

An Issue of Quasi-Contract

*Micallef vs Gravina*¹

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In this case plaintiff is asking defendant to pay back maintenance, which he had paid to her as curator of her minor child. The parties separated by means of a court judgment given on the 30 June 2004 whereby plaintiff was ordered to pay defendant adequate maintenance as fixed by the Court. Plaintiff is now asking for the reimbursement of all he had paid by way of maintenance to the defendant after it was declared that he was not the father of the child. Defendant opposed such a demand.

ISSUE OF PRESCRIPTION

Firstly, defendant claimed that plaintiff's action was prescribed as per Article 2156 Civil Code,² but failed to specify under which sub-article prescription was being invoked. The court cannot 'ex officio' give effect to prescription, where the plea of prescription has not been set up by the party concerned.³ Prescription must be clearly and explicitly indicated.⁴ For the sake of completion, the Court referred to Article 2156(b) which deals with actions for the payment of maintenance.⁵ This action had to be brought by the beneficiary of the maintenance against the debtor of the maintenance however in this case the action was filed by the person paying maintenance against the person receiving it. Therefore, this plea was unfounded and subsequently rejected.

THE REPAYMENT OF MAINTENANCE

Secondly, defendant referred to Article 22(1): *Where maintenance has been furnished, no action will lie for the repayment of such part thereof as may have been furnished after the cessation of the cause for which maintenance was due.*⁶

¹ Mario Micallef vs Sandra Micallef Gravina, Civil Court First Hall, 4 October 2011

² Civil Code, Chapter 16 of the Laws of Malta, Article 2156

³ Ibid, Article 2111

⁴ Francis Bugeja vs Indri Mercieca, Court of Appeal, 29 May 2000

⁵ Civil Code, Article 2156(b)

⁶ Ibid, Article 22(1)

Therefore, this action is precluded when the payment of maintenance takes place after the reason for which it was granted had ceased. Here, plaintiff's demand was limited to the time during which he was obliged to pay maintenance in favour of his daughter as ordered by the Second Hall of the Civil Court (now the Court of Voluntary Jurisdiction) and later on by the Family Court after granting separation up until the date on which the same Court declared that plaintiff was not the natural father of the minor child and maintenance was no longer due. For these reasons this argument was also rejected.

PLAINTIFF'S DEMAND

Plaintiff based his action on Article 1147 of the Civil Code.⁷ The Court outlined the difference between Article 1147 where payment implies a debt (*indebitu ex re*) as distinct from Article 1022(1)⁸ where the debt is paid by mistake (*indebitu ex persona*). Although payment in the latter case occurs by mistake, in the former case, the debt has already been extinguished through payment and no longer exists either because the original cause of the relationship never existed (*condictio indebiti sine causa*) or because the cause ceased to exist at a later stage either because it was annulled or through the happening of a suspensive condition (*condictio indebiti ab causam finitum*). The mistake or otherwise of the 'solvens' is irrelevant since Article 1147 does not provide for it in the same way it is provided for in Article 1022.⁹

Plaintiff paid maintenance under a civil obligation to do so, as imposed on him by law, as the natural and biological father of the child born during his marriage to defendant and because he was expressly ordered to do so by Court decree. Plaintiff could not rid himself of such an obligation until the Court itself had declared that the minor child was not his daughter. Consequently, payment of maintenance was deemed to be 'bla causa originarja tar-rappport li jwassal ghall-obbligu tal-hlas tal-manteniment.'¹⁰

Although defendant claimed that she was not aware of the fact that the child was not the plaintiff's daughter this was irrelevant for the merits of the case because the law dealing with the repayment of a sum which is not due continues to apply despite the fact that the person receiving such payment believes that they have a right to it. Bad faith only arises when the person receiving such sum would have considered how much he would have to pay back to the person affecting such payment.¹¹

Even though plaintiff may have suspected that the child was not his, he was not in a position to stop paying maintenance, without incurring any of the sanctions established by law, until the Court itself released him from paying maintenance after it had declared that this obligation was based on a corresponding legal cause which was inexistent. Moreover, payment was not made in discharge of a natural obligation¹² because this was a civil and legal obligation with its own sanctions even of a penal nature.

⁷ Ibid, Article 1147

⁸ Ibid, Article 1022(1)

⁹ Maria Galea vs Grace Borg, Civil Court First Hall, 12 October 2005

¹⁰ Mario Micallef vs Sandra Micallef Gravina, Civil Court First Hall, 4 October 2011

¹¹ Accountant General et vs Frances Agius et, Civil Court First Hall, 26 October 2001

¹² Civil Code, Article 1147(2)

FINAL DECISION

Finally, the Court rejected all the defendant's pleas and decided in favour of plaintiff since he was not obliged to pay maintenance for a minor who was not his natural child. Defendant was ordered to pay back the sum of €18,114.66 with interest as from the date the action was instituted.