

**CIVIL COURTS
(FAMILY SECTION)**

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

Hearing of 30th November 2021*

Application no. : 186/2021

Case no. : 31

RL

Vs

BC

The Court:

Having seen the sworn Application filed by RL, dated 12th May 2021, at page 1 (translation at page 4), wherein it was held:

- 1. That the parties got married on the 7th January of the year 2012 in Malta and the same marriage was registered in the Malta Public Registry with progressive number 26/2012, MR No. 2258/2011 (certificate hereto annexed and marked 'Doc A');*
- 2. That from this marriage, YC, a minor, was born on X;*
- 3. That the parties separated by means of a contract signed before Notary Public Liza Schembri on the 1st June 2016 (contract hereto annexed and marked as Doc C), and this after being so authorised;*
- 4. That subsequently, further proceedings were initiated before this Honourable Court, application number 193/17 AL, RL vs. Dr. Simon Micallef Stafrace and L.P Marie Claire Bonello who, by means of a decree dated 23rd August 2017, were appointed as curators to represent the absent BC, through which proceedings the plaintiff was entrusted with sole care and custody and parental authority of the minor, and the defendant's access was suspended for reasons better explained in*

*the judgment given by this Honourable Court dated 28th May 2019 hereto annexed and marked as **Doc D**;*

5. *That the parties have not lived together since the year 2015 and there is no reasonable prospect for reconciliation between the parties;*
6. *That while the obligation of maintenance is contemplated in clause number 10 of the contract of separation dated 1st June 2016, it results that maintenance was never paid. This is the only pending matter between the parties and this application should not be interpreted as a renunciation to the same;*
7. *That since this default is attributable to the defendant, this should not pose an obstacle to the divorce proceedings as considered by this Honourable Court in application number: 261/2020 JPG, JT vs. RT, decided 29th January 2021;*
8. *That in the plaintiff's opinion, all the criteria required by law for the dissolution of marriage and for the divorce of the parties, are present;*

THEREFORE, *the plaintiff humbly requests that this Honourable Court:*

- (i) *Declare the marriage between the parties dissolved and pronounce divorce between the parties for all effects and purposes at law;*
- (ii) *Order the Registrar of the Courts so that within the time so fixed by this Honourable Court, he shall notify the Director of the Public Registry of the divorce of the parties in order to be registered;*

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

Having seen that Defendant has been duly served but has failed to file a sworn reply and has failed to appear in Court, therefore Defendant is contumacious at Law. (Vide Fol 41).

Having seen the exhibited documents and all the case acts;

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

Considers:

RL testified (vide affidavit at page 35) that the parties got married on the 7th January 2012, and from this marriage a daughter was born. She stated that this marriage broke down and they separated by virtue of a contract dated 1st June 2016. However they had been living apart since December 2015. She declared that there is no prospect for reconciliation with her husband. Moreover, she declared that there are still pending maintenance arrears due.

Having seen that Defendant has been duly served but has failed to file a sworn reply and has failed to appear in Court, therefore Defendant is contumacious at Law. (Vide Fol 41).

Having seen that Defendant was given the faculty to file written submissions in terms of Art 158 (10) of Chapter 12 of the Laws of Malta.

Having seen that this notwithstanding the Defendant failed to file any written submissions.

Deliberates:

According to Law, it is confirmed in Articles 66A and 66B of Chapter 16 of laws of Malta:

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 contract or of a judgement.

(omisis)

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 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.

Considers:

The Court has seen that the parties were married on the 7th January 2012, (vide Doc A, page 7) and a child was born from this marriage who is still minor;

The record shows that the marriage broke down and the parties obtained a personal separation by means of a public deed in the acts of Notary Liza Schembri dated the 1st June 2016 (vide Dok C, page 9 et seqq). Furthermore, as the acts show, they separated de facto as from December 2015. Therefore, it is established that the parties have been separated in excess of the timeframe required by law.

The record shows that that there are still pending maintenance arrears which are owed by the Defendant. The Court has seen the Judgement in the names JT vs RT (App. No. 261/2020) decided

by this Court on the 29th January 2021 and accordingly finds that since it is the Plaintiff that is owed maintenance arrears this may not be an obstacle to her acquiring a divorce.

Furthermore, the Court finds that there is no reasonable prospect of a reconciliation between the parties

For these reasons, the Court pronounces the dissolution of the marriage between the parties by divorce, with Marriage Certificate Number 26/2012 and orders the Court Registrar to advise the Director of the Public Registry of the dissolution of the marriage between the parties so that this may be registered in the Public Registry.

Senza Tassa.

Read.

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

**Lorraine Dalli
Deputy Registrar**

***By virtue of a decree dated 7th of October 2022, the date of judgment shall read 15th of December 2021**

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

**Lorraine Dalli
Deputy Registrar**