

**CIVIL COURT  
(FAMILY SECTION)**

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

**Hearing of Wednesday 11th December 2019**

**App. No. : 213/2018 JPG**

**Case No. : 19**

**SS**

**vs**

**AA**

**The Court,**

Having seen the sworn application filed by SS, dated 3<sup>rd</sup> August 2018, wherein it was held:

- 1. That the parties married in Italy on the 13<sup>th</sup> of January 2011 and had two children, KA born on X and AA born on Y;*
- 2. That the parties' marriage has irremediably broken down on the ground of excesses, cruelty, threats and grievous injury, amongst other valid grounds at law which rendered married life impossible and which gives ground to this personal separation, to which the defendant is solely responsible for breaking down;*
- 3. That for this reason, conjugal life is not longer possible;*

*4. That in fact, the applicant filed an urgent applicant due to the defendant's aggressive behaviour, whereby the Honourable Court decided that pendente lite, the defendant exercises access under supervision towards the two minor children whilst also issuing a protection order in favour of the applicant and the two minor children*

*5. That the parties have been authorised to proceed at this instance by virtue of a court decree of this Honourable court dated 20th of June 2018 (see Dok A hereby attached)*

*6. That the facts here declared are known personally by the plaintiff;*

*For these reasons the plaintiff contends, saving any necessary and opportune decisions, why this Honourable Court should not:*

- 1. Pronounce the personal separation between the parties on the ground of excesses, cruelty, and grievous injury, committed by the defendant and consequently authorise the plaintiff to live separately from the defendant;*
- 2. Decides that the exclusive care and custody of the two minor child KA and AA be given to the plaintiff and authorises her to take any decisions relating to issuing of passports, travel, the health and education of the minor children and this as established by this Honourable Court;*
- 3. Determines and liquidates an adequate amount of maintenance which should be payable by the defendant to the minor children and which should remain payable until the minor children reach the age of eighteen (18) years if the minor children stop pursuing their studies and start working on a full time basis or payable up to the age of twenty three (23) if the minor children decide to pursue their studies on a full-time basis; as well as ordering that the alimony be deducted directly from the salary or income of defendant or work or any other benefits that he would be receiving and deposited directly in a bank account that is to be indicated by the plaintiff and further provides how the said maintenance is to be reviewed and increased yearly so that it reflects*

*the increase in cost of living;*

4. *Orders the defendant to pay half of the expenses related with the health and education of the same minor children until they are studying including and not limited to uniforms, transport, donations, private lessons and any other expenses related to the education, including expenses related to extra-curricular activities;*
5. *Declares that the defendant has forfeited from any right to receive maintenance from the applicant;*
6. *Orders that the defendant has given cause to the breakdown of marriage as found in article 48 et seq of Chapter 16 of the Laws of Malta and applies against him all the articles or in part the dispositions of article 48, 51 and 55 of Chapter 16 of the Laws of Malta;*
7. *Orders the cessation of the existing community of acquests between the parties; liquidates the same community of acquests and orders that the objects forming part therein are divided in two portions as ordered and established by this Honourable Court, which portions are assigned one to the plaintiff and the other to the defendant, and this by the appointed experts and by appointing a notary to receive the relative acts and a curator to represent the defendant if he is contumacious on the same act;*
8. *Declares which are the paraphernal movable and immovable property of the plaintiff as will be proven during the case whilst also ordering and condemning the defendant to return to the plaintiff all her paraphernal things and this in a short and peremptory time given by this Honourable court;*
9. *Orders the allegation of the acts of the mediation, reference number 669/18 EC;*
10. *Authorises the plaintiff to register the eventual judgment of this Honourable Court in the Public Registry of Malta.*

*With costs and interests against the defendant, including those relating to the Warrant of Prohibitory Injunction No 128/2018, who is demanded for a reference on oath.*

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

Having seen the reply of AA, dated 21<sup>st</sup> August 2018, at page 28 et seqq., wherein it was held:

