

**CIVIL COURT
(FAMILY SECTION)**

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

Hearing of Monday 17th February 2020

App. No. : 12/2019/2 JPG

Case No. : 21

AO

Vs

AC

The Court,

Having seen the application filed by AO, dated 22nd October 2019, a fol 2 et seqq., where in it was held:

- 1. That the parties were married on the 2nd September 2014 from which marriage was born the minor child M who is X years old;*
- 2. That the parties have been separated de facto from January 2017 and then since access of the daughter M was done by mutual agreement between the parties;*
- 3. That the father had further agreed that such access is to take place in the presence of the paternal grandparents since defendant has been a heavy drug user;*
- 4. That on the 15th October 2019, following a visit with the father, the daughter M had a foul smell in her private parts and disclosed unnatural behaviour of the*

father towards the minor child;

5. *That the minor said that defendant would kiss her private parts as well as insert a pipette in her rear area explaining that that her father would tell her that this would stop her from passing wind;*
6. *That the minor child had also been exhibiting odd behaviour for some time, however applicant thought nothing bad of it at the time until this latest episode;*
7. *That during the time that parties spent living together, defendant had been heavily addicted to cocaine as well as pornography;*
8. *That upon this latest episode, applicant informed Child Protection Services within Agenzija Appogg, however she was placed on a waiting list since the case was still to be assigned to an Inspector;*
9. *That due to the risk of the minor child being exposed to further abuse, applicant filed a police report, copy of which is herewith attached marked Doc. OT1;*
10. *That for the above reasons, applicant humbly requests this Honourable Court to:-*
 - a. *Suspend access with immediate effect of the defendant to the Minor Child M pending police investigation.*

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 AC dated 25th of October 2019, at page 8 et seqq., where in it held:

1. *Respondent is shocked that applicant should resort to such terrible allegations about him. Respondent discovered that these proceedings had been filed against him on the 23rd October 2019 when he received a message from his wife*

informing him that his access was withheld because there was a court decree. Respondent then hastened to recover a copy of the application, decree and documents, in order to lodge his reply and ensure that the hearing of the 28th October 2019 is productive.

- 2. The allegations made by the applicant are completely untrue. Nothing even broadly similar ever occurred between the respondent and his daughter M. Respondent has never kissed his daughter anywhere but her cheeks; Respondent has never touched his daughter's anus except – rarely – when the child was younger and he had to attend to hygienic requirements. Respondent never measured the child's temperature anally. Every allegation made is untruthful and nothing happened, even innocently, which could have been misunderstood or misconstrued by the child or applicant's mother. There is no misunderstanding here. Just a lie.*
- 3. Respondent is not content to simply deny these allegations however vociferously that can be done in a judicial reply. Respondent is aware that once an allegation of this type is made, doubt is sown in the Court's mind and it can only be with great difficulty that an ordinary relationship with the child can be resumed.*
- 4. Thus, upon examining the applicant's application, respondent, assisted by members of his family, has prepared a detailed sequence of events from the 15th October 2019 to date. Respondent will seek to demonstrate that this alleged incident could not have happened. He will demonstrate that even applicant does not believe this incident occurred. From the information respondent has collected, respondent is in a position to state as follows:*
 - i) Applicant clearly states that it was on the 17th October 2019 that M was discovered to have a foul smell in her private parts and proceeded to disclose the respondent's alleged abuse. This date is also specifically mentioned in the Police report filed by applicant.*
 - ii) Respondent did not exercise access to the child on the 17th October 2019.*

Respondent is attaching exchanges of messages between O, applicant's mother and his own mother on 17th October. On that date no access was exercised and the child was unwell. It may be argued that the gravity of the allegation is such as to transcend actual days, times and dates. Not in this case however.

iii) In both application and report it is stated that the disclosures were made to applicant's mother and occurred after she returned from access with her father. It may be argued that the date is irrelevant and that emphasis should be seen to be made on the fact that the child had just returned from access, irrespective of the actual date.

iv) Even that does not hold up to scrutiny. On the 16th October 2019, again no access was exercised as it was not a visitation day. Access was last exercised on Tuesday 15th October 2019 at respondent's house and for the duration of the access SC was inside the house. She can testify that absolutely nothing untoward happened. The previous access took place on Sunday the 13th October 2019, in the presence of respondent's parents.

v) On the 18th October 2019 – the day after the shocking revelations claimed by applicant – respondent's mother sent a message to the applicant asking after her health and auguring that “we will see her tomorrow if she's better” to which applicant replied “Yes hopefully”. The message exchange is attached.

vi) On the 19th October 2019 there was a similar exchange of messages between respondent's mother and applicant concerning the child. Respondent's mother enquires whether she should pick up the child as usual and, after a brief description of the child's symptoms, applicant replies better to give a few days.

vii) Later that day, applicant met AA, respondent's brother, to discuss the terms of their contract of separation which has been some months in the pipeline. Applicant mentioned some lesser issues regarding respondent's care of M i.e. for instance her sitting in the front seat of a vehicle but she

relentlessly discussed monetary issues with AA and the result of the meeting appeared to be that a contract of separation was possible.

viii) On the 21st of October 2019, two days after discussing conditions of separation with AA and four days after discovering the abuse, the applicant filed a Police report.

ix) Respondent believes that at some point during the conversation with his brother, applicant decided that discussion regarding a compromise of the suit was not possible.

x) On these grounds respondent filed a police complaint requesting that proceedings be taken against his wife for the offence of calumnious accusations in terms of Section 101 of the Criminal Code. Respondent will motivate this.

