# COURT OF MAGISTRATES (GOZO)
# SUPERIOR JURISDICTION
# FAMILY SECTION

## MAGISTRATE DOCTOR BRIGITTE SULTANA
## LL.D., LL.M. (CARDIFF), ADV. TRIB. ECCL. MELIT.

Today, Thursday, 30th March, 2023

**Sworn Application number: 16/2015 BS**

**GVB**

**-vs-**

**IHTB**
***As corrected by this judgment to***
**IHTB**

**The Court;**

**A. PRELIMINARY:**

**Having seen the Sworn Application filed by GVB[1] who premised:**

[1] In the Maltese language at fol. 1 to 5.

1. THAT she married IHTB on the nineteenth (19th) of December two thousand and nine (2009);

2. THAT from this marriage two children were born, CB, who was born on the fifth (5th) of October April [sic] two thousand and ten (2010); and HB, on the twentieth (20th) of July two thousand and twelve (2012) and thus are still under age [sic];

3. THAT the marriage between her and her husband was irretrievably broken due to cruelty and abuse on the part of IHTB himself, due to alcoholism problems on his part, and due to other reasons that give rise to personal separation;

4. THAT because of this she was forced to leave the matrimonial home and go live elsewhere together with her children;

5. THAT therefore she wishes that the personal separation between her and her husband be pronounced;

6. THAT the applicant's children live almost exclusively with her, and can hardly be trusted with their father, precisely because of the problems that the father suffers from and that led to the breakup of the marriage;

7. THAT the applicant wishes, therefore, that the care and custody of her children be entrusted exclusively to her, except that times of access [sic] with regard the father to his children are established, under those necessary modalities in order to ensure the safety of her children;

8. THAT she provides for all the needs of her children and effectively takes care of them; and the amount that the respondent is currently paying as maintenance is not

sufficient and adequate to meet all the costs involved, and it needs to be increased as well as being subject to an increase per year in proportion to the increase in the cost of living;

9. THAT therefore she would like the father to be ordered to provide adequate maintenance for his children, and this also *pendente lite*;

10. THAT the applicant wishes to revert to her maiden surname, "E";

11. THAT the applicant also wishes to terminate, liquidate and partition the community of acquests in between the spouses and considering in such liquidation the value of her right of use and habitation in the matrimonial home should be taken into account, which house is paraphernal of her husband, and also she be paid adequate compensation for the fact that, due to the problems that led to the breakdown of the marriage, she was forced to leave the matrimonial home and therefore renounces such right;

12. THAT the spouses have been authorized to proceed with the personal separation from each other by a decree of this Honourable Court, one of the tenth (10th) of June 2015, in the acts of the mediation letter number 52/2013 in names "GVB vs. IHTB";

13. THAT the applicant believes that the income and the potential income on the part of IHTB is much higher than hers, and for these reasons IHTB should be ordered to pay alimony to herself commensurate with the respective potential, also taking into account the fact that she has upon herself the care of three children,

those from this marriage and another one from her previous relationship;

**Accordingly she requested this Court to:**

1. pronounce the personal separation between the contending parties for the reasons mentioned above and for all those that result during the course of the hearing of the case;

2. give those orders that this same Court deems appropriate and opportune in the best interest of the minor children regarding the care and custody of the same children CB and HB; by entrusting such care and custody to the applicant and establishing the times and modalities of the father's access to the same children; and this under those necessary modalities to ensure the safety of her children;

3. also with the application of Article 6A of the Civil Code, it sets the alimony that must be paid by the father to the applicant because she is taking care of the children, which alimony must be based on the circumstances of the facts as they currently are, but that it be subject to change, including an increase, in the event that the factual and financial circumstances of any of the parents change and also an increase that reflects the increase in the cost of living;

4. give any other order that it deems to be in the best interest of the common minor children;

5. fix an alimony to be paid by the respondent to the applicant personally;

6. order the respondent to pay the alimony as determined in follow-up to the third and fifth pleas above;

7. authorize the applicant to assume the surname "E";

8. terminate the existing community of acquests between the parties with immediate effect;

9. liquidate such community of acquests existing between the contending parties by declaring that it consists of those assets and liabilities which will result in the course of the lawsuit;

10. declare that there is reason to apply against the respondent the consequences and the lapses established in Article 48 of the Civil Code since it was he who gave rise to the separation for one or more of the reasons indicated in Articles 38 and 40 of the same Code;

11. Liquidate the value of the applicant's right of use and habitation with regard the matrimonial home, "Dar Kannella", Triq Sannat, Sannat and order the respondent to pay the plaintiff adequate compensation for such right, which right she cannot exercise due to shortcomings imputable to the respondent;

12. Partition and divide the assets and debts forming part of the community of acquests also in light of pleas number 10 and 11 above;

13. Order the publication of the opportune contract of personal separation between the contending parties and of the termination of the community of acquests by means of a Notary to be nominated, on a day, time and place to be set in this regard, and by means of deputy

curators to represent the eventual defaulters on that deed;

With all the costs against the respondent, and with the demand for a reference to the oath of the opposite party for which you are as of now summoned.

**Having seen the Sworn Reply filed by the defendant IHTB[2] in which he declared that:**

1. THAT preliminarily the applicant is submitting that a correction must be made in the name of this case since his name should read '*IHTB*';

2. THAT the applicant agrees that the personal separation between the parties should be pronounced but he does not agree that he should assume the blame for the failure of his marriage with GVB, on the contrary he claims that the blame is entirely that of his said wife as will be amply proven by the evidence and the submission of the case and that therefore the penalties set out in the Civil Code should be applied against his said wife;

3. THAT consequently he has no objection to dissolve the community of acquests between the parties save what was requested on the commination applicable according to the Law and after the paraphernalia of the parties are determined;

4. THAT the applicant is objecting to his wife being entrusted with the care and custody of the minor children and he contends that this should be entrusted to him and this since he is more suitable to raise the said children and therefore the minors should reside with

[2] In the Maltese language at fol. 32 to 34.

him with access in favour of the mother, and it is the mother who must supply him with alimony for the interest of the minors. In fact the applicant raised child JJA who is the son of the applicant from a previous relationship with the same love and affection as if he were his own;

5. THAT without prejudice to his fourth plea, the applicant maintains that in case this Honourable Court does not accept his fourth plea, then the current arrangement must remain in force and that the minors spend the weekend with the father while having the possibility to communicate with his children every day. This arrangement has been successfully exercised for the last few months and therefore it is not true that the children live exclusively with the plaintiff, and that the defendant cannot be trusted with his children;

6. THAT he is opposing the request that he be ordered to pay maintenance to his wife and given *that* she has her own income and has a profitable job and is therefore able to generate income for herself. In fact she is receiving all the income of the business with the name of Gigi's Clubhouse;

7. THAT she was the same plaintiff who on the twenty-sixth (26th) of November 2014 abandoned the matrimonial home and left out of her own free will without anyone forcing here to do so, and therefore there is no value that should be liquidated in favour of the plaintiff for the right of use and habitation. In fact the plaintiff continued to freely enter the matrimonial home for a number of weeks afterwards;

8. THAT the claims contained in the sworn application could easily have been contained in a smaller number of claims, and they have been fractionated solely to increase the costs, for which additional costs solely the plaintiff must make good;

Save for further pleas in fact and at law.

