



**CIVIL COURT  
(FAMILY SECTION)**

**JUDGE**

**Hon. Abigail Lofaro LL.D., Dip. Stud. Rel.,  
Mag. Jur. (Eur. Law)**

Today the 11th June, 2020

Sworn Application: 71/2013 AL

**A B**

**vs**

**C B**

The Court:

Having seen the application filed by the plaintiff, whereby she premised:

1. Whereas the applicant and the defendant got married on the 22nd February 1999 as is evidenced by the marriage certificate hereby attached and marked as Doc. GK1. From this union, two children were born, that is D E B who is now five (5) years old (see Doc. GK2 hereby attached) and F G B who is two (2) years old (see Doc. GK3 hereby attached);

2. Whereas it is no longer possible for the parties to continue to live their matrimonial life and this is due to reasons which can only be attributable to the defendant, mainly because of his adultery, physical and psychological violence even on the children, aspects of possessiveness and abusive behaviour as will be proved during the course of this case;

3. Whereas the defendant has abandoned his family but tries to convince the applicant that he is simply working abroad. However, he does not pay adequate maintenance for his children and does not even keep regular contact with them;

4. Whereas the defendant comes back to Malta and leaves as he pleases without even informing the applicant. He leaves Malta for a number of months on a regular basis and when he does return, his return is always characterised with orders to the minors in order that they refrain from doing anything that can be associated with the catholic religion, including the fact that they are not to eat pork and they are not to make the sign of the cross (in spite of the fact that the same parties had agreed otherwise before these minors were born) as the defendant is now insisting that the children are Muslims;

5. Whereas when the defendant is in Malta, he threatens the applicant that he is going to abduct the children and take them to Turkey or in any other place with the direct consequence that the same applicant will never see her children. The applicant declares that she has made the necessary inquiries even with the Turkish Consulate and she has been informed that it is not possible for her to register the minors as children of a Turk national and consequently, she understood that this can only be done by her husband as a male. Consequently, the same applicant understood as well that it is only possible for her husband to have Turkish passports issued for the children without the signature of their applicant mother;

6. Whereas during all these years of marriage, the defendant always refused to register their marriage and their children in Turkey however he always refused to give a reason for this decision. Presently, since he knows

that the parties have marital problems, the same defendant is insisting on registering his children in Turkey (which according to what he's stating can only be done after the parties separate) which clearly shows that his intention is to take the children to Turkey for good;

7. Whereas it is in the children's best interests that the defendant is precluded from taking the children abroad and outside of the Maltese island with any form of passport unless the same children are accompanied by their mother;

8. Whereas it is in the children's best interests that the applicant is entrusted with the care and custody of the children and that it is the same applicant who, in an exclusive way and without the need of the defendant's signature or consent, applies for the children's passports as will be proved during the course of this case;

9. Whereas that the same defendant has accumulated a huge amount of debt which forms part of the community of acquests, even by means of companies which were formed during their marriage as will be proved during the course of this case;

10. Whereas the mediation between the parties was unsuccessful and consequently, the same applicant was authorised to proceed with this separation case by means of a court decree dated the 25th February 2013 (see Doc. GK4 hereby attached);

11. Whereas since the defendant is Turkish national, this application is being notified to him as well in the English language (see Doc. GK5 hereby attached);

Plaintiff is requesting deendant to state why this Court should not, for the afore mentioned reasons :

1. Pronounce personal separation between the married parties B for reasons attributable to the defendant;
2. Trust the care and custody of the minors D E B and F G B exclusively in the hands of the applicant and having the same minors living with their applicant mother;
3. Authorise the applicant to apply for the minors' relative passports in an exclusive manner and without the need of a signature or consent of the defendant;
4. Order that in the best interests of the minors, the defendant is precluded from taking the minors abroad away from the Maltese Islands unless such minors are in the presence of their applicant mother or her mandatory;
5. Liquidate an adequate sum as maintenance for the minors, which maintenance should include costs relating to education and health of the minors in the widest possible manner and which includes any private lessons that the minors might attend and costs related to extra-curricular activities of the minors like ballet and gymnastics among others and orders that this sum is paid by the defendant directly to the applicant in a bank account indicated by the applicant on a date fixed by this Honourable Court every month;
6. Liquidate an adequate sum as maintenance for the applicant and consequently orders the defendant to pay such liquidated sum in a bank account indicated by the applicant on a date fixed by this Honourable Court every month;
7. Declare and decide that the defendant forfeited his right of maintenance;

8. Dissolve and terminate the Community of Acquests between the parties, liquidates and divides the same community into two portions one to be assigned to the the applicant and the other to the defendant, not necessarily in equal shares;
9. Apply against the defendant the sanctions contemplated in the dispositions of article 48 et seq of the Civil Code;
10. Liquidate the paraphernal assets of the applicant and assigns the same assets to the applicant;
11. Authorise the applicant to revert back to her maiden surname that is Mousu'.

With costs against the defendant with reference to the oath of the other party.

Having seen plaintiff's list of witnesses;

Having seen the sworn reply filed by the defendant, whereby he pleaded (fol. 45):

1. The blame for the breakdown of this marriage falls solely on the wife who is now trying to estrange the two children from their father. The wife is continuously provoking the defendant and taunting him about his religion. The plaintiff is acting in a fundamentalist way and is trying to nullify an agreement which the parties had reached when they married when they had agreed that the children should be Muslim. In fact to date the children have not been baptised. And the parties did not marry in Church.

