



Civil Court – Family Section

Mr. Justice Robert G. Mangion LL.D.
Dip.Tax (MIT), P.G.Dip. Mediation (Melit.)

Today the 12th day of July 2016

Sworn Application No. 400 / 06RGM

Number on list: 12

L W

vs

X W

The Court,

PRELIMINARIES.

Having seen plaintiff's application whereby he submitted and claimed as follows;

1. *Illi l-partijiet izzewgu fit-tletin (30) ta' Settembru, tas-sena elfejn (2000) fil-Kappella ta' Santa Marija, taz-Zellieqa, Gharghur.*
2. *Illi minn dan iz-zwieg twieldet tifla fl-erbatax (14) ta' Marzu tas-sena elfejn u wiehed (2001) li jisimha F Y W;*
3. *Illi l-hajja konjugali tal-kontendenti saret impossibbli minhabba sevizzi, eccessi, minacci, ingurji gravi, vjolenza psikologika da parti tal-intimat zewgha fil-konfront ta' martu r-rikorrenti b'rizultat li z-zwieg taghhom tkisser irrimedjabilment u r-rikorrenti kellha per forza titlaq mid-dar biex issib rifugju flimkien ma' bintha go 'shelter home' il boghod minn zewgha l-intimat;*
4. *Illi r-rikorrenti kienet u ghadha mwerwra minn zewgha;*

5. *Illi kull tenattiv li sar mir-rikorrenti ghal separazzjoni konsenswali falla minhabba l-intransigenza tal-intirnat zewgha li avza lir-rikorrenti li jried ikissirha akkost ta' kollox;*

6. *Illi r-rikorrenti kellha tfittex ghajnuna minn social workers minhabba c-cirkostanzi prevalenti fid-dar matrimonjali tal-konjugi W aktar u aktar minhabba l-agir irresponsabbli da parti ta' zewgha fil-konfront tar-rikorrenti kif ukoll fil-konfront ta' binthom;*

7. *Illi dan huwa t-tieni zwieg tal-intimat zewgha;*

8. *Illi r-rikorrenti taf b'dawn il-fatti personalment;*

9. *Illi ghalhekk kellha ssir din il-kawza.*

Ghaldaqstant, in vista tal-premess, ir-rikorrenti jitlob bir-rispett li din l-Onorabbli Qorti joghghobha:-

1. *Tiddikjara u tippronunzja s-separazzjoni personali bejn il-konjugi W ghar-ragunijiet pemessi unikament imputabbli lill-intimata;*

2. *Taffida l-kura u l-kustodja tal-minuri F Y W lir-rikorrenti salv dawk il-provvedimenti xierqa u opportuni fl-ahjar interess tal-minuri;*

3. *Tillikwida, tiffissa u tordna lill-intimat ihallas manteniment xieraq u adegwat skond l-introjtu finanzjarju tal-intimat, u dan kemm ghat-tifla minuri u kemm ghar-rikorrenti, pagabbli lir-rikorrenti;*

4. *Tiddikjara li l-intimat iddekada mid-dritt ta' manteniment;*

5. *Tiddikjara xolta l-komunjoni ta' l-akkwisti ezistenti bejn il-kontendenti;*

6. *Tillikwida l-istess komunjonijoni ta' l-akkwisti li ghandha tinqasam f'zewg partijijiet mhux necessarjament ugwali b'tali mod li jekk ikun il-kaz, l-intimat jitlef kull jedd li ghandu ghal nofs l-akkwisti illi qabel u waqt iz-zwieg kienu saru l-aktar bi hlas u hidma tar-rikorrenti;*

7. *Tapplika kontra l-intimat interament jew in parti l-effetti kontemplati fl-artikoli 48, et seq tal-Kap 16 tal-Ligijiet ta' Malta;*

8. *Taghu kull provvediment iehor skond ic-cirkostanzi;*

Bl-ispejjez kontra l-intimat li huwa minn issa ngunt in subizzjoni.

Respondent filed her sworn reply which reads as follows:

1. *Illi preliminarjament l-intimat jirrileva li huwa pprezenta rikors guramentat ghas-separazzjoni personali fl-ismijiet inversi u jissottometti li r-rikors guramentat odjern jimxi kontestwalment mar-rikors guramentat prezentat minnu fl-ismijiet fl-ismijiet X W vs L W (Rik. Gur. Nru. 410/06 NC);*

2. *Illi l-intimat jaqbel li tigi pronunzjata s-separazzjoni personali ta' bejn il-partijiet izda mhux ghall-tortijiet imputabbli lilu izda ghall-tortijiet imputabbli esklussivament lir-rikorrenti stante li hija rrendiet ruhha hatja kontra l-esponent zewgha ta' abbandun tad-dar matrimonjali, sevizzi, eccessi, minacci u ngurji gravi kif ser jigi pprovat tul it-trattazzjoni tal-kawza. Illi ghaldaqstant l-esponenti ma ghandu jbati ebda spejjez ghal din il-procedura;*

3. *Illi l-intimat qed jopponi ghat-tieni talba tar-rikorrent li tigi fdata l-kura u kustodja tal-minuri F Y W u jitlob li l-kura u kustodja tal-minuri tigi fdata f'idejh jew altrimenti f' idejh iz-zewgt genituri konguntivament b' access liberu u ampju favur iz-zewgt genituri;*

4. *Illi l-intimat qed jopponi ghar-raba' talba tar-rikorrent limitatament f' dak li jirrigwarda t-talba ghal-manteniment ghar-rikorrenti personalment u dan peress li r-rikorrenti tahdem, kapaci tmanti lilha nnifisha u ghandha introjtu tajjeb u ukoll peress li l-ksur taz-zwieg ta' bejn il-kontendneti huwa attribwibbli lilha kif ser jigi provat tul it-trattazzjoni tal-kawza;*

5. *Illi l-intimat qed jopponi ghar-raba' talba peress li huwa ma kienx hati tal-ksur taz-zwieg ta' bejn il-kontendenti;*

6. *Illi l-intimat ma huwiex qed jopponi ghas-sitt talba limitatament f'dak li jirrigwarda likwidazzjoni tal-komunjoni tal-akkwisti imma qed jopponi ghat-talba tar-rikorrenti li huwa jitlef kull jedd li ghandu ghal nofs l-akkwisti illi qabel u waqt iz-zwieg kienu saru l-aktar bi hlas u hidma tar-rikorrenti u dan peress li huwa ma ghandu ebda' htija ghal din il-firda;*

7. *Illi s-seba' talba tar-rikors promotur hija opposta stante li l-intimat ma huwiex responsabbli ghal ksur taz-zwieg ta' bejn il-kontendenti;*

8. *Salv eccezzjonijiet ulterjuri.*

Having seen the minute registered in the sitting of the 8th March 2007 whereby the Court ordered that proceedings are to be conducted in the English language as

plaintiff is English speaking, and parties agreed that the evidence gathered in case number 410/06 NC be considered as evidence produced in this case and vice-versa;

Having seen the report submitted by the Child's Advocate Dr Stephanie Galea filed on the 9th October 2007;

Having seen plaintiff's affidavit filed and confirmed on the 19th October 2007;

Having seen the evidence of the Social Worker Josette Camilleri who gave evidence at the sitting of the 3rd April 2008;

Having seen plaintiff's second affidavit sworn and filed on the 8th April 2008;

Having seen the affidavit of Professor Edwin W and his wife Pearl W, of Grazio known as Horace Micallef and his wife Maria Carmela known as Marlene Micallef, of Captain Francis Gauci and his wife Marika Gauci and of Alex and Sandra Darmanin which all relate to the incident of the 18th May 2008 .