- 1. That in the first place, the defendant submits that the plaintiff's allegations are all unfounded;*
- 2. That in the second place, the defendant contends that the plaintiff's allegations concerning his violent nature as incorrectly depicted by the plaintiff are ill-founded as shall be seen in the course of these proceedings;*
- 3. That subordinately, the defendant submits that the breakdown of the marriage is attributable solely to plaintiff's faults, to the extent that the marriage has irretrievably broken down;*
- 4. That despite the mentioned court decree dated the fourth (4<sup>th</sup>) of July of the year two thousand and eighteen (2018), the defendant has had no access whatsoever with the minor children, and this has been subsisting since May;*
- 5. That the defendant contends that he has been actively disbursing monies in favour of the minor children since birth, even after the martial breakdown, including all expenses related to their health, food, wellbeing, education and others, as evidenced in the documents herewith attached and marked as doc 'A' and 'B';*
- 6. That additionally, the defendant has at his own expense enrolled the minors into several extra-curricular activities, including dancing, chess, kickboxing and pool amongst others, as understood in the documents herewith attached*

*and marked as docs 'C';*

7. *That the defendant presently works at Lift Services Limited and on average earns the amount of €1700 and €1950 monthly, as evidenced in the payslips hereby attached and marked as docs 'D' and 'E';*

8. *That presently, the defendant lives in a rented accommodation and is paying the sum of €1260 monthly as evidenced in the contract of lease, together with the invoices hereby attached and marked as doc 'F' and 'G';*

*That for the above-mentioned reasons, the defendant humbly requests this Honourable Court to discard the plaintiff's requests.*

Having heard all the evidence on oath;

Having seen the exhibited documents and all the case acts;

**Considers;**

**Marvic Boyce** testified (*fol. 79 et seqq*) that she is a social worker stationed at Qawra Community Service and that Plaintiff had gone to her office to ask for help, claiming that the children were suffering some sort of trauma during access and that she was very concerned about them. She explained that she had spoken to the head of school that the children attended, who had stated that she was concerned because the child was exhibiting some form of sexual behaviour. She testified that at the time she had advised that this might be related to the development of the child, considering her age, but that she had suggested that Plaintiff go speak to Dr. Lara Dimitrijevic since Plaintiff had also mentioned that there is a history of domestic violence. She added that no risk assessment was made since Plaintiff's concerns were solely related to the children.

**Joseph Saliba** testified (*fol. 95A*) that Defendant at the time was unemployed and that since he is a third country national he would need to obtain a work permit before being able to work.

**Josette Dalmas** testified (*fol. 96 et seqq.*) that she is the head of school of St. Paul's Bay

primary school and knows the parties since their daughter A attends this school. She explained that during the scholastic year of 2017-2018 they saw drastic changes in the child's behaviour, adding that while the girl used to be very sociable, talkative and boisterous, she suddenly starting becoming detached from her peers and from what was going on in the classroom and had also started walking around with her hair in front of her eyes. She continued that due to this sudden and drastic change in behaviour, the school had referred her to counselling and child protection, from which it emerged that the child was either being sexually abused or was suffering from an anxiety disorder and touching herself as a coping mechanism in order to comfort herself. She added also that at the time the parties had an arrangement whereby the child would spend a week with the mother and a week with her father, and that these behaviours usually manifested during the week she spent with her father.

SS testified by means of an affidavit (*fol. 103 et seqq*) that the parties were in a relationship for five years before their marriage. She explained that their relationship was fine but that because Defendant always wanted to be right and to be the one who made all the decisions, she used to let things go, hoping that one day he would change. She continued that when their first child, K, was born, she was the primary caregiver, with Defendant never helping around the home and refusing to help care for the child. She explained that if she ever disagreed with him about anything Defendant would start shouting, lifting things and breaking objects at home. She continued that even though she loved him she was scared of him due to his aggressive behaviour, especially since during arguments he sometimes used to push her. She explained that when they had decided to buy a house, Defendant refused to involve her in the purchase and bought a house he picked, and on his name, later also buying a car and registering it in his name. She added that when she had asked for a fixed monthly payment Defendant had refused, leaving her in the situation where she had to ask him for money every time. She continued that after the purchase of the car, he started taking the car keys whenever they had an argument. She explained that this was a problem since at the time they lived outside the city and needed to spend two hours commuting by public transport in order to get to shops. She added that Defendant would only return the car keys when he was certain that she had made an unconditional apology and admitted that she had made a mistake, even when she had not. She also testified that after an argument, Defendant would sometimes stop eating until she felt sorry and responsible for him. She said that eventually they had decided to have a second child, since Defendant wanted another child and even though she was not keen on the idea, she believed that it would be good for their son to have a sibling. She testified that they had their daughter A

on the Y and then decided to get married, which she hoped would make things better between the parties.

