deed in the acts of Notary Doctor Paul Pullicino, whilst retaining 1A Ordinary Share, and retaining 51% of the voting rights.

"In the deed of donation the parties had agreed that "the said donation is being made on condition that the fruits or dividends thereof shall not form part of the community of acquests existing between the donee Patricia Horzella and her husband Roger Horzella."; and in his affidavit he explains that since he knew that his daughter had problems in her marriage "whenever I wanted anything to be transferred to my daughter, I made it very clear that the defendant had no interest in it."[20]

"In his submissions defendant maintains that, though the dividends of the shares have been expressly excluded from the community of acquests by virtue of the afore-mentioned deed, and in terms of article 1320 [b] of the Civil Code, the company itself, that is Patti Limited, forms part of the community of acquests, since when plaintiff's father had registered the company he had done so on behalf of and in the interests of his daughter and therefore on the strength of the prestanome principle the company is at law considered to be plaintiff's property and thereby forming part of the acquests.

"Defendant also states, that by registering the company in his own name, and the next day donating almost all the

[19] Vol.2 – fols.320 et seq.
[2020] Vol.1 – fol.70

shares to his daugher, plaintiff's father showed bad faith, and that his actions *"iwasslu sabiex wiehed jinduna li hemm xi tip ta'* foul play" with a view to excluding defendant completely from the company itself, as distinct from the fruits of the shares donated.

"In this regard, the Court disagrees with defendant's interpretation that in registering the company, plaintiff's father was acting under a mandate from plaintiff. It results manifestly clear to this Court, that plaintiff's father wished to donate his property to his daughter, lawfully excluding defendant from the donation and the fruits thereof. Plaintiff's father was at law entitled to dispose of his property in any manner he deemed fit, even by registering a company in his own name, transferring most of the company's shareholding to his daughter, and retaining the voting majority in the company - this is a perfectly lawful exercise of ownership, and any reference to the prestanome principle in this regard is unfounded, since the registration of the company and the shares donated to plaintiff were not her property, but belonged to her father, the donor.

"On the strength of the above the Court is of the opinion that the company does not form part of the community of acquests, whilst the 498 A Ordinary shares belong to plaintiff, and defendant is excluded, both from the ownership of these shares and from the fruits thereof.

"Finally, with reference defendant's argument that, as only 20% of the capital of the company have been paid, and just as the community of acquests may be made to pay for the unpaid share capital of the company, it should therefore participate in any benefits due to the company; the Court is of the opinion that, this argument is flawed, since [1] article 1329 limits the liability of the community of acquests to "the extent of the value of the share which such spouse has in the community of acquests."; and [2] the cessation of the community of acquests between the parties is being declared by this judgment, dating from 31st December 1996, and the acquests are being liquidated and assigned to the parties.

"Shares in Brittania Financial Services Ltd.

"Once Patti Limited, is a company having a distinct legal personality, from that of its sharegholders; and once the fruits and interests of the shares of this company donated by plaintiff to his daughter have been excluded from the community of acquests, then defendant has no valid claim at law to the shares acquired by Patti Limited from Brittania Financial Services Limited even though the acquisition took place during the marriage.

"Rainbow World Limited

"In this respect, apart from a reference to this company made by defendant in his affidavit[21], no further evidence has been produced; therefore this Court is not considering this company as part of the community of acquests.[22]

"Regarding defendant's request that the legal referee's report [drawn by Professor Andrew Muscat] be removed from the records of the proceedings, since the legal referee had 1 Ordinary share in Rainbow Company Limited, the Court observes that [1] the legal referee's participation in this company was minimial, almost negligible; [2] that no expert opinion has been given by him in this regard; [3] that no evidence was brought forward by the parties in the proceedings; [4] that even if defendant's pleas were to be accepted,it should not affect the rest of the report regarding Patti Limited, and Brittania Financial Services Limited; [5] finally, it must be stated that the decision regarding the postion of Patti Limited and Brittania Services Limited has been reached by this Court after a thorough examination of the evidence procduced, in the light of provisions of the Civil Code referrring to the regim of the community of acquests, without referring to the report in question.

[21] Vol.1 – fol.78

[22] In his report Professor Andew Muscat states that form a search carried out by him in the Registry of Companies, it results that this company has been dissolved and put in liquidation on the 27th April 1990

"On the strength of the above, the Court has come to the conclusion that defendant's request is not justified, and is being hereby dismissed.