Having seen the affidavit of Antonia Ida van Hunnik-Hiethbrink, plaintiff's mother sworn on the 26th May 2008;

Having seen defendant's affidavit, annexed to a note filed on the 5th January 2009;

Having seen the evidence of Joseph Borg Cardona for Bank of Valletta plc, Audrey Ghigo for HSBC Bank (Malta) plc, David Galea for APS Bank Limited, Jeanette Lepre' Lombard Bank Malta plc and Ilario Zammit for Air Malta , who gave evidence at the sitting of the 29th January 2009 held by the Judicial Assistant Dr. Kenneth Gulia;

Having seen the evidence of Christine Mercieca, Social Worker co-ordinator at Ghabex Centre who gave evidence at a sitting held by the Judicial Assistant on the 3rd April 2009;

Having seen the evidence of Amanda Cordina, Social Worker at the Domestic Violence Unit, who gave evidence at a sitting held by the Judicial Assistant on the 1st June 2009;

Having seen the evidence of Nathasha Bernek , who gave evidence at a sitting held by the Judicial Assistant on the 30th October 2009;

Having seen the report filed by Social Worker Josette Camilleri regarding times and dates of access, dated 13th July 2007;

Having seen the evidence of Gian Franco Selvaggi, given at a sitting held by the Judicial Assistant on the 14th May 2010;

Having seen the minute registered at the sitting of the 15th November 2011 when parties informed the Court that the Gozo property had been sold and parties had received their share of the price according to law, agreed on access times over the Christmas period and agreed further that the minor daughter was authorized to travel to The Netherlands from 26th December 2011 to the 6th January 2012;

Having seen this Court's decree of the 18th April 2013, which ordered the cross examination of plaintiff's mother be conducted via video conferencing in terms of Council Regulation (EC) No. 1206/2001 of 28th May 2001;

Having seen plaintiff's note of submissions, Fol 886 et seq, filed on the 25th March 2014;

Having seen defendant's note of submissions Fol 929 et seq, filed on the 19th June 2014;

Having seen plaintiff's additional note of submissions Fol 990 et seq, filed on the 7th July 2014;

Having seen defendant's counter-reply Fol. 1004 et seq, filed on the 5th September 2014;

Having seen the report submitted by the Legal Referee Dr Ludvic Caruana, Fol 1133 et seq, filed on the 13th November 2014;

Having seen defendant's note of questions to the Legal Referee filed on the 26th January 2015;

Having seen plaintiff's note of questions to the Legal Referee filed on the 27th January 2015;

Having seen the Legal Referee's replies in a note filed on the 15th June 2015;

Having seen plaintiff's reply filed on the 15th July 2015;

Having seen plaintiff's final note of submissions filed on the 15th September 2015;

Having seen defendant's final note of submissions filed on the 30th October 2015;

Having seen the numerous applications, replies and relative decrees relating to the access of the parties to their minor daughter;

Having seen that the case is adjourned for judgment.

Having considered the evidence submitted:

PLAINTIFF'S AFFIDAVIT.

In her affidavit Plaintiff attributes the breakdown of their marriage to the complete failure of communication and understanding of defendant. She sought marriage therapy in February 2005, the psychologist being Dr Edward Curmi, which she intended to follow with her husband, but the latter refused to attend and thought it was a useless exercise.

She decided to proceed with the therapy on her own to improve communication with her husband, whom she describes to be obsessive without the 'slightest degree of understanding' in her regard. They met 7 years before they married, when he was in the process of divorcing his first wife Natascha Bernek. She complains of his egoistic behaviour and difficult personality. She knew he had problems in the past, particularly the trauma suffered during his childhood years when his younger sister was killed in dramatic circumstances. She indicates his obsessive behaviour during marriage to be the main problem. Plaintiff calls Defendant Mr. Perfect, he was always right and she was always wrong, he was not only obsessional to the highest degree but also self centred.

She describes him as the perfectionist thinker and obsessional with cleaning. The was house was kept at all times meticulously clean, like a showroom. She had to do all the cleaning, go to work and take care of their daughter. Plaintiff declared that defendant had also an obsession to hoard money. She declared " It has been unbearable for me. It was not a normal life that is expected and accepted in a normal married couple. It was absurd.

I know that my husband has never loved me but only loved me as I knew how to cope with his disorders, problems and his difficulties and I am very sad about that."

" I know he had passed through his first marriage and therefore, it was difficult for him to trust any other woman. But his mistrust developed into an obsession to control everything from money to cleaning!"

She declares that they lived on her modest salary and he used to save all his earnings. He used to keep thousands of Maltese Liri in his desk, with his

obsession of counting the cash. He closed all bank accounts removed all bank papers from the house and had complete control of what they both earned.

Her condition improved with therapy, this made him more obsessive as he was feeling he was losing control over her, their arguing and continuous litigation escalated and she decided she had to safeguard her own and her daughter's sanity and security. She left home in September 2006, the hardest decision in her life as she still loved him but could no longer live with him emotionally. She sought and obtained the assistance of the Domestic Violence Unit of Aгенzija Appogg. Plaintiff and daughter were admitted in shelter were they remained for three and a half months.

She describes how defendant used to tell their daughter that plaintiff, was an unfit mother for her. She recounts in detail what she describes as a terrifying ordeal for her when her husband chased her out of their daughter's bedroom. She was full of fear and trembling all over. She phoned 179 and cried "please get me out of here".

At the Shelter she finally felt she was safe and notwithstanding his terrorizing behaviour the previous month she suggested daily access to the daughter by the father in public areas. She believed then that a fifty -fifty access was positive for the child, she did not imagine then that defendant would take on the proposal literally and divide the hours, including night time, mathematically to the daughter's detriment and without respecting her wishes. She declares that the child faces several problems when she is with her father. He buys her enormous amounts of clothes and presents, he insists she wears the clothes he bought for her, when she is with him, and insists that she changes back to her other clothes when she returns to the mother. He tells her sad stories, tries to convince her that her mother is trying to break the family and insists in asking her if she loves him. Plaintiff declares that defendant's obsessive personality and indoctrination are disturbing and damaging the daughter.

According to plaintiff, defendant dislikes plaintiff's Dutch family, he only visited them three times in Holland even though he has free flight tickets. He used to create problems if her family did not adapt to his obsessive needs. He used to object whenever plaintiff wanted to travel to visit her family with her daughter, saying that they could not afford it when at the same time he was hoarding huge amounts of money in the drawer in the study. Although admitting she is not an expert, Plaintiff believes that defendant might suffer from 'obsessive Compulsive Personality Disorder'. Finally plaintiff claims that her share of the community of acquests refers to the salaries they had received from their respective employments which she quantifies in the amount of LM65,291.

DEFENDANT'S AFFIDAVIT.

Defendant filed his affidavit annexed to a note filed on the 5th January 2009, Fol 484. He contests plaintiff's accusations against him as being completely untrue and false, and are merely an attempt to tarnish his name and reputation. He declares to be aware of responsibilities towards his daughter, and claims that he fully respects the Court's joint care and custody decree following reports of three social workers. He accuses plaintiff of using their minor daughter as a pawn, and this constant pressure is having a negative effect on the child who is at a most sensitive age. He denies having a girl-friend and insists that no person other than immediate family members have slept at his house even when their daughter was not in his custody. He re-iterates that he makes it a point to give his daughter 'prime time' whenever she is with him, he never keeps her in the company of other persons, as plaintiff sometimes does. He objects to the unethical methods carried out by plaintiff to extract information from the minor child which can be traumatic and can cause harm and distress to the child. He declares that plaintiff was irresponsible when she kept their daughter for three whole months in a shelter home. He accused plaintiff of being the cause of continuous pressure and unhappiness on their daughter with physical or psychological ill effects.

X Mark W, filed an affidavit in the case 419/06 where he is the plaintiff, Fol 39. annexed to a note filed on the 5th January 2007. He declared that he met his wife in the summer of 1995. They married on the 30th September 2000, two years prior to that, as from 1998 they lived together at his residence in San Gwann. The house is his personal property as he had been living there since 1991. He had asked her to move in with him as she had financial problems with her employer and had to repay the amount of LM3,500. Their daughter was born on the 14th March 2001. She was baptized as a Roman Catholic and attends a Church school. defendant claims that his wife does not practise any religion. The first few years of their marriage were fine, they both worked, were supportive to each other, had a good social life and travelled for holidays at least twice a year. Defendant claims that in 2001 plaintiff changed her job and there was a change in her behaviour. She started her consultations with Dr Edward Curmi, a Psychologist. Defendant claims that plaintiff had problems originating from her childhood days as her father was an alcoholic and bullied members of the family.

