



**CIVIL COURT
(FAMILY SECTION)**

MR. JUSTICE HON. ANTHONY VELLA

Sitting of Thursday 19th December 2019

Application number : 151/2019 AGV

ABC

Vs

DE

The Court :

Having seen the application of ABC of the 2nd April 2019 that respectfully declares ;

1. That the parties got married on the 13th July 1999 and from this marriage two children were born FGE, on the 5th April 2001 and who is still a minor and HIJE that was born on the 16th June 2007, also a minor;
2. That the parties obtains personal separation by Court decree given by the Honorable Civil Court (Family Section) dated 13th May 2014;

3. That the parties have been legally separated by contract in the acts of Notary Sam Abela dated 24th May 2014, as can be seen from the document attached and marked as Doc A;
4. That there are no pendency relating to the payment of maintenance from one party to another and this owing to the fact that the parties have renounced reciprocally to the right of obtaining the payment of maintenance;
5. That according to the same contract of personal separation, the defendant owes by way of maintenance for the minor children, the sum of five hundred Euros per month for each child and therefore the total of one thousand Euros per month, which amount increases every two years according to the index of inflation, which maintenance is to be paid according to the terms found in Article 3 B, Chapter 16 of the Laws of Malta. That despite, this the defendant has never made a payment in favor of the minor children;
6. That there is no reasonable prospect of reconciliation between the parties, since not only have they been separated for more than four years, but they lead totally sperate lives, independent form each other;

Therefore, the applicant respectfully asks this Honorable Court to ;

1. Pronounce the divorce, and there fore the dissolution of marriage betwwen her parties.
2. Orders that the guarantee of maintenance as contemplated in Article 66 I Sub Article 3, Chapter 16 of the Laws of Malta is application in the way that this Honorable Court deems fit and necessary;
3. Order the Registrar of Courts so that within a short and peremptory time as established by tis Honorable Court, to warn the Director of the Public Registry with the dissolution of the marriage, of the parties, so that the relevant registrations and annotations are done in the relative civil acts of

the Public Registry in terms of Article 66 A (4) Chapter 16 of the Laws of Malta.

With costs and expenses against the defendant.

The Court having seen the reply of the defendant DE dated 15th October 2019, respectfully declares;

1. That there is a lack of jurisdiction as the parties married abroad in Singapore, therefore their marriage cannot be dissolved by a Maltese Court;
2. That without prejudice to the above, and in any case it is inconceivable how the Director of Public Registry here in Malta would register this divorce, since the parties married in Singapore;
3. That without prejudice to the above, the plea, for the divorce does not subsist because the plaintiff is alleging that there is maintenance due to the respondent and therefore this runs counter to Article 66 B © of CXhapter16 of the Laws of Malta;
4. That without prejudice to the above , the said plaintiff did not in any at substantiate her allegation regarding maintenance but does not even indicate the alleged amount that according to her is due to the children and at the same time, requests the issue of a guarantee.
5. That in any case and always, without prejudice to the above, the request for the issue of a guarantee does not apply in the circumstances of the case, as can be proved during the course of these proceedings.
6. Save other defences.

Having seen the notes of submissions filed by both parties with regard to the preliminary plea of lack of jurisdiction filed by respondent.

Having heard the submissions made by both parties with regard to the same plea.

CONSIDERS

This preliminary judgment is concerned with deciding on a plea of lack of jurisdiction of this Court to hear the divorce application filed by Ms C. The parties were married in Singapore on the 13 July 1999 and had two children. Subsequently they entered into a separation agreement on the 13 May 2014, which contract was filed in the Malta Public Registry by a Maltese notary. Applicant then filed a divorce case on the 2 April 2019, asking for the parties to be divorced. Respondent is claiming that the Maltese Courts have no jurisdiction in hearing this application, as both parties lack the necessary elements of domicile and residence here in Malta to be parties to a suit, as outlined in Article 66N of Chapter 16 of the Laws of Malta.

A brief look at the Article in question will help in determining whether the Maltese Courts have jurisdiction or not. The Article in question provides the following:

66N. (1) Notwithstanding the provisions of any other law, the courts of civil jurisdiction shall have jurisdiction to hear and determine a demand for divorce only if at least one of the following requirements is satisfied: (a) at least one of the spouses was domiciled in Malta on the date of the filing of the demand for divorce before the competent civil court; (b) at least one of the spouses was ordinarily resident in Malta for a period of one year immediately preceding the

filing of the demand for divorce. (2) Notwithstanding the provisions of sub-article (1), where a cause for personal separation in accordance with Sub-Title III of this Title is pending before a court of civil jurisdiction in Malta, including a cause being heard at appeal stage, and the court has jurisdiction to hear and determine that cause, the courts of civil jurisdiction in Malta shall also have jurisdiction to hear and determine a demand for divorce between the same parties.*

From a quick analysis of this Article it is evident that, for there to be jurisdiction of this Court to hear the application, at least one of the parties must either be domiciled here in Malta on the date of the filing of the divorce, or alternatively one of the spouses was ordinarily resident in Malta for one year preceding the filing of the application. Sub-article 2 of the said Article is not applicable to this case. Respondent claims that no such evidence has been submitted in this regard, and consequently the Court cannot be vested with jurisdiction in this case.

With all due respect, the Court begs to differ. If anything, it was up to respondent to submit evidence to the contrary, since he is alleging lack of jurisdiction in this case. It was up to him to show the Court that both parties had not been domiciled in Malta or that they had not been so ordinarily resident as the law provided. The Court has a copy of the contract of separation between the parties submitted with the application, which contract is dated 2014 and duly signed before a notary here in Malta. One of the first preambles of the contract states that both have been living in Malta since July 2011, together with their children. Moreover, the proviso to clause 7 of that contract stipulates the following:

Provided that this clause (6) shall not apply, should the wife decide to leave the country, permanently with the children, in order to establish her residence

elsewhere. In such eventuality, the father's consent is necessary, and if such consent is not forthcoming than, the wife may only leave the country with the children, after leave has been granted by the competent Court, following an application by the wife.

In other words, the express understanding was that the wife – applicant for divorce in this case – was to remain ordinarily resident here in Malta together with their two children, given that she was also entrusted with the care and custody of the children. If she wished to leave Malta to establish her residence elsewhere, she would have had to ask for the father's consent to leave with the children. The Court may therefore safely presume that such instance did not arise.

The Court finds it hard to understand why respondent raised the plea of jurisdiction in the first place, when it is so evident that surely the requirements of Article 66N(1)(b) subsist. This first plea is consequently being rejected.

With regard to the second plea raised by respondent, given that the separation contract was signed and filed here in Malta, that the parties are ordinarily resident here and that they have been so ordinarily resident since July 2011, that this Court is seized with jurisdiction as per Article 66N of Chapter 16 as earlier outlined, the Court fails to see what sort of impediment would the Director of Public Registry have in this case to register an eventual divorce between the parties.

DECIDE

For these reasons the Court;

Rejects the first and second pleas raised by respondent.

Costs of this judgment *in parte* are to be borne by respondent.

Hon. Anthony G Vella

Judge

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