Court Of Appeal

Judges

THE HON. MR. JUSTICE GIANNINO CARUANA DEMAJO (President)
THE HON. MR. JUSTICE TONIO MALLIA
THE HON. MR JUSTICE ANTHONY ELLUL

Sitting of Thursday 9th of July 2020

Number: 34

Application Number: 52/05 AGV

Lilia Nikolayevna Mukhortova in her own name and by decree of the 1st March 2005 as curator "ad litem" of her minor daughter Anna Alexandrovna Mukhortova
v.

Doctor Vincent Galea and PL Louisa Tufigno as curators to represent the absentee Alexander Maxovitch Bernstein (also know as Bernchtein)

The Court:

1. By wirt of summons filed on the 23rd February, 2005 Lilia Nikolayevna Mukhortova filed a lawsuit Lilia Nikolayevna Mukhortova proprio et nomine vs Dr Vincent Galea nomine (Writ no. 52/2005) whereby she requested the Court to condemn the defendant to pay maintenance for his daughter Anna Aalexadrovna Mukhortova born on the 13th September, 1990.

2. On the 27th June, 2006 the Civil Court, Family Section delivered a judgement whereby she condemned the defendant to transfer one third ($^1/_3$) of the property he owns in apartment number four (4), Veronica Flats, Perellos Street, Saint Paul's Bay as payment of maintenance for his daughter.

3. By application filed on the 13th August, 2013 Maxovitch Berstein filed a request for a retrial of the case. By judgement delivered on the 9th November, 2016 the Civil Court, Family Section decided:

> "*1. By virtue of Article 811(a) and (b) of Chapter 12 of the Laws of Malta, revokes and annuls the judgement delivered by this Court as differently presided on the 27th June 2006 in the names Lilia Nikolayevna Mukhortova pro et noe vs Doctor Vincent Galea et nomine (Citaz nru 52/05NC)*
>
> "*2.Orders the rescission of the contract published by virtue of that judgement on the 30th March 2007 by Notary Dr Sylvana Borg Caruana, and for this purpose appoints Notary Dr Sylvana Borg Caruana to publish the relative contract of rescission within a month from today and appoints Dr Anna Mallia as curator to represent any contumacious party on the deed.*
>
> "*3.Orders the retrial of said lawsuit.*
>
> "*With costs against respondent Lilia Nikolayevna Mukhurtova*".

4. No appeal was filed from that judgement.

5. On the 14th February, 2019 the Civil Court, Family Section decided the lawsuit 52/2005. The Court rejected defendant's pleas and declared that he is responsible to pay maintenance for his daughter during the years 2001 to 2011.

He was condemned to pay the sum of €41,855 within three months from the date of judgement.

6. On the 5th March, 2019 the defendant filed an appeal, claiming:-

i. Nullity of the lawsuit;

ii. His daughter is of age and therefore the Court should abstain from considering the lawsuit;

iii. The matter was determined by a previous judgement delivered in Moscow;

iv. Plaintiff's claim is time barred (Article 2156(b) and 2156(f) of the Civil Code);

v. The sum of €41,855 is excessive;

Facts.

7. The parties are Russian nationals and are parents to a daughter born on the 13th September, 1990.

8. On the 14th December, 1995 defendant bought an apartment in Malta (apartment no. 4, Veronica Flats, Perrellos Street, St Paul's Bay).

9. On the 21st November, 2001 the couple divorced. The plaintiff said that she moved permanently to Malta in January 2000 and went to live in the apartment that was bought in 1995 (apartment 4, Veronica Flats, Perellos Street, St. Paul's Bay). The parties disagree as to who owns the apartment. The plaintiff claims that both parties are co-owners whereas the defendant claims that he is the sole owner.

10. The following year the plaintiff sued the defendant in Moscow for maintenance. By decree delivered on the 10th June 2003 the Court condemned the defendant to pay to the plaintiff one fourth ($^1/_4$) of his salary or other source of income, with effect from the 12th May 2003 up to the day when the child comes of age.

11. By letter dated 9th December, 2004 addressed to the Registrar, the plaintiff requested the commencement of mediation proceedings for the maintenance of her daughter.

12. By decree delivered on the 10th December, 2004 the Court dismissed the request for mediation proceedings and authorized the plaintiff to file a law suit subject to the appointment of curators to represent the absent defendant.

13. By application filed on the 17th February, 2005 the plaintiff declared that she required more time to file the lawsuit and therefore asked for an extension.

