

**CIVIL COURT
(FAMILY SECTION)**

**MADAM JUSTICE
JACQUELINE PADOVANI GRIMA LL.D., LL.M. (IMLI)**

Hearing of Wednesday 12th June 2019

App. No. : 11/2019 JPG

Case No. : 25

**FS
vs
SS**

The Court,

Having seen the sworn application of divorce filed by FS, dated 10th January 2019, a fol 1 et seqq., where in it was held:

1. *That the parties married on the twentieth [20] of July of the year nineteen seventy four [1974] [vide Dok A] and from this marriage a child was born who is today of adult age;*
2. *That the parties were duly authorised to proceed with the contract for personal separation [vide Dok B] by means of a decree issued by Civil Court [Family Section] dated the tenth [10] of October of the year two thousand and eighteen [2018];*
3. *That the parties have been de facto separated as from the year two thousand*

and ten [2010] as evidenced by clause fifteen [15] of the contract of separation;

- 4. That there is no reasonable prospect of reconciliation between the parties since besides being de facto separated since the year two thousand and ten [2010], as today they both lead separate lives;*
- 5. That in accordance with clause nine [9] of the separation contract, the parties have renounced in a definite manner from their right to demand maintenance from one another;*
- 6. That, therefore there are no arrears of maintenance;*

That these above indicated facts satisfy all the necessary requisits for attaining divorce according to Article 66B of the Civil Code, Chapter 16, of the Laws of Malta;

Therefore, the plaintiff humbly requests this Honourable to:

- 1. Pronounce the dissolution of the marriage between the parties;*
- 2. Orders the Registrar of Courts so that within the given period by the Court, informs the Director of the Public Registry of the dissolution of the marriage of the parties and for the same to be registered in the Public Registry.*

With costs,

Having seen that the application and documents, the decree and notice of hearing have been duly notified in accordance with law;

Having seen the sworn reply of SS dated 6th February 2019, a fol 19 et seqq., wherein it stated:

- 1. That preliminary, the respondent submits that she is not a Maltese National,*

and although she has been residing in Malta for thirty years, she is not fluent in Maltese and cannot read in Maltese – a fact well known to the applicant. Therefore, in accordance with Article 5 of Chapter 189 of the Laws of Malta, the respondent has a right to be duly notified with Judicial Act presented against her in the English Language;

- 2. Since the applicant deliberately chose to not follow the procedure established by Chapter 189 of the Laws of Malta, it follows that the respondent has not as yet been validly notified with the application de quo in terms of the law;*
- 3. That in any case, and without prejudice to the aforesaid, the respondent submits that it is not being contested that the parties have been de facto separated for more than 4 years as evidenced by the contract of separation already presented in the acts of the case and marked Dok.B;*
- 4. That the respondent also confirms that the applicant is not bound to pay any alimony or maintenance to her or their son who is of age;*
- 5. That the respondent also confirms that there is no reasonable prospect of reconciliation between parties.*

Therefore, the respondent does not object to the declaration of parties' Divorce. However, in view of the fact that the applicant did not inform her of his intentions prior to these proceedings, which costs could have curtailed through a joint application, the respondent strongly objects to any costs that are being claimed by the applicant as a consequence of these proceedings.

Save any other order that this Honourable Court may deem fit and necessary.

Having heard all the evidence on oath;

Having seen the exhibited documents and all the case acts;

Having seen the Articles 66A, 66B and 66C of Chapter 16 of laws of Malta;

Considers;

FS testified that the parties got married on the 20th of July 1974, and from this marriage one child was born to the parties, who is now no longer a minor. He explained that the parties have been separated *de facto* since 2010, despite the fact that they only signed their contract separation on the 31st of October 2018. He stated that there are no maintenance arrears, and that there is no prospect of reconciliation.

SS testified and confirmed and corroborated the testimony given by plaintiff.

Deliberates;

Having seen the Articles 66A and 66C of Chapter 16 of Laws of Malta, wherein it stipulates:

66A. (1) Each of the spouses shall have the right to demand divorce or dissolution of the marriage as provided in this Sub-Title. It shall not be required that, prior to the demand of divorce, the spouses shall be separated from each other by means of a contract or of a judgement.[....]

66B. Without prejudice to the following provisions of this article, divorce shall not be granted except upon a demand made jointly by the two spouses or by one of them against the other spouse, and unless the Court is satisfied that:

(a) on the date of commencement of the divorce proceedings, the spouses shall have lived apart for a period of, or periods that amount to, at least four years out of the immediately preceding five years, or at least four years have lapsed from the date of legal separation; and

*(b) there is no reasonable prospect of reconciliation between the spouses;
and*

(c) the spouses and all of their children are receiving adequate maintenance, where this is due, according to their particular circumstances, as provided in article 57:

Provided that the spouses may, at any time, renounce their right to maintenance:[...]

The Court begins by noting that in her reply, while not contesting the divorce, defendant contested the validity of her notification of plaintiff's application, arguing that according to law she has a right to be notified in the English language of any judicial act filed against her. The Court notes however that defendant did not restrict her reply to this contestation, but proceeded to reply to plaintiff's application. The Court considers therefore, in light of the copious jurisprudence on the matter, that defendant's reply to plaintiff's application rectified the defect complained of, such that it is now a moot point.

The Court notes that the record of the proceedings shows that the parties were married on the 20th of July 1974, (vide Dok 'A', a fol 3), and from this marriage they had one child. It has been similarly established that the marriage broke down and the parties obtained a personal separation by means of a public deed in the acts of Notary Doctor Yasmin la Rosa, dated the 31st October, 2018 (Vide Dok 'B', a fol 4 et seqq.).

The evidence proffered also shows that there are no maintenance arrears. It has been proven that the parties have lived separately for more than four years, and that there is no hope of reconciliation between the parties.

The Court considers therefore that plaintiff has satisfied all the requirements imposed by law for the granting of a divorce.

For these reasons, the Court pronounces the dissolution of the marriage between the parties by divorce and orders the Court Registrar to advise the Director of the Public Registry of the dissolution of the marriage between the parties so that this may be registered in the Public Registry.

The expenses of these proceedings are to be borne equally by the parties.

Read.

Mdm. Justice Jacqueline Padovani Grima LL.D. LL.M. (IMLI)

**Lorraine Dalli
Deputy Registrar**