"Bank Deposits and other Monies

"In this regard the Court refers to the legal referee's first report under the section entitled "Kontijiet Bankarji", and adopts her conclusion, save for the sum of LM6,666.66 [equivalent to €15,529.14], indicated in her additional report as paraphernal property belonging to plaintiff.
"A copy of pages 24 and 25 of the first report is being hereby attached to form an integral part of this judgment. [Appendix A][23]

"Vehicles

"The court confirms the legal referee's conclusions in this regard, and accordingly orders that the Range Rover be assigned in its entiretly to defendant."

Having seen the appeal application of defendant whereby he is requesting that this Court varies the judgment in relation to the demands marked number 5 and 6 by revoking the liquidation and distribution of the community of acquests and ordering the said community of acquests to be liquidated and assigned to the parties as detailed in the appeal.

Having seen the reply filed by plaintiff whereby, while rebutting defendant's appeal, she also filed an incidental appeal and requested the Court to vary the part of the judgment finding fault with her for the breakdown of the marriage and also requested that the Court declares that the Bank deposits are her paraphernal property as well as to apply the effects of Article 48 *vis à vis* defendant.

Having seen the appellant's reply to the cross appeal;

[23] Vol.2 – fols.764-765

Having seen that the case was put off for judgment on the 2nd July 2013 after submissions by both counsels;
Having considered that appellant feels aggrieved on three issues as clearly indicated in the appeal application:

"1.4.1 the works carried out in the matrimonial home during the marriage do not form part of the Community of Acquests given that the expenses therefor were settled from proceeds of the sale of an apartment that appellant had in Paris since before the marriage, and consequently the appellant is to be considered as having a credit against Patti Limited for the value of works undertaken during the marriage but paid for with paraphernal monies pertaining solely to the appellant;

"1.4.2 the value of the movabloes in the matrimonial home as detailed in the invoices submitted by the appellant should have been assigned to appellant by reason of the fact that such moveable were easily identifiable, have been enjoyed solely by plaintiff a few years after they were purchased, and any share pertaining to plaintiff should have been declared forfeitable as a result of the application of article 48 of the Civil Code;

"1.4.3 the shares and fruits thereof in Patti limited and in Britannia Financial Services Limited form part of the Community of Acquests and do not constitute the paraphernal property of plaintiff and consequently appellant is to be considered as having a share as partaker of the Community;"

The Court shall therefore treat these issues accordingly.

WORKS EXECUTED IN THE MATRIMONIAL HOME

The Court does not need to discuss the issue as to whether appellant paid through his own paraphernal monies for the improvements mentioned in the appeal application for the simple reason that plaintiff is not the owner of the said property. It is clear from the Court documents (and also mentioned in the judgment) that the

property is owned by Patti Limited, a company set up by plaintiff's father. It was the latter in fact who transferred the property to the same Patti Limited by deed of the 17th February 1984; the company then leased it to the parties.

As this Court recently decided in the case **Aldrin Muscat v. Valerie Muscat** (decided on the 31st May 2013) that:

"Jekk jigi ordnat il-hlas, hija se tkun qed thallas ghal benefikati li saru ghal gwadann tal-propjeta' u l-propjeta' ma hix taghha. Ghalhekk tkun qed issir ingustizzja palesi jekk hija tigi ordnata taghmel dak il-hlas; jekk hlas ghandu jsir dan irid isir minn min huwa l-propjetarju."

MOVABLES IN THE MATRIMONIAL HOME

Appellant is claiming that since the Court of first instance ordered that the movables in the matrimonial home be divided equally between the parties it created an imbalance against him and instead it should have ordered the payment of their value to him. He is also complaining that plaintiff had sole access to the home and therefore could have disposed of a number of these movables.

The Court finds that these claims are also unfounded. There is no proof in the records of the case to suggest that these movables were bought by appellant from paraphernal funds and thus the Family Court was correct in assuming (as the law itself assumes) that these movables also form part of the community acquests between the parties. As for his complaining that plaintiff could have disposed of some of them during the proceedings there is no proof that she did so and appellant could have made use of the means afforded to him by law to prevent or at least minimize this possibility – and he evidently did not do so.

Article 48 of the Civil Code does not apply to this situation since the movables are deemed to be acquired by both parties.

SHARES IN PATTI LIMITED

Patti Limited was set up in 1984 by plaintiff's father and the absolute majority of the shares (498 out of 500) were donated to her a day later.

