



**CIVIL COURT
(FAMILY SECTION)**

MR. JUSTICE HON. ANTHONY VELLA

Sitting of Thursday 5th March 2020.

Application number : 124/2015 AGV;

ABC (ID no; 82113A)

Vs

DEC (ID no; 82137A)

The Court;

Having seen the application of ABC dated 3rd June 2015;

Respectfully states and confirms under oath:

That this is an Application for **Judicial Separation** of the Parties ‘a thoro et mensa’, for the dissolution of the Community of Acquests, and the grant of **Sole Care and Custody** to Applicant in respect of visitation rights, better explained hereunder.

That by a Decree of 15th May 2015 the Court has terminated the reciprocal mediation proceedings, bearing numbers 453/15 and 503/15, and authorized both parties to proceed according to law. Applicant therefore respectfully asks that *the Record of the above-mentioned mediation proceedings (Ittra 453/15 and Ittra 503/15) be amalgamated* with the present Record as they contain submissions and documents that are directly related to the same issues, object of the present Procedure.

The facts that brought about the present procedure are principally, though not exhaustively, the following, as can be further proven during the trial:

1. The contending parties got married in Bulgaria, the country of origin of defendant. (see Marriage certificate and relative translation into English **Dok, A**); and on the 25th April 2006 , over there, a child was born to them and they called her **FAC** (see the annexed Birth Certificate and English translation **Dok. B**) They call her ‘G’. She is nine (9) years old.
2. That with effect from the first (1) of October 2013 the contending parties were registered as resident in Malta, as results from the annexed copy of their respective Identity Cards (**Dok. C**) .
3. That the exponent has no current occupation, both because he has some money saved up from work he formerly had outside of Malta, and also so that he may be able to pay proper care and attention to their minor daughter abovementioned; whilst in the case of the respondent, she works as a Nurse at Mater Dei Hospital where she has shifts of twelve (12) hours each including breaks, and rarely has a full day off -- and when she does she spends several hours sleeping.

4. That since a certain time ago, and more specifically since September 2014, respondent started to be very cool towards the exponent and their daughter 'G', and relations started to deteriorate. On 23rd November of the year 2014, the defendant went to Bulgaria for two weeks (till 7 December 2014), where, it is now a known fact, she regularly met up with a certain 'HI' who has turned out to be her 'sexual' boyfriend. She might deny, but she has no religion of any kind, as she admitted before the Court when commencing to give evidence on 14th May 2015, in the mediation case 453/15, and thus hardly any scruple or restraint about saying an untruth where convenient. On 14th February of this current year, the defendant abandoned the conjugal home and went to live in a hotel, and started to stay in different hotels. She went again to Bulgaria on 1st March 2015 for a whole week, and returned with HI. She and H went to stay at the Plaza Hotel, in Sliema.

5. That the respondent and her daughter were hardly on speaking terms during those long several weeks, and on 17th March 2015, after much insistence from the exponent, believing himself to be acting in his daughter's interest, he persuaded the defendant to return home at 5.00 in the evening. By now the minor had become sufficiently aware of her mother's double life and this thing was a cause of great pain to the girl and in the days that followed there were arguments between them. That same night 'G' wrote her thoughts in her diary, and the exponent managed to make a copy that is exhibited in the acts of the Mediation case no. 453/2015, together with other documents filed which show the low morality of the respondent, not conducive at all to the upbringing of a child of 9 years. Between mother and child there was no proper dialogue, and more so there were frequent arguments. So much so that the respondent, on 18th of March 2015, told 'G' that they were "incompatible". On 19th March 2015 (a public holiday) at about nine (9.00) p.m., the respondent started harming herself and to cry and rant and say demeaning things in her own regard. And even began to punch

herself in the face in the presence of exponent and their daughter. The minor then started telling her mother to leave the home and that she (G) will only go and visit her when it pleases her and not whenever she chooses.

6. That then, in the very early hours of the 22nd of March 2015, there was a violent incident in the place, which, although the respondent has been trying (in Court) *to blame* Exponent for it, entirely occurred due to the irascibility and uncontrolled anger of respondent. That evening, after he had left mother and daughter together in the flat so they could dialogue more freely, he returned home rather late and also quite tipsy since he had frequented a bar nearby and taken a few pints of beer (but was not used to drinking). D raised a scene and at one point she took a run after him, and as he tried to avoid her she landed on the floor and started banging her head against the sideboard and wall. When the exponent attempted to stop her and help her up, she repeatedly kicked him in the abdominal area and chest causing his ribs to be bruised. She raised a panic, even involving the neighbours in her lamentations, The police had to intervene (Sergeant Matthew Galea), and in the hysterical state she was in, she was asked by them to leave the flat and go elsewhere taking her clothes and personal items which had still not been unpacked since her return on the 17th and their daughter was witnessing all this.

7. That it resulted that the respondent actually had a rented flat, in Gzira, that she had not told Exponent about. Later that day in the afternoon more trouble cropped up, because respondent phoned up the exponent and told him she was on the floor and could not move her legs,...as since, at that time, exponent and his daughter were at the Gzira Police Station, they all went together to respondent's flat, guided by the police who knew where she lived as she'd given Sgt Galea directions on the phone. They found her seated on the floor crying and wringing her hands, saying she cannot move her legs. It ended up that she had to be taken to the Mater Dei hospital by ambulance accompanied by exponent and his

daughter. One of the police officers suggested (no doubt spontaneously) that in her neurotic state she should be sectioned and placed in Mt Carmel *for a proper check*. In the hospital a wheelchair was provided and she was checked by a doctor and he found nothing physically wrong with her, the Doctor wanted her to go to Mt Carmel, but she kept insisting she wanted to go home. She accused exponent that he had intended sending her “up there.”

8. Shortly after these painful series of incidents, which must have left an indelible effect on the minor child, (who saw everything) there were yet others. Such as when the mother visited the child unannounced at her (G’s) birthday party at the Salesians (Sliema) when the girl was enjoying herself surrounded with friends and, on surprising her by this visit and offering her a gift, G grabbed the gift and smashed it to the ground in disgust. This was recounted to exponent by G and the children, and a Salesian Sister by the name of J-K. This happened while the exponent, oblivious of his wife’s plan to make a surprise appearance, had gone out of the party for some fresh air. On his return the mother was gone. The girl accused him of orchestrating this matter, **but perhaps the most worrying** was the discovery, in the flat, by the minor “G” of her mother’s second mobile phone and... when she fiddled with it... she found a long series of several mobile phone messages with **a lot of explicit sexual and even pornographic content**, in an exchange of *viber messages* that shocked the girl to the point of crying and screaming...(a small selection of these is exhibited in the records of Mediation no. 453/15 RGM). All of which messages were exchanged with the depraved ‘partner’ of respondent, HI. This incident left the girl heartbroken, who started insisting again with her father that she no longer wanted to hear about her mother. And this is what she still maintains to this day, at school, with friends, at home. The respondent had, in earlier days told G that she does not love her father, and that with H she was “making love, not sex”. This same HI is based in Nigeria on business of some sort, but often comes to

Europe and Malta. Respondent had told exponent that he had bragged that he could sleep with as many Nigerian women as he pleased. Another example of the respondent's irresponsible and certainly unexemplary behaviour is the fact that she is currently under investigation by the Maltese and Bulgarian authorities, on suspicion of having produced documents under false pretensions to the Maltese Health Authorities, showing Nursing qualifications or studies *higher* than those she actually possessed when applying for her Mater Dei position.

9. After this significant series of situations, with his daughter adamantly protesting about her mother's betrayal of the Father and refusing to see her, respondent's scandalous behaviour with HI, and her abandonment of the family life, Exponent decided to seek legal advice. The respondent, living in her own flat (*regarding which, still he had no clue of the address until he saw it written on the Mediation papers*), had started insisting she wants to come over to the Flat, even downstairs in the street, to spend time with the girl. As this request instilled fear in the minor child, and he feared the respondent might turn up at the door, respondent sought legal advice. His lawyer sent a Letter by email to the respondent asking her to be patient, to give the daughter enough space that she needed, that access should be regulated by the Family Court, and warning her to keep away from the exponent's flat (Dok. D). Exponent filed a request or the issue of a protection order upon defendant, but this request was shelved and undersigned lawyer was directed to first apply for mediation. There was then the hearing of the 'other' mediation request, and this Honourable court issued the decree of 15th May 2015, appointing a Child Advocate, a clinical psychologist and Agenzija Appogg and giving directions about how the mother's access rights may be exercised, quashing the two mediation attempts and granting either party the faculty to proceed further...as exponent is doing by today's Application.

10. That the Timeline herein exhibit (Dok. E.) clearly shows how true it is that respondent has abandoned the family and the conjugal home, even providing dates, which exponent confirms as accurate.

