



MALTA

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

**ONOR. IMHALLEF  
NOEL CUSCHIERI**

Seduta tal-21 ta' Novembru, 2014

Rikors Numru. 130/2002/2

Number on list: 6

**A Bf'isimha proprju u bhala kuratrici ad litem ta' wliedha minuri Eu F**

**vs**

**C D B**

**The Court,**

Having seen the writ of summons by virtue of which plaintiff premised that: from their marriage, which took place on the 23 April 1994, the parties have two children born on the 23 April 1996 and 1 October 1997 respectively; conjugal life between them has become

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impossible for reasons attributable to defendant, namely due to excess and other reasons, and that the marriage has irretrievably broken down; plaintiff had obtained the necessary authorization according to law to proceed with this case; on the strength of the above, plaintiff is requesting this Court to: [1] pronounce the personal separation between the parties for reasons attributable solely to defendant; [2] entrust her with the care and custody of their two minor children; [3] order the cessation of the community of acquests, its liquidation, and division between the parties; [4] establish adequate maintenance for plaintiff and the minor children; [5] apply against defendant sections 48, 50 to 55 of the Civil Code; [6] authorize the plaintiff to live exclusively in the matrimonial home; [7] order defendant to pay all existing debts; with costs against defendant;

Having seen the note of pleas by virtue of which defendant states that: the first, fifth and seventh claim are legally and factually groundless; the breakdown of the marriage is attributable solely to plaintiff due to threats, excesses and other faults, to the extent that the marriage has irretrievably broken down; opposes plaintiff's claim for care and custody of the children; does not oppose the plaintiff's third claim, but contests the her claim for maintenance; the matrimonial home belongs to him as his paraphernal property and that plaintiff has abandoned the matrimonial home for no reason; with costs

Having seen the counter claim by virtue of which defendant premised that: plaintiff has rendered herself guilty of threats, excess and mental cruelty in his regard and also in regard to the two minor children; the marriage has irretrievably broken down as plaintiff has abandoned the matrimonial home for no reason on the 9 January 2002; defendant's attempts to save the marriage were not successful because of plaintiff's behaviour; on the strength of the above, defendant is requesting this Court to: [1] pronounce the personal separation between the parties for reasons attributable solely to plaintiff; [2] assign to defendant, the care and custody of their minor children; [3] dissolve the community of acquests existing between the parties and liquidate, assign and divide the same acquests as the Court shall deem fit and order the plaintiff to return defendant's dotal and paraphernal property; [4] apply, if necessary, against the plaintiff the dispositions of Article 48 *et sequitur* of the Civil Code; authorizes defendant to live in the matrimonial home with the exclusion of plaintiff; with costs;

Having seen the note of pleas by virtue of which plaintiff claims that the allegations made by plaintiff are baseless and that the fault for the marriage breakdown is attributable to defendant owing to threats, excess and mental cruelty committed by the defendant which has given cause for plaintiff to leave the matrimonial home; defendant's claim for care and

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custody of the minor children is being done out of spite; it is the plaintiff who has tried to save the marriage and it was due to defendant's attitude that the situation became untenable and unbearable; plaintiff denies defendant's ground for separation made in her regard.

Having seen all the acts of the case, including the sworn declarations of the parties, the list of witnesses, and the affidavits presented;

Having heard evidence on oath;

Having considered;

### **The Action and the Counter-claim**

By virtue of the present action plaintiff is requesting this Court primarily to pronounce the personal separation between the parties for reasons attributable to defendant, and that the marriage has irretrievably broken down; as well as for this Court to regulate matters consequential to the separation.

On his part, defendant is holding plaintiff to be solely and exclusively responsible for the marriage breakdown, and has also filed a counter claim.

### **The Personal Separation**

The parties married on the 23 April 1995 and have two children from this marriage born on the 23 April 1996 and 1 October 1997.

#### *Plaintiff's Version*

According to plaintiff, the first signs of matrimonial problems manifested themselves after the birth of their son Eon defendant's parents first visit. She complains of their behaviour in

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her regard as being interfering, disruptive and controlling over the day-to-day running and the upbringing of the children.

Plaintiff states that when she tried to point this out to her husband and that only the parties should make decisions concerning the upbringing and welfare of their children she “*was ordered to pack [her] bags and leave*”<sup>1</sup>. This escalated to a point where, according to plaintiff, her husband told her that he did not want her anymore, and gave her a three month notice to leave the matrimonial home, that is, by December 1999.

