



**CIVIL COURT
(FAMILY SECTION)
MR. JUSTICE ANTHONY G. VELLA**

Sitting of Thursday 26th May 2022

Application number : 93/2021 AGV , in the names of ;

GCP

Vs

**Dr Mario Caruana and PL Silvana Vella appointed
as Deputy Curators to represent the absent CAM as
per decree dated 3rd June 2021.**

The Court;

Having seen the SWORN APPLICATION of GC P dated 22nd March 2021;

**Respectfully submits and on oath confirms the following facts which she
declares to know personally:**

1. That the parties are both foreign nationals, namely citizens of Romania. The applicant had married the respondent CAM in Romania on the 11th September 2010, from which marriage the minor BGM was born on the 3rd May 2013 in Roman, Romania, copy of the birth certificate hereunder annexed and marked as Dok. A;
2. That there were various problems in the marriage of the parties, particularly domestic violence of a physical and psychological nature committed by the respondent against both the applicant and eventually the minor daughter as well;
3. That the applicant divorced from the respondent in Romania, which divorce was pronounced by means of a judgement delivered by Roman Court – Neamt County in Romania on the 26th January 2015. This judgement was not appealed;
4. That in the mentioned divorce judgement, the Civil Court in Romania while making a reference to this same domestic violence committed by the respondent against the applicant and in fact it pronounced the divorce between the parties for faults exclusively imputable to the respondent, in so far as the minor child is concerned, it decided that notwithstanding the serious problems between the parties, it was in the minor's interest that parental authority remains vested and exercisable by both parties together, in that the habitual residence of the minor was to be with her mother the applicant, whereas the respondent was condemned to contribute maintenance towards the minor of not less than 25% of the minimum wage from the 30th May 2014 till the child attains majority;

5. That when the minor child was around two years three months old, the applicant met a certain EP in Romania with who she began a relationship. Nowadays the applicant is married to this third party and has a very happy marriage. However when initially the respondent had gotten to know about the applicant's relationship, the situation degenerated again and the applicant was subject to harassment and threats (including death threats) committed by the respondent in her regard and her family, amongst other things;
6. That because of the respondent and his deplorable behaviour, the applicant came to Malta on the 6th October 2015 and she started living and working here – EP had been living in Malta from around three years prior. The applicant has been in Malta since that time
7. That when the applicant came to Malta to start a new life away from the respondent and his abusive behaviour, the respondent refused to allow her to bring the minor child to live with her in Malta, and this simply to spite the applicant and in order to do anything in order to make her life a living misery. At that time the applicant used to work in order to send money back to Romania for her daughter who she had left in her parents' custody, and she used to visit her daughter every 2-3 months. All this was happening while the respondent never showed any interest to spend time with his daughter, to keep contact with his daughter, to be present in her life in any manner and additionally he did not even contribute the maintenance that he was condemned to pay by the court;
8. That in the beginning of the year 2018, whilst various legal proceedings were initiated by the applicant in Romania against the respondent, including proceedings of a criminal nature and proceedings in order to be

given the exclusive care and custody of her daughter, the respondent had agreed that he would sign all that was necessary whenever the need arose in order to allow his daughter to come and live in Malta with her mother, however on condition that the applicant withdraws all the proceedings against him;

9. That since the applicant's sole interest was to be reunited with her daughter she accepted that proposed by the respondent and therefore whilst the applicant withdrew the proceedings that were ongoing at that time, on the 8th January 2018, the respondent made a declaration before a Notary Public in Pascani, Romania by virtue of which he authorized the applicant to bring the minor to live with her in Malta, which declaration was valid for a period of 1 year, from the 8th January 2018 to the 8th January 2019;
10. That furthermore on the 9th January 2018, the respondent gave a power of attorney to the applicant before a Notary Public, by virtue of which he authorised the same applicant, in view of the fact that the minor was coming to live with her in Malta, to take on his behalf all those decisions regarding the minor's education in Malta, including to enrol the minor in a school in Malta, and to take decisions related to the minor's health. This power of attorney, contrarily to the declaration mentioned in paragraph 9 above, was given for a period of 3 years, hence valid till the 9th January 2021;
11. That the minor BGM first arrived in Malta on the 10th January 2018, and already from February 2018 she started attending school in Malta, namely St Thomas Moore College, St Anne Marsaskala Primary and is still living with her mother in Malta since that time;

