



**CIVIL COURT  
(FAMILY SECTION)**

**JUDGE ANTONIO G. VELLA, LL.D**

Sitting of the 15th of July 2021

**Application no: 204/20 AGV**

**AB**

**Vs**

**Dr Leontine Calleja and Legal  
Procurator Nicolette Aquilina  
as curators for the absent  
CD**

**The Court;**

**Having seen the application of the plaintiff** dated 10<sup>th</sup> November two thousand and twenty were she sat out with respect and submitted the following under oath:-

1. That the parties got married in 2009 by means of tradition in Libya, which marriage is not recognised in Malta and does not have a legal basis;

2. That from the relationship between the parties a minor child EFD was born on the 8<sup>th</sup> of May 2012 (see birth certificate hereby attached and marked as Doc A);
3. That by means of a decree of this Honourable Court, the applicant was awarded the care and custody of the minor child. That subsequently the defendant abducted the child and it was only after the institution of legal proceedings, that the German court ordered that the minor child return to Malta with the applicant;
4. That from that day onwards the applicant has not had any communication with the defendant and does not know where he resides;
5. That since the applicant has no idea where the defendant resides, this Honourable Court appointed curators to represent the defendant (see legal copy hereby annexed and marked as Doc B);
6. That the parties have been authorised to proceed at this instance by virtue of a court decree of this Honourable Court dated 22<sup>nd</sup> September, 2020 (see legal copy of the decree hereby attached and marked as Doc C);
7. That the facts here declared are known personally by the plaintiff;

For these reasons the plaintiff contends, saving any necessary and opportune decisions, why this Honourable Court should not:

1. Declares that the marriage between the spouses, that occurred by traditional means is not valid in terms of law and that has no civil or legal implications;

2. Without prejudice to the above, pronounces the personal separation between the parties on the ground of excesses, cruelty, and grievous injury, committed by the defendant, declares that the defendant forfeited from any right to receive maintenance from the applicant and orders the cessation of the existing community of acquests between the parties, liquidates the same and orders that the objects forming part therein are divided in two portions as ordered and established by this Honourable Court, which portions are assigned one to the plaintiff and the other to the defendant, and this by the appointed experts and by appointing a notary to receive the relative acts and a curator to represent the defendant if he is contumacious on the same act;

3. Orders that the defendant be deprived of all his rights of parental authority in terms of article 154 of the Civil Code and this is in the best interest of the minor child;

4. Decides that the exclusive care and custody of the minor child EFD be given to the plaintiff and authorises her to take any decisions relating to issuing of passports, residence, travel, the health and education of the minor children, the minor child's identity card and this as established by this Honourable Court;

5. Determines and liquidates an adequate amount of maintenance which should be payable by the defendant to the minor child and which should remain payable until the minor child reaches the age of the eighteen (18) years if the minor child stops pursuing hi studies and start working on a full time basis or payable up to the age of twenty thee (23) if the minor child decides to pursue their studies on a *full-time* basis; as well as ordering

that the alimony be deducted directly from the salary or income of defendant or work or any other benefits that he would be receiving and deposited directly in a bank account that is to be indicated by the plaintiff and further provides how the said maintenance is to be reviewed and increased yearly so that it reflects the increase in cost of living;

6. Orders that this maintenance should include the defendant's share of the expenses related with the health and education of the same minor children until they are studying including and not limited to uniforms, *transport, donations*, private lessons and any other expenses related to the education, including expenses related to extra-curricular activities;

7. Authorises the plaintiff to register the eventual judgement of this Honourable Court in the Public Registry of Malta.

With costs and interests against the defendant who is demanded for a reference on oath.

**Having also seen the sworn reply** of the curators Dr Leontine Calleja and Legal Procurator Nicolette Aquilina dated 1<sup>st</sup> December two thousand and twenty, were they submit:-

1. That primarily if the parties only got married according to tradition in Libya and such marriage is not recognized at law then there can be no separation between the parties and hence the second and seventh request cannot be acceded to by the Honourable Court;

2. That at this stage they are not aware of the facts of the case and thus, reserve the right to file another reply when and if they manage to communicate with the defendant they represent;
3. That they request plaintiff to provide any information that she might have such as a mobile number, postal or electronic address so as to enable possible contact with the defendant;
4. That it is the plaintiff that has to convince this Honourable Court by means of adequate proof that justify the removal of parental authority according to article 154 of the Civil Code;
5. Save the right to file other pleas if necessary.