Plaintiff states that while the defendant was in the United Kingdom in October 1999, after he told her to leave, he transferred to his name their main savings which were in a joint account and refused to give plaintiff any information in this regard. She continues to explain that on the 2<sup>nd</sup> November 1999 defendant abandoned her and their children leaving her with no financial support. He then left to England and refused to provide maintenance even though there was a Court decree<sup>2</sup> to this effect.

She states that decision-making was done totally either by her husband or by his parents, giving examples of decisions made concerning the children, purchase of items for the home, holiday destinations as well as other matters relating to the family's finances. Also, defendant would not disclose information regarding the money and would not discuss with her his salary package, stating that “*I have to beg for money every time I need to buy things*”<sup>3</sup>.

Plaintiff attributes the lack of communication existing between the parties, to the difference in age between the two. “*He continuously stated that he had elevated [her] from a state of poverty and into a state of lavish lifestyle, something that is totally wrong as well as humiliating. I was made to listen to his statements over and over again without any recourse to my stating my feelings*”<sup>4</sup>. Plaintiff claims that she was subjected to name-calling by her husband on a daily basis.

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<sup>1</sup> Vol. 1 – fol. 30.

<sup>2</sup> Vol. 1 – fol 81 document produced by the plaintiff of a copy of a court decree by the Second Hall of the Civil Court ordering maintenance among other things.

<sup>3</sup> Vol. 1 – fol. 53.

<sup>4</sup> Vol. 1 – fol 55.

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After her husband abandoned her and the children in November 1999 she was forced to go back to work on a part-time to keep up with her needs and those of her children.

Plaintiff made allegations of physical and sexual abuse<sup>5</sup> on the part of defendant in her regard. She recalls that the first incident occurred on the 8<sup>th</sup> December 2000 when according to plaintiff her husband pushed her after a heated argument when she tried to stop him from taking their son since he was not in a stable position to do so. The second of the two episodes was *“during the night between the 25<sup>th</sup> and 26<sup>th</sup> June at around 10.00pm I was subjected to continuous verbal and psychological abuse. At a point C turned towards me in an altered and frightening state and put both hands around my throat and commenced to press his thumbs against my windpipe... he only stopped his assault when F, who was present, started shouting, “No daddy No”*<sup>6</sup>.

Plaintiff also claims that defendant watched pornography, and kept at home pornographic material, even though she had unsuccessfully on repeated occasions asked him to stop and dispose of the magazines. She states that *“We would have a serious argument during the day or in the afternoon and then he would want sex at night. When I refused he would just ignore my wishes and continue with his request giving no heed to my wishes”*<sup>7</sup>.

### *Defendant's Version*

Defendant states that there were no major problems before the birth of their two children and identifies the year 1999 as *“the year when there was a turning point in our marriage”*<sup>8</sup>. The arguments between the spouses, concerned mainly the upbringing of the children stating that plaintiff was too rigid whilst on his part he was more lenient and that more patience was needed with the children rather than the obedient regimental style. He states that *“there were serious problems between me and my wife, firstly because of the way she was treating the children and secondly because of her attitude towards my parents. I was also having difficulties at work and all this was giving rise to a lot of tension and we started actually discussing legal separation. I did not wish to separate from my wife but the subject came up”*<sup>9</sup>.

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<sup>6</sup> Vol. 1 – fol 59.

<sup>7</sup> Vol. 1 – fol 60.

<sup>8</sup> Vol. 1 – affidavit a fol. 146.

<sup>9</sup> Vol. 1 – affidavit a fol. 146.

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Defendant describes how, after he had to go to England when his father was terminally ill and subsequently died, on his return he was served with court documents for separation. Consequently he decided that since there was no future in the marriage, he quit his work and left on the 2<sup>nd</sup> November 1999. He claims that since he felt plaintiff wanted him out of the country and out of her life.

On the 31<sup>st</sup> May 2000 he returned to Malta to try and reconcile with plaintiff following correspondence with a marriage counsellor who also spoke to plaintiff. However, things did not change, on the contrary they rather took a turn for the worse, in as far as plaintiff's attitude towards the children, who on occasions began hitting them and pulling their hair.