5. For causes that at present are beyond these proceedings, applicant had always insisted that access be exercised in the presence of respondent's mother. This unfair condition had been accommodated by respondent whose only concern was his access through his parents to his daughter. It is now a very happy event that respondent abided with this unfair condition. Thus between the 15th August 2019 and Sunday the 13th October 2019, respondent's access to his daughter was invariably exercised in the presence of his mother and very often with both his parents. They or she, as the case may be, can testify to this. On the 15th October 2019 as stated, respondent was at all times in the presence of a third party who will testify to this.

6. In her eagerness to slur respondent, applicant literally dumps an implicit allegation in her application, without bothering to explain it. In paragraph 8 of her application she refers to the events of the 17th October 2019 as "this latest episode" leading one to believe that this is the latest of a series of events of abuse; a terrifying prospect. The applicant does then not care to explain the allegation any further or seek to explain how access was exercised without concerns or restrictions notwithstanding "earlier episodes".

7. *Applicant shares with the Court her allegation that respondent was a heavy drug user and was addicted to pornography. Respondent believes applicant did not consider these allegations relevant because, had they been relevant she would have disclosed to the Court her own analogous predilections.*
8. *Lastly respondent fears that the applicant has apparent been made aware of the devastating effect that these allegations will have on her husband who she knows is psychologically vulnerable. It is for this reason that respondent's family have rallied around him and sought to assist him in collating the evidence that the events claimed by applicant could not have occurred on the 17th October 2019, the 15th October 2019 or any date prior to that.*
9. *It is for this reason that respondent's family have materially and financially assisted respondent through this difficult period, it is they who have exercised most of the access to the child and it is they who fear not seeing the grandchild when difficulties are encountered.*

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;

AO testified, vide page 56, that the parties' have a minor daughter together who is X years old. She explained that the parties are *de facto* separated and that defendant exercises access as agreed between them on an amicable basis, adding that due to the defendant's circumstances they had agreed that access was to be exercised under the supervision of defendant's family members. In this respect she explained that defendant struggles with drug addiction which is why she does not trust him alone with their daughter.

She testified that she had started seeing the child exhibiting some odd behaviours, but she

thought nothing of it. She explained that the odd behaviour consisted in the child having become more friendly and extroverted with men, including strangers, she had started becoming secretive about what she did during access with her father, she had tried to kiss her mother on the lips and she had started displaying some sexualised behaviour. Regarding the latter issue, she explained that once, when she was changing her clothing, the child had started pushing out and wiggling her buttocks in a sexualised manner while she was naked. She added that once while she was cooking the child had started to poke her, in an insistent manner, in her rear precisely around the anal area, and had claimed that her father does this to her when applicant snapped at her. Regarding the kissing on the lips, she testified the child had claimed that her father kisses her on the lips and that when she told the child that it is not right to kiss anyone on the lips but that kissing on the lips should be reserved for her prince when she grows up, the girl had responded that her father is her prince.

She explained that she had decided to contact Appogg when, after returning from her shift at work, her mother had informed her that while was washing the child she noticed a foul odour coming from her genital area and that the child had told her that her father had kissed her on her genital area and that he had also inserted something, which literally translates into “pipette” in English, in her behind to stop her from passing wind. She said that while it’s true that her mother can be over-protective, she felt that this was too suspicious because to her it was unlikely that such a young child could invent these sorts of details. She continued that, being a gynaecologist, she had conducted a visual examination of the child’s genital and anal area and saw no signs of violence. She added that she had also found the child’s underwear wet, so she had tried to examine it under the UV light that the hospital has in the neonatal ward but that nothing resulted from this examination, possibly since these lights are not as strong as those which are intended for forensic examination. She explained that she had contacted Appogg and the police, and that she had wanted the child to be examined by a child psychologist to make sure that the child was telling the truth, since she did not want her to be traumatised by invasive medical exams without good reason. She continued that the social worker had initially advised her to tell respondent that the child was sick on the Thursday when access was meant to be held, but added that eventually she had to file an application to suspend access since did not want to risk that the child would be possibly abused further pending the results of the investigation.

Upon being reproduced, she testified that recently the child had mentioned that her father’s cat had gone into the shower while her father was giving her a shower. She continued that when

she asked the child what was her father doing in the shower the child had answered that her father was washing her and that he had given her an injection “*to the place from where I do coco.*” She continued that the child said that this had happened when she had had a sleepover with her father, and that her paternal grandmother was waiting for her in the bedroom to read her a bedtime story. She said that this could not be true because it had been a very long time she had allowed for there to be a sleepover.