**Having seen** that at the hearing of the 10th June, 2015 the parties agreed that the applicant would be vacating the matrimonial home with the respondent changing the locks thereto without prejudice to any rights of both parties on said property. The parties also agreed that the applicant would remove items from the matrimonial home subject to the value of such removed items being considered in the liquidation of assets subsisting between the parties;[3]

**Having seen** that at the same hearing of the 10th June, 2015 the Court authorised each of the parties to proceed with separation proceedings;[4]

**Having seen** that at the hearing of the 24th September, 2015, the parties agreed for the case to proceed in the English language;[5]

**Having seen** the decree given by this same Court in the record of different proceedings — proceedings number 52/2013 PC — which established maintenance to be paid by the respondent towards his children as well as the respondent's access rights *pendente lite*;[6]

[3] Court record at fols 6 and 7.
[4] Court record at fols 6 and 7.
[5] Court record at fols 55 and 56.
[6] Court record in proceedings number 52/2013 PC at fols 53 and 54.

**Having seen** that following an application of the applicant of the 3rd September, 2015,[7] an application of the respondent of the 11th September, 2015,[8] a reply of the respondent of the 11th September, 2015,[9] and a reply of the applicant of the 24th September, 2015,[10] via a decree dated the 24th September, 2015 the Court ordered surprise visits on the respondent, while alone and while with his children, to be carried out by a social worker with instructions for said social worker to provide a report to the Court;[11]

**Having seen** that by the same decree of the 24th September, 2015 the Court ordered that access and maintenance were to remain regulated by the Court's decree as per the record of the 30th April, 2015 entered in the separate proceedings with number 52/2013 PC with the only change being that the maternal grandmother was to be present during the respondent's visitation hours when present in Malta, with visitation rights being exercised even when she is not;[12]

**Having seen** the application of the respondent of the 6th October, 2015[13] and the applicant's reply thereto of the 14th October, 2015[14] regarding an account held by the applicant with Richardson GMP, Canada;

**Having seen** the note of the applicant of the 16th October, 2015[15] with attached several police reports, printouts of cellular text messages exchanged between the parties,

[7] Application at fol. 12.
[8] Application at fols 14 and 15 with documents at fol. 16 to 19.
[9] Reply at fols 20 to 21 with documents at fol. 22 to 24.
[10] Reply at fols 35 to 36 with document at fol. 38.
[11] Decree at fol. 57—in the Maltese language—and fol. 58 in the English language.
[12] Court record in proceedings number 52/2013 PC at fols 53 and 54, decree of the 24th September, 2015 at fol. 57—in the Maltese language—and fol. 58 in the English language.
[13] Application at fol. 59 with documents attached at fols 60 to 65.
[14] Reply at fols 70 and 71.
[15] Nota at fols 72 and 73.

statements to an a HSBC bank account held in the name of the applicant with number 071-231351-050 covering the period between the 4th December, 2009 and the 1st November, 2010, copies of cheques issued by the applicant to the respondent on the 18th June, 2010 and the 1st July, 2010 for the values of ten thousand euros (€10,000) and fourteen thousand euros (€14,000) respectively, a letter dated the 10th September, 2014 addressed to the applicant and signed by the respondent, a copy of a decision delivered by the US Securities and Exchange Commission on the 12th July, 2013, copies of medical articles regarding alcohol withdrawal symptoms, and an affidavit released by Christine Christian;[16]

**Having seen** the report of the social workers filed in line with the Court's decree of the 24th September, 2015;[17]

**Having seen** the applicant's note of the 22nd October, 2015 listing the assets and liabilities of the community of acquests according to her;[18]

**Having examined** the digital contents of a memory stick submitted on the 22nd October, 2015;[19]

**Having seen** the eighteen police reports exhibited at the hearing of the 22nd October, 2015;[20]

**Having seen** the decree of the 22nd October, 2015 whereby the Court confirmed its decree of the 24th September, 2015 and ordered the persistence of surprise visits on the respondent by social workers. The Court also ordered the

[16] Documents at fols 74 to 130.
[17] Social workers' report at fols 132 and 133.
[18] Note at fols 137 and 138 with documents at fols 139 to 199.
[19] Memory stick sealed in an envelope at fol. 209.
[20] Sealed in an envelope at fol. 204.

social workers to immediately report to it if they find the respondent to be under the influence of alcohol;[21]

**Having seen** the application of the respondent of the 30th October, 2015[22] and the applicant's reply thereto of the 9th November, 2015[23] regarding the account held by the applicant with Richardson GMP, Canada;

**Having seen** the Court's decree of the 10th November, 2015;[24]

**Having seen** the respondent's note of the 16th December, 2015 listing the assets and liabilities of the community of acquests according to him.[25] Having also seen the additional note of further explanation of the list of assets and liabilities filed by the respondent on the 24th February, 2016[26] as well as additional documents filed by the respondent at fols 411 to 781;

**Having seen** the note of the applicant of the 24th February, 2016;[27]

**Having seen** the applicant's request of the 8th March, 2016[28] and the respondent's reply thereto filed on the 11th April, 2016,[29] followed by the Court's decree of the 12th April, 2016;[30]

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[21] Decree at fol. 211.
[22] Application at fol. 212 with documents at fol. 214 to 216.
[23] Reply at fols 218 and 219.
[24] Decree at fol. 220.
[25] Note at fol. 265 with documents at fols 266 to 370.
[26] Documents at fols 394 and 395.
[27] Note at fol. 396 — including at back of same fol. — with documents at fols 397 to 410.
[28] Application at fols 805 to 806.
[29] Reply at fols 810 and 811.
[30] Decree at fol. 816.

