

**CIVIL COURT
(FAMILY SECTION)**

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

Hearing of Monday 12th Of October 2020

App. No. : 198/2019 JPG

Case No. : 20

**WS
vs
VB**

The Court,

Having seen the sworn application filed by WS, dated 16th August 2019, a fol 1 et seqq., where in it was held:

1. *That this lawsuit is regarding the custody and the residence of the parties' daughter, who was born on 11th August 2013, today she is six years old.*
2. *That the salient facts which gave rise to this lawsuit are the following:-*
 - i) *That plaintiff is a C national whilst defendant is a U national.*
 - ii) *That during the year 2006 parties met in C while defendant was in C playing with the orchestra.*
 - iii) *That plaintiff married defendant in C, on 18th February 2008 (DOC WS 1), after being together for about two (2) years and established their residence in*

C.

- iv) *Later on the parties married in a Church in U since defendant wished that he gets married in his country.*
- v) *That from this marriage parties had two children, that is, KB, who was born on X in A (DOC WS 2) and W (also known as MB) who was born on Y in C, still minors.*
- vi) *That a few days after their marriage, parties lived for about three years in Malta and this happened because defendant was offered a job in Malta. It is stated, that defendant's profession is a violin player and during marriage and even before marriage he used to travel because of his job. That a few days after their arrival in Malta, that is on 25th September 2008, the parties bought a property in Malta, the property in H, which property still belongs to the parties.*
- vii) *That during the year 2011, two and a half years after, plaintiff returned back to C because she was in pain and the medicine being prescribed to her were not curing her and for this reason she decided that she should take the necessary care in her country. It is stated that defendant did not make things easy for plaintiff to leave Malta since he hid her passport and credit-cards and were given to her only after she attended the Police Station. A couple of months later, defendant went to C.*
- viii) *That a few months later plaintiff got pregnant but lost her baby.*
- ix) *That towards the end of the year 2012, plaintiff was pregnant again. Defendant expressed his wish that the baby be born in A and convinced plaintiff that this was beneficial for the baby future. When plaintiff was five months pregnant, parties travelled to A. It is stated that parties had no job while in A.*
- x) *That on 11th August 2013 KB was born in A. When the baby was only forty-five (45) days old the parties returned to C. During the few days that parties were in C, plaintiff registered the minor in C and in effect the minor has a C identity card. When the baby was on two months old, parties decided to come to Malta for a short period. Defendant expressed his wish that the baby be baptised in Malta. Plaintiff did not object and the minor was baptised.*
- xi) *That when the girl was eight (8) months old, plaintiff and the minor child returned to C and defendant followed later on but was present for K's first*

- birthday.*
- xii) *That from that day plaintiff and the minor child never returned to Malta whilst defendant used to come to Malta regularly and this because on 6th January 2011 he had registered the company Violin Limited (C-51606) and the address of the company is the parties' property in H.*
 - xiii) *That defendant always expressed that he was sad with the restrictions he believed he had as a U citizen to the extent that he forced plaintiff – while in advanced pregnancy – to travel with him to the United States in order that their daughter K be born there and possesses an An passport that would thereafter allow him to go to A. He had also made everything to obtain rights of residence and work in Malta and he used to explain to plaintiff of the legal needs he had to observe for this purpose.*
 - xiv) *That on Y plaintiff gave birth to the minor W (also known as MB) in C.*
 - xv) *That in April 2018 defendant expressed his wish to travel for a holiday alone with the minor KB to Malta. He had to travel for the period between 10th July 2018 and 3rd August 2018. That parties had also agreed that during this holiday defendant had to attend the C Embassy in Malta to apply and obtain a long term Visa known as "Q1 Family Reunification Visa" and this in order that it would be possible for the minor to attend an International School in C, since the minor is an A national. In fact plaintiff had given her consent in order that the Visa be issued in writing.*
 - xvi) *That defendant and the minor left C to Malta as foreseen on 10th July 2018. It is stated that plaintiff managed to speak to her daughter only twice during this period and this because defendant started creating all kind of excuses in order that plaintiff has no contact with her daughter.*
 - xvii) *That on 3rd August 2018, which is the day when they had to return to C, defendant did not return to C together with the minor.*
 - xviii) *That as soon as this happened plaintiff tried to contact her husband to know what happened. This to no avail. Plaintiff made contact with the An Embassy in U and asked them to check whether her daughter was in U. The An Embassy confirmed that her daughter was indeed in U in defendant's parents' residence.*
 - xix) *Plaintiff tried several times to contact defendant's family but this resulted in the negative except on two occasions and during those two occasions plaintiff*

- learned by startle that she could not communicate with her daughter and this because she had forgotten the C language.*
- xx) *That because K was not in Malta and because W was only thirteen months old and was alone in B with plaintiff's mother, plaintiff decided to come to Malta as soon as her daughter K arrived in Malta from U.*
 - xxi) *As soon as plaintiff found out that the minor was in Malta, she made all necessary arrangement to come to Malta and on 11th October 2018 she arrived in Malta. Under her lawyer's instructions, she stayed for a week in a Hotel and afterwards went to the parties' home in H to see her daughter.*
 - xxii) *When plaintiff was in Malta, she found out that defendant had given his consent to his sister, NV, to travel together with the minor KB to U from 2nd August 2018 to 5th September 2018. It is stated that the minor returned to Malta only on 2nd October 2018. It is stated as well that the minor never spoke in the U language and neither defendant's sister nor his family know how to speak English but he still sent his daughter on her own with who she can in no way communicate with them.*
 - xxiii) *That plaintiff filed a lawsuit against defendant (Lawsuit number 513/2018JPG) by virtue of which she requested that this Honourable Court declares that defendant has stolen/abducted the girl by deceit and by breaching the law including the Convention of the United Nations regarding the Children's Rights;*
 - xxiv) *That plaintiff's requests in that lawsuit were turned down by judgement delivered on 3rd July 2019 because the Court abstained from taking cognisance of the requests made by the said plaintiff in that lawsuit;*
 - xxv) *That before that judgement was delivered, namely by decree delivered in the acts of mediation number 1590/2018 in the names in reverse, plaintiff was temporary entrusted with the custody of her daughter with access under supervision to defendant;*
 - xxvi) *That parties had both of them requested and obtained the issue against each other of Prohibitory Injunction in order to stop the minor from travelling from Malta.*
 - xxvii) *That the passport issued by the A to the minor KB was deposited under this Honourable Court's authority in the records of the Prohibitory Injunction numbers 245/2018 and 247/2018 by ordered in the sense of the 16th October*

2018;

