

**CIVIL COURTS  
(FAMILY SECTION)**

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

**Hearing of the 2<sup>nd</sup> November 2022**

**Application no.: 139/2019 JPG**

**Case no.: 17**

**CO  
Vs  
HO**

**The Court:**

Having seen the sworn Application filed by CO dated 3<sup>rd</sup> June 2019, at page 5 et seq, wherein it was held:

*That the parties live in Malta but were married in N on the 30<sup>th</sup> September of the year 2009 as evidenced by a marriage certificate hereby attached and marked as Dok. A. Three children were born from such relationship namely C who is now of age, P, who is now X years old and J who is now Y years of age;*

*That the married life between the parties has irretrievably broken down for reasons recognised at law;*

*That for these reasons the applicant has acquired authorisation as required from this Honourable Court to proceed in this Court after having completed a mediation procedure in accordance with the law and this after a decree numbered 765/19, an*

*informal copy of which is being hereby annexed and marked as Doc B;*

*That the case and custody of the minor children was trusted to the applicant and they are authorised to reside with him and this as evidenced by a decree dated 14t January 2016 in the acts of the mediation procedure numbered 1277/15AL, an informal copy of which is hereby being annexed and marked as Dok C;*

*That in spite of several attempts for reconciliation, these yielded no positive results and this in view of the respondent's defaults and there is no possibility of reconciliation and hence why this case is being brought forward.*

*Therefore the plaintiff is humbly requesting this Honourable Court to:*

- 1. Declare and pronounce the personal separation between the plaintiff and defendant HO for reasons imputable to the defendant;*
- 2. Applies against the mentioned defendant the effects of Articles 46 to 52 of the Civil code in full or in part;*
- 3. Declares and dissolves the exiting community of acquests between the parties and liquidates the same;*
- 4. Condemns same respondent to pay the applicant for the minor children an appropriate and adequate sum of money by way of maintenance in accordance with the law and gives instructions on payment arrangements including provision for increase according to cost of living by this Court;*
- 5. Authorise the applicant to register the eventual court judgement to be pronounced by this Court with the Public Registry.*

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

Having seen that no reply was filed and Defendant failed to appear in Court. Therefore Defendant is contumacious;

Having seen counsel to Plaintiff declared *seduta stante* on 1<sup>st</sup> August 2022 that he has no further evidence to produce (Vide Fol 201);

Having heard the evidence on oath;

Having seen that in the light of the fact that Defendant is contumacious at law, the Court granted the Defendant three weeks within which to file written submissions in terms of Art 158 (10) of Chapter 12 of the Laws of Malta.

Having seen the Defendant failed to file any written submissions;

Having seen the exhibited documents and all the case acts;

**Considers:**

**Plaintiff testified by means of an affidavit (*vide fol 32 et seq of the acts*)** and explains that he met Defendant in 1998, in N. On the 30<sup>th</sup> of September 2009, they got married in N. He adds that their marriage was both a civil marriage and a religious one, since they are both Christians. The parties lived in N until 2011. From their marriage, the parties had three children, C who was born on W, P who was born on X and J who was born on Y.

In 2011, Plaintiff testified that he was forced to leave N and had applied for Refugee Status when he arrived in Malta. He explains that at the time, he did not bring his family with him because of the risks association with the journey to a safer country. In 2012, Plaintiff was then granted Refugee Status and subsequently he started the process to bring his family to Malta on the basis of family reunification. In fact the process was then completed in 2015 and his family arrived in January 2015. By this time, Plaintiff had full time employment as a housekeeper and was able to support himself and his family and he was also working as a steward in a hotel on a part-time basis. As soon as his family arrived in Malta, his children started complaining about the way Defendant was treating them. The children claimed that Defendant was abandoning them. Plaintiff attests that he knew that trouble was brewing from before their arrival in Malta, as while the children were in N they had already complained about beatings from their mother and about the fact that their mother was not taking care of them. Plaintiff explains that he had tried to verify this information with his in-laws, who had told him that Defendant would change.

