

**CIVIL COURT
(FAMILY SECTION)**

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

Today 1st March 2023

Sworn App. No. : 298/2018 JPG

Case No. : 14

**IF in her own name and on behalf
of the minor children TF and LF**

Vs

JF

The Court:

Having seen the application of IF of the 14th of November 2018 wherein she requested the personal separation from her husband, care and custody of the two minor children, maintenance for the children including half the costs of their medical and educational expenses, the termination of the community of acquests and the division of such acquests between the parties and ancillary matters;

Having seen the decree of this Court for service to Defendant and a right of reply;

Having seen the sworn reply of JF of the 12th December 2018, objecting to the demands of Plaintiff;

Having seen Defendant's counter claim dated 12th December 2018;

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Having seen the sworn reply of Plaintiff to the counter-claim dated 10th June 2019;

Having seen the deed of personal separation published on the 7th December 2022;

Having seen the application filed by Plaintiff dated the 3rd September 2021 for the conversion of the request of personal separation into one of divorce;

Having seen this Court's decree dated 3rd November 2021, upholding the conversion from personal separation to divorce and the order for the adherence of the dictates Articles 66G and 66H of Chapter 16 of the Laws of Malta;

Having seen the Note filed by Dr Josette Sultana dated 8th November 2021 (vide page 574) in terms of Articles 66H of Chapter 16 of the Laws of Malta;

Having seen the Note filed by Dr Josette Grech dated 11th November 2021 (vide page 575) in terms of Articles 66G of Chapter 16 of the Laws of Malta;

Having seen the parties' notes of cessation regarding the personal separation and ancillary matters filed by both parties;

Having seen the declaration by this Court pronouncing the cessation of the requests for personal separation and ancillary matters dated the 26th of January 2023 such that the remaining issue between the parties, was one relating to the divorce and to the registration of the same in the Public Registry;

Having seen the sworn affidavits of the parties with regards to the divorce proceedings;

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 filed on the 23rd of February 2023 (vide fol 598)

and confirmed that the parties contracted marriage on the 9th June 2001 and have legally separated by means of a public deed in the acts of Notary Dr Claire Camilleri on the 7th December 2022. Plaintiff confirmed that they have been separated de facto since June 2016. In 2018 Plaintiff had initiated separation proceedings and following the publishing of the deed of personal separation, she requested the conversion of the proceedings into one of divorce. Plaintiff confirms that there are no pending issues between the parties with regards to maintenance and affirms that there is no hope for a reconciliation between the parties.

Defendant also testified by means of an affidavit filed on the 27th February 2023 and confirmed the evidence of the Plaintiff.

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.

(omissis)

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 9th June 2001 in Victoria Gozo, which marriage bears the certificate number 45/2001 (*vide* marriage certificate annexed to affidavits) and that two children were born from this marriage, TF who was born on X and LF who was born on Y.

The Court notes that the proceedings were initiated as contentious proceedings for personal separation. During the sitting of the 26th January 2023, this Court was informed by the parties that the parties had signed a deed of separation which was published by Notary Dr Claire Camilleri on the 7th December 2022. The parties filed a note of cessation with regards to the requests for their personal separation as well as with regards to the ancillary demands, with the exception of the request for the pronouncement of the divorce between the parties and the registration of the same.

In light of the above, and since the parties have in the interim reached an amicable settlement, this Court is now left with determining whether the parties, who are now legally separated, satisfy the requisites for the granting of a divorce in accordance with Maltese Law.

Deliberates:

The Court observes that as indicated by the parties' in their respective testimonies, the parties have been living apart since June 2016 and have obtained legal separation in December 2022. The Court observes that the parties have renounced to their right to receive maintenance from one another. Neither are there any maintenance arrears regarding the minor children.

Furthermore, the Court finds that there is no reasonable prospect of reconciliation between the parties.

Therefore, the Court holds that the parties have satisfied all the requisites envisaged in the law for the pronouncement of divorce.

For these reasons, the Court pronounces the dissolution of the marriage which bears the certificate number 45/2001 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 registered in the Public Registry.

Costs regarding the divorce proceedings and its registration shall be divided equally between the parties.

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

**Lorraine Dalli
Deputy Registrar**