2. The plaintiff was well aware that she was marrying a person of different creed and she was happy with the arrangements made between the parties; now that she is seeing things in a different manner she expects to have her own way regardless of the agreement reached between the parties at the outset of the marriage;

3. It is not true that the defendant is adulterous or that he was physically violent towards her or towards the children. It is not true that the defendant was psychologically violent towards his wife or his children. He was not possessive or abusive.

4. The plaintiff knows that the business run by the defendant in Malta went bankrupt and it was due to this reason that the defendant had to search for work abroad. In fact this business has been saddled with a lot of debts which still have to be paid – these debts are close to €150,000.00.

5. The defendant pays all the school bills and also pays as much maintenance as he can pay. The defendant in spite of his religion had accepted to send his children to a catholic school and has constantly paid all that was due for his children's education.

6. It is not true that in any way the defendant has threatened to take the children to live in Turkey – in fact the plaintiff is trying to have the Court discriminate against him simply because he is a Turk and because he is a Muslim. She is expecting that he should not have the visiting and access rights as all other parents who are facing separation procedures. The defendant wants and has a right to be able to have good quality time alone with the children.

7. The father has agreed to have the children attend a Church school and he knows that the children are happy in Malta where he too lives. He has no intention of taking the children to live in Turkey. This allegation made by the wife is only intended to try and have the

father's access rights curbed. In fact the mother does not allow the father to take the children anywhere alone.

8. There is no reason why the father should lose the care and custody of the children. And there is no reason why his access rights should be curbed or controlled – such an act would be discriminatory.

9. The family has debts to settle and the income of the defendant is not so big – as will be proved during the course of this case. The wife is capable of working but in spite of this, she is insisting that the husband also pays her maintenance when she knows very well that the family cannot afford this.

10. In fact the family has around €150,000.00 debts to pay, besides this there still is a loan with the Bank amounting to €12,000.00, and another overdraft of €15,000.00 which he uses to pay for his maintenance. The husband is actually paying the wife for the children the amount of €300.00 as maintenance. The defendant cannot afford more than this even because he is still paying the abovementioned debts. The defendant was obliged to go and work abroad where he earns a miserly € 3,000.00 a year (this is a company that he opened). Because of this he is seGg to do some part time work. He is paying the maintenance from an overdraft he has taken out for this purpose. The defendant's work is now very much in jeopardy and this was announced to him by his employers – this is also due to his having to come so frequently to Malta

11. Now to add insult to injury his mother in law has commenced proceedings against him and against his wife asking them to pay the sum of €54,000 by way of arrears of rent when the agreement between the in laws and the parties was that no rent should have in fact been paid in spite of the rental agreement that was signed by the parties. In fact the fictitious rent agreement has expired since 2008. In fact this is part of a ploy intended to have the defendant evicted from the matrimonial home. And this when the defendant has no other place where to live.

12. The plaintiff is 35 years old - she is capable of working, and in fact had worked for the family business until some years ago – in view of this she should not be accorded any maintenance. The plaintiff rather than searching for a job to help the family is dedicating her time running around with her mother;

13. The defendant should not be evicted from the matrimonial home because he has done nothing wrong to deserve eviction.

14. With costs against the plaintiff

15. The defendant is using these procedures to file a counterclaim against his wife.

Having seen defendant's list of witnesses;

Having seen the sworn counter claim filed by the defendant, whereby he claimed (fol. 47):

The parties were married on the 22 February 1999. From this marriage the parties had two children D E B who is 6 years old and F G B who is 2 years old.

The defendant is a Turkish and a Maltese national who however has been living in Malta for 17 years. The father is a Muslim while the wife is a Roman Catholic. The parties had agreed that their children should be Muslim, in fact they both have Muslim names. The plaintiff is now attempting to break that agreement.

The wife is trying to break his agreement by not co-operating to expose the children to the Muslim religion while the father is working abroad to sustain the family.



Now also the wife and her mother are collaborating in an attempt to evict the defendant from the matrimonial home which is property that belongs to the mother and was passed on to the parties by title of loan "commodatum". In fact the plaintiff's mother has instituted procedures in front of the Rent Regulation Board asking for the eviction of the father from the matrimonial home.

The wife has been trying to provoke the husband by calling him names and attacking him violently - like when she attacked him with the intent of taking away his mobile phone because he was taping her while she was calling him names and yelling at him.

The wife has also continuously been trying to estrange the children from their father. The plaintiff has also involved the children in the matrimonial problems that exist between the parties. Even because of this the children should be placed under the care and custody of the father who is the better parent to take care of the children - the children should be allowed to air their views on this matter.

The mother should not be allowed to take the children abroad in the absence of the father.

The family had a small business which however did not do well. There are various debts which have to be settled and for this reason the father has had to go to work abroad in Turkey. The father has been living in Malta since about 1997 - he has since then always lived and worked in Malta. Unfortunately the business did not do well and the family has debts which the father cannot pay alone.

The plaintiff is 35 years old and is capable of working - in view of this she should not be accorded any maintenance. She has also more than once attacked the defendant violently or abused him by threatening him and insulting him with rude words. Even in view of this the wife should forfeit

her rights to receive maintenance from her husband. The wife has abused the defendant in more than one ways.

