



**FIL-QORTI CIVILI  
(SEZZJONI TAL-FAMILJA)**

**L-ONOR. IMHALLEF ANTHONY VELLA**

**Seduta ta' nhar 9 ta' Dicembru, 2020.**

**Rikors nru: 64/2016 AGV**

**A sive B C**

**Vs**

**D C**

**Il-Qorti,**

**Rat ir-rikors guramentat ta' A sive BC datat 22 ta' Marzu 2016 fejn esponiet bir-rispett u kkonfermat:-**

- 1. Illi l-esponenti zzewget lill-intimat CD fit-12 ta' Novembru 2004 (ara Dok. A hawn unit) u minn dan iz-zwieg kellhom tifla, E li twieldet fil- 31 ta' Marzu, 2006 (Ara Dok. B hawn unit);**

2. Illi l-partijiet ghandhom problemi matrimonjali li jaghtu lok ghal separazzjoni personali minhabba li ma baqax aktar l-ebda sens affettiv, l-intimat qed jinfexx fil-vizzju tieghu tal-pornografija u fi vjolenza domestika nkluza dik psikologika;
3. Illi l-hajja konjugali ta' bejn il-kontendenti saret ghalhekk impossibbli minhabba eccessi, sevizzi, ngurji gravi, mohqrija, u minhabba li l-hajja konjugali tfarrket irrimedjabilment;
4. Illi wara sensiela ta' incidenti domestici li affetwaw hazina hafna lil binthom minuri E, u li minhabba fihom l-esponent bdiet anke tibza' ghall-inkolumita' taghha l-esponenti kellha, ukoll fl-ahjar interess ta' bintha minuri, tallonta ruhha mid-dar matrimonjali, flimkien mal-istess bintha;
5. Illi b' digriet tad-19 ta' Ottubru 2015, dina l-Onorbabli Qorti ordnat lill-intimat ihallas lill-esponenti s-somma ta' mitejn Euro fix-xahar bhala manteniment ghall-minuri E ( Ara Dok. C hawn unit);
6. Illi l-esponenti qed tipprocedi ghas-separazzjoni personali minn ma' zewgha wara li b'digriet tat-3 ta' Frar 2016, dina l-Onorabbli Qorti ddikjarat maghluqa l-medjazzjoni ta' bejn il-partijiet, u awtorizzathom jiprocedu bil-kawza opportuna ( Dok. D unit);

Ghaldaqstant, l-esponenti titlob bir-rispett li dina l-Onorabbli Qorti joghghobha, ghar-ragunijiet premissi u prevja kull dikjarazzjoni necessarja u opportuna:-

1. Tippronunzja s-seperazzjoni personali bejn il-kontendenti u dana ghal ragunijiet imputabbli lil-konvenut DC;

2. Tafdalha l-kura u kustodja tat-tifla minuri EC, salv id-dritt ta' access lill-missier, l-intimat.
3. Tiddikjara li l-esponenti ghandha l-jedd li ggieghel lill-intimat zewgha, li f' kull kaz, jaghtiha manteniment bis-sahha tal-obbligu li jitnissel miz-zwieg;
4. Tordna lill-konvenut ihallas manteniment lill-attrici ghat-tifla minuri E b'ordni li tali manteniment jibqa' jithallas sakemm E taghlaq l-eta' ta' 23 sena, fl-eventwalita' li tkun studenta full -time wara li taghlaq l-eta' ta' 18- il sena;
5. Tiddikjara xolta l-komunjoni tal-akkwisti ezistenti bejn il-kontendenti fosthom id-dar matrimonjali 48, Triq l-Amarozz, Mgarr, u tiddividi u tassenja l-istess f' zewg porzjonijiet ugwali;
6. Tapplika kontra l-konvenut, interament jew in parte, id-disposizzjonjiet tal-Artikoli 48 u / jew 50 sa 55 A tal-Kodici Civili.

Bl-ispejjez inkluzi dawk tal-medjazzjoni kontra l-konvenut minn issa ingunt in subizzjoni.

Rat ir-Risposta Guramentata ta' DC datat 6 ta' Gunju 2016 fejn espona bir-rispett :-

1. Illi hu minnu li l-esponent izzewweg lil-attrici rikorrenti fit-12 ta' Novembru 2004 fejn minn dan iz-zwieg twieldet tifla, E li ghadha minorenni;

2. Illi m' hu minn xejn dak allegat mir-rikorrenti li l-esponent hu hati ghat-tortijiet indikati fir-rikors taghha. Illi pjuttost hu kontra, tant li dawn sejjer jigu ppruvati fil-mori tal-kaz, speċjalment il-fatt li l-istess rikorrenta ilha timxi sistematikament, biex toskura l-esponent b' mod intenzjonat anke meta taf li mhux vera, liema intenzjoni malinja hi, issa, kristalizzata f' dawn il-proceduri u proceduri ohrajn. Illi dawn il-proceduri qeghdin iservu bhala paraventu ghat-tortijiet tal-istess rikorrenta li b' certa animus qed tipprova titfa' l-htija taghha fuq l-esponent, biex takkwista, liema haga ser tigi ppruvata fil-mori tal-kaz.
3. Illi di piu' jekk iz-zwieg bejn il-partijiet tkisser irrimedjabilment dan hu tort tal-istess rikorrenta principalment, imma mhux esklussivament, minhabba l-attitudni taghha xejn pjacevoli fejn fost affarijiet ohrajn thobb tipprovoka kontinwament kif ukoll l-istess rikorrenta jidhrilha b'erronju li hadd ma jista' ghalha u tippretendi ukoll li l-affarijiet ghandhom jimxi biss bl-approvazzjoni taghha. Fin-nuqqas ir-rikorrenta taghmillek hajtek infern, liema kaz odjern qed iservi ta' mera ta' dan. Illi allacjat mas-suespost, apparti mil-eccessi, mohqrija, u issa qed jirrizulta inkompatibbilita' ta' karattri, fost affarijiet ohrajn, irrizulta adulterju min-naha tar-rikorrenta liema haga ser tigi ippruvata fil-mori tal-kaz.
4. Illi bla pregudizzju ghas-suespost, l-attitudni skifuza u intollerabbli tar-rikorrenta hi ferm riflessa mit-talbiet tal-istess rikorrenta f' dal-proceduri, fejn hi qed tipprova timmanuvra b' tali mod biex minghajr ma tikxef xejn konkret, qed tipprova timponi kundizzjonijiet li huma 'l boghod ferm mill-applikazzjoni tal-principju civili liema haga tiggustifika l-posizzjoni tal-istess esponent.
5. Illi l-problema tal-attitudni xejn pjacevoli tar-rikorrenta tant saret impossibbli li b' mod ingust, l-esponent qed isofri konsiderevolment tant