**Having seen** the Court's decree of the 7th July, 2016 which temporarily suspended all access rights of the respondent to the parties' children;[31]

**Having seen** the additional note of the applicant of the 13th July, 2016 regarding the assets and liabilities of the community of acquests according to her;[32]

**Having seen** the respondent's reply of the 13th July, 2016[33] following Court's decree of the 7th July, 2016;

**Having seen** that at the hearing of the 13th July, 2016 the applicant declared her evidence stage closed;[34]

**Having again seen** the applicant's application of the 6th July, 2016,[35] Court's decree of the 7th July, 2016 which temporarily suspended all access rights of the respondent to the parties' children,[36] the respondent's reply and note of the 13th July, 2016,[37] and; Court's decree of the 14th July, 2016 which revoked the previous decree of the 7th July, 2016 and, whilst declaring that it didn't believe that the respondent is free of his alcohol addiction, granted one last chance to the respondent before revoking all his rights of access to the children, thus confirming previous decrees regarding his visitation rights;[38]

**Having seen** the applicant's application of the 26th September, 2016 requesting a reconsideration of Court's decree of the 14th July, 2016 in light of additional incidents that occurred between the parties on the 26th August, 2016 and the 18th September, 2016[39] .Having also seen the medical certificates regarding injuries sustained in the additional incidents described in said application;[40]

**Having seen** that following this additional application of the applicant filed on the 26th September, 2016, the Court once

again temporarily suspended the respondent's visitation rights via a decree of the 27th September, 2016 while also ordering notification of the decree to social workers instructing them to investigate the matter;[41]

**Having seen** the respondent's reply to the decree of the 27th September, 2016 as filed on the 29th September, 2016[42] wherein he gives his version of the events of the 26th August, 2016 and the 18th September, 2016. Having seen the documents attached thereto including results for breathalyser tests voluntarily and privately carried out by the respondent as well as medical certificates relating to the respondent's general health;[43]

**Having seen** that following this penultimate application by the applicant filed on the 26th September, 2016 and the respondent's reply thereto of the 29th September, 2016, Court delivered a decree on the 30th September, 2016 ordering notification of the relevant acts to the social workers and requesting them to speak to the minors, alone, and report back to Court with recommendations;[44]

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[31] Decree at fol. 833.
[32] Note at fols 834 and 835 with documents at fols 836 to 842.
[33] Reply at fols 843 to 845.
[34] Court record at fol. 854.
[35] Application at fols 829 and 830.
[36] Decree at fol 833.
[37] Reply at fols 843 to 845. Note at fol 846 with documents at fols 847 to 853.
[38] Decree of the 14th July, 2016 at fol. 855.
[39] Application at fols 860 to 863.
[40] Medical certificates dated the 18th September, 2016 re. slight injuries sustained by the applicant and the parties' minor son—at fols 868 and 869—with two additional medical certificates relating to the applicant—at fols 870 and 871—including one released on the 27th November, 2015 at fol. 870.
[41] Decree at fol. 872.
[42] Reply at fols 873 to 877.
[43] Test results at fols 878 to 889 and certificates at fols 890 to 892.
[44] Decree at fol. 893.

**Having seen** the two reports of the social workers dated the 4th October, 2016 following Court's decrees of the 27th September, 2016 and the 30th September, 2016;[45]

**Having seen** the notes of the parties with reference to the reports of the social workers dated the 4th October, 2016;[46]

**Having seen** Court's decree of the 10th October, 2016 wherein having considered all relevant acts, applications, replies, notes of the parties and reports of the social workers, left the respondent's rights of access to the minor children suspended;[47]

**Having seen** that at the hearing of the 1st November, 2016 the respondent requested that access to his children be reinstated, and the Court temporarily reinstated same as it was prior to the last decree but prohibited the respondent from driving with the children. The Court also re-affirmed its previous order for the persistence of surprise visits on the respondent by social workers;[48]

**Having seen** [**i**] the applicant's application of the 2nd January, 2017 demanding, for the reasons therein given, sole care and custody of the minors CB and HB pending the duration of proceedings with supervised access retained by the respondent;[49] [**ii**] the reply of the respondent dated the 11th January, 2017 in which he objects to the request made by the applicant in her application of the 2nd January, 2017;[50] [**iii**] additional requests regarding access made at the

[45] Reports at fol. 894 and 895 to 896.
[46] Respondent's note at fols 902 and 903 with attached document at fol. 904. Applicant's note at fols 905 to 910.
[47] Decree at fols 911 and 912.
[48] Court record at fols 964 and 965.
[49] Application at fols 987 to 993.
[50] Reply at fols 1041 to 1042.

hearing of the 11th January, 2017,[51] and; [**iv**] Court's decree of the 12th January, 2017 stipulating that while the respondent's mother is abroad, the respondent is to collect and return his children at the Rabat Police Station, Gozo where an officer is to assess his lucidity and, in case it is found lacking, either refuse delivery of the children to the respondent or inform Court that the children were returned by the respondent under the influence;[52]

**Having seen** the applicant's application of the 16th February, 2017 wherein, after stating that additional incidents of concern occurred, particularly one on the 11th February, 2017, the applicant requested the suspension of all rights of access of the respondent until the return of his mother from abroad;[53]

**Having seen** the police report with number NPS 10/Z/483/2017 regarding the incident of the 11th February, 2017 whereat the applicant declared to the police that having been called to the respondent's residence by the minor CB— then 6 years of age—in a state of panic, she went to the address where she was physically assaulted by the respondent who was under the influence;[54]

**Having seen** Court's decree of the 16th February, 2017 where in light of the latest application of the applicant it temporarily suspended the rights of access of the respondent and ordered Inspector Edel Mary Camilleri to appear in Court and give testimony;[55]

[51] Court record at fol. 1043.
[52] Decree at fol. 1044.
[53] Application at fol. 1045.
[54] Police report at fols 1046 to 1048.
[55] Decree at fol. 1049.

**Having seen** the two notes filed by Inspector Edel Mary Camilleri on the 16th February, 2017[56] and the 23rd February, 2017;[57]

**Having seen** the reply of the respondent of the 23rd February, 2017 to the application of the applicant of the 16th February, 2017 where he gave his version of events related to the incident of the 11th February, 2017;[58]

**Having seen** Court's order of the 21st March, 2017 for social workers to re-assess the situation of access to the children following the temporary suspension of the respondent's rights of access via the decree of the 16th February, 2017;[59]

**Having seen** the two reports of the social workers dated the 23rd and the 28th of March, 2017, wherein the social workers stated that having spoken to all involved parties, including the children, and noted the respondent's willingness to take random breathalyser tests conducted by the police; they are of the opinion that the respondent's rights of access to his children should be reinstated with conditions;[60]

**Having seen** Court's decree of the 30th March, 2017 wherein in light of the latest findings by the social workers charged with this case, Court revoked the decree of the 16th February, 2017 and reinstated access of the respondent to his children whilst upholding the social workers' recommendations thus ordering random breathalyser tests on the respondent as well as the paternal grandmother's presence during access times;[61]

**Having seen** the draft deed of consensual separation approved by the Court on the 30th November, 2017;[62]

**Having seen** the true copy of the deed of consensual separation signed by the contending parties on the 21st

March, 2018 in which the parties agreed on consensual separation, renounced to maintenance for themselves from each other, renounced all claims to succeed one another, agreed upon the matrimonial home being paraphernal to the respondent with the applicant rescinding all her rights thereon, retrieved all their personal belongings from each other, and terminated and liquidated the community of acquests – assets and liabilities;[63]

**Having seen** that following the signing of the deed of consensual separation, the only pending matters remaining between the contending parties are those relating to the minor children, that is, care and custody, access, maintenance, and travel;[64]

**Having seen** the applicant's sworn note of the 20th March, 2018 regarding events preceding a trip to Rome that was to be partaken by the respondent and his children.[65] Having seen the respondent's reply of the 2nd April, 2018.[66] Having heard the testimony of Effie Forrest Brown, respondent's mother on the matter;