11. That the efforts of exponent to reunite the family have unfortunately proved futile. He did not succeed to persuade his daughter to accept her mother as she is, and now he finds this even more difficult to imagine. But he assures the Court that, throughout this saga, though sorely tested, he has never ever tried to manipulate the girl to turn against her mother, as was falsely alleged by the respondent during her testimony at the sitting of 14th May 2015 in the mediation hearing of Ittra no . 453/2015. Today he is convinced that, whilst there is a need to sort out acceptable and properly monitored ways for the access rights between mother and daughter to be exercised, **there is an urgent need for Personal Separation of the parties**, and for **sole care and custody** to be granted to Exponent.

Accordingly exponent brings the above facts to this Honourable Court's cognizance and request that he be granted (a) *Personal Separation* 'a thoro et mensa', (b) the *dissolution of the Community of Acquests* and Respondent's *decadence from any future right of Maintenance*, and (c) the *Sole Care and Custody* of the minor daughter 'FAC,----and this on the grounds of :

(1) respondent's **adultery**, (2) her frequent **violent (and sometimes masochistic and irrational) behaviour** even exercised upon their daughter various times, (3) her **irresponsible and incompatible character**, (4) her **abandonment of the family home**, (5) her **scandalous sexual activities amounting to a habitual fixation, and consequent bad example** to the minor daughter whereby she has been estranged, and (6) her **inability** to come to terms with herself and maintain a smooth, trustworthy and sincere relationship with exponent and their daughter.

Furthermore, exponent humbly requests that in consequence, and in her best interests, the minor daughter *continue to live with her father in the family home* she is familiar with, that the **Family Allowance** in future be directed to the Father for reliable allocation of same to the minor's needs, and finally that until the Court directs otherwise in future, the **Child Advocate** and the **Psychologist** continue to monitor the relationship of the Child with her Parents and all access rights of mother to Child and vice-versa be exercised under strict surveillance by **Agenzija Appogg**.

It is finally submitted that the respondent is in any case physically and psychologically unfit to have care and custody of FAC, also due to her neurotic condition, her history of recurring depression and mood swings, her recurring affair and frequent travels abroad with 'another man' whom the child abhors and who can also present risk of abduction and certain diseases since he militates in African countries and finally the long working hours of the respondent which leave her little time for the girl and a great need to sleep off her tiredness. In contrast of which, exponent offers tranquillity and loving attention to the minor, has plenty of time to dedicate to her, helps her with her studies, cooks for her dresses her up and takes her out to playgrounds and parks and to meet school friends and generally attends to the needs of her health, education and well-being. He also has some capital saved up sufficient to make sure his daughter lacks nothing.

With costs against Respondent.

The Court having seen the sworn Reply of DC dated 21st July 2015;

1. That preliminary respondent notes that the sworn application as submitted by applicant is not in conformity with the requisites as stipulated in article 156 (1) of Chapter 12 of Laws of Malta. In the sense that respondent notes the following :-
 - a. The wording as required under article 156 (1) (d) is not in conformity as found at in the referred to article in the said application.
 - b. The claims are not numbered , obscure and unintelligible.

2. That nevertheless, respondent contests the facts as submitted and it will be resultant from the evidence exhibited throughout the proceedings, it is in fact applicant that has been violent towards her and has done all in his power to ensure, that her relationship with her child is severed.

3. That although not clearly indicated as explained above, it may appear that applicant is laying claim on the following;
 - a. That personal separation is declared '*et mensa et thoro*'.
 - b. That Court declared the dissolution of the community of acquets and declares decadence from any further right of maintenance;
 - c. That Court grants the sole and custody of the minor child to applicant.

4. That if this is the case , whilst respondent agrees with applicant, that their personal separation is to be declared, it does not agree all sanctions as laid at law should be imposed on her. Such sanctions ought to be imposed on the applicant and that he be declared responsible for the breakdown of the marriage, on the ground of violence, excess, cruelty , threats and grievous injury committed by applicant on the Respondent. Respondent makes reference to her sworn application number 140/2015 AL.

5. That furthermore, whilst applicant agreed that the community of acquiescence existent between the parties is to be dissolved, however it ought not to be necessarily liquidated in equal portions as any sanctions, as dictated at Law should be imposed on the applicant for reasons as declared above.
6. That applicant rebuts the third request, such that is to be provided with the sole care and custody of the minor daughter FC. As will be resultant from evidence produced, applicant is in the habit of drinking, even in the presence of the child and whilst the minor child is in his care he has a violent character, is manipulative, and is much older than the minor child and is not physically and mentally fit. Furthermore, he had several suicidal thoughts and even said so to the child;
7. That applicant further rebuts that she suffers from depression or as a neurotic condition as is falsely being alleged by the applicant. It is in fact that has been the stable and the bread winner of the family, and has done all that is necessary thus to ensure that the family's needs are seen as well as been pivotal in the upbringing of the child.

Save for any other pleas.

With costs against defendant reference to the oath for the other person.

Having seen the acts of the case.

Having seen that this case is being decided together with case Application Number 140/15AL in the names **DEC vs ABC**

Having seen the various applications and decrees.

Having seen that on the 3rd July, 2015, Dr. Sharon Vella Camilleri was appointed to prepare a psychological assessment of both parents.

Having seen the report filed by Carmen Sammut, Psychologist dated 29th September, 2015.¹

Having seen the report filed by Dr. Sharon Vella Camilleri on the 16th December, 2015.²

Having seen the application and the decree dated 19th May, 2016.

Having seen the report of Family Psychotherapist Carmen Delicata dated 20th September, 2016.³

Having seen that by decree dated 12th January, 2017, the Court appointed Dr. Stephanie Galea as the Child's Advocate.

Having seen the note of submissions filed by Dr. Stephanie Galea, Child's Advocate on the 16th May, 2017.

Having seen the application and decree dated 26th September, 2018, whereby the Court granted care and custody to Defendant at the request of Plaintiff.

FACTS

1.Plaintiff met Defendant in September, 2004 in Bulgaria. At the time she was studying in her third and final year of college to obtain her nursing

¹ Fol.86 of the acts of the case.

² Fol.149 of the acts of the case.

³ Fol. 504 of the acts of the case.

qualification. He had employed her as a translator, but she proved to be inadequate and he fired her because she had become a liability to the projects he was working on.

Sometime later, he explains that he heard from Defendant, who asked for his help, because she needed money as she wanted to obtain an abortion as she was expecting the child of her mother's neighbour L. She admitted that she used to instigate the sexual relationships. He agreed to help and after the abortion she went to live with him. A bond formed between them and he also felt a sense of pity towards Defendant because she had a dreadful upbringing. This led to them starting to be intimate and very soon after she moved in with him with her very small belongings, since she came from a very poor family, who were considered to be gypsies.

By September, 2005 they were expecting a child, they got married and G was born in April, 2006. After the birth of their daughter, Plaintiff believes that Defendant changed. She became more depressed and more of an introvert. She seemed to have lost interest in him and used to spend a lot of her time chatting on internet and that is where she mentioned a certain HI who she considered to be a pervert.

When G was six months old, Plaintiff insists that Defendant had started to slap her on her bottom, arms and legs. Despite the several times he tried to stop her it continued until the child was 3 years old, when they were living in Spain. He could understand that it was coming from the fact that her mother used to hit her when she was a child and it was part of Bulgarian culture to do what you want, but he warned her that in Spain, hitting a child would be unacceptable and she stopped.

Plaintiff reiterates that Defendant's depression got worse, until it reached its climax in 2009 when she had to be admitted to hospital because of a severe panic attack. As a result, she had to see various psychiatrists and he had to take full care of their daughter, so much so that he had to stop working to take care of both of them. She seldom spoke to him and their daughter and she was either chatting on internet or spinning, that is lying in bed and seeing the whole room spin around. He admits to have been suffering from severe headaches too.

She had also told him that she thought he was rich and that is why she had made sure she got pregnant.

In November, 2013 they came to Malta and in December, 2014, Defendant had to be admitted to hospital, where she was diagnosed with psychosis, he says . In Malta, he explains, Defendant had tried to start working as a nurse, but she was informed that she did not satisfy the four years nursing training as required within the EU. He however discovered on the 23rd March, 2015, that Defendant had forged an extra year of nursing study, as she had officially completed three and it was through this deception that she had managed to acquire a certificate to work here as a nurse through the Council for Midwives and Nurses. Plaintiff further explains that he had done his utmost to support her and at the same time took care of all Gs needs and activities.

