



**CIVIL COURT
(FAMILY SECTION)**

MR. JUSTICE ANTHONY G. VELLA

Sitting of Wednesday 6th April 2022

APPLICATION number : 539/2021 AGV;

AE

v.

**Dr Leontine Calleja u l-
Prokuratur Legali Nicolette
Aquilina as curators of the
absent JA**

The Court;

Having seen the Application of AE

Humbly submits and under oath declares:

1. That by means of a court decree dated the 14th of August 2019 the Court appointed Dr. Leontine Calleja and Legal Procurator Nicolette Aquilina to represent the absent JE in these acts and in subsequent acts (see **Doc A** attached);

2. That the parties married in the year 2009 in Libya and separated by means of a judgment delivered by the Court on the 15th of July 2021, which judgment was not appealed (see copy of judgment and certificate of no appeal hereby attached and marked as **Doc B**);

That in the same judgment, the Court confirmed that the parties got married and thus separated the parties;

3. That there is no possibility of reconciliation between the parties and this since apart being separated for years, nowadays live separate lives, so much so that the plaintiff does not know where the defendant is residing;

4. That the plaintiff declares that the defendant is not paying maintenance for the minor child but refers to article 66D of the Civil Code, whereby the law in sub-article (2) stipulates that it is the party making the demand that can contest the divorce on the basis of this plea. That in this case, the plaintiff is due arrears and thus all conditions as stipulated by law are satisfied;

5. That the parties have been living separately since the year 2013;

6. That these facts satisfy the conditions required by law for the obtainment of a divorce according to article 66B of Chapter 16 of the Laws of Malta (see Affidavit marked as **Doc C**);

Therefore, the plaintiff humbly requests this Honourable Court to:

1. Orders the divorce between the parties in terms of article 66B of Chapter 16 of the Laws of Malta;

2. 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.

Save any other orders that the court deems fit and just

Having seen the reply of of Dr. Leontine Calleja holder of Id no: 272169M and PL Nicolette Aquilina as curators for the absent JA

Humbly submit:

1. That primarily the plaintiff declared under oath that the parties were not married in Libya but only declared this on their arrival in Malta so as to be given more assistance by the authorities;

2. That for this reason there exists a contradiction in the sentence of separation no 204/20 as the court denied the first request where the plaintiff requested the court to pronounce the personal separation of marriage that took place in Libya since *court finds it hard to consider plaintiff's first plea as having been proven, even on a mere balance of probabilities* but then went on to say that it *upholds the second request, and pronounces the personal separation between the parties on the grounds of excesses, cruelty and grievous injury....;*

3. That if there is no proof of a marriage having taken place one cannot pronounce a divorce on an inexistant marriage, since as per art 66A(4) of chapter 16 of the Laws of Malta below, the details of marriage are required and are to form part of the judgement.

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

4. That they request plaintiff to declare if she has had contact with defendant since case no 240/21 AGV was decided and if so 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;

5. Save the right to file other pleas if necessary.

With expenses.

After having seen all the documents exhibited by the parties and heard all the evidence.

CONSIDERS:

The case concerns an application for divorce, following a judgment of separation given by this Court some months earlier on the 15 July 2021. From the evidence submitted, it appears clear that applicant had filed a court case asking for a declaration that she had not been legally and validly married to respondent, and alternatively requesting separation from respondent. The Court had decided that case on the basis of the evidence brought before it, and consequently granted applicant the second request, that is separation from her then husband. Applicant is now requesting the Court to grant the dissolution of marriage by pronouncing the divorce between the parties.

Respondent could not be traced in order to appear in these proceedings, and the curator rightly referred to the previous case and the evidence submitted therein. For the Court to deny the request for divorce, there have to subsist a number of conditions. It is evident that in this case, no such conditions subsist. There appears to be no possibility of the parties reconciling; parties have been living apart for a number of years; finally, applicant declares that respondent is still owing

maintenance as per the judgment referred to earlier, but that this may only be raised as an objection by respondent if he were to be paid maintenance. In other words, there are no grounds for the Court to deny the request for divorce.

DECIDE:

Now, therefore, the Court;

Upholds the applicants' claim.

Declares the divorce of the marriage contracted between the parties.

Orders the Registrar of Courts to inform within ten (10) days the Director of the Public Registry to register the divorce in the Public Registry.

Without costs.

Hon. Anthony Vella

Judge

Cettina Gauci- Dep Reg

