



**CIVIL COURT
(FAMILY SECTION)**

MR. JUSTICE HON. ANTHONY VELLA

Sitting of Thursday 5th March 2020.

Application number : 140/2015 AGV;

AB

Vs

CDB

The Court;

Having seen the application of AB dated 22nd June 2015;

Respectfully states and confirms under oath:

1. That the parties married in Bulgaria on the 5th April, 2006 and from this marriage was born the minor child E who is nine years old.
2. That the marriage of the parties has irretrievably broken down due to violence, beatings amongst other reasons valid at law that have rendered

married life to be impossible and given rise to the personal separation of the parties as declared by Law, due to fault imputable to the defendant.

3. That in the early hours of the 22nd March, 2015, the applicant was physically assaulted by defendant, after he returned drunk and beat her for no reason at all (see document MR1). Following this incident, defendant forced out applicant of the matrimonial home and has been prohibited from entering since.
4. That this was not the first time that defendant had assaulted applicant such that in fact, the couple had already agreed that their married life was no longer possible and infact had begun making arrangements for their separation.
5. The defendant has always been very manipulative over their daughter and has done his best to prevent any form of relation between applicant and the said minor, such that ever since the 22nd March, 2015, there has been no contact with her daughter and defendant has done all his best to ensure this, as will result from evidence exhibited in the proceedings of the case.
6. That for this reason, the married life of the parties is no longer possible and this due to the fault of the defendant.
7. That the parties have been authorised to proceed at the instance by virtue of court decree of this Honourable Court dated 15th May, 2015 (see Dok.MR2).
8. That the facts here declared are known personally by the plaintiff.

In light of the above, applicant humbly requests this Honourable Court for reasons above to:-

1. Pronounces the personal separation of the parties due to violence, beatings, excesses, cruelty, threats or grievous injury imputable to the defendant.

2. Grants exclusive care and custody of the minor child Margaret Rees to the plaintiff.
3. Orders and liquidates an adequate amount of maintenance that are to be paid by the defendant to applicant for the applicant and the minor child, which maintenance will be due for the minor child until she is of the age of 23, if the minor child continues her studies, as well as order that his alimony be deducted directly from the salary or income of defendant or work or any other benefits that he would be receiving and deposited directly in a bank account that is to be indicated by the applicant and further provides how the said maintenance is to be reviewed and increased yearly so that it reflects the increase in cost of living, as well as declares that the defendant has forfeited from any rights to demand or claim maintenance from the plaintiff.
4. Orders defendant to pay all the expenses related to the health and education of the minor child.
5. Declares the termination of the community of acquests of the parties; liquidates the community of acquests and orders that the objects forming part of the community of acquests are divided into two portions as ordered by this Honourable court, which portions are assigned to each of the parties not necessarily in equal proportions and if required with the nomination of an architect and notary to receive the relative acts and a curator to represent the eventual default of the defendant to represent him on the acts.
6. Orders the forfeiture of the defendant from all conjugal rights as contemplated in Article 48 et seq. of Ch.16 of the Laws of Malta and applies against him in its entirety or in parte the dispositions as contemplated in Article 48 and 51 and 55 of Ch.16 of the Laws of Malta.
7. Orders the defendant to return back paraphernal and personal belongings of the applicant.

8. Authorises the applicant to register the decisions given by this Honourable Court with the Public Registry of Malta.

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

The Court having seen the sworn reply of CDB dated 14th October, 2015 that states:-

1. That this response is in the English language because this Honourable Court had earlier granted that the proceedings between these parties be conducted in English since neither of them understands Maltese. For which reason the exponent preliminarily protests that the applicant abovementioned served him with a copy of her said application drawn up in Maltese and he has had to depend on his lawyer's informal explanation of the contents – which default which should be remedied in accordance with Cap. 189 (Judicial Proceedings (Use of English Language) Act). It is also without being accompanied by a copy of the provisions of sub-art (1) and (4) of Article 5 of the aforementioned Act. The exponent thus preliminarily protests against the costs of these incidents against whomsoever responsible.
2. That also preliminarily the Exponent pleads that - the Applicant AB filed the present New case unnecessarily – i.e. when she knew or could easily have known through her lawyer that three whole weeks earlier, the present Respondent had already filed for the same objective, i.e. separation and custody; and all of the points and allegations she raises in her said application are covered in her defence replies to the said first case. Thus a

“reconvention” or “counter-claim” in the original case (in terms of Art. 396 et. seq. of Title VIII of Cap.12, Laws of Malta) should have been sufficient to protect her rights, had the trouble been taken, before filing a new case, to see if another case was already filed – Respondent therefore pleads that this new case be deemed vexatious because it implies unnecessary additional costs for the parties, delays the treatment of the original case and (additionally) burdens exponent and the Court with a huge list of irrelevant witnesses. Consequently, defendant pleads that – if joined to the original case, the costs of the present case should be borne exclusively by applicant AB independently of its outcome.