Defendant attributes the marriage breakdown to two main factors, firstly, the fact that plaintiff married him because he was *"45 and I was of independent means having had a relatively good job, with my own house and quite a number of investments and she was certainly under the impression I was well-off"*<sup>10</sup>. Secondly, the problems in 1999 caused a rift between the parties due to the fact that the plaintiff was not able to cope with the upbringing of the children who were beginning to dislike him and his family.

Regarding plaintiff's allegations of mental, physical and sexual abuse, defendant denies these allegations, and claims that plaintiff made these allegations in an attempt to obstruct defendant from obtaining custody of the minor children.

### *Court's Considerations*

The Court finds that both parties in their own way contributed to the breakdown of the marriage, and therefore responsibility of the breakdown is attributable to both parties. It results quite clearly from the evidence produced that communication between the parties was extremely poor and they were unable to reach a compromise on their differences especially regarding the upbringing of the children. This impediment constituted a serious obstacle to the existence of a peaceful and harmonious matrimonial relationship.

Moreover defendant's difficulty in adjusting to living in Malta proved to be an added obstacle to a peaceful co-existence between the parties. There also seems to have been a degree of hostility between the plaintiff and the defendant's relatives, resulting from undue

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<sup>10</sup> Vol. 1 – affidavit a fol. 146.

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interference on their part in matters concerning the parties' children and other matters. This resulted in plaintiff adopting a manifestly negative attitude towards his parents, which was an added strain on the marriage.

Both parties claimed insensitivity to each others' feelings. sentiments with respect to the other spouse.

Also, wehn the first separation was underway, they tried to reconcile even seeking therapy, however the differences between them were so deep-seated that all attempts at reconciliation proved to be futile, and as a result, on the 9<sup>th</sup> January 2002 plaintiff left the matrimonial home

On the strength of the above, the Court is of the opinion that the evidence fully justify the request for personal separation for reasons attributable to both parties, as their repeated abusive behaviour in respect of one another amounts to "acts of cruelty" in terms of article 40 of the Civil Code in that they rendered matrimonial life and cohabitation between them unbearable if not impossible. However, this Court is not of the opinion that their responsibility to the marriage breakdown is such as to render applicable the sanctions contained in article 48 of the Civil Code.

### **Divorce**

Following an application filed by defendant on the 23 April 2014 whereby he requested that in terms of Article 66 (F) of the Civil Code these separation proceedings be considered instead as proceedings for divorce, and that the demand for personal separation be converted to a demand for divorce, the Court acceded to the request after the parties declared in the sitting held on the 25<sup>th</sup> April 2014 *"that they have been living apart for the past 12 years and that provisional maintenance has been paid regularly. There is no possibility of reconciliation between the parties. The parties agree they both reside in Malta"*.

### **Care and Custody, Access**

Regarding this aspect of the case, it is relevant to point out that, whilst Eis no longer a minor, F is still a minor and will be coming of age on the 1 October 2015

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Regarding their son Liam, it results manifest that unfortunately his health condition and consequent upbringing has been a point of contention between the parties throughout the proceedings as can be seen from the evidence given, medical reports, expert reports and the applications filed by the parties. However, the Court is not satisfied that enough evidence has been produced to establish that his condition is sufficiently severe to the point that he is incapable of working and providing for himself. It is the Court's view that not enough evidence has been produced to prove that this child will in future not be able to lead an independent existence and will have to continue relying on the help of his parents.

Regarding care and custody the Court observes that Eis now 18 years old and therefore, has reached the age of majority so the matter of care and custody is no longer relevant in his regard.

As to F, who has just turned 17, since there appears to be no disagreement regarding her care and custody the Court orders that this be entrusted jointly to both parents so long as both parents continue to reside in Malta, which country is considered by this court to be the child's habitual place of residence. However, the child will be in the effective custody of plaintiff with free access in favour of defendant, which access should be agreed upon with both child and father.

All decisions of an extraordinary nature concerning the health and education of the child will be taken jointly by the parties. However should defendant be abroad and in case the child should require urgent medical intervention the mother's consent for this intervention will suffice, provided it is shown that attempts had been made by her to obtain the father's consent.