Under cross examination she testified that she mixed up the dates when the alleged incident occurred because she was nervous and because to her Tuesday and Thursday sound very similar. She explained that she had told defendant’s mother that the child was ill because Appogg had advised her to find an excuse not to send the child for access until the police investigation was under way. Asked whether defendant is the only man that the child interacts with, she answered in the affirmative, explaining that she lives with her mother and that when they have exchange students at their house, they’re usually girls or young men under the age of eighteen. She added that in any case, the child is never alone with them because her mother is always present and never leaves the child unattended. Asked whether she ever brought up the subject of the child’s odd behaviour with defendant’s relatives, she testified that she had brought up the issue regarding the kissing and also regarding the tickling. She added that she had not brought up the issue of the child touching men’s genitals because she did not make a link with abuse and she thought that this was simply due to the child feeling a lack of attention from her father. She then clarified that she could not be certain that the child was specifically aiming to touch men’s genitals, because she would go to tickle them and her hand would be close to their genitals and that she would also do this with women. She added that in fact the girl had tried to put her hands under the skirt of one of her mother’s friends. She agreed that the child’s inclination to run her hands over bodies had been going on for some time and agreed that defendant’s mother had mentioned that the child used to touch breasts, something which she used to correct her about. She added that she linked this with the fact that the child was breastfed.

Regarding her testimony about the child sticking out and wriggling her rear, she said that she did and could not link this behaviour to defendant, adding that this is strange behaviour for a child. Asked whether it could be that the child saw this sort of dancing on You Tube videos, she said that she does not know. Regarding the odour that she mentioned in her testimony, she said that she could not described the odour but that it was not normal for a child to have a strong

odour emanating from her genital area. She added that it was her mother who had smelled it, and told her about it the next day and when she saw the child the smell had not persisted. She said that her mother had mentioned that there was redness on the child's genital area, however redness is not something specific. Plaintiff declared that from her examination of the child, there was no sign of forced penetration. She added that the mucosa of the vagina and rectum heals very quickly, so scratches and minor tears would no longer be visible within twenty-four hours so it would have been pointless to conduct a further examination.

Regarding the 15th of October 2019, she testified that she was at work and that she had a dinner in the evening at 8.00pm with her colleagues and visiting surgeons which finished around midnight, at which point she went back home. She said that the child sleeps in her room, while her mother has her own bedroom, but sometimes her mother sleeps in the same bedroom as the child when she is not home. She confirmed that her mother had phoned her on the 15th telling her that she had receiving some alarming information from M regarding the time she spends with her father and instructing her not to wash the child's clothes in the morning. She continued that she had arrived home when everyone was asleep and that the day after was very hectic because she was on call and she was responsible for any emergencies that occurred as from 8.00am on the dot. She explained that that morning she had dressed M herself, and the child had behaved normally. She added that at that point she still had not been given details about what had alarmed her mother, adding that her mother is the worrying type who brings many things to her attention and even insists on the child have blood tests if she looks pale or sneezes, so she had become a bit dismissive of her mother's concerns about the child. Asked why she and her mother did not speak about her mother's concerns in the morning she said that there was no time since she was in a hurry to get ready for work.

She explained that she had phoned Appogg because she was aware of the organisation through her patients who were in abusive relationships who had mentioned the organisation in their conversations. She said that in fact she had already spoken to Appogg before speaking to her lawyer. She said that Appogg had suggested that it might be a good idea for the child to be examined medically, but that however she considered that this would be unnecessarily traumatising for the child since she had already been washed and sudocream had been applied, which would have further speeded up the healing of the mucosa, meaning that there would be no physical evidence of abuse on the child. She added that she had not wanted to take any serious action which harmed her husband and that is why she wanted for the child to be spoken

to by psychologists to make sure that this was not something stemming from the child's imagination, but Appogg had informed her that they could not provide her with this help and that the procedure is that a psychologist is only appointed after an inspector is appointed. She added that she had expressed her disappointment that the child did not have a chance to be assessed by a psychologist beforehand. Asked whether she finds it suspicious that the child told her grandmother about the alleged abuse while mentioning nothing to her, she answered that the child spends a lot of time with her grandmother. Questioned about her use of the word "soiled" she explained that in medicine soiled means dirty, including with a liquid. Regarding the child's underwear she testified that after trying to examine it under the UV light that they have in the obstetric department, she put it in a paper bag as she was advised to by Appogg and she's waiting for someone to ask her to hand it in. She added that she had asked the inspector when she would be required to hand the underwear in, and she was simply told that it was not required at that point. She confirmed that sleepovers had happened only a few times in the past two and a half years and that the last sleepover had occurred was a year or so ago.

Maria Pirrone testified that she is a social worker at the Child Protection Services at Appogg and on the 16th of October 2019 she had phoned plaintiff following a referral from another social worker, and plaintiff told her that she and her mother were noticing sexualised behaviour by the minor. Plaintiff told her that while she was changing the minor, the minor was sticking out and wriggling her bottom and that after the latest access with her father, the minor had returned with wet underwear. She explained that she had spoken about this with Inspector Busuttil from Vice Squad but that they still had not heard from Vice Squad since. She said that since the investigation had not started yet she had advised plaintiff to file a police report and to speak to her lawyer to file an urgent application in court and to come up with an excuse so that she could not send the child for access in the meantime. She added that she had been instructed to wait for the case to be allocated and then work on it together with Vice Squad, and that she had followed these instructions.