Plaintiff testifies that it was evident from his wife's attitude and behavior that something was wrong: Defendant used to leave the house late at night and return in the morning, she would never explain where she was going to be or she would say unbelievable things such as that she was looking for a job at odd hours, early in the morning. Later in 2015, Defendant left the matrimonial home and never returned. Plaintiff recalls that on the day she left, she had left the children alone at home. Plaintiff adds that Defendant never provided financial contribution to her family. Plaintiff affirms that the children had also told him how Defendant never cooked for them and how she would beat them. Plaintiff contends that he had witnessed the Defendant curse, threaten and beat the children. In fact Plaintiff adds that he had instituted court proceedings to gain sole custody of the children, which was in fact granted by the Maltese Courts. Defendant was granted supervised access at Appogg, however, the children did not want to attend access. Eventually access was suspended by the Court in 2016. After that, Defendant never tried to see the children. To date, the children still live with the Plaintiff, the boys are now adults, while J is Y. C is currently studying at ITS, P is studying at MCAST while J is still in secondary school. Plaintiff adds that Defendant does not contribute in any way. Plaintiff together with the children, live in rented property and confirms that he and Defendant never owned any property.

**Plaintiff also tendered evidence viva voce on the 1<sup>st</sup> November 2021 (*vide fol 192 et seq*)** and confirmed that the children are still living with him. Plaintiff affirms that the boys are now W and X years old, are both work, whereas the youngest is Y. Asked as to whether he has heard from Defendant, Plaintiff, testifies that some people have told him that they have seen the Defendant, but he and the children have had no contact with her since 2015, not even on facebook. Plaintiff explains that the children do not want any contact with Defendant. Plaintiff reiterates that they did not acquire any property here in Malta, nor do they own any other assets, but explains that he has a bank account in his name. He contends that when Defendant left the matrimonial home, she took all her belongings with her.

With regards to the situation prior to Defendant leaving the matrimonial home, Plaintiff explains that Defendant wanted to be left alone, and that she was never willing to spend money on the children. He adds that Defendant wanted to live her life. In fact, he affirms that the children had already stopped talking to the Defendant whilst she was still living in the matrimonial home.

**Considers:**

This is a judgement following a request on the part of the Plaintiff asking this Court to pronounce the personal separation of the parties due to fault on the Defendant's part.

Article 40 of the Civil Code provides:

*Either of the spouses may demand separation on the grounds of excesses, cruelty, threats or grievous injury on the part of the other against the plaintiff, or against any of his or her children, or on the ground that the spouses cannot reasonably be expected to live together as the marriage has irretrievably broken down:*

*Provided that the court may pronounce separation on the ground that the marriage has irretrievably broken down notwithstanding that, whether previously to or after the coming into force of this article, none of the spouses had made a demand on such ground.*

Article 2(2) of the Civil Code provides that:

*The spouses shall have equal rights and shall assume equal responsibilities during marriage. They owe each other fidelity and moral and material support.*

**Considers:**

It appears that the parties met in 1998 in N and contracted marriage on the 30<sup>th</sup> September 2009. The parties lived in N until 2011. From their marriage, the parties had three (3) children, C who was born on W, P who was born on X and J who was born Y. In 2011, Plaintiff testified that he was forced to leave N and had in fact applied for Refugee Status when he arrived in Malta. In 2012, Plaintiff was granted Refugee Status and subsequently initiated the process to bring the rest of the family to Malta, who arrived in Malta in January 2015, however, later that same year Defendant left the matrimonial home.

From the acts of the case it appears that the care, custody and access arrangements of the parties' children have previously regulated in separate judicial proceedings before this Court diversely

presided, and thus this Court as presided needs only determine whether there are sufficient grounds to pronounce personal separation.

As aforementioned, Defendant, although duly notified, failed to submit a sworn reply, failed to appear before this Court as presided, and thus is contumacious. Defendant also failed to submit a note of final submissions.

After having considered the evidence produced by the Plaintiff throughout the pendency of the proceedings, the Court has no reason to doubt plaintiff's uncontested version. The Court has seen that despite Plaintiff's best efforts to reunite the entire family in Malta following his arrival here as a refugee, Defendant did in fact abandon the matrimonial home, shortly after her arrival in Malta. In fact to date, the parties' children still live with the Plaintiff and it is solely the Plaintiff that contributes towards the children's upbringing. This Court has also taken cognisance of the acts of the mediations with number 1277/2015 AL, 1277/2015/1 and 1562/2016 AL, which further corroborate the testimony of the Plaintiff with respect to Defendant's leaving from the matrimonial home and that the parties' children refusal to re-connect with Defendant. The Court has also seen that the parties' perception of married and family life are irreconcilable and it is palpable that the parties' marriage has irretrievably broken down.