12. That in July 2018, when the applicant last visited Romania for a holiday together with her daughter and her husband EP the applicant tried to get her daughter to meet her father the respondent on three different occasions, however she never found him at his parents where he was living at the time and the respondent's father had even refused to pass on any information to her regarding his son and his whereabouts for the minor's sake. It was only by mere coincidence that the child came face to face with her father for a few minutes only whilst she was inside a shop buying with her mother and EP, and even in this occasion the respondent was so aggressive that he frightened his minor daughter and made her cry. The child did not want to have anything to do with her father from then onwards. The respondent did not try to contact his daughter after this;

13. That in this occasion and on the back of the power of attorney given to her (paragraph 10 above) that was valid for three years, the applicant requested the respondent to extend the authorisation given by him in order that his daughter could continue living with her mother in Malta after the 8th January 2019 and this owing to the fact that because of the child's school, the applicant was not going to be in a position to go to Romania in January 2019 for this purpose, however the respondent refused even though he had promised that he would sign whenever there was the need. The respondent never made another authorization beyond the 8th January 2019, however he never even showed any interest to see his daughter returned to Romania and in fact the minor child remained in Malta with her mother;

14. That when the child first arrived in Malta, the applicant stopped working for one year in order to spend the most time with her daughter, to take care of her and make good for the time she was separated from her, and after that year passed the applicant started her own business. The applicant is

now self-employed and hence she is in a much better financial position today to provide for all of her daughter's needs, and this especially because of the fact that the respondent never contributed anything and till this very day does not contribute anything towards his minor daughter;

15. That the minor, who will be 8 years old in a few weeks' time, has established and integrated herself very well in Malta – as has already been stated above she attends a public school in Marsascala, this being the same school that she was enrolled into when she arrived here in 2018, is doing well in her education, has a very happy childhood (as she deserves after all) and this also due to the fact that since EP has been present in her life and that of the applicant, the child is being brought up like other normal children in an environment which is much more ideal, secure and happy, away from her father's threats, domestic violence and abusive behaviour. The minor is also registered as being resident in Malta;

16. That between the minor and the applicant's husband a very strong and special relationship has grown – although the minor child is well aware that the respondent is her father, she considers that EP is her real father and not the respondent. The same EP takes care of the minor, provides financially for her contrarily to the respondent who is obliged but does not care, always involved himself in a very active manner in her upbringing and education as any normal father who loves his children, and this even though the child is not his daughter biologically. The applicant tried several times to speak to her daughter about her father, the respondent, however this affects the child badly as she starts getting upset and cries because for her no one other than EP is her father;

17. That since the Summer of the year 2018, the respondent never tried to make contact with the minor even though he knows how and where he can contact her and can easily speak to her if he wants. In all this time, he never even tried to ask to see his daughter nor to come to Malta to visit her nor did he insist that the applicant goes to Romania with her daughter in order that he may have access to her. His total lack of interest in his daughter is blatant;

18. That on the other hand, it is impossible for the applicant to contact the respondent in order to take the decisions regarding her minor daughter and this because apart from the fact that he is a difficult person and she never gets anywhere with him, the applicant has nowhere to contact him, except to try and get through to him via his parents who live in Luncasi village, Halaceusti, Iasi in Romania, however she never gets any feedback from them. The last information that was made available to the applicant is that the respondent has even left Romania and has gone to England, however she has no information, not a telephone number and not even an address, to be able to trace him because of their daughter,

19. That the applicant's problem has become bigger now that the power of attorney of the 9th January 2018 has expired and therefore the applicant has found herself in the ridiculous situation where she cannot continue taking decisions for her minor daughter as she was doing because of the respondent's behaviour and the shortcomings. This is only going to result in serious prejudice to no one but the minor child.

20. That the applicant who has an interest to be entrusted with the exclusive care and custody of her minor daughter, and this already from before the expiry of the power of attorney, tried to resort to the court in Romania,

Pascani Court- Civil Section in order to amend the divorce judgement of the 26th January 2015 in that part that concerns the care and custody of the minor child in order that this is entrusted exclusively to her in view of all that premised above, however that Court in a judgement delivered on the 15th February 2019 *ex officio* raised the plea of incompetence of the Romanian Court due to lack of jurisdiction and decided that since the habitual residence of the minor is in Malta nowadays, then it is the Courts of Malta that have the jurisdiction to hear and decide such a dispute and hence the case instituted by the applicant was rejected on this basis. This judgement was also confirmed on appeal, and this by means of a judgement delivered by the Iasi Tribunal – Civil Section I on the 19th November 2019;