Under cross-examination she stated that she does know the date when the child had allegedly returned from access with wet underwear. She added that plaintiff had told her that she's a gynaecologist and she had checked the underwear under UV light. She testified that when she spoke to plaintiff about filing a police report and a court application regarding access, plaintiff had wanted to do neither because she did not have any evidence but eventually she had decided to go for these options.

She explained that it is the child who is their client and not plaintiff, as they are a completely different service from the domestic violence unit. She said that on the 16th of October 2019 Anthea Bonavia, the social worker from the domestic violence unit who had spoken with plaintiff, had discussed the case with her and then she had phoned plaintiff. She continued that during the telephone conversation with plaintiff she had taken notes which then became a part of her report. She confirmed that at this point she had not met plaintiff in person. She continued that as per their regular procedure, she had forwarded the information to Vice Squad so that they could investigate it. Asked why she put the words “*ppuppat il-patata u bdiet tizzegleg*” in inverted commas she said that this was because she was quoting plaintiff, and confirmed that plaintiff had said these words in Maltese, adding that plaintiff spoke mainly in English and used a few words in Maltese. She said that she had not asked for exact dates of when the abuse allegedly occurred and she did not suggest for the child to be examined by her doctor because her job is merely to take a report and refer to Vice Squad, and it is then Vice Squad that takes care of the necessary investigation, adding that she is not specialised in this area. She agreed that plaintiff had told her that she had not seen any sign of penetration on the child’s body. She said that plaintiff did mention that the child’s underwear was wet but she was never told that the child was in pain. She added that they never suggest any kind of medical examinations to be carried out, but that they simply refer reports to the police.

TI testified that she is plaintiff’s mother and that she’s in Malta to help plaintiff take care of M. She explained that on the 15th of October 2019, when the child returned from access with her father and she was preparing her for her bath she was alarmed by a strong smell coming from the child, and the child told her that her father had kissed her on her bottom. She continued that after her bath, the child climbed on the bed, opened her legs and touched her genital area saying that her father had kissed her there as well. She added that she had asked the child to tell her where exactly she had been kissed by her father, and the girl answered that her father had kissed her in the place where she urinates from. When asked what else her father had done, the child said that he had removed her dress and underwear, put her on her stomach and inserted a pipette inside her to stop her from passing wind, and afterwards she saw liquid coming out of the pipette. The witness continued that after hearing this she had inspected the child’s genital area, which appeared irritated and when she applied Sudocream the child was in pain. She added that the child told her that her paternal grandmother had told her that we must tolerate suffering because Jesus had suffered for us on the cross.

She testified that a few days later while she was washing the child, the child had queried why it was ticklish when her grandmother did it but it hurt when her father did it. When the child was asked to explain what it was that her father did, she testified that the girl turned around to give her her back and stuck her bottom up, saying that her father would then tell her that she's a bad girl while she would insist she's a good girl and that he gave her an injection in her rectum which hurt, although she had not cried. She explained that from summer they had started noticing that the child was inserting her finger in her vagina and rectum and also that her genital area was irritated.

On re-examination she explained that when the child told her that her father had given her an injection in her rectum, she understood that this had happened on an occasion before the 15th of October 2019.

Under cross-examination she testified that there have been times when male students were staying at the house where she, plaintiff and M live. Asked whether the child has ever slept at a house other than their home, she answered that once they had slept at a house that belongs to a female friend of hers and that she and M had shared a bedroom. She agreed that a certain IG had slept at their house sometimes the year before, because at the time he was her boyfriend. She explained that IG was a licenced masseuse and that he had massaged the child when she was less than a year old because she hadn't started to walk yet and they wanted to increase the strength in her legs. She added that this had happened at defendant's house. She said that the last time she spoke with IG was around June or July 2019. She added that since M's birth IG had visited her and spent a maximum of three days at her house once or twice a year.

She testified that after access the child usually answered questions relating to what she ate or who else was there during access, but generally refused to answer questions relating to what she did with her father, saying that that was her secret with her daddy. Asked about the smell she claimed to have smelled on the girl on the 15th of October, she explained that she could not decipher what sort of smell it was, but she certain that it was a strong smell which was not the usual smell that the child had. She clarified that when she had applied Sudocream to the girl's intimate areas she figured that the child was in pain from her facial expression and not because she had actually complained about being in pain. She said that she had phoned plaintiff as soon as the child was asleep to inform her about this and had then told her the story in more detail

when she had returned from her shift. She added that on the phone she had told plaintiff not to wash the child's clothes and they have remained unwashed. Regarding her testimony about have noticed the girl touching herself in summer she explained that she had suggested to plaintiff to run some tests on the girl because she thought she might have worms.

