

 **CIVIL COURT**

 **(FAMILY SECTION)**

**MR. JUSTICE HON. ANTHONY G VELLA**

**Sitting of Tuesday 22nd November 2022**

**Application number : 153/2021 AGV**

**ROO**

**v.**

**CBO**

**The Court ;**

 **Having seen the Sworn Application of ROO**

Respectfully submits and on oath declares:

1. That the parties got married in 2010 by means of traditions in Nigeria; which marriage is not recognised in Malta and does not have any legal basis;

2. That from the relationship between the parties had three minor children, PO who was born on 19th August 2008, BO who was born on 2nd January 2010 and AO who was born on 19th September 2016 (see Dok A sa Dok Ċ);

3.That by means of a court decree of this Honourable Court dated 5th February 2018, the applicant was vested with the care and custody of the minor children, and the defendant was ordered to pay the sum of €600 every month as maintenance for the children;

4. That the applicant tried to reach an amicable agreement with the defendant, but a few days before the procedures were closed in February 2021, the applicant was informed that the defendant escaped from Malta and went to live in England so he won’t pay maintenance. The defendant is still contacting the children;

5. That since the applicant has no idea where the defendant resides, she filed a court applicant together with this application to request this Honourable Court to appoint curators to represent the defendant;

6. That the parties have been authorised to proceed at this instance by virtue of a court decree of this Honourable court dated 10th May 2021 (see Doc D);

 That the facts here declared are known personally by the plaintiff;

For these reasons the plaintiff contends, saving any necessary and opportune decisions, why this Honourable Court should not:

1. Declares that the marriage between the spouses, that occurred by traditional means is not valid in terms of law and that it has no civil or legal implications;
2. Orders that the defendant be deprived of all his rights of parental authority in terms of article 154 of the Civil Code and this in the best interest of the minor children;
3. Decides that the exclusive care and custody of the minor children PO , B O , and AO , be awarded to the applicant and authorises her to take any decisions relating to the minor children, including those relating to the issuing of passports, travel, health, religion and education of the minor child without the defendant’s consent;
4. Orders that the three minor children reside with the applicant;
5. Determines and liquidates an adequate amount of maintenance which should be payable by the defendant to the minor children and which should remain payable until the minor children PO , BO , and AO reach the age of eighteen (18) years if the minor children stop pursuing their studies and start working on a full time basis or payable up to the age of twenty three (23) years if the minor children decide to pursue their studies on a *full-time* basis; as well as ordering that the maintenance be deducted directly from the salary or income of the defendant or work or any other benefits that he would be receiving and deposited directly in a bank account that is to be indicated by the plaintiff and further provides how the said maintenance is to be reviewed and increased yearly so that it reflects the increase in cost of living, as well as ordering that the plaintiff receives any benefits relating to the minor child, including but not limited to the children’s allowance in its entirety;
6. Orders that such maintenance includes the defendant’s share from all health and education expenses of the minor children, including but not limited to uniforms, transport, donations, stationary, private lessons and any other expenses related to extra-curricular activities;
7. Orders that the defendant pays all arrears of maintenance and other expenses towards his minor children PO, BO , and AO from the date that the applicant filed the Letter of Mediation No 1070/17;
8. Give any appropriate and opportune provisions and decisions concerning the minor child in their best interest;

**With costs and interests against the defendant, including those relating to the Letter of Mediations and General Application, who is demanded for a reference on oath.**

**Having seen the deputy curators’ reply** filed in the Maltese language.

Rat ir-risposta guramentata ta’ Dr Martha Mifsud u PL Hilda Ellul Mercer, mahtura bhala kuraturi deputati ghal CBO , fejn qed jesponu bir-rispett u jiddikjara li ma ghandhomx ebda kuntatt ma l-intimat u lanqas huma edotti mill- fatti.

Illi f’ dal-istadju qed titlob biex tirriserva d-dritt sabiex tkun tista ‘tressaq eccezzjonijiet ulterjuri fi stadju opportun, u dan meta tkun edotta mil-istess fatti.

Salv kull provvediment li dil-Qorti joghgobha tordna.

Having seen all the documents exhibited by plaintiff.

Having seen the acts of the proceedings, including the mediations between the parties.

Having heard all the evidence presented by plaintiff.