**Having seen** numerous applications and replies filed by the parties relating to the children and, particularly, their extra-

[56] Note at fol. 1050.
[57] Note at fol. 1054.
[58] Reply at fol. 1081.
[59] Court record at fol. 1083.
[60] A report at fol. 1084 and another at fols 1087 to 1089.
[61] Decree at fol. 1091.
[62] Decree approving draft deed at fol. 1108, draft deed at fols 1110 to 1116.
[63] Deed at fols 1134 to 1140.
[64] Ref. clause 8 of the deed at fol. 1136. Ref. also the applicant's sworn note at fol. 1148. Ref. also the respondent's affidavit at fols 1199 to 1200 which is in fact limited to maintenance, care and custody, access and travel.
[65] Note at fols 1122 to 1123 with documents at fols 1124 to 1131.
[66] Reply at fols 1144 to 1147.

curricular and religious activities. Having seen its decree on these matters delivered on the 26th April, 2018;[67]

**Having seen** the note with the documents filed by the respondent on the 6th September, 2018;[68]

**Having seen** the applicant's application of the 15th March, 2019 requesting, *inter alia*, that if the respondent fails a breathalyser test when he appears to collect the children at the Victoria Police Station, he forfeits his right of access for that entire weekend.[69] Having seen the reply thereto filed by the respondent on the 4th April, 2019.[70] Having seen Court's decree of the 5th April, 2019 upholding the request of the applicant;[71]

**Having seen** that at the hearing of the 9th July, 2019 the respondent declared his evidence closed;[72]

**Having seen** that this Court issued a decree dated the 4th September, 2019, following a number of applications and replies by both parties, stating that while the allegation of alcohol addiction on the part of the respondent has been a consistent point of contention, no professional had yet been appointed to clearly confirm whether the respondent is indeed afflicted by this addiction. This Court therefore appointed Dr Anthony Dimech, addiction psychiatrist, to examine the respondent and assess his dependency or otherwise on alcohol;[73]

**Having seen** that by order of this Court of the 10th December, 2019, and a note of the applicant of the 12th December, 2019, the passports for both minor children have since been deposited in the Court Registry;[74]

**Having seen** the report dated the 12th January, 2020 compiled by Dr Anthony Dimech, addiction psychiatric

expert appointed by this Court to examine the respondent and assess his dependency or otherwise on alcohol;[75]

**Having seen** that the applicant requested to pose questions to the court appoint addiction psychiatrist;[76]

**Having seen** its decree of the 22nd October, 2020 where, in light of the conclusions of the Court appointed addiction psychologist, it revoked *contrario imperio* the decree of the 5th April, 2019 regarding the taking by the respondent of breathalyser tests;[77]

**Having seen** its decrees of the 23rd October, 2020 and the 9th December, 2020 relating to an audience by the Court with the minor children of the contending parties.[78] Having seen that the minors were spoken to by Court alone, as per Court record of the hearing of the 11th December, 2020;[79]

**Having seen all the other—copious—acts of the case**, including all additional applications and replies, documents and records;

**Having seen** at the hearing of the 17th November, 2022 the parties rested their cases, their legal representatives made

[67] Decree at fols 1173 to 1174.
[68] Note at fol. 1230 with documents at fols 1231 to 1244.
[69] Application at fols 1325 and 1326.
[70] Reply at fol. 1328 with documents at fols 1329 to 1331.
[71] Decree at fol. 1332.
[72] Court records at fol. 1341.
[73] Decree at fols 1385 and 1386.
[74] Court record at fol. 1426 and note at fol 1427. Passports were renewed and re-deposited in the Court Registry by virtue of a note of the 21st April, 2022 at fol. 1742 and again at fol. 1759.
[75] Report at fols 1483 to 1496.
[76] Decree at fol. 1543
[77] Decree at fol. 1610.
[78] Decrees at fol. 1611 and fol. 1614 respectively.
[79] Record at fol. 1615. The minor CB was additionally spoken to by Court on the 18th June, 2021—Court record at fol. 1669.

their final oral submissions before this Court, and that the case was later on adjourned to today for judgment;[80]

**Considers:**

This Court has examined in depth all the evidence brought forward under oath, including by means of sworn declarations. It has examined all the documents and reports in the acts of the case.

The Court has also seen the report dated the 12th January, 2020 compiled by Dr Anthony Dimech, addiction psychiatric expert[81] appointed by this Court to examine the respondent and assess his dependency or otherwise on alcohol.

In compiling the report, the addiction psychiatrist perused the respondent's hospital file, and collateral information obtained from other professionals that have followed the respondent including his medical practitioner, Dr John Dingli Xuereb, Ms. Miriam Farrugia, a social worker previously involved in the case, Mr Noel Xerri, CEO of the OASI Foundation, and Police Inspector Bernard Spiteri of the Victoria Police Station, Gozo.[82]

The respondent was assessed over five, one-hourly sessions over a period of ten (10) weeks.

After giving background information on the respondent's personal life and medical history, the report goes on to explain the assessments that were carried out on the respondent and give a brief of the results and observations. Following this, the report also provides insights about addiction through an analysis of different source materials.

The conclusions were thus that:

*Taking into consideration Mr. Brown's history of alcohol use and consequences, information from Dr. Xuereb Dingli (his family doctor), Police Inspector Spiteri of Victoria Police Station, Mr. Noel Xerri (CEO of OASI Foundation), and Mr. Brown's medical notes at the Gozo General Hospital, it is evident that Mr. Brown has had problems related to excessive alcohol use*—para. 23, pages 19 and 20 of the report at the front and back of fol. 1492.

It then goes further into stating that an analysis of the respondent's medical records as well as observations made during the addiction psychiatrist's assessment *would exclude a past severe, life-destroying and persistent addiction to alcohol*—para. 24, page 20 of the report at the back of fol. 1492—and that *Mr. Brown does not currently meet the criteria for alcohol use disorder or addiction*—para. 25, page 20 of the report at the back of fol. 1492.

The court appointed expert also clarifies that while aware of the subjective nature of assessment, *a significant part of it is based on more objective evidence such as his*—Mr. Brown's—*appearance and presentation throughout the lengthy assessments over a ten week period, his above average and stable cognitive function, the result of his blood tests and information by Dr. Xuereb Dingli, Inspector Spiteri and Ms. Miriam Farrugia*—para. 25, page 20 of the report at the back of fol. 1492.

The report further states that recent blood test results *do not indicate excessive and persistent alcohol use*—para. 26, page 20 of the report at the back of fol. 1492.

[80] Court record of the 17th November, 2022.
[81] Report at fols 1483 to 1496.
[82] Later, in examination, he also states that he read the parts of the Court file as were available to him.