Inspector Joseph Busuttill testified that he had been informed that a report had been lodged according to which there was a suspicion that a X year-old was the victim of sexual abuse. He explained that since the mother is a doctor she had examined the child and saw no signs of violence, although she had explained that certain types of abuse do not leave a mark. He added that in view of this he had decided not to speak to the minor due to her young age, but had informed the duty magistrate who appointed a criminal inquiry. He explained that Dr. Mariella Mangion was appointed as a paediatrician to examine the child physically, Dr. Joe Cassar as a psychiatrist, and Carmen Sammut as a child psychologist to work together and speak to the child to obtain her version of the events, and further investigations will occur once these experts will have filed their report.

Under cross-examination he testified that he was not the inspector who received the report, but he was the one who informed the inquiring magistrate about it, adding that he himself was informed about the report by Inspector Joseph Scerri. Asked to explained why the dates when the alleged crimes occurred as indicated on the report are from between the 1st of February 2019 and the 17th of October 2019 he explained that this is due to the fact that just because the child discloses that something occurred after a particular access does not necessarily mean that something happened to her on that day and time.

Inspector Joseph Spiteri testified that plaintiff had lodged a report on the 21st of October 2019 with Inspector Jonathan Ransley at the Sliema police station regarding alleged sexual abuse on her minor daughter M, and that he was informed of this by Inspector Ransley, and that he passed on the case to Vice Squad. He testified that he did not speak to the minor or to the parties.

AC testified that on the day when it is being alleged that he sexually abused the parties' child he had exercised access while his housekeeper, SC, was at the house. He explained that the child spent most of the time with SC, and that SC left at about 6.00pm, leaving him to continue feeding the child the pizza that she had made for her. He said that after the child finished eating

he had given her an ice-cream at about 6.20pm as a treat for eating all her food, then they brushed her teeth, the child used the bathroom and he gave her a tissue so that she could clean herself up after that and they left the house at about 6.30pm to take the child back to her mother since access ended at 7.00pm and he needed to make a stop regarding his phone on the way. He added that on that day he was on the phone trying to sort out an issue with his mobile phone, and he had dropped off his broken phone at the repair shop on the way to applicant's residence, at about 6.45pm, after having been on the phone with the shop numerous times while M was at his house. He testified that after that day he had not seen the child because plaintiff had said that the child was ill and then he was eventually informed about these accusations after a court decree suspended his access.

He denied ever touching the child inappropriately, saying that at this point he no longer even helps the child to clean herself after using the bathroom and that when necessary he takes her temperature using a forehead temperature reader. He confirmed that he has occasionally tickled the child, adding that he never tickled her anywhere inappropriate but only under her arms and on her ribs, and that this was only a gesture of affection that he himself had enjoyed as a child with his father. Asked whether he had noticed any sexualised behaviour he testified that he had observed the girl wriggling in her pram to rub herself against the middle strap but he did not really think of it as sexualised behaviour even though plaintiff had said that the child was masturbating. He added that the child had a habit of touching breasts which probably was a result of the fact that she was breastfed, adding also that his mother had spoken to plaintiff about this.

Under cross-examination he denied being a heavy drug user, adding that he had only used drugs occasionally. He confirmed that he was under psychiatric treatment, adding that he has suffered from severe depression and anxiety since he was fourteen years old, and that unfortunately his condition does not respond to treatment. He added that over the years he has tried various treatments, including by seeking medical help abroad. He explained that his parents had also sent him for treatment abroad when they discovered that he used cocaine since it scared them and he had gone to Scotland for treatment. He added also that his condition had worsened and he had become suicidal because he was a victim of physical and psychological abuse perpetrated by applicant against him and that that was why he had to be admitted to Mater Dei.

He agreed that there were instances where he was alone with M during pick up and drop off, but that this might have happened only twice since he's been exercising access. He said that whenever he had tickled the girl, she used to enjoy it and she never asked him to stop or say or do anything which worried him. He said that while the parties were negotiating their separation contract the issue of plaintiff taking M to country Y had cropped up for around two weeks, around January of 2017, which he had objected to due the risk of abduction.

AA testified that he is defendant's brother and that he had been involved in the negotiations between the parties regarding their separation contract. He explained that he had met plaintiff on the 19th of October 2019 at Giorgio's and they had discussed the contract since he was trying to mediate between the parties and they had discussed some issues regarding maintenance for clothing and supervised access. He testified that he knows that plaintiff had raised a concern with his father regarding the child being tickled, adding that his father had told them to stop doing it since plaintiff was against it. He testified that he has never observed any sexualised behaviour on the part of the child or anything that concerned him about defendant's behaviour with the child.

Under cross-examination he testified that he tried to be presented at least once a week for access, but he would not spend the entire time there, adding that he went to visit the child and not to monitor access. Asked whether there have been occasions when a family member was not present during access he answered that he knows for a fact that on the access that occurred on the 15th of October 2019 there was SC present instead because his mother was abroad.

PA testified that he is respondent's father and that he has a very good relationship with his granddaughter. He described the child as very intelligent, bright, bubbly, loving and cheerful, adding that she was also clearly happy and excited to see him and that she also clearly loved her father, who she calls her prince. He explained that he has not noticed any odd or sexualised behaviour on the part of the child, and that the only issue was that she had had a habit of grabbing and touching breasts as a result of being breastfed for a long period. He added that applicant had drawn their attention to the fact that she was against the child being tickled and that, on understanding that this was a cultural issue, he had immediately warned the rest of the family to refrain from tickling the child in order to respect applicant's wishes.