3. That without prejudice to the above, the Exponent does not object – as such- to the joinder of the actions requested by the Plaintiff per her application dated 27th August, 2015 if the Honourable court deems it nonetheless expedient.
4. That also as a preliminary plea, it is submitted that the applicant’s list of witnesses appears to be nothing but a “stock template.” A kind of menu used to cover all possibilities in a separation case, and is not tailored to the present case proper. Thus the list should be drastically reduced and Exponent respectfully requests the elimination of the following “witnesses” a) those in items 9 and 10 because it should be sufficient to exhibit legal copies of any related court documents or police reports and (b) those in items 11, 12,13,14 because defendant has already filed a sworn detailed report of his financial position as directed by the Court – together with his detailed affidavit, to which he hereby makes reference and also because all the other witnesses from numbers 12 to 14 are totally irrelevant to the parties and to the case.
5. That on the merits of the new case, defendant denies the claims and allegations of applicant AB in her present application; and hereby makes full reference to his original separation and custody case in the names

“CDB vs AB ” (Rik. Gur. No. 124/15 RGM) and the point he raises in his own application and stands by what he stated therein - *about the erratic and unpredictable behaviour of AB – her bad relations with their daughter – his absolute denial of any manipulation, violence or drinking habits on his side as contrasted with the rough and un-motherly ways she has always treated the parties’ minor daughter EB, the uncontrolled sexual exploits of the mother with her elderly lover and the disgusting display of words and pictures on one of her two mobile phones (all of which were accidentally discovered by the minor daughter who found the said mobile left behind by her said mother after the incident of March, 2015, her fixation with use of social media and most seriously, the abandonment of the family home way back since February, 2015...all of which and more, give the lie to the spurious allegations of applicant as recited by her (or her lawyer?) in the present case. The facts in italics herein are the real and cogent facts that militate towards the loss of all custodial, matrimonial, inheritance and maintenance rights on the part of applicant AB...as will result in the trial of the case.

6. That Respondent notes that Applicant acknowledges with him that the relationship between the parties has been irrevocably broken beyond repair and that separation is the only solution; and that this entails the dissolution of the community of acquests and a decision on the custody and the imposition of loss upon the guilty part of matrimonial and maintenance rights. However, exponent strongly rebuts the statements contained in her paragraph number (2) namely that this irremediable situation has arisen because of what she lists as being attributable to him...for indeed he has never been violent, cruel, guilty of excesses, bullying, threats, grave offences or any other such things as she alleges in her application. Indeed, it is suspected that the terminology used was downloaded wholesale from the legal separation template used as a convenient basis from which the

legal firm concerned can choose the applicable accusations. On the contrary, the only cause of the need for separation is the said AB, namely her abandonment of parenting responsibilities, the betrayal of her statutory loyalty to her husband and daughter, her unbearable attitudes and tantrums, her abandonment of the conjugal home and her bad (sometimes irrational and even virulent) behaviour towards their minor daughter, among others.

7. That the story of the incident that Plaintiff describes in her paragraph three is purposely twisted and skewed in her own favour whereby she wrongfully and untruthfully alleges that exponent attacked and hit her on the 22nd March, 2015 – whereas the truth was the opposite and the relevant facts are as described in detail in Exponent’s affidavit. It is to be emphasized that it was not true he “kicked her out” of the family home, because (apart from the fact she had only returned to the flat after an exchange of emails where Exponent’s pleaded and invited her back in the hope of saving the marriage...and mainly for the minor child’s sake) as the police officers of Gzira will confirm, it was they who asked her to leave, after the violent incident of her own making – and escorted her out of the flat. The Police report clearly states that the minor daughter, who saw everything, told them that her father had not harmed her mother (for she harmed herself when falling after lunging towards him violently and missing him). Though he had come home a bit tipsy, he was not drunk, but it was enough for AB to fly into a rage and perform her violent tantrums.

8. That in paragraph four she untruly and perjuriously states that this was not the first time that the exponent had been violent towards her. But this is not true, as the parties’ minor daughter can surely confirm, if quizzed (as is hoped) by the Honourable sitting judge. Indeed the minor child has – sadly – witnessed, on a number of occasions, her mother “self-harming” her

body.” She is liable to get hysterical or anxious for no apparent reason at all, and in such a state she can intentionally hit her head against the wall or punch or pinch her face or hurt her hands – even getting bruised.