Appellant claims that these shares ought to form part of the community of acquests; he claims *bad faith and deceit* and that plaintiff's father when setting up the company was in fact acting as his daughter's 'prestanome'. Therefore according to him the company is in fact hers and should form part of the community of acquests. This concept was explained as:

"*il-mandatarju prestanom huwa dak li apparentement jezercita drittijiet ta' propjetarju, mentri fir-realta' huwa semplicement mandatarju. Meta huwa f' din il-kwalita' ta' mandatarju prestanom jakkwista l-propjeta' ta' haga immobbli, ikun hemm att pubbliku li bih tigi trasferita l-propjeta tal-haga u konvenzjoni sigrieta fis-sens li huwa, pretiz akkwirent, mhux hlief mandatarju'* (**Prof. Anthony J Mamo noe vs Nobbli Charles Sant Fournier - Qorti tal-Appell, 2 ta' Mejju 1957).**

In the judgments found in **Vol. XXVIII-60** and **XXXVII-I-350**, it was held that '*il-prestanome li jkun gie verbalment kostitwit mandatarju hu fl-obbligu li jaddivjeni ghal formalita` tal-att pubbliku biex minnu jkun jirrizulta di fronte ghat-terzi li dak l-akkwist, apparentment maghmul mill-mandatarju f'ismu proprju, kien fir-realta` gie maghmul ghal mandant tieghu u jekk il-mandatarju ma jottomperax ruhu ghal dan l-obbligu, huwa jista' jigi kostrett mill-mandant ghal ezekuzzjoni specifika ta' dak l-obbligu tieghu li jittrasferixxi lill-mandant il-fondi akkwistati f'ismu proprju.* Similar judgments are: **Galea v. Gauci** (24 ta' April 1931), **Meli v. Meli** (25 ta' Mejju 1927) and **Briguglio v. Parnis** (28 ta' Dicembru 1928).

Therefore the **intention** of the parties to these kinds of transactions is the main ingredient for a prestanome to exist. In this case it is quite clear that the property was plaintiff's father's and he wanted to donate it to her and to her alone. Indeed it might be argued that he adopted this

perfectly legal measure to prevent appellant from having any share in the company through the community of acquests. Appellant himself suggests that this was the intention of these transactions; therefore it would be going against donor's intention were the Court to accept this claim. There is no question of deceit and bad faith as the appellant claims in the appeal application. Contrary to what he says in the said application, it would be an injustice to accept his request.

The final argument in the appeal application relating to 250 shares acquired by Patti Limited in the company Brittania Financial Services Limited is also rejected by the Court as the said company (Patti Limited) belongs only to plaintiff; thus all its property, including these shares, belong to her.

CROSS APPEAL

As already mentioned, plaintiff filed a cross appeal.

Firstly she feels aggrieved that the First Court found her solely responsible for the breakdown of the marriage. In this regard the Court agrees with the Famliy Court. As our Courts held on several occasions:

"Ghalkemm indubbjament kien hemm ragunijiet ohra ghat-tifrik taz-zwieg, l-adulterju dejjem kien meqjus bhala l-kawzali l-aktar gravi illi ghaliha l-Qorti tawtorizza s-separazzjoni personali." (**Vol XXXVII-parti ii, pagna 693**).

This is invariably also reflected in the apportionment of Court expenses.

Plaintiff's second complaint is that a sum of twenty three thousand, one hundred and twenty seven Maltese Liri and sixty nine cents (Lm23,127.69c) ought to be declared as her paraphernal property since they were donated to her by her father. However as appellant points out in his reply, even according to the latter's testimony this sum consisted of dividends paid in respect of shares plaintiff

held in another company; and according to Article 1320 of the Civil Code:
"1320. *The community of acquests shall comprise –*

"(a) all that is acquired by each of the spouses by the exercise of his or her work or industry;

"(b) the fruits of the property of each of the spouses including the fruits of property settled as dowry or subject to entail, whether the husband or wife possessed the property since before the marriage, or whether the property has come to either of them under any succession, donation, or other title, provided such property shall not have been given or bequeathed on conditions that the fruits thereof shall not form part of the acquests;"

Therefore these dividends also form part of the community of acquests and plaintiff's claim is unfounded at law.

DECISION

For all these reasons, this Court rejects both the main and cross appeals and confirms the judgment of Civil Court (Family Section) given on the 29th May 2012 *in toto.* Both parties are to pay all expenses for their respective appeals.

< Final Judgement >

----------END----------