He explained that he was involved in the parties' negotiations relating to their separation

agreement and that applicant's accusations coincided with some disagreements that the parties were having regarding the possibility that the child moves to country Y and other financial issues relating to the child, namely the payment of private school fees. He testified that both parties evidently love their child and that it is a pity that they cannot see the harm that is being done to the child due to this suit.

He testified that in a draft contract that he had received there were two changes which he could not agree with, adding that there will still some outstanding issues on the 3rd of September, especially regarding the child's passport and that he disagreed with plaintiff's request for €750 in monthly maintenance. He continued that just before their meeting on the 3rd of December he had referred to the court, telling plaintiff that if she insisted on her claims she would have to go to court, and he was told that there would be scandal, but it never occurred to him that it would be what is currently happening.

Under cross-examination he testified that he was negotiation the parties' separation contract with plaintiff and he remembers that on a particular occasion plaintiff had said there can be a scandal when they were discussing her presenting defendant with receipts to prove that she had truly spent a sum of money allocated for clothing on the child's clothing. Asked to confirm that the parties had come to an agreement on all issues regarding the contract, he answered that the parties had agreed that they would be willing to allow the child to travel to country Y for a holiday if plaintiff made certain assurances.

Regarding access, he explained that defendant lives alone but that as far as he is aware whenever access occurs at his house there would be either his wife (the child's grandmother) or SC, the housekeeper, present. He said he is not aware that there were any instances when defendant was alone with the child other than at the end of access on the 15th of October 2019.

Regarding his testimony about the maintenance demanded by plaintiff, and upon being asked to make reference to the maintenance clause in the draft contract, he clarified that the amount stated is €725, and that €350 of this represents monthly maintenance whereas €375 represents child minding expenses. He testified that to his knowledge defendant had never paid any maintenance for his daughter till then. Regarding the payment of €10,500 for maintenance arrears he testified that his disagreement was in the sense that he had offered to pay this amount for the child, and he had told plaintiff that if she wanted this sum to be paid to her she would

have to go to court for it.

SC testified that she has worked as a housekeeper at defendant's house for the past six or seven years, going on Tuesday, Thursday and Fridays from 3.00pm till 6.00pm. She said that previously her times were 4.00pm till 7.00pm but she had had to change them due to her other job. She explained that she saw M twice a week and she would help defendant take care of her. She explained that she used to cook for the child, feed her and play, on top of her other duties. Regarding the 15th of October 2019 she explained that she was at defendant's house at 3.00pm and the child had arrived at 4.00pm. She continued that after preparing food, she and the child had gone upstairs together because the child wanted to help her with the laundry and then they went downstairs so that she could feed the child. She added that when she left at about 6.00pm the child was still eating and she left defendant to continue feeding her. She agreed that there is CCTV inside the house, in the kitchen, in the hall downstairs and in the landing upstairs. She testified that on the days when the child is there, there would generally also be defendant's mother or sister who go over to the house to play with M so that she has time to do the chores required. She added that when they're not there she is the one who takes care of the child, although defendant plays with her. She said that she has never seen anything that worried her, and that the only change of behaviour that she has noticed is that the child no longer just spends all time watching television and instead roams around the house. She said that there were times when the child tried to grab her breasts but she understood that this was because she was breastfed because her own son used to do the same. She testified that while she would be taking care of the child, defendant would usually be downstairs on the computer. She said that when the child went to use the bathroom, she would shoo everyone out of the room, and that she could do everything on her own, although sometimes she needs to help her clean herself a bit. She added that defendant never helped with this and usually went to have a cigarette in the garden. She said that the child used to seem happy to attend access and never seemed scared of defendant. She added that on the contrary she used to frequently hug her father and tell him she loves him.

Under cross-examination she testified that defendant's mother used to communicate with her to try to arrange for alternative date for her to be at defendant's house whenever the grandmother could not be there herself during access. She added that defendant's mother was at the house very often during access but there were times when it was just her. Asked what defendant used to be doing on the computer during access she said that he used to always be

dismantling it and changing parts from one computer to another. She added that defendant was never normally alone with the child because there would be either her or defendant's mother present.

CA testified that she is defendant's mother and that she is usually present during defendant's access with his daughter which occurs three times a week. She explained that if she were already in Sliema, she would pick up the child herself from plaintiff's residence and if not she and defendant would go together to pick the child up. She described the child as a lovely, delightful and intelligent girl who always seemed fine during access, adding that she loved spending time with the child. She testified that when she is not present during access, there is usually the housekeeper, SC, present, and sometimes there would also be defendant's sister or brother. She said that defendant and his daughter have a normal relationship and she has never seen any strange or untoward behaviour. She explained that M had a habit of grabbing breasts and she had spoken to plaintiff about this because she felt that it was inappropriate. Asked to explain what she told the child regarding Jesus's suffering, she explained that she had had a conversation with the child after Easter where the child asked her if Jesus was dead or alive and she had explained that Jesus had died but rose again. She continued that at that point the child had remarked about it having been pointless, to which she answered that it was not pointless because when he died Jesus went to open the gates of heaven so that when we die we can go join him. She added that there was no mention of suffering at any point. She added also that the child never complained with her about her father hurting her. In this regard she also testified that even plaintiff herself had told her that she did not believe that defendant had abused their child.

