

**CIVIL COURT  
(FAMILY SECTION)**

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

**TODAY, 1ST OF OCTOBER 2021**

**Warrant No.: 156/2021 JPG**

**Chief Executive Officer of the Social  
Care Standards Authority**

**Vs**

**PB**

**The Court:**

Having seen the sworn application filed on the 27<sup>th</sup> of August 2021, wherein it was held:

*That the Applicant has an interest that the minor, hereinafter indicated, be not taken outside Malta;*

*That the Respondent is the person having, or who might have, the legal or actual custody of the said minor;*

*Wherefore, the Applicant respectfully requests that this Court orders the issue of a warrant of prohibitory injunction against the Respondent enjoining him not take, or allow anybody to take, the said minors out of Malta;*

*Particulars of the minor TMDB:*

1. *Name: TMDB:*

*Date and Place of Birth: X – Y*

*Habitual Residence Before the Illegal Removal: W*

*Present Residence: M*

*Physical Description: Fair hair, brown eyes*

*Photo: Attached*

*That the Respondent is in possession of the passports of the aforementioned minors, which passports are issued by the V Authorities.*

Having seen that the application and its decree have been duly notified.

Having seen the reply filed by PB dated 3<sup>rd</sup> September 2021, at page 42, where it stated that:

*That Respondent is for the time being opposing the issue of the warrant in the names set out above as requested since the Applicant does not qualify as a person who has an interest that the minor, TMDB, be taken out of Malta.*

Having seen this Court's decree on the preliminary plea dated 27<sup>th</sup> September 2021;

Having seen all the documents exhibited including the Note of PB dated 28<sup>th</sup> of September 2021 and the Court's decree annexing the acts of the Warrant of Prohibitory Injunction 147/2021 to these proceedings ;

Having seen Notes of Submissions;

Having heard Final Submissions;

**Considers:**

This is a final decree following a warrant of injunction filed by the Chief Executive Officer of the Social Care Standards Authority, on behalf of the left-behind father LMDB, father of the minor TMDB, to restrain the Defendant mother, from taking their minor child, TMDB

born on the X outside the Islands of Malta.

In their sworn application, the Chief Executive Officer of the Social Care Standards Authority, requested the Court to issue a warrant of prohibitory injunction against the Defendant, PB, T's mother, prohibiting said Defendant from taking the minor outside of Malta. In these proceedings, the Chief Executive Officer of the Social Care Standards Authority is acting on behalf of the minor's father, LMDB **who is at present in W, where the family was permanently based**, after the father filed an application for the return of the minor with the W Central Authority, which was then transmitted to the Maltese Central Authority on the 13<sup>th</sup> of August 2021. At one point, Plaintiff asserts that Defendant, without authorisation from the father, travelled to Malta with the child, taking the minor's Y and Maltese passports and subsequently refused to return to W. Plaintiff alleges that Defendant planned the trip with a pre-determined intent to remove the child from his habitual residence in W.

On the other hand, in her reply, Defendant opposes the issue of the warrant since the Applicant does not qualify as a person who has an interest that the minor, be taken out of the Islands of Malta. The Court notes that the Defendant expanded further on this preliminary plea during the sitting of the 7<sup>th</sup> September 2021, wherein legal counsel to the Defendant stated that the issue of the order of the warrant ought to be rejected, inter alia on the grounds that Applicant does not qualify as an interested party who may request, the issue of this warrant and that moreover, this warrant does not qualify as an interim order of the Plaintiff as contemplated in article 7 of Chapter 410 of the Laws of Malta.

Article 877 of Chapter 12 of the Laws of Malta provides:

*877. (1) A warrant of prohibitory injunction may also be issued to restrain any person from taking any minor outside Malta.*

*(2) The warrant shall be served on the person or persons having, or who might have, the legal or actual custody of the minor enjoining them not to take, or allow anyone to take, the minor, out of Malta.*

*(3) The warrant shall also be served on:*

*(a) the officer charged with the issue of passports enjoining him not to issue, and or deliver, any passport in respect of the minor and not to include the name of the*

*minor in the passport of the minor's legal representatives or in the passport of any other person; and*

*(b) the Commissioner of Police enjoining him not to allow such minor to leave Malta.*

