



**CIVIL COURT  
(FAMILY COURT)**

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

**Sitting of Thursday, 20<sup>th</sup> October 2022**

**Application number : 165 /2018 AGV ;**

**KCN**

**Vs**

**RN**

**The Court ;**

**Having seen the sworn application dated 28<sup>th</sup> June 2018, KCN premised that:**

1. The parties got married on the 10<sup>th</sup> October 2005 and from their marriage, two children were born, N who was born on the 10<sup>th</sup> February 2006 and BL who born on the 15<sup>th</sup> August 2013;

2. That the parties have been living de facto separated since July 2016;
3. That since the marriage had irretrievably broken down, applicant initiated mediation proceedings with the intention of reaching a compromise in respect of the division of their assets;
4. That the opposite occurred. In the months of discussion that followed the filing of mediation, respondent made it impossible for the parties to reach a consensual separation;
5. That these facts were not leading to any progress and applicant asked for the mediation to be closed and to be authorized to file this Court Case;
6. That the matrimonial home is being occupied exclusively by respondent, as per the decree dated 4<sup>th</sup> August 2016;
7. That respondent started a relationship with HEE and from this relationship she had a daughter, SAE who was born on the 18<sup>th</sup> November 2017;
8. That it results that respondent is not residing in the matrimonial home together with the two minors, but is in fact residing with HEE
9. That by means of a decree delivered on the 4<sup>th</sup> January 2017, respondent has been ordered not to let in the matrimonial home any men, except for family members. An order which has been ignored by respondent, who slightly after conceived her daughter SAE ;
10. That respondent not only failed to adhere to this Court's orders, but she also went further by taking the parties' children to reside with HEE ;

11. That applicant has been authorized to file these proceedings by means of a decree dated 3<sup>rd</sup> May 2018;

**For these reasons, this Honourable Court is asked to:**

1. Pronounce and declare the personal separation between the parties for reasons attributable to the respondent, and for the purposes of Article 48(c) of the Civil Code (Chapter 16) establishes a date from which respondent is to be considered as responsible for the separation, adultery, excesses, cruelty, threats and grievous injury;
2. Entrust the care and custody of the minors NN and BLN exclusively to applicant save for the access towards respondent, which is to be exercised on days and times established by this Court;
3. Establishes and liquidates maintenance which respondent is to pay applicant, every week or every month, as this Court may deem fit, for N and BL, according to her means, and the minors' needs;
4. Establishes and liquidates maintenance which respondent is to pay applicant for himself, every week or every month, as this Court may deem fit, according to her means and applicant's needs; or if this Court deems fit, to order respondent to pay applicant, instead of the entire maintenance or part thereof, a global sum which in the opinion of this Court is enough for applicant to live financially independent or lesser independent on respondent;

5. Apply against, or in part, against the respondent the sanctions established in article 48 of the Civil Code (Chapter 16);
6. Order respondent to return to the applicant his dotal and paraphernal assets and to order applicant to be able to administer fully his paraphernal property;
7. Liquidate his paraphernal credits and quantify the same against the community of acquests, which amount is to be eventually included in the division of assets and/or against respondent;
8. Dissolve and extinguish the community of acquests between the parties and liquidate the assets and debts of the community, including the debts liquidated according to the demand preceding this one, and liquidate the same in such a way as to establish the portions in division and assign to the parties, and also to establish a date since when the respondent is considered to have forfeited any acquisition made by the work and ability of the applicant;
9. Authorise applicant to reside exclusively in the matrimonial home situated at Flat 4, A3, Triq Pietru Darmenia, Pembroke with the exclusion of respondent;
10. Authorise applicant to register this Court's eventual judgment with the Public Registry;

**With costs, including those of the mediation, against respondent, who is summoned so that a reference to her evidence be made.**

**The Court ;**

**Having seen the sworn reply filed on the 18<sup>th</sup> December 2018, respondent submitted:**

1. Respondent agrees that personal separation be pronounced between the parties but contends that it was the plaintiff who brought about the irremediable breakdown of marriage due to beatings, violence and abuse exercised by him, which made conjugal life impossible;
2. Respondent is opposing plaintiff's second request that the Court order that the care and custody of the minor children be given exclusively to plaintiff and this for reason above mentioned, namely applicant's behavior, and thus this should be entrusted to her;
3. Respondent opposes the third request, for the same reason she mentioned above, and therefore it is applicant who has to be ordered to pay maintenance towards her for the minors;
4. Respondent opposes the fourth request, since there are no reasons valid at law, for which respondent is to pay maintenance towards applicant;
5. The fifth request is hereby being opposed since such demand is unfounded and false;
6. The sixth request is not being opposed as long as applicant produces evidence to this effect;
7. The seventh request is hereby being opposed since it's vexatious;

8. The eighth request concerning the winding up and liquidation of the community of acquests existing between the parties is not opposed, however, such division and subsequent assignment has to reflect the abusive and violent behavior of applicant, which caused the breakdown of the parties' marriage;

9. The ninth request is opposed;

10. The tenth request is not being opposed;

**Respondent asks that the expenses of this procedure, including those of the mediation, be liquidated against applicant.**

Rat id-dokumenti esebti.

Semghet il-provi.

Rat li din il-kawza kienet qed tinstema' kontestwalment ma' kawza ohra f'ismijiet inversi, 229/16.

Rat li z-zewg kawzi qed jitmexxew bil-lingwa Ingliza, u ghalhekk il-Qorti sejra tkompli z-zewg sentenzi bl-Ingiliz.

Having seen the legal referee's report and conclusions.

Having seen all the acts of the proceedings.

Having seen that this case was being heard together with case number 229/16 in the same names.

**CONSIDERS:**

This case is being heard with case number 229/16, and the evidence submitted in one was deemed applicable to the other. As a result, in order to avoid duplication of the examination of evidence, the considerations raised in the other judgment being delivered today are also applicable to this judgment.

**DECIDE:**

Now, therefore, the Court:

With regard to the pleas raised by **KCN** , the Court;

1. Upholds the first demand put forward by **KCN** and declares the personal separation of spouses **N** for reasons attributable to both parties, even if in unequal measure, as explained above;
2. Rejects the second demand and entrusts limitedly the sole care and custody of the two minors, for educational purposes only to the Wife; and orders that extraordinary health decisions and the decision of the issuance or otherwise of passports, are still be taken jointly by both parents. The

Minors are to reside with the Mother with access towards the Father, every Tuesday and Thursday from 4pm till 8pm, and a sleepover from Friday at 6pm till Saturday at 6pm, alternating the following week from Saturday at 6pm till Sunday at 6pm. In the case of Naomi, given her age, she should have free access towards her father.

3. Rejects the third demand for the reasons set out above;
4. Rejects the fourth demand for the reasons set out above;
5. Upholds the fifth demand and sets the 15th September 2016 as a cut off date for such forfeiture;
6. Rejects the sixth and seventh demands as no evidence of dotal and/or paraphernal assets and/or claims have been brought forward;
7. Upholds the eighth demand and orders the termination and liquidation of the community of acquest as set out under the sub-title “Termination, Liquidation and Division of the Community of Acquests”;
8. Rejects the ninth demand for the reasons set out above;
9. Upholds the tenth demand and order that the judgment be registered in the Public Registry of Malta, in termin of Article 62A of Chapter 16 of the Laws of Malta.

With costs apportioned as to two thirds (2/3) to be paid by the KCN and the remaining one third (1/3) to be paid by RN.



**Hon Anthony G Vella**

**Judge**

**Cettina Gauci**

**Dep Reg**