She explained that the parties got married on the 13<sup>th</sup> of January 2011 in Italy, at which point things between the parties got even worse. She testified that Defendant continued being violent, dominant and was being financially reckless. She explained that she had started getting suspicious that Defendant was having an extra-marital affair, and in fact one evening when he had returned home from work, she found a long blonde hair on his clothes, so she confronted him about her suspicions. She said that this had angered Defendant who broke the table, threw all the food that was on it and left the house. She added that this was not the first time that Defendant left the house after an argument, and that this was a constant threat on his part, that is that he would leave and she and the children would have no money to survive. She recounted another incident when after confronting him about finding earrings that did not belong to her in the car, Defendant grew so angry that he tried to hit her with a bottle and then left the matrimonial home for a month.

She testified that the parties eventually moved to Russia, and Defendant had insisted that they should live with his mother so that he could know where the Plaintiff was at all times. She added that once when she had suggested to Plaintiff that it might be better if they returned to Italy, he had taken all the money that they had at home and her passport to make it impossible for her to do so. She explained that Defendant had started threatening her and being violent in front of the children, to the extent that once his mother had stopped him from hitting her while A shouted at her father to not hit her mother. She added that Defendant used to insult her when they were out with friends, making her cry in front of them. She also testified that during their stay in Russia, she was continuously afraid that Defendant would deport her, and every three months she would have to leave the country to renew her Visa, with Defendant threatening that he would tell officers that she was in the country without proper documentation and she would never be able to see the children again.

She explained that the parties had eventually moved to Malta in 2015, by which point their relationship had already irretrievably broken down. She said that their intimate relationship had ceased, and that due to this, Defendant would threaten that he would leave her and the children. She explained that the parties used to argue frequently, particularly about their son, who used to stand up for her making Defendant even angrier. She recalled three incidents during the parties'

time in Malta which were particularly scary for her and led her to decide to seek personal separation from Defendant. In one of these episodes, Defendant had shut her hand in a door on purpose, breaking a finger and nails in front of a mutual friend. During another episode, when she had stood up for herself for the first time, Defendant became so enraged that he started threatening and insulting her in front of the children, during which incident she suffered cuts from broken glass. She added that later whilst at work she had spoken with their son on the phone who told her that Defendant was packing his clothes. Her son pleaded with her to apologise to Defendant so that he would not leave them. In the third episode, she explained that Defendant had shouted at her in front of a mutual friend because he had seen them laughing together.

She testified that while Defendant was never physically violent with the children, she feels that they were nonetheless victims of his abuse since he was violent in her regard in front of them. She explained that during their separation, their daughter had experienced difficulties to the extent that at her school they had initially thought that she was a victim of sexual abuse and had been referred to a social worker. She added that Defendant had reported her for neglect and was threatening that he would go to Russia with their daughter. She testified that on the 22<sup>nd</sup> of May 2018 Defendant had gone to the child's school and was trying to drag her to his car and only stopped due to the intervention of a passer-by. She explained that on the 4<sup>th</sup> of July 2018 Defendant was given supervised access to the two children by court order and ever since that decree he has never seen the children.

Regarding maintenance, she explained that since the decree ordering Defendant to pay maintenance, her monthly rent had increased to €500 a month excluding utilities. She testified that she pays around €100 for electricity every two months, €30 monthly for internet and €30 monthly for IPTV. She added that she incurs the sum of €1,002 every month in expenses for the children, which includes health and educational expenses. She added that she earns approximately €700 net a month while Defendant earns between €1,700 - €1,950 a month as an employee with Lift Services Limited.

She explained that after getting married in Italy, Defendant had bought a house there but the bank had repossessed the house since he had failed to honour the loan payments, and that when they lived in Malta they lived in rented accommodation which she had to leave due to Defendant's violent behaviour. She continued that the parties do not have a joint bank account,



but only separate bank accounts. She stated that Defendant had bought a car in Italy which he registered in his name, but that he had eventually sold this car and they had used the money to buy their flight tickets and settle in Malta, adding that she does not know whether Defendant owned a car while in Malta. She explained that Defendant had started a business in Italy and had named her as a partner in order to benefit from a tax reduction, adding that however Defendant had failed to pay her taxes or pension contributions, and that the company was eventually liquidated. She stated that she has no paraphernal property.