14. By decree dated 18th February 2005 the Court upheld the request and established a two month period within which the plaintiff had to file the lawsuit.

15. On the 23 February, 2005 plaintiff filed the lawsuit against the defendant, whereby she requested payment of maintenance for her daughter.

16. Judgement was delivered on the 27th June, 2006 whereby the Civil Court, Family Section upheld plaintiff's requests and condemned the defendant to transfer 1/3 share of the apartment in Saint Paul's Bay. A deed of transfer was published on the 30th March, 2007.

17. That judgement was revoked after retrial proceedings filed by the defendant. By public deed published on the 24th February 2017 the deed of transfer was rescinded.

Appellant's complaints

***First complaint – the lawsuit was filed after the lapse of the two month period established by law*. Therefore the writ of summons is null.**

18. The defendant referred to Article 35(5) of the Civil Code. There is no such provision in the law. Probably the appellant was referring to Article 37(5):-

> "*(5) The decree referred to in sub-article (3) shall cease to be enforceable if the **action for separation** is not instituted with in two months of the date of the decree or **within such longer period as the court may in the same or in a subsequent decree allow**".*

19. The lawsuit filed by the plaintiff was not one for separation but a claim for maintenance for her daughter. So that provision of law does not apply.

20. In any case, by application filed on the 17th February, 2005 plaintiff requested an extension of the period to file the lawsuit. It is a fact that the application was filed after the two months had lapsed from the original decree authorizing plaintiff to file the lawsuit (10th December, 2004). However, that decree in itself was an authorization by the Court for the claimant to file a lawsuit within two months from the date of the second decree (18th February, 2005).

21. The first complaint is dismissed.

Second complaint – Anna Alexandrovna is an adult.

22. The appellant contends that a retrial is considered to be a completely new lawsuit and:

> "*23. ..... the actual condition of the parties is to be taken into consideration at the inception of the retrial.....*
>
> "*And in this particular case it is even more so since we have a defendant, the appellant, who was NEVER notified with the original lawsuit and the ensuing judgement of the 27th June 2006 was revoked and annulled by the judgement of the 9th November 2016 on very serious grounds of fraud and lacck of notification. **Following this judgement the Family Court even ordered the***

> ***notification of appellant with the original writ of summons, and in fact he was notified with it for the very first time on the 28th November 2016 (vide folio 78 a tergo). In this particular instance this is the time (28/11/2016) that should be taken into consideration, or at worst on the 18th August 2013, the date of the retrial application.***
>
> "*24. In this particular lawsuit Anna Alexandrovna was born to the parties on the 13th September 1990 in Moscow, and had married Richard Joseph Aquilina on the 13th November 2011 when she was then 21 years of age (Vide Dok. AM1, a fol. 151). On the 28th November 2016 Anna Mukhortova was 26 years of age and on the 13th November 2011 Anna Mukhortova had reached her 23rd year birthday. Given these circumstances that Anna Mukhortova being of majority age makes plaintiff's claim for maintenance as superflous*".

23. The retrial proceedings (163/13) dealt with the judgement delivered by the Civil Court, Family Court on the 27th June, 2006. The defendant was declared to be responsible for payment of maintenance for his daughter Anna Alexandrovna and he was ordered to transfer one third ($^1/_3$) of the apartment situated in Saint Paul's Bay.

24. Since that judgement was revoked, the parties were placed in the same position they were prior to the judgement delivered on the 27th June 2006. It is true that on the date of delivery of the final judgement in the retrial proceedings (9th November 2016) the daughter was an adult, however plaintiff still had the right to claim maintenance for those years when the daughter was a minor. The evidence shows that the mother was providing for the maintenance of the daughter with no contribution from the father.

25. The time that lapsed from the date of the first judgement (27th June 2006) to the judgement in the retrial proceedings (9th November 2016) and the fact

that by that time the daughter was an adult, cannot prejudice plaintiff's claim and is no benefit to the husband. The date of notification of the writ of summons to defendant (28th November, 2016) and the date of filing of the retrial proceedings (13th August, 2013) are totally irrelevant for the purposes of plaintiff's claim for payment of maintenance for her daughter.

26. The second complaint is also dismissed.

Third complaint – res judicata.

27. The appellant contends that the issue concerning maintenance of the daughter has been settled by a judgement delivered by the Court in Moscow, Russia.

28. However, the defendant did not produce any evidence that the judgement is enforceable in Malta. Therefore, he cannot succeed in his defence that the decision delivered by the foreign court is a *res judicata*.