The report therefore concludes that the respondent *has full capacity to make responsible decisions regarding alcohol use whilst taking care of his children. There is no evidence that he has neurocognitive impairment (planning, decision making, problem solving and impulse control) related to excessive alcohol use that could pose significant risk to his children, and as a result, he is fully responsible for his actions*—para. 27, page 20 of the report at the back of fol. 1492.

The report further states that *even if in the past Mr. Brown may have had an undiagnosed addiction to alcohol (of any severity though devastating unlikely), it is certainly possible that his strong self-identity as a responsible, caring and loving parent opened an exit point*—para. 28, page 22 of the report at fol. 1493.

**Examined by the applicant,**[83] he states that his assessment of the respondent had to be thorough for his conclusions to have solid foundations.

He states that there is no medical evidence of alcohol use disorder or dependent syndrome in the respondent.

He states that he respondent's employment history demonstrates that he couldn't have been on a self-destructive path—he has successes all through his life, even near to date.

He also states that having spoken to other professionals involved with the respondent and seen his blood test results it is clear that any previous abuse of alcohol is now a few years back, with his liver functions and other indicative levels being normal.

[83] Transcript at fols 1558 et seq.

Asked if the respondent could have been drunk and had time to sober up between session with him, he replies that this is not likely, and he would have picked something up; be it a residual smell of alcohol in the breath or a neurocognitive deficiency.

He asserts that the respondent had no neurological deficiency or impairment and is in control.

He states that if there actually was an alcohol addiction it would be quite evident and detectable.

He states that although denial by the addict can be the case, there would be other markers such as inability to keep appointments, to concentrate—nothing he noted in the respondent.

He further adds that blood test result would also indicate alcohol abuse even weeks back which was not noted in this case. He explains how he combined tests from when the respondent had used alcohol to much later tests and the levels in his blood were normal meaning that he had been clear. He adds that so was his liver function—normal.

He states that the key is that the respondent is in control and thus, independently of what he does when he is alone; when he is with his children, he is capable of saying no to alcohol. He adds that the respondent is able to decide when and if to drink.

Asked whether particular incidents in the respondent's life which were not revealed to him by the respondent could have led to a different conclusion in his report he replies in the negative. He states that the material information requisite to carry out his assessment was in hand.

Asked about the fact that in 2017— three (3) years prior— the respondent was prescribed Diazepam; he replies that he noted that from his hospital records. He states that the drug is usually prescribed when a person is not addicted and there are no real withdrawal symptoms thus, just as a precaution for the not to have an epileptic seizure.

He further states that if the respondent was dependent three (3) years prior, he certainly hasn't found it at the time of his reporting, and that was after the thorough assessment and speaking to several professional involved with the respondent.

He adds that in the respondent's medical history file he found no evidence of withdrawal symptoms. He insists that he didn't base his conclusion on one test result but on several and he stands by them.

He asserts that he spoke to the other professionals mentioned in his report but that he also carried out his own tests himself, objective, scientific tests which showed that although there may have been issues with alcohol in the past, he found no evidence of an addiction.

He reiterates that the blood test results alone exclude sustained and frequent heavy drinking. He asserts that the last blood results he obtained in January 2020 definitely show an absence of alcohol dependency, with the liver functioning normally, and for this to be the case it means that the respondent hadn't drank for a stretch before that.

Asked about several blood tests results—from 2017 and 2019 no copy of which are in the records—and whether he asked for older results—from 2013—from Dr Xuereb Dingli, on the suggestion that at the time—2013—the applicant would go crying to the doctor due to the respondent's addiction, he states that had the 2013 results been made available to him and they showed high blood levels indicative of potential alcohol abuse, he would conclude that the respondent achieved more control referable to his alcohol consumption because of the high discrepancies between the 2013 results and those nearest to date.

Asked whether the comments made to him by the OASI Foundation CEO may be interpreted as proof that the respondent went in for a program with an addiction and came out of the program without the addiction properly addressed, he states that he took into consideration the matters which concerned him and confirmed his conclusions via his own assessment.

Asked why he didn't peruse the entire Court file and whether instances of violence reported therein would have altered his conclusions he states that violence and alcohol, even alcohol intoxication, do not equate to addiction.

Asked to clarify the point made in his report regarding the subjective nature of certain aspects of his assessments he explains that an addiction assessment is not like a physical assessment where an x-ray might show a break in black on white. He adds that he uses criteria and applies information collected from various sources with the nature of psychiatry being just that.

He insists that addiction does not make a person incapable and that certain changes in life may kick open a door that frees the afflicted from addiction.

He reiterates that if the respondent had problems in the past, he is now able to exercise more control, including due to him having become a father. He insists on how amazed he was with the respondent's dedication to his children and the level of planning he goes into for the weekends he has them.

Informed about the current access the respondent enjoys to his children, he states that in his opinion the respondent could have a full week with his children since he is fully capable of making the decision not to drink and if he decides to do otherwise than he would have to face the consequences as any other responsible adult.

He states that at the end of the day even the social workers who he spoke to were happy with the respondent's commitment.

## B. CONSIDERATIONS:

This case was instituted on the 31st July, 2015 by the applicant who, after premising that she married the respondent on the 19th December, 2009 and with him had two children, the minors CB—born on the 5th October, 2010—and HB – born on the 20th July, 2012—continued to premise that the respondent's issues with alcohol consumption led to the irretrievable breakdown of their marriage.

The applicant thus requested this Court to pronounce the personal separation between her and the respondent, give directions regarding care, custody and access to the minors—requesting sole care and custody with access hours to the benefit of the respondent—liquidate and dissolve the community of acquests subsisting between her and the respondent while applying those sanctions imposed by the law for attributable fault, and fix the value of maintenance payable by the respondent to herself as well as to the parties' two (2) minor children. She also requested this Court to authorise her to revert to her maiden surname—E—and to liquidate and order the payment of a sum of money relating to her being disabled from using the matrimonial home after the respondent changed the locks thereon and barred her entry.[84]

The respondent replied to the sworn application on the 17th September, 2015. In his reply he first requested a correction in his name from IHTB to IHTB. He subsequently agreed for personal separation to be pronounced between him and the applicant and for the community of acquests to be liquidated and dissolved. He disagreed, however, that sole care and custody to the minor children should be assigned to the applicant requesting that it be assigned to him with access hours set for the applicant. He also objected to the payment of maintenance in favour of the applicant as well as to the applicant's request for the payment of a sum of money relating to her being disabled from using the matrimonial home claiming instead that the applicant left the matrimonial home of her own volition.[85]

[84] Sworn application at fols 1 to 5.
[85] Sworn reply at fols 32 to 34.

The applicant's requests to this Court were narrowed down following the signing by the parties of a deed of personal separation dated the 21st March, 2018.[86] The signing and publication of this deed of personal separation was authorised by the Court on the 30th November, 2017.[87]

In this deed of personal separation, the contending parties resolved all matters pending between them consenting to the personal separation, liquidating and dividing the assets and liabilities of the community of acquests, and addressing the issue of maintenance payable from either one of them to the other personally.

