

**CIVIL COURTS  
(FAMILY SECTION)**

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

**Hearing of the 10<sup>th</sup> of October 2022**

**Application no.: 302/2018JPG**

**Case no.: 16**

**Avv. Timothy A. Bartolo ` (ID 42391M) as a  
special mandatory of the absent VJ (bearer  
of Passport No. X) in her own name and as  
curator ad litem for her minor daughter  
LJ (bearer of Passport no. Y)**

**Vs  
KG**

**The Court:**

Having seen the sworn Application by Dr Timothy A. Bartolo dated 19<sup>th</sup> November 2018, at page 1, wherein it was held:

*The Object and the Facts of the Case*

- 1. That the Applicant nominee, is acting in these proceedings for and on behalf of the absent VJ, and this in virtue of a special power of attorney dated the tenth (10<sup>th</sup>) of November two thousand and eighteen (2018) and limited to the issue of maintenance due from the Respondent for the minor LJ (Document annexed and marked as Doc A);*

2. *That VJ and the Respondent KG had a relationship from which relationship they had a daughter, LG, born on the Z in E. Birth certificate is being herewith annexed and marked as Doc B;*
3. *That even though Mr KG was and still is registered as the natural father of the minor on the birth certificate, the minor changed her surname to LG by means of a Deed Poll done in England on the sixth (6) of April of the year two thousand and nine (2009) and so today the minor bears the name LG as can be seen from the Deed Poll annexed and marked as Doc C.*
4. *That the Respondent left the E without informing the mother or his minor daughter as to where he would be establishing himself, not even going so far as to tell them he had the intention to come and reside in Malta. In fact the mother had to engage the services of a private investigator in order to find out where the Respondent had begun residing.*
5. *That in the meantime VJ and her daughter have moved to the I with the express and written consent of the Respondent, with the child now happily settled in the I where she lives, goes to school, has friends and centres all of her activities;*
6. *That the minor has resided the mother for practically, her entire life, with the mother shouldering alone the responsibility of raising and caring for her daughter and remaining solely and exclusively responsible for her health, education and upbringing, and this with great sacrifice;*
7. *That in the meantime it transpires that the Respondent has begun a whole new life here in Malta, getting married and having new children, thus directing all his efforts and financial resources to his new family whilst completely abandoning his minor daughter LJ;*
8. *That throughout this time the father made little to no effort to contact his minor child, barring a couple of half-hearted attempts (via e-mail) which only served to cause further emotional damage to the minor following the initial trauma of being abandoned by her father. This is being said because not only did the Respondent proceed to have some form of contact, thus coming suddenly back into the child's life, only to disappear suddenly once again, but because the*

*Respondent also used this limited contact to denigrate the mother in the eyes of the child and consequently cause severe emotional upset to the latter;*

9. *That in fact throughout the mediation process the Respondent was given the minor's email address as well as a mobile number via which he could begin, after many years, to initiate and build some form of contact. Each time the mother prepared the minor emotionally in order to cater for this initial contact by her father, only for the Respondent to renege on his word and forgo making any contact, each time causing further distress and upset to the child;*
10. *That the truth of the matter is that the Respondent has no desire to have any form of contact with the minor given that he now has a new family and thus believes that he can simply forget and abandon the child he left behind him, leaving the mother to carry alone the expense of raising the minor. In fact the Respondent requests to have contact with the minor before paying any maintenance were simply a way of diverting and delaying the issue of maintenance given that this is his only real concern;*
11. *That at the same time the mother continues to carry alone the responsibility of raising the minor on her own in the I, with ever increasing costs given that the minor is growing and developing at a healthy and fast rate. This whilst the Respondent continues to shrug off his responsibilities towards his daughter, preferring to devote himself entirely to his new family;*
12. *That the parties had attempted a mediation in these islands in order to regulate the maintenance due for minor LJ. In fact, the Civil Court (Family Section) had, through a decree issued on the sixth (6) of April of the year two thousand and seventeen (2017) in the Acts of Mediation Letter Number: 1595/16 in the names Dr Timothy Bartolo noe vs KG, ordered pendente lite the same KG to pay VJ the amount of three hundred and fifty Euro (€350) per month as maintenance for the minor LJ. However, this mediation was closed prior to the parties managing to reach any agreement in the best interest of the minor;*
13. *That subsequently the mother did not file any judicial proceedings with the hope that the mediation process was sufficient for the Respondent to become*

*aware of his duties and responsibilities as a father – which hope, however, came to nothing given that after only a few weeks the Respondent managed to stop the maintenance order after making allegations which were completely unfounded regarding the fact that the minor was taken from the mother by social services in the I;*

