

**CIVIL COURT  
(FAMILY SECTION)**

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

**TODAY 5<sup>TH</sup> OF NOVEMBER 2021**

**Warrant No.: 188/2021/2 JPG**

**CA  
Vs  
OA**

**The Court:**

Having seen the sworn application filed by CA dated the 5<sup>th</sup> of October 2021, wherein it was held:

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

*That the Respondent/s is/are the persons 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/s enjoining him/them not to take, or allow anybody to take, the said minor out of Malta;*

*Particulars of the minor:*

*EA who is six (6) years old, born to the parties on the X in Y – a copy of the birth certificate is attached herewith and marked as Dok. A and a photo of the minor recently taken is attached herewith and as Dok B. That there is pending between the parties a separation lawsuit number 12/2019 in the names “OA vs CA.”*

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

Having seen the reply filed on the 18<sup>th</sup> of October 2021, at page 12A, wherein it stated:

*That by means of a court decree dated 5th of October 2021, this Honourable Court provisionally upheld the request for the issuing of a Warrant of Prohibitory Injunction so that the parties' daughter EA is not taken outside of Malta;*

*That the plaintiff contends that the request for the issuing of this Warrant is frivolous and vexatious in nature and this since there is no real fear that the applicant leaves the country with the minor child. That therefore this warrant is not necessary;*

- 1. That moreover the plaintiff knows that the minor child does not have a valid passport, so much so that her last passport expired 4 years ago and the minor child has since that time not travelled outside of the Maltese islands;*
- 2. That there is no demand and there has been no communication for a request between the parties for the minor child to travel with the plaintiff;*
- 3. That it is further not possible to issue a U passport and this since the plaintiff's signature is required;*

*That therefore **there is no real fear that the plaintiff will take the minor child outside of the country and the request for the issuing of this warrant** has been done capriciously and in a vexatious manner, since there is no reason on a prima facie basis as required by law, for this demand to be acceded to on a definitive basis. That therefore this Warrant should be revoked definitively. That in fact no reason was brought forward for the issuing of this warrant;*

*That if the court feels the need to accede to the plaintiff's demand, it is the plaintiff who should bear all expenses. The plaintiff is from this point forward being demanded for reference of oath.*

*Save further pleas.*

Having heard evidence on oath;

Having seen all the acts and documents exhibited;

Having heard final oral submissions of the parties;

**Considers:**

*Defendant OA, produced by the Applicant, testified on the 21<sup>st</sup> October 2021*, with reference to the statement in her reply wherein, she affirmed that a U passport cannot be issued for the child, without the father's signature. She explained that this is common knowledge and a common practice in all countries, including in U. Confronted with the notion that U does not issue passports to children but merely issues a travelling document for two years, Defendant replies that she is not aware of this as she did not look into this issue. Asked whether she was aware that a U citizen living in the U, stating that the other parent was not present in U, can have a travel document issued for the minor. Defendant insisted that she is not aware of this and denies that she has tried to research or discover information about this matter. Defendant adds that her brother has two children and has, on occasion, mentioned that these passports expire after two years and that their renewal requires the signature of both parents. However, she stated that she did not personally make any verifications.

Asked whether two or three years ago, she had requested that a passport be issued for travel purposes, the Defendant recalls that this was at the very beginning of the proceedings. Defendant insist that she did not file an application to travel to the U, but one asking for the renewal of the minor's passport which had expired when the minor was two years old. Defendant affirms that the minor never had a U passport, a U travel document, and she was not included in Defendant's passport. Asked whether she was aware of the possibility of including the minor in her own passport, Defendant contends that she is not sure about this possibility since her brother is now having to renew his children's passports every two years. She adds

that she could not differentiate between a passport and a travelling document, and she only knew that it had a two year validity period. Defendant stated that when she was a child herself, minors could be included in the parents' passports, however she affirmed that this might have changed.

Asked about her relationship with a certain Natalya Vassallo, Defendant asserts that she might be an acquaintance on Facebook. She then adds that she has never seen this person but remembers that she had posted something about her personal experience on Facebook and had possibly asked her questions, and in turn, gave her a reference to the Public Registry as to how to obtain documents. Asked whether this person's experience involved the travelling of a child, the Defendant asserts that she does not recall because their communication happened some time ago. After having checked her phone, Defendant affirmed that this person's Whatsapp profile is the same as her Facebook profile on the Russian Group and that is how she recognised her face. Asked whether this person is in her contact list, Defendant confirms that she is, adding that she might have asked something on the forum and this person had sent her links. Defendant insists that she does not know this person, and that she is simply an acquaintance. Confronted about her wish to travel to the U with the child, the Defendant affirms that in general it is a normal wish for every parent to travel as she wishes that the child has contact with the other side of the family. Asked whether she has travelled to the U, Defendant confirms that she has. Asked whether she checked with the passport office regarding passports, Defendant denies having done so.