Requested, that further to the abovementioned motives, the applicant declares why this Court should not, saving any declaration that may be deemed necessary:

1. Pronounce personal separation between the married parties for reasons attributable to the plaintiff.
2. trust the care and custody of the children to the defendant and in default allow to the defendant sufficient access with possible sleep overs during weekends and holidays.
3. Authorise the defendant to apply for a passport for the children without the need of a signature of the plaintiff;
4. Prohibit the plaintiff from taking the children with her outside the territorial waters of Malta;
5. Order the wife to pay maintenance as established by the Court, to the defendant for the minor children;
6. Order that this maintenance is to be paid by the wife directly into an account pertaining to the husband.
7. Order that the wife should forfeit her right to receive maintenance from the husband.
8. dissolve and terminate the community of acquests between the parties, liquidate and divide the same community into two portions one to be assigned to the defendant and one to the plaintiff – not necessarily in equal shares.
9. apply against the plaintiff the sanctions contemplated in Art 48 et seq of the Civil Code.
10. Liquidate the paraphernal assets of the defendant and assign the same to the defendant.

With costs against the defendant – the defendant is being summoned to take the oath as contemplated by law.

Having seen defendant's list of witnesses;

Having seen the sworn reply filed by the applicant to the counterclaim filed by defendant, by virtue of which she claims : (fol. 50):

1. Whereas the applicant rebuts all allegations and claims as brought forward by C B as untrue and unfounded at law and in fact;

2. Whereas without prejudice to the above contrary to what the defendant claims, the marriage broke down due to reasons which are solely attributable to the defendant, mainly continuous adultery, physical and psychological violence coupled with violence against the minor children as will be proved during the course of this case;

3. Whereas without prejudice to the above, there was no agreement between the parties which stated that the children born out of their union had to be Muslims. On the contrary, the agreement between the same parties was to the effect that the children were to be exposed to both religions, be taught both and then have the same children which religion they want to follow when they're of age. The fact that the parties did not marry in Church and did not have their children baptised are not indications as to the fact that the children should be Muslims. In fact, the same defendant had agreed to enrol the same children in a Church School (St. Monica School) and was also aware that due to their young age, the minor children will not be allowed to walk out of the classroom during religious lessons;

4. Whereas without prejudice to the above, the applicant is aware that there are debts in relation to the business which went bankrupt. However, this does not necessarily mean that the only employment that the defendant could find in his own country. The defendant chose to work abroad so that he could easily manage his adulterous affair with a Turkish national with the name of H as will be proved during the course of this case;

5. Whereas without prejudice to the above the defendant is not currently paying adequate maintenance as he arbitrarily decides what amounts of money to send from abroad, which amounts are so minimal that the same applicant had to file a specific application in order for the court to establish and liquidate an adequate sum of maintenance both for herself and for the minors;

6. Whereas without prejudice to the above the applicant at this stage makes reference to the warrant that she filed in order to impede the same defendant from taking the children abroad, which warrant was acceded to by this Honourable Court. The fact that such warrant was in fact acceded to goes on to prove that this Honourable Court gave credibility to the applicant who testified about the threats and continuous lies of the defendant;

7. Whereas without prejudice to the above it is not in the children's best interests for their defendant father to be entrusted with their care and custody. Care and custody should be entrusted to the applicant mother who has taken care of the same children since they were born. Now that the same defendant (ex-admissis) works abroad, it is clearly in the children's best interests to be entrusted with their mother as will be proved during the course of this case;

8. Whereas without prejudice to the above the defendant is to pay maintenance for the applicant who is forced not to work due to the fact that the same defendant works abroad and consequently, she needs to take care of the children during such long periods when the same defendant is abroad. The applicant also declares that up until 2007, she used to work with 'Cassar and Cooper'. However the defendant made her quit her job so that she could take care of the children and be a full-time mother to them. This will also be proved during the course of the case;

9. Whereas without prejudice to the above the applicant is aware of the debts that have accrued and to the civil proceedings as instituted by the applicant's mother. However, these have no bearing over the applicant's claim for maintenance since both herself and the same children need to be fed, clothed and taken care of as will be proved during the course of this case;

10. Whereas without prejudice to the above, whether the rent agreement entered into by the parties with the applicant's mother is null or not is to be decided by the Court of Magistrates (Malta) and consequently, this Honourable Court should not take any cognisance of such claims;

11. Whereas the defendant should be evicted from the matrimonial home for reasons which have been duly explained in the sworn application and in an application filed specifically in order to have the same defendant evicted and which are in the children's best interests;

With reservation for further pleas.

Having seen plaintiff's list of witnesses;

Having heard the witnesses brought forward;

Having seen all the documents exhibited, the evidence produced and the acts of the proceeding;

Having seen its decree of the 29th October 2013 whereby Dr. Gabrielle Buttigieg was appointed as legal referee in this case;

Having seen its decree dated 10th November 2016 whereby the Court revoked Dr. Buttigieg's appointment as Court Attorney and substituted her with Dr. Claudio Zammit as legal referee.

Having seen its judgement dated 11th October 2017 whereby the Court agreed to terminate the community of acquests between the parties.

Having seen legal referee's report sworn by him on the 5th December 2018.

Having seen the answers given by the legal referee, upon questions made by plaintiff in connection with his report.

Having seen plaintiff's note of submissions;

Having seen that the case was put off for today for judgement;

Having considered:

## **CONSIDERATIONS**

The Court is going to reproduce the summary of the evidence given before the legal referee and also the considerations made by the legal referee as follows :

### **Plaintiff's evidence**

When plaintiff testified viva voce she said that the fines from the tax authorities and MFSA were increasing because defendant did not want to collect the mail, and he had not seen the mail for the last two years. She also stated that she cannot submit the returns of the company since she is not a director. She also stated that the parties had acquired a house in Turkey, but defendant insisted that this house was no longer theirs, whereas at other times he would say that this house was never acquired.