li r-rikorrenta qed timmanipola ukoll lit-tifla minuri ghas- skopijiet taghha u bhala konsegwenza qieghda tipprova tipprogetta l-posizzjoni taghha bhala ' *vittma* ' meta fir-realta' s-sitwazzjoni hi kontra. Illi dan l-agir minnaha tar-rikorrenta ukoll qed tikkawza tbatija lit-tifla liema haga ghandha tigi indirizzata fid-dawl generali tal-kaz.

6. Illi fil-waqt li l-esponent jichad kategorikament l-akkuzi fjakki, fil-konfront tieghu, is-sitwazzjoni hi ferm bil-kontra fil-konfront tar-rikorrenta liema haga tispjega l-ghaliex hi tant herqana li tissepara mill-iktar fis possibbli liema haga ser tigi ppruvata fil-mori tal-kawza.
7. Illi n- nuqqas ta' sincerita' f' dawn il-proceduri da parti tar-rikorrent sa anka testendi ghal-fatt li qed tipprova anki tizvijja lil Qorti. Illi din il-haga ser tigi ppruvata iktar u iktar meta l-istess rikorrenta trid tghix hajja xellarata tant li taht skuza ta' vjolenza domestika li qatt ma giet ppruvata, telqet u abbandunat id-dar matrimonjali biex b' hekk hi tkun libera b' mod assolut, biex tkompli fil-liasons amoruzi taghha, liema haga ser tigi ppruvata fil-mori tal-kaz.
8. Illi allacjat mas-suespost jigi innutat li ghar-rikorrenti apparti mix-xewqa taghha ghal separazzjoni, liema raguni vera ghall-esponent ghadha misteru, l-istess rikorrenta qed tara kif taghmel biex tiggwadanja finanzjarjament u tassikura ruhha li jkollha mezzi biex tkun libera fil-hajja xellarata li ghazlet 'l boghod mill-hajja mizzewwga. Illi dan huwa rifless fil-motivazzjoni taghha, fil-hames aspett liema haga qed taghmlu ghas-spejjez tat-tifla minuri biex imbaghad, f' nifs, l- istess rikorrenta toskura l-esponent, imma meta jaqblilha, tinqeda' bih biex izomm lit-tifla biex tkun libera u fl-istess hin hi ma tonfoqx flus fuq it-tifla. Illi fil-fatt hu ferm rilevanti li jigi osservat li l-istess Onorabli Qorti, diversament preseduta, indunat bil-manuvri tar-rikorrenti, tant li ma ghandix il-kura u kustodja tat-tifla minuri,

u dan in vista tal-provi sufficjenti, liema provi l-istess rikorrenta qed tara kif taghmel biex jibqghu misteru.

9. Illi f' dan ir-rigward imma mhux esklussivament, it-talbiet li jiffavorixxu lir-rikorrenti ghandhom jigu michudin, u skartati stante li huma intizi biex jipprevedikaw dak dovut lill-esponent u anke t-tifla minuri E, kif ukoll biex inessu it-tortijiet imputabbli lir-rikorrenti, li hi, wara kollox ghandha iggorr fis-shih it-tort tal-htija taghha.

10. Salv risposta ulterjuri/ eccezzjonijiet ohrajn.

Il-Qorti rat il-kontro-talba ta' DC datata 6 ta' Gunju 2016:-

1. Peress li l-partijiet kienu zzewwgu fit-12 ta' Novembru 2004, fejn minn dan iz-zwieg ghandhom tifla minuri E.
2. Peress li l-attrici rrendiet ruhha hatja ta' tortijiet serji liema tortijiet jinkludu, fost affarijiet ohrajn, adulterju, minacci, mohqrija, nguri gravi, eccessi, theddid u swat tant li z-zwieg taz-zwieg tal-partijiet sar impossibbli.
3. Peress li fost affarijet ohrajn, l-intimata rikorrenta hi hatja ta' adulterju liema haga tispjega wahda mir-ragunijiet principali l-ghala r-rikorrenti qed tippersegwita kontinwament l-esponent fejn anka irnexxilha sa issa timmanipula lit-tifla taghhom kontra l-istess esponent, fejn minhabba din l-attitudni, kapriccuza taghha, irnexxilha tohloq stragi b' hajja li saret intollerabbli.

