

**CIVIL COURT
(FAMILY SECTION)**

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

Hearing of Wednesday 25th of November 2020

App. No. : 46/2020 JPG

Case No. : 15

**TP
Vs
EP**

The Court,

Having seen the sworn application filed by TP, dated 21st of February 2020, a fol 1 et seqq., where in it was held:

- 1. The plaintiff married the defendant on the 8th January 2010 Dok A is the marriage certificate; the couple had no children;*
- 2. The marriage has broken down and the parties have been living separately and have been separated de facto since 2014. The parties had no children and had no common property so they did not need a contract of separation since they had signed a pre nuptial contract in the Acts of Not. Jean Pierre Attard dated 16 the February 2015 – Dok B.*
- 3. The parties have been separated for more than five years;*
- 4. No maintenance is due as both parties work and both have lost the right to*

receive maintenance.

5. *There is no hope of reconciliation.*
6. *No maintenance is due between the parties.*
7. *Plaintiff desires to obtain divorce as per Art 66A and subsequent articles of the Civil Code.*
8. *Dok C is the plaintiff's affidavit.*
9. *Dok D is the decree authorising the plaintiff to proceed after mediation.*

Therefore Plaintiff humbly asks this Hon. Court so that :

1. *Following any declaration which may be required, it declares and orders that all that has been agreed upon in the contract of Separation of assets of the 16^{ta} February 2015 Not. Jean Pierre Attard – annexed as Dok B be confirmed;*
2. *It declares that no maintenance is due between the parties since both of them work and since both have lost the right to receive maintenance;*
3. *Following any declaration that may be necessary it, orders and declares the divorce of the marriage celebrated on the 8th January 2010 between the parties as per Article 66A and subsequent Articles of the Civil Code.*

With costs, the defendant is hereby summoned for reference to the oath.

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

Having heard the evidence on oath;

Having seen that the Court accorded the Defendant fifteen 15 days within which she to file

written submissions in terms of Article 158 (10), Chapter 12 of the Laws of Malta;

Having seen that Defendant failed to file any written submissions;

Having seen the exhibited documents and all the case acts;

Deliberates:

This is a judgement following a request made by plaintiff for, *inter alia*, the divorce of the parties who were married on the 8th of January 2010 and who terminated and liquidated their community of acquests by means of a public deed published on the 16th of February 2015, opting for the patrimonial regime of separation of estates in the same deed. The record shows that the parties are not yet legally separated.

The Court begins by noting that although Subsidiary Legislation 12.20 requires that, in cases where the parties are not already separated, proceedings are initiated by means of **an application** requesting the appointment of mediation proceedings, plaintiff did not file an application, but a letter. Mediation proceedings commence by means of a letter only in the case of proceedings for personal separation. However, considering that in his letter plaintiff made clear his intention to petition the Court for divorce and was authorised by the Court to file these proceedings, the Court considers that it can overlook this procedural defect.

However, the Court has seen that according to article 66G (2) of the Civil Code:

“The application for the commencement of divorce proceedings shall:

(a) where the spouses are not separated by means of a contract or a court judgement, be accompanied by a note in which the advocate confirms that he has observed the requirements of sub-article (1);”

The Court has also seen that according to the first proviso to article 66G (2),

“Provided that where the advocate assisting a client in a cause for divorce shall not have presented the said note, the copy of the judgement of separation or of the contract of consensual separation, as the case may be,

the advocate shall present these documents not later than, or during, the first sitting in the cause:”

The Court notes that from the acts of these proceedings it results that plaintiff’s lawyer had not filed the note required according to article 66(2) of the Civil Code with the application for the commencement of these proceedings, which note has never been filed till the present day.

On this matter the Court makes reference to the judgement in the names **JM vs FM** decided by this Court on the 2nd of July 2020 wherein on this issue it was stated that

“Il-Qorti tqis illi galadarba l-Legislatur ghazel illi jimponi dan ir-rekwizit fi proceduri ta’ divorzju, m’huwiex possibli ghal din il-Qorti illi tinjora r-rieda tal-Legislatur u taghlaq ghajneja ghal dan in-nuqqas. Dan specjalment ikkonsidrat illi l-Legislatur inkluda wkoll zmien perentorju entro liema ghandha tigi prezentata din in-nota, u cioe sa mhux aktar tard mill-ewwel dehra, u ghaldagstant lanqas ma kien possibli ghal din il-Qorti illi taghti lir-rikorrenti aktar zmien sabiex tottempera ruhha ma’ dan ir-rekwizit.”

Therefore, it is evident that plaintiff has failed to satisfy the procedural requirements necessary in order to enable this Court to take cognizance of his demands, and that the Court has no alternative other than to abstain from taking further cognizance of this case.

For these reasons, the Court declares that plaintiff has failed to satisfy the conditions imposed by article 66G (2) (a) of the Civil Code and abstains from taking further cognizance of this case.

Costs to be borne by plaintiff.

Read.

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

**Lorraine Dalli
Deputy Registrar**