*14. That although it is true that the minor spent a short time in the care of social services, this only occurred on a voluntary basis and with the consent of the mother following professional advice following the minor's exhibiting troublesome and worrying behaviour. However, since after the necessary evaluation it was concluded that the mother of the minor was ideally suited to raise her child and that it was in the best interest of the minor for her mother. In fact nowadays the minor is being given all the necessary professional medical attention in order to address the behavioural problems which she had and she lives a happy life with her mother as she had always done;*

*15. That this is why the mother started mediation proceedings by means of Mediation Letter Number: 512/2018 and this in order to be able to obtain once again the financial help which is evidently needed from the Respondent. However, the Respondent did not even bother to attend for the two sessions that were held, with this showing his utter lack of interest and the mind set which he always adopted – that is, that he can abandon and ignore his daughter simply because he lives abroad;*

#### *Cause for the Claims*

*16. That in virtue of a decree given by this Honourable Court on the twenty fourth (24) of September, of the year two thousand and eighteen (2018) the new mediation which had been started by the mother was closed and the Applicant nominee was authorised to proceed with these proceedings, annexed and marked as Doc D;*

*17. That the mother estimates that she spends around one thousand one hundred and thirty sterling (£1130) per month for the raising and upbringing of her daughter, providing her with all that which she needs and wants in order for*

*her to be able to live happy joyful life;*

18. *That any argument by the Respondent that he is not in a financial position to maintain his daughter is not only unjustified at law but also manifestly unfounded in fact given that he occupies the role of a UI/UX Designer as well as appearing to also have a remunerative business within the technology sector, and is thus obviously not only gainfully employed but also benefits from the type of advantageous remuneration which comes with such an occupation;*
19. *That all this whilst simultaneously the minor continues to grow, develop and live her life with the mother having to cover all the relative costs and expenses without even the slightest financial help from the Respondent. In fact the mother is not only raising her daughter but is the only person who, notwithstanding her limited resources, does her very best to make sure that her daughter has everything she needs and desires;*
20. *That it is impossible for the mother to continue to bear alone the financial burdens associated with the raising of the minor, doing so with great sacrifice only for the Respondent to continue failing to contribute anything by way of maintenance and instead choose to use his finances in order to continue living a very comfortable life in Malta, all this whilst at the same time completely ignoring the basic needs of his daughter LJ;*
21. *That at present KG is not contributing, not even the slightest financial help and therefore it is necessary for this Honourable Court to establish a binding maintenance order which establishes the amount of maintenance and manner in which the Respondent is to pay maintenance in favour of his minor daughter LJ;*
22. *That the mother wishes that the issue of maintenance be regulated through the establishment of an appropriate maintenance order, and this only exclusively in the supreme interest of her minor daughter;*

#### *Claims*

*Therefore, in light of the above, the Respondent is called upon to state why this*

*Honourable Court should not, saving any necessary and opportune declaration, for the reasons above premised as well as for all those which may result from the hearing of this cause:*

- I. Declare that the Respondent has to maintain the minor LG and for this purpose fix an amount due by way of maintenance, which amount is to be inclusive of costs and expenses pertaining, to health, education and extra-curricular activities, as well as declare that this amount due by way of maintenance shall be increased periodically in order to make good for the cost of living;*
- II. Order the Respondent to pay that amount due by way of maintenance as established, and this in such manner as it may deem fit, including that the payment is made by means of a standing order that the Respondent is to effect in favour of VJ and/or by deducting such amount directly from the Respondent's salary or income and/or from any employment or work which he has and/or may have, and/or from any social benefits which he could be receiving from time to time;*
- III. Liquidate the arrears of maintenance due from the Respondent to VJ according to law and order that the Respondent is to pay such maintenance arrears.*
- IV. Give all those other opportune decrees and orders which this Honourable Court, in its learned judgments, deems fit and necessary in the circumstances;*

*With costs, comprising those for all proceedings instituted by the Applicant nominee, and with legal interest according to law against the Respondent, which Respondent is as of now called upon to testify with reference to his oath.*

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

Having seen the sworn reply filed by KG dated 12<sup>th</sup> December 2018, wherein it stated that:

1. *That as can be seen in the sworn application the Applicant and the Respondent had a relationship from which relationship they allegedly had a daughter, the minor LG on the Z in E;*
2. *That primarily the allegations put forward by the Applicant are all unfounded and in fact not true and are only an attempt by the Applicant to try and take financial advantage from the Respondent;*
3. *That without prejudice to the above the Respondent did leave the E but never tried to hide this fact, in fact he used to post multiple posts on social media, however, he did not inform the Applicant that he was going to leave the country because he lost all contact with her and her daughter for a long period of time;*
4. *That in fact the Applicant used to make contact with the Respondent when she needed something since the Applicant used to, and still does do everything in her power to make the Respondent's life impossible;*
5. *That the Applicant temporarily lost the care and custody of the minor, as will be proved in the court proceedings and hence, any allegation about costs is unfounded, apart from the fact that there was a time when the Respondent paid maintenance;*
6. *That without prejudice to the above, it is not true that the Respondent did not make any effort to contact the minor since there was a time when he was even going to be given the care and custody of the minor;*
7. *That with all due respect, it is the Applicant who distanced the minor from her father and has a comfortable life without him unlike what the Applicant is trying to allege;*
8. *That with all due respect, any request for maintenance shall be substantiated with the real needs of the minor and the means of the parents;*
9. *That the income of the Respondent is low as will be proven during the court proceedings and the Applicant has good income and hence, one has to consider*

*all facts of the case before any request is considered;*

*10. That in light of the above, the Respondent asks that the claims as pleaded to be rejected as a whole, since primarily there are serious doubts as to whether the minor is the biological daughter of the Respondent and if the mother has the effective care and custody of the minor.*

*11. Save additional pleas.*

*With costs against the Applicant who is now summoned so that a reference to their oath.*

**Considers:**

**Plaintiff, VJ testified by means of an affidavit** (*vide fol 141 et seq*) and explained that she met Defendant on an online chat room when she was sixteen (16) years old in 2001. At the time Defendant was thirty (30) and was living in B, E with his mother since he had recently terminated his marriage due to adultery. He was looking for work in the E close to where she was living and in fact he eventually got a job with Nokia E. Plaintiff adds that in hindsight, their relationship was wrong and that Defendant was controlling and manipulative.

In 2004, Plaintiff became pregnant with LJ and managed to obtain rented accommodation. Defendant moved in with her. LJ was born in Z, Defendant had attended the registration office and signed the register to complete the minor's birth certificate. Plaintiff recalls that Defendant was very present throughout the minor's first year, however his interest began to wane when the minor began nursery school. Plaintiff in fact, states that she had later found out that Defendant was involved with the minor's nursery teacher and this brought about the end of their relationship. Defendant paid child support through the government, according to his salary and did so until early 2013. However, he only had physical contact with the minor five (5) times between 2007 and the present day. In 2014, the Plaintiff and the minor moved to I. Plaintiff had been unemployed since the couple separated and with difficulty had to apply for working permits. Plaintiff managed to get a part-time job with an extremely low income. In 2013, Defendant stopped paying maintenance and Plaintiff had to look to her present partner and parents for financial help. Plaintiff engaged the services of third parties to locate Defendant in Malta so as to ask for child support, however Defendant is only interested in his current family.



Plaintiff explains that the minor LJ has had to cope with many issues: in the past year she was constantly running away from home, socialising with undesirable individuals, being violent towards the Plaintiff and her other two children. Together with Social Services, it was agreed that the minor be placed in voluntary and temporary foster care where she spent three months, while Plaintiff was urging the mental health team to take on LJ's case again. Plaintiff affirms that she was of no risk to her daughter and in fact the minor went regularly for weekend sleep overs and would go over during the week. LJ returned home after three months and has since started medication for ADHD and works closely with her learning support in school, psychologist and language therapists. In this manner LJ's behaviour continues to improve.

Defendant's lack of interest in the minor, has according to Plaintiff been detrimental to the minor's mental health. LJ and feels rejected, resulting in the minor's lack of self-worth and self-harming. Plaintiff affirms that this information did not raise any concerns on the part of the Defendant. She adds that in the last five years Defendant has only made a few payments in 2018 but never sent any birthday cards or gifts.

**Alison Mifsud Brimmer on behalf of HSBC Bank Malta plc testified on the 5<sup>th</sup> April 2019** (*vide fol 47*) and confirmed that Defendant does not hold any bank accounts with the said bank.

**Joanna Bartolo on behalf of Bank of Valletta plc testified on the 5<sup>th</sup> April 2019** (*vide fol 48*) and confirmed that Defendant does hold an account. The said account, which is a savings account was opened on the 24<sup>th</sup> December 2015 and is still open. Witness exhibited Dok JB1.

