CIVIL COURT
(FAMILY SECTION)

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

Hearing of Thursday 9th January 2020

App. No.: 198/2019/2 JPG
Case No.: 11

WS
vs
VB

The Court,

Having seen the application filed by VB, dated 6th November 2019, a fol 3 et seqq., where in it was held:

> *Whereas this Honourable Court delivered a preliminary judgement on 1 November 2019 with regard to the pleas raised in the statement of defence of both parties;*
>
> *Whereas the defendant feels that there are grounds for appeal and that there is the probability that this judgment will be overturned and his pleas will be upheld;*
>
> *Whereas, such an appeal would be expedient to these proceedings since it would avoid a situation where the Court of appeal remit the acts of this case to this Court following a Court of Appeal judgment if filed following the final decision of this Honourable Court;*

Whereas, such an appeal would be fair on the defendant, since he feels that the above-mentioned judgment has prejudiced his legal position in these proceedings and is forced to take into consideration claims that none of the parties have effective control on;

Whereas, the defendant is aware that this Honourable Court has upheld the Plaintiff's request for these proceedings to be heard with urgency, this should not preclude either of the Parties, including the Defendant from availing themselves, from their legal rights in these proceedings and utilizing procedures that the law puts at their disposal;

Therefore, the Defendant, requests this Honourable Court to grant him special leave to file an appeal from the judgment delivered by this Honourable Court on 1 November 2019, in the above-mentioned names.

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 by WS, dated 4th March 2019, at page 185, where in it held:

1. *This application is being filed in terms of Article 231 of Chapter 12 of the Laws of Malta, which regulates leave for appeal from preliminary judgements. Plaintiff submits that this demand should be rejected on the following grounds:*

a. *The demand itself is unclear and cannot be upheld. This court had, in its judgement, partially rejected Plaintiff's first preliminary plea. Defendant has not requested leave to appeal from distinct heads of the said judgement in the manner contemplated in Article 226 of Chapter 12 and cannot demand the reversal of judgements given in his favour.*

b. *Jurisprudence has determined that leave to appeal is granted only exceptionally. Indeed our courts have characterised the amendments which had substituted the automatic right of appeal which pre-existed the present*

regime as having been intended to prevent suits from being heard in stops and starts and curtailing unnecessary delay. The Court has ordered that this suit be heard with urgency, an order which is repugnant to the delay implicit in appeal. Moreover, the urgent hearing of a suit precludes appeals from preliminary judgements as an acceptable remedy, otherwise the Court would allow the institute of urgency to be subverted by appeals from vexatious pleas and counterclaims clearly destined to rejection. In this case, defendant – clearly intent on delaying this suit by appeals – had filed a separation suit as a counter-claim to a custody suit without ever having been authorised to file such suit.

c. *On these grounds plaintiff believes that defendant's application for leave to appeal from the judgement of the 1st November 2019 should be turned down by this Honourable Court.*

Having heard all the evidence on oath;

Having seen the exhibited documents and all the case acts;

Having heard oral and final submissions from both parties;

Considers;

This is a decree following an application filed by Defendant to be granted leave to appeal this Court's judgment in parte dated 1st of November 2019, with which this Court rejected the pleas numbered (1) (2) (3), (4) and (7) in Defendant's sworn reply, while ordering Plaintiff to file a note within a week of the judgement indicating the name and surname of the family members, friends and colleagues she intends to summon as witnesses according to paragraph (7) of her list of witnesses, and partially accepted Plaintiff's first preliminary plea contained in her Sworn Reply to Defendant's Counter-Claim, and declared null and void the demands numbered (1), (7) and (8) in Defendant's Counter Claim and abstained from taking cognisance of them, while rejecting that part of this plea relating to demand number (6) in the same Counter Claim.

By means of Defendant's application dated 6th November 2019 Defendant requested this Court to grant him special leave to appeal from the aforementioned judgement, claiming that there is the probability that the judgement will be overturned and his pleas upheld. He argued that such an appeal would be expedient since it would avoid a situation whereby the Court of Appeal would remit the acts of the case to this Court following its judgement and that this appeal would be fair on him since he feels that it has prejudiced his legal position. He argued further that the fact that this Court has upheld Plaintiff's request for these proceedings to be heard with urgency should not preclude him from availing himself of his legal rights and the procedures that the law puts at his disposal.