Subsequently his wife was suffering from symptoms that severely disturbed her sleep at night. His wife consulted an ENT Specialist and the tests ruled out serious medical problems, however it resulted that she was suffering from a severe hearing disorder caused by a congenital maldevelopment of the inner ears. This made her moody and affected her behaviour towards other people. She became very assertive and always wanted to have her own way in everything. He tried to accommodate her, however the more he tried the worse she became. He declares his only wish was always to have a happy family life, he played a very

active role in their daughter's upbringing as he had a considerable amount of free time being a pilot because of legal flight time limitations and seasonality of work schedules. On the other hand, her job in the Tourism Industry was very demanding particularly in the Summer months. Her attitude towards people at work and towards friends has changed, she started to fall out and quarrel with people due to her changed behaviour being rather bossy, arrogant and imposing in her ways with other people. In the last year before the separation she used to stay longer hours away from home due to pressure of work and she was spending more evenings out with friends. Her drinking habits increased, her friends were Dutch ladies who were divorced with children, and on a number of occasions returned home under the influence of alcohol, felt sick and stayed in bed most of the following day.

In September 2006 she informed him that she had sought legal advice regarding separation. Defendant declares that he was totally shocked and disturbed as he was not expecting it. He asked her for a reason and her reply was "that I was too organized in my ways". He desperately tried to reason things out with her to save the marriage, however to no avail as she had made her decision.

On the 2nd October 2006 he returned home from a flight only to find out that she deserted the matrimonial home taking their daughter with her. There were no justifiable grounds for such an action he said and had no idea where they were and it took him a couple of days to find out that she had taken refuge in a woman's shelter run by the Government Agency, Appogg. Defendant insists that his wife never suffered any form of violence from him and she did what she did because she thought that such an action would serve her interests better. It was very cruel on their daughter who was only 5 years old at the time, especially since they had agreed that if anything happened between them, they should never harm their daughter.

Defendant claims that his wife used their daughter as a pawn through her cruel and malicious behaviour intended to affect him psychologically to succumb to all her demands. He claims that she became even more aggressive after the Social Worker's report recommending that the care and custody of the child should be shared equally between the parents. He declared that he is committed to give his daughter his support, love and attention in this particular period of her sensitive life both at home and at school. He is in agreement and is co-operating fully with the recommendation of the Social Worker, whereas she is sabotaging it. She has closed all means of communication, an irresponsible act on her part, especially as the Social Worker recommended family therapy for the parents at a later stage.

As regards their assets, plaintiff declared that the residence in San Gwann is his parafernal property as it had been completed years before their marriage,

however during the marriage two small structural alterations were carried out, the enlargement of a French window and the building of a concrete roof in the driveway to form a garage. The expense involved amounted to LM8,400. Plaintiff declares he received arrears, from a previous collective agreement which had expired on the 31st March 1999, a payment he received in May, June and September 2001 and that the largest part of this money i.e. LM7,000 was in fact earned well before the marriage.

The property in Qala, Gozo was acquired during their marriage, on which he claims to have a parafernal credit of LM70,000. There was also a loan with Bank of Valletta which was utilized to buy the property in Gozo.

OTHER EVIDENCE.

Antonia Ida van Hunnik-Heithbrink, plaintiff's mother, gave evidence by means of an affidavit filed on the 28th may 2008. She declared that her daughter's marriage centered on the wishes of defendant, his wishes were her command. Despite the difficulties her daughter had faith that that the marriage would eventually succeed. Her daughter was always criticized by her husband. In 13 years the parents only stayed twice at their house, they had to stay in hotels on all the other occasions the came to Malta. When F was born, they were only allowed to see her two weeks after she was born, not before.

He never allowed them to use his extra car, they had to rent one. She noticed her daughter was not happy as there was no affection in their relationship. She was impressed with his obsessive cleaning rituals, his fixation to have everything precise and in its appropriate place.

Her daughter could only take decisions after she had discussed them with X. He always insisted things had to be done his way, he insisted that they should celebrate their 40th wedding anniversary in Malta, when all the relatives and friends lived in Holland and Canada. There was no celebration though as L, in that particular month left the house and the marriage. She describes him as an impossible person to deal with, let alone live with him. His parents were perfect, his parents-in-law were irrelevant.

Witness claims that defendant became even more possessive after September 2006 when L informed him that she had decided to leave him. She could not communicate with her daughter and grand- daughter, he was always there shouting in the background.

In March 2007, as her daughter had work in Holland she came to stay with F, and was so pleased about it as normally she only sees her once a year. X knew about

this and in 3 days he managed to ruin it all as he informed the school that she could not pick up F from school.

Gian Franco Selvaggi gave evidence at the sitting of the 14th may 2010 held by the Judicial Assistent. He declared that he knew plaintiff L W, as she had worked for him in 2000 in the travel industry. He declared that he had once discovered some irregularities as she was selling excursions on the side and keeping the money, with a company from Gozo, Magro. He confirmed that such incidents are unfortunately quite regular in this kind of work, he describes her to be a loner, and acted on her own without asking for any directions, however she was a very good seller and used to sell a great number of excursions. She earned a standard wage, a commission on the sales of excursions, the use of a car and free petrol. Her wages were paid by cheque.

Salvina Frendo Cumbo, Social Worker, submitted her report on the 14th December 2006, Fol 25 et seq. She made the following recommendations:

Due to the fact that both parents are good and devoted parents they should have joint custody of their minor child F. The parents should ensure that their disagreements should in no way affect the well being of the child.

She recommended (i) Family Therapy for the parents; (ii) that not to disrupt the child during school from Monday till Thursday she is to sleep with her mother; (iii) that F sees her father after school until 17 hrs, that it should alternate two or three times weekly, that the Summer holidays be spent equally with both parents, that she spends Mother's day and her mother's birthday with her mother and Father's Day and her father's birthday with her father, that the child visits both her paternal as well as her maternal grandparents, both parents are to be updated on all school issues, and both parents should attend for special occasions.

Advocate Doctor Stephanie Galea nominated by the Court as Advocate for the Child in her report submitted on the 9th October 2007, Fol 132 concludes that in her opinion F is to remain living with her mother, her father having regular access including one sleepover between Saturday and Sunday.

Josette Camilleri, Social Worker, filed her report on the 13th july 2007 Fol 46 in case number 410/2006. She declares to have heard the parties limitedly on the details of the right of access of the father which had already been established to be equal between both parties. The report is limited to the recommendations of the times and dates of access in view of the father's irregular hours of work which presented difficulties in establishing a fixed schedule.

Professor Edwin W and his wife Pearl W, parents of defendant X W in their joint affidavit sworn on the 26th May 2008, Fol 336 declared that they attended their grand daughter's First Holy Communion Cermony at Naxxar Parish Church on

the 18th May 2008. Several family members and close friends attended the same function. F looked serene and happy on this memorable occasion in her life. The Church was well befitting the occasion without being too tiring to the children participating. After the ceremony there was a short photo session both inside and outside the Church.

Since F could remain with her father until 16.30 hrs, when she was to be returned to the mother to spend the rest of the day with her in accordance with the Court Decree, her father organized a family get-together to celebrate the occasion. The buffet party was held round the swimming pool area. F was very happy surrounded by people who were close to her and loved her dearly. F was showered with presents, she was happy circulating around all the guests and enjoying the party. She was wearing her ceremonial white dress. Eventually she started feeling hot in her dress which had also got soiled with food and chocolate so she asked her father to remove her white dress, her father agreed and she changed into casual clothes.

Later on, while her father was busy in the house entertaining the guests, F went back in the house and changed into her swimming costume without the knowledge of her father. When she came out again she promptly jumped into the swimming pool to the delight of all the guests around. They therefore categorically denied that X W “literally threw her (F) into the pool”. This statement is a complete fabrication as they had witnessed F jumping into the pool by herself when her father was not even anywhere in sight in the swimming- pool area. Sometime later, F got out of the pool, went to have a shower and her father dressed her up again in her normal clothes. At about 1600hrs X and F left the party, he drove her to Naxxar to her mother’s residence as previously arranged. They arrived there well before 1630hrs.