Tghid ghalhekk l-attrici rikonvenzjonata ghaliex dina l-Onorabbli Qorti ma ghandhiex:-

1. Tiddikjara l-firda personali tal-partijiet ghal ragunijiet imputabbli lill-intimata rikorrenti.
2. Tiddikjara xolta l-komunjoni tal-akkwisti ezistenti bejn il-partijiet.
3. Tillikwida l-istess komunjoni tal-akkwisti f'zewg partijiet mhux necessarjment ugwali, b' mod li l-intimata titlef, ukoll bhala konsegwenza kull jedd li ghandha fuq in-nofs l-akkwisti li saru waqt iz-zwieg, imma partikolarment bil-hidma tal-esponent.
4. Tapplika fis-shih kontra r-rikorrenti l-effetti tal-Artikolu 48 et seq, tal-Kap. 16 tal-Ligijiet ta' Malta.
5. Tordna li r-rikorrenti thallas l-ispejjez li saru fid-dar matrimonjali - minn tal-inqas nofs u spejjez ohrajn relatati mal-komunjoni tal-akkwisti, specjalment imma mhux esklussivament, minn meta bdew il-proceduri anka mill-bidu u cioe' mill-medjazzjoni.
6. Illi stante li r-rikorrenti hi kapaci tahdem u fil-fatt qed tahdem, tordna li thallas manteniment ghall-esponent u tikkundanna ukoll lir-rikorrenti thallas dak il-manteniment li dina l-Onorabbli Qorti, taghzel li takkorda f'dan ir-rigward.
7. Takkorda l-kura u kustodja tat-tifla minuri favur l-esponent, u tordna lill-istess rikorrenti thallas manteniment ghall-minuri, kif ukoll tikkundanna lir-rikorrenta thallas dak il-manteniment biz-zieda fl-gholi

tal-hajja li dina l-Onorabbli Qorti taghzel li takkorda f'dan ir-rigward inkluz il-beneficċji soċjali skond il-kaz.

8. Tikkundanna lir-rikorrenti tikkonsenja lill-esponent il-beni kollha parafernali tal-esponent u separatament lill-esponenti jigi moghti l-piena amminstrazzjoni tal-beni tieghu. Illi fin-nuqqas tikkundanna thallas somma li tigi likwidata rapprezentanti l-istess proprjeta' parafernali.
9. Tiddikjara li l-propjeta' kollha partikolarment, imma mhux esklussivament, id-dar matrimonjali, tigi assenjata u b'hekk okkupata mill-esponenti ad esklussjoni tar-rikorrenti iktar u iktar minhabba t-tortijiet imputabbli lilha, kif ukoll talli naqset fl-obbligi taghha liema nuqqas jaqghu facilment f' abbandun biex tkun libera taghmel u tghix kif trid hi li huma ' l boghod mill-obbligi ta' hajja mizzewwga.
10. Tawtorizza lill-esponenti jirregistra l-eventwali sentenza definitiva fir-Registru Pubbliku.

Bl-ispejjez kollha kontra l-intimata rikorrenti, li minn issa hija ingunta in subizzjoni.

Il-Qorti rat ir-risposta tal-attrici rikonvenuta A sive BC , għall-kontro-talba tal-konvenut, datata 22 ta' Gunju 2016 fejn esponiet bir-rispett u bil-gurament taghha konfermat:-

1. Illi l-esponenti ma topponix għas-separazzjoni personali rikjesta mill-konvenut rikonvenjent u li għandha tinghata għal ragunijiet u unikament imputabbli lill-istess konvenut.



2. Illi l-esponenti lanqas topponi ghax-xoljiment u likwidazzjoni tal-komunjoni tal-akkwisti ezistenti bejniethom, u li l-istess tinqasam f' zewg porzjonijiet ugwali skont il-ligi, inkluz li hija tiehu sehemha mill-garaxx u mid-dar matrimonjali, 48, Triq l-Amarozz, Mgarr, akkwistata minnhom tul iz-zwieg in forza tal-kuntratt tas-17 ta' Novembru 2010, in atti tan-nutar Dr. Angele Rapa.
3. Illi huwa inawdit illi l-konvenut qed jitlob manteniment minghand martu meta huwa mqabbad sewwa bhala bajjad, self-employed, u jahdem bla waqfien, mentri l-esponenti tahdem bhala 'salesgirl' fl-Imdina Cathedral Museum, b' minimum wage.
4. Illi hija topponi illi l-konvenut jigi akkordat l-kura u l-kustodja tat-tifla minuri E, aktar u aktar meta huwa qed jabbuza mill-awtorita' tieghu ta' genitur u qed ikun ta' struzzjoni hazina ghall-bintu, u dan kif ser jigi ppruvat ahjar waqt it-trattazzjoni tal-kawza. Dina l-Onorabbli Qorti, fiha ordnat f' digriet tal- 4 ta' April 2016 (Dok. E hawn unit), illi t-tifla minuri ghandha tirisjedi mal-omm li kellha, in segwitu ghal diversi accidenti li bdew jaffettwaw hazin lill-istess bintha, tallonta ruhha mid-dar matrimonjali.
5. Illi l-esponenti ma ghandix beni parafernali ta' zewgha, il-konvenut, x'tikkonsenjalju.
6. Salv risposta ulterjuri permessa mil-Ligi.

Il-Qorti rat il-verbal tas-6 ta' Lulju 2016, fejn gie ordnat li l-kumplement tal-kawza titmexxa bil-lingwa Ingliza.

Ghalhekk, stante li l-attrici ma tifhimx bil-Malti, il-bqija tas-sentenza ser tinkiteb bil-lingwa Ingliza,

Having seen all the acts and documents related to the case.

Having seen the report drawn up by AIC Perit Tekniku AIC Godwin Abela on the 23 August, 2018.<sup>1</sup>

#### FACTS

1. Plaintiff had met Defendant whilst she used to live in Belarus, although she had been to Malta for a time and she used to work at a gentleman's club. They had got to know each other through a common friend F. She came to Malta and they moved in with each other and they got married on the 12<sup>th</sup> November, 2004.

The first problems emerged from the first day of their marriage, when she caught defendant masturbating and this went on throughout the marriage, together with his fetish of watching pornographic material. She denies encouraging these actions.

Plaintiff used to get annoyed because their younger daughter used to be close by. Their daughter E was born on the 31<sup>st</sup> March, 2006 and initially defendant was happy and was a loving and caring father, but by time it seemed to have unnerved him. He wanted attention before his daughter.

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<sup>1</sup> See fol. 464

The real problems continued because of Defendant's extreme possessiveness and jealousy. She couldn't do anything and was simply expected to stay at home and look after the house and their daughter. He wanted her to be solely dependent on him.