Asked about the context of such conversation by her defence lawyer, Defendant explains that this conversation took place on March 16<sup>th</sup> 2020, when the parties were already separated. When confronted with the application submitted in 2018, Defendant explains that this was filed by her previous lawyer and that she had forgotten about the relative details but recalls having asked for the authorisation to travel with the minor to visit her family and grandmother who at the time was unwell.

*Defendant testified on the 21<sup>st</sup> of October 2021*, and explained that when she had left the U, her knowledge of foreign languages and her medical knowledge was not appreciated so when she graduated, she had a choice of several countries but opted for Malta because it was an English speaking country and she had come here as a student. Subsequently she established good relations with colleagues, the salary was much better and enjoyed the climate, together with its relaxed atmosphere when compared to other countries where life was more hectic. She

also adds that she has progressed professionally very well here in Malta.

Defendant adds that she is a specialist in obstetrics and gynaecology and has also obtained the European Diploma like her other colleagues here in Malta. She also has a Masters Degree in Ultrasound, which was obtained through a grant so that she is contractually obliged to work in Malta for another five (5) years. Defendant also affirms that she is quite happy with her salary and her working hours, since she does not work duties and has reduced her hours significantly to be there for the minor. She contends that she is very happy here in Malta and has a special niche in a large community of Russian-speaking women who appreciate her as a specialist which adds to her income. She also asserts that she loves the sea and swims all year round. Although she considers the U as her mother land, and misses it, she feels she no longer fits there. Defendant affirms that she has no reason to move, and that she is not of an age that permits major change.

Defendant states that the minor's passport, expired on the 4<sup>th</sup> May 2017 and was submitted to the Inspector of Immigration police according to the Court's decree. Defendant also submits that even though the child wants to travel like her peers, due to the threat of the pandemic and the fact that the minor is still not vaccinated, she does not feel comfortable in making the minor undergo multiple swabs and thus does not intend to travel with the minor.

*When cross-examined*, Defendant explains that she is opposing the warrant because it is not justified because she did not intend to travel. Therefore, there was no need for the warrant to be in place. Asked whether she agrees that the child should not leave Malta except with a Court order, Defendant affirms that the child needs an opportunity to travel to develop herself, and satisfy her curiosity and practice the foreign languages that Defendant is investing in. However, she remarks that such travel should happen upon agreement between the parents, or with the permission of the Court. She confirms that whenever her daughter asks about the possibility of travelling, she tells her that she cannot travel without a passport. Asked whether she has attempted to renew the passport recently, Defendant denies having attempted this. Asked whether she has told the minor that the Plaintiff is refusing to sign the relative forms for her passport, Defendant contends that she has told the minor that she is ready to sign it but that her father also needs to sign it. Defendant recalls that the last time she had travelled to the U was around 2018 around two years before Covid and she had travelled on her own. Asked whether she remembers that she has publicly stated that she wants to leave the country with her daughter, Defendant does not recall ever saying this, as it did not make sense since she has

property in Malta and is established professionally and socially in Malta.

*Applicant CA testified on the 21<sup>st</sup> of October 2021* explains that his fears have augmented with the passing of time, following information he received through a client of his. Indeed, he stated that Defendant expressed her wish to return to the U with a certain Natalya Vassallo, that she was fed up in Malta, that she was facing legal custody proceedings and that she allegedly had financial problems, all of which raised a number of red flags. Plaintiff also mentions the allegations involving sexual abuse on the minor, which he believes were part of Defendant's plan to deprive Plaintiff of custody and access. In 2018 Plaintiff recalls that Defendant had filed an application seeking authorisation to travel also requesting the waiver of the father's signature for the relative documentation for the renewal of the passport.

The Plaintiff contends that as soon as the minor enters the U, there is no control, since the U is not an EU Member State and thus it would not be easy to get the minor back. Additionally Plaintiff also asserts that to his knowledge the minor does not have a U passport, however if Defendant manages to take the minor to the U, it would be relatively easier for her to obtain a passport or some sort of travel document for the minor. Plaintiff also admits that in light of past indiscretions admitted by the Defendant, namely that she acquired her U driving's license after a relative of hers facilitated this with the relative authorities, Plaintiff believes that a passport for the minor may be easily obtained through unconventional channels. Moreover, the Plaintiff also explains that the Defendant has *tramite* the minor requested him to renew the child's passport. He recalls that the minor has asked him to get her a passport, and that she wants a passport for her birthday, she wants to go abroad, and at a wishing well, she wished for a passport.

When *cross-examined*, Plaintiff replied that his application for the issuance of the warrant was not based on assumptions but on facts, namely the false allegations in his regards which deprived him of access to the child for four months, wherein she portrayed him as a monster of a father and the obtaining of a U passport procured remotely, which raised a red flag. Asked why Plaintiff did not file a warrant back in 2018, Plaintiff affirms that he relied on the fact of not renewing the passport, however the urgency of the matter increased recently and now he cannot afford to take a risk, especially since the minor is constantly insisting on having a passport. Plaintiff also confirmed that all Defendant's family is in Malta barring her grandmother who still lives in U.