The Court notes that in proceedings for the issuance of a precautionary warrant, the Court may not delve into the merits of the case, but rather it must be satisfied that the person asking for the warrant to be issued has a **prima facie right** and **that the warrant is necessary in order to preserve that right**. (See *Panorama Company Limited vs Enemalta Corporation* decided by the First Hall of the Civil Court on the 14th of February 2013; *Emanuel Sammut vs Josephine Sammut* decided by the First Hall Civil Court on the 5th of June 2003). The two elements must concur and in default, the Court is bound to reject the claim for an issue of a Warrant of Prohibitory Injunction. (See *Mary Borg vs Commissioner of Lands* decided by the First Hall Civil Courts on the 15th of December 2008; *The Golden Sheperd Group Limited vs Enemalta Corporation* decided by the First Hall Civil Court on the 17th March 2009).

**Deliberates:**

From the acts of the case, it appears that the parties have been living in “a non-marital partnership” since circa August 2018, from which relationship the minor TMDB was born on the X. He is currently X years old. (*Vide extract from birth certificate a fol 16 et seq*). It seems that the parties terminated their relationship in June 2021. Whilst it transpires that the parents have professional interests in diverse countries, the parties, together with the minor, have been permanently based in W since before October 2020, first residing at W1 than at W2 both in L. (*Vide Rental Agreement signed on the 27<sup>th</sup> September 2020 a fol 24 et seq.*)

It seems that in June of 2021, the parties, together with the child travelled to Y and stayed there with the child, when the Defendant, in the father's brief absence (being away from home for a few hours on business) and without the latter's authorization, travelled to Malta with the child, taking the child's Y and Maltese passports with her.

Once in Malta, Defendant informed the father of her refusal to return to W, and also refused

to allow the minor to return back to W where the child habitually resides and has been enrolled in an educational institution, namely the school C in L, W since November 2020 (*Vide Doc 3 a fol 21*). It also appears that the father instructed a lawyer to petition the District Court of L for the regulation of the exercise of parental responsibilities regarding the minor.

The Court notes that W Legislation extends the application of the legal provisions applicable to spouses to partners living in conditions similar to those of spouses as far as the rights to parenthood are concerned. Therefore, parental responsibilities are endowed on both parents and such responsibilities are to be exercised by mutual agreement. When such form of cohabitation ceases, the applicable provisions at law are those applicable to spouses that are divorced, separated or have had their marriage annulled. In the latter scenario, W Law dictates that parental responsibilities on issues of particular importance to the child's life, ought to be exercised jointly by both parents, whether the parents are married or cohabitating, while those decisions relating to acts of everyday life, rest with the parent with whom the child habitually resides or the parent with whom he is temporarily.

Thus, in light of the evidence submitted in the acts of the case, and the fact that Defendant tendered no evidence in these proceedings, the record shows that the minor was habitually resident in W. Moreover, according to the applicable W Legislation, both parents at present have joint custody of the minor child. Consequently, the minor's father has indeed a prima facie custodial right. The Court also holds that the filing of the Warrant of Prohibitory injunction was necessary in order to preserve that right.

Additionally, jurisprudence has always been consistent in affirming that, in addition to the Applicant's prima facie right, the degree of prejudice suffered by the Applicant must, should the Applicant's rights not be safeguarded by the issuing of the warrant, be irremediable:

*Anke jekk rikorrent ghandu jedd prima facie x`jigi tutelat, il-grad ta` pregudizzju li jkun se jgarrab jekk il-jedd tieghu prima facie ma jkunx tutelat bil-hrug tal-Mandat, irid ikun irrimedjabbli – dan skond il-gurisprudenza talQorti taghna. Mhux bizzejjed li jkun semplici diffikulta', disagju jew thassib [Vide – Qorti tal-Kummerc – 26 ta` Mejju 1995 fl-atti tar-Rikors ghall-hruġ ta' Mandat ta' Inibizzjoni fl-ismijiet "Cassar Pullicino noe vs Caruana Curran noe et" (Kollez. Vol: LXXIX.iv.1387)]*

*B`irrimedjabbli wiehed ghandu jfisser illi l-hsara li minnha r-rikorrent ikun qed jilmenta, tkun wahda tali illi ma tistax tissewwa mod iehor. Jekk l-inkonvenjent jew in-nuqqas lamentat jista' jitnehha, mqar b`decizjoni wara li jigi mistharreg il-kaz fil-mertu, jigi nieqes dan l-element mehtieg għall-hrug tal-Mandat (ara – Prim`Awla tal-Qorti Civili – 2 ta` Jannar 1993 - Atti tar-Rikors għall-hrug talMandat ta' Inibizzjoni fl-ismijiet "Avukat Victor Borg Grech vs Joseph Gasan et noe")*

The Courts have always categorically held that:

**“Mhux bizzejjed li jkun sempliċi diffikulta’, disagju jew thassib ...”**

- A simple difficulty, discomfort or concern, does not suffice.