**Chantelle Chircop on behalf of APS Bank Malta testified on the 5<sup>th</sup> April 2019** (*vide fol 49*) and confirmed that Defendant does not hold any bank accounts with the said bank.

**Jeanette Lepre on behalf of Lombard Bank Malta plc testified on the 5<sup>th</sup> April 2019** (*vide fol 50*) and confirmed that Defendant does not hold any bank accounts with the said bank.

**Jesmond Baldacchino on behalf of BNF Bank Malta testified on the 5<sup>th</sup> April 2019** (*vide fol 51*) and confirmed that Defendant does not hold any bank accounts with the said bank.

**Sarah Cuschieri on behalf of the Department of Social Security testified on the 5<sup>th</sup> April 2019** (*vide fol 52*) and exhibited Dok SC 1 indicated the social benefits received by Defendant.

The witness also explained that Defendant together with his wife received children's allowance as a couple. To this effect Dok SC 2 was also exhibited.

**Joseph Saliba on behalf of Jobsplus testified on the 5<sup>th</sup> April 2019** (*vide fol 53*) and exhibited Defendant's employment history, which was marked as DOK JS1.

**Dr Claudia Fenech on behalf of Registry of Companies testified on the 10<sup>th</sup> June 2019** (*vide fol 152*) and confirmed that Defendant is presently involved in a company with registered number C 84199 Use Ability Malta Limited. This company was registered in the 27<sup>th</sup> December 2017, Dok CF1 was exhibited by the witness.

**Petya Georgieva Dimitrova on behalf of NetRefer testified on the 10<sup>th</sup> June 2019** (*vide fol 154*) and explained that according to their records Defendant was employed as UIUX Designer, the software part of the company on the 28<sup>th</sup> of December 2015 and ended his employment on the 25<sup>th</sup> August 2017. His starting salary commenced at EUR 35,000 gross per annum and was then increased to thirty-six thousand gross per annum as from the 1<sup>st</sup> January 2017. Witness exhibited Doc PGD1.

**Paul Scicluna on behalf of the Vat Department testified on the 10<sup>th</sup> June 2019** (*vide fol 156*) and explained that according to their records Defendant was never registered for VAT purposes not even at present.

**Beppe Muscat on behalf of Lottostarlet testified on the 10<sup>th</sup> June 2019** (*vide fol 158*) and explained that Defendant was engaged by the company on the 1<sup>st</sup> of September 2017 and his employment was subsequently terminated on the 2<sup>nd</sup> March 2018. Defendant occupied the position of UX and Interaction Designer, and earned EUR 20, 122 gross throughout his period of employment. Witness also presented a number of documents: BM1 To BM5. Witness also affirmed that employment was terminated during the probationary period by the Executive Director.

**Stephen Cachia on behalf of Transport Malta testified on the 10<sup>th</sup> June 2019** (*vide fol 161*) and explained that according to their records no vehicles are presently registered in Defendant's name. However, Defendant did have one vehicle- a Chevrolet Aveo with registration number W, registered in his name between the 22<sup>nd</sup> March 2016 till the 12<sup>th</sup> of December 2018.

**Dr Alexia Aquilina, representing the Registrar of the Civil Courts and Tribunals, testified on the 14<sup>th</sup> October 2019** (vide fol 194) and explained that according to their records, exhibited a full list of all the acts which have been filed against Defendant which were marked as Dok AA 1 and Dok AA2, together with a copy of the mediation letters and the acts filed in the mediation letters marked as Dok AA 3 and Dok AA 4.

When **Cross-examined on the 3<sup>rd</sup> of February 2020 via skype, Plaintiff, confirmed** that both parents' names are on Elisabeth's birth certificate. Asked as to whether the deed poll affected the birth certificate, Plaintiff explained that this did not since it was done by a E Deed Poll, which allows you to change you name by Deed Poll but it does not change one's birth certificate. Confronted with the fact that there are allegations regarding the paternity of the minor, Plaintiff reiterates that Defendant was present for the birth and denies that the minor could have been fathered by some else other than Defendant. Plaintiff confirms that no DNA tests existed however, affirms that should Defendant wish to carry out a DNA test, she is positive that it would say that Defendant is the father. Plaintiff declares that she is a nursery teacher and has been so for ten years on a part-time basis. Asked as to why Plaintiff works on a part-time basis, Plaintiff explains that she has two other children apart from the minor. Elisabeth has high level needs and thus Plaintiff would need to be available for meetings, for pick-ups as she cannot travel alone and thus does not have the time to work on a full-time basis. Plaintiff also confirms that she got married in June 2019.