**CONSIDERS:**

Plaintiff submitted her affidavit, wherein she explained that she had met defendant C BO in Libya, after she had fled from her home country Nigeria. They started living together there, but it was not safe living in Libya, so they decided to come to Malta by boat. Their relationship was a very difficult one. Plaintiff says that defendant was very abusive and violent, even though she was pregnant with their first child. From the detention centre they had moved to Dar Qawsalla, but some time later she asked for assistance and resided in Dar Merhba Bik because of defendant’s behaviour. Their second child was born in Norway, because plaintiff had some serious complications during the pregnancy, and she found no support from defendant. She was persuaded to return to Malta because she was told, again, that he was going to change and convert to Christianity. They got married traditionally in Africa in July 2010, and settled in Malta.

The violent incidents resumed, and plaintiff found it very difficult to keep her employment, or even to try and study to improve her condition. The children were kept with the Ursuline Sisters during the week, and with their parents in the weekend. Plaintiff found help from friends and from social workers. Yet again, they reconciled a third time, as the children said that they were missing their father, but the incidents continued. All this time, defendant had forced plaintiff to give him all the money she had been earning, which she reluctantly accepted to do. In 2013, she says that she stood her ground and agreed with him that they were to share expenses between them, while each party was to keep their respective salary.

Plaintiff moved to an apartment in Bugibba with her children in 2014, after yet another violent incident. At the time, defendant had a relationship with another Nigerian woman. A year later, they reconciled and lived together, for the children. Their third child was born in 2016. Plaintiff eventually filed mediation proceedings in 2017 and obtained a decree for maintenance of €600 per month, which was deducted from defendant’s salary as from end 2017. There were another two mediations between the parties, until the sworn application was filed. In the meantime, defendant left Malta and went to live in England with his Nigerian girlfriend. He has been very erratic in maintenance payments throughout all this time.

**Conclusions**

**Parental Authority & Care and Custody**

Reference is made to the case in the names of **Giuseppe Scicluna vs Maria Scicluna pro et noe** decided by the First Hall of the Civil Court on the 31st May 1958, wherein it was stated:

“li l-kura tat-tfal komuni (..omissis..) hija regolata mill-principju ta’ l-aqwa utilita’ u l-akbar vantagg ghall-interess ta’ l-istess tfal li c-cirkostanzi tal-kaz u l-koefficjenti tal-fatti partikulari tal-mument ikunu jissuggerixxu”[[1]](#footnote-1).

Moreover in the case **Yolanda Formosa vs Maggur Frank Formosa** decided by the First Hall of the Civil Court on the 10th June 1965, the Court noted that:

“b’gid tat-tfal ghandna nifhmu mhux tant il-profitt materjali kemm il-ben esseri morali taghhom. It-tfal, f’kawzi bhal dawn, m’humiex oggett in kontraversja u l-interess tal-genituri fil-kwistjoni dwar il-kustodja taghhom huwa inservjenti ghall-interess tat-tfal”.

Similarly in the case, **Sylvia Melfi vs Philip Vassallo** decided by the Court of Appeal on the 25th November 1998the Court stated that:

“In this case the Court must seek to do what is in the sole interest of the minor child. In its decision whether the care and custody of the child should be given to one parent or the other the Court must solely be guided by what is most beneficial to the child”.

Reference is also made to the case in the names of **Miriam Cauchi vs Francis Cauchi** wherein the Court noted discarded a demand for joint care and custody “…ghaliex bhala sistema m’hijix prattikabbli meta l-genituri ma jiftehmux bejniethom.” As established in **Francienne Fenech vs Alexander Fenech**, “id-decizjoni tal-Qorti f’din il-materja tmur lil hinn minn jekk parti hijiex kapaci jew affidabbli. Il-Qorti trid tiehu kont ta’ x’inhu fl-interess suprem tal-minuri mil-lat l-aktar ampju tieghu, inkluz is-sahha fizika u psikologika taghhom, kif ukoll il-mod kif ukoll l-animu li jaraw li l-genituri ghandhom fil-konfront ta’ xulxin.”

As a matter of fact, the father has abandoned not only his partner, but also his three minor children parties, for the past two years; and had it not been for plaintiff they would not have been living in a family environment. For these reasons the Court is hereby depriving the father of the rights of parental authority. Furthermore, in the circumstances and in the best interests of the three children, the Court is hereby granting the sole care and custody of the three minors to applicant mother with whom the children shall continue to reside who shall have the right to take all decisions exclusively without the father’s consent.