3. *That is evidence form defendant's behaviour – as well as from the little time he spends with his daughter – that he cannot be entrusted with the upbringing of the child; That it is also evident that the minor's place should be back in B, with her mother, her younger sister and her grandparents;*
4. *That plaintiff has been duly authorised to file a lawsuit for the care and custody of the minor KB and this in order that she be allowed to travel to and establish her residence and of the minor abroad, that is in C, against defendant by decree in this sense delivered from this Honourable Court on 30th July 2019 (DOC WM 3).*
5. *That this lawsuit is being filed precisely in order that the Court, after it listens to the parties, their witnesses and of the minor, orders that in the supreme interest of the said child, KB, lives with her mother, the said WS and with the other minor child W (also known as MB) in C.*
6. *That it is also submitted that in a note entered on the 30th. July 2019, in the records of the proceedings in the opposite names number 8/2019, Advocate Malcolm Mifsud as lawyer of defendant, together with Advocate Stephen Thake as plaintiff's advocate, it was accepted that the service of judicial acts on defendant , including the acts commencing this suit, which is being filed by virtue of the decree of closure of mediation and authorisation ordered that day, be served on the said Advocate Mifsud, provided that in the said judicial act, reference is made, as is happening now, to the declaration entered that day;*

Consequently plaintiff respectfully requests that this Honourable Court, sees fitting and opportune for that states above:-

- i. *Orders and declared that in the best interest of the said minor child, parties daughter, KB, that the care and custody of the said minor be entrusted to plaintiff her mother;*
- ii. *Authorises plaintiff to, on a date established by this Court in her eventual judgement leaves Malta and takes with her the said minor child KB in order to*

live with her and with the other minor child W (also known as MB) in C and this notwithstanding all orders otherwise obtained by the parties or either one of them after the issue of the Prohibitory Injunction to stop a person from taking a minor outside of Malta;

- iii. Authorises plaintiff to withdraw the passport issued by the A to the minor KB which was deposited under this Honourable Court's authority in the records of the Prohibitory Injunction numbers 245/2018 and 247/2018 by order in this sense on 16th October 2018;*
- iv. Authorises plaintiff, if such is needed to travel with the minor child KB from Malta to C, as will eventually be ordered as requested in the preceding request, in order that on her own and without the need of defendant's consent or participation, applies for and receives passport, visa or other document of whatever nature that is needed in order that the said minor KB, be able to enter C and lives in C and also in order that the minor KB stops and enters in all countries needed in her journey between Malta and C;*
- v. Authorises plaintiff, in order that on her own and without the need of defendant's consent or participation, attends the C Embassy in Malta in order to apply and obtain a long term Visa known as "Q1 Family Reunification Visa" and this in order that it would be possible for the minor, KB,, that she attends an International School in C.*

With expenses, including those suffered in the mediation proceedings and those of the Prohibitory Injunction number 245/2018, against the defendant who is from now summoned for reference to his oath;

Having seen that the application and documents, the decree and notice of hearing have been duly notified in accordance with law;

Having seen this Court's decree dated 5th of September 2019; (vide page 35 et seqq.)

Having seen this Court's decree dated 1st of October 2019; (vide page 50 et seqq.)

Having seen this Court's decree dated 1st of October 2019; (vide page 57 et seqq.)

Having seen the sworn reply filed by VB) dated 23rd September 2019, wherein it was held:

1. *Whereas preliminarily, the applicant pleads that since the plaintiff is declaring her intention to live abroad, specifically in C, this Honourable Court does not have jurisdiction to grant the first request. This Honourable Court cannot entrust the care and custody of minors to one of the parents if the ordinary residence of the minor will be abroad;*
2. *Whereas, Without prejudice to the above, the Plaintiff's claims lack the essential elements, since the Plaintiff has not requested a personal separation in terms of Article 35(1) seq and Article 56 of the Civil Code (Chapter 16). Therefore, the action is unsustainable.*
3. *Whereas, with respect to the fourth claim, this Honourable Court does not have the jurisdiction to impose upon foreign Authorities, principally C and the A, the receipt of application for the issuance of passports of minors, without the consent of the Defendant;*
4. *Whereas, in respect of the fifth claim, this Honourable Court does not have jurisdiction to order a sovereign country, as in C, to issues a visa without the consent of the Defendant. This is purely within the jurisdiction of the laws of C and se mai, the request should have been made in proceedings in C and not before this Honourable Court;*
5. *Whereas, the applicant is objecting to the second and third request of the plaintiff and this is because the principal residence of the minor is in Malta and there is no reason why this should change. It is not in the best interest of the minor to reside with the mother exclusively and in C , in a completely different environment. The minor would have the advantage of receiving a better education in a country in the European Union and in C she would be kept away from the father;*
6. *Whereas, without prejudice to the foregoing, it is not in the interest of the minor to live in C , that will mean that effectively and in a practical manner she would not be able to access and enjoy her father, since the Defendant would not be able*

to see or enjoy the minor, due to legal sanctions that he would have to access his two children.

7. *Whereas, in the witnesses list, there is written the “relatives, friends and work colleagues of the contenders ...” and this goes against Article 156(4) of Chapter 12 of the Laws of Malta, that states: “(4) The plaintiff shall together with the declaration also give the names of the witnesses he intends to produce in evidence stating in respect of each of them the facts and proof he intends to establish by their evidence”. And thus point number 7 shall be expunged.*

8. *Saving further pleas.*

Having seen the counter-claim filed by VB dated 23rd September 2019, where in it was held:

Whereas, the reconvened VB wishes to prevail himself of the right to submit a counter-claim against the reconvener WS;

Whereas, the parties are married, and they got married in C on 18th February 2008. The marriage celebration was celebrated in U as well. From this marriage KB was born on X, in the A and W was born on Y, in C

Whereas, as a result the minor K is an A citizen, but in one way or another it appears that she is also a C citizen, despite the fact that C does not permit dual citizenship;

Whereas, with respect to residence, the parties lived in Malta, where the Defendant works as a musician. The parties bought a home in Malta, which was intended to be their matrimonial home and he creates a partnership with the names of Violin Limited, by which he offered his services;

Whereas, the parties went to live in C at the Plaintiff’s parents house, but always with the intention of returning to Malta, once they have children, since the Defendant had an established career in Malta, contrary to C , where he had economic difficulties.

Whereas, life in C was difficult for the Defendant due to frequent abuse and violence by the Plaintiff and her parents against him and against the minor children. In fact there were several accidents between the Defendant and the Plaintiff and her family where there were threats and even beating him and the minors. Moreover, he had no help from the C authorities to stop these accidents and he had a great fear that recourse to the police would make things go against him since he is a foreigner. Foreigners that are in the situation of the Defendant do not have equal rights with C citizens;

Whereas, in April 2018, the parties agreed that the minor K had to come to Malta with the Defendant. The Defendant, in the best interest of the minor, decided not to return to C and remain in Malta so that the minor would have better education opportunities and would no longer live in a violent environment.

Whereas, the reconvened knows these facts personally.

