



**CIVIL COURT
(FAMILY SECTION)**

MR. JUSTICE ONOR. ANTHONY VELLA

Sitting of Thursday 11th April 2019.

Warrant of Prohibitory Injunction: 55/2019/2 AGV

AB

Vs

CD

Having seen the prohibitory injunction filed by AB on the 18th March 2019, declares on oath;

1. Whereas contextually with this application the plaintiff has filed a mediation letter where in is asking that care and custody, maintenance and access of the childrens' two minor children aa regulated:
2. Whereas the parties have two children namely, EFDB born on the 14th November 2010 as results from the birth certificate attached and marked

As Document A, and GHDB born on the 5th April 2012 as results from the birth certificate attached and marked as document B;

3. Whereas the parties reside in Malta and the children are habitually resident in Malta.
4. Whereas the parties have an English passport results from the copy of their passports attached and marked as Document C;
5. Whereas the defendant had taken the children illegally from Malta and the minors were returned to Malta after procedures were undertaken in the United Kingdom as results from the decree attached and marked as Document D;
6. Whereas the plaintiff has a founded fear that the defendant will try to take the minors out of Malta again;
7. Whereas the applicant has an interest that the minors below mentioned are not taken out of Malta;
8. Whereas the defendant is the person who has the factual care and custody of the minors;
9. Whereas the plaintiff had a well-founded fear that the defendant goes abroad again with the children without informing the plaintiff as she has already done;

Therefore, the plaintiff humbly asks this Honourable Court to order the warrant of prohibitory injunction against the defendant whereby she is prohibited to take the minors EFDB and GHDB outside of the Maltese Territory or to permit anyone else to take the said names minors out of the Maltese territory.

Having seen the reply filed on the 9 April 2019 by respondent CD, in the Maltese language, which outlined the following;

1. Illi fl-ewwel lok ghandu jirrizulta illi wiehed mit-tfal imsemmija fir-rikors huwa rikonoxxut mir-rikkorenti li EFDB waqt li iehor GHDB li

ghandu seba'(7) snin qatt ma intavola procedura biex jigi rikonoxxut u ghalhekk dawn il-proceduri ma japplikawx ghall-ewwel tifel;

2. Illi di piu' hemm l-ordnijiet mill-Qorti Ingliza sabiex dawn it-tfal jingiebu Malta u l-passaport taghhom jinaghataw lir-rikorrenti u ghalhekk dawn il-proceduri huma superfluwi u inutili;
3. Illi dar-rikors gie intavolat biss sabiex twahhal spejjez lill-intimat sabiex jivversa lill-intimat ghax ma hemmx bzonn li jigu intavolat dar-rikors;

Ghaldaqstant, l-esponenti bir-rispett titlob sabiex dar-rikors jigi michud bl-ispejjez kontra r-rikorrenti.

Having seen all the evidence brought by the parties;

Having seen all the documents exhibited;

Having heard the final submissions;

Deliberates;

This is a warrant of prohibitory injunction filed in terms of Article 877 of Chapter 12 of the Laws of Malta. The facts of the case are as follows. The parties are parents to two minor children, and applicant has filed this precautionary warrant on the strength of a decision issued by the Royal Courts of Justice in London, after respondent had fled Malta together with the children to the UK and was duly ordered to return to Malta by means of the same decision referred to herein. Applicant is claiming that he has a founded fear that respondent may try to take the children again out of Malta, and consequently is requesting this Court to uphold his pleas to have respondent prohibited from doing so.

Respondent, on the other hand, is claiming that she only took one child out of the country, and that these procedures are now superfluous following the order given by the London Court. She also declared that she is going to abide by the orders given by that Court and will be depositing the children's passports in the Maltese Courts in the coming days.

The nature of these precautionary warrants is such that the level of proof and of evidence tendered is only up to the basis of *prima facie*, that is, if at first glance the threat perceived by applicant that the child or children may be taken out of the country can be deemed to be a real one. Given the facts of the case as presented by both parties, where it clearly transpires that respondent did actually leave Malta with one child or with both, for that matter, and that she was actually ordered to return to Malta, which she did, is sufficient reason to *prima facie* uphold the issuing of this warrant as requested.

Article 877 of Chapter 12 of the Laws of Malta provides:

877. (1) A warrant of prohibitory injunction may also be issued to restrain any person from taking any minor outside Malta.

(2) The warrant shall be served on the person or persons having, or who might have, the legal or actual custody of the minor enjoining them not to take, or allow anyone to take, the minor, out of Malta.

(3) The warrant shall also be served on:

(a) the officer charged with the issue of passports enjoining him not to issue, and or deliver, any passport in respect of the minor and not to include the name of the minor in the passport of the minor's legal representatives or in the passport of any other person; and

(b) the Commissioner of Police enjoining him not to allow such minor to leave Malta.

In the course of counsels' oral submissions before this Court, it became increasingly evident that the minor children, EFDB and GHDB, should not be permitted to leave the Islands of Malta and Gozo, until such time as the Maltese Courts, in a final judgement on the merits of the case, have decided the various questions relating to the said minor child.

The Court is of the opinion that, given the events of the recent past, the issuing of this warrant was a necessary precaution, and the Court will be confirming its effects as per the relevant Articles under Maltese law.

DECIDE

Therefore, this Court, having seen Articles 873 to 877 of Chapter 12 of the Laws of Malta;

Is of the opinion that all the essential elements of the prohibitory injunction concur.

For these reasons the Court;

Upholds the issuing of the warrant as requested;

Grants the request made by applicant;

And furthermore, orders that respondent be prohibited from taking the said minor children out of the Maltese Islands.

Orders respondent to deposit the passports of the minor children with the Court Registrar.

To this end the Court orders that a copy of this decree be notified to the Director (Civil Registration) as Officer in charge of the issuance of passports within the Passport Office and Commissioner of the Police as Principal Officer of Immigration.

All costs of these proceedings are to be borne by respondent.

Mr Justice Onor. Anthony Vella
Judge

Cettina Gauci
Dep Reg