Grazio known as Horace Micallef and his wife Maria Karmela known as Marlene Micallef, in their joint affidavit, Fol 338 confirmed that they were invited to the ceremony and the party. They were present at the Church ceremony at the Naxxar Parish Church as well as the party and they helped X getting everything from upstairs to the pool area. They confirmed that F was wearing the Holy Communion dress and that about 1.30pm she asked her father to remove the dress as she was feeling hot and tired as she had been wearing the dress since 9am. X tried to convince her to keep it on for some time, but after a while he helped her change into her normal clothes. Some time after F on her own went back in the house, changed into her swimming costume, came back to the pool area and jumped into the pool. Nobody present was expecting this and F looked very happy in the pool. Nobody encouraged her or physically pushed her into the pool and when she did her father was not near the pool. At about 4pm X told F to come out of the pool to change and go to her mother.

Captain Francis Gauci and his wife Marika Gauci, in their joint statement, Fol 339 confirmed that they are close friends of X W, that they were invited on Sunday 18th May 2008 to F's First Holy Communion at Naxxar Parish Church and that they joined in the party held around the swimming-pool. They confirmed that later in the afternoon, F went into the house by herself and to everybody's surprise came out of the house in her swimming costume and promptly jumped into the pool. Everybody was pleased and even joked with her. At that time her father X was nowhere in sight near the pool area. " We deny completely that her father or any one else prompted F to swim, let alone purposely pushing her into the water. After a considerable time F came out of the swimming-pool, had a shower and her father helped her change into normal clothes".

Alex Darmanin and his wife Sandra Darmanin in their joint statement, Fol 340 confirmed that they have known F since she was a baby, as Sandra is X's first cousin. They were present for the Church ceremony as well as the party at X's house. They also confirmed that after some time F was very hot and tired in her dress and asked to change into normal clothes. At a point she suddenly went back into the house, re-appeared in her swimming costume and quickly jumped into the pool. This happened when X was upstairs in the kitchen preparing more hot snacks. Everybody present was surprised and at the same time happy to see her 'playing like a fish in the pool'. After a considerable time she came out of the pool, had a shower and her father dressed her up again in her normal clothes.

Advocate Doctor Stephanie Galea, nominated by the Court as Advocate for the Child, in her report filed on the 30th September 2008 Fol 394 declared that F is happy with the present arrangement namely that she spends one night with her father in the weekend. She has a good relationship with them both. She recommended that the father's request that F spends more nights with him should not be acceded to.

At the sitting of the 29th January 2009 held by the Judicial Assistant, the Bank's representatives were produced as witnesses to give evidence in connection with bank deposits and accounts held by the parties.

Joseph Borg Cardona, manager at legal office of Bank of Valletta exhibited various bank statements relative to accounts held in their names, marked Dok JBC1 to Dok JBC 14, Fol 458 to 461.

Audrey Ghigo appeared in representation of HSBC Bank Malta plc and exhibited marked Dok AG1 to Dok AG6, Fol 463 to 465.

David Galea, appeared in representation of APS Bank Limited, Fol 467. He confirmed that from the research conducted it resulted that both parties never held any accounts with the Bank.

Jeanette Lepre, for Lombard Bank Malta plc, Fol 470 confirmed that no accounts had been found either in the sole or joint names of the parties.

Ilario Zammit , for AirMalta, Fol 473 confirmed that X Mark W's gross emoluments were Euro 87,592 annually.

Christine Mercieca, co-ordinator at Ghabex Centre, and a Social Worker, Fol 520 confirmed that L W sought help from Appogg. She came to the Domestic Violence Unit and spoke to Amanda Cordina, her Social Worker at the time. She was admitted to the Ghabex Shelter on the 2nd October 2006. She felt that there was too much stress in the household and, at that point she was feeling emotionally and psychologically abused. She stayed there, with F, till the 19th January 2007. She tried her utmost to keep F not involved in what was going on between mother and father.

Amanda Cordina, a Social Worker gave evidence at a sitting held by the Judicial Assistant on the 1st June 2009, Fol 539. She confirmed that she met L W for the first time on the 28th September 2006, who had complained that her husband was emotionally, financially and psychologically abusive. She maintained that her husband was threatening her and that was also impacting on her daughter F. On the 2nd October 2006 her colleague, Alexia Cutajar referred L to the shelter. At the time L was going through the process of separation and she was concerned about the situation at home. She claimed her husband was very controlling financially and he insisted on everything being very clean. This contributed to the fact that F became very anxious particularly if she spilt something on the floor or if something was not in place. At a point L told her that as a couple they were living very independent lives, and that she was not even allowed to go to F's bedroom.

Under cross-examination the witness confirmed that she never talked to Mr W but she did continue to follow Mrs W after their initial encounter. Mrs W was in the Ghabex Centre between October 2006 and January 2007, at that time X W was not seeing F. He was granted access by means of a Court decree.

Nathasha Bernek, gave evidence at a sitting held by the Judicial Assistant on the 30th October 2009, Fol 568. She confirmed that she had met X W over 20 years before and that they were married. They had since divorced and there was also an annulment. She is Austrian and confirmed that the marriage was a very short one. She declared that he was not aggressive, he was normal and the basis of the divorce was that they were very incompatible. She did not recall reporting to the

Police against X for domestic violence. The marriage lasted for only six months they were both very young and inexperienced. She did not agree that X was dependent on his parents. She confirmed that they had separated because of their incompatibility of character.

Children's Advocate Dr Tanya Sammut Catania, in her report filed on the 22nd March 2012, Fol 754, confirmed that in accordance with previous Court Decrees she spoke to the minor child F W at St Dorothy's School, Sliema on the 20th March 2011 at 1pm. The minor confirmed that she lives with her mother in Naxxar, her father had access twice a week, he picks her up after school and keeps her till 7pm; he takes her to religious doctrine on Tuesday and Thursday between 4.30pm and 5.15pm and every Saturday from 9am to 7pm. The minor expressed her wish to continue seeing her father as at present and did not want to sleep over at his house because she did not feel safe and she misses her mother a lot at night. When she had sleep-overs at her father she remained watching television till the early hours of the morning and most times ended up crying or having nightmares.

She stated that she enjoys staying with her father and that he enjoys her company too when he is not in a bad mood.

As regards her mother's working trip to Holland, she stated that she wants to go with her because she does not want to sleep at her father's house during the said trip.

Carmen Sammut, the Court appointed Psychologist, by a note filed on the 1st June 2012, Fol 786, requested the Court to accept her resignation from the appointment. At the sitting of the 4th October 2012, the Court revoked its decree dated 7th March 2012 and nominated instead Psychologist Veronica Ellul. This latter appointment was revoked by the Court at the sitting of the 12th February 2013, Fol 834.

Submissions by the Parties.

The Mother's Submissions

In her note of submissions, filed at the sitting of the 27th March 2014, Fol 886, plaintiff submits that the marriage broke down solely as a result of the husband's behaviour during marriage, on the grounds of excesses, cruelty and threats in terms of Article 40 of the Civil Code as well as due to psychological violence exercised by the defendant leaving plaintiff no other option except to leave the matrimonial home with her daughter and seek refuge in a shelter. Plaintiff therefore claims sole care and custody of the minor child, she requests adequate

maintenance in favour of her minor daughter and the liquidation and division of the community of acquests.

She complains that there was a complete failure of communication or negotiation on her husband's part, lived an extremely obsessive life without the slightest degree of understanding towards his wife and expected her to always agree with him and always insisted that hers was the fault for anything that went wrong in the home. She accuses her husband of managing the family as if he was in the cockpit, she had no choice but to follow his orders, there was no room for her opinions and feelings. She complains that her husband is not only a perfectionist thinker but also obsessed with cleaning. She felt she was constantly in his complete financial, material and psychological control.

She describes the few months before she left the matrimonial home like living in a horror film when he constantly called her crazy and unfit to be a mother. She claims that as a result her health was suffering heavily and she lost twenty kilos in just a month. She submits that his behaviour forced her to leave the matrimonial home since he continually screamed at her and followed her wherever she went in the home.