Therefore, if the Court fails to uphold the first plea of the defendant in his sworn reply, he is pleading this Honourable Court to:

- 1. Declare the personal separation of the spouses B*
- 2. Order that the care and custody of the minor shall continue to be entrusted in the father, whilst authorising him to take all the decisions concerning the minor, including those related to the health and education of the minor KB;*
- 3. Fix days and times for the Plaintiff to have direct access to the minor and this in the best interest of the minor;*
- 4. To order that the residence of the minor shall be Malta;*
- 5. To liquidate a sum for the payment of maintenance per month for the minor and order the plaintiff to pay the sum of maintenance as liquidated and to contribute to the payment to half the expenses pf health and education of the*

minor;

6. *To confirm the decree of the warrant prohibitory injunction number 247/2018 JPG dated 7th May 2018 in these names.*
7. *To declare dissolved, the community of acquests of the Parties and to liquidate the community of acquests in equal portions and to assign the same portions as divided;*
8. *Assign the dotal and paraphernal property*
9. *Give other provisions that this Honourable Court may deem fit and appropriate in the circumstances.*

With costs, included the costs of the warrant of prohibitory injunction 247/2018 against the Plaintiff that from now is summoned in deposition.

Having seen the sworn reply filed by WS for the counter-claim, dated 3rd October 2019, wherein it was stated:

1. *That defendant was not authorised to file judicial proceedings for separation and neither for demands related to a demand for separation. The only authorization defendant possesses is that granted by this Honourable Court of the 24th of July 2019 upon closure of mediation proceedings filed by the plaintiff against defendant (number 904/19) and relating exclusively to the country of residence of their child, to the travel of the said child and as well as regarding the custody of the minor child KB. This decree is attached to plaintiff's sworn application. In terms of Legal Notice 397 of the year 2003 and according to the regulations 4(1) and 7(1), this Honourable Court's authorization is required in order that one is able to file a separation suit. That on these grounds, all demands made in his counter-claim, saving those numbered two (2), three (3), four (4) and six (6), are null and void and this since the law prohibits that same be demanded primarily in the absence of the required authorization. The sixth (6th) demand forms the subject matter of another lawsuit already filed by plaintiff and thus in accordance*

in accordance to law and jurisprudence it is null and not required.

2. *That in terms of law and jurisprudence even where authorization required was delivered, the lawsuit for separation is not connected with a suit for care and custody in the manner contemplated by law and jurisprudence and is therefore null.*
3. *That in any event with regard to the said demands, plaintiff responds as follows:*
 - a. *That plaintiff did not make a demand for separation. The breakdown of the parties' marriage was brought about by defendant's desertion, and adultery, which includes that of becoming a father to a child from a third party in Malta as well as the abduction of the parties' elder child KB.*
 - b.
 - c. *That the second, third and fourth demands should be rejected by this Honourable Court since the parties' daughter, KB, should reside with her mother in C as she did before she was illegally abducted by defendant her father. For the record, the plaintiff reminds defendant that they have another child, by the name MB (or W) now aged two (2) years and who does not appear to be included within the merits of this demand.*
 - d. *Plaintiff does not work – defendant does. These proceedings have destroyed plaintiff's ability to generate an income since she had to abandon her home to come to Malta and fight expensive judicial proceedings in order to be able to take her child back to C .*
4. *The seventh demand should be rejected since there is no community of acquests existing between the parties since parties married in C and resided in Malta for only two and a half (2½) years. Both parties own in common a property in H. Plaintiff does not possess any property belonging to the defendant.*

Save other pleas.

Declaration of facts of WS

Respectfully submits and solemnly declares:

- 1. That plaintiff is C and defendant is U. Parties met in the year 2006 in B whilst plaintiff was working with an orchestra.*
- 2. That plaintiff married defendant on the 18th February 2008 in C after a courtship and relationship of two (2) years, subsequently establishing their place of residence in C.*
- 3. That the parties also got married in a church in U since the defendant wanted to also be married in his country of birth.*
- 4. That from this marriage the parties had two (2) children, namely KB, born on the X in the state of A and W (also known as MB) born on the Y in C, therefore both minors.*
- 5. That a few days after the parties' marriage they resided for approximately three (3) years in Malta and this because the defendant was offered a job opportunity in Malta. The defendant's profession is playing violin and both before and during his marriage he used to go abroad for work related purposes. That a few days after arriving in Malta, on the 25th of September 2008, the parties purchased property in Malta namely 142, Vincenzo Bugeja Street, H, which property still belongs to the parties.*
- 6. That in the year 2011, two years and a half after moving to Malta, the plaintiff returned to C due to the fact that she was constantly in pain and the prescribed medicine was not giving her the desired results, and therefore she decided to go back to C in order to get the necessary treatment. It can be said that the defendant did not plan on making things easy for the plaintiff to leave Malta, this being since he hid her passport and credit cards refusing to allow her access to them. It was only with the help of the Maltese Police that she managed to obtain these belongings. A few months later defendant followed back to C .*
- 7. That a few months later the plaintiff got pregnant but suffered a miscarriage.*

8. *That towards the end of the year 2012, the plaintiff got pregnant again. The defendant expressed his wish that the child be born in A and managed to convince the plaintiff that this would be beneficial to the child in the future. When the plaintiff was five (5) months pregnant the parties flew to A. The parties had no means of employment during their time spent in A.*
9. *That on the X, KB was born in A. When the child was only forty-five (45) days old, the parties returned to C where a C identity card was successfully issued in K's name. When the child was only two (2) months old the parties decided to come for a short period to Malta. The defendant expressed his wishes that the child be baptised in Malta, to which the plaintiff held no objection and therefore K was so baptised.*
10. *That when the child was eight (8) months old the plaintiff returned back to C with her and the defendant followed suit a few months later but was present for K's first birthday.*
11. *That from that day the plaintiff and the child never returned to Malta whilst the defendant used to visit Malta regularly, where he registered a company Violin Limited (C-51606) with the registered address being the property of the parties in H.*
12. *That the defendant was always clear that he was unhappy with the restrictions that he felt burdened with as a U citizen so much so that he convinced his pregnant wife to travel with him to the A to have his first child born there in order to obtain an An passport which would permit him to access the A. He further ensured to carry out any and all acts exercisable to him in order to obtain rights of residence and employment in Malta and he would explain to the plaintiff the legal requirements that he had to satisfy in this regard.*
13. *That on the Y the plaintiff gave birth to the child W (also known as MB) in C.*
14. *That in April 2018 the defendant wanted to travel on holiday to Malta only*

accompanied by his daughter KB. This was agreed for the period between the 10th July 2018 until the 3rd August 2018. The parties were also in agreement that during defendant's stay in Malta he would go to the C Embassy in order to apply for and subsequently obtain a long term Visa namely "Q1 Family Reunification Visa" in order to enable the minor to attend the International school in C, due to the fact that K is an A citizen. In fact the plaintiff gave her consent in writing for this Visa to be obtained.