29. The complaint is dismissed.

Fourth complaint – Five year prescription.

30. The appellant insists that the plaintiff's claims are time barred by the application of Articles 2156(b) and 2156(f) of the Civil Code, and argued:-

> "*30..... The First Court seems to forget that by tis own judgement of the 9th November 2016, then differently presided, that it had rescinded and annulled the 27th June 2006 judgement on the basis of fraud committed by plaintiff to the detriment of appellant, besides lack of notification, which makes prescription legally start to run from when the fraud was discovered and from when appellant was notified validly for the very first time.....*
>
> "*33. As it has already been pointed out at the very outset of this fourth grievance, the Family Court seem to forget that in its previous judgment of the 9th November 2016, then differently presided, that it had set aside and annulled the judgment of the 27th June 2006 on the basis of fraud and lack of notification. In its judgment of the 9th November 2016 it resulted to the Family Court that in the filing of the lawsuti on the 23rd February 2005 against the absent Alexander Bernstein and her contestual request for the appointment of curators to represent her absent ex-husband, she indicated Legal Procurator Gerald Bonello as his relative or friend (Vide Dok. 'J' filed with appellant's affidavit) when the said Legal Procurator Gerald Bonello is neither a relative nor a friend and they are completely unknown one to the other (vide sitting of the 5th February 2015). This had led the Family Court then to describe this kind of service as 'sewer service' representin 'a contempt to the authority of the Court' (vide p. 24 of the 9th November 2016 judgment). Neither did appellant Mukhortova proceed to any form of publication as dictated in Article 931 of Chapter 12 of the Laws of Malta.....*".

31. The Court does not agree with defendant's reasoning. The first court decided that maintenance was due with effect from 2001. The lawsuit whereby plaintiff requested payment of maintenance was filed on the 23rd February, 2005. From that date prescription was suspended, irrespective of whether defendant was present or absent from Malta. Article 2131 of the Civil Code provides:-

> "*2131. **Prescription is interrupted by a judicial demand**, even though such demand has not been notified to the defendant on account of his absence or for any other lawful cause, provided the plaintiff has continued the proceedings against a curator appointed by the court according to the provisions of the Code of Organization and Civil Procedure, and has obtained a judgment on such demand*".

32. Once a lawsuit is filed, the time specified by law for purposes of extinctive prescription does not run afresh.

33. In this case judgement was delivered on the 27th June 2006. Subsequently the judgement was enforced by the publication of the deed of transfer published on the 30th March, 2007 published by Notary Dr Sylvana Borg Caruana. At that point in time the debt was extinguished. Therefore, the time period for purposes of prescription was no longer running.

34. After defendant filed retrial proceedings, by judgement delivered on the 9th November 2016 the Court revoked the judgement of the Civil Court, First Hall delivered on the 27th June 2006. At that point in time, the parties were placed in the same position as they were prior to the judgement delivered on the 27th June 2006. Since the lawsuit was pending, prescription did not apply.

35. For these reasons the Court dismisses the fourth complaint.

Fifth Complaint – the amount of maintenance liquidated is excessive.

36. The appellant complained that plaintiff did not produce any evidence with regards to her claim for maintenance. For example she did not prove that she sent her daughter to Junior College (year 2006 to 2008). Furthermore, the Civil

Court should not have granted maintenance for the year 2001 when the plaintiff request maintenance from the date of divorce (21st November, 2001). Neither should the Court have accepted a fee of €1,400 per annum for schooling at the Junior College. The same applies to expenses dealing with medical insurance and karate lesson expenses.

37. Furthermore, there is no solid proof that the daughter pursued her studies after reaching adulthood. He also argued that the judgement delivered by the First Court is in conflict with the judgement delivered by the Russian Court, and maintenance should have been liquidated until Anna turned 18 years of age. Furthermore, the appellant claims that he discharged his obligation according to the Russian Court's judgement when he deposited in a bank account the amount of money requested by bailiffs. This apart from the fact that the Maltese Court should have liquidated maintenance according to plaintiff's earnings.

