

**CIVIL COURTS
(FAMILY SECTION)**

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

Hearing of the 24th of January 2023

Application no.: 236/2022

Case no.: 29

**MM
Vs
LM**

The Court:

Having seen the application filed by MM dated the 5th of May 2022, at page 1 (translation at page 34), wherein it was held:

- 1. That the parties got married on the fourth (4th) of July of the year two thousand and nine (2009) in Aarhus, Denmark as evidenced in the extract of the Marriage Certificate annexed hereto and marked as “Dok MM1”;*
- 2. That from the marriage two children were born; a girl named M who was born on the X and a boy named J who was born on the Y;*
- 3. That in virtue of a deed publishes in the acts of Notary Marilena Crisitna LL.D. on the twenty fifth of June of the year two thousand and twenty (25.06.2020) which contract is being annexed hereto and marked as ‘Dok MM2’, the parties separated amicably after being duly authorised by the Maltese Court in virtue of a decree number 1072/20 issued by the Civil Court (Family Section);*

4. *That in clause number 5 the applicant MM undertook to pay to LM the amount of five hundred (€500) per month for a period of three (3) years from date of publication of the said contract, which maintenance has always been paid in time and will continue to be paid in terms of the said contract;*
5. *That in clause number 30(i) the applicant MM also undertook to pay the amount of four hundred (€400) per month for each child, which maintenance increases according to the index of inflation, as maintenance for the children, which maintenance has always been paid in time;*
6. *That the conditions for the pronouncement of divorce as listed in terms of Article 66B of Chapter 16 of the Laws of Malta are satisfied because:*
 - i. *The parties are legally separated from each other;*
 - ii. *There is absolutely no reasonable prospect for reconciliation between the parties who, nowadays are leading totally separate lives from each other.*
 - iii. *In terms of clause number six (6) of the abovementioned contract of separation hereto annexed (and marked as 'Dok MM2'), the parties renounced to the right of requesting and receiving maintenance from each other, saving what is stipulated in clause number five (5) mentioned above, which maintenance has always been paid and will continue to be paid in terms of the said clause;*
 - iv. *In relation to the minor M and J the maintenance is being paid without any disputes;*
7. *That this is also declared and confirmed by the applicant by means of a sworn Declaration annexed hereto and marked as 'Dok MM3';*
8. *That for the purpose of Article 66N (1)(a) and (b) it is being declared that the applicant is residing in Malta;*

Therefore, in light of the above, the applicant is respectfully requesting this Honourable Court, in terms of any declaration and/or order which it deems opportune in terms of Article 66A et. Sec. of Chapter 16 of the Laws of Malta, to:

1. *Pronounce the dissolution of the marriage celebrated on the fourth (4th) of July of the year two thousand and nine (2009) in Aarhus, Denmark;*

2. *Order the Registrar of Courts to notify the Director of Public Registry of the divorce and the dissolution of the marriage within the period established for this purpose by this Honourable Court, so that this is duly registered in the Public Registry.*

And this in terms of all those orders which this Honourable Court deems appropriate and opportune.

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 LM, dated the 24th of October 2022, vide page 30, wherein it stated:

1. *That the respondent does not oppose the requests submitted by the applicant for a declaration of divorce between the parties, and for the dissolution of the marriage celebrated between the parties on the 4th of July 2009 given that there is no possibility of reconciliation between the parties, as also confirmed in the attached sworn statement marked Doc.A;*
2. *That the respondent confirms that the maintenance due for the same respondent and for the minor children of the parties as regulated in clauses number five (5) and thirty sub paragraphed one (30 (1)) of the contract of separation published in the deeds of Notary Marilena Cristine on the 25th June 2020, is being paid regularly in terms of the said contract, as also confirmed in the attached sworn statement marked Doc A.*
3. *That the respondent should not bear the costs of the present proceedings.*

Having heard the evidence on oath;

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:

MM by means of an affidavit (*vide affidavit at page 23*), that the parties married on the the 4th of July 2009 in Aarhus, Denmark and that from this marriage two children were born. He testified that their marriage broke down and the parties contracted a consensual separation by means of a public deed dated the 25th of June 2020 in the acts of Notary Dr Marilena Crisitna. He testified that they both have independent life from each other and therefore there is no possibility of reconciliation. He declared that there are no maintenance issues between them.

LM testified by means of an affidavit (*vide affidavit at page 31*) and confirmed and corroborated her husband's testimony.

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 4th of July 2009, (Vide fol 4, Dok MM1), and that two children were born from this marriage.

From the acts of the case it transpires that the parties' marriage broke down and they regulated their personal separation by means of a public deed in the acts of Notary Dr Marilena Cristina dated 25th of June 2020 (*vide* contract of separation at page 5). 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. Furthermore, both parties agree that maintenance to the children has always been paid as per contract.

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

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, 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 noted in the Public Registry.

Senza Tassa.

Read.

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

Christabelle Cassar

Deputy Registrar