15. That the defendant and minor daughter left Malta as planned on the 10th of July 2018. The plaintiff was only allowed contact with the minor twice during this period and this solely because defendant sought every excuse imaginable to prevent the plaintiff from contacting her minor child.

16. That on the supposed day of return the 3rd August 2018, the defendant and the minor in fact did not return to C as was planned.

17. That as soon as plaintiff became aware that they had not returned she attempted to contact her husband in order to know what had happened, but to no avail. She proceeded to contact the A Embassy in U and asked them to check if her daughter was in U, to which they confirmed that K was with the defendant's parents.

18. That the plaintiff repeatedly tried to make contact with defendant's parents however again to no avail apart from two specific instances where she managed to make contact with her daughter only to realise that she could no longer speak in her native language, C.

19. That both because K was not in Malta and also because W was only thirteen (13) months' old and was alone in B with plaintiff's parents, the plaintiff decided to come to Malta as soon as her daughter was returned to Malta from U.

20. That as soon as the plaintiff became aware that her daughter was in Malta, she made the necessary arrangements to come to Malta and on the 11th October 2018 she arrived in Malta. Under her lawyers instructions she spent a week in a hotel and subsequently went to their property in H to finally see her daughter.

21. *That the plaintiff became aware that the defendant gave permission to his sister, NV, to travel to U with KB from the 2nd of August 2018 to the 5th September 2018. The minor was returned to Malta on the 2nd of October 2018 and she had never learned the U language and none of defendant's U family knew how to speak the English language and yet he still sent his daughter away to U with a woman who could not in any way communicate with the minor child.*
22. *The plaintiff filed a suit against the defendant (suit number 513/2018JPG) through which she pled to this Honourable Court to declare that the defendant had abducted the minor child breaking the law amongst which the International Convention on the Rights of the Child;*
23. *That the plaintiff's pleas in this suit were denied by a sentence delivered on the 3rd of July 2019 because the court chose to abstain from taking cognisance of the pleas made by the said plaintiff in this suit.*
24. *That before this decision was granted, through a degree given in the acts of mediation number 1590/2018 in the inverse names, the defendant was given temporary supervised access to his daughter.*
25. *That the parties both requested against each other prohibitory injunctions to ensure the minor child does not leave the Maltese islands.*
26. *That the minor KB's A passport has been deposited under the authority of this honourable court in the proceedings of the prohibitory injunctions numbered 245/2018 and 247/2018 which came in force on the 16th of October 2018.*

Having seen the judgment in parte dated the 1st of November 2019;

Having seen the exhibited documents and all the case acts;

Having heard final oral submissions from both parties;

Considers;

Maria Kyra Borg, social worker with Agenzija Appogg testified (fol. 137) that she supervises the access visits held between Defendant and the parties' daughter, which is normally spent reading, drawing or painting, playing, playing the violin, talking and having snacks together, adding that Defendant tries to structure the visit almost as if it is a school day. She continued that there were times when she stopped conversations between Defendant and the child because she felt that they were not appropriate for a six-year old child. These conversations were about Defendant and the child allegedly being beaten in C , adding that in the beginning Defendant would insist on continuing such conversations. She explained that there were also other occasions where she intervened because Defendant would be speaking to the child in the U language which she (the social worker) does not understand and it is their policy that only English is spoken during access visits so that social workers may know what is being said. She testified that the child shows signs of distress during the visits, which in her opinion is due to the fact that she has split loyalties, adding that there is no consistency in the child's behaviour and how she describes feeling about Defendant. She continued that both the child and Defendant mention M, adding that recently the child told Defendant that it is his fault that she is separated from her sister M. Borg testified that she heard Defendant telling the child that her mother told her to attack the baby he has with his new partner.

Under cross-examination (fol. 147 *et seqq.*) she agreed that Plaintiff waits outside the room for access to end and that there have been times when she knocked on the door to inform them that time was up.

Andreana Gellel, Service Area Leader with Agenzija Appogg testified (fol. 125 *et seqq.*) that Agenzija Appogg has been providing supervised access visits between Defendant and the parties child since the 24th of December 2018 twice a week in accordance with the relative Court Order. She explained that Defendant usually brings with him books, crafts, food and his violin, so the visit is quite structured, and he emphasises that they should talk and read in English together so that she learns the language since she is currently not attending school. She added that initially the child was reluctant to attend access and leave her mother, but eventually adapted after some time in the room, settles down and enjoys the time with her father. She continued that the child usually mentions C and her friends and family there, saying that she would like to go there. She observed further than the child is experiencing the parents'

separation as her own and so feels that she has to take sides.

Under cross-examination (fol. 131 *et seqq.*) she testified that since Defendant structures the visit quite rigidly, he does not give the child any freedom to choose what she would like to do, citing as an example the fact that if reading time is over but the child wants to continue reading, Defendant insists that the time for reading has finished and they must move on to the other activity according to his plan. Asked to clarify the issue regarding the language spoken during access, she explained that whenever supervised access visits are held for foreigners who speak a language which is not understood by the social worker present, they always request that the parents speak in English so that the social worker can understand what is being said, adding that in this case this was also done because the child showed that she is not comfortable speaking or hearing the U language.

Plaintiff testified (fol. 150 *et seqq.*) that the parties met in 2006 in Beijing which is where she lives. She explained that at the time Defendant was a student studying in Switzerland and working part-time with the Zurich Orchestra, whereas at the time she was working with a telephone company which is the biggest company in C . She said that as the relationship developed he would go to C to visit her, adding that eventually he was denied a working visa in Switzerland, at which point they decided that she would help him find a job in Beijing. She continued that in 2007, she had found him a job with the Shen Zen Symphony Orchestra which gave Defendant a one year contract, adding that however he had only worked there for nine months and that soon after, in February 2008, they had gotten married in Beijing. She testified that just before they got married, Defendant had gotten a job in Malta with the Maltese Symphonic Orchestra and immediately bought a property in Malta. She explained that Defendant worked in Malta for about three years, while she had stayed here for about two and a half years working part-time as a babysitter before going back to Beijing.

She continued that once Defendant's contract expired, he had registered a company in Malta for visa purposes and then followed her to Beijing, where they lived for two years before she got pregnant with K in 2012, after miscarrying her first pregnancy at five months. She added that at the time she had a jewellery shop while Defendant worked part-time playing the violin since his family visa did not allow him to have a full-time job. She explained that Defendant wanted them to go to the A to have the baby there so that the child would have A citizenship. Plaintiff states that she was reluctant to go because she was scared that she would miscarry again, adding

that eventually she accepted to go to the A where she gave birth in October 2013. Plaintiff states that they stayed in A for forty-five days after the baby was born, after which they went back to C to live with her parents. She testified that the parties then came to Malta when the child was two months old, staying here for six months living in Defendant's property in H, adding that after which period, she went back to C with the baby and Defendant followed a few months later. She continued that on the Y the parties had another child, who was born in B and who they call M but whose official name is W. She continued that at the time they had been living in C since their return from Malta in 2014, in an apartment that was given to them by her parents, and they all lived there together until June 2018, while she ran a kindergarten. At that time, Defendant worked as a part-time violinist and also ran a music summer camp in Malta every summer for a period that ranged from two weeks to a month.