38. In this regards the first Court concluded:

> "*Hence, the Court comes to the following conclusions: -*
>
> 1. *(i) Defendant has satisfied the judgement delivered by the Russian Court on the 10th June, 2003 in parte and deposited the sum of (RUB. 102,824.63) €1,600 with the court bailiffs that result to still be deposited in court;*
>
> 2. *(ii) Plaintiff sold the matrimonial home without defendant's knowledge and was ordered by Court to pay him back RUB. 499,968(approximately €15,000) which she never did, though defendant did not insist on it considering that his wife was maintaining his daughter;*
>
> 3. *(iii) Maintenance is being claimed from 2001 when the parties' daughter was 11 years up to when she got married at the age of 21.*
>
> 4. *(iv) Considering that the plaintiff and her daughter have been living in Malta since 2000, it is evident that they are domiciled here and therefore Maltese law would have to apply in this respect, in the sense that if the child*

is studying full-time, then maintenance will be due until the age of 23. In this case, though mention has been made that parties' daughter got married in 2011 and thus all contributions of maintenance had to stop.

In conclusion, therefore, on the basis of plaintiff's claim that defendant should contribute maintenance for their daughter in the sum of €58,455, on the basis that defendant has already paid the sum of €1,600 as per court order in Russia and on the basis that plaintiff owes defendant the sum of €15,000 for the sale of the matrimonial home, and that between 2001 and 2011, defendant earned €45,936, maintenance would have to be calculated as follows:-

1. *i) €58,455 - €16,600 (€15,000+€1,600) = €41,855;*
2. *ii) One fourth of €45,936 = €11,494; this amount is incorporated in the sum just mentioned above".*

39. In her second affidavit plaintiff stated:

"*17. I am expecting a liquidation of all the income my husband had and that ¼ of it will be considered as alimony for my daughter. In addition I forked out approximately €10,628 per year for apporximately 11 years, amounting to €116,911.30. My husband's share should definitely not be less than half of this amount, i.e. €58,455.65*".

40. According to a document filed on the 13th June, 2006 (fol. 64), plaintiff claimed that she had an annual expense of Lm4,621 (€10,764) for her daughter. This referred to expenses relating to schooling, meals, books and stationery, private lessons, clothing, computing classes, computing exams; medical insurance; karate lessons; and medicinals and pharmaceuticals. With regards to this document, the Court noted:

"*Nevertheless, expenses such as food, clothing and everyday necessities are more than reasonable. Defendant never contests these expenses throughout the court case and although plaintiff's production of evidence, when it came to quantifying her claim for maintenance is not so satisfactory and desirable as one would have required for the purposes of liquidation, but considering that there is no contestation and that the said expenses are no more than the ordinary mundane expenses that a parent geneally incurs in bringing up children, the plaintiff's claim for (Lm4621) (equivalent to €10,628) per annum is credible*".

41. In the writ of summons the plaintiff declared that she is claiming maintenace with effect from the year 2001, although in her first affidavit she said:

> "*My daughter 15 years old. She attends school and I pay school fees. I finance all her needs including clothes, food, books, private lessons, entertainment and all her personal needs. I have been doing this since 1999 and I have never recevied any financial help from her father*".

42. The plaintiff also confirmed that she permanently moved to Malta in January, 2000 and lived in the apartment that defendant had bought on the 14th December, 1995. The parties do not agree as to whether the apartment is co-owned or whether the defendant is the sole owner. However, that is not relevant for the current proceedings. The appellant claims that he is the sole owner of the property and that he never received any payment from plaintiff for the use of the property. However, appellant did not file a counter claim. Appellant referred to that part of the judgement delivered on the 27th June 2006 stating:

> "*From the evidence produced, and particularly from the deed of purchase of the above deed, it results that defendant is a businessman, and though the flat was bought by the couple after ten years of marriage, the purchase was made solely in the name of defendant, who consequently under Maltese law is considered to be the sole owner of the premises*".

43. However, that judgement was revoked and therefore no longer valid.

44. The plaintiff did not produce any documents to corroborate her claims as regards to the annual expenses she said she incurred in the upbringing of her daughter. For example receipts of payments. Similarly, although she declared

that her daughter was studying Medicine at the University of Malta there is no documentary proof. The same applies to her claim that Anna has a degree in psychology and nursing studies, and that for one of the degrees she had to pay €21,500.

45. The same applies to the appellant with regards to his income in Russia, although when cross-examined no questions were asked in that respect.

46. The appellant's argument that the Court does not consider as sufficient evidence what the plaintiff said concerning the expenses she incurred in the upbringing of her daughter, is out of place since:

i) No questions were asked during cross-examination with regards to what plaintiff said as regards to expenses. Appellant had every opportunity to ask questions, if he wanted to discredit her claims;

ii) He himself did not produce any documentary evidence with regards to his earnings during the years 2001 to 2008.