In a subsequent sitting (25th February 2015) plaintiff filed a series of documents about the property acquired in Turkey, two of which properties were sold to defendant's uncle, and another one to his mother, within the same day. Plaintiff denied that she had shared in the proceeds of this sale. She also stated that she had send four thousand or five thousand Malta Liri to defendant in Turkey so that he could acquire property in Turkey. During this sitting, plaintiff filed three documents as Doc. GK to GK 3, and later during the sitting of the 29th Mary 2015, defendant stated that the documents filed by plaintiff (consisting of four pages), that is Appendix 1 (consisting of four pages), Appendix 2 (consisting of five pages), Appendix 3 (consisting of one page) and Appendix 4 (consisting of two pages), were print outs which were neither stamped nor signed and the 5 documents themselves do not show from where they were extracted, and neither was there any signature attesting the source of the documents, or who might be taking care of the original. Moreover, Appendix 4, is a photocopy, and the words written underneath are not completely legible. The documents were not apostilled neither.

Plaintiff also filed a sworn note (fol. 28) by which she stated that it would be fitting if defendant would be precluded from being able to take the minor children abroad, as long as the minor children are not in her

continuous presence, or in the presence of an agent of hers, and this due to the fact that defendant never wanted to register their marriage and the birth of their minor children in Turkey. This would mean that defendant would be able to issue a passport for the minor without the need of plaintiff's consent. Plaintiff also fears that defendant might have registered the parties' minor children in Turkey.

Regarding the matrimonial home, this is a property which is leased to the parties. Plaintiff claimed that she should be assigned the movables within the matrimonial home since these were hers. She also claimed that during marriage a house was bought in Turkey, and plaintiff wants her share from this house.

Plaintiff also claimed the sum of two hundred and fifty Euro (€250) per month by way of maintenance for each 6 of the minor children, over and above half the health and education expenses. Plaintiff also claimed maintenance of seventy-five Euro (€75) for herself.

She also stated that the community of acquests comprised the vehicle Opel Astra (GWN 292) registered in her name. There is also the vehicle Mercedes A Class (ABW 431) registered in defendant's name. Plaintiff requested the latter vehicle to be sold and the profits therefrom to be shared equally by the parties. Plaintiff also requested that if there are bank accounts and investments in her name, these should be assigned to her; whereas the joints accounts are shared equally by the parties. She also requested that the debts relative to the companies formed during marriage be assigned to defendant.

Plaintiff also request a declaration in the sense that defendant has forfeited his right to claim maintenance because of violence and adultery, apart from the fact that the debts that defendant knows about and which plaintiff knows nothing about, should be assigned to defendant. Plaintiff also requested that she revert to her maiden surname.

Plaintiff filed an affidavit, sworn on the 27th May 2017, where she stated that defendant had established another family in Turkey while still married in Malta. Defendant got married in 2015. He goes to Turkey for months, and when he returns to Malta, he pretends that the children 7 behave as if nothing happened. He does not paid maintenance punctually, and accumulated a health and education expenses bill amounting to four

thousand Euro (€4,000). Recently, when the minor children were with him, the elder child got grievously injured and had to undergo an operation in her leg; however defendant left for Turkey the week after and did not bother to call in order to see how his daughter got on with her leg. Plaintiff stated that defendant even forgets the age of his daughters, and had sent a birthday card with an erroneous age number to one of his daughters. Plaintiff further testified on the 11th October 2017 where she stated that the only income she earned was from social benefits and that she was not in employment. She said that she did not try to get employed because defendant had said that he wanted half her wage. She also stated that she received around 400 Euro (€400) every month from social assistance. She also received five hundred and seventy-seven Euro (€577) every three months as Children's' allowance.

**Noel Paris** from Volksbank Malta stated that defendant had two personal accounts, and had had another personal account which was closed. He exhibited a document with several pages which gives information about these accounts, marked as Doc. NP 1.

**Romwald Attard** from Bank of Valletta stated that defendant had no account with the bank, whereas plaintiff 8 had two personal accounts. Regarding Censu Collection Co. Ltd. there were two accounts. Regarding Global Sales Ltd. there were four accounts. For the accounts related to these two companies, defendant is the only signatory. This witness exhibited eight documents (Doc. RA 1 to RA 8)

**Audrey Ghigo** from HSBC Bank (Malta)

from HSBC Bank (Malta) plc, stated that plaintiff had three (3) savings accounts, a current account, a closed visa account, and a Visa advanced account. Defendant had a current account and two (2) savings accounts which were still active, whereas there were two savings accounts, a current account, a visa account, and a Eurocard account which were previously open and had been closed. The parties had jointly held two loan accounts which had been closed. There were two other loan accounts which were cancelled. In a subsequent sitting, the witness stated that Censu Collection Co. Ltd. had two current accounts, two savings accounts, a loan account with a balance of €11,306, and a current account that was closed. For the company 'Global Sales Ltd.', there was



a current account and four savings accounts, whereas there were three (3) savings accounts which were closed. She exhibited sixteen documents which were marked as Doc. AG 1 to AG 16.

**Anton Psaila** from HSBC Bank (Malta) plc stated that regarding Censu Collection Ltd., plaintiff was added as a signatory along which, but not as a substitute of, defendant. Regarding Global Sales Ltd., it is only the plaintiff who is the only signatory. He exhibited three documents, marked as Doc. AP 1 to AP 3).

**Quentin Tanti**, from MFSA, exhibited some documents relative to Censu Collection Ltd. and Global Sales Ltd. He exhibited eight documents, marked as Doc. QT1 to QT8. This witness also testified in a subsequent sitting and said that there were some penalties payable by Censu Collection Ltd. and Global Sales Ltd, and exhibited the relative documents as Doc. QT 9 to Doc. QT 19.

