Court Of Appeal

Judges

THE HON. CHIEF JUSTICE SILVIO CAMILLERI
THE HON. MR. JUSTICE TONIO MALLIA
THE HON. MR JUSTICE JOSEPH AZZOPARDI

Sitting of Tuesday 15th December 2015

Number:

Application Number: 130/02 NC

Mary Ann Morland in her own name
and as curator ad litem of her minor children
Liam and Elaine

v.

Colin John Morland

The Court:

Having seen the judgement given by the Civil Court (Family Section) given on the 21st November 2014 whereby the Court decided thus:

"**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 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 extend 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

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 Liam on defendant's parents first visit. She complains of their behaviour in 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 partes should make decisions concerning the upbringing and welfare of their children she "*was ordered to pack [her] bags and leave*"[1]. 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

[1] Vol. 1 – fol. 30.

main savings which were in a joint account t and refused to give plaintiff any information in this regard. She continues to explain that on the 2nd 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[2] 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*"[3].

"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*"[4]. Plaintiff claims that she was subjected to name-calling by her husband on a daily basis.

"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 [5]on the part of defendant in her regard. She recalls that the first incident occurred on the 8th 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 25th and 26th June at around 10.00pm I was subjected to continuous verbal and psychological abuse. At a point Colin 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 Elaine, who was present, started shouting, "No daddy No"*"[6].

"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*

[2] 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.
[3] Vol. 1 – fol. 53.
[4] Vol. 1 – fol 55.
[5]
[6] Vol. 1 – fol 59.

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"[7].

"*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*"[8]. 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*"[9].

"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 2nd November 1999. He claims that since he felt plaintiff wanted him out of the country and out of her life.

"On the 31st 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*"[10]. 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

[7] Vol. 1 – fol 60.
[8] Vol. 1 – affidavit a fol. 146.
[9] Vol. 1 – affidavit a fol. 146.
[10] Vol. 1 – affidavit a fol. 146.

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 attibrutable 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 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 9th 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 25th 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 Liam is no longer a minor, Elaine is still a minor and will be coming of age on the 1 October 2015

"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 been 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 Liam is 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 Elaine, 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 31st January 2002 defendant was ordered to pay the monthly sum of Lm150 as*

maintenance for plaintiff and Lm210 as maintenance for the two children[11]*. By means of another decree dated 1st 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*[12]*. By means of a decree dated 7th 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*"[13]. Also, the legal referee states that "*... in his testimony given on the 15th February 2011, defendant declared he was receiving a pension of circa €92 weekly*"[14]. Furthermore, during the Court hearing of the 25th 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.*"[15]*.* Also, by means of a note filed by him on the 22nd 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 21st. March 2014 and the relative reply filed by plaintiff, the Court orders that defendant pays plaintiff as maintenance for the child Elaine the monthly sum of €180 in additon 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 mantenance 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

[11] A fol. 7
[12] Decree a fol. 200A.
[13] Vol. 6 – fol. 1817.
[14] Vol. 6 – fol. 1818.
[15] Vol. 6 – fol. 1971.

she will be 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 <u>two years</u> in the sum of two hundred [€200] monthly. However, should defendant pay plaintiff the entire sum of €174,233[16] before the expiration of the two-year period, then on payment of the whole sum his obbligation to pay the €200 montly ceases after two months from the said payment.

"**Community of Acquests and Paraphernal property**

"<u>*Matrimonial Home*</u>

"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.

"<u>*Movables*</u>

"*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)*"[17].

"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 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

[16] Infra
[17] Vol. 6 fol. 1819.

pertaining to the community of acquests, and for the benefit of proprety forming part of the same acquests.

"*Movables in the Matrimonial Home*

"During the sitting of the 24th May 2006 plaintiff exhibited a document marked Dok MM5[18] 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[19] 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 9th 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 judgement, the items are to 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 fols1820 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 judgement. [Appendici.A]

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

"€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[20] 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 <u>one hundred and four thousand, two hundred and thirty three euros</u> [€174,233], and this court is ordering defendant to pay this sum to plaintiff in <u>two yearly installments of equal value</u>, the first installment to be paid by not lated that the 31st. December of the current year.

[18] Vol. 5 fol. 1325 et seq.
[19] Vol. 5 fol. 1224
[20] Vol. 6 fol. 1858.

"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[21] that the wife's work in the matrimonial home and her work as a mother in the upbring 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 responsable for the breakdown of their marriage;

"[2] acceding to request numbered two limitedly and as establied 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 establied and ordered in the section entitled **"Maintenance";**

"[5] rejects request number five;

"[6] rejects request number six;

"[7] rejects request number seven

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

> "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."

