

**CIVIL COURTS
(FAMILY SECTION)**

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

Hearing of 18th November 2021

Application no. : 192/2018 JPG

Case no. : 19

**TG
Vs
VM**

The Court:

Having seen the application filed by TG, dated 16th July 2018, at page 1 (translated version at page 20) et seqq., wherein it was declared:

- 1. That the parties contracted marriage on the 14th September 2002 as can be shown from the marriage certificate progressive number: 1601/2002 herewith attached and marked DOC A.*
- 2. That from this marriage the parties have a daughter who is a minor.*
- 3. That the parties have been de facto separated since the 11th September 2009.*
- 4. That there is no reasonable prospect of reconciliation between the parties and each of them leads a separate life independent of one another;*
- 5. That there is no maintenance due between the parties.*
- 6. That these facts satisfy the conditions established by article 66B of the Civil*

code for the attainment of divorce.

The Applicant request:

- a) That the court pronounce the divorce between the parties;*
- b) That the Court orders the Registrar of Courts to notify the Director Public Registry with the pronouncement of divorce of the parties so that such changes will be registered in the Public Registry;*
- c) The Applicant requests that in terms of the dispositions in article 66B of Chapter 16 that this Honorable Court, after hearing the parties as intended in article 66C of Chapter 16 and in order to be established the existence of the conditions mentioned in Article 66B, pronounces the divorce between the parties as intended in the said Article 66C.*

Having seen that the application and documents, the decree and notice of hearing have been duly notified according to law;

Having seen the reply of Dr Rodianne Sciberras [0376688M] as special attorney of VM, dated 1st of February 2021, at page 41, wherein it sated:

- 1. That Respondent nomine is acting as special attorney of the absentee VM who resides abroad;*
- 2. That in addition to the above, Respondent nomine submits and confirms that the parties got married on the 14th September 2002 and from their marriage, a daughter was born;*
- 3. That Respondent also confirms that the parties have been living de facto separated since 2009, when they obtained a divorce in Georgia (Dok A attached); there is also agreement that there is no chance of reconciliation between them;*
- 4. That as a matter of fact, Respondent also confirms that there are not issues about*

maintenance between, both vis-à-vis the spouses and the minor daughter;

5. That therefore, whilst Respondent is not objecting to the Plaintiff's demands, she objects to the expenses of these proceedings;

Such is what Respondent has to submit at this stage.

Having examined all the evidence on oath;

Having seen the exhibited documents and all the case acts;

Having seen the Joint Application filed by the parties dated 18th March 2021, whereby they invited the Court to adjourn the case for judgment;

Having seen the Articles 66A, 66B u 66C of Chapter 16 of laws of Malta;

Considers:

Respondent testified on the 1st of March 2021 via Zoom (vide fol 60 et seq) confirming the date of the marriage between the parties. He explained that the parties divorced in Georgia several years ago in 2009 and have not lived together as husband and wife ever since, and that there has never been a reconciliation. Respondent states that he has in fact re-married abroad and that there are no pending issues with regards to maintenance between him and the Plaintiff.

Plaintiff testified on the 1st of March 2021 (vide fol 62 et seq) and explained that she married the Respondent on the 14th of September 2002 and that the parties have one daughter who resides with her here in Malta. Plaintiff added that the parties divorced in September of 2009 and have not lived together ever since, nor have they reconciled. Plaintiff confirms that there are no maintenance claims which are still pending.

Considers:

Article 66(A) and article 66 (B) of Chapter 16 of the Laws of Malta stipulate the following:

66A.(1) Each of the spouses shall have the right to demand divorce or dissolution

of the marriage as provided in this Sub-Title. It shall not be required that, prior to the demand of divorce, the spouses shall be separated from each other by means of a contractor of a judgement.

(2) The divorce or dissolution of the marriage shall be granted by virtue of a judgement of the competent civil court, upon the demand of one or the other of the spouses, or by a decree of the same court where the spouses shall have agreed that their marriage should be dissolved.

(3) All demands for divorce shall be brought before the appropriate section of the civil court as established by regulations made by the Minister, and the provisions of article 37 shall apply mutatis mutandis. The decrees and judgements of divorce shall be pronounced in open court.

(4) The court shall, in the decree or judgement of divorce, clearly indicate the progressive number of registration of the Act of Marriage and identification number of the parties, and order the Registrar of Courts to notify the divorce of the parties to the Director of Public Registry within the period allowed for this purpose by the same court, so that the same shall be registered in the Public Registry.

