

**CIVIL COURTS
(FAMILY SECTION)**

MADAM JUSTICE

JACQUELINE PADOVANI GRIMA LL.D., LL.M. (IMLI)

Hearing of Friday 4th December 2020

Application no. : 451/2018 JPG

Case no. : 22

JGS

Vs

**Dr Leontine Calleja and Legal
Procurator Madeline Firman who
were nominated as deputy curators
to represent JJS**

The Court:

Having seen the sworn application filed by JGS, dated 5th October 2018, at page 4 et seqq., wherein it stated:

That applicant JGS and respondent JJS celebrated marriage in the Public Registry in Malta on 2nd September 2007, and their marriage was registered with marriage certificate number one thousand six hundred and twenty five of the year two thousand and seven (1625/2007) (Doc A).

That the parties had one daughter in wedlock, ES who was born on X and is X years old.

That the parties have been living separated de facto since January 2011 , and they separated legally in virtue of a separation deed in the records of Notary Doctor Nicholas Vella of the 11th April 2014 (Dok B).

That respondent left Malta for good, and applicant has no information of his whereabouts whilst having to cut off all contact with him for her own safety.

The applicant works as an employee in the financial sector and is financially independent. Effectively, in the separation contract, applicant declared that she had forfeited in the same manner as respondent, her right to claim and receive maintenance from respondent.

That the child is receiving adequate maintenance, according to her particular circumstances.

That applicant declares and confirms that there is no reasonable prospect of reconciliation between her and respondent.

That therefore all conditions required for the pronouncement of divorce between the parties, as stipulated in article 66 B of the Civil Code are satisfied.

Therefore applicant respectfully demands that this Court:

- 1. Pronounces the divorce between the parties terminating their marriage registered in virtue of the marriage certificate number 1625/2007;*
- 2. Orders the Registrar of Courts to give advice thereon to the Director of Public Registry, who shall proceed with the registration hereof.*

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

Having seen the sworn reply of Dr Leontine Calleja (ID No 272169 M) and PL Madeline Firman wherein they replied:

That at this stage they are not aware of the facts of the case and thus, reserve the right to file another reply when and if they manage to communicate with the defendant they represent and in this respect, they request plaintiff to provide any information that she might have to establish contact with the defendant.

Save the right to file other please if necessary.

With expenses.

Having heard all the evidence on oath;

Having seen the exhibited documents and all the case acts;

Having seen the Articles 66A, 66B u 66C of Chapter 16 of laws of Malta;

Considers;

JGS gave evidence on oath (page 51) that she married **JJS** on the 2nd September 2007 and from this marriage one daughter was born, now aged X and a half. This marriage was not a successful one and the parties signed a contract of personal separation on the 11th of April 2014. She also testified that from the date of the separation there was no reconciliation and there is no hope of this reconciliation. She testified that although there are maintenance arrears, she pays for all the expenses related to the upbringing of the child.

JGS testified (vide affidavit at page 66) that she never kept her daughter from having contact with her husband or his family. The parties separated because of the very disrupted life that her husband led. She testified that her husband left Malta for good, and she does not know his whereabouts. She testified that she decided to see to all the needs of her daughter on her own. She pays for all her educational, medical and general living expenses. She finally testified that she could not proceed against her husband for maintenance because she did not know her husband's address.

Considers:

Dr Leontine Calleja for the defendant exhibited, text messages (Doc A), which were received via WhatsApp with the defendant. She also exhibited a pen drive, (Dok B), with some very contradictory messages. The defendant nomine filed a note in the records of the proceedings dated 10th January 2020 (page 60) and declared that the defendant has no further evidence to adduce.

Deliberates;

66A. (1) Each of the spouses shall have the right to demand divorce or dissolution of the marriage as provided in this Sub-Title. It shall not be required that, prior to the demand of divorce, the spouses shall be separated from each other by means of a contract or of a judgement. [...]

66B. Without prejudice to the following provisions of this article, divorce shall not be granted except upon a demand made jointly by the two spouses or by one of them against the other spouse, and unless the Court is satisfied that:

(a) on the date of commencement of the divorce proceedings, the spouses shall have lived apart for a period of, or periods that amount to, at least four years out of the immediately preceding five years, or at least four years have lapsed from the date of legal separation; and

(b) there is no reasonable prospect of reconciliation between the spouses; and

(c) the spouses and all of their children are receiving adequate maintenance, where this is due, according to their particular circumstances, as provided in article 57:

Provided that the spouses may, at any time, renounce their right to maintenance:[...]

The Court has seen that the parties were married in the Public Registry of Malta on the 2nd September 2007, (vide Doc A, page 7) and from this marriage they had one child, still a minor;

It results also that the marriage broke down and the parties obtained a personal separation by means of a public deed in the acts of Notary Doctor Nicholas Vella dated the 11th April 2014 (vide Dok B, page 9), and therefore it results that the parties have been separated for longer than the four years required by law.

The record shows that although it is alleged that there are maintenance arrears, the plaintiff has

taken on the responsibility of maintaining their daughter.

The Court notes that it is the Defendant who is allegedly in default of maintenance payments and not the Plaintiff who has single-handedly taken care of all the needs of the child of the parties.

Furthermore, the Court finds that there is no hope of a reconciliation.

For these reasons, the Court pronounces the dissolution of the marriage between the parties by divorce and orders the Court Registrar to advise the Director of the Public Registry of the dissolution of the marriage between the parties so that this may be registered in the Public Registry.

The expenses of these proceedings are to be borne equally by the parties.

Read.

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

**Lorraine Dalli
Deputy Registrar**