**Considers:**

This is a final decree following a warrant of injunction filed by the Applicant CA requesting the issuance of a warrant of prohibitory injunction, against the Defendant, OA, prohibiting her from taking the minor EA outside of Malta. In his sworn application, the Applicant contends that there exist reasons for him to believe that the Defendant is planning to take the minor child to the U, a non-EU Member State.

On the other hand, in her reply, defendant opposes the issue of the warrant stating that the applicant's request for the issuance of the said warrant is frivolous and vexatious and does not merit to be upheld by this Court. Defendant *inter alia* adds that Plaintiff is very much aware of the fact that the minor's Maltese passport has expired, and that Plaintiff's signature as the father is required for the issuance of a U passport.

**Considers:**

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 begins by noting 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 subsist and if they do not concur, the Court has 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:**

It appears that the parties got married on the 2<sup>nd</sup> of September 2014 in the U and are currently undergoing separation proceedings. The parties have a minor daughter, ED, born on the X and is currently X years old.

The Court notes that even where the requisites indicated in sub article (2) of Article 877 are satisfied, jurisprudence has also consistently affirmed that Applicant's degree of prejudice suffered, should the Applicant's rights not be safeguarded by the issuing of the warrant, must 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 tal-Qrati taghna. Mhux bizzejjed li jkun sempliçi diffikulta', disagju jew thassib [Vide – Qorti tal-Kummerc – 26 ta` Mejju 1995 fl-atti tar-Rikors ghall-hrug ta' Mandat ta' Inibizzjoni fl-ismijiet “Cassar Pulliçino 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'deciżjoni wara li jiġi mistharreġ il-kaz fil-mertu, jiġi nieqes dan l-element mehtieg għall-hrug tal-Mandat (ara – Prim`Awla tal-Qorti Civili – 2 ta` Jannar 1993 - Atti tar-Rikors għall-hrug tal-Mandat ta' Inibizzjoni fl-ismijiet "Avukat Victor Borġ Grech vs Joseph Gasan et noe")*

The Courts have always categorically held that: "*Mhux bizzejjed li jkun sempliċi diffikulta', disagju jew thassib ...*" - Mere difficulty, discomfort or concern, does not suffice.

The Court observes that record of the proceedings shows that the parties have presented two diametrically opposed versions wherein Plaintiff is adamant that Defendant is about to abscond with the child to her homeland, U while Defendant denys this and states that she has now established in Malta even professionally an socially.

With regards to the issues raised in relation to the minor child's passport, this Court notes that while the child's Maltese passport is currently expired and has been duly deposited under the authority of this Court.

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 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.

The Court also notes that although U is not a European Union Member State, it is nonetheless, a signatory to the 1980 Hague Convention on the Civil Aspects of Child Abduction. However, the April 2021 Report on Compliance with the Hague Convention on the Civil aspects of International Child Abduction, issued by the USA Department of States, shows that although U is not amongst the non-compliant countries, the Court observed significant delays on the part of U Judicial Authorities which have negatively effected cases in 2020.<sup>1</sup> Should Defendant abscond with the child to U, such judicial delays may cause irremediable harm to

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<sup>1</sup>Vide:

<https://travel.state.gov/content/dam/NEWIPCAAssets/2021%20Annual%20Report%20on%20International%20Child%20Abduction.pdf> [accessed on the 3<sup>rd</sup> November 2021]

the parent-child relationship, especially where the child, as in this case, is very young.

In light of the above considerations, together with the fact that the U is at present a Level 4 Country, so that the Co-vid 19 threat is significant,<sup>2</sup>, a fact which has also been mentioned by the Defendant during her testimony, and the fact that it is not possible to have the child vaccinated at this time, this Court shall uphold Plaintiff's requests as per his application dated 5<sup>th</sup> October 2021.

Therefore, this Court, after having seen Articles 873 to 877 of Chapter 12 of the Laws of Malta is of the opinion that all the essential elements of the Prohibitory Injunction concur.

**For these reasons the Court orders that the Defendant, OA mother of the minor child EA who is X years old, born to the parties on the X at Y, of Maltese Citizenship, be prohibited from taking or allowing anybody to take the said child out of the Maltese Islands, and orders that any passport of the minor child remain deposited under the authority of this Court.**

**The Court orders that this decree be notified to the competent authorities.**

**Senza tassa.**

**Given in Camera.**

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

**Christabelle Cassar**

**Deputy Registrar**

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<sup>2</sup> Where even fully vaccinated travelers may be at risk for contracting and spreading COVID-19 variants - Vide: <https://wwwnc.cdc.gov/travel/notices/covid-4/coronavirus-U> [accessed on the 3rd November 2021]