9. That the Exponent denies the allegation made in paragraph (5) of the present case, that Exponent is “a manipulative person, particularly upon their daughter” and also strongly rebuts the statement that he has done all he could do to impede relations between mother and daughter. “Where this the case, would he have - himself – insisted in persuading the applicant mother to return home and be one of the family again ... a) request that can be proved from an exchange of emails) ...but which “return home” was unfortunately to play out into the violent episode of 22nd March, 2015 when the applicant mother’s tantrums, hysterics and violent behaviour (even in front of the minor child) led her to getting hurt and being escorted out by the Police. Having witnessed these ugly things about her mother and having see the pornography and sexism of her mother graphically displayed, seen her betrayal of a father who had shown patience and forbearance for several years in vain and having been often roughly treated by her mother, the minor daughter Margaret refuses still refuses to see or be with her mother....as can be confirmed, possibly, by the psychologists appointed by the Court and this – not as a result of manipulation but of self-assessment by an intelligent girl.

10. That in consequence, Exponent states that the separation of the parties from bed and board is definitely due (subject of course to the dissolution of the community of acquests), but that the reasons for separation are solely attributable to applicant AB and that custody of the minor child E B should

not and must not be given to the mother, but to the father, with whom the girl lives and with whom she feels

loved, comfortable and safe, cared for and well-maintained, and who is prepared and able to continue to provide - as he has been doing for her subsistence, health, education and welfare until major age ...subject to the mother being required to put in her share towards said maintenance according to law and all this in the child's interests.

11. That, saving the above, Exponent accordingly pleads that the demands, the denial of the demands made by the applicant numbered (2), (3), (4), (6), (7), (8), since these have no basis in fact or law, as will result in the treatment of the case, whilst he declares that to the best of his knowledge he holds no paraphernal assets of the applicant as described in her demand number (7) and submits the demand at number (8) is superfluous and unnecessary as registration of a judgment in the public registry does not need court authority.

12. That he accordingly pleads the denial of the Plaintiff's demand for custody of the minor daughter EB (age nine), which could be disastrous and against the child's best interests; the denial of her demand for maintenance for herself, because such claims and demands are totally wrong and undeserving - she having herself been the sole cause and effect of the breach of relations; and the denial of the request that expenses for the minor child's health and education be the exclusive cost of the father.

13. Finally, whereas the Exponent does not contest that the community of acquests be dissolved and the assets allocated by the court to the respective parties, he clarifies that most of the financial capital he currently holds is paraphernal, since it was mostly earned prior to the marriage between the

parties, whilst any earnings received during marriage were mostly expended for the many travelling, accommodation and maintenance needs of the family in the nine years of marriage, as can be seen from documents produced in his original case no. 124/2015 RGM – and respectfully asks that these facts be taken into account at the final reckoning of the value of the community.

With costs against applicant AB who is hereby summoned to appear and submit herself to the oath according to law.

CONSIDERS

Having seen the acts of the case.

Having seen that this case is being decided together with case Application Number 124/15 in the names **EDB vs AB** The Court adopts all the acts, evidence and reasonings in the case in the names **EDB vs AB Application number 124/15.**

DECIDE

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

- 1) It declares the separation between them because of Plaintiff's adultery, threats, insults and grave offences and because Defendant also rendered himself responsible for the breakdown of the marriage because of his threats, insults and grave offences;
- 2) It declares that the care and custody of the child is to be joint between the parties, and that the child is to reside with Plaintiff, provided that such residence may change according to whether Defendant takes up residence

or not in Malta as aforementioned in the subtitle “Care and Custody” in the case **EDB vs AB Application number 124/15 decided today 5th March, 2020.**

- 3) It orders maintenance for the child be paid by Defendant according to what is decided in the subtitle “Maintenance” in the case **EDB vs AB Application number 124/15 decided today 5th March, 2020**, and therefore orders Defendant to pay the sum of two hundred and fifty Euro (€250) per month.
- 4) Abstains from deciding the above claim, since it forms part of the decision in number (3) above.
- 5) It declares that the community of acquests has been dissolved and liquidated as decided in the case **EDB vs AB , Application number 124/15 decided today 5th March, 2020.**
- 6) Denies this claim.
- 7) Grants this claim.
- 8) Grants this claim.

Costs are to be borne equally between the parties.

Hon. Mr. Justice Anthony J. Vella

Registrar