In 2010 Plaintiff reiterates that they had purchased a 1/3 undivided share of a groundfloor maisonette 7, today renumbered 48, together with the full ownership of the garage numbered 19, from the Housing Authority and for this reason they had taken out a loan from HSBC Bank Malta plc. She adds that they had taken out an additional loan to finish the property. These contracts of purchase as well as the loans were signed on the 17<sup>th</sup> November, 2010.<sup>2</sup>

Plaintiff also stated that as her daughter was growing, she was getting bored of staying at home and not earning her own money. Defendant used to pay her housekeeping money and they used to go to do the shopping together at the weekend once a month and Defendant used to pay this.

She argued constantly with Defendant to permit her to find a job and she also threatened to leave him, until he finally gave in. She started working around 2012 as a housekeeper at Xara Lodge. She then used to work as a salesgirl at the souvenir shop at the Mdina Cathedral Museum with Horos Limited and received a salary of around €750/€800 per month. Presently she works at Maypole and receives a salary of about €800 a month, out of which she has €550 rent and the rest she pays her utility bills. In addition to her salary, she also receives €200

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<sup>2</sup> Vide Dok. VG1

maintenance for her daughter. She admits too that the house loan used to be paid from her income.

As regards her car, she admits that she had received it as a birthday gift from her present partner GH. She also adds that she had started going out with GH about six months into the separation. She had got to know him through a friend of hers, when he had given them a lift from the beach to her friend I's flat. When he dropped them off they had found Defendant waiting for them.

Plaintiff mentions various incidents with the Defendant, where she had to ask for police intervention.<sup>3</sup>

During the period that Plaintiff's mother was visiting from Belarus, she used to ask her to pick up her daughter from school, mainly when she was stuck at work. Defendant resisted this and had informed the school and threatened to institute court proceedings against the school headmistress. This happened on the 30<sup>th</sup> November, 2015. As a result, the headmistress had asked Plaintiff to pick her daughter up from school personally.

On the 19<sup>th</sup> October, 2015, the court had ordered Defendant to pay Plaintiff the sum of €200 per month for the minor child.<sup>4</sup> As to the childrens allowance, Plaintiff explains that she was only receiving the sum of €112 every three months and not the sum of €280 and this was because Defendant had failed to pay his national insurance

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<sup>3</sup> Vide Doks. VG 2 – VG6

<sup>4</sup> Vide Dok C attached with plaintiff's affidavit.

contributions. She explains that Defendant used to pay the rent and he used to give her money for shopping.

Plaintiff continues explaining that the constant arguing between her and Defendant started to have a bad effect on their minor daughter, so much so that she had developed a rash over her forearms and this was related to anxiety and tension as diagnosed by Dr. Cristina Mintoff.<sup>5</sup>

After spending some time sleeping separately from Defendant, Plaintiff decided that for her safety and for that of her daughter, it would be better to move out and she went to reside at 19, Sqaq Dun Mikiel Xerri, Mosta. She admits that at times her partner GH sleeps there and he helps out with the food expenses. By a decree of the 4<sup>th</sup> April, 2016 she was granted care and custody of the minor.<sup>6</sup> This led to their minor daughter improving her school results.<sup>7</sup>

On the 29<sup>th</sup> February, 2016, Plaintiff states that Defendant had scrapped their car with registration number BUG 003, when it only needed slight repairs.<sup>8</sup>

With regards access, Plaintiff states that Defendant sees their minor daughter E every Wednesday and Friday from 4.45 pm to 7.30 pm. And she sleeps over from Saturday 5 pm to Sunday 5 pm, according to a decree dated 4<sup>th</sup> April, 2016.<sup>9</sup> Unfortunately, she states that all this is having a bad influence on their daughter, who returns home tense and

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<sup>5</sup> Vide Dok. VG 9

<sup>6</sup> Vide Dok. E attached with plaintiff's affidavit.

<sup>7</sup> Vide Doks. VG 10 and VG 11.

<sup>8</sup> Vide Dok. VG 12.

<sup>9</sup> Vide Dok. E attached to Plaintiff's affidavit.

excited because of the things he says against Plaintiff. He also fails to spend quality time with her, since he leaves her alone when he is meant to have access, so much so that the Court had appointed child psychologist Carmen Sammut to support her.

Plaintiff admits that there was a time when Defendant was stalking her and she had to report him to the police and since then he seems to have changed.

She denies having asked her sister-in-law to send her a pornographic video for herself, but on the other hand it was Defendant who asked for it. She states that she gave in because she was used to him seeing pornographic material on the internet or on magazines.

2. Defendant confirms that he has met Plaintiff through a common friend they had F. She had passed on to him Plaintiff's mobile number and he contacted and invited her to come over to Malta at his expense, which she did on the 14<sup>th</sup> July, 2004. He rented an apartment at M' Skala and they resided there until the 12<sup>th</sup> November, 2004.

Plaintiff had then returned to Belarus to renew her passport and when he called her to wish her a happy birthday, it seemed that she was under the influence of alcohol, as she had been out celebrating with her friends and she had insulted him and questioned whether he was in love with her. She had then called to excuse herself. Later she came to Malta and they spent time living with his mother.

Meanwhile Plaintiff got pregnant and when she was seven months pregnant she had an argument with Defendant's mother and they

decided to move out and rented out a flat. He used to give her housekeeping money from the money he used to earn. They had a joint account and both were signatories. Since he was self-employed at times he would ask clients to issue cheques in Plaintiff's name and she would deposit them in their joint account or she keeps them and they would use from them both. Plaintiff didn't work until their daughter started school. He had agreed to this only because now their daughter attended school, because until then, since Plaintiff was not on good terms with his mother, they had no one else to look after their child.

After their daughter was born, Plaintiff's parents came over to Malta and they helped out with the child, especially her mother. He felt that Plaintiff relied heavily on her mother.