**Francis Stivala**, in representation of NSTS Falcon Tours Ltd., stated that Censu Collection Co. Ltd. owed them the amount of €21,219.52. Interests started to run from the 1st August 2011, and there were also legal expenses due. The witness exhibited five (5) documents as Doc. FS1 to FS5.

**Joe Aquilina** for Club Class Language School, stated that his entity was owed €32,000 by Censu Collection Co. Ltd. Business discussions used to takes place at times with defendant and at other times with plaintiff. The witness exhibited one document as Doc. JA 1.

During the sitting of the 10th April 2014, plaintiff exhibited two (2) bills that had been sent to defendant with a request for payment for the expenses of two warrants, marked as Doc. AC 1 and Doc. AC 2. Plaintiff further stated that defendant had to pay the water and electricity bill according to a decree of this Honourable Court, for the amount of €2,300, but this was not paid. Subsequently, during the sitting of the 20th January 2016, this amount was reduced to (€2,074.94).

During the sitting of the 7th May 2014, plaintiff filed a document (Doc.GL1) which showed that defendant had paid two thousand Euro (2,000) to apply for a shortened military service.

Plaintiff also filed other documents, attached to a reply to an application, namely a report by Dr. Mireille Vila (clinical psychologist), a report to the Police dated 18th June 2013, and photographs of defendant's girlfriend. These documents did not have a letter or a number of reference but are found from fol. 223 to 229 of the file.

Plaintiff also file another document (Doc. PL 1) which shows that was due by defendant for the health and education expenses.

Plaintiff also filed three other documents, that is a marriage certificate between defendant and H I (Doc. GKA 1), a photography of the wedding ceremony (Doc. GKA 2), and a breakdown of health and education expenses (Doc. GKA 3).

Plaintiff also filed five documents with her application of 23rd May 2013, showing a gold ring which defendant gave to his girlfriend, and several other instances where defendant went abroad and dined with his girlfriend.

**Defendant** produced the following evidence:

Defendant testified viva voce and stated it was not true that plaintiff could not get reach him on telephone, and he filed two documents related to a Maltese telephone line and a Turkish telephone line to show that plaintiff was still contacting him. He also filed some air tickets. He also stated that the house in Turkey had been sold for seven thousand Euro, and these had been sent to plaintiff in order for her to pay the English language schools, since the company Censu Collection Co. Ltd. was bankrupt. Together with this affidavit he exhibited three documents, that is Doc. SK 2 to Doc. SK 4.

Defendant also filed an affidavit (Doc. SK 1) in which he stated what his expenses are, and this while he was still doing part-time work in Turkey. He also stated that he had to pay four hundred and fifteen Euro (€415) per month for a loan which he had in Turkey in order to pay legal expenses and to be able to come to Malta to attend for Court sittings and to come to visit the children.

In an additional affidavit he filed (Doc. SK 6), defendant stated that from the three properties indicated in the document prepared by the Turkish advocates, he only had a one-third (1/3) share in Field 2. When he was

pressed because of the bad performance of the business in Malta, he had borrowed money from his uncle and he had to release this one-third. From the sum recouped, he had sent six or seven thousand Euro to plaintiff in order for her to pay the English language school in Malta. He also stated that his mother-in-law had requested the payment of rent for the place in which they were living, and this with a certain animosity, in view of the fact that previously, the intention was that they would be left to dwell in this place for free. He denied that there was an incident in 2013 whereby he was violent with plaintiff. He also denied that he was married in Turkey. He stated that his uncle J K had borrowed €16,760 in Turkey, while this same uncle was himself in a dire financial situation.

In counter-examination defendant stated that he had paid part of the water and electricity bill which he was ordered to pay by the Court. He also stated that he pays maintenance punctually. He also stated that during marriage he had acquired 1/3 share in a property which he had subsequently transferred to his mother, without any form of payment. He further stated that in order to acquire this 1/3 share, he had used money coming from the community of acquests (circa Lm7,000). He also stated that Censu Collection Co. Ltd. owed English language schools circa one hundred and fifty thousand Euro (€150,000). His uncle had helped him to alleviate this debt, and defendant also got some money from his mother, because in Turkey he could not have a loan. For this purpose, he had given his 1/3 undivided share to his uncle.

Defendant filed another affidavit on the 25th February 2015 where he stated that he was in continuous contact with plaintiff and the children, before plaintiff file the application requesting care and custody, and plaintiff had not mentioned their daughter's school application with him. He stated that he was in Malta and exhibited the air tickets as evidence of this; he also stated that it was not true that plaintiff could not reach him. He had contact plaintiff even by e-mail. He also stated that plaintiff was trying to avoid the debts of the companies. He also said that plaintiff used to leave the house in a shabby state and filed photographs illustrating this situation. He stated that they used to live in a filthy environment, and that plaintiff used to mix up clean clothes with soiled clothes. Apart from this, plaintiff did not accept to be intimate with defendant, and wanted that the minor children continue to sleep in the matrimonial bedroom.

**J K** (affidavit as Doc. SK 7), defendant's uncle, said that due to financial difficulties he encountered in 2004, he had transferred a property which he had in his name to defendant, and this only temporarily. After his situation improved, he took back the property he had transferred to defendant. He also said that he had obtained a loan from a bank in order to lend a sum of money to defendant, since the latter had financial problems. Given that defendant could not manage to pay him back, he had renounced to a share which he had in a field (Field 2) so that the loan with him could be paid up.