### **Maintenance**

#### Children

The legal referee states that *"by means of a decree dated 31<sup>st</sup> January 2002 defendant was ordered to pay the monthly sum of Lm150 as maintenance for plaintiff and Lm210 as*

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*maintenance for the two children*<sup>11</sup>. By means of another decree dated 1<sup>st</sup> July 2003 the Court ordered defendant to pay a further Lm90 monthly as a contribution towards the plaintiff's expense for rent of her house<sup>12</sup>. By means of a decree dated 7<sup>th</sup> September 2009 defendant was ordered to pay a further €75 by way of maintenance. Therefore the present maintenance to be paid by defendant is €1123.22 monthly<sup>13</sup>. Also, the legal referee states that "... in his testimony given on the 15<sup>th</sup> February 2011, defendant declared he was receiving a pension of circa €92 weekly"<sup>14</sup>. Furthermore, during the Court hearing of the 25<sup>th</sup> April 2014 defendant declared that "at present he is only receiving a Maltese pension of 90 euros and an English pension of about 120/130 sterling a week after deducting tax."<sup>15</sup>. Also, by means of a note filed by him on the 22<sup>nd</sup> May 2014, he states that he is receiving a Maltese pension of €466.60 and that he is also receiving a pension from the United Kingdom of GBP 135.49 weekly as transpires from the documents filed together with the note. Hence, at present defendant is receiving €116.65 and GBP 135.49 (approx. €173) for a total of approximately €290 weekly together with any additional bonuses received from time to time.

Bearing in mind the information contained in the previous paragraph, as well as defendant's application of the 21<sup>st</sup> March 2014 and the relative reply filed by plaintiff, the Court orders that defendant pays plaintiff as maintenance for the child F the monthly sum of €180 in addition to half the ordinary expenses relating to the health and the education of the minor until she reaches the age of majority.

However, should either of the parties' children or both, though being of age are *full-time* students with no regular adequate income from full or part-time employment, defendant is ordered to continue paying the above maintenance per child until the child reaches the age of 23 or finishes his/studies, whichever is the earliest. This shall be paid to the plaintiff for as long as the child resides with her, or directly to the child should he or she reside elsewhere.

### Spouses

The Court observes that in view of the fact that plaintiff is capable of working and providing for her needs as she had done in the past, even though she has not worked for a number of years to take care of the family, and also in view of the fact that the parties's children are now of a certain age and have attained a high degree of independence, and that she will be

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<sup>11</sup> A fol. 7

<sup>12</sup> Decree a fol. 200A.

<sup>13</sup> Vol. 6 – fol. 1817.

<sup>14</sup> Vol. 6 – fol. 1818.

<sup>15</sup> Vol. 6 – fol. 1971.

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receiving a hefty sum as her share of the community of acquests, defendant is to pay plaintiff maintenance for her sustenance for a limited period of two years in the sum of two hundred [€200] monthly. However, should defendant pay plaintiff the entire sum of €174,233<sup>16</sup> before the expiration of the two-year period, then on payment of the whole sum his obligation to pay the €200 montly ceases after two months from the said payment.

### Community of Acquests and Paraphernal property

#### Matrimonial Home

From the evidence produced is results manifest that the matrimonial home is the paraphernal property of defendant.

Regarding the premia paid in respect of the house for insurance cover, this Court agrees with the legal referee's conclusion that, since the insurance cover on the matrimonial home is considered to be a benefit to both parties, and their children, who have all been residing therein, plaintiff's claim is unjustified and cannot be upheld.

#### Movables

##### *Cars*

The Court agrees with the conclusions reached by the Legal Referee in stating that "*Plaintiff declares that prior to marriage she had a Citroen AX RE which she exchanged in marriage with another car Subaru Impresa with a top up of €17,703.24 (Lm7600). She is therefore claiming the amount of €2562.31 (Lm1100) representing the exchange price of the Citroen... claim justified... During the separation proceedings defendant bought another car, Subaru Legacy, bearing registration number FBT 619 for the price of circa €32,145.35 (Lm13,800)*"<sup>17</sup>.

The car Subaru Impresa is being assigned to plaintiff while the Subaru Legacy bearing registration number FBT619 is being assigned to defendant. In the absence of a value of the current value of the vehicles, the Court notes that the difference between the purchase value of the two cars was €11,879.80. Therefore, orders defendant to pay onto the plaintiff

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<sup>16</sup> *Infra*

<sup>17</sup> Vol. 6 fol. 1819.

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half said amount, that is, €5,939.90 as well as the claim of €2,562.31 which is the amount representing the exchange of the vehicle she owned prior to marriage.