At one point, her sister-in-law J came over too and she spent a month living with them, at the same time when Plaintiff's mother was here too. There was a time, when Plaintiff's mother, encouraged them to go out and Defendant mentions an episode when they visited "Sense" in Mriehel, which is known for gays. J and plaintiff had a drink too much and they ended up stripping and J flirted with Defendant. The following morning, Plaintiff accused him of allowing J to flirt with him. He also admitted that Plaintiff had asked Natasha to bring over with her a pornographic video called "Red Riding Hood" and she used to insist they watch and that they be intimate whilst the video was running.

Defendant explains that Plaintiff had made it up with his mother because she needed her help once she had planned to return to work. She started working with a certain KL who ran a cleaning company.

There was a time when Plaintiff was working with a sixteen year old M, who was quite immature and she did not have a good reputation.

Defendant explains that he had suspicions that Plaintiff was being unfaithful and this was because she started to show a keen interest in Facebook and was constantly changing her password. Through Facebook she made many friends including NO and his number was included in her phone list, but under the name of "P." He happened to be M's uncle. Although he confronted Plaintiff that she was being unfaithful she denied it.

From here onwards Defendant alleges that Plaintiff was becoming aggressive with him and she also told him that she had been in relationships with various men from Mgarr. He was quite disappointed and upset about all this as he felt he didn't have a wife, but he was married to a prostitute.

With reference to the allegations made by Plaintiff that she had caught him masturbating on the night of their wedding, he states that this was the case, but it was she who insisted he does so, since she was menstruating and refused to be intimate. He denies masturbating in bed whilst seeing pornographic magazines as Plaintiff alleges.

He states that plaintiff insists in making up false accusations, such as when during such proceedings she accused him of being a paedophile.

Defendant stated that during his access he speaks a lot to his daughter. He denies speaking to her about things that might hurt her or upset her. He believes that Plaintiff makes her lie about him. He states that he tries



to make her realise that her life is going to change due to the separation and due to the fact that she had moved to Mosta with her mother and that Plaintiff had a partner. He states that the minor child does not enjoy talking about the Plaintiff's partner, but yet again she is manipulated because her mother threatens that she will abandon her if she speaks up.

He confirms that he was aware that the childrens advocate had been appointed to speak to the minor child, however throughout that time he hadn't seen his daughter for over three months and she was living solely with her mother.

### **MONEY**

Defendant stated that he never left Plaintiff without money, he always ensured though that utility bills were paid. Once a week they would go out to do their grocery shopping, so in this respect he never neglected his family.

Defendant also denies treating his wife as a slave, where he expected her to stay at home. He explains, that he always made Plaintiff aware that her first responsibilities were towards her family and mainly their daughter, however when the latter was around three years old he was fine with Plaintiff going out to work. His only complaints were that he felt she was working for peanuts and he felt it wasn't worth it. Nevertheless, he felt that she was using it as an excuse to go out and be free, but yet again he insists that he always gave her freedom and infact she used to meet up with her friends at the Rabat garden.

With Plaintiff's income she used to help pay the house loan.

As to the fact that Plaintiff accuses Defendant of not giving her money and as a consequence she lost weight, he denies it, insisting that Plaintiff worked as a lap dancer and for her it was always important to keep herself slim and she was always very well dressed. Today she is in a relationship with GH and she is still slender.

Defendant blames all their problems on M, because her company was a bad influence on Plaintiff and this led to their breakdown of their marriage. Another friend who assisted and encouraged Plaintiff to go ahead with the separation was I and then she started off on a series of false accusations and filing of police reports. Most of the reports resulted to be unfounded. Her aim was to find him guilty of domestic violence to get him out of the matrimonial home, but he denies ever lifting a hand on his wife or daughter. Plaintiff had lived with I for a while when she left the matrimonial home. Plaintiff had then asked him for a separation in March, 2015.

### **Matrimonial Home**

Defendant explains that they had bought one third of the property they bought in Mgarr. Initially, Plaintiff was against it as it only had one window on the façade. However, he convinced her that it made more sense rather than paying the monthly rent. Since he was a plasterer they saved a lot of money. All they needed was a tiler and a carpenter.

3. WPC 200 Vanessa Attard Mcarthy exhibited police reports filed by the parties respectively.<sup>10</sup> She also confirmed that there were some cases pending before Court and others had reached a “procediment ezawrit.”<sup>11</sup>

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<sup>10</sup> Vide Doks. VAM 1 – VAM 12

<sup>11</sup> Vide Dok. LB

4. John Micallef in representation of the Inland Revenue Department exhibited Defendants tax returns for the last five years between 2012-2016.<sup>12</sup>

He also explains that for the basis year 2011 Defendant's self-declared income was €11, 432 and he declared that he was a plasterer.

With regards Plaintiff, until 2011 there was no declared income. For the basis year 2012 she declared an income of €852, for the basis year 2013 she declared an income of €6215 and for the basis year 2014 she declared the sum of €4, 595. For the basis years 2013 to 2015 the submissions were late and there was a ten euro penalty. For the basis year 2012 Defendant was taxable.

For the basis year 2015 there were no income tax return, in which case they rely on the previous income declared.

5. Audrey Ghigo, in representation of HSBC Bank Malta plc. confirmed that Defendant had the following accounts:-

- i) Savings Account 058128919050<sup>13</sup>
- ii) Visa Account card number 4568822089354081<sup>14</sup>
- iii) Joint savings account <sup>15</sup>
- iv) Term deposit account 061130928100<sup>16</sup>

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<sup>12</sup> Vide DOks, JM 1 – JM 7

<sup>13</sup> Vide Dok. AG 1

<sup>14</sup> Vide Dok. AG 2

<sup>15</sup> Vide Dok. AG 3

<sup>16</sup> Vide Dok. AG 4

- v) Loan account 058084228300<sup>17</sup>
- vi) Loan Account 13739006<sup>18</sup>
- vii) Loan account 879006534<sup>19</sup> ( the balance here is €20, 262.640.

On the loan account number 13739006, she confirmed that there was a balance of €21, 460.49 . Until the 28<sup>th</sup> December, 2015, the money to pay the loan was taken from the joint account mentioned above.