Since Defendant had started earning an income, initially she started contributing towards the family's needs, then she limited it to the rent and electricity for a while, until she decided that she was not going to contribute any further. He denied that as Defendant declares that she was the main bread winner. He maintained her for a whole ten years. He was a qualified teacher in the United Kingdom, but here in Malta he was not qualified

enough, so he worked as a receptionist or as an office boy, with a low wage of €7 an hour. He states that Defendant had never worked prior to March, 2014 and Plaintiff used to deposit in her account, the money that was due for their rent, which then Defendant used to pay. He also denies the allegations made by Defendant, that after she left the matrimonial home on the 14th February, 2015, she continued meeting the family needs, in particular when he ended up having to wash twenty pairs of “sexy pants” on which she had spent 200 sterling to satisfy HI.

On Valentine’s day, 2015, flowers arrived at their apartment for Defendant with a love message. The latter denied any wrong doing, but Plaintiff admits that he had his own suspicions because Defendant had gone to Bulgaria between the 23rd November and 7th December, 2014 and she had an infection in her intimate areas. Plaintiff denies Defendant’s allegation that he suffered from erectile dysfunction, especially when he had to undergo a number of tests to determine whether he had contracted a sexually transmitted disease. On that day, Defendant left the matrimonial home, she went to stay for a while at the Windsor Hotel and on the 1st March, 2014 she flew out to Bulgaria to meet H, and she returned on the 8th April, 2015.

On the 5th April, 2015 their daughter G discovered perverse messages of a sexual nature between Defendant and HI. This upset her very much. Plaintiff admits that he tried to save their marriage and persuaded Defendant to return home, but she was very unhappy. She started to beat herself up in their presence and she admitted that she had been self-harming herself for a long period of time. This was followed by another episode, when she attacked Plaintiff when he attempted to stop her from bashing her head against the wall and the sideboard. That day the police had to intervene after the neighbours called. Under cross-examination, Plaintiff

states that it was Defendant who called. Plaintiff insists that she fabricated a whole story that he had been violent with her and had caused her all the injuries. This was also the case that Defendant's lawyer raised in court. He denies also being under the influence of alcohol. Defendant was ordered to leave the home where Plaintiff was living with his daughter and as soon as she moved into an apartment close by, soon he was called by the police, because Defendant was in a hysterical state and she was taken to hospital and eventually admitted to Mount Carmel, where she was watched by a nurse. Until they supported her at Mater Dei, it was serving no good for their daughter and it was causing her more distress. Defendant was furious at Plaintiff and blamed him for having placed her at Mount Carmel. Her mother also accused him of having misunderstood everything and that there was no other man in Defendant's life.

Plaintiff believes that today his daughter and himself are much happier, since Defendant has not been in their lives. It was all too much for their daughter to see the unhappiness and the instability of her mother, who never had time for her daughter, but had all the time in the world to have an affair with another man. She fears having to see her again and was very distressed when there were the visitation sessions at Appogg.

Plaintiff believes that he only can be the sole custodian of their daughter G, because Defendant's psychological problems prevent her from working and moreover, she is being investigated for having forged her nurse qualifications. Meanwhile, on account of his daughter's young age it is going to be difficult for him to find a full-time employment, until she reaches an age when she can stay at home alone. His other daughter from a previous marriage intends to come to live in Malta and this would make things easier for him as she was old enough to help him with his minor daughter.

He also reiterates that since Defendant is in a relationship with HI, this is not the ideal situation for his daughter to be in full care and custody of her mother.

If things don't work out in Malta, Plaintiff states that his only option would be to return to England, where he has family, who would definitely help out with the babysitting.

When testifying in 2018, Plaintiff confirms that Defendant and their daughter G had spoken, because it was the latter's birthday and Defendant had brought her some gifts. The initial contact led to a whole argument, until Plaintiff states that he had to descend from his apartment to make them stop and brought them inside.

2. Defendant confirmed Plaintiff's version on how they met and that in 2006 they got married just three weeks prior to giving birth to their daughter. She explains that two years into the marriage, Plaintiff became aggressive with her and would call her names. She says that he would slap her, push her to the floor, pinch her private parts and her nipples and force her to have sexual intercourse even when she refused. During this time, Plaintiff also started to suffer from unexplained pain in his knees and eventually a chronic headache. All this caused him extreme pain, a bad temper and mood swings. He became more abusive towards her and their daughter and intolerant. At times he was even suicidal and this continued even when the doctors he visited in Malta put him on medication for depression.

She explains that since she was a nurse she had tried to convince him to seek psychological help and also to seek help to manage his pain, but he was stubborn and he refused.

Since there was a twenty year age difference, Defendant insists that Plaintiff had a very domineering character and was also very jealous of her. He was the one who took care of their finances. He used to speak against her to their daughter and blamed her for everything that went wrong. He discussed certain mature topics with his daughter and she would always do and say things that would please him. Defendant states that her daughter saw her as the weaker one in the relationship. She reiterates that he used to call them “bitch,” “slut,” “rubbish.”

She explains that she had a close relationship with her daughter and they lived a very isolated life, because Plaintiff did not enjoy it when she made friends. It was only after she left him that she started to make friends.

Since 2014 she started to work at Mater Dei as a nurse and she was the main bread winner. She earns on average €1,650 per month, with two bonuses every six months. She explained that €800 are paid towards the rent and then the rest of the money would get transferred to Plaintiff’s account. The rest go on medical care, clothing, internet and mobile phones and travelling by bus expenses.

However, by September, 2014, they had already made a verbal agreement to separate because their relationship had become dysfunctional. On Valentine’s day, 2015 she had received flowers from a man who she was chatting with online and on account of this she states that Plaintiff got very jealous and forced her to leave the matrimonial home. Having no alternative, she had booked a hotel where she resided between the 14th February, 2015 till the 17th March, 2016. Their daughter G used to visit her regularly and she states that they tried to maintain some normality, although when she had found out about the flowers she was upset.

She admits that the flowers that she received on Valentine's day, 2015 were from HI, but she denies that they were sent after they spent a holiday together in Bulgaria.

In September, 2015, Plaintiff insisted with her to transfer the money she had in her account to him, because he was too old and sick to work and she confirms that between September, 2014 and March, 2015 she transferred approximately €50,000. She confirms that although she was not living with her family, she still passed on €5,000 back in March, 2015.

After she had informed Plaintiff that she was moving into her new apartment that she had rented out in Gzira, it was on the 17th March, 2015, after having asked her to meet up, that Plaintiff tried to convince Defendant to go back home. Since, she was missing their daughter she decided to move back into the matrimonial home, but when she did, Plaintiff kept on insulting her and humiliating her because she had let herself have feelings for a man she met on internet.

As to HI, she never met him personally, but over the internet. When she confirmed that she met him in the email, she did it just because Plaintiff was pressurising her to admit that she cheated on him, but it does not mean it is right.⁴ She even explained that the chats with Has exhibited, spoke about fictitious facts, because they fantasized about doing things together.⁵ She states that they played a virtual game, since they never met, though the period between the 7th November, 2014 and 7th December, 2014 she was in Bulgaria, according to Plaintiff's lawyer.⁶ She also denied meeting H when cross-examined about an email she sent Plaintiff on the 5th April, 2015. She also denies that when she had left the matrimonial home and she

⁴ Dok. MJR 1 a fol.675 of the acts of the case.

⁵ Doks. MJR 2 – MJR 4

⁶ Dok. JRP 1B

was staying at the Plaza Hotel, H was in a room opposite her and her daughter G had seen him in her room.

She agreed that Plaintiff had deposited the sum of around €11,000 in her bank account, because they were applying for a permanent citizenship here in Malta, so it helped to show that she had her own funds. In all Plaintiff had brought around €100, 000 with them to Malta and these were the proceeds from the sale of two properties he owned in Bulgaria. He used part of the money to buy themselves an apartment in Malta.

On the 22nd March, 2015 Defendant mentions an incident where Plaintiff had returned home drunk in the middle of the night and he assaulted her causing her so much pain that she had to go to Mater Dei. When she returned to her apartment, the pain in her leg was so bad, that she had to call Plaintiff for help. That day the police came to her place and that was the last time she had contact with her daughter. She explains that she was angry at her daughter because according to Defendant, she had lied to the police and didn't admit that Plaintiff had beat her up. She states that the minor child told her she was scared that Plaintiff would end up in jail. She goes on to state that Plaintiff has made everyone believe that she left the matrimonial home and abandoned their daughter. She didn't want to abandon her so much so that she transferred the childrens allowance she had received for her in April, 2015, to Plaintiff's account.

On the 25th April, 2015, their daughter's birthday, Defendant went to visit her at her summer school with a present, but instead G reacted hysterically, screaming and running away. During such a period, G had stopped all contact with her and with all members of her family. The only adult figure in her life was Plaintiff. She also discovered that her daughter had hacked

her email account on the 30th April, 2015 and this she could confirm because of the identical mobile numbers. On the 3rd May, 2015 she also discovered that her Facebook page had been taken over in all probability by Plaintiff.