She explained that after she and defendant had agreed to move access day to Wednesday instead of Tuesday, she had received a message from plaintiff, informing her that there would no access until the situation changes. She continued that plaintiff had refused to explain what the situation was, telling her she would know from the police. She said that then plaintiff told her that she had to make sure and to be sure herself of what was going on because she could not believe it.

She testified that usually it is she or SC who help the child in the bathroom, and that defendant does not do this other than hand her a piece of tissue. She said that there are security cameras at defendant's home, filming both inside and outside the house.

Under cross-examination she confirmed that there were times when defendant was alone with M in the bathroom, and that there were times when he was alone with the child during pick up or drop off, but that this was very rare. She explained that she knew that SC would be present during access because she would personally communicate with SC so that they could sort out dates between them when she could not be present herself during access.

Malik Atwair testified that he works in marketing and customer care at Pulpotech and that he could not remember whether he was the one who spoke with defendant on the 15th of October 2019 because he answers a large amount of messages and therefore it's difficult for him to remember all the people he would have spoken with online. He said that from the messages it appears that they were discussing a cracked screen on a mobile phone and he was advised that it would not be feasible to have it repaired. He added that when defendant had gone to pick up the phone he had stopped in the middle of the road because it is difficult to find parking in the area where the shop is. He added that some customers in fact do this, letting them know that they are outside the shop by calling or honking, but he did not remember if he was the one who had handed the phone to defendant. He said he remembers that defendant had phoned a total of five times, and they had answered two of these phone calls.

Witness was reproduced to testify on a second occasion, on which he said that after further verification on their system, he still could not find the messages that he was shown that defendant allegedly sent them, after having conducted searches using both his number and his name.

WPS 256 Lianne Sant testified that she is stationed at the Msida police station and that she had plaintiff's report on the 21st of October 2019. She testified that the date indicated on the report as being the date when the incident happened, i.e. the 17th of October 2019, was indicated by plaintiff, adding that plaintiff had also told her that the child's behaviour had been odd for about a year, from around the 1st of February 2019. She explained that plaintiff had spoken to her on the 17th of October, but had filed an official report on the 21st of October. She continued that she had informed plaintiff regarding the importance of the dates indicated by her and she had asked plaintiff whether she was sure of the dates.

Under cross-examination she testified that the 1st of February 2019 was included because their

computer system does not allow for a report to be saved unless a time frame is given.

Inspector Jonathan Ransley testified that the first person to speak with plaintiff was WPS 256, who had informed him that there was a case involving a child, and he had asked plaintiff to go speak to him personally at his office. He added that he had heard plaintiff's version before a report was taken. He explained that wherever there are words in inverted commas in the report, these words would be a direct quote of what plaintiff would have told them, adding however that the report was not typed in his presence. Asked whether from his recollection of his conversation with plaintiff there appear to be any inconsistencies between what plaintiff told him and what she told the officer taking down the report, he said that what is reported is story that he heard from plaintiff. Asked whether he agrees that the date of an event is particularly important in an allegation of abuse on a minor he answered that the date is important in every report but that however this is not imperative because a child cannot give you an exact date and the adult complainant can only report what was said to them by the child.

Under cross examination he testified that plaintiff had told him that she had spoken to Appogg about the matter and that this was before she filed the report.

Deliberates;

This is a decree following an application filed by plaintiff, wherein she requested that defendant's access be suspended due to the alleged commission of sexual abuse on the parties' child. Defendant strongly denied these accusations, and argued that this is merely an attempt by plaintiff to manipulate the proceedings and to try to deny him access to their daughter.

The evidence shows that the parties have a daughter who is now around X years old, and that the parties are de facto separated and are currently engaged in litigious separation proceedings. It results, and it is uncontested, that during their de facto separation, defendant was exercising access as amicably agreed by the parties, that is, it was agreed that this access should be exercised under the supervision of defendant's family members since defendant has a history of depression and substance abuse. From the testimony heard by this Court, it results that notwithstanding this agreement, there were a few occasions where no family member was present during access, although there was, at the relevant time, defendant's housekeeper present in the house, since she also helped him take care of the child. It results however that after a

change in her working hours, defendant was at his house alone with the child for the last hour of access.

The Court notes that no signs of violence were observed on the child after a superficial examination conducted by her mother, who is a gynaecologist by profession. However, applicant explained that the mucosa of the vaginal and anal area of a child heals quickly, and that therefore any small scratches would no longer be evident within twenty-four hours. This evidence was not disputed by expert evidence produced by the defendant. The Court further notes that plaintiff herself stated that she could not be certain that the version of events as told by the child was true and that plaintiff had chosen not to have the child undergo more invasive medical examinations without first being examined by a child Psychologist in order to verify the child's story.