She testified that in 2018 Defendant had told her that he wanted K to join him for the summer camp and also so she could travel, and Plaintiff had agreed to this because she needed a visa from a foreign country to enable her daughter's enrolment in the best international school in B. Therefore, the parties bought return tickets for both Defendant and the child. She continued that Defendant and the child left C for Malta on the 9th of July 2018, and a week later Defendant showed her a video of the child crying because she missed her mother, adding that Defendant stopped allowing her to see the child via video call, and stopped giving her information about her child after the first week from their departure. Plaintiff states that she kept asking him to speak to their daughter. She continued that she later found out that Defendant had sent their child to U with his sister, even though the child had just met her and did not speak U. She testified that she finally managed to speak to their daughter on the 7th of September, at which point the child had already forgotten C.

She explained that when Defendant and their daughter did not return to C as planned, she had spoken to Defendant who said they would not be returning to C and that K might stay in U or she might go to Malta. On receiving this information, Plaintiff immediately applied for a visa and came to Malta, arriving on the 11th of October 2018 while K had arrived to Malta from the U around the beginning of October. She said that because of the court proceedings that she has had to institute against Defendant, she is separated from the parties' other daughter M, and has missed her first words and her first steps. She explained that initially she was living with Defendant in the H property, but eventually had to leave and go to a Shelter because she did not feel safe with Defendant, adding that a few months later she moved to a rented property. She

testified about an incident when Defendant had taken K for access which she had agreed to, only to find out that instead of taking the child out to the aquarium as he had told her he would, Defendant had taken the child to Mater Dei to accuse her (Plaintiff) of abusing their daughter. She said that before coming to Malta, K could only speak C, but now she can speak C and some English.

Under cross-examination (fol. 189 *et seqq.* and fol. 258/1 *et seqq.*) she testified that when Defendant had sent their daughter to U, he had found a notary who was willing to prepare the documentation necessary without her signature.

Asked whether Defendant was living in Germany when he was working with the Shen Zhen Orchestra, she stated that Defendant was living in C with her because the Orchestra had provided accommodation for them, adding that he might have travelled to Germany during that period because he had a part-time job there. Asked about her education, she said that she had originally studied financial accountancy and enterprise management at university but that she then went on to study primary-age education obtaining a diploma which allows her to work as a kindergarten teacher in C. Asked whether the reason for her return to C was to obey her parents' wishes, she testified that she went back to C because she wanted to get pregnant but the medication that she was being given in Malta was not working and she believed that C medicine would have better results. Asked why she still went to the A when she was pregnant and even made all the arrangements herself in spite of the fact that she was scared due to her previous miscarriage, she replied that she did so because she trusted Defendant, denying however that the parties had discussed emigrating to the A or that they had gone to speak to an A immigrating lawyer. She denied that Defendant went to the U while she came to Malta when K was two months old, insisting that they had both come to Malta together.

She denied that her parents were organising for K to have brain surgery in C and that Defendant had to leave U and go B earlier than planned to stop this surgery from happening, stating that she only took the child for tests because the baby was not sleeping and she was concerned about her health. She denied that she has plans to renounce K's A citizenship so that she can have C citizenship. She denied ever hitting the child, denying also that her parents ever hit the child. Plaintiff also refuted the suggestion that on the We Chat video, the child was crying because the child did not want to see her and not because she was missing her. She denied that Defendant ever suggested that they build their family in Malta and that he did not want to go to C. She

denied also that he wanted to move to Malta because of the violence that was allegedly taking place in C, adding that Defendant wanted to come to Malta because he had a new girlfriend and had got her pregnant.

Dr. Stephen Attard testified (fol. 208) that he is a paediatric neurologist and that the parties had taken K to his consultant Dr. Doriette Soler as a young infant because Plaintiff was worried that the baby was sick and would not feed her. He explained that after a careful examination of the baby it resulted that there was nothing wrong with the baby, but Plaintiff kept insisting that a MRI should be done until he relented and convinced one of his radiology colleagues for this MRI to be done at a private hospital since there was no medical necessity for it, adding that the results of the MRI were normal. He added also that this was not something extraordinary in his field because it is normal for mothers to be extremely worried about their children. He continued that he followed up the child for a few months and she was developing normally, adding that he was called a few times to examine the infant because of concerns that she was not eating, but the results of the examinations were always normal.

Miriam Mifsud testified (fol. 214 *et seq.*) that she works as a Social Support Worker with Appogg and supervises Defendant's access with the parties' child on Mondays. She testified that Defendant is always delighted to see the child and prepares ahead, bringing games, fruit and food the daughter might need or wish for and does his best to engage. Regarding K she testified that she is lively and talkative and seems quite content in her father's presence, getting involved in activities with him and sharing jokes. She added that Defendant also does his best to let the child choose some of the activities during the visit, adding that the child loves pretend play. She stated that Defendant and the child have a great bond between them and K looks forward meeting her father. Regarding Plaintiff she testified that Plaintiff usually waited in the waiting room during access, adding that sometimes she entered the corridor if they stayed a little longer and would perhaps knock on the door.

She testified that on the 27th December 2019 the parties had gotten into a verbal altercation in front of the child, adding that she had advised them to avoid discussing issues in front of their daughter. She had also called the on-call service since Plaintiff kept shouting and she had to focus on the child's safety. She explained that she and the police officer did her best to calm down the Plaintiff as it appeared that Plaintiff was angry because the child apparently did not want to continue a painting she was working on with her father which included the Lady of

Mount Karmel church dome. Plaintiff insisted that the child did not like churches and crosses, while Mifsud explained to her that Defendant did not force the child to paint the view of Valletta with the dome. She said that subsequently Andreana Gellel went to speak to Plaintiff while she guided Defendant out from a different entrance since they thought that this was best for his safety.

NV testified by means of an affidavit (fol. 241 *et seqq.*) that she is Defendant's sister and has known Plaintiff for the last fourteen (14) years. She testified that it was in fact Plaintiff who insisted that she be K's godmother, adding that she had arrived in Malta a month before the baptism to help Plaintiff with the baby. She explained that in July 2018 Defendant had asked her to go to Malta because of K, and he had asked her to take K to U to see her grandparents and the rest of her family, adding that at the time she was not aware that there were problems between the parties. She continued that K was to stay in U for two months, after which she was to return to Malta to start attending school there. She testified that while they were together, K told her that her mother used to punish her and that she used to beat Defendant if he tried to protect her. She also stated that on the 11th of August, which was K's birthday, K had spoken to Plaintiff on Skype and Plaintiff was shouting at her, while on the 7th of September, which was Plaintiff's birthday, the child was insisting that she did not want to speak to her mother and it was obvious that she was afraid of Plaintiff.