Defendant states that she never gave up following her daughter's progress at school and she has kept herself informed regarding her life and well being.

3. Inspector Joseph Busuttill presented a police report filed by Plaintiff against Respondent on the 15th July, 2015, regarding an incident that happened on the 8th March, 2015. However, no action was taken, although they did investigate the mobile phone and they found normal photos of the child, there was nothing irregular.⁷

4. Eucharist Camilleri used to work⁸ as the Acting Registrar at the Council for Nurses and Midwives of Malta. He explains that Defendant was registered before he was there in 2013. He admitted knowing Plaintiff and he had met him about twice. Plaintiff made allegations that his wife was not qualified to work as a nurse and Camilleri took down notes and asked Plaintiff to sign it. Herein he stated that Defendant had forged documents to show that she qualified to work as a nurse. He explained that he had referred this document to the Council for consideration and he was asked to investigate the matter further, since they had a networking for the European system. In this regard, he had asked the Bulgarian Council whether the Defendant's registration was in line with Article 31 of the

⁷ DOK. JG 1

⁸ Dok. EC1

European Union directive, which confirmed that she was not.⁹ The Council then referred the matter to the Police and this is as far as he knows, because he then did not work with the Council any longer. He said that he did not pass on further information to the Plaintiff, except that the matter was being taken care of by the Council.

5. Inspector Anne Marie Xuereb was approached by the Council for Nurses and Midwives to investigate Defendant regarding suspected falsification of information presented when she applied for a nursing position at Mater Dei. She explained that for the nurse to be registered it was required that she had worked for a number of hours and with the documents she had filed with her application, these hours were not satisfied. She exhibited four documents which resulted to be false and these were presented to the Council, but she didn't know by whom,¹⁰ although it resulted that Dokument AMX 4 was done by Dr. Maneva.

She also explained that two CVs were presented, but the first one presented was different from the second both in its writing and its format.¹¹ However, as soon as the Council received the report from Plaintiff, the Council made contact with the Director of Pleven Medical University and they also sent a scanned copy for verification of document.

With regards Dok. AMX 1 and AMX 4, the Bulgarian authorities confirmed that the signatures and the rubber stamp were authentic, however the doctor herself confirmed that she was not a manager at the health centre at Auro Veliko Tornova, and thus had no authority to issue such a recommendation and she couldn't even recall doing so.

⁹ Dok. EC2.

¹⁰ Doks. AMX 1 – AMX 4.

¹¹ Doks. AMX 6

When confronted with the forged documents, Defendant denies ever seeing them and when asked how they ended up with her application, she explained that when there was the first refusal by the Council, Plaintiff promised her that he was going to take care of things himself, but she had no idea about a second application.

She concluded that since they did not manage to confirm who the author of the forged document, was through the investigation, no criminal action could be taken against Defendant. When they contacted Dr. Maneva regarding the forged document by letter rogatories, he couldn't explain how it happened.

The Inspector also exhibited a copy of the notes she took regarding this inquiry.¹²

6. Lino Cremona, on behalf of Plaza Hotels, confirmed that HI had resided at the hotel between the 8th and 9th March, 2015, whereas Defendant had resided in the hotel between the period of 8th March, 2015 till the 15th March, 2015.

7. MN a cousin of Defendant states that when she had found out that Defendant was in a relationship with Plaintiff, both her and Defendant's mother were not happy because he was much older and he was a foreigner.

She explains that from the start Defendant had told her that Plaintiff had a hard character and he would easily lose his temper and start calling her names. She describes Defendant as being a good mother who took care of

¹² Dok. AMXR 1.

her daughter and always kept her neat and tidy. She also took good care of the household.

When Plaintiff had problems with his knees and started to suffer from constant headaches, he became like a monster according to what Defendant told her. He used to scream, insult her and even physically abuse her. His pain used to make speak about committing suicide. He also used to drink alcohol and this made his temper worse.

She speaks about the time when she happened to be visiting them in Malta and she confirms that G their daughter was very unhappy because they argued all the time and they wanted to separate, but it was going to be difficult for her to choose between them. She believes that G was always trying to please her father and she feared him. On one of the mornings when she happened to be there, Plaintiff woke up and started to act like a crazy person, he started insulting her calling her a “whore” and a “bitch” and accusing her of conspiring with Defendant against him. He asked her to pack her things and leave. Defendant did not contact her for a while until then Defendant told her that Plaintiff had beaten her and this was on the 23rd March, 2015. She explains that since March, 2014 they have tried to retain contact with G, but she refuses.

With reference to this evidence, Plaintiff has a different version. He always had a good relationship with M and he had even paid for her eye operation. When she had come over to Malta, it was him and G that took her around as Defendant was at work most of the time.

He explains, that M knew about Defendant’s relationship with HI and this because through the viber messages it was mentioned that both H and Defendant had to meet her with her boyfriend in Varna, when she was married, so she was cheating too on her husband. Infact, when she had

come to Malta, he later discovered that the reason was to seek employment as she was planning on leaving her family. However, that time Defendant and her had an argument and this was the reason that they were not in contact for a while. He believes that Defendant did not want M to stay in Malta because she risked telling him about HI.

Plaintiff denies having acted in the way M alleges when she was living with them, mainly because she did not understand English so it was impossible for her to state the words he said that day. Also, if it was true he treated his daughter abusively, she would never have agreed to live with him. He believes that all her testimony is based on blatant lies. Infact, the truth is that when she left all she kept saying was that she was sorry.

CARE AND CUSTODY

1. The minor child FC explained that she did not want to see her mother because she was always mean and horrible, she had threatened to steal her and take her back to Bulgaria. She has also once threatened to kill her and she was very mean. She would even slap her and hurt her. This went on forever until she left home. She recalls an episode when she threw a glass at her. She explained that when her mother was at home it hardly made a difference because she was always on her laptop and she barely spoke to her and if she did, more often than not they would end up arguing. After returning from school, she would do her homework and spend time with her father, whereas the Defendant never joined in.

The parties' minor child goes on to explain that at one point her mother started to go crazy and she became very scary as Defendant was hurting herself and she feared that she would start hurting her and her father.

She explained that she had opened up about her problems with the school counsellor she was assigned, OP. She also admits having told him that she wants to stay with her father, because she dislikes her mother and doesn't trust her. She also reiterated that she had not told her father about the incident when her mother threw the glass at her because she always hoped that her mother would change, but she never did. She considers her to be the worse mother ever.

The child went to state that in March, 2015 her mother had left home. Plaintiff had been trying hard for her and Defendant to have a better relationship and he would attempt to leave them alone to talk, but it always ended up in shouting and arguments. Plaintiff wanted a full family, she explains, but she couldn't trust her mother, after what she did to her. As a result, Plaintiff had told Defendant that she was free to leave and it was at this point, that the said Defendant, according to the witness started to self-harm herself and this scared her tremendously. However, her father had convinced her mother to return on the 19th March, but things didn't work out as witness admits that she was not happy to see her mother back again, despite the fact that she knew her father was trying to help. Infact, her mother left again soon after.

The minor child went as far to say that she hated her mother and admits that she had spoken about her feelings and emotions with OP, at school. She also told her father this and that she did not want a relationship with her mother. She had also been telling her mother up to six months before she left home and she wanted her to leave at all costs.

The minor child admits also that there were other occasions when Defendant had left home and during such a period she did not communicate with her, although there were times she admits that they used to email each

other, but she describes her emails as being lies as she thought her mother would change.

The parties' daughter had access to both her mother's mobiles and she explains that on one she had discovered messages which Defendant exchanged with a man and on her other mobile she had read obscene messages. She had told all this to her father. She also confirmed that there was one particular Valentine's day when Defendant had received flowers from her boyfriend who she admitted to be HI who was in his 50's.

2. OP, a guidance counsellor at St. Clara College Gzira Primary, was asked by the Senior Management Team of the school to hold a couple of sessions with the parties' minor daughter. In all he held three sessions and he figured out that it was family related. He explains that the child would get very agitated once he mentioned Defendant. She told him that for her she did not have a mother, because she was never there for her and she never loved her or cared for her. As to her father, the minor child spoke very highly of him. P describes the minor child as being very mature for her age and very focused. During one session, the minor child was very upset because she was fearing having to attend the Family Court and having to meet her mother. He admitted trying to explain to her the importance of having a mother in her life, but she refused to understand. However, overall he felt that these sessions were beneficial for the child, but unfortunately he had been sent to another school, so he was replaced by another guidance teacher.

3. QR, the assistant head of Gzira Primary School stated that at present the minor child is fine, however previously there were some concerns related to family issues. During the scholastic year 2015/2016 G the minor child

opened up with one of her teachers and explained to her that she had problems at home. She was very unhappy and she also mentioned that she was not seeing her mother. On account of all this, the child was unable to focus and perform at school and as a result, she had referred her to OP, the guidance counsellor. Presently, she is followed by Ms. S.