The matters left pending between the contending parties following the signing of the deed of personal separation were thus those relating to the children CB and HB, today still both minors with the eldest, CB, being today twelve (12) years of age.

The pending matters are, therefore:

i. Care and custody of the minors as well as access to them;

ii. Maintenance payable towards the minor children, and;

iii. Any further provisions as this Court might deem in the best interest of the minor children.

[86] Deed of personals separation at fols 1134 to 1140.
[87] Court record at fol. 1108.

That these are the sole remaining pending matters is clear from a reading of clause 8 of the deed of separation—at fol. 1136 of the Court file—as well as the note filed by the applicant on the 4th April, 2018—fol. 1148 of the Court file—and additional notes filed by the respondent near the end of the proceedings, particularly the one filed after the case was rested, during final submissions made by counsel for the respondent on the 17th November, 2022—see Court's record of the 17th November, 2022 and the notes preceding same.

This Court is thereby requested to deliver a decision on those matters only. Prior to doing so, however, the Court deems it appropriate to give a synthesized version of the generic backstory leading to this this case and make some remarks thereon.

The parties married on the 19th December, 2009 and together had two (2) children CB—born on the 5th October, 2010—and HB—born on the 20th July, 2012. Both children are today still minors with CB, the eldest, being twelve (12) years of age.

The marriage between the parties broke down irretrievably, as also declared by them in clause [ii] of the deed of separation dated the 21st March, 2018—deed at fols 1134 to 1140 of the Court file with the relative clause at the very top of the deed's page at fol. 1135.

The deed of separation imputes no responsibility to either party for the breakdown of the marriage but merely states that the breakdown occurred *due to reasons which suffice at law to justify the attainment of personal separation*.

This notwithstanding, through the pendency of these proceedings the contending parties advanced various

claims and allegations against each other regarding the reason for the breakdown of their marriage.

An examination of these claims and allegations might seem superfluous following the signing of the deed of separation by the parties but remains necessary not to assign responsibility for the breakdown of the marriage to any of the contending parties in order to apply relevant sanctions as the case may be, but for this Court to be able to deliver judgment on each of the parties' stance regarding care and custody of the minor children of the marriage.

The applicant consistently claims that the respondent is afflicted by an alcohol addiction. A dependency that according to her has also left an impact on his mental faculties.

This she claims in her sworn application, her own testimony, as well as the many and voluminous applications she filed during the pendency of these proceedings which, at times, also lead to the temporary suspension of the respondent's rights of access to his children *pendente lite*.

To 'prove'—as it were—this alcohol dependency of the respondent the applicant relies heavily on the several police reports she filed against the respondent over the years as well as on some images and particular witnesses.

In terms of witnesses, the applicant produces members of her own family, including her sister-in-law Laura E, as well as a Mr Reuben Said.

Mr Said, in particular, recounts an incident in November, 2015 where the respondent showed up at the Oratory of Don Bosco football ground and, allegedly, after a confrontation ensued between him and the applicant the witness intervened and noted the scent of alcohol in the respondent's breath.

Ms Laura E recounts an incident when on appearing with his daughter at a flamenco class, the respondent had on him the whiff of alcohol which herself and others noted.

The photographs which the applicant relies on consist of the following: [**i**] an image—at fol. 52—submitted early on in the proceedings, showing the respondent strewn on the floor right next to the front door of a property which the applicant refers to as the matrimonial home, and; [**ii**] a set of seven (7) images submitted much later on during her testimony in cross-examination showing the respondent asleep in his car near the Seminary in Victoria, Gozo, allegedly, and according to the applicant, due to alcohol consumption—images sealed in one brown envelope at fol. 1321 of the Court file.

On this evidence of alcohol abuse as produced by the respondent, the court remarks that, with reference to the witnesses brought forward; not only are the observations of Ms Laura E deemed untenable, given her demeanour during her deposition and also the unlikelihood of the events she describes, but also the conclusions drawn by witness Mr Reuben Said that he caught a whiff of alcohol in the respondent's breath cannot but be considered subjective to say the least.

With reference to the images brought forward by the applicant, the Court remarks that the first image—at fol. 52—only proves that the respondent was on lying the floor. As to why he was lying on the floor, it is not for this Court to make assumptions. Additionally, and as regards the other images submitted in one brown envelope at fol. 1321 of the Court file, this Court can only hope that the applicant was not trying to swindle it. This is said due to the fact that the images do indeed show the respondent asleep in a vehicle, a burgundy Peugeot, but unlike what is alleged by the applicant, he is shown sleeping in said vehicle on the side of the road and not blocking traffic.

One of the set of seven (7) images does indeed show a vehicle seemingly parked illegally and probably disrupting traffic, but this is a different vehicle altogether to the one the respondent is seen asleep in. It is in fact a red Honda while as noted the respondent's car is a burgundy Peugeot.

This one image showing the Honda in fact also shows the respondent's car unmoved from where it is seen in the other images, as can easily be confirmed by the unchanged layout and colours of the Seminary seen through the respondent's car in all the images.

These images alone cannot be deemed to prove any drunkenness as much as that the respondent was asleep in his car parked properly to the side of the road—a not too uncommon occurrence on Malta and Gozo's streets.

As for the several police reports, the Court notes that these simply show declarations made to the police by the applicant, with the Court being dismayed that the applicant produced no additional and independent evidence in

support of them. And this was a persisting trait with the evidence submitted by the applicant.

In fact, and in addition to the evidence brought forth by the applicant already discussed above, the applicant, in her numerous applications, including those which brought to the temporary suspension of the respondent's rights of access to his children, made many serious allegations of disrepute towards the respondent however fell short form corroborating the same by independent evidence.

A few such instances relate to the allegations made by the applicant that in February, 2019 the respondent showed up drunk at the parties' daughter's school and classroom and had to be escorted out, that he disrupted one of their son's occupational therapy session and also had to be escorted out, that he showed up under the influence of alcohol in hospital to sign their son's discharge after he was admitted with a gastric ailment, and that he showed up under the influence of alcohol to pick up their children from Chambray, Għajnsielem, Gozo.

This notwithstanding, no independent parties were brought forward to substantiate these claims of the applicant, and this, notwithstanding the fact that such independent parties were known to the applicant.

In the school incident, the applicant mentioned the daughter's teacher, Charles Bajada, as someone who witnessed the respondent's drunkenness. Yet, Mr Bajada was not brought forward to testify. Additionally, the principal of the school who gave testimony at length, mentioned no incident where the respondent appeared drunk in his children's school. On the contrary, she reiterates the respondent's active interest in his children.

In the hospital discharge incident, she names the doctors who allegedly allowed the respondent to discharge their son from hospital while under the influence. These names were listed by the applicant herself in her application at fols 1122 and 1123 of the Court file—ref. para. 13 at fol. 1123. These doctors and nurses were not produced as independent witnesses.

In the occupational therapy session incident, the therapist who would certainly be an easy witness to subpoena was not brought to testify.