Plaintiff filed a written reply on the November 2019 to this application, objecting to Defendant's requests and arguing preliminary that the demand is unclear and cannot be upheld because Defendant has not requested leave to appeal from distinct heads of the said judgement in the manner contemplated in Article 226 of Chapter 12 of the Laws of Malta and, that this Court would be allowing Defendant to subvert the institute of urgency should his request were to be accepted.

Regarding Plaintiff's preliminary objection, the Court notes that Article 226 of Chapter 12 of the Laws of Malta regulates the manner in which an appeal is to be formulated when it is not entered from the whole judgement. This article makes no reference to the application for leave to appeal, but merely regulates the appeal application itself. The manner in which an application for leave to appeal is to be filed is regulated instead by means of the proviso to Article 231(1) of Chapter 12, which states that:

> "***Provided that an appeal from such separate judgments maybe entered before the final judgment only by leave of court to be read out in open court; such request for leave to appeal shall be made either orally immediately after the delivery of such judgment or by application within six days from such judgment and when such leave to appeal from such separate judgements is granted the time for the filing of the appeal in respect thereof shall commence to run from the day on which the said leave is read out in open court***."

It is clear that this proviso establishes no requirement on the party seeking leave to appeal to indicate to the Court which specific heads of the judgement he wishes to be granted leave to appeal from. In fact, this proviso also entertains the possibility of such request to be made verbally immediately after the delivery of the judgement, indicating that the proviso is not contemplating a detailed application in the manner suggested by Plaintiff in her reply. Therefore, this objection is being rejected.

On the merits, the Court recalls that according to the settled jurisprudence of the civil courts while it is in the Court's discretion to grant a party leave to appeal from a partial judgement, such leave should be given only for particularly weighty reasons. In fact it has been held that the court needs to be convinced that it is **'good and just'** that the appeal be filed at a premature stage in the proceedings and that therefore, if the Court does not consider it be better and just to give such special leave, that leave to appeal shall be denied.[1]

Having seen the acts of this application, and having heard the parties, the Court considers that Defendant has not managed to show to this Court's satisfaction that it is good and just for his application to be upheld. The Court considers that these proceedings relate primarily to a child's place of domicile and therefore it is not in the child's best interests for these proceedings to be prolonged by the submission of an appeal from the Court's judgement in parte.

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[1] See for instance **Catherine Balzan pro et noe vs Tarcisio Balzan, First Hall of the Civil Court** (4 May 2001):

> "[1]-*Artikolu 229 li gie sostitwit bl-Att XXIV tal-1995 u emendat b'dak IV tal-1996 gie ntrodott fis-sistema taghna biex jigu evitati l-kwantita' ta' appelli li kienu jsiru fil-prosegwiment ta' kawza fil-prim'istanza li diversi drabi l-uniku skop taghhom kien li jitwalu l-proceduri. Kien ghalhekk illi l-legislatur hass li kellu jimponi dawk il-kazijiet fejn ma kellu qatt isir appell hlief mis-sentenza finali (sub-artikolu (1) ta' l-Artikolu 229) u dawk il-kazijiet, invece, fejn kien assolutament necessarju li jsir appell qabel dak l-istadju ghall-prosegwiment gust u effikaci ta' dik il-kawza partikolari [sub-artikolu (2)]. Dawn il-listi pero' ma setghux kienu kompleti u kien ghalhekk illi, f'kazijiet ohra, id-diskrezzjoni dwar appell qabel is-sentenza definittiva giet imhollija f'idejn il-gudikant. Bil-mod kif huwa redatt pero'* ***l-istess sub-artikolu jindika li ghandu jigi nterpretat b'mod illi dan il-permess ghandu jinghata biss ghar-ragunijiet ta' certu portata. Infatti l-gudikant irid ikun konvint illi jkun "ahjar u gust" illi l-materja tingab quddiem il-Qorti ta' l-Appell fi stadju prematur ta' l-andament tal-kawza. In-norma ghalhekk hija li jekk l-Ewwel Qorti ma tikkonsidrax li jkun sew "ahjar" sew "gust" li jsir dan il-permess, dan il-permess li jissejjah "specjali" mill-istess ligi ma ghandux jinghata***."

For these reasons, the Court denies Defendant's request for leave to appeal filed on the 6th of November 2019.

Costs reserved for final judgement.

Read.

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

Lorraine Dalli
Deputy Registrar