Plaintiff also refers to defendant's obsession of hoarding substantial amounts of money in a drawer in his study, which he used to count over and over again. He was in complete control of all the money they earned, giving her 'pocket money' every month in an envelope, a ridiculous amount as together they were earning more than LM2000 a month. Plaintiff submitted that he paid for all the expenses from her salary and not from his, which he was saving every month to hoard it away in his desk drawer.

Plaintiff submits that the fault for the breakdown of the marriage falls squarely on the defendant due to his attitude and behaviour namely his obsessive, controlling and manipulating behaviour, that plaintiff's opinion never mattered, only his did, and the way he controlled their finances.

As to the care and custody of the minor child, plaintiff submits that she should be given sole care and custody of the child. She refers to defendant's work schedule which changes from week to week. She claims to be uncomfortable with sleepovers at her father's house.

As regards child support, during the course of the court case defendant was ordered to pay LM100 (Euro233) every four weeks as well as all expenses related to the child's education. In view of the child's present needs, and as defendant earns five times as much as plaintiff, she submits that defendant should contribute

Euro500 a month which would include all ordinary medical, educational and extra-curricular expenses of the minor.

In her note of submissions plaintiff referred to the documents submitted regarding their respective earnings. On average her yearly income is in the region of Euro12,000 whereas defendant's is approximately Euro60,000 per annum, Fol, 921.

She therefore claims as her share of the community of acquests, namely her share of their earnings net of expenses the amount of Euro136,963.02 being made up as follows:

1. € 123,297.70 her share of the earnings less expenses.
2. € 11,044.77 her share of the interest on a Term Deposit Account.
3. € 2620.25 her expenses during the 4 months she spent at the shelter.

As to access of the father to the minor child,, the mother submits that access times should be established taking into consideration the child's own wishes, particularly that there should not be any sleep overs.

Plaintiff further submits that the Court should order defendant to pay no less than € 500 per month as maintenance inclusive of health and educational expenses, in view of the minor's ever growing needs and taking into account his monthly earnings; and that plaintiff should receive from defendant the amount of € 136,963.02 as her share of the community of acquests.

Defendant's Submissions:-

In his note of submissions, Fol 929. Defendant submits:

a) that plaintiff is solely responsible for the breakdown of the marriage as she abandoned the matrimonial home without good reason and because of her excesses, cruelty, threats and grievous injury and subsidiarily because the marriage has irretrievably broken down.

b) that care and custody of their minor daughter should be joint with adequate access to both parents.

c) that he does not object to continue paying maintenance and contribute to the health and educational needs of the child.

d) he agrees that the community of acquests should be terminated and liquidated, however he contends that plaintiff has forfeited her rights at law as she was responsible for the marriage breakdown.

e) that the property 5 “Kololo” Triq Anglu Cilia San Gwann, his parafernal property, is not to be considered as the matrimonial home, and that plaintiff has no rights on the said property.

Defendant submits that plaintiff has failed to prove her allegations as required by law. Plaintiff’s interpretation is not proof but is an unsubstantiated allegation which in itself amounts to “eccessi” under our law.

Plaintiff admitted that she attended therapy sessions for three years, that she had a difficult childhood as her father had problems related to alcohol abuse. She was divorced when she met him whereas he had obtained a Church annulment after a consensual separation. She admitted that she was not a psychiatrist, that her husband was never diagnosed with obsessive behaviour, and that it was her personal opinion.

He refers to the evidence of Natasha Bernek, his first wife, whom he married when he was 20 years old, a witness produced by plaintiff. She declared that there was no violence or aggression during her marriage, they had divorced because they were very incompatible.

He contests any financial hardship as alleged by plaintiff as she retained a substantial part of her salary for her own personal use, he also gave her money every week to pay household expenses.

He refers to the evidence of Gian Franco Selvaggi who according to defendant confirmed that she had problems at work and that she was a loner.

He submits that the care and custody of their minor daughter should remain joint and that major decisions should continue to be taken by both parents in the best interests of the child. In his opinion there is no reason why the latest Court decrees should not be adhered to. There is no justification to alter them, what plaintiff proposed is practically denying the father access to the child.

Defendant refers to the numerous applications made by plaintiff to be granted sole care and custody of the child which have all been refused, and that all Court appointed Social Workers and Children’s Advocate have all concluded and recommended that the parties are to enjoy joint care and custody of the child.

He has always contributed to the financial needs of their daughter. Even though according to the Court decree dated 14th December 2006 he was ordered to pay LM100(Euro233) every 4 weeks, in practise he paid regularly not only educational expenses but also various other expenses such as sports equipment, dental expenses and extra-curricular activities. Plaintiff never asked for an increase in maintenance throughout the proceedings, she is only claiming it at this stage as another act of control on her part to exclude the father from the daughter's life. As regards his hours of work he declared that he has a fixed flight schedule, all flights are short haul his work day never exceeds nine hours, he cannot work more than 100 hours per month and that gives him ample time to dedicate to his daughter. By contrast, plaintiff has long hours of work every day and she is even more busy during the summer months as her job is in the tourism sector.

As regards the immovable property, there is no contention between the parties that the matrimonial home Kololo, Triq Anglu Cilia, San Gwann is his parafernial property. It had been in fact donated to defendant by his parents ten years before his marriage to plaintiff.

The Gozo property "L-Gharix" Triq Cini, Qala, Gozo was sold on the 15th October 2009, a contract published by Notary Dr Enzo Dimech and vendors, the parties, declared that they received individually what was legally due to them. The husband assumed the obligation of paying the balance of the loan, which BOV representative Joseph Borg Cardona at the sitting of the 19th February 2009 confirmed it had been settled in full.

Finally defendant contests plaintiff's money claim as being unfounded in fact and at law.

The Legal Referee confirmed his report at the sitting of the 9th December 2014, the report is at Fol 1132 et seq. His conclusions are as follows:

1. Plaintiff's request for personal separation being the sole responsibility of the defendant should be partly acceded to as defendant should be burdened with 4/5 of the responsibility for the marital breakdown due to acts of cruelty towards the wife, who should be burdened with the remaining 1/5 of the responsibility as she was guilty of 'ingurja gravi' towards her husband;
2. Plaintiff's second request to be given exclusive care and custody of their minor child F is to be dismissed as this is to be kept jointly between the parents;
3. Plaintiff's third request for maintenance for herself and for her daughter to be partly acceded to only in respect of maintenance in favour of the minor daughter,

which should be in the amount of Euro450 per month inclusive of health, educational and extra-curricular activities, which amount is to be deducted directly from defendant's salary and credited to an account indicated by plaintiff;

4. Plaintiff's fourth request to be dismissed;

5. Plaintiff's fifth request to be acceded to, namely to declare the cessation of the community of acquests between the parties with effect from date of judgement;

6. Plaintiff's sixth request to be acceded to, partly, in that her share of the community of acquests is being liquidated in the amount of Euro38,790.43 and dismisses that part of the request where she claims that defendant should forfeit his rights over the property acquired mainly through her efforts;

7. Plaintiff's seventh request, that the sanctions indicated in Article 48 et seq of Chapter 16 of the Laws of Malta are to apply against defendant is to be dismissed;

8. That the property 5 Triq Angelo Cilia, San Gwann should be declared not to be any longer the matrimonial home of the parties;

And that costs should not be taxed between the parties by application of Article 223(3) of Chapter 12 of the laws of Malta.

Both parties contested the conclusions of the Legal Referee, defendant's questions were filed on the 26th January 2015, Fol 1174, plaintiff's questions were filed on the 27th January 2015, Fol 1179.

The Legal Referee's replies to the questions asked by plaintiff were filed on the 15th June 2015 Fol 1194 et seq, and the note containing the replies to the questions asked by defendant was filed on the same day , Fol 1203 et seq.

Plaintiff filed her final note of submissions on the 15th September 2015 Fol 1222 et seq. She declares not to be in agreement with the apportionment of responsibility for the marriage breakdown as established by the Legal Referee and submits that defendant should be held solely responsible. She contests being attributed 1/5 of the responsibility in view of her comments regarding her husband's compulsive and obsessive behaviour, which the Legal Referee concluded to be offensive to the husband as she was not an expert in the field. She submits that she never told him that he was psychologically unfit, but she had reasons to believe that his behaviour was indicative of that particular condition, which should never be considered to amount to 'grievous injury' as concluded by the Legal Referee. Furthermore, her consultant, a clinical psychologist Dr Edward Curmi had confirmed that certain traits in her husband's behaviour could be

attributed to such a condition. However she insists that she never offended him as she never mentioned this to him when they were still living together.