**Maintenance**

Reference is made to article 3B of Chapter 16 of the Laws of Malta:

*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.*

And article 7(1) of the Chapter 16 of the Laws of Malta:

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

In the case **Borg Angelo vs Borg Kristen**, decided on the 24th June 2009 it has been established: “In tema legali jigi osservat li, ghalkemm il-manteniment dovut ghandu jkun proporzjonat bejn il-mezzi tal-konvenuta u l-bzonnijiet tal-minuri, jibqa’ ferm il-principju li “kull genitur ghandu obbligu jikkontribwixxi ghall-ghixien u l-manteniment tal-ulied, u ghal dan il-ghan kull genitur ghandu jara x’ jaghmel biex jaghmel sforz genwin [anke a skapitu tal-interessi personali tieghu] biex imantni lill-ulied li jkun gab fid-dinja”.

Reference is also made to article 54 of Chapter 16 of the Laws of Malta, according to which, the maintenance due to children shall be determined having regard to the means of the spouses, their ability to work and their needs, and regard shall also be had to all the other circumstances of the spouses and of the children. In the case **Claire Booker vs Roger Mahlangu** decided by the by the Civil Court (Family Section) on the 7th December 2017 (Rik. Gur. 186/2016RGM), the Court stated that “Il-Qrati taghna kostantament irritenew illi l-quantum tal-manteniment tal-minuri pagabbli mill-genitur li m’ghandux il-kustodja tal-minuri, jigi stabbilit wara apprezzament li l-Qorti trid taghmel tal-fatti migjuba quddiemha fid-dawl tal-provvedimenti legali appena citati.” In the case of **Angela Conti vs Lawrence Bonnici**, decided by the Court of Appeal on the 6th February 2015, it was noted that:- “Wiehed l-ewwelnett jifhem li f’ezercizzju bhal dak li taghmel il-Qorti meta tiffissa hlas ta’ manteniment l-istess Qorti tkun qed taghmel apprezzament tal-fatti li jkollha quddiemha u mbaghad skond l-artikoli fuq imsemmija tal-Kodici Civili tasal ghall-konkluzjoni taghha dwar x’ghandu jkun l-ammont gust li jithallas.”

Considering that the maintenance liquidated by the Court during mediation was not revised in accordance with the cost of living, and considering that the father is absent from Malta and there is no relationship between the two parents, the Court orders that the Father is to pay the sum of Eur 250 for each minor that is a total of Eur 750 every month, which amount includes his share of health and education expenses. This maintenance should be revised every year in accordance with cost of living and should be directly deducted from the Father’s salary and/or any social benefits he might be receiving, and paid directly in the Mother’s bank account. Maintenance is to be paid until the minors reach the age of eighteen years should they decide to work on a full time basis, or until the age of twenty three should they decide to pursue their studies on a full time basis. Any children’s allowance payable by the State for the Minors are to be solely and exclusively received by the Mother since the minors’ residence is with her. With regard to arrears in maintenance payments, it appears that ever since defendant moved away from Malta, he stopped paying maintenance for his children. From the evidence submitted, together with the mediation files, it appears that defendant left Malta some time between the Summer of 2020 and January of 2021. That would leave twenty (20) months of unpaid maintenance due to plaintiff, which sum is going to be liwuidated in her favour, for the benefit of the parties’ children. The Court sincerely hopes that this judgment brings some closure to plaintiff and her three children, after all the abuse and pain that they were subjected to by defendant.

**DECIDE:**

Now therefore, the Court:

1. UPHOLDS the first demand and declares that the celebration of marriage between the parties, is not valid in terms of law and that it has no civil and/or legal implications;
2. UPHOLDS the second demand and orders that the parental authority of the three minor children shall be exclusively vested in the applicant mother;
3. UPHOLDS the third demand and grants the sole care and custody of the three minors to the applicant mother;
4. UPHOLDS the fourth demand and orders that the minors are to continue to reside with the mother;
5. UPHOLDS the fifth and sixth demands and liquidates the amount due by the Father to the amount of Eur 250 per month, per child, which amount is inclusive of the Husband’s share of educational and health expenses and which is to be revised every year according to the Cost of Living and deducted from the Husband’s salary and/or any social benefit he might be receiving from time to time. Maintenance shall be due until the minors reach the age of eighteen years should they decide to work on a full-time basis, or until the age of twenty-three should they decide to pursue their studies on a full time basis. Moreover any children’s allowance is to be perceived exclusively by the Mother;
6. UPHOLDS the seventh demand and liquidates ‘arbitrio boni viri’ arrears in the sum of €12,000 being maintenance due for 20 months, as per decree dated 7 September 2017.
7. Abstains from the eight demand.

All costs are to be borne by defendant, provisionally payable by the Registrar of Courts, but fully recoverable from defendant upon his whereabouts being identified.

Judge

Hon Anthony Vella

1. See also **Jennifer Portelli v. John Portelli** decided on the 25th June 2003 [↑](#footnote-ref-1)