47. Under the circumstances this Court cannot disagree with the first court for having considered what plaintiff said with regards to the expenses she incurred during the years.

48. The plaintiff stated that since she had to provide for her daughter's upbringing, in 2003 she sold an apartment in Moscow (apartment 145, 30 Building 2, General Glagolev Street). The first court deducted the sum of €15,000 with regards to that sale, after taking into consideration that a court in Moscow had condemned the plaintiff to pay the defendant the sum of Rubles 499,968 (€15,000). There is no appeal from that part of the judgement although the plaintiff does not agree with that part of the judgement.[1]

49. Irrespective of whether the judgement delivered in Russia can be enforced or not, the evidence shows that the plaintiff made use of all proceeds from the sale for needs of her daughter.

50. Similarly the first court deducted the sum of €1,600, the amount that the appellant gave to the bailiffs in Russia. The plaintiff knows about this, as she confirmed in her second affifdavit (paragraph 11)[2] and during her cross-examination. The appellant stated:[3]

> "*On the 15th July 2010 I paid this debt in full to the Russian Court Bailiffs by depositing in a bank account provided by my ex-wife Lilia Mukhortova to the said Court Bailiffs the amount of RUB 102,824.63, apart from the payment of the enforcement expenses in the amount of RUB 7,197.72c (Vide Dok. 'G' attached with the Retrial Application). In this respect, I fulfilled my obligations under Russian Law and paid the Court Bailiffs the amount of some €2,600 at the exchange rate valid at that time*".

[1]Vide plaintiff's reply to the appeal.
[2]Fol. 99.
[3]Fol. 178.

51. The plaintiff also confirmed that she can withdraw the money whenever she wants to.

52. The evidence also shows that on the 13th November 2011 Anna Alexandrovna married Richard Aquilina.[4] Maintenance is certainly due with effect from the year 2001. The daughter was born on the 13th September, 1990 and therefore became of age on the 13th September, 2008. It was by Act XIV of 2011 that the law introduced the obligation on parents to continue providing adequate maintenance to children, according to their means, where it is *".... not reasonably possible for the children, or any of them, to maintain themselves adequately"*, and they are under the age of 23 and still in full-time education, training or learning. Act XIV of 2011 came into force on the 11th July, 2011. Therefore, the daughter had no right to claim maintenance between the 13th September 2008 up to the 10th July, 2011.

53. In terms of Article 3B(1) of the Civil Code, marriage imposes an obligation on both spouses to:

> "*.... look after, maintain, instruct and educate the children of the marriage taking into account the abilities, natural inclinations and aspirations of the children*".

[4]Fol. 151.

54. According to Article 19 of the Civil Code, maintenance is to **include food, clothing, health, habitation, and expenses necessary for health and education**.

55. Article 20 of the Civil Code provides the manner in which the Court establishes the maintenance that is to be paid:-

> "*(1) Maintenance shall be due in proportion to the want of the person claiming it and the means of the person liable there to.....*
>
> "***(3) In estimating the means of the person bound to supply maintenance, regard shall only be had to his earnings from the exercise of any profession, art, or trade, to his salary or pension payable by the Government or any other person, and to the fruits of any movable or immovable property and any income accruing under a trust.***
>
> "*(4) A person who cannot implement his obligation to supply maintenance otherwise than by taking the claimant into his house, shall not be deemed to possess sufficient means to supply maintenance, except where the claimant is an ascendant or a descendant.*
>
> "*(5) In estimating the means of the person claiming maintenance regard shall also be had to the value of any movable or immovable property possessed by him as well as to any beneficial interest under a trust*".

56. Therefore, in establishing the amount of maintenance that a parent has to pay for a child, the court has to take into account the means of that parent. It is not sufficient to merely establish the expenses to be incurred or incurred with regards to the child and divide the sum by two.

57. The only evidence that we have with regards to appellant's means is what he said in paragraph 7 of his affidavit referring to his salary during the years

2001 to 2008 inclusive. Nothing more. There is also no evidence that he was earning other income.

58. Unfortunately, the first court did not make a proper consideration of the means of the appellant when compared with the expenses made by plaintiff. According to the first court's calculations during the years 2001 to 2011, appellant earned a total of €45,936. The court reasoned that appellant's contribution for his daughter's maintenance was one half of the expenses declared by plaintiff, i.e. €58,455. This Court does not agree with that reasoning as it does not take into consideration the fact whether appellant was in a financial position to make such a contribution, apart from the fact that the standard of living in Malta is different to that in Russia.