Asked to explain LJ's needs, Plaintiff states that the minor has a psychiatrist, and educational psychologist, and she is also receiving treatment for ADHD, takes anti-depressants, had dyslexia as well as processing disorders such as APD and LPD- and is basically classed as a high-level needs child and cannot attend mainstream school but attends a facility which provides her with one to one care. Asked about the period when Plaintiff lost parental authority over LJ, the Plaintiff affirms that she did not lose parental control but social services had to get involved because of LJ's diverse problems since at the time her behaviour created doubts as to Plaintiff's abilities as a parent. She adds that LJ was in voluntary care and proceedings are still pending in Court and in fact brought her back home after three months.

**Defendant testified by means of an affidavit (vide fol 439 et seq)** and explains that he moved to Malta with his family on the 4<sup>th</sup> May 2015 and currently lives with his wife, and their two children, his mother –in –law and up until a few years ago his father-in-law. Defendant and his family lived in Malta until February 2020 and then moved to Gozo to reduce rental outgoings and

are in fact receiving a rent subsidy from the Housing Authority.

Defendant declares that he has no savings in any bank account both in Malta and in the E. Although he is part owner of the family business Use Ability Malta Ltd which was established in December 2017, he has a 39% share of the company and the company is facing a loss of EUR 21,909. Defendant adds that he is not paid a regular wage by the business, and is only able to take money for living costs when it is available in the business. In fact it was his parents- in law that helped them with living costs.

With regards to his relationship with Plaintiff, Defendant confirms that they were in a relationship from early 2002 until late 2006. During this time, Defendant affirms that he was mentally and emotionally abused by Plaintiff. Following the separation, he suffered from depression and suicidal feelings, was in fact diagnosed with depression and acute anxiety and prescribed medication. Defendant adds that he has joint parental rights with Plaintiff of their daughter. In 2007, he lived close to his daughter and was initially granted access, which however was constantly being denigrated by Plaintiff. Due to constant abusive and threatening behaviour from Plaintiff, Defendant and his wife moved away. Between 2007 and April 2011 he had only been allowed to see the minor on three (3) occasions and had a small number of phone conversations. In October 2013, Plaintiff had emailed Defendant about the possibility of her partner to adopt LJ and he had agreed to this since it would provide the minor with a stable family environment. Defendant also affirms that in February and March 2014, Plaintiff had stated that they do not want or need his money.

Defendant states that he has paid CSA in the E the amount of £18, 652 from the 19<sup>th</sup> September 2006 up until the 12<sup>th</sup> May 2014 when Plaintiff closed the case, with the final payment being made on the 24<sup>th</sup> April 2015. At the time the weekly maintenance was £20. Between April 2017 and December 2017 Defendant paid EUR 350 per month as decreed by the Maltese Court which was subsequently revoked since LJ was not in her mother's care. Defendant together with his family had also agreed to have LJ placed here in Malta with him and his family however, the minor's tone changed when Defendant refused to buy her a mobile phone.

**In cross-examination** on the 13<sup>th</sup> May 2021 (vide fol 490) Defendant confirms that he has never undertaken DNA tests to confirm whether LJ is in actual fact his daughter or not. Defendant also confirmed that the last payment by way of maintenance was in between April and December of 2017, and thus has not paid any maintenance from December 2017 to this date. He also confirms

between May 2014 and April 2017 he had not paid any maintenance since he was told that LJ was not his daughter and that they do not need Defendant's money. Defendant also confirms that judicial proceedings here in Malta with regards to maintenance have been going on since 2017.

Defendant also explains that towards the end of 2017, Plaintiff had contacted him saying that she was going to put LJ into voluntary care and social services had advised him not to pay any money to the mother and in fact the decree was revoked. Defendant exhibited recent correspondence which indicates that LJ is once again in the custody of the State. Asked about his wages, Defendant contends that he has recently opened a business which testes websites and that it was his late father-in-law that was seeing to his family's expenses in order to allow him and the business to establish itself. Defendant admits that the fact that he has been told so many times that LJ is not his child, coupled with not being granted access to the child, to him felt as if the minor had died, so much so, that he mourned her emotionally and had to be put on medication to overcome his suicidal feelings and hence does not want to go there again.

When **re-examined**, Defendant contends that he got to know that LJ is once again put in care after LJ messaged him from her boyfriend's account, since he was not notified by the Plaintiff about this. Asked whether between 2014 and today, could have been other times when LJ was put into care without him knowing, Defendant contends that he has no way of knowing since she was not in contact with him. Defendant explains that he did not reply back to the message he received from LJ as there had been occasions in the past when it was the Plaintiff who would have been messaging him. Instead he contacted children's services in the I who confirmed.