The Court also noted serious anomalies in the evidence of the applicant, not least the mistaken date of the alleged incident, i.e. the 15th rather than the 17th October 2019 – a mistake that was reflected in the police report and repeated to the various Police Officers with whom applicant spoke, and a costly mistake for the Defendant since all security footage of the 15th October 2019 were written over.

Of concern too is the inconsistency of applicant's evidence, about when she physically examined her child, whether this was within twenty-four (24) hours from her mother's phone call, as she in fact told her lawyer¹ or later still.

Of more concern is the fact that applicant failed to mention the child's wet underwear and the ultra violet light examination she had conducted of the same underwear during the course of her first testimony – an extensive testimony before this Court, vide page 56 to 94 - and only mentioned this in her subsequent testimony. She also failed to mention this to the Police Officers. Indeed, none of the Police Officers² mention the child's underwear and there is no mention of this underwear in the police report lodged by the Applicant³. Moreover, the

¹ Vide Document OA2, at page 136.

² Vide page 283 to 285; Vide page 172 – Isp. J. Busuttil; Vide page 298 – Isp. J. Busuttil; Vide page 189 – Isp. Joseph Scerri; Vide page 383 till 386 – WPS Lianne Sant; Vide page 394 till 397 – Isp. J. Ransley.

³ Vide Document JS1 at page 283.

Applicant concedes that when she examined the child's wet underwear under ultra violet light in hospital, there was not evidence of any sperm content on the same underwear.

The Court notes furthermore that although the plaintiff mentions she was terribly distraught with the allegations regarding her daughter and the fear that she had been sexually abused by the child's own father, plaintiff continued to negotiate the terms of her separation with PA and with AA⁴ on the **19th of October 2019**, and this in a timeframe subsequent to the date of the alleged abuse (that is the 15th of October 2019) but before the filing of the Police Report on the 21st of October 2019.

Of note also is the fact that when PA requested receipts before payment of the child's clothing and this request was denied by Plaintiff so that PA informed Plaintiff that then there will be no alternative but proceed to Court, the Plaintiff responded that in that scenario there shall be **scandal**⁵.

Moreover, the Court could not rely on TI's evidence, Plaintiff's mother, as this was not found to be credible. The Court finds that in spite of the fact that TI was most insistent about the foul smell emanating from the child's genital area she was unable to identify it or describe it. Moreover, her evidence is most confused as regards the sequence of what exactly the child told her and when it happened. Furthermore, the Court noted TI's malice when she declared that CA's response to her grand-daughter's alleged suffering at the hands of her father was: ***"Jesus was harmed and he tolerated it, sort of, so we should ... as well"***⁶.

On his part, defendant has strongly denied the accusations against him, gave a detailed account of the day in question⁷, adding that on the day of the alleged abuse, he had barely spent half an

⁴ Vide page 282, Document AA1 and AA's evidence at page 225.

⁵ Vide page 243A and 298R, evidence of PA.

⁶ Vide page 121, evidence of TI.

⁷ Vide Document CA1 and CA2, at page 286 and 287.

hour alone with his daughter. In fact, from the evidence produced before this Court, it results that on the day in question, defendant was frequently on the phone as he was trying to repair a cracked screen on his mobile and was repeatedly calling Malik Atwair⁸, the mobile phone repairer.

According to the paternal relatives whose testimony was heard by this Court, the child has an excellent relationship with her father, who she calls her 'prince', and there have no notable changes in the child's behaviour, who continues to be bubbly, intelligent and bright.

From the testimony heard by this Court and all the evidence produced by the parties, the Court considers that there is not sufficient evidence to suspend defendant's access. The Court observes that access forms part of a parent's right to family life guaranteed under Article 8 European Convention on Human Rights (ECHR), and interferences with this right ought only to be made when this would be in the best interests of the child, and upon balancing the parent's rights with the child's best interests, always taking into consideration the paramount importance of the child. The Court notes however that a Magisterial Inquiry into these allegations is currently pending and that the Inquiring Magistrate has appointed a number of experts to examine and speak to the child. In the Court's opinion it would not be prudent at this point for defendant to exercise access unsupervised. The Court is of the opinion that, since the Magisterial Inquiry is ongoing in which the child shall be giving her version of events, it would be more prudent that defendant exercises access under the supervision of a family member. The Court considers also that defendant's parents and siblings are to be allowed to be present during access, in order to preserve the child's bond with her paternal relatives.

For these reasons the Court, while rejecting applicant's request to suspend defendant's access, orders that defendant shall have access to his daughter twice a week, under the supervision of a member of the family of Defendant, either the parents or/and siblings, every Tuesday and Thursday from 4.00pm to 7.00pm at the residence of Defendant's parents or his brother's residence. There shall also be access on the Weekend on alternate

⁸ Vide Document MA at page 390 – call log.

Saturdays and Sundays from 4.00pm to 7.00pm under the same supervision of a family member and with the same modalities.

Costs reserved for final judgment.

Read.

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

**Lorraine Dalli
Deputy Registrar**