

**CIVIL COURTS
(FAMILY SECTION)**

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

Hearing of 4th July 2022

Application no.: 130/2022 JPG

Case no.: 19

**AS
Vs
FO**

The Court:

Having seen the sworn Application filed by AS dated 7th of March 2022, at page 1, wherein it was held:

That the parties were married on the twentieth (20th) of September of the year two thousand and three (2003) attached as “Document A”;

Parties have been separated since the fifteenth (15) of April of the year two thousand and fifteen (2015) as per contract attached “Document B” in the acts of Notary Leanne Sammut;

There is no possible prospect of reconciliation;

That the defendant is presently serving time in the Correctional Facility of Kordin after judgment was delivered in which the defendant was given a prison term following charges; he has not paid maintenance but this should not be an obstacle to the plaintiff to obtain a divorce as held in various judgments;

That these facts satisfy the requirements of Article 66B of the Civil Code of Chapter 16 of the Laws of Malta.

Wherefore, the applicant is humbly requesting this Honourable Court to:

- 1. Pronounce the dissolution of the marriage which was celebrated between the parties on the twentieth of September of the year two thousand and three (2003).*
- 2. Order the Director of Public Registry to make the necessary annotations in this sense and this under all those provisions and conditions that this Honourable Court deems fit and appropriate.*

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

Having seen the reply filed by FO dated 6th May 2022, at page 16A, wherein it was stated that:

- 1. That the defendant confirms the facts as premised in paragraphs one (1) and two (2) of the application;*
- 2. That the defendant moreover confirms that there is no reasonable prospect of reconciliation between the parties where the parties have been living separate lives since they legally separated on the fifteen (15) of April of the year Two Thousand and Fifteen (2015);*
- 3. That however defendant submits, with reference to paragraph four (4) of the application that, applicant is incorrect in stating that he has never paid maintenance for their children and that the applicant has stopped all communication with him and she is therefore refusing to even communicate with him in order for him to provide her with the maintenance due for their children. In addition, applicant has stopped granting access to defendant to their minor children;*
- 4. That defendant declares that in principle he has no objection to this*

Honourable Court pronouncing divorce between the parties, saving those measures or orders which this Honourable Court deems fit to impose;

5. *With expenses to be borne by applicant;*

Having heard the evidence on oath;

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:

Plaintiff testified by means of an affidavit (*vide affidavit at page 4*), and held that she married Defendant on the 20th of September 2003 and that from this marriage two children were born. She added that the parties separated by virtue of a separation contract in the acts on Notary Leanne Sammut dated the 15th of April 2015. She testified that she raised their children on her own and that Defendant is serving a prison sentence at Corradino Correctional Facility. Furthermore she declared that this should not be an obstacle to the divorce award. Plaintiff stated that there is no reasonable prospect of a reconciliation with the Defendant.

Defendant testified *viva voce* before this Court on the 30th of May 2022 and confirmed and corroborated Plaintiff's evidence (Vide Page 20 et seqq.)

Considers:

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.

Deliberates:

The Court has seen that the parties contracted their marriage on the 20th of September 2003, bearing marriage certificate number 1693/2003 (*vide* marriage certificate at page 5) and that two children were born from this marriage, who are still minors.

From the acts of the case it transpires that the parties' marriage broke down and they regulated their personal separation by means of a public deed in the acts of Notary Leanne Sammut dated 15th of April 2015 (*vide* contract of separation at page *et seqq*). The Court observes that as indicated by the parties' in their respective testimonies, the parties are now leading separate lives and that they have both renounced to their right to maintenance (Vide Clause 3 of the contract of separation at page 6 *et seqq*.)

Therefore, it is established that the parties have been separated in accordance with the time frame required by law.

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, which Marriage Certificate bears the Number 1693/2003 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**