She admitted that Defendant would communicate with her directly to be informed about her daughter's progress at school. She would either communicate with her through email, or there were times when she would go to school, during hours when the minor child was not at school.

4. Dr. Sharon Vella Camilleri who had been nominated by this Court as a psychological expert and prepared a report, testified that this was a marriage in which both parties had significant difficulties. Defendant was suffering from a generalised anxiety disorder and severe panic attacks, with accompanying depression. On the other hand, Plaintiff was suffering from severe pains in his legs, then he had severe headaches. Therefore, this led to their daughter not having a tranquil childhood. The problems stemmed off from the fact that the Plaintiff became irritable on account of his pains and also very critical and stressed. The more Plaintiff criticised Defendant, the more she became anxious and depressed and thus he criticised her more.

She also explained that the parties as parents burdened their daughter with their decision whether to separate or not. She was like the third adult and this led to her being prematurely mature. When Defendant left home because she was chatting with someone on the internet, for a while, she and her daughter communicated via email. The alienation between the two happened when Defendant made an attempt to return home. Since the

Defendant had left the family home, this had an impact on the child, who then refused to see her mother.

The witness also confirmed that there were two episodes that contributed to the minor child's trauma, firstly when she discovered the text messages of a sexual nature on her mother's mobile and secondly, the constant fear she had that her mother would try to abduct her and take her to Bulgaria. The relationship between them turned into one of fear and Plaintiff undoubtedly contributed to this fear, because he was constantly mentioning this risk in front of the minor, when at the same time he had her passport and he used to let her walk to and from school alone or with friends, when Defendant lived close by.

Essentially, the child feels rejected by Defendant and wants to stay only with her father. Both parents need to put aside their difference and the betrayal and to put as their first priority, their daughter's well-being and if they fail to do so, the child will end up having serious psychological problems because she would not feel loved, so she could turn to being anorexic, or committing self-harm for instance. Most of the work has to be done by Plaintiff since the child lives with him because the welfare of the child is the most important thing, starting by reassuring her that she is not going to be abducted, that they are not going to go bankrupt.

The process of healing the wounds will be long because the child is still young. If Defendant will be there psychologically and with the help of therapy the wound might heal, she explains. She considers Plaintiff to be an excellent father and he sees what his daughter's problems are, however there is a split between his behaviour and the result. He must put aside his anger and feeling of betrayal, because then the whole issue of custody is at stake if he fails to do this.

5. Carmen Sammut clinical psychologist, on the basis of her report testified that when she had started sessions with the minor, there was meant to be contact between her and her mother, but the minute the minor realised she was going to meet her mother, she would get very agitated and would move away and refuse to go ahead with meeting her.

She confirmed that the minor child felt betrayed by her mother, because she left them for another man. Being an intelligent child she was put in a position where she felt she had to make a choice and she probably saw that her father was more stable, reliable and more of an investment for the future. This was the less painful way forward for her. However, there was wasn't a complete rejection of Defendant according to the witness, because when the Defendant sent the minor gifts through her, the minor child asked her to keep them for her, because if she took them, she would otherwise throw them away.

The minor child experienced a lot of instability throughout her childhood and this together, with the fact that she felt her mother abandoned her and that she feared she might be abducted to Bulgaria, by her or her mother's family, who had started to contact her, made her seek more stability in her life and this she only envisaged in her father.

Ms. Sammut considered that the best way forward for the minor child would be for therapy to be held individually with the parents respectively teaching them on how they can each support the child in this process and this would require someone working separately on therapy with the child, who then could indicate when the child would be ready to join in this process. The parents need to be prepared to support their child, because if it is only the child who receives the support, then it will all be in vain.

6. ST, trainee counsellor at St. Clare's College Gzira, Primary has been following the minor child FC since January, 2016 after she was referred to her by the class teacher, who felt that the child was more mature than her cohorts. In all she saw the minor child, five times, two of which in the presence of counsellor UV. She explains that the minor child was quite passionate about her life and she was quite happy about her present situation. She refuses to see her mother, mainly because when she was young her mother never spent any quality time with her. Defendant, according to her daughter was constantly making use of social media.

Ms T. goes on to confirm that the minor child is very angry and annoyed because she is trying to be persuaded by a psychologist to see her mother and she believes that it is too late for Defendant to apologise and in any case she had no interest in meeting her. On the 8th April, 2016, the minor child had told her that she had confronted her mother in court and told her that she didn't want to see her. She explains that she was present at a meeting at school, together with the minor child and Plaintiff, together with the nurture teacher, because of concern that during this class, at times the minor child overreacts. She was unable to state whether Defendant was informed about the meeting, but she could confirm that she was not present.

7. W C, Plaintiff's daughter from his first marriage, explains that her father had given all he had to help Defendant who came from a very poor background in Bulgaria. Anything that Defendant and her cousin M state are all lies, especially when one considers that at the time Plaintiff got to know them, they barely spoke a word of English.

She also confirms that Defendant was very absent from her half-sister's life and she ignored her and Plaintiff. She confirms that many a time, the minor child told her that she wished for a proper mum, who would do things with her, but she never did, at least when she happened to be visiting.

She explains that even when Plaintiff was not well, it was still he who took care of the family, because Defendant needed help. Since she speaks a lot to her half-sister, she believes that the best for her is to get on with her life with Plaintiff.

8. Carmen Delicata, Family Psychotherapist, explained that her role was to meet with the parties and help them to learn how to cooperate between them. She also had a number of sessions with the minor child G, making it clear, that there was no intention to push her to meet her mother. She admits that the minor child informed her that she had taken a permanent decision that she didn't want to meet her mother, because she felt let down by her. She felt neglected by her mother, whereas her father was always present. Ms. Delicata doesn't exclude that this could have been the result of the psychological problems that Defendant had during the early years of the marriage, because the actual depression hinders the development of a bond. She also explains that the minor child was exposed to too much, when she was younger, with the result that she knew too much for her age. Referring to the messages that the minor child had read off her mother's mobile, depicted the Plaintiff as more of a victim and she too.

She believes that the parents need to meet to be able to communicate, as presently this does not take place. For instance, Defendant gets to follow her daughter's school progress directly from the school because Plaintiff does not keep her informed.

She reiterates that although the initial plan was to bring the parties together round a table to see a plan in action as to how they could move forward, Plaintiff still had too much anger within him, that setting a meeting in the presence of both parties, she felt was going to create more harm than good, because Plaintiff would end up venting all his anger and this wasn't the

aim. She explains that the parties first and foremost would need to stop judging each other, listen to each other and empathise with each other. Plaintiff also needs to change his idea about Defendant, because he believes that she isn't a good enough mother, so he feels that their daughter G is not losing much not seeing her mother. G, on the other hand knows that her father is the more powerful parent.

She also explained that Plaintiff is caught in a double bind because on the one hand, if he had to agree to the Defendant having access to G, then he and his daughter would have to stay in Malta so that she can continue having the access. He felt that the Court was hindering his plans of moving to England because he feared he would run out of money and he has family there who would help him and he would rather bring up his daughter there.

9. Dorianne Fava, a social worker at Agenzija Appogg explained that she was contacted by Defendant because she said she was suffering physical and emotional abuse by Plaintiff. They had been married for 9 years and she had suffered violence during the last 4 years. He was emotionally abusive because he insulted her stating that she was a bad mother to their daughter who was 9 years old.

Throughout the contact she had with Defendant, she was always upset because she was not seeing her daughter. She recalls that Defendant had mentioned that there was an incident that took place in 2015 where the police had to be involved and she was taken to hospital. According to what Defendant told her she had to leave her daughter behind after this incident and she had not intention of abandoning her. She had admitted to her that she had taken legal advice for care and custody of the child.

10. Maria Dolores Fenech, on behalf of the Registrar of Courts, confirmed that there were no criminal proceedings against Plaintiff. She exhibited four

judgements, one of which was an acquittal¹³, whereas the four other cases were pending appeal.¹⁴

COMMUNITY OF ACQUESTS

1. Johanna Bartolo, on behalf of Bank of Valletta plc. confirmed that from the searches carried out, the following accounts resulted:-

In Plaintiff's name

There were four accounts, three of which were closed¹⁵ and a savings account that was opened on the 6th November, 2012.¹⁶

With regards the term account Dok. BMJR 4 wherein there was deposited the amount of €10,000, this was deposited in another account (in Dok. BMJR 1). Another amount of €18,700 was deposited into Dok. BMJR 1 from Dok. BMJR 2. From Dok. BMJR 1 the amount of €19, 030 was withdrawn and deposited into Dok. BMJR 3 and then back again to the same account.

There were two deposits in Dok. BMJR 1 of €5,000 each which were transferred from Defendant's account and then deposited into Dok. BMJR4.