Also, plaintiff's claims for half the insurance premia paid for the Subaru Legacy cannot be upheld by the Court since these were paid from funds pertaining to the community of acquests, and for the benefit of propretu forming part of the same acquests.

### *Movables in the Matrimonial Home*

During the sitting of the 24<sup>th</sup> May 2006 plaintiff exhibited a document marked Dok MM5<sup>18</sup> consisting of a list of items purchased from April 1995 to the date of the sitting, together with the value of purchase for a total of Lm22,965, in her note of submission<sup>19</sup> plaintiff submitted that the sum "*should be increased by an inflation rate of 4.5% per annum since her departure from the matrimonial home on the 9<sup>th</sup> January 2002*".

The Court shares the legal referee's view that the items have either "*become obsolete or highly depreciated in their value*" and therefore cannot accept plaintiff's claim for the sum indicated by her, much less her claim for any inflation rate. Should any of the items still exist these are to be divided among the parties by agreement. Failure to reach an agreement, within one year of this judgment, the items are to be valued by a technical expert to be nominated by this Court, at the expense of both parties, and the same expert is to divide the movables into two portions of equal value, which portions are to be assigned to the parties by lot in the presence of the expert nominated.

### *Financial Investments*

The Court agrees with the legal referee's considerations made and conclusions reached in the sections of her report entitled "*Financial investments*" exhibited in Vol. 6 fols 1820 to 1822, and adopts same. A copy of this part of the referee's report is being attached herewith and is to be considered as forming an integral part of this judgment. [Appendici.A]

Therefore, the amounts due to plaintiff by defendant are the following:

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<sup>18</sup> Vol. 5 fol. 1325 et seq.

<sup>19</sup> Vol. 5 fol. 1224

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€8,482.27 representing paraphernal sums disbured during the marriage, €2,562.31 representing the value of the Citroen AX which was plaintiff's paraphernal property, and €157,248.38 being plaintiff's share of community of acquests. This brings to a total of €168,292.96<sup>20</sup> which is due to plaintiff, together with €5,939.90 being the difference in the value of the cars. Therefore the grand total due to plaintiff by defendant amounts to one hundred and four thousand, two hundred and thirty three euros [€174,233], and this court is ordering defendant to pay this sum to plaintiff in two yearly installments of equal value, the first installment to be paid by not lated that the 31<sup>st</sup>. December of the current year.

Regarding defendant's submissions that the value of the investments may have decreased todate, and also, that *"he was the one who has been working hard to produce the relative funds."* the court observes that firstly, it results that plaintiff has worked for a number of years during the marriage, and secondly, the fact that plaintiff has stopped working during the marriage with a view to taking good care of the parties' two children and to keep house [which in this case belongs solely to defendant] is certainly a factor to be taken into consideration in the liquidation of the community of assets. It has been repeatedly stated by the Honourable Court of Appeal<sup>21</sup> that the wife's work in the matrimonial home and her work as a mother in the upbringing of the spouses' children has an economic value which cannot be ignored and which must surely have contributed to the husband being in a position to work outside the matrimonial home and increase the financial assets of the community of acquests.

In view of the above the court observes that any loss in the value of the investments held by defendant caused by factors effecting the financial market is offset by his wife's contribution in the upbringing of the children and running the matrimonial home.

### **Decide**

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

[1] acceding to request numbered one, by pronouncing the divorce and stating that both parties are equally responsible for the breakdown of their marriage;

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<sup>20</sup> Vol. 6 fol. 1858.

<sup>21</sup> See by way of example - *App.S. 351/05 Julia Coleiro v Carmel Coleiro, decided on 31 October 2014, and the cases cited therein.*

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[2] acceding to request numbered two limitedly and as established in the section entitled **“Care and Custody, Access”**;

[3] acceding to request numbered three, limitedly, by ordering the liquidation of the community of acquests, and that it be assigned to the parties as above established and ordered in the section entitled **“Community of Acquests and Paraphernal Property”**;

[4] acceding to request number four, limitedly and as established and ordered in the section entitled **“Maintenance”**;

[5] rejects request number five;

[6] rejects request number six;

[7] rejects request number seven

With regards to defendant’s counter-claim, the Court decides within the parameters of the decision on the action.

All expenses are to be borne by both parties in equal shares.

**Judge**

**Deputy Registrar**

**< Sentenza Finali >**

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