She also contests the Legal Referee's conclusion that she had a drinking problem, and insists that defendant's allegation in this regard has not been proved, and consequently defendant should be held solely responsible for the marriage breakdown.

She further submits that she is in disagreement with the Legal Referee's conclusion that care and custody of the daughter should remain joint and insists in claiming exclusive care and custody of the child.

She claims that her request is justified in view of the fact that there have been various clashes between the parties on matters concerning their daughter and parties practically never agreed when their joint decision was required in matters relating to their daughter.

In default, she should in any case be authorized to decide unilaterally on issues relating to the child's normal educational and health decisions, as well as to be able to travel abroad for 2 weeks every year for a holiday without the need to obtain the father's consent.

She submits that access hours in favour of the father should be flexible, without any sleepovers, so as to accommodate not only the father but particularly the child in view of her school commitments and extra-curricular activities.

As regards child support, plaintiff generally is in agreement with the Legal Referee's conclusions, however she insists that her claim for Euro500 per month as child support is justified rather than the amount of Euro450 per month as recommended by the Legal Referee.

She also disagrees with the Legal Referee who concluded that the husband's alleged financial control was not a determining factor which led to the termination of the marriage. She insists that she was kept on a limited budget which originated from her own salary, while her husband saved up and hoarded most of his income. This in her view was detrimental and put a considerable strain on the marriage.

She strongly contests the Legal Referee's conclusion regarding her share of the community of acquests which he quantified to be in the amount of Euro38,790,43. She contends that there is a substantial difference between what can be accounted for from the banking transactions, and the actual total income earned by the parties during the marriage. Dok JBC3 contains sporadic deposits as against regular and monthly deposits relating to a salary, which confirms that

defendant's earnings until 2003 had not been deposited in that account, and over the same period he had hoarded circa LM40,000 the equivalent of Euro93,174.94, half of the said amount is due to the plaintiff i.e. Euro46,587.47.

She submits that defendant withdrew in January 2006 from the joint account Dok JBC6 the amount of LM16,500 which he deposited in his personal account Dok JBC9 only to withdraw the amount of LM17,000 in September 2006, with no further trace of the amount. She therefore claims half of the said amount LM17,000 i.e. Euro39,600, one half of which amounts to Euro19,800.

She therefore submits that her original claim in the amount of Euro136,963.02 is justified.

Defendant in his final note of submissions, filed on the 30th October 2015 Fol 1249 et seq. declares that plaintiff was principally responsible for the break down of the marriage, subsidiarily he submits that the marriage broke down because of gross incompatibility between the parties.

They married on the 30th September 2000 after cohabitating for two years, their only daughter, F was born on the 14th March 2001. Plaintiff abandoned the matrimonial home and was admitted to Ghabex Shelter, on the 2nd October 2006 together with their child and for two months he had been denied access to the daughter. He referred to the eight reports submitted by the Court appointed experts, throughout the case, namely:

Mrs Salvina Frendo Cumbo, social worker , report dated 30th November 2006
Ms Josephine Pace Caruana, social worker, report dated 12th February 2008
Ms Josephine Pace Caruana, social worker, report dated 16th June 2008
Ms Josette Camilleri, social worker, report dated 13th July 2007
Dr Stephanie Galea, children's advocate,,report dated 9th October 2007
Dr Stephanie Galea, children's advocate, report dated 30th September 2008
Dr Tanya Sammut Catania, children's advocate, report dated 22nd March 2012.

He claims that it was the wife who had psychological problems, not himself, as she had problems with her parents in her upbringing which explains why she sought the advice of psychologist Dr Edward Curmi.

He denies he had a controlling behaviour over his wife, who enjoyed meeting her own friends, particularly towards the end of their relationship.

He contests the Legal Referee's conclusion that he had 'a cleaning mania', and insists that he never mistreated his wife to the extent that she was compelled to

leave the matrimonial home. He further declares that she had a strong personality who insisted that things should be done her way.

He agrees that as the experts suggested, care and custody of the child is to be joint between the parties. He has never opposed any decision which was beneficial to the child. He also accepted that the child travels with her mother for holidays, particularly at Christmas, however he objects to the wife's request to take her abroad all through the school holidays as this would preclude him and his parents to spend time with the minor.

He agrees with the recommendation made by the Legal Referee on maintenance and agrees that this should be made payable directly to the daughter in case she no longer resides with the mother and is pursuing full time education.

Defendant submits that when the Gozo property was sold plaintiff had received the amount of Euro 18,500 being her share of the community of acquests, and this has not been taken into account by plaintiff in her computation. The Legal Referee has also failed to take into account this payment which plaintiff received.

He further submits that plaintiff has failed to take into account the considerable costs incurred in the improvements and maintenance of the Gozo property, and as all major transactions are documented plaintiff's requests should be rejected.

CONSIDERATIONS OF THE COURT.

The provisions of the law relating to Personal Separation are Articles 35 to 66 of the Civil Code, Chapter 16 of the Laws of Malta.

Article 40 of the Civil Code reads as follows:

“Either of the spouses may demand separation on the grounds of excesses, cruelty, threats or grievous injury on the part of the other against the plaintiff, or against any of his or her children, or on the ground that the spouses cannot reasonably be expected to live together as the marriage has irretrievably broken down:.....

Article 41 refers to desertion and reads as follows:

“Either of the spouses may also demand separation if, for two years or more, he or she shall have been deserted by the other without good grounds.”

Article 47 refers to the care of the children and reads as follows:

“During the pendency of the action the court shall give such directions concerning the custody of the children as it may deem appropriate, and in so doing the paramount consideration shall be the welfare of the children.”

RESPONSIBILITY FOR THE MARRIAGE BREAKDOWN.

The Legal Referee examined this issue ‘in extenso’ and concluded “that the conjugal life between the parties is no longer possible mainly due to defendant’s controlling and abusive behaviour which has rendered cohabitation unbearable for plaintiff. The stress and the negative sentiments shown by defendant towards plaintiff undoubtedly constitute ‘sevizzi’ or acts of cruelty in terms of Article 40 of Chapter 16 of the Laws of Malta”. In this respect the Legal Referee further states that “ Defendant’s frequent use of demeaning and insulting words towards his wife resulted in a hostile environment and rendered marital cohabitation unbearable for plaintiff and qualified as act of cruelty”.

The Report also refers to the defendant’s obsession on perfect cleanliness in the house, which was often a contentious issue between the parties and which had a disastrous effect on their relationship. Furthermore defendant was insensitive to his wife’s feelings, a glaring example being the way he completely mismanaged his wife’s plea (not merely a suggestion) to attend together to marriage therapy sessions. In his way of thinking, it was a complete waste of time, whereas for his wife it was their last opportunity to make a serious effort to save their marriage. Defendant had declared that he accompanied Plaintiff on the first visit to the consultant who she had approached in view of her old childhood problems, whereas she insisted that she had approached the consultant specifically to address their marriage problems and he refused to cooperate and participate. Defendant’s negative attitude towards plaintiff’s parents also contributed to the breakdown of their marriage. He was cold and insensitive to them, they were only invited twice throughout their marriage, and they had to rent a car as he did not lend them his extra car which was parked in his garage. Although on the face of it the relationship between Plaintiff’s parents and Defendant should not be a determining factor when assessing the breakdown of a marriage, when one considers that Plaintiff is not of Maltese origin and she does not have her extended family living in Malta, the relationship with her parents increases in importance as to the marital relationship between the parties.

It has been proved that Defendant controlled and managed the couple’s finances. The Court is of the opinion that Plaintiff managed to prove that Defendant had an obsession with money substantial amounts of which he used to keep in a drawer in his study. He was also precise in always leaving the same amount of money, every month for the wife in an envelope with the exact amount, date and signature. However the Legal Referee concluded that Defendant’s control over the

finances of the parties was not a determining factor leading to the breakdown of the marriage. It has been proved by Defendant that notwithstanding his hoarding of cash he still contributed to the requirements of the family, spent holidays abroad with the family twice a year and bought a second residence in Gozo. The financial needs of the family were always met.