Having seen the appeal application of defendant whereby he is requesting that this Court:

> "... ... ... varies the judgement delivered by the Civil Court (Family Division) above mentioned and proceed to revoke that part whereby plaintiff was accorded maintenance for herself, revoke that part dealing with the payment to plaintiff of her alleged parafernal property, revoke the part dealing with the liquidation and division of the community of acquests and proceed to divide and liquidate the community of acquests in a more equitable manner and in a manner which is less burdensome to the defendant ensuring that defendant will receive his abovemnetioned "inherited estate", his parafernal property and his half share in the community of acquests, with costs of both these proceedings and those of the first instance being borne by the plaintiff."

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 judgement finding fault with her for the breakdown of the marriage and also requested that the Court increases the amount of maintenance awarded by the First Court and that the maintenance awarded for her son Liam shall only be stopped once he is in full time employment.

Having seen appellant's reply to the cross appeal;

Having seen that the case was put off for judgement on the 10th November 2015 after submissions by both counsel;

Having considered:

that appellant feels aggrieved on several issues as clearly indicated in the appeal application;

that however these grievances can be summarised in three, namely regarding the responsibility for the breakdown of the marriage, maintenance and the division of the community of acquests.

The Court shall therefore deal with these issues accordingly and shall at the same time deal with the cross appeal which touches the first two mentioned issues.

RESPONSIBILITY FOR BREAKDOWN OF THE MARRIAGE

It has been held on many occasions that the appellate Court only varies judgements given by the Court of First instance on the facts of the case, *ghal ragunijiet serjissimi u dan biex tikkoregi zball manifest li jekk ma jigix tempestivament korrett ikun sejjer jikkawza ingustizzja cara.* The same

principle was upheld in the case **Phyliss Ebejer v. Joseph Aquilina** (10th January 1995) '*il-Qorti tal-Appell tiddisturba biss id-diskrezzjoni ezercitata mill-Ewwel Qorti f'kazijiet eccezzjonali meta si tratta ta' valutazzjoni ta' fatti."* and in **Joseph Cini v. George Wells** (15 ta' Novembru 2004): "*Huwa principju bazilari segwit minn din il-Qorti ta' revizjoni li fejn si tratta ta' apprezzament u evalwazzjoni ta' provi ta' fatt din il-Qorti qatt ma tiddisturba leggerment apprezzament tal-provi li jkun sar mill-ewwel Qorti sakemm ma jkunx hemm ragunijiet gravi u serji bizzejjed li jissuggerixxu mod iehor*".

However "*Din il-Qorti pero' f'kull kaz tapprezza wkoll li d-dover taghha xorta huwa li tezamina sewwa l-provi mressqa u barra minn hekk, huwa wkoll importanti li l-istess provi u l-konkluzjonijiet ta' kif graw il-fatti in kwistjoni jigu evalwati sewwa u interpretati skont il-ligijiet taghna u l-gurisprudenza l-aktar ricenti u kostanti fil-materja.*" (**Attard et v. Direttur tas Sahha,** Qorti tal-Appell, 31 ta' Mejju 2014).

The Court has examined the records of the case and finds no reason to disagree with its findings and conclusion, namely that both parties were equally to blame for the breakdown of the marriage. It is evident that both parties were responsible for this breakdown as well described in the judgement appealed and quoted above. It is clear to the Court that parties

ended their marriage "*f'sistema costante di vessazione e di disprezzo, di oltraggio e di umiliazioni che rendono almeno inopportabile l'abitazione e la vita comune.*" (**Caterina Agius v. Benedict Agius** – Prim' Awla 13 ta' Gunju 1967). Since plaintiff also appealed on this issue, the Court is therefore dismissing both appeals in this regard.

MAINTENANCE DUE TO PLAINTIFF

Defendant is also appealing with regard to maintenance awarded by the First Court to plaintiff. The Family Court awarded the sum of 200 euros per month for two years as maintenance for plaintiff as well as 360 euros per month for the children until they reach the age of 23 or are employed since they are both still studying although no longer minors. The Court further said that if appellant pays the sum due to plaintiff for her share of the community of acquests within these two years the obligation to pay this maintenance shall cease forthwith.

It results that appellant receives about 1200 euros per month in pensions and thus it appears to this Court that the amount awarded is just and equitable. Appellant has no reason to complain in this regard since in a few years time he will not be paying any maintenance and while still enjoying a generous pension by local standards.