With regards Dok. BMJR1 regarding the transaction of the 6th March, 2015 for the amount of €5, 828.69, this was a transfer from Invest Bank Ltd. by the order of DEC.

In Defendant's name:-

¹³ Dok. MDF 1.

¹⁴ Dok. MDF 2 – MDF 5.

¹⁵ Doks. BMJR 2 – BMJR 4

¹⁶ Dok. BMJR 1

There resulted three accounts, two closed¹⁷ and one remains active, a savings account.¹⁸

2. Audrey Ghigo, on behalf of HSBC Bank Malta plc. carried out searches and the following accounts resulted:-

- (i) In Plaintiff's name two accounts¹⁹;
- (ii) In Defendant's name, three accounts.²⁰

3. Saviour Theuma, in representation of the Department of Social Services, confirms that Plaintiff did not receive any social assistance, whereas Defendant, prior to 20th June, 2015 was receiving a children's allowance.²¹ With effect from 20th June, 2015, Plaintiff started to receive the children's allowance in the amount of €22.23 per week and until the 30th September, 2016 he had been paid the sum of €1489.41.²²

4. Lawrence Bugeja, a client relations officer, in representation of Mater Dei Hospital, exhibited Plaintiff's medical file, as well as that of Defendant.²³

5. XY, headmaster of Gzira Primary, stated that he had sent for Defendant regarding the ongoing proceedings. During such time he explains that Plaintiff had contacted him and asked to inform Defendant to come to

¹⁷ Doks. BMR 2 – BMR 3

¹⁸ Dok. BMR 1

¹⁹ Doks. HMJR 1- HMJR 2

²⁰ Doks. HMJR3 – HMJR 5

²¹ Dok. MRS 1 @fol. 643 of the acts of the case.

²² Dok. ST1 @fol.628 of the acts of the case.

²³ Dok. MDR 1 and MDR 2.

school after school hours because their daughter was getting upset when she meets her mother. He replied by telling him that he could not do so because they had joint custody.

CONSIDERATIONS

Plaintiff is requesting a separation on the grounds that Respondent committed adultery, for the abandonment of the matrimonial home and also because of her irrational and irresponsible behaviour.

ABANDONMENT

From the evidence brought forward during this case, it has not been proved that she abandoned the matrimonial home. It was at the request of Plaintiff that he asked her to leave after she received flowers on Valentine's day from HI, a man she had met online. This Court is not going to take into consideration the issue of abandonment because it has not been sufficiently proven for the purposes of the responsibility for the separation.

ADULTERY

Plaintiff alleges that Defendant was having an affair with a certain HI, who she had met online. He produced various Viber messages, wherein it was very evident that the chatting was not one that usually takes place between friends, but they were very sexually orientated. It is hard to believe Defendant's version and her credibility, when she described this relationship as simply a virtual one, where they would simply have role play. Moreover, her credibility remains doubtful when in the said messages, there is reference to the fact that they were to meet in Bulgaria. Furthermore, Lino Cremona, General Manager of the Plaza

Hotel, confirmed that between the 8th and 9th March, 2015, there was a room booked in the name of HI and there was another room booked in Defendant's name, but for a period of seven nights starting from the 8th March, 2015. This was immediately after they had been holidaying together in Bulgaria as results from the Viber messages exchanged between them. On one occasion, even G her daughter who went to visit her mother met HI she admits. She even confirms reading the Viber messages that upset her a great deal.

Plaintiff also mentions his suspicions that Defendant was suffering from some sexual infection due to the fact that she kept on treating her intimate parts.

Adultery is the most serious ground when it comes to determine one's responsibility in a separation.

Various jurisprudence has established the guidelines so as to determine when adultery has been proved or otherwise. In the case "**Rose Gauci vs Salvatore Gauci**" (P.A. (RCP) 1 ta' Ottubru 2002 - Cit Nru:1365/1997/RCP) the Honourable Court reiterated as follows:-

*"... l-artikolu 38 tal-Kapitolu 16 tal-Ligijiet ta' Malta jghid illi "Kull parti mizzewga tista' titlob il-firda minhabba l-adulterju tal-parti l-ohra". Illi kif tajjeb osservat din il-Qorti fis-sentenza taghha tas-16 ta' April 1953 fil-kawza fl-ismijiet "**Rita Spiteri vs Avukat Dr. Albert V. Grech et noe**". (P.A. (C.C.) Kollez. XXXVII.II.693) l-adulterju "hija bla dubju l-kawza l-izjed gravi li ghalha l-ligi tawtorizza sseparazzjoni personali; izda, stante d-diffikulta' tal-prova, kif turi l-assenza ta' dispozizzjoni legislattiva li tillimita dina l-prova, huwa ormai pacifiku fid-dottrina u fil-gurisprudenza li l-adulterju jista' jkun pruvat permezz ta' indizji u prezunzjonijiet,*

purche' dawn ikunu gravi, precizi u konkordanti, b'mod li ma jhallu ebda dubju f'min ghandu jiggudika". ("Rosina Micallef vs Angelo Micallef" Prim'Awla Deciza -27 ta' Gunju 1964)".

From the evidence evaluated above, Defendant has definitely failed to be consistent and credible before the said Court and in this respect, the evidence is grave, precise and corroborates an adulterous relationship with HI.

What this Court has to consider now, is whether the said adultery was the main cause that led to the parties' separation or whether there existed other grounds, though undisputably, adultery remains the gravest ground of all.

Starting from the very beginning of their marriage, the parties did not have a very normal relationship. There were twenty years difference between them and it started off more out of a sense of empathy by Plaintiff with respect to Respondent, who was a vulnerable twenty year old, pregnant with a neighbour's child and in need of an abortion. Defendant moved in with Plaintiff and within three months, they started having intimate relations and eventually Defendant was carrying his child and they got married.

The beginning of the marriage was marred by psychological problems from Defendant's end. She was depressed and was on medication. She used to spend most of the time on her bed or chatting on the internet, oblivious to the Plaintiff's and their daughter's presence. Plaintiff speaks about the physical abuse that Defendant exercised on their daughter because it was very typical of Bulgarians, but then this had stopped when they moved to Spain.

As time went by the depression got worse and she started to get panic attacks and in Malta she was diagnosed with psychosis.

Although Plaintiff conveniently enough does not mention his shortcomings, this is confirmed by his daughter W C who states that Plaintiff was unwell, but he still took care of his family, especially of Defendant who needed help. There was a period when he was suffering from severe pain in his knees and later he started suffering from chronic headaches. He became very irritable, aggressive and arrogant and he used to insult Defendant. He had become depressed too.

So, essentially as Dr. Sharon Vella Camilleri pointed out, this situation did not help the relationship. Plaintiff would vent out all his frustration on Defendant, who in turn, suffering from her anxiety disorders, matters only turned for the worse, leading her to seek solace in HI, through internet chatting and then a fully fledged adulterous relationship.

Defendant describes Plaintiff as being very aggressive and violent towards her during such a period, saying that he would insult her, push her onto the floor or against the wall, with his fist against her face, or even more so pinch her intimate parts or her nipples.

No police reports or criminal proceedings were produced to sustain such allegations. It is hard to believe Defendant's version completely, especially due to the fact that Plaintiff always seemed to cooperate with Defendant, until the Valentine Day's incident, when by that time they had already agreed to separate because their whole relationship was dysfunctional. Nevertheless, he could have been more irritable on account of his illness and his feeling useless

and this could have caused more friction between them and made Defendant more vulnerable considering she was not receiving perhaps all the support she needed herself at the time, since Plaintiff was not in a position to do so either.

In the judgement Antoinette Cauchi vs Alexander Cauchi, insults and grave offences have been defined as follows:-
“jinkludu kliem jew agir illi joffendu l-pudur ta’ dak li jkun minkejja illi dawn jirreferu ghal affarijiet vera jew foloz.”

It has also been determined that for the purposes of responsibility in a marital breakdown, the threats, insults and grave offences must have been committed habitually and repeatedly. In the judgement **Jayne Margaret Chetcuti vs Lawrence Chetcuti** decided by the Court of Appeal dated 15 th December, 2015, it was enunciated that *“....mhux kull nuqqas da parti ta’ konjugi versu l-konjugi l-iehor jwassal ghas-sevizzi, minacci jew ingurja gravi fit-termini tal-Artikolu 40 tal-Kodici Civili u huma biss daww in-nuqqasijiet li, maghmula ripetutament u abitwalment, iwegghu u jferu lill-konjugi sal-grad li l-konvivenza matrimonjali ssir wahda difficili u insopportabbli. Kif jinsab ritenut fil-gurisprudenza patria: “Per sevizie del senso della legge s’intendono atti abituali di crudelta’ che offendono la persona o l’anima di colui e sono diretti al punto di ingenerare in lui perturbazione, un dolore ed un aversione verso chi commette tali atti [PA Camilleri utrinque, 16 Marzu, 1898].”*

Again in the case **Catherina Agius vs Benedict Agius**, decided on the 13 th June, 1967 by the First Hall of the Civil Court, the Court explained that for these grounds to exist the parties must live *“f’sistema costante di vessazione e di disprezzo, di oltraggio e di*

umiliazione che rendono almeno insopportabili l'abitazione e la vita comune.”