66B. Without prejudice to the following provisions of this article, divorce shall not be granted except upon a demand made jointly by the two spouses or by one of them against the other spouse, and unless the Court is satisfied that:*

(a) upon a demand made jointly by the two spouses, on the 30 date of commencement of the divorce proceedings, the spouses shall have lived apart for a period of, or periods that amount to, at least 6 months out of the preceding year: Provided that when the demand is made by one of the spouses against the other spouse, on the date of commencement of the divorce proceedings, the spouses shall have lived apart for a period of, or periods that amount to, at least one year out of the preceding two years; or

(b) on the date of commencement of the divorce proceedings, the spouses are separated by means of a contract or court judgment; and

(c) there is no reasonable prospect of reconciliation between the spouses; and

(d) the spouses and all of their children are receiving adequate maintenance, where this is due, according to their particular circumstances, as provided in article 57: Provided that the spouses may, at any time, renounce their right to maintenance:

Provided further that for purposes of this paragraph, maintenance ordered by the court by a judgement of separation or agreed to between the spouses in a contract of separation, shall be deemed to be adequate maintenance:

Provided further that a divorce pronounced between spouses who were separated by a contract or by a judgement shall not bring about any change in what was ordered or agreed to between them, except for the effects of divorce resulting from the law.

Deliberates:

The Court has seen that the parties were married on the 14th September 2002 at the Public Registry in Valletta. This marriage was subsequently registered at the Public Registry in Valletta bearing registration number 1601/2002. From this marriage, the parties had a daughter who was born on the 13th of December 2002, who has now reached the age of majority. It appears that the Respondent abandoned the matrimonial home on the 11th September 2009 and thus the parties have been de facto separated since that day.

It also appears that the parties have been granted a divorce in Georgia on the 11th of August 2009 as evidenced by the document found *a fol 47* of the acts of the proceedings.

Request for the Dissolution of the Marriage:

The Court notes that Subsidiary Legislation 12.20 requires that, in cases where the parties are not already separated, proceedings are initiated by means of an application requesting the appointment of mediation proceedings. In this case Plaintiff did not file an application, but a letter. Mediation proceedings commence by means of a letter ***only*** in the case of proceedings for personal

separation. The Court notes that the Family Court's decree, dated 16th May 2018 (*vide fol 18*) authorizing the Plaintiff to proceed with the filing for judicial separation, had requested the Plaintiff to confirm the contents of the said letter on oath, however, it appears that the Plaintiff failed to confirm the said content on oath.

This Court also asked for the annexing of the mediation proceedings in question, and also verified the above from the original acts, wherein it is apparent that the Plaintiff failed to adhere to the decree of the 16th of May 2018 and confirm the contents of the said letter on oath.

Additionally, the Court has seen that according to article 66G (2) of the Civil Code:

“The application for the commencement of divorce proceedings shall: (a) where the spouses are not separated by means of a contract or a court judgement, be accompanied by a note in which the advocate confirms that he has observed the requirements of sub-article (1);”

The Court has also seen that according to the first proviso to article 66G (2),

“Provided that where the advocate assisting a client in a cause for divorce shall not have presented the said note, the copy of the judgement of separation or of the contract of consensual separation, as the case may be, the advocate shall present these documents not later than, or during, the first sitting in the cause:”

The Court notes that from the acts of these proceedings it results that Plaintiff's lawyer had not filed the note required according to article 66(2) of the Civil Code with the application for the commencement of these proceedings, which note has never been filed till the present day.

On this matter the Court makes reference to the judgement in the names ***JM vs FM*** decided by this Court on the 2nd of July 2020 wherein on this issue it was stated that:

“Il-Qorti tqis illi galadarba l-Legislatur ghazel illi jimponi dan ir-rekwizit fi proceduri ta' divorzju, m'huwiex possibli ghal din il-Qorti illi tinjora r-rieda tal-Legislatur u taghlaq ghajneja ghal dan in-nuqqas. Dan speċjalment ikkonsidrat illi l-Legislatur inkluda wkoll zmien perentorju entro liema ghandha tigi prezentata din in-nota, u cioe sa mhux aktar tard mill-ewwel dehra, u

ghaldaqstant lanqas ma kien possibli ghal din il-Qorti illi taghti lir-rikorrenti aktar zmien sabiex tottempera ruhha ma' dan ir-rekwizit."

Therefore, it is evident that Plaintiff has failed to satisfy not merely one, but two procedural requirements necessary in order to enable this Court to take cognizance of her demands. The Court has no alternative other than to abstain from taking further cognizance of Plaintiff's requests.

The Court also notes that Respondent's counsel also failed to adhere to the requirements envisaged in article 66H of Chapter 16 of the Laws of Malta.

For these reasons, the Court declares that Plaintiff has failed to satisfy the conditions imposed by this Court as differently presided in its decree dated 16th May 2018 in terms of S.L. 12.20 and those set out in article 66G (2) (a) and 66H of the Civil Code, and abstains from taking further cognizance of this case.

Costs to be borne by Plaintiff.

Read.

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

Christabelle Cassar

Deputy Registrar