At the same time the Court also feels that plaintiff's claims in her cross appeal are not justified. As aready said the First Court was correct in applying the pinciples of law regarding maintenance and awarded the right amount for the right amount of years. The Court is also dismissing the cross appeal regarding maintenance due for Liam. Although he has a condition which might handicap him it appears that fortunately he is coping very well and is following tertiary education. The Court has no doubt he will therefore be able to find a job commensurate to his qualifications. Naturally if in the future he needs maintenance he may still request it in his own name according to the Civil Code.

The Court therefore is dismissing both appeal and cross appeal in this regard.

COMUNITY OF ACQUESTS

Defendant is also appealing about the way the First Court liquidated the community of acquests between the parties. The Court in fact ordered the defendant to pay plaintiff the sum of 174,233 euros in two yearly installments.

Appellant is also appealing from the decree given in May 2014 which rejected his request to bring further evidence regarding the value of his investments. This Court however agrees with this decree in that it is not acceptable for parties to make such demands so late in the proceedings as otherwise the case would never be concluded; so **it is hereby rejecting this part of the appeal.**

As regards the computation of the community of acquests the Court feels however that some of defendant's grievances deserve to be accepted. He is not correct in stating that since plaintiff did not make an explicit demand for the return of her paraphernal property the Court shoud not have considered it as part of her claims, since a computation and division of the community necessarily implies the computation of such property.

Having said that, the Court agrees with appellant that he should not be ordered to return to the community and thus pay plaintiff the sum of 41,678 euros indicated in page 9 of the legal referee' s report and which were endorsed by the First Court. These include expenses for the dentist, house maintenance and holidays which appellant made during the course of the case. These were normal expenses incurred by appellant according to his life style and he should not be penalised for having had holidays or gone to a dentist while happening to be abroad. Expenses made by

parties to a separation case do not form part of the community of acquests unless they are such as to have manifestly been made to diminish the part which is to be assigned to the other party. **Section 1320** of the Civil Code says in fact that:

> "*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;*
>
> "*(c) saving any other provision of this Code to the contrary, the fruits of such property of the children as is subject to the legal usufruct of the father or of the mother;*
>
> "*(d) any property acquired with moneys or other things derived from the acquests, even though such property is so acquired in the name of only one of the spouses;*
>
> "*(e) any property acquired with moneys or other things which either of the spouses possesses since before the marriage, or which, after the celebration of the marriage, have come to him or her under any donation, succession, or other title, even though such property may have been so acquired in the name of such spouse, saving the right of such spouse to deduct the sum disbursed for the acquisition of such property;*
>
> "*(f) fortuitous winnings made by either or both spouses, and such part of a treasure trove found by either of the spouses, as is by law assigned to the finder, whether such spouse has found the treasure trove in his or her own tenement, or in the tenement of the other spouse, or of a third party:*
>
> "*Provided that such part of the treasure trove as is granted to the owner of the tenement shall belong entirely to the party in whose tenement the treasure trove is found*."

Appellant also complains that the First Court (agreeing with the referee) did not take into account the sum of circa 14,000 sterling which he was keeping for his parents and that when they died this remained part of his assets. He therefore contends that this sum should be considered his paraphernal property. Although no documentary evidence was submitted the version given by appellant regarding this sum is credible; it appears certainly credible that he should have inherited something from his parents who both died during the Court proceedings. Although plaintiff claims that appellant has only raised this issue at this stage this is not correct; appellant had in fact testified about this sum during the hearing before the first court. Thus the sum of 14,000 (circa 17,800 euros according to the rate of exchange applied in the judgement) should also be subtracted from the sum payable to plaintiff. Thus according to this Court the sum finally payable to plaintiff is **114,755 euros**.

In other respects this Court agrees with the conclusions of the First Court.

CROSS APPEAL

As already mentioned, this Court is hereby rejecting both grievances advanced by plaintiff in her cross appeal. Regarding her request that the documents filed by appellant in conjunction with his appeal application be

expunged, these documents have not been considered as relevant to the appeal and thus there is no need for any decision in that regard.

DECISION

For all these reasons, this Court varies the judgement appealed from by ordering appellant to pay the sum of one hundred and fourteen thousand euro seven hundred fifty five (€114,755) instead of one hundred and seventy four thousand euro two hundred thirty three (€174,233); (and) rejects both the main and cross appeals and confirms the judgement of Civil Court (Family Section) given on the 21st November 2014. The expenses for the main appeal are to be borne equally between the parties and that for the cross appeal by defendant respondent.

Silvio Camilleri Chief Justice	Tonio Mallia Justice	Joseph Azzopardi Justice

Deputat Reġistratur
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