**L B** (affidavit as Doc. SK 8) stated that she had acquired a field which was eight hundred and two metres squared (802 m<sup>2</sup>), in equal shares between her, defendant, and her brother J K. Later, the share held by defendant was transferred to her, upon her brother's request. Subsequently, this property was sold. Defendant had no financial involvement in the sale where the property was sold to third parties. Apostilled copies of documents SK7 and 8 were filed and marked as Doc. SK 9 u Doc. SK 10.

After the twelve sittings held by the previous Legal Referee, the undersigned held four (4) sittings, during which no evidence was brought forward.

By means of a judgment of the 11th October 2016, the Court ordered the cessation of the community of acquests existing between the parties, according to Section 55 of Chapter 16 of the Laws of Malta, and this with effect from the date that that decision became *res judicata*.

## **CONSIDERATIONS**

### **1. Responsibility for the break-down of marriage**

Plaintiff states that there was this break-down of marriage because of adultery, physical and psychological violence, violence on the minor children, and abusive behaviour from defendant. She also states that defendant abandoned his family with the premise that he got 15 employment overseas and he does not pay regular and adequate maintenance.

Defendant on the other hand states that plaintiff is continuously provoking him and taunting him about his religion. She is acting in a fundamentalist way and is trying to nullify an agreement which the parties had reached when they married, when they had agreed that the children should be Muslim. In fact, to date the children have not been baptised, and the parties did not marry in Church.

Plaintiff countered that the agreement was that the children should be exposed to both religions and then they should choose which religion to follow when they were of age.

The undersigned however finds it very odd that defendant accepted to enrol the older child in a Catholic school, given his opposition to exposing the children to Catholic traditions, and in the same way stating that he wanted to raise the children as Muslims, and therefore this argument about religion does not hold, since defendant himself was not consistent in this regard.

The undersigned has yet to search for other reasons which might have led to the breakdown of marriage. From the documents exhibited, it can be seen that on the 13th January 2013, defendant had already given a gold ring to H I<sup>1</sup>, the girlfriend which he later got married to in 2015. This fact was not contested by defendant. Neither did defendant comment on, or contest, the photographs exhibited at fol. 229 of the file.

Furthermore, defendant decided to move to Turkey with the premise that he went there in order to find employment, so as to alleviate the debts related to the business which the parties had together. The undersigned once more does not find this as a valid reason for defendant to abandon his wife and children, and leave to Turkey, returning to Malta with no pattern and only when he deemed it fit and proper. If he really wanted to seek employment, he could have done so in Malta. Defendant himself complained that his salary in Turkey was not high enough; it therefore begs the question: Why did he go to work in Turkey, with a minimal salary, instead of trying to work in Malta, where his family was?

The defendant, on the other hand, exhibited photographs of the rooms in the matrimonial home, while the parties lived together with their children

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<sup>1</sup> One has to bear in mind that this case was filed on the 26th March 2013

as a family, to allege that plaintiff allowed the matrimonial home to remain in a state of neglect. From the evidence produced however, it transpires that both parties worked in the business they had related to students who came from abroad to learn English; defendant therefore had a duty himself as well to see to the organisation of the rooms in the house, and could not expect this to be carried out only by plaintiff.

The undersigned therefore can conclude that the responsibility for the break-down of marriage lies only with defendant and no one else; primarily because he decided to abandon the matrimonial home and have a relationship with someone else.

## **2. Division of the community of acquests and the return of paraphernal property**

There is agreement that in the community of acquests there are the following:

Car Opel Astra (GWN 292), of whose plaintiff is the registered owner. By means of a decree here above mentioned, this car was assigned to plaintiff. The undersigned suggests that this car is to be definitively assigned to plaintiff, together with any fines and penalties that may be due relative to this car.

Car Mercedes A Class (ABW 431), of whose defendant is the registered owner. By means of a decree here above mentioned, this car was assigned to defendant. The undersigned suggests that this car is to be definitively assigned to plaintiff, together with any fines and penalties that may be due relative to this car.

The parties produced the following evidence regarding the community of acquests:

The matrimonial home, (Flat 8, Victoria Mansions, Victoria Junction, Sliema), is not the property of either of the parties; the parties claim that there were eviction proceedings and that plaintiff's mother claimed fifty-four thousand Euro (€54,000) for rent due, but no evidence in this regard was produced; In any case this property should no longer be deemed to be the matrimonial home of the parties, and, for all intents and purposes, the undersigned is of the opinion that the Court can confirm that defendant is prohibited from living in this property.

The movables in the matrimonial home are to be assigned to the plaintiff, so as to compensate for the fact that defendant abandoned the matrimonial home and left plaintiff to exclusively see to the needs of the children, and is also reluctant in paying the amounts due for his share of the health and education expenses.

Plaintiff also alleged that defendant bought immovable property in Turkey and based herself on Doc. GK 1, a report from Kaya & Partner, Advocates, to back this claim. The undersigned however does not deem this report to be admissible as proof, since it was not confirmed under oath by the person who prepared it, and the Court had ordered that the Turkish lawyer who prepared it had to testify before it.

From his side, defendant accepted that he had bought 1/3 of a field and he transferred it back to someone else, so that this is no longer in the community of acquests.

What is relevant in this context is that defendant agreed that the sum of seven thousand Malta Liri (Lm7,000) had been paid from the community of acquests towards the acquisition of property. Since defendant did not satisfactorily give any account of the way in which this sum was spent, and/or what was bought with this amount of money, he should refund to plaintiff half of this amount, i.e. three thousand five hundred Malta Liri (Lm3,500) equivalent today to eight thousand one hundred and fifty-two Euro and fifty-five cents (€8,152.55).