She testified that during the time K spent with them they took her to fun places, and her husband, who is an architect, started to teach the child how to paint, adding that the child managed to make friends during this short amount of time. She explained that they realised there were problems because they received a visit from an official from the A Embassy in K who informed them that Plaintiff had contacted the Embassy and told them that her daughter had been abducted or kidnapped and that she was in danger. She continued that the official was satisfied that the child did not appear to be in any danger and therefore he did not file a report. She added that she had accompanied the child to Malta and stayed for around a week, adding that the child was very close to her and even told her that she did not want her to leave. She added that there is a communication barrier between herself and Plaintiff since she does not speak C and Plaintiff does not speak U , explaining that usually it is Defendant who translates for them.

Naomi Darmanin testified (fol. 268 *et seqq.*) that she works as a Social Worker within the

Domestic Violence Unit of Appogg, explaining that Plaintiff went to Appogg on the 19th of November 2018, making allegations of abuse against Defendant. She explained that Plaintiff had told her that Defendant was refusing to return the child to C, that he had pushed her and sometimes slapped her as well and she also alleged that Defendant had neglected K when she was living in Malta with him. She continued that Plaintiff and the child were admitted into a shelter, adding at Agenzija Appogg does not investigate claims of abuse but simply advises the person to go to the police.

Kristy Agius testified (fol. 273 *et seqq.*) that she works with Appogg and was monitoring Defendant's access with the child via Skype during the COVID-19 period. She testified that some calls were unsuccessful and that during some calls there was a bad connection, adding that they would reconnect every time they were cut off. She said that the mother was only present twice, explaining that this had happened because the mother had overheard Defendant criticizing C, while on another occasion they were bickering about an issue relating to an ID card. She said that there used to be tension every time C was mentioned, so she used to advise them not to mention any countries during the call. She continued that in fact she had to hang up several times because whenever the child mentioned C, bickering would ensue because Defendant does not like it when the child speaks about C and starts criticizing C while the child keeps insisting that she loves C.

Defendant, VB testified that in 2005, he was a resident of S and G, working as an assistant concert master with the Z Symphony Orchestra and also playing violin with a G orchestra, adding that he mostly lived in S but would spend three-week periods in G. He explained that he met Plaintiff in B in 2005 while he was on tour with the Z Symphony Orchestra, explaining that they started a relationship during his time in B and upon his return to S they continued their relationship communicating via phone calls and messages, until he returned again to B about three to four months later, at the beginning of 2006, where he was offered a job with the SZ Orchestra. He continued that this notwithstanding, his residence between 2006 and 2008 remained in S and G, adding that in 2008 he had auditioned for a position in the Maltese Philharmonic Orchestra, married Plaintiff in B in February 2008, and moved to Malta in April 2008 after he accepted the position with the Maltese Philharmonic Orchestra. He continued that the parties initially lived in Valletta and then moved to H after buying a property in August 2008, adding that the parties' parents had come to Malta in early 2009 because the house needed substantial work.

Asked about his relationship with Plaintiff's parents, he testified that Plaintiff's parents hate him and were often violent with him, recounting an instance when Plaintiff's father grabbed the biggest knife they had in the kitchen and pointed it at his parents, who left within an hour. He testified that Plaintiff was pregnant for the first time in the beginning of 2012, adding that she had miscarried this pregnancy and that during this time Plaintiff was in Beijing while he was in Malta. He continued that he had returned to Beijing around September or October of that same year and Plaintiff had gotten pregnant again a few months later and the parties agreed that they would go to the A so that the baby could be born there, adding that he had some contacts there so for him it was another chance to try and live there, although Plaintiff had no contacts there. Asked why Plaintiff would want to go the A if she had not contacts there, Defendant explained that this was a compromise since he wanted to live in Malta and Plaintiff did not, and she preferred moving to the A than to Malta, so she took care of the preparations and they travelled to the A when she was about four months pregnant. He continued that after K was born, Plaintiff become obsessed that something was wrong with her and that she was not developing in a normal manner so they used to visit doctors frequently. He testified that had they stayed in the A, career wise, he would have to start from scratch. Therefore, so they went back to C, adding that because his passport was expiring, while Plaintiff went to B, he went to U for a week to sort out his paperwork. He continued that while he was there, he had received a phone call from Plaintiff saying that the baby was going to have brain surgery, so he had travelled to B the very next morning, insisting that there was no need for such surgery. He explained that when he arrived at the hospital, doctors were performing tests on the baby and then they were sent home.

He explained that a month after they came to Malta, Plaintiff started worrying again that there was something wrong with the baby so they took her to Mater Dei where the doctors confirmed that K was a healthy baby, having referred her to a private hospital to get an MRI performed. He added that at the time Plaintiff was refusing to breastfeed the baby because she was insisting that her milk was poisonous, and while they were in hospital, she was seen by psychiatrists who had prescribed medication to treat her. He continued that Plaintiff then decided to go back to C and took K with her, and he had involved Appogg and the police, adding that he himself went back to C around October of 2014. He added that while he lived in C, he used to come to Malta for three weeks to a month. He added that while they lived in C, Plaintiff used to beat him in front of the child, point a knife at home in front of the child and also beat the child, once even

punching her in the head.

He testified that the first school that the child attended was the kindergarten run by Plaintiff, but they then decided to move her to a Russian kindergarten, adding that in C , the child spoke C, U and some English and Russian. He continued that Plaintiff got pregnant with M in 2016 and gave birth in C in 2017, adding that he had to come to Malta during the summer as he usually did and so he had left for Malta the day after M was born. Asked why he wanted K to come to Malta with him in 2018, he testified that this was because K was a A citizen and therefore she needed to go abroad to apply for a visa. He also wanted K to see Europe and meet his side of the family. Asked what sort of discussions the parties had had about this, he explained that at the time they were not speaking much and that in fact they were living separately, while K lived with her mother and M lived with him, adding that Plaintiff had written and signed a paper for him giving him permission to travel to Europe with K.