In the Chambray incident, the police who allegedly saw the respondent under the influence yet let him take his children in his car were not brought to depose.

Various other professionals were named by the applicant as persons who witnessed or know the respondent to have an alcohol addiction yet none of them were brought forward to give evidence. These professionals include psychiatrist Dr Anton Grech, psychologist Angele Licari, and other doctors and therapists.

The Court here notes that although some of these allegations made by the applicant refer to incidents which may have occurred after the applicant had closed her stage of production of evidence, the applicant was in no way barred from requesting to bring this evidence forward as new evidence, discovered after she closed her evidence stage.

In fact, the images in the brown envelope at fol. 1321 were allowed as evidence during the applicant's cross-examination of the 7th March, 2019, well after the date her evidence stage had been declared closed.

Apart from this, this Court cannot ignore the fact that no witness truly corroborated the allegations consistently made by the applicant that the respondent abused of alcohol and had an alcohol related addiction.

On the contrary, all witnesses brought forward attested to one thing and one thing alone: the respondent's dedication to his children. A dedication this Court has noted also in the minute matters such as his naming of his company *JCH Capital Investment Limited*—the children's initials, including the initials of the applicant's eldest child who isn't the respondent's biological child, as well as the respondent's decision to keep all children, including the applicant's eldest, on his international health insurance policy.

Witnesses Mr Reuben Said and Ms Laura E may indeed have deposed that they caught a whiff of alcohol in the respondent's breath, but a whiff of alcohol cannot be retained as making one drunk or, even more importantly, an alcoholic.

It is indeed true that the respondent's own mother twice in testimony admitted to referring to her son drinking. Once when she stated that he has a drink socially like most people and another when she agrees that she called the applicant to inform her that a planned trip to Rome by the respondent with his children was to be cancelled and that the respondent had had a drink.

It is also true that the applicant eldest child recounted an incident to the social workers were the respondent allegedly drove in the wrong direction on a one-way road.

This notwithstanding, other witnesses deposed on the respondent's character and the fact they never noted any signs of alcohol abuse in him. These include colleagues of the respondent at a football club where the respondent has for circa ten (10) years coached young children on a voluntary basis as well as the court appointed social workers who paid the respondent several surprise visits.

In addition, this Court took it upon itself to appoint an addiction psychiatrist as a Court expert who, while not denying that the respondent may have had problems with alcohol in his past, he certainly didn't show signs of having one in the present and he certainly didn't show signs that any such issue was then, let alone now, tantamount to an alcohol addiction.

In fact, the Court appointed expert, psychologist Dr Anthony Dimech, in his report of the 12th January, 2020 stated that a thorough assessment of the respondent along with an examination of his medical and professional records showed that the respondent couldn't have had an alcohol addiction as insinuated by the applicant since his bodily organs showed no signs of permanent damage and there was no elevated blood counts that would scientifically prove this while his personal and professional successes and advancements showed him to be in control of his mental faculties and certainly not on a destructive downward spiral.

It is to be noted that the Court appointed expert clarified, even in examination following submission of his report—*in subizzjoni*—that in his assessment of the respondent he did not merely rely on the subjective—that which he could perceive visually in the respondent—but also on the objective—clinical test results as well as information

obtained from various other professionals that have seen the respondent over the years. Professionals such as the respondents personal doctor, Dr John Xuereb Dingli, whose clinical blood test result certificates issued for the respondent—ref. certificate of the 1st August, 2016 at fol. 890—with attached clinical findings—and that of the 15th October, 2016 at fol. 963—showed that the respondent's liver was clear form any long-term alcohol use, and the social workers who, on the behest of this Court, carried out several surprise visits on the respondent and not only never witnessed him under the influence but also asserted his capabilities in setting and maintaining a home fit for children as well as his willingness in being a father—ref. various social worker reports as identified in the preliminary part of this judgment.

On his part, the respondent makes no immediate clear allegations as to why it should be him, not the applicant, who is assigned the sole care and custody of the minor children until much later in the proceedings via a reply to an application of the applicant which he filed on the 24th April, 2018. This is the first time the Court sees mention of «bi-polar disorder» attributed to the applicant—ref. reply at fol. 1155 to 1159.

On the other hand, in her own deposition, the applicant states that the respondent also accuses her of failing in keeping the matrimonial home tidy up to his standards.

The allegation that the applicant suffers from bi-polar disorder is furthered by the respondent's mother in her testimony to the Court wherein she states that the applicant had admitted to her herself that she struggled with bi-polar disorder, and this was before the applicant and respondent

and ever even met, and before the respondent had followed his mother to Gozo, Malta.

Later on the respondent also mentions pressure put on him by the applicant to sell his house in Gozo – ref. page 3 of the court appointed expert's report.

The applicant completely refutes the allegation that she suffers from bi-polar disorder.

The Court notes that no independent evidence has been provided to it on the accusations advanced against the applicant by the respondent and it certainly cannot entertain these allegations as sufficient to deprive the mother from care and custody of the children, particularly seeing that the applicant, as mother to the minor children of the parties, like the respondent, has also shown to be a keen, dedicated and able mother, putting her children's interests first.

It is thus this Court's conclusion that neither of the parties have managed to prove any of the accusations alleged against the other that would lead this Court to decide that either of them is incapable or incompetent to care for the minor children of their dissolved marriage.

So therefore, and as far as the care and custody matter is confirmed, there is, in this Court's opinion, no matter that could or should bar care and custody of either of the contending parties to either of their children.

This notwithstanding, there is a matter that has worried this Court and that will be reflected in the conclusion of this decision regarding care and custody. This relates to the respondent's reluctance to be pro-active and favourable to extra-curricular activities the children clearly show a keen interest on.

This Court read several applications and replies filed by the parties regarding this matter, and while dismayed, as in the case of non-corroborative evidence discussed above, that the applicant fell short in properly corroborating the matters relating to extra-curricular activities, declares that it has seen enough to be morally convinced of the respondent's stance on the matter of extra-curricular activities.

The applicant has time and again drawn this Court's attention and requested its intervention to obtain the respondent's clearance for the children to attend extra-curricular activities. The reasons given by the respondent for him dragging his feet on such matters mostly related to the fact that the applicant would take these decisions unilaterally, without discussing them with him.

This Court respects the fact that parents should put their personal animosities aside in favour of the best interest of their children. It therefore understands that the father could be irked by the fact that the mother does not discuss extra-curricular activities with him. But, similarly, the mother can be irked by the fact that the father questions every single one of them and drags his feet accordingly.

The Court would have liked to have better evidence on these matters—the teachers allegedly receiving short cellular messages from the respondent were never brought to give testimony, for instance. As previously discussed, that these matters arose after the applicant closed her evidence stage is no excuse.

The Court does however have screenshots of short cellular messages exchanged between the respondent and teachers to the minors as well as said teachers and the applicant—ref.