In Volksbank Malta, defendant has two accounts.

In Bank of Valletta, plaintiff has two accounts. There are two accounts relative to Censu Collection Co. Ltd. and four accounts relative to Global Sales Ltd. The defendant was the only signatory for the accounts relative to these companies.

HSBC Bank (Malta) plc, plaintiff has three savings accounts, one current account, a closed account and a Visa Advanced Account. Defendant has a savings account and two current accounts. For the company Censu Collection Co. Ltd. there were two current accounts, two savings accounts, a loan account with a debit of eleven thousand three hundred and six Euro (11,306). For the company Global Sales

Ltd. there was a current account and four savings accounts. 20 With HSBC Bank (Malta) plc, for the company Censu Collection Co. Ltd., plaintiff was a signatory with defendant, whereas for Global Sales Ltd. plaintiff is the only signatory.

The statements of the bank accounts show largely transactions related to the business of the parties, indicating mostly names of students and deposits they made for English courses.

The undersigned is of the opinion that each party should be assigned the accounts and any other investment which are registered in his/her own name.

The following bank accounts, however, should be divided in equal shares between the parties:

- Joint accounts
- Loan accounts
- All accounts relating to the business, including those relating to Censu Collection Co. Ltd. and Global Sales Ltd.

### **3. Debts of the community of acquests**

Both the companies Censu Collection Co. Ltd. and Global Sales Ltd. owe penalties to the Malta Financial Services Authority.

NSTS Falcon Tours Ltd. are owed twenty-one thousand, two hundred and nineteen Euro and fifty-two cents (€21,219.52)

Club Class Language School are owed thirty-two thousand Euro (€32,000).

There are also the fines and penalties due to MFSA.

It is the opinion of the undersigned that the debts and fines just above-mentioned, and any debt related to the business of the parties, including those related to Censu Collection Co. Ltd. and Global Sales Ltd., should be paid in equal shares by the parties. This is due to the fact that both parties had an active participation in the running of the



business. The witnesses produced by plaintiff stated that both plaintiff and defendant dealt with clients and suppliers, and both had access to bank accounts relative to the companies. There is no particular evidence indicating that any one party was to blame for this state of affairs; the precarious state of the businesses is therefore no fault of any one party or the other; both parties have to bear the difficulties of these debts.

The defendant also claimed that he had to get a loan in Turkey in order to pay legal expenses and to come to Malta for court sittings. This loan is to be assigned exclusively to defendant, since it was his choice to go to Turkey and no authority compelled him to do so.

The undersigned also noted that there is a pending utilities (ARMS Ltd.) bill, related to the period up till when defendant was ordered to evict the matrimonial home, which the Court had ordered defendant to pay. The Court can now finally and definitively order defendant to pay this bill or any balance thereof.

Likewise it should be made clear that defendant is to pay the costs of any prohibitory injunction or garnishee order that was filed against him.

It is also the opinion of the undersigned that each party should be obliged to pay any debt which it had personally entered into, even till today, without the consent or involvement of the other party.

#### **4. Monies owed to the Community of acquests**

There was no evidence of any money owed to the community of acquests.

#### **5. Paraphernal property**

The parties produced no evidence about paraphernal property.

#### **6. Care and custody**

The undersigned is of the opinion that care and custody should be entrusted exclusively to plaintiff. Defendant's behaviour, when going to Turkey, shows that he cannot be trusted for long term with the care and custody of the children. Moreover, defendant currently lives in Turkey, and has further perpetuated his stay there through marriage,

and cannot truly attend to the necessities of the minor children, whose habitual place of residence has now been established in Malta.

Moreover, the undersigned is of the opinion that defendant should be precluded from taking the minors abroad. Defendant is well established in Turkey, he has his place of residence there, and one cannot serenely exclude that he will not take the children there, or to any other country, on a permanent basis.

It would also be opportune to specifically include, in the exclusive care and custody assigned to plaintiff, the plaintiff's exclusive right to apply for and issue a passport for the minor children, without the necessity of any consent or intervention on the part of defendant.

## **7. Maintenance**

The Court through its decree of 26th July 2013 had ordered defendant to pay four hundred Euro (€400) per month for the maintenance of the minor children, and this apart from half the expenses for education and health. The undersigned has noticed however, through the notes filed by plaintiff, that defendant did not pay his share for the expenses. Defendant lives abroad, and it will not be practicable for plaintiff to send him the receipts and/or institute the relative case against him for non-payment of these expenses; the undersigned also took into consideration the fact that defendant did not readily pay the expenses related to health and education, as evidence by the various representations by plaintiff in this regard during this case. It must be added that such maintenance was established by the Court six (6) years ago; therefore it is being suggested that the maintenance is increased to 260 Euro per month for each child, which would include every expense, including those related to health and education. This amount of maintenance is being proposed after the undersigned considered the decree above-mentioned and after it was also considered that defendant is comfortable to lead another life with get married to another person abroad, irrelevantly of the financial difficulties he claims to be in.

The undersigned furthermore is of the opinion that plaintiff should receive in their entirety, for herself, any childrens' allowance and social benefits related to the children.

Regarding the maintenance for plaintiff, the undersigned is of the opinion that plaintiff is able to get employed and can have an employment of her own. Therefore, the claim for maintenance for plaintiff, should not, in the opinion of the undersigned, be acceded to. Plaintiff herself stated, directly after the judgment related to the cessation of the community of acquests was pronounced, that she would now seek employment.