**Stephen Cachia** testified (*fol.* 156) that the parties have no vehicles registered in their names.

**Connie Azzopardi** testified (*fol.* 157 *et seqq*) that Plaintiff is the beneficiary of children's allowance in respect of the parties' children K and A.

**Lino Borg** testified (*fol.* 158) that he is head of school at Maria Regina College Middle School, Naxxar, where the parties' son attends. He explained that the boy attends school regularly, and is a relatively good student.

**Rita Galea** testified (*fol.* 161) that she is a school counsellor at St. Paul's Bay primary school and that the parties' daughter was referred to her by the head of school. She explained that she did not have any sessions with the child over the summer since the child did not attend school. She continued that she gave the parents a meeting, although only the father showed up. She said that during this meeting Defendant had alleged that Plaintiff let the children be absent from school because she lets them do whatever they want, adding that he had mentioned nothing about a court case. She explained that the main concerns regarding the child was that she was touching and scratching her genital area when with the father and that she would need someone to go to the toilet with her. She continued that this behaviour has now stopped, adding that the girl had become afraid to go to the bathroom on her own after an incident where she was locked in a room and became afraid that the same thing would happen again. She testified that lately the girl has been saying that she is sad because she missed her father, saying that they chat over laptop and adding that once her father had told her that she must choose between her parents which greatly upset her. She said that the girl is doing well overall and that she has potential, but that however she needs more structure at home.

The Defendant failed to produce any evidence in this case other than his sworn reply;

**Deliberates;**

This is a judgement for personal separation of the parties who were married on the 13<sup>th</sup> of January 2011 in Italy and moved to Malta in 2015. It appears the parties were in a relationship for five years prior to their marriage, and from this relationship they had two children, KA on X and AA on the Y.

The Court has seen that although Defendant had filed his pleas on the 21<sup>st</sup> of August 2018 he never appeared for any hearing and on the 12<sup>th</sup> of March 2019 Agenzija Appogg informed the Court that Defendant had declared that he was leaving the island (*fol.* 138.)

From Plaintiff's testimony it appears that throughout the parties' relationship, Defendant was domineering and controlling. He controlled the parties' finances and used this as a means to threaten and coerce Plaintiff to ensure absolute compliance with whatever he dictated. From her testimony, it also results that Defendant was initially verbally and emotionally abusive, and that he used to insult and humiliate Plaintiff in front of family and friends, as well as their children. It results also that as time passed Defendant became physically abusive, and one particular episode of violence necessitated Plaintiff to go to hospital for medical treatment after Defendant had shut her hand in a door, breaking one of her fingers, as evidenced by the relative discharge sheet issued by the hospital.

The Court has seen that Defendant showed no interest in the case and brought no evidence to contest Plaintiff's claims, nor did he cross-examine her. Having seen all the acts of the case the Court is satisfied that Defendant's behaviour clearly amounts to excesses, cruelty and grievous injury, perpetrated over the course of the parties' entire relationship and increasing in severity as the relationship continued. Therefore, the Court considers that Defendant is responsible for the breakdown of the marriage, due to frequent incidences of violence and aggression, dominant and coercive behaviour and financial abuse which rendered married life impossible. Having seen Article 51 and 55 of the Civil Code, the Court considers that the dispositions of Article 48 should be applied *in toto* against Defendant.

Regarding the care and custody of the children, the Court has noted that Defendant left the country while these proceedings were pending and does not seem to be communicating with

Plaintiff, although he seems to be maintaining some form of contact with the children by chatting with them online. The Court has seen that Defendant has abandoned his family, thereby putting Plaintiff in a difficult position with regards to any decision relating to the children which require the joint consent of the parties. The Court considers that it would not be in the best interests of children for Plaintiff to need to have recourse to the Court every time any decision needs to be taken in their regard, simply because Defendant chose to abandon his family. For this reason the Court considers that the care and custody of the children should be vested solely in Plaintiff, who shall be authorised to take any decision regarding their health, education, travel and issuance and renewal of passports on her own and without the need of Defendant's consent or presence.