She also confirmed that Plaintiff has the following account Savings account 058111261050 and another savings account 058111261051.<sup>20</sup>

6. Karen Cremona, in representation of Transport Malta confirmed that the Defendant was the registered owner of the vehicles as appear on the Document KC. <sup>21</sup> These vehicles were scrapped on the 30<sup>th</sup> December, 2002 and on the 11<sup>th</sup> June, 2002. There were other vehicles in his name that are marked as being scrapped.<sup>22</sup>
  
7. QR, confirmed that she used to work as a taxi driver and on the 4<sup>th</sup> July, 2015 she had given a lift to Plaintiff from Bugibba to Mgarr between 1 am and 3 am. She recalls the incident when they arrived, Defendant walked up to the taxi and pulled Plaintiff out of the car. He was shouting and they were quarrelling and Plaintiff ran into the taxi and asked her to take her to the Mosta Police Station. She admits being scared because Defendant looked angry and was shouting. He was accusing Plaintiff of slacking in her responsibilities as a mother because

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<sup>17</sup> Vide Dok. AG 5

<sup>18</sup> Vide Dok. AG 6

<sup>19</sup> Vide Dok. AG 7

<sup>20</sup> Vide Dok, AG 8 – AG 9.

<sup>21</sup> Vide Dok. KC

<sup>22</sup> Vide Dok. KC 1.

she was out till the early hours of the morning and she had left their child alone. When Plaintiff returned to the taxi she was crying, but she didn't speak. The witness states that she had then called the police station and took her to the Mosta one.

8. Saviour Theuma, in representation of the Director of Social Security from the Childrens Allowance Section confirms that Plaintiff received childrens allowance between the period 5<sup>th</sup> January, 2008 and 7<sup>th</sup> April, 2017. Between the 5<sup>th</sup> January, 2008 till the 8<sup>th</sup> April, 2006 Defendant was responsible for the childrens allowance, whereas the Plaintiff was a beneficiary.<sup>23</sup>

As from the 9<sup>th</sup> April, 2006 to date, Plaintiff was paid the amount of €4, 555.17. She receives monthly €489.97. Since Plaintiff was given joint care and custody, she is only paid half the rate of allowance.

9. ST, Plaintiff's mother states that had come to Malta on the 28<sup>th</sup> November, 2015 on her invitation. She explains that Defendant was not happy to have her in Malta because she had come without his consent. He had also thrown her out of the house. He accused Plaintiff of having a boyfriend. She also states that Defendant was not a dedicated father, who did not shoulder responsibility over his daughter. He never helped with her studies. She mentions the incident that happened on the 25<sup>th</sup> December, 2015, when Plaintiff went out with her friends and when Defendant returned home he did not find her there. He started threatening their daughter to tell him where her mother was, until he made her cry and threw her in the street. After she managed to contact her mother, they called the police.

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<sup>23</sup> Vide Dok. ST

10.UV, states that he got to know the parties because Defendant was painting in the vicinity of the Lady Di bar in Sliema, which he ran with his father. He goes on to state that Defendant had accused him of having a relationship with Plaintiff, which he denies. As to Plaintiff he knows her as a client and today she became a friend, since she was a friend of his girlfriend. She visited the bar around five times a month with her friends, both male and female. He does not consider her as a regular client, however, her friends tended to frequent the bar more regularly., whereas Plaintiff tended to go to the bar either mornings or evenings. He admits to having shown Plaintiff the messages that Defendant had sent him accusing him of being in a relationship with Plaintiff and they had laughed over it.

11.GH explains that he had met Plaintiff through their common friends I and W . They used to meet up socially. He added that he works as the rental manager of Meli Car Hire at the airport and he admits to buying Plaintiff a car from Meli Car Rentals and had it transferred in her name. Initially, Plaintiff was paying €5 a day as rent for the car and at the time he didn't know her.

When Plaintiff moved to Mosta, he had gone to visit her a couple of times. There were times he went with I and there were times he went alone on Plaintiff's invitation. Eventually when they started a relationship, he states that he used to help Plaintiff with her expenses and he had paid the car that she rented.<sup>24</sup> He used to sleep at times at Mosta, but not on a daily basis, but eventually he moved in.

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<sup>24</sup> See Dok. DW 1

12. Connie Azzopardi, in representation of Director of Social Security states that Plaintiff receives childrens allowance.<sup>25</sup> She receives the full amount of €4.33 a week. There could be arrears she states in the sum of €498.63.

13. Maria Demanuele, in representation of HSBS Bank Malta plc. confirmed that the parties held accounts with them. Plaintiff held two accounts.<sup>26</sup>

There were another three accounts in Defendant's name.<sup>27</sup>

There resulted too two joint accounts that are home loans.<sup>28</sup>

14. Joseph Debono, in representation of the Commissioner of Inland Revenue, exhibited the income tax returns for the basis years 2012-2014.<sup>29</sup> The income tax returns for the basis years 2015- 2017 were not presented.

15. Raymond Meli, Director of Meli Car Rentals Limited confirms that he knows GH, since he rents cars. Regarding the cars bearing registration number HQZ 202, this was used to drive to and from from the airport. He explains that he had no problem who used this car, as long as the driver has a valid licence and he does his work. He did not exclude that this car was used by GH. As to the car bearing registration number IQZ 102, this was rented and then sold to GH.<sup>30</sup>

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<sup>25</sup> See DOK. CA 1

<sup>26</sup> See Dok. MD1 and MD 2

<sup>27</sup> See Dok. MD 3 – MD 5.

<sup>28</sup> See Dok. MD 6 – MD 7

<sup>29</sup> See Doks. JD 1 – JD 3

<sup>30</sup> See Dok DW 1.