Furthermore, in view of the conclusions mentioned further above regarding the breakdown of marriage, and even in view of the fact that defendant is in an adulterous relationship with another person, he has forfeited his right to claim maintenance from plaintiff, in terms of Section 48(1)(d) of Chapter 16 of the Laws of Malta.

Likewise, given that Section 38 of Chapter 16 of the Laws of Malta applies to the circumstances, defendant should forfeit the rights envisaged in Sections 631, 633, 825, 826 and 827 of Chapter 16 of the Laws of Malta, according to Section 48(1)(a) of the same Chapter.

## **8. Visitation rights**

Defendant has the right of visitation to his minor children. From the evidence it has transpired that at times, several months passed during which defendant would not exercise his visitation rights as provided for by the Court. The undersigned also noted that defendant is not willing to help the minor children with their homework when they're with him during visitation hours.

The Court has already provided for visitation rights, that is on Tuesdays and Thursdays from 4 PM to 8 PM, and on Saturdays from 10 AM to 8 PM. The Court had also directed plaintiff to suggest alternative dates when the minor children would not have any extra-curricular activities, but plaintiff did not make such suggestion. The Court also authorised plaintiff to refuse to grant visitation if defendant does not show his intention to exercise visitation rights at least twenty-four (24) hours before on school days, and one week before during the holidays.

The undersigned, after viewing all the circumstances, suggests that visitation rights can be further fine-tuned. Due to the various extra-

curricular activities of the minor children, there should be a different visitation right in summer and during school days. During school days, that is for the period between the 22nd September and the 1st July of the following year, it is suggested that the visitation rights be exercised every Wednesday from 4 PM to 6.30 PM, and every Saturday from 10 AM to 4 PM. During the summer holidays, then, that is from the 1st July to the 21st September, it is suggested that the visitation rights be exercised every Tuesday and Thursday from 5PM to 8 PM and every Saturday from 10 AM to 6 PM. Given the particular situation of the parties, and the fact that plaintiff is not regularly in Malta and does not always and invariably exercise his visitation rights, it is being suggested that during school days, defendant has to give notice of his intention to exercise visitation rights at least twenty-four hours in advance, and during the summer holidays, he has to give notice at least thirty-six hours in advance. Such notice should be sent by a conventional text message (SMS) sent to the mobile phone of the plaintiff, which would not require connectivity to internet in order to be received. Plaintiff is to ensure that she always provides to defendant her correct mobile phone number.

On each of the minor childrens' birthday, and on defendant's own birthday, furthermore, defendant would have visitation rights from 4 PM to 6 PM. On Father's Day (on the date it is celebrated in Malta), defendant would have visitation rights from 10 AM to 4 PM.

Plaintiff would also have the right to choose, at her discretion, a particular continuous period of eight days, in the summer holidays, during which defendant would not have visitation rights, so that she may plan a holiday with the minor children. She would have to give notice to defendant about the period chosen at least fourteen days in advance. In order to compensate for this, defendant would have additional visitation rights on the Sunday immediately falling after this period of eight days, from 10 AM to 6 PM

The Court declares that, since it agrees with all considerations and conclusions reached by the legal referee in his report, it is therefore adopting the same report and incorporating it in its judgement.

The Court, therefore decides the claims in plaintiff's supra application and those in defendant's counter-claim as follows:

1. Accedes to the first claim.
2. Accedes to the second claim, provided that defendant has visitation rights as explained in Section 8 above.
3. Accedes to the third claim.
4. Accedes to the fourth claim.
5. Accedes to the fifth claim, provided that the maintenance payable should be regulated as explained in Section 7 above.
6. Denies the sixth request for the reasons given in Section 7 above.
7. Accedes to the seventh request for the reasons given in Section 7 above.
8. Partially abstains from pronouncing itself on the eight request, since the community of acquests has already been dissolved by means of a partial judgment of the 11th October 2016, but otherwise liquidates and shares the community of acquests between the parties as found in Section 2 and 3 above.
9. Accedes to the ninth request, in that Sections 48(1)(a) and (d) of the Civil Code apply to defendant as explained in Section 7 above.
10. Denies the tenth request since no evidence of paraphernal property was produced.
11. Accedes to the eleventh request.

Regarding the claims in defendant's counter-claim, it is being suggested that the Court:

1. Accedes to the first request, for reasons attributable to defendant and not to plaintiff as explained in Section 1 above.
2. Denies the second request for reasons explained in both Section 1, 6 and 8 above.

3. Denies the third request for reasons explained in both Section 1, 6 and 8 above. 4. Denies the fourth request for reasons explained in both Section 1, 6 and 8 above.

5. Denies the fifth request for reasons explained in both Section 1, 6 and 8 above.

6. Denies the sixth request in view of the denial of the fifth request.

7. Accedes to the seventh request, not however for the reasons stated in the request, but for the reasons explained in Section 7 above.

8. Partially abstains from pronouncing itself on the eight request, since the community of acquests has already been dissolved by means of a partial judgment of the 11th October 2016, but otherwise liquidates and shares the community of acquests 30 between the parties as found in Section 2 and 3 above.

9. Denies the ninth request, in that this request is to be decided in line with the submissions as found above.

Considering the responsibility for the break-down of marriage as above explained, the defendant is to pay the expenses, both those related to plaintiff's sworn application and those related to the counter-claim.

Hon. Dr. Abigail Lofaro

Judge

Rita Vella Baldacchino

Deputy Registrar