With expenses.

Having seen the documents exhibited.

Having seen the acts of the mediation files 1566/15 and 956/20, and of the General Application 277/19.

Having heard the evidence submitted by the parties.

## **CONSIDERS:**

Plaintiff came to Malta some time in 2011, arriving as an undocumented migrant after having fled her home country, Nigeria. She claims she met defendant CD while she was in Libya waiting to board a vessel and flee to Europe, when they

both decided to pretend they were married so as to stand a better chance of being awarded some status as a married couple. They lived in the Hal Far open centre, where after a few months she got pregnant. She also claims that life with defendant was characterised by constant physical and verbal abuse in her regard, especially when he was drunk, and that he did not care for their child. She explains in detail the various incidents she had, and the time when defendant abducted the child and went to Germany, after which proceedings were successfully instituted by her for the return of the child. She claims she has been taking care of her son's needs all this time without any support from defendant.

In support of her version of events, plaintiff exhibited various documents that firmly corroborate her story. Defendant, on the other hand, was absent from these proceedings. The curator could not make any contact with him, and therefore the Court can take plaintiff's evidence as being coherent and credible.

What remains to be seen is whether the parties were actually married or not, particularly in view of plaintiff's first plea. The Court admits that it is not familiar with the customs and rituals of many African nations in this respect, and coupled with the fact that the parties arrived in Malta with little or no documents at all, makes the task all the more difficult. Indeed, the couple's behaviour after their arrival here in Malta was quite similar to that of many married couples, so the Court finds it hard to consider plaintiff's first plea as having been proven, even if on a mere balance of probabilities. This notwithstanding, plaintiff's other pleas are all being upheld. She is being granted sole care and custody of her son EF, defendant is thus being deprived of his parental authority over the child, and she will also be awarded monthly maintenance, although this may prove difficult to

actually enforce in practice, given that defendant's whereabouts are as yet unknown.

**DECIDE:**

The Court, therefore;

Denies the first request.

1. Upholds the second request, and pronounces the personal separation between the parties on the ground of excesses, cruelty, and grievous injury, committed by the defendant, declares that the defendant forfeited from any right to receive maintenance from the applicant and orders the cessation of the existing community of acquests between the parties, liquidates the same and orders that all the objects forming part therein are hereby assigned to the plaintiff.
2. Orders that the defendant be deprived of all his rights of parental authority in terms of article 154 of the Civil Code and this is in the best interest of the minor child;
3. Decides that the exclusive care and custody of the minor child EFD be given to the plaintiff and authorises her to take any decisions relating to issuing of passports, residence, travel, the health and education of the minor child, as well as the minor child's identity card.
4. Determines and liquidates the maintenance payable by the defendant for the minor child in the sum of two hundred and sixty Euro (€260) per month, and which should remain payable until the minor child reaches the

age of the eighteen (18) years if the minor child stops pursuing his studies and starts working on a full time basis, or payable up to the age of twenty-three (23) if the child decides to pursue his studies on a *full-time* basis; as well as ordering that the alimony be deducted directly from the salary or income of defendant or work or any other benefits that he would be receiving and deposited directly in a bank account that is to be indicated by the plaintiff. Such maintenance is to increase every two (2) years by thirty Euro (€30) per month.

5. Such maintenance order includes the defendant's share of the expenses related with the health and education of the same minor child until he is studying, including and not limited to uniforms, *transport*, *donations*, private lessons and any other expenses related to the education, including expenses related to extra-curricular activities;

6. Authorises the plaintiff to register the eventual judgement of this Court in the Public Registry of Malta.

Given that a curator is representing defendant, all costs are to be borne by plaintiff, and shall become recoverable directly from defendant if and when his whereabouts are determined.

**Anthony G Vella**

**Judge**

**Dep Reg**

**Cettina Gauci**