In the Court's view, the Legal Referee is right in his contention that this issue was not the determining factor for the marriage breakdown. However when taken into account together with the other particular circumstances of this case leading to the marriage breakdown, the Court concludes that Defendant's controlling attitude and behaviour over all the family finances contributed, albeit on a secondary level, to the dissolution of the marital trust so important in a healthy married life. For a marriage to survive the turmoils and difficulties that crop up from time to time, there must exist the right ambience and relationship where a married couple can have complete trust in one another in all matters relating to the marital bond. From marital faithfulness to matters relating to the finances of the married couple.

For a healthy marital relationship to flourish important financial decisions are to be joint decisions. A situation where the husband decides and then just informs the wife, or even worse, not even inform her, is not conducive to a peaceful and serene atmosphere between the couple, as it is only normal for the party who is unaware of important financial decisions, to become suspicious of the other. In such marital situations honesty is one of the basic requirements to enhance and promote a stable marital relationship. Put simply, important financial decisions should be taken jointly by both spouses.

As to Defendant's submission that Plaintiff went to live in a shelter as a ploy on her part to gain sympathy in the separation proceedings, the Legal Referee concludes that the version of facts as illustrated by Plaintiff is closer to the truth than that given by Defendant. The Court is in agreement. The agitated, emotional and psychological behaviour of Plaintiff was confirmed by the Social Worker, Christine Mercieca, a clear and manifest indication of her emotional stress. It is true that most probably Plaintiff suffers from an anxiety state as Defendant claims. Actually Defendant claims that prior to the breakdown of the marriage Plaintiff was under medical care for her state of anxiety as a result of traumas suffered in her younger years. Plaintiff denies this. However, if for the sake of the argument one were to accept Defendant's version of events in this respect, the Court notes that the parties lived under the same roof for almost two years prior to getting married. The Plaintiff's mental state should have been apparent to Defendant. The Court however believes Plaintiff when she testified that Defendant's behaviour in the matrimonial home made life under the same roof impossible. The Court believes Plaintiff's testimony when she testified that Defendant called her an insane and unfit mother, kept her awake through the night

and made her lose 20 kilos in a week, started following her all over the house, screaming and talking to her for hours full of hate.

The Court is of the view that the fact that the matrimonial home was the paraphernal property of Defendant also contributed to Defendant's negative attitude towards Plaintiff. In the circumstances the Court concludes that Plaintiff was entirely justified to leave the matrimonial home and contrary to what Defendant claims, Plaintiff is not responsible for desertion in terms of Article 41 of the Civil Code.

The Legal Referee concluded that defendant is chiefly responsible for the marital breakdown, however, plaintiff should also shoulder a small part of the responsibility; defendant should be burdened with 4/5 of the responsibility, plaintiff should be burdened with the remaining 1/5. According to the Legal Referee, Plaintiff 'insulted' defendant when she portrays him as a person with mental problems. The Legal Referee concluded that her contention that defendant suffers from an obsessive compulsive personality disorder constitutes 'a grievous injury' in terms of Article 40 of Chapter 16.

At this point it is to be noted that that the Maltese text in the said Article 40 mentions 'offizi gravi' which literally translated should read 'grave offences', whereas in the English text the Article mentions 'grievous injury' which one would normally associate to a serious bodily harm. To clear any misunderstanding the term 'ingurja gravi' is not equivalent to 'grievous injury' but to defamation as defined in Article 252 of the Criminal Code Chapter 9 of the Laws of Malta. The Legal Referee has considered plaintiff's contention, that defendant suffers from this condition, to be insulting and offensive, particularly in view of the fact that she is not qualified or competent to make such declarations.

As regards plaintiff's alleged drinking habits, the Legal Referee concluded that she 'cannot be deemed at fault'.

Plaintiff in her note of submissions subsequent to the filing of the Legal Referee's Report, contested the drinking habit allegation and submitted that she never told defendant that he suffers from a psychological disorder, she never offended him in that respect, however she insists that it was correct on her part to comment on the fact that in certain aspects defendant's behaviour was indicative of that particular condition. The Court does not accept Defendant's submission in this respect. Describing acts of behaviour is one thing, describing acts of behaviour and saying that these are the result of a serious mental condition is another thing. The Court finds fault on the part of Plaintiff in this respect since she failed to establish her allegation that Defendant suffers from a serious mental condition. She had ample time to prove her allegation. Plaintiff could have requested the Court to appoint

a medical expert to prove her allegation. She failed to do so. The Court therefore concludes that Plaintiff's claim that Defendant suffers from a mental pathology by the name of "obsessive compulsive personality disorder" has not been proved. Plaintiff's failure to prove her allegation amounts to grievous injury in terms of the law .

The Court is also of the view that Plaintiff should further shoulder part of the responsibility of the marriage breakdown, in view of her late nights out drinking heavily with friends. Plaintiff has contested this allegation, however defendant's version on this issue is to the Court more credible. For a married person, going out occasionally with friends is not considered as tantamount to gross breach of the matrimonial duties. However going out frequently with friends, returning home late in the night after drinking heavily amounts to gross breach of the matrimonial duties and qualifying as "eccessi u ingurji gravi".

The Court agrees with the Legal Referee's conclusion as regards the apportionment of responsibility for the marriage breakdown. In view of the above considerations the Court is of the view that responsibility for the marriage breakdown should be apportioned as to 4/5 on Defendant and 1/5 on Plaintiff.

As regards the applicability of Article 48 of the Civil Code, the Legal Referee's conclusion is being confirmed. The sanctions contemplated in Article 48 are mandatory only in the case of proven adultery and desertion of the matrimonial home without just casue. In the absence of these two situations, it is in the Court's discretion to apply the Article 48 sanction, in part or in toto. It is the Court's view that the particular circumstances of this case do not warrant the applicaton of the sanctions mentioned.

CARE AND CUSTODY OF THE MINOR.

Plaintiff is claiming exclusive care and custody of the minor daughter. All through this long drawn case, numerous applications have been filed by Plaintiff requesting exclusive care and custody, the Court has appointed several Social Workers and Children's Advocates, who all recommended that it was in the best interest of the child that her care and custody should be joint between the parties.

This issue has been examined 'funditus' by this Court as differently presided by the Hon. Mr Justice Noel Cuschieri in a detailed and motivated Court Decree dated 2nd February 2010.

The Court is of the opinion that it is in the best interest of the child that access by the father to the minor daughter is to be in conformity with the above mentioned Decree with the exception of sleep overs at defendant's residence, as the minor

daughter had expressed her wish with the Children's Advocate that she was not comfortable with sleep overs at her father's house. As the daughter was born on the 14th March 2001 she is now 15 years old, and at her age her wishes should be taken into account.

CHILD SUPPORT.

In her sworn application Plaintiff requests maintenance for herself and for her minor daughter. At the sitting of the 8th March 2007, Fol 17 in Application 410/06 she declared that she was renouncing to her personal claim for maintenance.

A Decree dated 14th December 2006 ordered Defendant to pay 'pendente lite' the amount of LM100 (Euro233) every four weeks by way of maintenance in favour of the minor daughter. Plaintiff in her written submissions is requesting that this amount should be increased to Euro500 per month inclusive of ordinary medical and educational expenses. Defendant submits in his written submissions that throughout the proceedings plaintiff never asked for an increase and her present claim is only intended to completely detach him from his daughter's life.

The Legal Referee, cited various judgements particularly the case decided by the Court of Appeal in the names "Joanne Zammit pro et noe vs Joseph Zammit" decided on the 29th January 2010 which held that the Court can always increase the maintenance of the child even if no specific grievance is raised on this point by the parties, if it deems it to be in the best interest of the child. As the Legal Referee rightly concluded on this issue Plaintiff's inaction to ask for an increase in maintenance does not impair the Court to increase the maintenance if it is in the best interest of the child.