59. The Court notes:

i. The total earnings of the appellant during the years 2001 to 2008 were €24,336. It is evident that although there was a time when he was involved in business, he started gambling and things turned sour. In fact he had various creditors (see the transcript referring to his cross-examination during the sitting of the 20th February 2018). There is no information as to what his employment was during the years in issue. However, the appellant stated that he is an economist. Asked as to who his employers were, he replied: "*The company*

called Atlas. The company Sky Fort. A Russian company, I worked in Belorussia and Russia as well".

ii. Plaintiff sold a property in Moscow, Russia and kept all proceeds. She said that she did this to pay for expenses related to her daughter's needs. Defendant's share was approximately €15,000, which amount was deducted by the first court from the amount liquidated. The defendant said that he did continue pursuing his share from that sale, "*.... knowing that my wife was bringing up our daughter and that his should go towards the maintenance of Anna*". The plaintiff claims that defendant had filed a lawsuit and she was ordered to pay defendant his share from the selling prices. However the judgement was not enforced and now it is time barred. She referred to a legal opinion at fol. 113, which is a copy of an unsigned legal letter addressed to plaintiff's legal counsel and dated 5th August, 2013. On reading the letter, the Court is not convinced that defendant's claim would be time barred.[5] This notwithstanding, as a matter of fact all proceeds were kept by the plaintiff and used for the daughter's needs and appellant has no problem with that.

iii. There is also the sum of 102,824.63 roubles deposited in Russia which the plainttif can withdraw, and is maintenance which appellant paid to the court bailiffs in Russia on the 15th July 2010.

[5]In the letter it is stated: *"In accordance to the Art. 23 of the Law 'On Enforcement Proceedings' the claimant, who missed the deadline for presentation of the writ or court order for execution, has the right to apply for reinstatement of the period to the court, ..."*.

iv. There is no proof that plaintiff was paying school fees for her daughter during the years 2001 to 2005. The Court understood that the school fees at the Junior College refer to the time when the daughter was pursuing her studies in the Sixth Form. Subsequently payments had to be made for the daughter's tertiary education.

v. The obligation to provide maintenance for children, is on both parents. During the sitting of the 14th June 2006 plaintiff declared that she was receiving an average of Lm1,000 (€2,322) every month from a family business.[6]

vi. There is not sufficient evidence that the appellant was renting the two apartments he owned in Russia. Although the plaintiff in her second affidavit referred to a commercial lease agreement, and referred to Doc. B, there is no such document or translation in English.

60. Based on what has been stated above, the Court is of the view that no further payments are due by the husband as maintenance for his daughter for the period 2001 to 2008 inclusive. The Court having considered the relevant provisions of the law and the defendant's earnings during the years 2001 and 2008, concludes that the amount deposited in the Russian bank account and the proceeds of the sale of the apartment in Russia are to make good for the

[6]Fol. 69.

maintenance owed by the appellant to plaintiff for his daughter's maintenance. It is a fact that the amount is a small fraction of the expenses incurred by the plaintiff for the needs of her daughter, however this has to be based on the appellant's means as defined in Article 20(2) of the Civil Code. From the evidence produced, the Court concludes that his earnings at the time did not permit him to make a larger contribution.

61. This Court also considered the possibility of condemning the appellant to assign to the plaintiff a portion of the apartment in Saint Paul's Bay in terms of Article 54(8) of the Civil Code. However, that provision of law applies to personal separations and maintenance due to the other spouse. The case filed by the plaintiff is not a personal separation case.

62. Obviously the issue concerning the ownership of the apartment in St. Paul's Bay is not determined as it does not form part of the merits of this case.

For these reasons the Court:-

1. Dismisses the first four complaints of the appellant;

2. Upholds the fifth complaint and alters the judgement delivered by the first court in the sense that:

4.vi.i. **Appellant owes maintenance for the years 2001 to 2008 inclusive;**

4.vi.ii. **The maintenance due by the defendant is the sum deposited in the bank account in Russia by the bailiffs and all proceeds received by plaintiff from the sale of the matrimonial home in Moscow, Russia. No further amounts are due by appellant to plaintiffs.**

3. All expenses of the first court are at the charge of the plaintiff whereas the expenses of the appeal are to be divided equally between both parties.

Giannino Caruana Demajo President	Tonio Mallia Judge	Anthony Ellul Judge

Deputy Registrar
mb