

**CIVIL COURT
(FAMILY SECTION)**

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

Hearing of Wednesday 23rd October 2019

App. No. : 281/2018 JPG

Case No. : 23

EG

Vs

**Dr. Joseph Ellis u l-PL Jean Pierre
Busuttil bhala Kuraturi Deputati sabiex
jirraprezentaw l-interessi tal-assenti
RG, u b'digriet tal-11 ta' Jannar 2019
tordna l-estromessjoni tal-Kuraturi Dr.
Joseph Ellis u l-PL Jean Pierre Busuttil
b'riserva ghad-drittijiet taghhom.**

The Court,

Having seen the sworn application filed by EG, dated 1st November 2018, a fol et seqq.,
wherein it was held:

- 1. That the parties got married on the fifteenth (15) of February of the year
nineteen ninety nine (1999) and from their marriage no children were born;*

2. *That the marriage of the parties has irretrievably broken down for various reasons mainly abandonment by the defendant, such behaviour made conjugal life between the parties impossible;*
3. *That as a matter of fact, the parties have been living separately and therefore defacto separated for the past years. The plaintiff have been living for several years here in Malta whilst the defendant remained living in X;*
4. *That since many years have passed, the plaintiff has no idea where her husband is residing and therefore, there is the need that curators be appointed to represent his interest;*
5. *That the plaintiff was authorized to proceed with the sworn application by means of a decree dated second (2) October 2018;*

The defendant is being called upon to bring forward any reasons why this Honourable Court should refrain from:

1. *Declaring and pronouncing the personal separation of the parties for grave the reasons exclusively imputable to the defendant, amongst other serious reasons, abandonment committed against the plaintiff, as a consequence of the which the marriage has irretrievably broke down;*
2. *Quantifying an amount as maintenance which is to be paid to the plaintiff according to her needs and according to her husband's means and earnings; there shall be a rise in such maintenance according to the index of the cost of living. The court shall also declare that as a result of his behaviour the respondent has forfeited the right of requesting maintenance from his wife;*
3. *Orders that the said maintenance shall be deducted directly from his wages or profits or from any social benefits that he may receiving from time to time;*
4. *To terminate the community of aquests between the parties and to divide the said community of aquests in portions which shall be assigned to the parties,*

whereas a cut off date shall be defined from which date the defendant shall forfeit any right over any assets which was acquired by the plaintiff's earnings. The court shall, if need be, appoint court experts to evaluate the properties of the parties, and also a notary to publish the relevant act and a curator to represent the defendant should he be absent and not appear on the said deed;

- 5. To divide any other common assets belonging to the parties which does not form part of the community of aquests;*
- 6. To order the defendant to refund the plaintiff with any paraphernal credits or assets, which will result during proceedings, as well as any expenses incurred by the plaintiff before marriage, within a short period which shall be determined by the court, in default of which, the court will condemn the defendant to pay the plaintiff the sum as liquidated by the court need be with the assistance of the court experts;*
- 7. To apply in whole or partially against the defendant the effects of the articles 48 to 53 of Chapter 16 of the Laws of Malta including also that the defendant has lost the right of succession related to the applicant;*

With costs against the defendant who is being summoned.

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 filed by the curators Dr. Joseph Ellis (ID 21763G) and P.L. Jean Pierre Busuttil (ID 409171M), dated 10th January 2019, at pg 13, wherein it was stated:

Jeccepixxu bil-qima:

Illi fl-ewwel lok, in-nuqqas ta' kompetenza ta' dina l-Onorabbli Qorti fir-rigward tal-vertenza odjerna ai termini tal-artikolu 742 tal-Kap. 12 tal-Ligijiet ta' Malta stante illi si tratta ta' separazzjoni minn zwieg ikkuntrattat fl-esteru, il-konvenut m'hux resident Malta u l-gudizzju ma jistax jigi nforzat Malta.

Illi bla pregudizzju ghas-suespost, l-esponenti m'humieq edotti mill-fatti li taw lok ghal din il-kawza u ghaldaqstant, jirriservaw illi jdahhlu eccezzjonijiet ulterjuri fl-eventwalita illi jkun hemm il-htiega.

Salv eccezzjonijiet ulterjuri.

Having seen the exhibited documents and all the acts of the case;

Having seen that despite being granting time to do so, both parties failed to file their written submissions on the preliminary plea of jurisdiction;

Deliberates;

This is a judgement following a preliminary plea raised by defendant that this Court lacks jurisdiction to hear and determine this case. According to Defendant, this Court lacks jurisdiction in this case because this is a separation following a marriage contracted abroad, the Defendant is not a resident of Malta and the judgement cannot be enforced in Malta.

