

**CIVIL COURTS
(FAMILY SECTION)**

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

Hearing of the 25th January 2023

Application no.: 451/2022JPG

Case no.: 20

**MA
Vs
SA**

The Court:

Having seen the sworn Application filed by MA dated 29th August 2022, at page 4 et seq, wherein it was held:

That the parties married on the seventeenth of November of the year nineteen ninety (17.11.1990), in Birzebbugia, Malta, and this as shown by the marriage certificate attached hereto and marked as Dok A;

That from this marriage, the parties had two (2) children, BA born on X and AA born on Y, and this as shown by the birth certificates attached hereto and marked as Dok B and Dok C respectively;

That the parties legally separated from each other by means of a separation contract in the acts of Notary Rachel Busutil dated the twenty-third of March of the year two thousand and eleven (23.03.2011), as can be seen from the contract attached hereto

and marked as Dok D. That from that time, the parties never reconciled or lived together. The parties have been legally separated and living separately for a period of eleven (11) years, which is more than is required and requested by virtue of Article 66B (a) of the Civil Code, Chapter 16 of the Laws of Malta;

That there exists no possibility of reconciliation between the parties;

That no maintenance is due between the parties as per the contract of personal separation and neither is any maintenance due to the children of the parties who have both attained the age of twenty-three (23) years and are both in gainful full-time employment;

The parties declare that they are resident in Malta;

That, in light of the above, there exist all the requisites required for the attainment of divorce as per Article 66B of the Civil Code, Chapter 16 of the Laws of Malta.

Therefore, the applicant humbly requests that this Honourable Court:

- 1. To declare and pronounce the dissolution of the marriage between the parties, which marriage was celebrated on the seventeenth of November of the year nineteen ninety (17.11.1990), in Birzebbugia, Malta;*
- 2. To order that the Registrar of the Courts informs the Director of the Public Registry about the divorce in order for the necessary annotations to be made in 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 Respondent did not file a reply but declared that she does not object for the divorce.

Having examined 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:

Plaintiff testified by means of an affidavit (*vide affidavit at page 25*), and held that parties got married on the 17th of November 1990 and that from this marriage two children were born. He added that the parties separated by virtue of a separation contract in the acts on Notary Dr Rachel Busuttill dated the 23rd of March 2011. Furthermore, he declared that there is no reasonable prospect of a reconciliation. Regarding maintenance, he declared that there are no pending maintenance issues.

Defendant testified on the 24th November 2022 (*vide fol 22*) and confirmed and corroborated her husband'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 17th November 1990, bearing marriage certificate number 2125/1990 (*vide* marriage certificate at page 6) and two children were born from this marriage, aged twenty-six (26) and twenty-four (24) respectively.

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 Rachel Busutil dated 23rd March 2011 (*vide* contract of separation at page 9 *et seqq*). 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 one another.

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, which marriage bears the Certificate Number 2125/1990 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)

**Christabelle Cassar
Deputy Registrar**