*inter alia*, screenshots[88]. But more importantly, it has at its disposal the message from minor CB to her father, the respondent, at fol. 1708 of the Court file. Here, the minor makes clear her wishes to attend dance classes which the father is being difficult about only by referencing legal notions of care and custody.

The Court is therefore inclined to allow the applicant to be the one to alone take decision relating to extra-curricular activities of the minor children, without the necessity of the respondent's consent, and this solely in the best interest of the minors who cannot be kept and utilised as pawns by any parent to spite the other on principles of perceived power and control.

Religion is another point that was frequently raised during these proceedings. Court notes that the two (2) children of the marriage were predominantly raised in the Roman Catholic faith, so much so that a sufficient portion of procedural time in this case was also dedicated to the matter of CB's First Holy Communion.

The Court deems personal religious faith and association to be just that: personal. But since the parties in subject here are minors who are allegedly being exposed to several different religious beliefs seemingly creating confusion in them; this Court will provide about this accordingly.

This Court deems that the children having been raised predominantly Roman Catholic should remain so and that neither of the contending parties—their parents—should now attempt to change their religious denomination including by introducing them to a different faith and this

[88] At fol. 1657—1658 and 1706—1707

until at least the time the two (2) minor children reach the age of majority.

Travel shall be tackled differently. Since fears of abduction have been raised, this Court cannot but listen to them and will take measures to minimise if not eliminate the same.

As for maintenance and access, the Court observes that the last time these matters were effectively decided upon was on the 30th of April, 2015 via a decree delivered by this Court in a different case between the parties—Case Number 52/2013.

Since then, changes affected to said decree were minor and catering for immediate requirements such as the exchange of a week by another, travel, or the absence of the paternal grandmother named therein in the decree as a third party to be present during access by the father.

In terms of access, the Court noted the parties' final submissions on the matter and will reflect these accordingly in this decision. The Court makes it clear, however, that given its appointed addiction psychologist expert's conclusions as well as the respondent's mother's age and health conditions, this Court will make away with the involvement of the third party, mother of the respondent, as a required presence during access by the respondent to his children. This because this Court does not see it right or fit to rely on the respondent's mother in this manner. The respondent has to show responsibility himself, responsibility which per the court expert's report he is fully capable of assuming. The respondent's mother is now around eighty (80) years of age. In her own words, she should be a grandmother not a guardian.

In terms of maintenance the Court notes the lack of evidence regarding income of the two contending parties,[89] particularly updated information given that both parties changed their jobs during the pendency of the proceedings.

The Court also notes that the applicant herself, in her testimony, made clearly known that any increase requested by her in the currently payable maintenance relates to the fact that according to her, the respondent fails to contribute towards fees and expenses relating to the children's health, education, and extra-curricular activities.

These matters shall also be reflected in this Court's decision.

**So therefore, for these reasons, this Court decides as follows:**

**DECIDE:**

1. Abstains from taking further cognizance of the requests of the applicant numbered 1, 5, 7, 8, 9, 10, 11, 12, and 13 and the respective and connected defence pleas of the respondent;

2. Upholds the respondent's 1st defence plea and authorizes correction in his name from IHTB to IHTB;

3. Denies the 2nd request of the applicant and denies the corresponding 4th defence plea of the respondent and instead decides the matter of care and custody of the two (2) minor children CB and HB by leaving the same joint between the parties' applicant GVB and respondent Ian Hay Thompson Brown;

[89] The only real such evidence in Court is with reference to the respondent's income and dates back to 2010—ref. note by respondent at fols 266 to 267 with relevant documents at fols 311 to 329.

Provided that the minor children of the parties shall reside with the applicant, their mother, while access to them by the respondent, their father, shall be as follows:

i. Access of the father to the minor children shall be on the basis of four (4) weekends rotating after each other;

ii. Weekends 1 and 3 will be alternate weekends. The children shall be collected by the father from the Victoria Police Station, Gozo, on Friday at 16:30hrs and returned on Sunday at 16:30hrs also at the Victoria Police Station;

iii. On weekend 2 the children shall be collected by the father from the Victoria Police Station, Gozo, on Friday at 16:30hrs until Sunday at 15:30hrs;

iv. On weekend 4 the children shall be collected by the father from the Victoria Police Station, Gozo, on Sunday from 10:00hrs till 18:00hrs;

v. The parties may change or alter the precise access times for any particular weekend provided that such agreement is mutually reached by not later than Thursday immediately preceding that particular weekend and is beneficial to all parties, in particular the minor children and their engagements.

On Christmas Day and the children's birthdays whosoever of the parents does not happen to have the children with him/her shall have the children from 12 noon to 1800hrs on that day and in addition to the normal hours assigned to said parent;

Any parent who is unwell or away at the time when the children should be with him/her shall seek to arrange for the children to be with the other parent save when and where this is not possible due to other engagements in which case the children may be assigned in the temporary care of adult relatives. The parents shall not be entitled to any compensatory time for missed time with the children unless this is agreed upon with the other parent and this so as not to affect the children's schedules and engagements;

Provided further that given the respondent's behaviour as well as the applicant's concerns vis-à-vis the children's extra-curricular activities, this Court orders that decisions relating to schooling, health, and extra-curricular activities in general of the minor children are to be taken by the applicant alone subject to the applicant giving the respondent all relative information relating to the same within four (4) working days from signing the relative enrolment forms or agreeing to commencement of the course/tuition;

Decisions relating to religion shall not be taken by any parent since the minors' religious denomination shall remain that of Roman Catholics until the minors reach the age of majority and can decide to change the same themselves;

As regards travel, any parent wishing to take a vacation with the minors or one of them shall obtain the prior written consent of the other parent, obtained at least three (3) weeks before the departure date. The itinerary of travel and related details as well as accommodation address/es and contact numbers shall also be provided to the other parent and communication with the other

parent shall be daily. The daughter's passport shall be kept by the father whereas the son's passport shall be kept by the mother for six (6) months with the passports swapped for the next six (6) months thereafter and so on;

4. Upholds the applicant's 3rd and 6th requests and orders maintenance in the value of five hundred euro (€500) a month for the two (2) minor children to be paid by the respondent to the applicant on the 6th day of each month;

   Provided that all fees and expenses for the education, health and extra-curricular activities partaken by the children shall be payable over and above this maintenance and split in half, with one moiety payable by the applicant and the other by the respondent. Each of the parties shall at the end of every month submit to the other via email a statement/balance sheet with scanned receipts accounting all values spent. Half the total value indicated in the statement/balance sheet shall then be paid by the relative party to the other via direct banking on bank details o be provided by the parties within ten (10) working days from receipt of the email. Receipt of the email shall be deemed to be the day following that on which the email is sent.

All the above provisions are made in line with the parties' authorisation for this Court to make any provisions it might deem appropriate and in the best interest of the minor children.

With costs to both parties, in equal shares between them.

(sgn.) Dr Brigitte Sultana
Magistrate

(sgn.) John Vella
D/Registrar

True Copy

For the Registrar