The Court notes that Plaintiff failed to produce any evidence before this Court, save for a copy of the parties' marriage certificate. The Court has seen that the parties are nationals of X and that they contracted their marriage in X on the 15th of February 1999. According to the facts indicated in Plaintiff's sworn application, the parties' marriage broke down and they are *de facto* separated, with Plaintiff having moved to Malta alone a number of years ago, while Defendant remained in X.

The Court notes that according to Article 742 (1) of Chapter 12 of the Laws of Malta, unless otherwise expressly provided by law, the civil courts of Malta have jurisdiction to take cognisance of cases brought before them in the circumstances indicated in the same article. This Court shall therefore be examining each of circumstances in relation to the facts of this case:

“(a) citizens of Malta, provided they have not fixed their domicile elsewhere;”

The Court notes that it is undisputed that neither party is a Maltese citizen. Therefore, this

paragraph is not applicable in the present case.

“(b) any person as long as he is either domiciled or resident or present in Malta;”

The Court notes that jurisprudence has interpreted the term “any person” in this sub-article as referring to the Defendant in the case, by application of the principles *actor sequitur forum rei u tal-massima ubi te invenio, ibi te convenio*.¹ In this case, Applicant herself states in her sworn application that Defendant is not present in Malta, as he remained living in X while she moved here alone. Therefore, it is clear that the Court also does not have jurisdiction based on this paragraph.

“(c) any person, in matters relating to property situate or existing in Malta;”

The Court notes that plaintiff failed to produce any evidence, at least on a *prima facie* level, that there is property in Malta which may form part of the merits of the proceedings. There exists only a presumption that the parties have no property in Malta which may form part of the merits of this case, since according to Article 12 of the Marriage Act, while a marriage which is not registered in Malta is valid, **it has no legal effect until it is so registered. In this case it appears that Plaintiff never registered her foreign marriage in Malta.** The effect of that article, coupled with the fact that it does not appear that the parties ever intended to establish either their residence or domicile in Malta as a married couple, leads to the presumption that there never existed between the parties the community of acquests while in Malta, and from this it follows that there is no property in Malta that would form part of this case. Since Plaintiff failed to produce any evidence to rebut this presumption, the Court concludes that its jurisdiction cannot be based on this paragraph.

“(d) any person who has contracted any obligation in Malta, but only in regard to actions touching such obligation and provided such person is present in Malta;”

The Courts notes that the parties contracted their marriage in X, and according to Plaintiff they were already separated *de facto* when she moved to Malta. The Court also notes that their

¹ See for instance, Angelo Cutajar & Sons Limited vs Dr Anthony Cremona et, First Hall of the Civil Court, decided on the 16th of October 2003;

marriage was never registered in Malta and therefore produces no legal effects in Malta in accordance with Article 12 (3) of the Marriage Act. Therefore, this Court also does not have jurisdiction on the basis of this paragraph.

“(e) any person who, having contracted an obligation in some other country, has nevertheless agreed to carry out such obligation in Malta, or who has contracted any obligation which must necessarily be carried into effect in Malta, provided in either case such person is present in Malta;”

The Court begins by reiterating that Plaintiff failed to produce any evidence, and has not even testified in these proceedings. Considering that from the sworn application it transpires that the parties were already separated *de facto* when Plaintiff moved to Malta, it does not appear that there was any agreement that any marital obligations would be carried out in Malta. Furthermore, it does not appear that any marital obligations had to necessarily be carried in Malta, since it does not result from the acts of the case that there was any agreement between the parties that they would establish themselves in Malta as a married couple. Therefore, the Court does not have jurisdiction based on this article.

“(f) any person, in regard to any obligation contracted in favour of a citizen or resident of Malta or of a body having a distinct legal personality or association of persons incorporated or operating in Malta, if the judgment can be enforced in Malta;”

With reference to this paragraph, Plaintiff submitted a copy of the **Protocol on the Law Applicable to Maintenance Obligations dated 23 November 2007** (vide page 26 et seqq.). The Court notes however that X is not a party to this Protocol and therefore it not relevant for the purposes of these proceedings since Plaintiff cannot use a Protocol that X is not a party to in order to have this judgement enforced. The Courts notes that Plaintiff did not produce any evidence on how this judgement can be enforced in Malta, and therefore it is clear that the Court’s jurisdiction cannot be based on this paragraph.

“(g) any person who expressly or tacitly, voluntarily submits or has agreed to submit to the jurisdiction of the court.”

It is clear that the Court does not have jurisdiction based on this paragraph. Defendant

immediately contested this Court's jurisdiction in his sworn reply, and it is clear that he has neither expressly nor tacitly voluntarily submitted to jurisdiction of this Court.

For these reasons, the Court declares that it does not have jurisdiction to determine this case, and consequently takes no further cognisance of Plaintiff's application.

All costs are to be borne solely by Plaintiff.

Read.

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

**Lorraine Dalli
Deputy Registrar**