Regarding maintenance, the Court has seen that while Plaintiff is not asking for maintenance for herself, she is asking for maintenance for the parties' two children. The Court recalls that it has previously been held that when one of the parents finds themselves raising the children alone, they are considered to be contributing substantially to the maintenance of the children, in kind instead of financially.<sup>1</sup> The Court further notes that according to jurisprudence when child-rearing falls on the shoulders of only one of the parents, it will considerably decrease that parent's ability to generate an income, and that this is a factor which must be taken into consideration by the Court when it liquidates the maintenance that is to be paid for the children by the other parent.<sup>2</sup>

The Court has seen that according to Plaintiff's uncontested testimony, she spends approximately €1,002 for the children, which amount includes their health and educational expenses. It is this Court's considered opinion that the amount of maintenance to be liquidated should include health and educational expenses. The Court understands that since Defendant has left the country, it is difficult for the Plaintiff to communicate with him in order to share the expenses related to health and education. Moreover, the violent and aggressive nature of Defendant's character makes it well-nigh impossible to communicate and agree on shared expenses. Having taken all this into consideration, together with the fact that Defendant has abandoned the country leaving Plaintiff to care for the children alone, the Court considers that Defendant is to pay the sum of seven hundred euro (€700) per month as maintenance for the

---

<sup>1</sup> **Marina Galea vs Mario Galea**, Court of Appeal, 31 January 2019

<sup>2</sup> **Audrey Buhagiar pro et noe vs Daniel Schembri**, Court of Appeal, 25 November 2016.

children, which amount shall include his share of their health, educational and extra-curricular expenses.

Regarding the community of acquests, the Court has seen that Plaintiff failed to provide any evidence regarding the applicable matrimonial regimes when the parties lived in Italy and in Russia. The Court may therefore only take into consideration any debts or assets accumulated by the parties from when they moved to Malta to settle here, at which point it is clear and unequivocal that the regime of community of acquests started applying. From the evidence produced by Plaintiff, it appears that the parties had no property or vehicles in Malta and that they had no joint bank accounts but simply separate bank accounts in their own name. The Court therefore considers that each party should retain full ownership of the bank account in his or her name.

Regarding paraphernal property, the Court has seen that Plaintiff declared that she has no paraphernal property, whereas Defendant brought no evidence regarding any paraphernal property he may own

**For these reasons, the Court while rejecting all of Defendant's pleas:**

- 1. Upholds the first request and pronounces the personal separation of the parties on the ground of excesses, cruelty and grievous injury, committed by Defendant, and consequently authorises the Plaintiff to live separately from the Defendant;**
- 2. Upholds the second request and orders that the exclusive care and custody of the two minor children, K and A A, be vested solely in Plaintiff, who is hereby being authorised to take any decision relating to the health, education, issuing and renewal of their passports and travel of the two children on her own without the consent, signature, or presence of her husband;**
- 3. Disposes of the third and fourth request by ordering Defendant to pay to Plaintiff the sum of seven hundred (€700) a month as maintenance for the two children, which sum includes expenses relating to their health, education and extracurricular activities, which shall remain payable until the minor children reach the age of eighteen (18) years if the minor children stop pursuing their**

**studies and start working on a full time basis or payable up to the age of twenty three (23) if the minor children decide to pursue their studies on a full-time basis, which amount shall increase yearly according to the increase in the index of cost of living. This amount shall be deducted directly from any wages or social benefits payable to Defendant and paid directly into a bank account indicated by Plaintiff.**

- 4. Upholds the fifth request and declares that defendant has forfeited from any right to receive maintenance from the applicant;**
- 5. Upholds the sixth request and declares that Defendant is responsible for the breakdown of the marriage and applies against him the provisions of Article 48 *in toto*;**
- 6. Upholds the seventh request and orders the cessation of the community of acquests between the parties, liquidates the same community and orders that each party is to retain full ownership of the bank accounts in his or her individual name, having seen that from the evidence produced, it appears the parties had no other assets or liabilities in Malta;**
- 7. Rejects the eight request since Plaintiff declared that she has no paraphernal property;**
- 8. Upholds the tenth request and authorises Plaintiff to register the final judgment of personal separation in the Public Registry of Malta.**

**Costs as requested by Plaintiff are to be borne entirely by Defendant.**

**Read.**

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

**Lorraine Dalli  
Deputy Registrar**