In all proceedings concerning minor children, the Court must be guided by the best interests of the child, which are paramount. This Court has always held that such proceedings should only be availed of to safeguard the best interest of the minor and to protect one of the parents from being arbitrarily deprived of a relationship with the minor, and not as an attempt to hold the other parent hostage in a particular country. This Court has always maintained that a child needs the presence of both parents in his or her life and adequate time with both so as to have the possibility to develop a good and strong relationship with both.

During the sitting of the 27<sup>th</sup> September 2021, following this Court’s pronouncement of its decree *in parte* rejecting the preliminary plea raised by the Defendant in these proceedings, Defendant’s counsel informed this Court that Defendant PB had filed a request for the issuance of a prohibitory injunction, case number 147/2021AGV, and the Family Court, differently presided, on the same day (that is 27<sup>th</sup> September 2021) upheld the request and issued a warrant of a prohibitory injunction restraining the travel of the minor child in question.

On the basis of this decree, Defendant opposed the issue of the warrant de quo holding that it was no longer necessary to safeguard the interest sought to be safeguarded by the Applicant since the child’s travel was already restrained in terms of Article 873 of Chapter 12 of the Laws of Malta and a copy of the decree was filed on the 28<sup>th</sup> September 2021.

The Court noted that the copy of the decree filed by the mother's counsel lacked the signature of the presiding judge and that of the deputy registrar, a requisite which is essential to authenticate the veracity of the decree in question. Therefore, the Court ordered that the acts of the proceedings 147/2021/2 be annexed to these proceedings. The Court noted that the acts of the proceedings 147/2021/2 were duly signed by the presiding Judge. The Court however noted with some consternation that the Defendant's filing of the injunction proceedings 147/2021/2 were not divulged to this Court, until they were finally decided. The Court also noted that service to the father was in an address in Y, when the record shows that the father and indeed the parties, were habitually resident in W. It is this Court's considered opinion that this illustrates an attempt by the Defendant to circumvent the spirit of the Convention on the Civil Aspects of International Child Abduction of 1980 and that of Chapter 410 of the Laws of Malta. Moreover, it attempts to bypass the Office of the Central Authority and its efforts to safeguard the illegal removal of minors from one jurisdiction to another. It is essential to note that the warrant issued in the proceedings 147/2021/2 may be reversed simply by the filing of a counter-warrant by the defendant. Therefore, this procedure offers no real restraint on the movement on the minor child in question.

In the light of the law and jurisprudence on the matter, and having examined the evidence produced in these proceedings, it is this Court's considered opinion that the father will suffer an irremediable prejudice if this warrant is not upheld. Moreover, should this Court refrain from issuing the warrant of prohibitory injunction of the minor child, the *raison d'être* of the Convention and the very Office of the Central Authority will be invalidated.

Therefore, after having seen Articles 873 to 877 of Chapter 12 of the Laws of Malta, this Court holds that the essential elements of the prohibitory injunction concur. For these reasons the Court, orders that the Defendant PB, mother of the minor child TMDB, X years old, born on the X in Y, holder of a Maltese and Y Passport be prohibited from taking or allowing any other person to take the said child out of the Maltese Islands.

To this end the Court orders that a copy of this decree be notified to the Director (Civil Registration) as Officer in charge of the issuance of passports within the Passport Office and

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Commissioner of the Police as Principal Officer of Immigration and all authorities concerned.

**Therefore, and in light of the above considerations, this Court upholds the request of the Chief Executive Officer of the Social Care Standards Authority as delineated in his application dated 27<sup>th</sup> of August 2021**

**Costs are to be borne by the Defendant.**

**Given in Camera.**

**Madame Justice Jacqueline Padovani Grima LL.D. LL.M. (IMLI)**

**Christabelle Cassar  
Deputy Registrar**