**Considers:**

This is a judgment following proceedings instituted by Plaintiff, for the payment of maintenance and maintenance arrears for the parties' minor child LG, born on the Z in E as evident from the minor's birth certificate, vide page16.

From the acts of the case it transpires that the parties were involved in an intimate relationship, from which the minor LJ was born. The parties however, parted ways and have both married and have children with their respective spouses. The minor LJ who is now Z years old, appears to be in the care of the I Authorities. The Court has also seen that this is not the first time that the minor was the care of the State and that the minor is a high-level needs child, suffers from ADHD, dyslexia as well as processing disorders such as APD and LPD.

**Considers:**

The legal principle regulating maintenance is based on **article 7(1) of the Civil Code** which provides as follows:

*“Parents are bound to look after, maintain, instruct and educate their children in the manner laid down in article 3B of this Code.”*

The parents, therefore, have the same legal obligation towards their children, with both parents having to contribute to the upbringing of their children. The quantum of this obligation of a child’s maintenance is calculated according to the parents’ needs, and the criteria set out in article 20 of the Civil Code.

**Article 20 of the Civil Code** provides that:

- (1) Maintenance shall be due in proportion to the want of the person claiming it and the means of the person liable thereto.*
- (2) In examining whether the claimant can otherwise provide for his own maintenance, regard shall also be had to his ability to exercise some profession, art, or trade.*
- (3) In estimating the means of the person bound to supply maintenance, regard shall only be had to his earnings from the exercise of any profession, art, or trade, to his salary or pension payable by the Government or any other person, and to the fruits of any movable or immovable property and any income accruing under a trust.*
- (4) A person who cannot implement his obligation to supply maintenance otherwise than by taking the claimant into his house, shall not be deemed to possess sufficient means to supply maintenance, except where the claimant is an ascendant or a descendant.*
- (5) In estimating the means of the person claiming maintenance regard shall also be had to the value of any movable or immovable property possessed by him as well as to any beneficial interest under a trust.*

In the case in the names of **Georgina Schembri pro et noe vs Dino Schembri** (413/2000/1)

decided on the 28th November 2002, the Court held that:

*“L-obbligi ta’ manteniment tal-konjugi huma regolati bl-artikolu 3 tal-Kap 16...jirriżulta mid-disposizzjonijiet tal-Liġi, li l-ġenituri għandhom l-istess obbligi versu l-ulied tagħhom, u għalhekk it-tnejn li huma għandhom jikkontribwixxu għat-trobbija tal-istess, aktar u aktar meta illum il-miżewwġin huma f’posizzjoni ta’ ugwaljanza u għandhom l-istess drittijiet, u allura anke skont l-artikolu 2 tal-Kap 16, “jerfġhu responsabbiltajiet indaqs matul iż-żwieġ tagħhom” (Ara Eoll Jennifer Portelli pro et noe vs John Portelli (Rik Nru 2668/1996) deċiża fil-25 ta’ Ġunju 2003).<sup>1</sup>*

The obtaining Jurisprudence illustrates that the obligation of the parents is an absolute obligation, and persists even where the parents are unemployed (Vide **Maria Bugeja pro et noe vs Spiridione sive Stephen Bugeja First Hall Civil Court (FD) (154/94)**).

The Court recognizes the fact that according to law, parents have an obligation to maintain their children according to their means. However, local Courts have always stressed that:

*.....Il-Qorti dejjem irriteniet illi l-ġenituri ma jistgħux jabdikaw mir-responsabilità tagħhom li jmantnu lil uliedhom materjalment, hu kemm hu l-introjtu tagħhom. Dejjem kienet tal-fehma illi kull ġenitur għandu l-obbligu li jmantni lil uliedu anke jekk il-meżzi tiegħu huma baxxi jew jinsab diżokkupat. Il-Qorti ma tista qatt taċċetta li persuna ġġib it-tfal fid-dinja u titlaq kull responsabbiltà tagħhom fuq il-ġenitur l-iehor jew inkella fuq l-istat.” (Vide **Tiziana Caruana vs Redent Muscat (272/2018) deċiża mill-Prim’ Awla Qorti Ċivili fl-24 ta’ Ġunju 2019; Liza Spiteri vs LEE Farrugia (219/2018) deċiża mill-Prim’ Awla Qorti Ċivili fit-2 ta’ Ottubru 2019**).<sup>2</sup>*

