



**CIVIL COURT
(FAMILY SECTION)**

JUDGE ANTONIO G. VELLA, LL.D

Sitting of Friday 10th of September 2021

Warrant of Prohibitory Injunction no: 145/21 AGV

AB

Vs

CDE

The Court;

Having seen the request for a warrant of prohibitory injunction filed by applicant AB, whereby she requested the Court to stop respondent CDE from travelling from Malta with their minor son William Soto.

Having seen that the Court provisionally upheld the warrant by means of a decree dated 30 July 2021.

Having seen the reply filed by respondent CDE, whereby he stated, by way of a preliminary plea, that he enjoys diplomatic immunity and consequently cannot be bound by the civil jurisdiction of a foreign court.

Furthermore, without prejudice to the preliminary plea, there were no grounds for the warrant to be upheld.

That the mediation proceedings in the Family Court have led to a decree in favour of respondent on the 29 July 2021.

That the German Courts have already granted respondent full care and custody of the minor child FD as was confirmed by means of a General Application also decided on the 29 July 2021.

Having seen that both the application and the reply were filed in the Maltese language, and that proceedings were being conducted in the English language, since both parties do not speak Maltese.

Having seen the documents exhibited.

Having heard the submissions made by the parties.

CONSIDERS;

The Court is faced with a request to prohibit the minor child FD from travelling with his father, respondent CDE. Respondent is defending himself from this action by raising the issue of diplomatic immunity, which he enjoys as a member of the international diplomatic corp, and by rebutting the request as completely unfounded at law and in fact for the reasons indicated in his reply.

To uphold such a request, the Court has to be satisfied *prima facie* that applicant has cause to fear that her son may be taken out of the island for an indefinite period, and thus be denied effective access to his mother. In this case, the Court first must go into the defence of diplomatic immunity raised by respondent, before entering into the actual merits of the warrant itself.

A quick glance at the nature and scope of diplomatic immunity will immediately reveal that such immunity hardly applies to civil domestic disputes between parents. Indeed, diplomatic immunity was a concept that was thought of quite early in the history of mankind, when empires and civilisations started to emerge and larger conflicts arose between them, and thus the office of envoy was created as a means to convey messages and negotiations safely between nations. In recent history it has been embodied in the Vienna Convention on Diplomatic Relations of 1961. Such immunity is tied to the duties that such officers carry out, and the intention is that these officers are not hindered by local laws in the performance of their duties, thus making the effective communication between countries much easier and unhindered.

This does not mean, however, that such immunity is a *carte blanche* for the diplomat to do as he pleases, or that such a person is above the law, or in Orwellian language, more equal than others. The United States Department Of

State, Office Of Foreign Missions, makes it very clear in its publication “Diplomatic and Consular Immunity: Guidance for Law Enforcement and Judicial Authorities”;

“It should be emphasised that even at its highest level, diplomatic immunity does not exempt diplomatic officers from the obligation of conforming with national and local laws and regulations. Diplomatic immunity is not intended to serve as a licence for persons to flout the law and purposely avoid liability for their actions. *The purpose of these privileges and immunities is not to benefit individuals but to ensure the efficient and effective performance of their official missions on behalf of their governments.* This is a crucial point for law enforcement officers to understand in their dealings with foreign diplomatic and consular personnel. While police officers are obliged, under international customary and treaty law, to recognise the immunity of the envoy, they must not ignore or condone the commission of crimes.”

In other words, respondent cannot hide behind the thin veil of diplomatic immunity in this case and argue that he is untouchable or above Maltese law. It appears that respondent, the father of the minor child, is making it very difficult for the mother to even see her child in accordance with a Court decree issued by the Family Court here in Malta. This alone makes it all the more evident that applicant is right in seeking the issuing of a prohibitory injunction to keep the father from leaving Malta with her son and virtually cutting all effective contact between mother and child. In fact, the parties’ other minor child, GD, has already been taken out of the island, allegedly without applicant’s consent.

Applicant moreover argued that since respondent himself, in a separate proceeding, requested the issuing of a similar injunction on the mother, prohibiting her from leaving these islands with the child, then respondent acquiesced to the jurisdiction of the Maltese Courts and therefore passively renounced such immunity. Applicant stated that by filing an identical and competing warrant, a form of counter-claim, respondent cannot now claim diplomatic immunity in this warrant, in line with international law. The Court is in agreement with this argument. Once respondent has requested the courts in Malta to issue a warrant against applicant in the same way that applicant has done in his regard, he cannot now raise diplomatic immunity as a defence. In other words, respondent cannot have the proverbial cake and eat it. Therefore, even on these grounds, the preliminary plea of diplomatic immunity is also being rejected by the Court.

As to the actual merits of the case, the Court simply has to see whether there are *prima facie* grounds for the warrant to be upheld. The Court can only deduce what is being argued and debated between the parties by having a brief look at the extensive and exhaustive decree given by the Family Court in the mediation proceedings entered into between the parties. From a copy of this same decree as exhibited by respondent, the discussions being had between the parties are far from amicable. So far in those proceedings, respondent has been awarded care and custody of the minor child, with applicant being granted access. From the verbal submissions made in Court in the last hearing, it transpired that respondent is refusing to grant access to applicant in accordance with the decree given. Without going into the merits of access rights and obligations, the refusal to grant access in accordance with a court decree is a criminal offence that is against public order. Respondent may believe he has every right to defy a court order, indeed he may feel aggrieved by such an order granting access to the minor child

to the other part. However, once the Family Court has examined the merits in those proceedings and in spite of such an order respondent is refusing to cooperate with the other parent on this matter, the issuing of an injunction prohibiting him from leaving Malta with the child is more than justified in these circumstances.

DECIDE;

For these reasons the request for the issuing of a warrant is being upheld.

Hon Justice Anthony G. Vella

Deputy Registrar