Thus, after having seen article 40 of Chapter 16 of the Laws of Malta it is the Court's considered opinion that there are sufficient grounds for the pronouncement of the parties' personal separation. Moreover, and in light of the circumstances contemplated above, namely, Defendant's abandonment of the matrimonial home, which undoubtedly has exacerbated even further the breakdown of the parties' marriage, the Court considers that the dispositions of Article 48 et seq should be applied *in toto* against Defendant.

With regards to the community of acquests, which is still *in vigore*, the Court notes that Plaintiff failed to provide any evidence regarding the applicable matrimonial regimes when the parties lived in the N. The Court may therefore only take into consideration any debts or assets accumulated by the parties from when they moved to Malta to settle here, at which point it is clear and unequivocal that the regime of community of acquests started applying. From the evidence produced by Plaintiff, it appears that the parties have no immovable property and that they resided in a rented premises. Nor do the parties own vehicles or joint bank accounts. From Plaintiff's testimony it appears that he has a separate bank account in his own name. The Court therefore

considers that each party should retain full ownership of any bank account/s in his or her respective name.

With regards to Plaintiff's request for maintenance for the parties' minor children, it appears from Plaintiff's testimony that the parties' sons, are engaged in tertiary studies (ITS and MCAST) and their daughter J shall be commencing her post-secondary education after having set for her O'Levels. The Court has seen that a request for maintenance for the minor J was already put forth by the Plaintiff in mediation proceedings, however such a request was rejected.

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’ ugwajjanza u għandhom l-istess drittijiet, u allura anke skont l-artikolu 2 tal-Kap 16, “jerfghu responsabbilitajiet indaqs matul iż-żwieġ tagħhom” (Ara ukoll Jennifer Portelli pro et noe vs John Portelli (Rik Nru 2668/1996) deciza fil-25 ta’ Ġunju 2003).*

Therefore, the Jurisprudence cited 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 also makes reference to article 3B of the Civil Code which provides that:

*3B.(1) Marriage imposes on both spouses the obligation to look after, maintain, instruct and educate the children of the marriage taking into account the abilities, natural inclinations and aspirations of the children.*

*(2) The obligation of the parents to provide maintenance according to sub-article (1) also includes the obligation to continue to provide adequate maintenance to children, according to their means, and where it is not reasonably possible for the children, or any of them, to maintain themselves adequately, who:*

*(a) are students who are participating in full-time education, training or learning and are under the age of twenty-three; or*



***(b) have a disability, as defined in the Equal Opportunities(Persons with Disability) Act, whether such disability is physical or mental.***

After having considered the above dispositions of the law, it is this Court's considered opinion that maintenance is due for all three children, until the attainment of twenty-three years of age, even though from Plaintiff's testimony, this Court understands that the boys are doing some part-time work, and are contributing towards the family's day-to-day expenses. However, all three children are still engaged in full-time education. Thus, it is this Court's considered opinion that Defendant is to pay the sum of EUR 500 each month by way of maintenance for the parties' children, which also includes the Defendant's share of the children's medical and educational expenses.

**For these reasons, the Court:**

- 1. Upholds the first request and pronounces the personal separation of the parties and authorizes the Plaintiff to live separately from the Defendant;**
- 2. Upholds the second request and applies against Defendant the provisions of Article 48 *et seq in toto*;**
- 3. Upholds the third request and orders the cessation of the community of acquests between the parties and liquidates the same community and orders that each party shall retain full ownership of the bank accounts in his or her individual name, having seen that from the evidence produced, it appears the parties had no other assets or liabilities in Malta;**
- 4. Confirms the decree of the Court as differently presided dated 14<sup>th</sup> of January 2016, whereby care and custody of the children was granted to the Father CO with access to the mother Defendant HO according to the recommendations of Agenzija Appogg;**
- 5. Upholds the fourth request and orders Defendant to the sum of EUR 500 each month by way of maintenance for the parties' children who are still in full time**

**education and this up to the age of twenty-three and terminates should they be in full time employment; this maintenance also includes Defendant's share of the children's medical and educational expenses. The Court orders that this sum is to be deducted directly from Defendant's wage, salary, or any social security benefits she might be receiving from the Maltese Government.**

**6. Upholds the fifth request and authorises Plaintiff to register the final judgment of personal separation in the Public Registry of Malta.**

**Senza Tassa.**

**Read.**

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

**Lorraine Dalli  
Deputy Registrar**