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<sup>1</sup> Translation: “the obligations of maintenance by spouses are regulated by article 3 of Chapter 16... according to the obtaining provisions of law, parents have the same obligation towards the children, and therefore, both have to contribute to the upbringing of the same, this applies even more so today, since the spouses are now equal under the law and have the same rights, and therefore, in terms of Article 2 of Chapter 16, are burdened with equal responsibilities during marriage.” (Vide also **Jennifer Portelli pro et noe vs John Portelli (App np. 2668/1996) decided 25<sup>th</sup> June 2003**)

<sup>2</sup> Translation: “The Court has always reiterated that parents cannot abdicate their responsibility of materially maintaining their children, and this independently of the quantum of their income. It was always the considered opinion of the Courts that a parent is in duty bound to maintain his children, even where his income is low or when he is unemployed. The Court can never accept a situation where a person brings a child into the world and assigns all responsibility to the other parent or to the State. (Vide **Tiziana Caruana vs Redent Muscat (272/2018) decided from First Hall (Civil Court) on the 24<sup>th</sup> of June 2019; Liza Spiteri vs LEE Farrugia (219/2018) decided from First Hall (Civil Court) on the 2<sup>nd</sup> of October 2019**)”

Of relevance is also the dicta of the Court of Appeal in *Marina Galea vs Mario Galea* decided on the 31<sup>st</sup> of January 2019:

***“Il-manteniment tat-tfal, fil-verita` izjed milli dritt tal-ġenitur li qed irabbihom, huwa dritt tat-tfal minuri li ma jisfawx m`cahhdin minn dawk l-affarijiet li d- dinja tal-lum tikkunsidra bhala neccessita` għall-edEazzjoni u għall-iżvilupp tagħhom.”***<sup>3</sup>

**Deliberates:**

From the parties’ testimony, it appears that their relationship commenced in 2002 and ended in 2006, circa four years later. The minor, LJ, was born in Z. The Court observes that a Court order for maintenance payments was awarded against Defendant in the E and in fact Defendant paid a total of £18, 652 by way of maintenance between the 19<sup>th</sup> September 2006 and the 12<sup>th</sup> of May 2014. (Vide Dok a fol 254) Defendant *ex admississ* affirmed that he did not pay any maintenance between May of 2014 and December 2017.

Legal proceedings were then initiated in Malta in 2017. In fact this Court, as diversely presided, had ordered Defendant to pay Plaintiff the sum of EUR 350 a month by way of maintenance for LJ by virtue of its decree dated 6<sup>th</sup> April 2017 (Vide fol 255). The said sum also included Defendant’s share from the minor’s educational, medical and extra-curricular expenses. Thus between April 2017 and December 2017, Defendant paid the maintenance ordered by the Civil Court-Family Section. However, at the time, Defendant was informed that their daughter was no longer with the mother but was placed in State Care. As a result, following an application on the part of Defendant, the Court’s decree dated 6<sup>th</sup> April 2017, was revoked on the 18<sup>th</sup> of December 2017 for this reason. (Vide fol 362) Defendant also confirmed under oath that no maintenance has been paid since January of 2018. The Court has also noted that as of the 28<sup>th</sup> of April 2021, the minor became a looked-after child by the relative State Authorities in the I. Thus, any maintenance due to the Plaintiff is antecedent to this date. (Vide Dok a fol 507)

Plaintiff filed a number of estimates for the monthly expenses incurred for the minor LJ. In the document *a fol 146-149*, the average expenses incurred for the minor amount to between £963 and £993. In the document *a fol 405* Plaintiff indicated the sum of £958.10 out of which £359.50

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<sup>3</sup> Translation: “With regard to maintenance due to children, in reality, rather than being a right of the parent who is looking after them, maintenance is a child’s right in order that children are not denied material things which are in today’s world considered as necessary for their education and development.”



include expenses for the minor's extra curricular activity. The Court has also seen that Plaintiff is a *nursery teacher* on a part-time basis, since she needed to be available to pick up LJ and attend meetings and appointments in relation to LJ's situation. Furthermore, Plaintiff has two other children apart from LJ. Defendant on the other hand is a Director in a relatively new family business set up in 2017, and which, at present, seems to be operating at a loss of EUR 21,909. In his testimony Defendant affirms that it is his mother-in-law who at present pays his family's day-to-day expenses and that he cannot afford to pay maintenance for LJ in the amount of EUR 350.