21. That this is the reason why this cause had to be instituted

22. That the applicant was duly authorized to proceed with this case by means of a decree given by the Civil Court (Family Section) dated the 22nd January 2021, a legal copy of which is being hereunder annexed and marked as Dok. F;

Thus, the respondent is therefore requested to state why this Honourable Court should not, for the reasons above premised and saving any declaration and provision that may be necessary;

1. Declare that the divorce judgement delivered by the Court in Romania, namely Roman Court, Neamt County, Romania of the 26th January 2015 in

the names GCM vs CAM as recognizable and enforceable in Malta, and this in terms of Council Regulation (EC) Number 2201/2003;

2. Consequently vary the divorce judgement delivered by the Roman Court – Neamt County, Romania of the 26th January 2015 in the names GCM vs. CAM , in that part of the judgement where that Court decided that the parental authority over the minor BGM shall be vested in both parents and instead to order that the parental authority shall no longer be vested in the parents jointly and to consequently entrust and grant the care and custody of the minor child BGM exclusively in the hands of her mother, the applicant GCP (formerly M), in that any decisions regarding health, education, religion, the upbringing and travelling of the minor, including the issuing and renewal of the minor’s passports, and generally any other decision regarding the minor shall be solely taken by the applicant without the need of the authorisation and/or the consent of the respondent, and this in the best interests of the mentioned minor BGM ;

3. Consequently vary the divorce judgement delivered by the Roman Court - Neamt County, Romania of the 26th January 2015 in the names GCM vs. CAM , in that part of the judgement where that Court decided that the residence of the minor child shall be with the Mother and to instead order that the habitual and ordinary residence of the minor BGM shall be with her mother, the applicant GCP (formerly M) in Malta and in any other country in which the applicant may choose to established her habitual and ordinary residence;

With all expenses against the respondent who is as of now summoned for the reference of his oath.

The Court;

Having seen the additional Application of GC P

Humbly submits:

That in the cause in the names premised above, the applicant is requesting this Honourable Court, after having recognised the judgment given by a foreign court in Romania, a member state of the European Union, as enforceable in Malta, which judgement regulates the divorce between the applicant and the respondent CAM as well as all issues relating with their minor daughter BGM , to vary that same judgement insofar as the care and custody and the habitual residence of the same minor are concerned;

That the applicant would like to add two further requests to those already contained in the sworn application, which requests do not change anything from the action as proposed and the substance of the same action as proposed, and this in terms of Article 175 of the Code of Organisation and Civil Procedure, Cap. 12 of the Laws of Malta, which additional claims, that are to be numbered with numbers 4 and 5 respectively, are the following:

4. Alternatively in the event that applicant's request numbered 2 is not acceded to, to order that due to a change in circumstances, the care and custody of the minor child BGM is to be entrusted solely and exclusively

in the hands of her mother, the applicant GCP (formerly M), in that any decisions regarding health, education, religion, the upbringing and travelling of the minor, including the issuing and renewal of the minor's passports, and generally any other decision regarding the minor shall be solely taken by the applicant without the need of the authorisation and/or the consent of the respondent, and this in the best interests of the mentioned minor BGM ;

5. Alternatively in the event that applicant's request numbered 3 is not acceded to, to order that due to a change in circumstances, the habitual and ordinary residence of the minor BGM shall be with her mother, the applicant G CP (formerly M) in Malta and in any other country in which the applicant may choose to establish her habitual and ordinary residence;

Thus the applicant humbly requests this Honourable Court to authorise her, to add these two additional requests to those already contained in her original sworn application, in the manner and format being requested in this application as indicated above, in terms of Article 175 of the Code of Organisation and Civil Procedure, Cap. 12 of the Laws of Malta and this subject to those provisions that this Honorable Court deems appropriate.

The Court;

Having seen the sworn reply of Deputy Curator Dr Mario Caruana and LP Silvana Vella ;

That the applicant who had the onus of providing and that is that by virtue of the proof submitted by her, she must convince this Honorable Court that the allegations made by her with regard to the respondent are founded.

That respondent at this stage declare that they are not aware of the facts surrounding this case and therefore reserve their right to submit ulterior pleas, if they become aware of facts relating to this case.

Saving further pleas.

With expenses against the applicant who is as of now summoned for the reference of her oath.

Having heard all the evidence submitted by the parties.

Having examined all the documents exhibited.