16. Mario Magro, in representation of the Housing Authority, confirms that the parties had purchased 48, Amarozz Street, Mgarr in 2010 with the assistance of a loan. They had agreed to purchase a third of the property and a garage at full price. If they fail to pay the Bank will have to turn onto their assets to settle the one third. He believed that they did not have a right of first refusal.<sup>31</sup>

He further added that the parties also had the option that the maisonette be returned into the ownership of the Authority and they can't refuse. Regarding the valuation on its return he explains that they first calculate the market value and also the rental value, which is deducted from the amount they pay, so that represents the time that they would have occupied this place.

## CONSIDERATIONS

## RESPONSIBILITY

Plaintiff attributes the problems in their marriage, due to Defendant's possessivity. He expected her to stay at home and bring up their daughter. He was jealous and barely allowed her to go out and to groom herself properly, something which she evidently gave importance to.

She insists that many a time she begged him to allow her to find a job, but he refused as he wanted her to stay at home, until she finally convinced him when their daughter started nursery.

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<sup>31</sup> See Doks. HA 1 and HA 2



Defendant denies all accusations related to possessivity and jealousy. He admits that he was adamant for her to go out to work, because he believed that her first duty was towards their daughter and since she had fallen out with his mother, they had nobody to help out with the child,

She also accuses him of masturbating on the first night of their marriage. Defendant admits to this but saying that it was done on the Plaintiff's encouragement, since she was menstruating. In any case, the parties had already cohabited before marriage, so the significance of them not consummating their marriage on the first night, becomes totally irrelevant.

Pornography is another problem that arose in the marriage. Plaintiff once again attributes all the responsibility to Defendant, who she admits, she caught many a time watching pornography. Then, there is the famous Red Riding Hood video. The evidence produced by both parties is conflicting. Defendant appears to be more credible in his version that he accepted on Plaintiff's insistence to see this video, which they watched together and at times, were intimate whilst the video was ongoing.

Plaintiff also accuses Defendant of not giving her enough financial assistance and he treated her like a slave. Defendant works as a whitewasher and since he is self-employed undoubtedly his income is not always constant, but varies. He denies all Plaintiff's version, in that he gave her money as a wage and there were times he would also give her cheques which his debtor would pay for his services. There is agreement that they used to go monthly to do the shopping from the

supermarket and that Defendant would put some money aside to pay the utilities.

When cross-examined as to where Plaintiff would spend her money, she placed a great deal of emphasis on materialistic things such as doing her nails, her hair, her make up and to buy perfumes, undoubtedly women's perks, but one only resorts to them when one is financially stable.

Plaintiff has also brought forward various allegations related to domestic violence and these allegations started to be raised, when she had planned to leave the matrimonial home. She mentions various instances when she alleges there were episodes of violence, only to continue to state that she had forgiven Defendant and withdrew proceedings.

Undoubtedly, the arguments were constant, mainly verbal and admittedly, Plaintiff produced evidence to show that he was aggressive with her, so much so that it had a negative effect on their minor daughter. QR, a taxi driver, who had dropped off Plaintiff in the early hours of the morning, after a night out with her friends, corroborates Plaintiff's version of Defendant's aggression that night. Another similar incident is confirmed by GH. Placed into perspective, Defendant's reaction, was inevitable, considering he did not approve of his wife's behaviour and above all, he had suspicions that Plaintiff was being unfaithful.

Defendant holds Plaintiff responsible for the breakdown of their marriage. He blames a friend and colleague of hers, a certain M to have been a bad influence on her. She used to go out frequently and she had

started to become aggressive. Another bad influence that led to their breakdown of the marriage was another of Plaintiff's friend I. Defendant believes that she was detrimental in Plaintiff's decision to leave him and she guided her to make false allegations against him.

It was also through I that Plaintiff met her present partner GH. There was no contestation on this fact. Defendant insists that Plaintiff committed adultery and she had started her relationship before she left him. Both Plaintiff and GH deny starting a relationship whilst the former was still living with her husband. They don't deny meeting socially, with other friends, but it was only when she moved to Mosta that they started to meet more often and started relationship. They insist that it was around six months after she had left Defendant. Defendant insists that this is not the case, since he had realised that Plaintiff was spending a lot of time on Facebook.

Plaintiff was a person who enjoyed meeting up with friends and she enjoyed partying too. UV, owner of the Lady Di Pub confirms that he knew both parties, but Plaintiff used to frequent the bar around five times a month and she used to be in the company of both males and females.

To prove adultery, there has to be serious and grave evidence. It can be established that Plaintiff undoubtedly knew GH and they frequented each other. Defendant is convinced that he aided Plaintiff to plan leaving him and settling in Mosta and infact he had seen him emerging from the residence in Mosta, together with Plaintiff and daughter E. GH had also purchased a vehicle for Plaintiff from Meli Car Hire Ltd. and he had also paid it off for her.

Although there are indications that Plaintiff was unfaithful, the evidence brought forward is not sufficient to convince this Court that there was adultery on Plaintiff's part.

All in all, from the evidence produced, in all probability, both parties were responsible for the breakdown of their marriage, because both parties were guilty of excesses, cruelty and threats.

### **CARE AND CUSTODY**

The parties have a daughter E who is 14 years old. Overall, from the evidence produced, it does not seem that the access rights given to Defendant according to a decree dated 4<sup>th</sup> April, 2016 were creating problems. Presently, access is to be exercised every Monday and Wednesday between 4.45 pm and 7.30 pm and a sleep over during alternate weekends from Friday to Saturday and the following week from Saturday to Sunday.

There have been instances, as the evidence produced confirms that Defendant was not always consistent in his access and there was a period recently when he hadn't seen his daughter for about three months and according to Plaintiff his excuse is that he does not want to spend money on fuel travelling for the access to take place.

In determining care and custody issues, this Court has always to evaluate how her decision always upholds the best interests of the child. Both parties accuse each other of not being the ideal parents to bring up their daughter. Plaintiff went as far as to accuse Defendant of being a

paedophile, only for her friend I to confirm that all the accusations were made up. Defendant, on the other hand, is in a relationship with GH and tends to be out and about often with not the most ideal of company. So, essentially, after having analysed the evidence brought forward, both parties seem to have their shortcomings. Nonetheless, E has been for most of the time with her mother, who must at all times refrain from bad-mouthing Defendant, who will always be her father, and thus has assumed a sense of stability.