It is apparent that Defendant was sporadic in his financial contributions towards the parties' minor daughter's up-bringing and it appears that maintenance was only paid whenever a Court Order was issued against Defendant. It is also this Court's considered opinion that Defendant's lack of initiative to bring his daughter to Malta after having discovered that she is once again under the State's Care signifies that he has lost all interest in forging a relationship with the minor. The Court understands that the high-level needs of the minor child have affected Plaintiff's ability to work additional hours, and consequently her ability to generate more income. This is in line with local jurisprudence.

In *Audrey Buhagiar vs pro et noe vs Daniel Schembri* decided by the Civil Court-Family Section, on the 28<sup>th</sup> of May 2015, the Court re-confirmed the reasoning of the Court of Appeal in its judgment of the 25<sup>th</sup> November 2016:

***“Il-Qorti qieghda tikkunsidra wkoll rilevanti il-fatt illi l-omm ghandha l-kustodja tat-tifla peress li tirisjedi maghha. Dan l-istat ta' fatt min-natura tieghu jillimita l-potenzjal ta' kemm l-omm tista' ddum barra mid-dar sabiex tiggenera dhul.”*<sup>4</sup>**

Local Courts have also acknowledged that the parent with whom the minor habitually resides naturally bears alone the responsibilities and burdens of child rearing:

***“tenut kont tal-fatt li, t-tfal qed ikunu aktar mal-attrici milli mal-konvenut, l-oneru tat-trobbija waqa' kwazi kollu fuqha u minn dan l-aspett hija qed taghti kontribut sostanzjali, inkluz dak mhux finanzjarju, ghal-manteniment taghhom.”*<sup>5</sup>**

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<sup>4</sup> Translation: “The Court considers relevant the fact that the mother has care and custody of her daughter who resides with her. The natural consequence of this state of fact limits the mother's potential earning capabilities because of the limitation of time that she can be away from home.”

<sup>5</sup> Translation: “taking into consideration the fact that the children are in the Plaintiff's care much more than with the Defendant, the burden of responsibility of the children's upbringing has fallen almost totally on the mother's shoulders and in this regard, she is contributing substantially - in a non-financial manner, to maintaining them.” Vide *Marina Galea vs Mario Galea* - decided from Court of Appeal on the 31<sup>st</sup> of January 2019

After careful consideration, this Court shall award maintenance for the periods between:

- 13<sup>th</sup> May 2014 and 13<sup>th</sup> March 2017, that is thirty-four (34) months.
  - January 2018 and 27<sup>th</sup> April 2021, that is circa 39 months.
- = Total of 73 months

Prior to December 2017 when Defendant commenced his own business, Defendant was employed with two different companies: between the 28<sup>th</sup> of December 2015 and the 25<sup>th</sup> August 2017. Defendant was employed at NetRefer and earned circa EUR 35,000-EUR 36,000 gross per annum. Eventually Defendant moved to Lottostarlet and was engaged by the company on the 1<sup>st</sup> of September 2017 with his employment being subsequently terminated on the 2<sup>nd</sup> March 2018 with Defendant earning EUR 20,122 gross throughout his period of employment.

In light of the above considerations, especially with particular regard to the minor's needs and Defendant's total absence from the minor's life which undoubtedly has caused the minor substantial harm, the Court deems the sum of three hundred and fifty euros (€350) each month for the period commencing 13<sup>th</sup> May 2014 up until 27<sup>th</sup> April 2021 to be fair and just in the circumstances, which sum includes Defendant's share from the educational, medical and extra-curricular expenses:

73 months x €350 = €25,550 –

1050 (350€ x 3 i.e. - 3 months when minor was in State care in 2017)

**Total: €24,500**

**For these reasons, the Court:**

- 1. Upholds Plaintiff's first request limitedly and declares that Defendant is at law bound to maintain the minor LJ should the same minor be removed from the care of the Competent Authorities in the I beyond the age of eighteen years should she continue with full-time studies up until the age of twenty-three (23) and this in the amount of EUR 350 per month which amount includes Defendant's share of the minor's medical, educational and extra-curricular expenses. This amount shall increase according to**

**the cost of living index in Malta;**

- 2. Upholds Plaintiff's second request limitedly and orders that in the event that the minor is removed from the care of the competent Authorities in the I, Defendant is to pay the said maintenance in a bank account held in the minor's name, which bank account is to be administered by Plaintiff;**
- 3. Upholds Plaintiff's third request and liquidates the maintenance arrears due to Plaintiff in the amount of twenty four thousand, five hundred euros (€24,500) and orders Defendant to pay the said amount directly to Plaintiff in a bank account of her choosing.**

**Costs are to be borne by the Defendant.**

**Read.**

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

**Lorraine Dalli  
Deputy Registrar**