CONSIDERS:

This case concerns the care and custody and general well-being of a minor child, BGM born on the 3 May 2013 in Romania, and currently residing in Malta with her mother, plaintiff GCP . The facts of the case are briefly as follows. Plaintiff was married to CAM and had a daughter with him. Subsequently, the parties divorced by means of a Romanian Court decree dated 26 January 2015, and

plaintiff remarried. She came to Malta together with her husband and her minor daughter to reside and work here, while the father remained in Romania. His whereabouts are still unknown. Plaintiff instituted these proceedings to have the Romanian divorce decree registered and recognised here in Malta, and subsequently to regulate all matters pertaining to the child's care and custody, given that the father is absent from these islands.

The issue of registering a divorce decree issued in a foreign country is merely a formality. All that is required is for the person making the request to file a copy of the divorce decree with the Maltese courts, and to request its recognition. Plaintiff has in fact made this plea in her first request in the sworn application and has also submitted the copy of the Romanian court decree for this court's consideration. Among the documents exhibited by plaintiff, there are the following documents:

1. **Dok. A** – Copy of the birth certificate of the minor BGM
2. **Dok. B** – Copy of the divorce judgement delivered by the Roman Court-Neamt County, Romania on the 26th January 2015 in Romanian language together with a translation into English;
3. **Dok. C** – Copy of the declaration of the 8th January 2018 made by the respondent by virtue of which he gave his authorisation for his minor daughter to come live with her mother the applicant, in Malta, in Romanian language together with a translation into English

4. **Dok. D** – Copy of the power of attorney of the 9th January 2018 made by the respondent in favour of the applicant by virtue of which in consequence of the fact that the minor was coming to live in Malta, he authorised the applicant to take all decisions regarding the health and education of the child in Malta, in Romanian language together with a translation into English

5. **Dok. E** – Copy of the judgement delivered on the 15th February 2019 by Pascani Court – Civil Section, Romania by virtue of which that Court decided that it lacked the competence to decide the dispute about the care and custody of the minor BGM due to lack of jurisdiction and that instead it is the Courts of Malta where the minor is habitually residence that have jurisdiction over this dispute, in Romanian language together with a translation into English;

6. **Dok. F** - Copy of the appeal judgement delivered on the 19th November 2019 by Iasi Tribunal - Civil Section I, Romania by virtue of which that Court confirme dteh judgement of the 15th February 2019 delivered by Pascani Court – Civil Section, in Romanian language together with a translation into English

The first plea raised by plaintiff has therefore been proved satisfactorily for the court to uphold that same plea and enforce the divorce decree as requested.

The second and third pleas raised by plaintiff cannot be entertained by this court, as the court has no power or authority to vary a foreign court decree. For this reason, plaintiff submitted two additional pleas, requesting that the court grants her exclusive care and custody of the minor child, and that the residence of the child remains that of the plaintiff. The court understands the circumstances of this case and sees no reason to with hold these two additional requests. It appears clear that it is in the child's best interests for her to remain residing with her mother, as she has so been residing ever since the divorce decree given in 2015. Furthermore, both plaintiff and the minor child have been living here in Malta for a number of years, and that both have established their lives here. As stated above, there is no reason for the court to disturb this arrangement, and plaintiff's additional requests are perfectly reasonable and understandable. The court will therefore uphold these two additional requests, and grant plaintiff exclusive care and custody of the minor child as requested, and also confirm that their ordinary and habitual residence is here in Malta.

DECIDE:

Now, therefore, for the above reasons, the Court:

Upholds the first request;

Declares that the divorce judgement delivered by the Court in Romania, namely Roman Court, Neamt County, Romania of the 26th January 2015 in the names GCM vs CAM as recognizable and enforceable in Malta, and this in terms of Council Regulation (EC) Number 2201/2003;

Abstains from taking cognizance of the second and third requests;

Upholds the fourth and fifth requests;

Orders that due to a change in circumstances, the care and custody of the minor child BG M is to be entrusted solely and exclusively in the hands of her mother, the applicant G C P (formerly M), in that any decisions regarding health, education, religion, the upbringing and travelling of the minor, including the issuing and renewal of the minor's passports, and generally any other decision regarding the minor shall be solely taken by the applicant without the need of the authorisation and/or the consent of the respondent, and this in the best interests of the mentioned minor BGM;

Furthermore orders that due to a change in circumstances, the habitual and ordinary residence of the minor B G M shall be with her mother, the applicant G C P (formerly M) in Malta and in any other country in which the applicant may choose to establish her habitual and ordinary residence.

All costs are to be borne temporarily by plaintiff, and are recoverable from defendant if and when his whereabouts are determined.

Hon. Anthony G Vella

Cettina Gauci- Dep Reg