

**CIVIL COURTS  
(FAMILY SECTION)**

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

**Hearing of 8th February 2022**

**Application no. : 272/2021**

**Case no. : 19**

**AH**

**VS**

**MH**

**The Court:**

Having seen the sworn application filed by AH, dated 25<sup>th</sup> of June 2021, at page 1 (translation at page 2), wherein it was held:

- 1. Parties got married on 3rd July, 2014 in Ro and this as confirmed in their marriage certificate herewith attached and marked as DOK A.*
- 2. From this marriage, their daughter NH was born on the Y.*
- 3. Parties obtained their personal separation contract, by means of a separation contract dated 17th May, 2018, in the acts of Notary Carmel Gafa (contract herewith attached and marked as DOK B)*
- 4. There is no hope for parties to reconcile since they have been separated for many years; they live a totally separate life.*
- 5. In light of the above, the parties satisfy the conditions required to obtain their divorce in terms of article 66B of the Civil Code, Chapter 16 of the Laws of Malta.*

*For these reason, applicant humbly requests this Honourable Court to*

- 1. Declare that their marriage is dissolved;*
- 2. Order that the Registrar of Court and Tribunal, within the time prescribed by this Honorable Court, to notify the Director of Public Registry about the dissolution of the parties' marriage in order to be registered in the Public Registry.*
- 3. Authorises applicant to revert to her maiden surname 'T'*

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 page 24);

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. (vide page 37)

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

Having seen Plaintiff's note dated 4<sup>th</sup> of October 2021; (vide page 19 et seqq.);

Having seen the exhibited documents and all the case acts;

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

**Considers:**

**AH** testified (vide affidavit at page 22) that the parties got married on the 3<sup>rd</sup> of July 2014 in R, and from this marriage a daughter was born. She stated that this marriage broke down and they separated by virtue of a contract dated 17<sup>th</sup> of May 2018. She declared that there is no prospect

for reconciliation with her husband. Moreover, she declared that there are still pending maintenance arrears due.

**Deliberates:**

According to Law, it is confirmed in Articles 66A and 66B of Chapter 16 of the 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 3<sup>rd</sup> of July 2014, (vide Doc A a copy of the marriage certificate number 33 of 3<sup>rd</sup> July 2014, at page 12 after having seen the original marriage certificate) 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 Dr. Carmel Gafa' dated the 17<sup>th</sup> May 2018 (vide Dok B, page 3 et seqq). 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 on the part of the Defendant.

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

It is this Court's considered opinion that there are no exceptions that this Court may raise ex-officio and this in the light of the contumacious position of Defendant. It is pertinent to note that the Plaintiff is not the **debtor** of maintenance arrears and therefore there is no justification for this Court not to accede to the request for divorce. To state otherwise, with tantamount to a double injustice. The position would be different had the debtor of maintenance arrears been the Plaintiff requesting divorce.

**For these reasons, the Court pronounces the dissolution of the marriage between the parties by divorce, with Marriage Certificate Number marriage certificate number 33 of 3<sup>rd</sup> July 2014 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 noted in the Public**

**Registry. Furthermore, the Court authorizes the Plaintiff to revert to her maiden surname ‘T’ and orders the Director of the Public Registry to take the appropriate measures.**

**Senza Tassa.**

**Read.**

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

**Christabelle Cassar  
Deputy Registrar**