The Legal Referee concluded that Plaintiff's request for an increase in maintenance as submitted in her note of submissions is fully justified and he recommended that Defendant should pay plaintiff the amount of Euro450 per month by way of maintenance for F Y. Actually in her note of submissions Plaintiff indicated the amount of Euro500 per month. In view of Defendant's high salary and the daughter's ever increasing needs, the Court agrees with the Legal Referee's opinion that the child support payable by Defendant for the minor child should be increased to four hundred and fifty euros (€450) per month. .

COMMUNITY OF ACQUESTS.

Parties agree that the matrimonial home Number 5, Triq Angelo Cilia, San Gwann is parafernal property of the husband. Plaintiff, in fact, has not made any claims relating to the matrimonial home.

Parties also confirmed that the Gozo property had been sold and that they had agreed how to divide the proceeds of the sale.

The parties have failed to indicate the movable effects including vehicles, which were acquired during the marriage.

The Legal Referee has suggested that once these items are identified, they can be divided equally between them, or sold and divide the proceeds equally, in case of disagreement on the value a Court appointed expert at the expense of both parties would determine the value. In case parties fail to agree on the partition of the items within one year, they are to be sold by auction under the authority of the Court and the proceeds are to be divided equally between them.

Plaintiff in her written submissions is claiming the amount of Euro136,963.02 as her share of the community of acquests, namely her share from their income which they earned between the years 2001 and 2006.

The Legal Referee concluded that Plaintiff is not entitled to receive any money generated by the couple between the end of 2003 and 2006 as all their income had been deposited in a joint account, on which she had access and control. On the other hand the Legal Referee concluded that she is entitled to a share of the various fixed accounts held by defendant between 2001 and 2002. The Legal Referee examined in detail the various banking transactions, which result from the various banking statements exhibited, and concluded that plaintiff was entitled to receive from defendant the amount of Euro38,790.43 (LM16,652.73) made up as follows:

One half of the amount of LM29,930.54 which resulted to form part of the community of acquests i. e. LM14,965.27;

The amounts of LM964.05 and LM723.41 interests accrued on fixed accounts during the marriage;

A total of LM16,652.73 i.e. Euro38,790.43

Plaintiff's claim for Euro2,620.55 which she declared to have spent during the four months she stayed at the shelter was not considered to have been sufficiently proved by the Legal Referee.

Defendant declared in his questions to the Legal Referee Fol. 1176 that the amount of LM29,930.54 was incorporated in larger amounts which were withdrawn by cheques when the Gozo property was bought.

Plaintiff, in her note of questions to the Legal Referee Fol 1186. questions the fact that given that from the FS3 income statements submitted, the parties during six years of their marriage had earned Euro338,838.40, it is not likely that only the sum of LM 29,930.54 should be considered as being part of the community of acquests.

In his replies the Legal Referee declared that he came to the conclusion that the amount of LM29,930.54 which was deposited in defendant's name, forms part of the community of acquests and it covers the period before the year 2003. In 2003 both parties started depositing their respective salaries in the joint account.

In her final note of submissions plaintiff submits Fol 1235, that the banking transactions resulting from the bank statements exhibited only account for part of the income which the parties had during marriage and that most of defendant's earnings were either not transacted by means of bank transactions or otherwise not kept in bank accounts. She declared that in the years 2001, 2002 and 2003 defendant earned Euro 161,819.63 (LM69,469.17), however the Legal Referee concluded, Fol.1237, that the sum of LM29,930.54 forms part of the community of acquests, most probably the sum covers his income for that period. She submits in this respect that there is a discrepancy of circa LM40,000 (Euro 93,174.94), which belongs to the community of acquests and therefore she is claiming half of the said amount, namely Euro46,587.47. She declared that this confirms that during the first three years of their marriage defendant had hoarded this amount in cash. She also claims the amount of Euro19,800 which represents half of the amount of Euro39,599 i.e. LM17,000 which amount was transferred by defendant from a joint account Dok JBC6 to his personal account Dok JBC9 and subsequently withdrawn by defendant on the 2nd September 2006 with no further trace of the amount. Therefore, apart from the amount established by the Legal Referee i.e. Euro38,790.43, Plaintiff is claiming two other amounts as indicated above, i.e. Euro46,587.47 and Euro19,800 a total of Euro105,177.90. Actually in her final note of submissions Fol.1243 she insisted on her original claim of Euro136,963.02.

Defendant in his final note of submissions declared that the Gozo property L-Gharix, Triq ic-Cini Qala was acquired on the 12th December 2003 and sold on the 15th October 2009. Substantial payments were made in 2003, various cheques are in Plaintiff's handwriting. Furthermore when the property was sold she received the amount of Euro18,500, being her share from the community of acquests. He submits that this amount has not been taken into account in plaintiff's calculations and the Legal Referee's report. He agrees that they had a good income and declares that they had various expenses, lived a good life and spent considerable amounts particularly on the upkeep of the Gozo property,

entertainment and wellbeing of the child. He declares that plaintiff's claims should be rejected.

Plaintiff has arrived at the conclusion that there was a discrepancy of cirka LM40,000 in the first three years of the marriage simply by comparing the amount indicated in the bank statement to the amount earned by the couple in the same period. However, as Defendant has rightly pointed out, in 2003 they had several extraordinary expenses as at that time they bought the Gozo property. They definitely had other numerous expenses, therefore plaintiff in this respect has not sufficiently proved her claim as is required at law.

As regards her claim for the amount of Euro19,800, as she submitted in great detail in her final note of submissions there is an audit trail in the banking transactions confirming that funds were transferred from the joint account to defendant's personal account, and subsequently no trace of the funds. This claim is justified as there is no doubt that the original amount pertained to a joint account which is the property of the community of acquests.

Defendant's claim to set off the amount of Euro18,500 which plaintiff received as her share when the Gozo property was sold is not legally justified as the said amount relates to plaintiff's share from the acquests from that particular property only.

The Court therefore concludes that Plaintiff's share of the community of acquests is as follows:

Euro38,790.43 as determined by the Legal Referee

Euro19,800 as indicated above.

A total of **Euro58,590.43**.

Divorce.

By judgment given today in the case number 410/06 the claim for personal separation has been amended to a claim for divorce.

DECIDE

In view of the above reasons the Court,

1. Accedes in part to Plaintiff's first claim as amended and accepts in part Defendant's second plea, and declares that Defendant shares four fifths (4/5) of the responsibility for the breakdown of the parties' marriage and Plaintiff shares

one fifth (1/5) of the responsibility for the breakdown of their marriage for reasons mentioned above. Consequently the Court pronounces the divorce of spouses W.

2. Rejects Plaintiff's second claim and accepts Defendant's third plea, and orders the joint care and custody of both parents over their minor daughter F Y.

3. Accedes in part to Plaintiff's third claim, and accepts Defendant's fourth plea. Orders Defendant to pay Plaintiff by way of child support for the minor child F Y W the sum of four hundred and fifty euros (€450) per month with effect from today, which is inclusive of ordinary medical and educational expenses. Extraordinary medical and educational expenses of the child are to be shared by both parties in equal shares between them. Child support and payments in respect of extraordinary medical and educational expenses are to be paid directly from defendant's salary in a bank account indicated by plaintiff; child support previous to this judgment is to be regulated by the Court's decrees pendente lite.

4. Rejects Plaintiff's fourth claim and Defendant's fifth plea.

5. Accedes to Plaintiff's fifth claim and declares the cessation and termination of the community of acquests existing between the parties;

6. Accedes in part to plaintiff's sixth claim, and rejects Defendant's sixth plea. Liquidates the assets of the community of acquests as stated above, declares and orders Defendant to pay Plaintiff the sum of fifty eight thousand, five hundred and ninety euros (€ 58,590) by way of Plaintiff's share from the division of the community of acquests and dismisses that part of the claim where she requested that Defendant should forfeit his rights over the property acquires through plaintiff's efforts; Declares that defendant's parafernal property at number 5, Triq Angelo Cilia, San Gwann is no longer considered as being the matrimonial home of the parties.

7. Dismisses plaintiff 's seventh claim.

Costs are to be paid as to four fifths (4/5) by Defendant and as to one fifth (1/5) by Plaintiff.

Judge

Deputy Registrar