In the case **Elisa Thompson vs Edward Thompson** it was established that for an action of responsibility for a marital breakdown to be successful, not all grounds need to be proved, it is sufficient if one is proved to confirm that the matrimonial life between them has become impossible.

Article 40 of Chapter 16 of the Laws of Malta contemplates that cruelty is also a ground for separation and in the case **Maria Mifsud vs Vincenzo Mifsud**, decided by the First Hall, Civil Court on the 30th June, 1961 it was decided that: “*Certi fatti, kliem u modi ta’ azzjoni jew atteggiamenti illi jistghu jrendu l-hajja komuni insopportabbli, huma ritenuti mid-dottrina bhala sevizzi.*” In the case **Antoinette Cauchi vs Alexander Cauchi**, insults and grave offences have been defined as follows “*jinkludu kliem jew agir illi joffendu l-pudur ta’ dak illi jkun minkejja illi dawn jirreferu ghall-affarijiet vera jew foloz.*”

Defendant states that many a time Plaintiff used to call her a “bitch” and “whore” and Plaintiff on the other hand explains that Defendant used to self-harm herself, hitting herself and then she tried to fabricate a whole story to put the blame on him. Nevertheless, no criminal proceedings were brought as evidence to confirm this incident. However, Defendant was taken to Mater Dei and then referred to Mount Carmel for a while.

In this respect, therefore there are conflicting views by the parties as to who acted the most irresponsible, however after having evaluated all the evidence produced in this respect, this Court has reason to believe that both parties are to blame for what started off as a weak bond of

marriage and as time went by, due to unfortunate circumstances, it failed to strengthen and so each ended up a victim of the other. So, essentially, they are both responsible for insults, threats and grave offences.

CARE AND CUSTODY

The issue of care and custody is of the essence in this case. A number of clinical psychologists, Child Advocates and therapists have been involved. After a whole saga that depicted the whole proceedings, wherein the minor child of the parties, G refused outright to see her mother or to have access visits with her and nothing convinced her to change her mind, Plaintiff, decided that he was financially in dire straits and had no choice but to return to England, where hopefully he could find a job, only to ask this Court to grant temporary access to Defendant.

G sensed from the start, when she envisaged problems between her parents that there was a power struggle, but she realised that she was bound to have a safer and sounder upbringing if she allied with her father, the Plaintiff. There is no reason to doubt that the relationship between Defendant and G was fine initially, There are several emails exchanged between them that proves this. However, there were two turning points in the minor child's life, one was when Defendant received flowers from HI on Valentine's day, leaving a very upset child and one who agreed with her father, that Defendant must leave the matrimonial home. The other impact was when G managed to enter into her mother's phone and she read all the messages exchanged between Defendant and her lover HI, which messages contained very explicit sexual material. This was very detrimental and determining in G's decision to exclude her mother from her life completely.

It was the school that first realised that a very good student was now facing difficulties and she felt very comfortable opening up with the guidance counsellor OP about her family problems. During the Court proceedings then, where both parties and the minor met up with the various psychological experts appointed by the Court individually, all seemed to be of the same opinion, namely that first and foremost, the parties must recognise that they have to sort out their differences and only then can they aim to help and safeguard G's interests.

G, stubbornly enough kept on refusing, despite everyone's attempt, to set up access with Defendant. However there were two issues that were of concern to the minor, primarily, because there were times her mother threatened to take her back to Bulgaria, she was scared that she would be abducted and the second fear was that they would go bankrupt since they had financial issues, particularly since Plaintiff did not work in a full-time job. Also other issues date back to her early childhood period, when she feels her mother was totally absent and never bonded with her. She spent more time chatting online according to the minor and she was also physically abusive with her. The last straw came with the admission that the Valentine's day flowers were from HI and the discovery of the Viber messages. There, G angered to the limit, wanted to eliminate her mother from her life totally.

There is evidence corroborated by various witnesses that the minor child G was too mature for her age and this was attributed to Plaintiff who would discuss with her mature topics, as well as discussing with her the issue of Defendant's adultery and his fears of abduction and bankruptcy. Nevertheless, it was also established that Plaintiff did instill the abovementioned fears in the minor child, because he repeatedly mentioned them in front of her causing more and more trauma. The

experts did conclude that Plaintiff did not instigate G's refusal to see her mother, but they believe that he could have persisted more to convince her to have a relationship. Nevertheless, forcing her to see her mother was going to bring on negative effects before other issues were tackled between the parties themselves. However, there were indications that the child wanted to retain certain memories of her mother and asked to be reminded of them. In this respect, the psychologists sensed that a healing process, would take time, but it was not inevitable.

Infact, things took a turn in a different direction when Plaintiff started to run out of finances, considering that he was not working here in Malta, except for a short while, but then he was made redundant. He also had funds frozen under the issue of a garnishee order, leaving him no option but to return to England to seek a job and asking the Court to grant the care and custody to Defendant. Plaintiff was always aware that despite his plans to move to England, this was always going to be hindered because Defendant lived and worked in Malta and if ever access was going to be given, this was going to hinder his plans of moving permanently to England.

The Court accepted this request by a decree dated 26th September, 2018 and granted care and custody to the Defendant. Until such time, there is evidence to prove that Defendant did try to see her daughter during school hours, but the latter asked for this to stop. Meanwhile, Defendant still kept on asking the school authorities to be able to follow the child's educational progress. Defendant also attempted to give G a gift for her birthday, although this led her to go into hysterics and Defendant had to intervene to calm the situation down.

Presently, for the last year, G has been living with her mother and although there are days when they argue and it is taking time to bond once again, the relationship has improved. Defendant describes this situation when she corresponds with Manwela Testa from Appogg. She explains that things between her and Maggie are *“improving...Slowly but surely. She is much nicer to me, she is calling me “mum” and even gives me hugs and kisses, without asking for them. G still has episodes of relapse, where she becomes mean to me for no reason, but everyone tells me that’s part of being a teenager. I am trying to encourage her to get to study more and make the most of her school life. She is taking notice of the things I tell her, but everything is taking a long time. It’s a long and slow process. However, on the bright side I am seeing a huge change since how she was 3 months ago.”*

As a result of these developments, Appogg felt satisfied, that despite rough patches in their relationship, Defendant was trying her best to accommodate G’ s needs and therefore they closed the case from Appogg’s end.

In his submissions, Plaintiff mentions his plans to come and work here in Malta. He states that he is in the process of applying to MQRIC to get his UK qualifications recognised for use in Malta to work in internet technology subjects. Throughout the proceedings, no evidence was produced from his end to support this fact. The Plaintiff cannot expect this Court to evaluate facts, which he deems essential to raise only in his submissions. One also questions how prior to leaving Malta, Plaintiff found it difficult to find employment in Malta and now he intends to apply for a job as though it was the easiest thing in the world! If he was too ill and old to work in Malta, is he not so in England and in Malta too!! The interpretation can only lead to one presumption,

Plaintiff wants to leave his options open, in the sense that if he shall not be granted the care and custody of his minor daughter, his intentions are to remain in England and not return, whereas if he is then he will try to start afresh in Malta. Therefore, his proposals and plans remain inconcrete in the eyes of the Court.

As is always the case, in determining the custody of the child, the law must ensure that it safeguards at all times the interests of the child. Considering that G has been living in Malta now for a substantial number of years, it is not the ideal situation for her to move to England and having to start afresh, a new school, new friends and adapting to the lifestyle there. Though unclear, it does not seem to be part of Plaintiff's plan either.

Presently, in all probability, the relationship between the minor child and Defendant has improved, though there are moments when they argue and they have their ups and downs, but on the whole they are slowly slowly reaching the steps towards a healing process. Plaintiff cannot just decide to play with the child's emotions in the way he has done, firstly, by being by her side throughout the moments that led to the breakdown of his marriage, as long as the going was fine. When he arrived on the verge of bankruptcy, he had to take a decision and chose to take up residence in England, away from his daughter and now seems to want to return.

A child needs stability and cannot be used as a pawn between one parent and the other. The period when the minor was still hurt, saw her despising her mother and refusing any sort of contact with her, but evidence goes to prove that she didn't cancel her out of her life completely. Once there was no alternative for her when Plaintiff decided to leave for England, she initially opposed to the idea, but

seeing that her father was once again entrusting her mother with her custody, she seemed to gradually come to terms with this idea. Over the year, evidence shows that her relationship with her mother is on the mend and therefore should be encouraged. Plaintiff insists on full care and custody, but seems incoherent until a decision is reached whether to return to Malta or not.