He explained that he arrived in Malta with K in July 2018 and confirmed that he had never in fact applied for a visa for her, because in August, he had decided that they should stay in Malta because he considered it to be in the best interests of the children. He continued that he had told Plaintiff to join him in Malta with M and Plaintiff had started shouting at him. He continued that K then went to U with his sister in the middle of August to meet her grandparents, returning on the 2nd of October. He stated that while the child was in U, Plaintiff had complained to the A Embassy that the child had been kidnapped and that when he spoke to Plaintiff she was screaming and insisting that he send the child back to C. He continued that Plaintiff then came to Malta and was staying at the H property, and that during this time he had received papers from court. Regarding M, he testified that he misses her immensely because he was always the one who took care of her since Plaintiff used to not even want to feed her. He explained that ever since coming to Malta, he has had barely any contact with her because Plaintiff had blocked him from WeChat so he could not even see photos of her. He testified that he is also concerned about K because she is brought to access dirty and she cannot read yet, adding that he is concerned that should K be sent back to C with Plaintiff, Plaintiff would let her starve because she is careless, adding that it would not be safe for him to go to C because Plaintiff's parents are violent.

Under cross-examination he admitted that he had had the water supply of the house in H cut off while Plaintiff and their daughter were living there. Asked whether he asked someone to put

concrete where the meter used to be, he refused to answer the question on the grounds that it could incriminate him. Asked whether the child had ever met his sister and parents before he sent her to U in 2018, he answered that she had met them when she was a baby. Asked why he decided not to go with her, he answered that he did not consider this necessary and also because he had to stay in Malta for work and to do works on the house. Asked whether he had already decided that he would not be returning to C with the child when they had left C in July, he responded that there was never any agreement with Plaintiff, and that he had always preferred to live in Europe, avoiding answer the question of whether he ever intended to return. Asked whether he has taken any legal steps regarding M's custody, he answered that he filed personal separation proceedings in Malta and M is mentioned in them and that he also filed personal separation proceedings in C just before the COVID-19 pandemic.

Deliberates:

This is an action regarding the care and custody and residence of the parties' minor daughter KB. Plaintiff is requesting that she be exclusively entrusted with the care and custody of the child; for authorisation for the child to travel to and live in C with her mother. On his part, Defendant is objecting to this request, and has filed a counter-claim by means of which he is requesting that the care and custody of the minor be exclusively entrusted with him; with access in favour of the mother; for the liquidation of maintenance due by the mother for the needs of the child; and for the Court to order that the residence of the child shall be in Malta.¹

According to the jurisprudence of the Maltese Courts, the care and custody of children is regulated by the principle of the best interests of the child, and the best utility and best advantage to the interests of the child.²

¹ Defendant's counter-claim also contained requests relative to a personal separation, which were declared null by this Court by means of a judgement in parte dated 1st of November 2019.

² **Maria Dolores sive Doris Scicluna vs Anthony Scicluna**, First Hall of the Civili Court, decided 27 November 2003: "*Apparti l-ħsieb ta' ordni morali u dak ta' ordni legali, li għandhom setgħa fil-materja ta' kura u kustodja tat-tfal in ġenerali, il-prinċipju dominanti 'in subjecta materia', li jiddetermina normalment u ġeneralment il-kwistjonijiet bħal din insorta f'dina l-kawża, huwa dak tal-aktar utilita' u dak tal-aqwa vantaġġ u nteress tal-istess minuri fl-isfond taċ-ċirkostanzi personali u 'de facto' li jkunu jirriżultaw mill-provi tal-każ li jrid jiġi riżolut...*"

According to the judgement in the names of **AB vs CD** decided on the 23rd of February 2018, the Court has the power to entrust the care and custody of a minor solely in the hands of one of the parents when this is the minor's best interests, in accordance with Article 56 of the Civil Code, and that while the parents' rights are a relevant consideration, the child's best interests are the Court's primary consideration.³

From the acts of the case it results that the parties met in Beijing, C , where Plaintiff lived, while Defendant was on tour with an orchestra. The parties were married on the 18th of February 2008 in C .⁴ It results that shortly after their marriage, the parties came to live in Malta, acquiring a property in H, after Defendant found a job with the Maltese Philharmonic Orchestra. It further results that after about two and a half years, Plaintiff returned to Beijing because she was not managing to get pregnant and the medication she was being given in Malta was not having the desired effects, so she wanted to try C Medicine. Defendant followed shortly after.

The record shows that the parties lived together in B until Plaintiff fell pregnant with K near the end of 2012. The parties moved to the A when Plaintiff was about four to five months pregnant so that the baby could have An citizenship, while Defendant hoped that he would be able to find a job there so that they could remain in the A. Plaintiff eventually gave birth to K in the A on the 11th of August 2013.⁵ It further results that approximately forty-five days after the child's birth, the parties left the A and Plaintiff returned to C with the child, with the parties coming to Malta a few weeks later. It results that the child lived in Malta for six months between the ages of approximately two months and eight months, and has lived in C ever since. It further results that the parties had a second child, M, who was born in B in 2017, but whose care and custody does not form part of the merits of this suit. It results that although the parties lived in B at least as from 2014, Defendant used to come to Malta every year for between three weeks to a month

³ *“Il-Qorti għaldaqstant, għandha s-setgħa illi jekk ikun fl-aħjar interess tal-minuri, tafda wieħed biss mill-ġenituri bil-kura u l-kustodja tal-minuri u dana ai termini tal-Artikolu 56 tal-Kodiċi Ċivili. Illi kif kellha l-okkażjoni ttenni din il-Qorti diversi drabi, l-interess tal-minuri huwa iprem mid-drittijiet tal-ġenituri. “Il-Qorti tirrileva illi filwaqt li dejjem taġti piż għad-drittijiet tal-ġenituri, l-interess suprem li żżomm quddiemha huwa dejjem dak tal-minuri, kif anke mgħallma mill-ġurisprudenza kostanti taġna hawn ‘il fuq iċċitata.”*”

⁴ See the translation of the marriage certificate at fol. 21.

⁵ See the birth certificate at fol. 24.

for work purposes. It results that in 2018, the parties had agreed that K would come to Malta with her father in summer, primarily because K needed documentation that had necessarily to be obtained from an embassy in a foreign country, and the parties purchased a return ticket for Defendant and the child. It results that Defendant never returned to C with the child, and that furthermore he had sent the child to U with his sister for a period of two months, that is, between August and October.

The Court has seen that Defendant has made various allegations about Plaintiff in order to claim that the child should not be entrusted in her care and should not be allowed to return to C , alleging that Plaintiff is mentally unstable, violent and neglectful. Having seen all the evidence produced by the parties, the Court considers these allegations to be manifestly unfounded, and further considers that Defendant's testimony is thoroughly lacking in credibility and trustworthiness.

