

**FV CIVIL COURTS
(FAMILY SECTION)**

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

Hearing of the 12th of January 2023

Application no.: 586/2021 JPG

Case no.: 18

**PE
Vs
OE**

The Court:

Having seen the sworn joint application filed by PE dated 29th of November 2021, at page 1, wherein it was held:

1. *That he contending parties contracted their marriage on the twenty fourth (24th) April of the year two thousand and two (2002) (Document here attached and marked as Dok A) in the Register of Marriages at Valletta, and from their marriage a daughter, SE (the minor) was born on X (document here attached and marked as Dok B).*
2. *That the aforementioned parties had separated from one another by a decision of this same Honourable Court on the twenty fourth (24th) of April of the year two thousand and fourteen (2014), through Sworn Application No. 210/96RM (“the decision”) (Document here attached and marked as Dok C) were the same court pronounced the personal the personal separation of the parties and declared that both parties were equally liable for the breakdown of their marriage.*
3. *That it results that a contract of separation of estates was signed between the*

parties on the twenty fourth (24th) of September of the year two thousand and two (2002) in the acts of notary Dr. Joseph Debono and therefore the community of acquiescence did not subsist between them. (Document here attached and marked as Dok D);

- 4. That through the Decision, the court ordered that the care and custody of the minor SE be entrusted exclusively to the mother along with the right to apply for the minor's passport and to revoke such passport without the father having to sign, and in the case of temporary travel with the mother or with the school which does not exceed fifteen (15) days, the consent of the father will not be necessary;*
- 5. That the applicant pays maintenance regularly and on a monthly basis through a bank transfer to the respondent in the amount of two hundred (200) Euro;*
- 6. That such maintenance has to continue being paid by the Plaintiff until the minor reaches eighteen (18) years of age, or until she reaches twenty-three years (23) of age should she continue studying at post-secondary level. The same maintenance stops as well should the minor stop attending school on a full-time basis;*
- 7. That the applicant has always paid maintenance;*
- 8. That the applicant and the respondent have been legally separated from the twenty fourth (24) of April 2014, meaning for a period longer than seven (7) years, which goes above and beyond the period of a year requested by the Civil Code Chapter 16 of the Laws of Malta, Article 66B(a) so that the applicant would be able to request that divorce be pronounced, as explained in the affidavit of the same plaintiff (Document here attached and marked as Dok E);*
- 9. That there are no reasonable prospects for reconciliation between the parties.*
- 10. That therefore the conditions contemplated in the aforementioned 66B of Chapter 16 of the Laws of Malta are satisfied and considering the fact that the parties are already separated by a Decision of the court, it's not necessary that a mediation takes place between them.*

Therefore the applicant respectfully requests that, in accordance with the dispositions found in Article 66B of Chapter of the Laws of Malta, this Honourable Court, privy

to the hearing of the parties as stipulated in Article 66C of Chapter 16 of the Laws of Malta, and to establish also the existence of those conditions contemplated in the aforementioned Article 66B, pronounces the divorce between the parties as contemplated in the aforementioned Article 66C.

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 OE dated 14th of January 2022, at page 30, wherein it was stated:

- 1) That although it is true that the parties have been living apart from each other more than four (4) years and there is no reasonable prospect for reconciliation, it is not entirely true that the maintenance payable by the applicant for the needs of the child, SE who was born on X, is being paid as intended in the judgment delivered by this Honourable Court on the 24th April 2014;*
- 2) That in the judgment delivered, the applicant was ordered to pay the sum of three hundred Euro (€300) every four weeks (paragraph number 2 of the decision).*
- 3) That as stated by the applicant in his sworn application, he pays maintenance regular and monthly by way of bank transfer to the respondent in the amount of two hundred Euro (€200) every month.*
- 4) This means the cumulatively from the date of the said judgment and the date of this reply, applicant, plaintiff, has failed to pay the sum of €12,425.11c as arrears of maintenance so ordered.*
- 5) That at the present the maintenance payable to the respondent is of €321.18c every four weeks, that is approximately €350 every month.*

Having heard the evidence on oath;

Having seen that Defendant declared on the 17th of November 2022 that all payments due in maintenance to the minor child were paid by Plaintiff during the pendency of these procedures and that therefore, she withdrew her first plea regarding maintenance arrears (vide fol 41A);

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:

PE testified by means of an affidavit (*vide affidavit Dok E, page 25*), that the parties were married on the 24th of April 2002, and that a child was born from this marriage. He added that the community of acquests between the parties was terminated by means of a public deed dated 24th of September 2002 whilst the Court pronounced their personal separation by virtue of a judgment dated the 24th of April 2014, per Hon Judge Robert Mangion. He testified that there is no reasonable prospect of a reconciliation and there are no maintenance issues.

In a further affidavit, regarding maintenance arrears, Plaintiff stated that Defendant always accepted the sum given by him every month and Defendant never complained regarding such sum to him. He declared that the payment regarding expenses of the child's health and education were made by him to Defendant in cash, without receipts. Moreover, to keep the child happy he bought her a mobile every year and that during the weekend access with the child, Plaintiff always gave her €100, and this apart from maintenance given to Defendant. Therefore, finally he declared that there were no maintenance arrears.

OE gave evidence on oath (*vide affidavit fol 43*) and she declared that the sum of €12,425 as maintenance arrears was paid by Plaintiff by virtue of a private agreement during the pendency of these proceedings. Thereafter she corroborated and confirmed Plaintiff's evidence.

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 21st of July 2017, bearing marriage certificate number 368/2002 (*vide* Dok A fol 9) and that a child was born from this

marriage.

From the acts of the case it transpires that the parties' marriage broke down and they separated by means of judgment dated the 24th of April 2014, per Hon Judge Robert G. Mangion (*vide* contract of judgement fol 12). Moreover, they also regulated their community of acquests by means of a public deed, dated the 24th of September 2002, in the acts of Notary Dr Joseph Debono. The Court observes that as indicated by the parties' in their respective testimonies, the parties are now leading separate lives and have renounced to their right to receive maintenance from each another.

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

During the pendency of these proceedings, the plea of unpaid maintenance was withdrawn as all the maintenance arrears were paid by the Plaintiff.

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 bears the certificate number 368/2002 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**