Moreover, it transpires that Plaintiff has a fetish for sex. The Court also reiterates that a child requires love, security and stability and purchasing a television, an ipad and also a playstation are totally materialism at its best and do not convince this Court of any motherly love, other than a buying of love with objects every teenager craves for!

In addition to all this, despite the fact that Plaintiff is from Belarus and there always remains the risk of her wanting to move there, irrespective of the fact that presently she is in a relationship with a Maltese man, the ultimate aim of the Court is to safeguard the minor child.

In this respect, it would be advisable for the care and custody to be joint and that access be exercised every Monday between 4.45 pm and 7.30 pm, where the minor child has to be picked up by Defendant and with a sleepover every weekend, alternating one week between Friday and Saturday and the following week between Saturday and Sunday.

### **MAINTENANCE**

According to a decree dated 19<sup>th</sup> October, 2015, Defendant was ordered to pay maintenance towards his minor daughter, the sum of €200 a month, as well as half the educational and health expenses for the said minor child.

Defendant works as a whitewasher and is self-employed. It is difficult to determine his income since he failed to file his tax returns from the basis year 2015. He has also attempted to ask for the suspension of the maintenance payment in his application dated 25<sup>th</sup> October, 2019, which application was rejected by the Court.

From the evidence collected, Defendant has failed to be regular in his maintenance payments and since the 19<sup>th</sup> September, 2019 he has failed to effect payment, leading to arrears amounting to €2, 200.

Plaintiff argues that the decree that ordered the €200 maintenance was five years ago and today the child's demands have increased since she is a teenager. Nevertheless, Plaintiff boasts of being an exemplary mother, who carries out two jobs to maintain a good living for her daughter, and therefore she too is expected to contribute towards the needs of their daughter. Defendant accuses Plaintiff of using the maintenance money to spend on her perks, such as doing her hair , her nails, and grooming herself, since her past job as a lap dancer, necessitates she takes good care of her looks.

Considering all the above, the Court deems it justifiable to increase the maintenance to the sum of €250 which is to be paid monthly and Defendant is also to bear half the educational and health expenses. The maintenance is to be paid until the child turns 18 or starts to work, which

ever happens earlier, or until the age of 23 if she decides to continue studying full time.

Prior to all this, Defendant is also to pay Plaintiff the arrears in the sum of €2, 200.

### **COMMUNITY OF ACQUESTS**

The only assets that make up the community of acquests are one third undivided share of the maisonette 48, Amarozz Street, Mgarr and a garage bearing number 19, in Amarozz Street, Mgarr.

The property was valued by AIC Godwin Abela who concluded that the one third of the maisonette would amount to €60, 000 and the garage €25, 000.

The parties had taken out a loan on the said property from HSBC Bank Malta plc. and up to the 6<sup>th</sup> January, the outstanding balance amounted to €19, 863.70.

It so results that pending proceedings, once Plaintiff left the matrimonial home on the 1<sup>st</sup> February, 2016, she stopped paying her share of the loan and it was Defendant who continue to effect payment and to date this amounted to €4, 936.70.

In view of the circumstances, since there does not seem to be any interest in the payment of the Plaintiff her share of the matrimonial home, there remains no option that this property, including the garage be sold at the price indicated by AIC Godwin Abela, from which, the

pending loan has to be settled, with a credit in favour of Defendant for the payment effected by him from when Plaintiff failed to continue paying the loan and therefore this amounts to €2, 468.35, which at costs can be set off with the arrears of maintenance due to Plaintiff which leaves a balance of €268.35.

### **BANK ACCOUNTS**

All accounts in the name of the respective parties has to be assigned to them respectively, whereas all joint accounts have to be closed and the money be divided between the parties.

### **REQUEST FOR DIVORCE**

There was a request filed by Plaintiff by means of an application dated 26<sup>th</sup> September, 2019, asking to be granted a divorce. Defendant did not contest the Divorce. However, in terms of Article 66 of the Civil Code for a divorce to be granted it necessitates, apart from the fact that the parties don't intend reconciling, the maintenance payments were in order.

From the acts of the case, it results that Defendant was in arrears of payments of maintenance and the situation had remained ever since.

Since the grounds of Article 66 A are not satisfied and moreover, there are still issues with payment of maintenance for the future, the divorce request technically cannot be upheld. However, since it is plaintiff herself who is requesting that the case be converted to a divorce claim, the Court shall uphold the request.



## **DECIDE**

For the aforementioned reasons, this Court hereby decides as follows:-

1. Accepts the first claim partially as well as the first counter-claim, in that the Court finds both parties responsible for the separation because of excesses and insults.
2. Accepts the second claim partially as well as the seventh counter-claim, in that the Court grants to the parties the joint care and custody of the minor child E. The child will reside with the Plaintiff and access rights will be exercised as decided by the Court in the sub-title “Care and Custody.”
3. Rejects the third claim.
4. Accepts the fourth claim and orders Defendant to pay maintenance as decided by the Court in the sub-title “Maintenance” and rejects the seventh counter-claim regarding maintenance.
5. Accepts the fifth claim and the second and third counter-claim and liquidates and assigns the Community of Acquests as determined by the Court in the sub-title “Community of Acquests.”
6. Rejects the sixth claim and the fourth counter-claim.
7. Rejects the fifth counter-claim.
8. Rejects the sixth counter-claim.

9. Rejects the eight counter-claim.

10. Rejects the ninth counter-claim.

11. Rejects the tenth counter-claim.

The Court furthermore pronounces the divorce between the parties, and consequently orders the Registrar of Courts, within ten (10) days from the date of this judgment, to inform the Director of Public Registry of the divorce between the parties.

Costs of the case are to be borne equally by the parties.

**Hon. Mr. Justice Anthony J. Vella**

**Registrar**