One of the allegations made by Defendant against Plaintiff is that she is mentally unstable. The Court notes however that even though Defendant contends that Plaintiff was seen by Psychiatrists at Mater Dei and placed on medication, the Defendant's medical records show that this allegation is manifestly untruthful. These medical records, which document Plaintiff's attendance and treatment at Mater Dei Hospital with effect from 2013 onwards, show that Plaintiff was referred to Mater Dei for treatment in February 2014 due to lumps in her breasts, and subsequently attended the Emergency Department in February 2020 due to sudden onset severe bleeding from her right nostril.⁶ Defendant also alleged that Plaintiff had arranged for brain surgery to be performed on the minor when she was still around two months old, however failed to produce any hospital documentation to corroborate this allegation. Furthermore, it results from the testimony of Paediatric Neurologist Dr. Stephen Attard that while it is true that Plaintiff was extremely concerned that there was something neurologically wrong with the child, this was not something out of the norm and it is in fact an issue that he faces very often with other mothers.

⁶ See Plaintiff's medical records at fol. 250

The Court also does not find credible Defendant's allegations that Plaintiff was violent towards him and the children. Defendant himself testified that for some time before he came to Malta with K in 2018, the parties were living in separate residences, and according to him K lived with Plaintiff in one apartment while he lived with Plaintiff's parents and M in another residence. The Court cannot therefore help but question Defendant's allegations that Plaintiff was violent with K when Defendant himself seems to have been willing to leave K alone in Plaintiff's care, especially when he claimed that Plaintiff punched K in the head, as well as Defendant's allegation of serious violence perpetrated against him by Plaintiff's parents, when he testified that he went to live with them, taking with him M who was still an infant at the time. The only two conclusions that can be drawn from this testimony is either that Defendant's allegations of violence are untruthful, or that, contrary to his submissions in this case, he cares very little about his children's well-being and safety. Furthermore, the Court notes that even though Defendant tries to give the impression that he decided to keep K in Malta in 2018 because of Plaintiff's violent behaviour, he seemed to have no issue with leaving M, an infant, behind in C with Plaintiff. This also places serious doubt as to the truthfulness of his allegations that Plaintiff neglected M to the extent that she did not even feed her, and this more so since it results from the evidence, and notably from Defendant's own testimony, that he left C to come to Malta for three weeks to a month the day after M was born and Plaintiff was M's sole caregiver during that time. Defendant also alleged that while in Malta, Plaintiff was not keeping K clean. From his own testimony, it results however, that he himself had arbitrarily decided to cut off the water supply of the property where Plaintiff and K were residing, which made it impossible for Plaintiff to wash the child properly. Moreover, none of the social workers who testified in this case made any mention of instances where K turned up for access dirty or unkempt as Defendant is alleging.

The Court also considers that Defendant's allegation, that the parties never discussed the issue of K returning to C when he brought her here in 2018, to lack credibility. It is manifestly evident from the acts of the case, that one of the reasons for K's visit in 2018 was so that Defendant could obtain the necessary official documentation for her to be enrolled in an International School in B. This in itself is sufficient to cast out any doubt as to the temporary nature of K's visit to Malta in July 2018. The temporary nature of K's 2018 visit is however further corroborated by the fact that the parties had bought a return ticket for the child, and not a one-way one. Furthermore, Defendant's admission that he had decided that K should stay in

Malta in August means nothing other than Defendant alone, and without consulting with Plaintiff, decided to wrongfully retain the child here in Malta at a time when she should have already been returned to C.

The Court also considers reprehensible Defendant's behaviour when he sent the child to U for two months, without Plaintiff's consent or knowledge, and without either of her parents. While it is true that she was going to be with family members, the Court considers that it was not in the best interests of the child, to send such a young child to a foreign country for a protracted period of time with people she had never met, or met when she was only a few months old, of which she could have had no recollection. This is not only a serious abdication of Defendant's obligations as a husband, but also as a father.

Having seen all the acts of the case, the Court considers that it is manifestly evident that the parties had an agreement that K was to return to C after her trip to Malta, and that therefore this is not a matter of relocation as Defendant is trying to portray it, but a matter of wrongful retention of the child, whose country of habitual residence is clearly C. From the evidence, it is clear that K consistently lived in C from when she was approximately eight months old and had never left the country until she came to Malta with Defendant in 2018. By that point K had established her roots in C, where her parents, sister and grand-parents lived, had already started attending school in C and spoke C, whereas it is clear that K has absolutely no links to Malta. It is irrelevant that Defendant always wanted to live in Europe because the primary consideration in these cases is what is in the best interests of the child. To this Court, it is clear that it is not in the best interests of the child to be separated from her sister and to be uprooted from the country where she was being brought up and schooled because of a whim on the part of Defendant.

The Court furthermore considers that it is evident that Defendant should not be entrusted with the care and custody of the child. It is clear from the facts of the case, that he wrongfully retained the child in a country she has no connection with, and furthermore sent her alone for two months to the U to live with people she did not know and did not speak her language and all this without her mother's knowledge. These facts, amply illustrates that Defendant does not act in, or even take into consideration, the best interests of the child.

While Defendant tried hard to portray Plaintiff as a violent, neglectful and mentally unstable mother, no credible evidence was brought before this Court to corroborate these allegations, and no evidence was produced which in any way shows that it is not in the best interests of the child for Plaintiff to be entrusted with her care and custody. Regarding Defendant's plea that should the minor be allowed to return to C it would be very difficult for him to exercise access, the Court notes that when Defendant decided that he wanted to live in Malta, he was well aware that his two daughters, K and M, are habitual residents of C, and his choice cannot be allowed to disrupt the children's life.

It is for these reasons that the Court considers that Plaintiff should be solely vested with the care and custody of KB, whose residence should in C, that is, the country of her habitual residence until Defendant decided to wrongfully retain her in Malta.

For these reasons, the Court, while rejecting Defendant's fifth, sixth and seventh pleas, and while rejecting Defendant's second, third, fourth, fifth and sixth requests made by him in his counter-claim, accedes to Plaintiff's requests and consequently:

- 1. Declares and orders that Plaintiff is exclusively vested with the care and custody of KB;**
- 2. Authorises Plaintiff to take KB to live in B, C with immediate effect and notwithstanding all orders otherwise obtained by the parties or either one of them, after the issue of the Prohibitory Injunction to stop a person from taking a minor outside of Malta;**
- 3. Authorises Plaintiff to withdraw the passport issued by the A for KB which was deposited under the authority of this Court in the records of the Prohibitory Injunction numbers 245/2018 and 247/2018 by order of the Court dated 16th October 2018;**

4. Authorises Plaintiff to travel with KB from Malta to C, and to, on her own and without the need for Defendant’s consent or participation, apply for and receive any passport, visa or other document of whatever nature that is needed in order that the said KB be able to enter and live in C and to stop and enter in all countries needed in her journey between Malta and C;

5. Authorises Plaintiff to, on her own and without the need for Defendant’s consent or participation, attend the C Embassy in Malta in order to apply for and obtain a long-term Visa known as “Q1 Family Reunification Visa” and this in order that it would be possible for the said KB to attend an International School in B, C.

All costs of these proceedings to be borne exclusively by Defendant.

Read.

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

**Lorraine Dalli
Deputy Registrar**