This Court believes that this minor child G has experienced a sour upbringing and perhaps for the first time she feels a sense of equilibrium and cooperation between the parents that must not be lost. Even Agenzija Appogg went so far as to close the case considering that there had been a marked improvement in the mother/child relationship and Appogg would only serve to antagonise the situation.

Thus, in consideration of the above and after this Court very carefully evaluated the case at issue, it strongly believes that it is in the best interests of the minor child, that the care and custody be joint between the Plaintiff and Defendant.

This decision requires further evaluation, considering the dubious decisions of Plaintiff who built a strong case, but then towards its final stages took a tangent and departed leaving inconsistencies in his evidence, shrouding it with doubt and presumptions. Consequently, this Court has to make provision as follows - for as long as Plaintiff retains his residence in England, the child shall continue living with Defendant, with free access to be given to the Plaintiff whenever he comes to Malta and/or the minor shall be entitled to visit her father during school vacations, for a minimum period of one week, each time at his expense, unless he comes to Malta. All this must take place with prior agreement

with the parties and the Defendant must ensure at all times that when she has a night shift, there is always someone present with the minor child. However, if Plaintiff returns to Malta to work permanently, then the said minor child shall reside with Plaintiff on those days when Defendant is working on her shift and consequently she will sleep at Defendant's during those days when the latter is not working, unless the parties agree otherwise.

MAINTENANCE

According to a decree dated 9th February, 2018 the Court ordered that Defendant pay the sum of €300 as maintenance for the minor child, excluding ordinary expenses. This sum was reduced as prior to this Defendant was paying €350 per month. This scenario was at a time when the minor was living with Plaintiff, who used the funds he had saved, to maintain himself and his daughter and Defendant being the one earning an income and the minor's parent too, as expected at law was required to contribute.

Today the scenario is different as for the last year, the minor child has been living with Defendant and according to the latter, Plaintiff has not been contributing towards the maintenance of the child since he left for England a year ago.

In the light of what this Court has decided regarding care and custody, if the Plaintiff returns to Malta and the child will be dividing her access between both parents, then the foregone conclusion is that no maintenance be paid to each other respectively, once the care and custody is being divided. All other health and educational expenses, be they ordinary or extraordinary shall be divided equally between the parties.

If Plaintiff, on the other hand does not return to Malta permanently, the Court reiterates that he failed to produce evidence as to what his present income is in England. His reference to a job in Malta is very superficial and is not being given due importance since he never brought evidence to this effect, except in his submissions. Therefore, this Court is void of an indication of Plaintiff's means, but this in no way excuses him from his obligations as a father. Thus, if he remains residing in England, he is obliged to contribute the sum of €250 towards the minor child and all educational and health expenses will be divided equally between the parties. Payment would have to be effected by a SWIFT transfer and deducted from the Plaintiff's salary. Payment is to be effected until the child reaches the age of majority, or she works, whichever happens first or if she continues to further her studies and does not have a full-time job, until she reaches the age of 23.

As to the children's allowance, if both parties reside in Malta, it is to be received by each of them in equal amounts, but if Plaintiff retains residence in England, it is to be perceived by Defendant.

Defendant is claiming arrears of maintenance since September, 2018 to date because Plaintiff failed to contribute towards these expenses ever since he left England in the sum of €4,900. In this respect, there was no court decree ordering the payment of the said amount. Neither did the Defendant institute any proceedings in this respect and therefore the court cannot enforce such request.

COMMUNITY OF ACQUESTS

From the evidence produced in this case, the community of acquests is minimal. The parties don't own any immovable property and the only assets are the money in the bank accounts, which are in dispute too.

Going back to the days in Bulgaria, Plaintiff worked as a real estate developer and he had made some considerable amounts of money. Once they planned to settle in Malta, Plaintiff had sold his last remaining two properties and the proceeds were brought to Malta, approximately the sum of €100,000 and deposited in the Banks here. This is confirmed by Defendant too.

Defendant also confirms Plaintiff's version, that he had deposited around €11,000 in an account she opened here in Malta, because they wanted to apply for permanent citizenship, so that was to help her , even on account of the fact that she wanted to apply for a job.

It was only in 2014, when Defendant started to work and earn money. Until then, they used to live off what Plaintiff had saved from his previous employment and he used to pass on the money for the rent to her. When she started working, initially Defendant started to pay the rent, but then she stopped that, for a while she then contributed towards the daily needs, but then stopped contributing altogether, except when she was ordered to pay maintenance for the minor child.

From the bank accounts exhibited, there were various transfers that took place between the parties' respective accounts. Plaintiff states that Defendant was transferring funds as refund of the money he had given her and this was once she was earning her income. Defendant states that this was her money, but then she states that Plaintiff did get money from the proceeds of sale. Essentially, there is a lack of coherence and inconsistencies in her evidence. Moreover, it is very difficult for this

Court to believe that these funds were her earnings, because she had only been working since 2014 in Malta and by September, 2014 they were already discussing a separation and the income was around €2,000 a month for which Defendant did not oppose. There were no indications that she worked in Bulgaria during her relationship with Plaintiff.

One must also consider that the present court case, has been lengthy and voluminous and therefore financially, there were several legal costs involved, that drained both parties. Infact, Ms. Carmen Delicata pointed out that she tried to limit her sessions because she knew they were financially limited.

Therefore, it is understandable, that both parties did not have significant amounts of money in their accounts, so much so that Plaintiff had to leave Malta on account of this problem.

Plaintiff once again believes that his submissions were a ground where he could continue placing more parts to this already confusing jigsaw. He claims that he was granted loans from relatives and friends and goes as far as to state the amount and name the persons, but this is not even going to be granted any due consideration by this Court, when Plaintiff never produced evidence to this effect, so much so that he had the audacity to state that he could produce their evidence by affidavit at such a late stage of the proceedings. By this time, all evidence had been concluded, and Plaintiff is reminded that he was writing his concluding submissions.

There remains to be considered the issue of the money deposited with Bank of Valletta in the amount of €29, 451.39 which was frozen on account of the garnishee order issued by Defendant. There is contestation on the said amount, due to the fact that Defendant is

expecting half the said amount because she believes it appertains to the community of acquests. Plaintiff states that this is not so, because it was the balance left from the proceeds of the property he sold in Bulgaria, before coming to Malta and therefore it was paraphernal. Defendant has admitted that there only assets came from the sale of this property, which definitely belonged to Plaintiff even before he got to know Defendant. In that respect alone, the property cannot but be considered paraphernal. Nevertheless, this property was sold. It is not made clear when it was sold, nor has proof been brought forward as to the actual value of this property before the sale and what the selling price was. It was up to Defendant to produce such evidence, once she claims that the assets are part of the community of acquests.

Thus, the assets deposited at Bank of Valletta plc. for all intents and purposes are to be considered as paraphernal to Plaintiff and the garnishee order 121/2015 must be revoked and assigned to Plaintiff, allowing him to withdraw the money.

ARTICLE 48 ET. SEQ

There were various reasons for the breakdown of the marriage, but considering that Defendant was responsible because of Adultery and therefore was mainly to blame for the breakdown of the marriage, considering the gravity of her actions, these articles are to be imposed on her only.

DECIDE

Prior to this Court giving its final decision, it wants to reiterate that Plaintiff's requests as drafted are not drawn up according to the usual requests presented before the said Court. The whole application is detailed and confusing to determine whether Plaintiff is stating a fact or making a request within the same sentence. As Defendant pleaded, the sworn application as submitted by applicant is not in conformity with the requisites as stipulated in article 156 (1) of Chapter 12 of Laws of Malta. The claims are not numbered, obscure and unintelligible and the wording as required under article 156 (1) (d) is not in conformity as found at in the referred to article in the said application. Nonetheless, this Court will limit its decision to what appears to be requested to it:-

For the above reasons, this Honourable Court, decides and determines that:-

- 1) It declares the separation between them because of Defendant's adultery, threats, insults and grave offences and because Plaintiff also rendered himself responsible for the breakdown of the marriage because of his threats, insults and grave offences;
- 2) It declares that the community of acquests has been dissolved and liquidated as abovementioned.
- 3) It declares that the care and custody of the child is to be exercised jointly between the parties, and that the child shall reside with Defendant, provided that, such residence may change if Plaintiff takes up residence or not in Malta as aforementioned in the subtitle "Care and Custody."
- 4) It declares that Defendant has forfeited to request any maintenance.

Costs are to be borne equally between the parties.

Hon. Mr. Justice Anthony J. Vella

Registrar