

**CIVIL COURT  
(FAMILY SECTION)**

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

**Today 27th April 2023**

**Sworn App. No. : 238/2021 JPG**

**Case No. : 22**

**SB**

**Vs**

**In virtue of a decree dated 22  
October 2021, Dr Mario Caruana  
and PL Gerald Bonello have been  
appointed Deputy Curators for the  
absent DB**

**The Court:**

Having seen the application filed by SB dated 29<sup>th</sup> September 2021, at page 1, wherein it was held that:

- 1. That the parties got married in the Republic of X on the 9<sup>th</sup> of May of the year nineteen hundred and ninety-eight (1998), as per copy of the marriage certificate which is hereby being exhibited, attached and marked as Doc. 'A'.*

2. *That two children were born from the parties' marriage, namely SDB and SYB, who both have attained eighteen (18) years of age old, as per birth certificates marked as **Doc 'B'** and '**C'** and reside in the Republic of the X.*
3. *That the parties have been living apart since two thousand and two (2002) and the respondent never came to Malta, such that there exists no community of acquests between the parties, and additionally the parties never acquired any assets or contracted any liabilities together.*
4. *That the applicant has been living in Malta for six (6) years namely since the year two thousand and fifteen (2015), as per document hereby attached and marked as **Doc 'D'**, such that the applicant satisfies the required conditions in terms of Article 66(N)(1)(b) of Chapter sixteen (16) of the Laws of Malta.*
5. *That there is no prospect or hope for reconciliation between the parties since besides the fact that they have been separated de facto for almost ten (10) years, they are also living totally separate and independent lives.*
6. *That there is no dispute between the parties in connection with any maintenance payments.*
7. *That the above-mentioned facts satisfy the criteria for the attainment of divorce in terms of article 66B of the Civil Code, Chapter 16 of the Laws of Malta.*
8. *That the applicant has been authorized to proceed with these judicial proceedings in virtue of a decree granted by this Honorable Court and dated the 5<sup>th</sup> August 2021, a copy of which is hereby attached and marked as **Doc. 'E'**.*

9. *That the applicant is hereby exhibiting her affidavit attached and marked as **Doc 'F'**.*

*Consequently, the applicant humbly asks this Honorable Court to: -*

- 1. Pronounce the marriage (divorce) between the parties; and*
- 2. Order the Registrar of Courts to, within the timeframe granted by Court, notify the Director of the Public Registrar of the dissolution of the marriage (divorce) between the parties so that it be registered in the Public Registry*

*And this under such provisions that this Honorable Court deems fit and appropriate.*

Having seen that the application and this Court's decree have been duly notified.

Having seen the reply filed by the Deputy Curator on the 26<sup>th</sup> of May 2022, at page 48, wherein it was held that:

- 1. The Respondent acting as Deputy Curators have no knowledge of the facts which instigated this cause and are reserving the right to make the necessary verifications on the facts indicated in the sworn application and without prejudice to pleas that they may make, reserve unto themselves the right to make further pleas when they are better informed of the facts of this cause.*
- 2. Saving, should it be the case, to make ulterior responses in fact and law.*

Having heard the evidence on oath;

Having seen the exhibited documents and all the case acts;

Having heard final submissions;

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 29<sup>th</sup> September 2021 of February 2023** together with her sworn application and confirmed that the parties contracted marriage on the 9<sup>th</sup> May 1998 and from this marriage they had two children, SDB and SYB, who have both attained the age of eighteen years and reside in the Republic of X. Plaintiff confirms that they have been de facto separated since 2002 and she has now been living and working in Malta since 2015. Plaintiff adds that her husband never came to Malta and as such no community of acquests was ever established between them. Plaintiff affirms that there are no pending issues between the parties with regards to maintenance and that there is no hope for reconciliation. Plaintiff attests that her husband is not objecting to the divorce as per correspondence sent to her legal representative and marked Doc DB.

**Plaintiff also testified viva voce before this Court on the 23<sup>rd</sup> June 2022 (vide fol 61 et seq)** and confirmed that she married Defendant on the 9th of May 1998 and had two daughters, who are now (V) and (W) respectively. Plaintiff explains that her children are residing in the X and they have been brought up by their maternal grandmother, and have been living in a house that Plaintiff built. She adds that she supports them financially by sending money to her children directly now that they are adults, to cover bills and costs.

In **cross-examination**, Plaintiff confirms that her permit has been extended ever since her entry visa expired and she is now in possession of a work permit which is renewed on expiration as she works as a senior carer in G.

**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 9<sup>th</sup> of May 1998 in the Republic of the X as evidenced in the certificate of marriage *a fol 5* of the acts. From this marriage the parties had two children: SDB and SYB, who have both attained the age of majority.

The Court notes that the parties have been *de facto* separated since the year 2002 and Plaintiff has been residing in Malta since 2015. The Court notes that Subsidiary Legislation 12.20 requires that, in cases where the parties are not already separated, proceedings are initiated by means of an application requesting the appointment of mediation proceedings. The Court observes that Plaintiff had indeed filed an application requesting this Court to authorize her to initiate divorce proceedings against the Respondent without the need of mediation since Respondent never resided in Malta and lives in S. The Court notes that by means of decree dated 5<sup>th</sup> August 2021, this request was acceded to.

Additionally, the Court has seen that according to article 66G (2) of the Civil Code:

***“The application for the commencement of divorce proceedings shall: (a) where the spouses are not separated by means of a contract or a court judgement, be accompanied by a note in which the advocate confirms that he has observed the requirements of sub-article (1);”***

The Court has also seen that according to the first proviso to article 66G (2),

***“Provided that where the advocate assisting a client in a cause for divorce shall not have presented the said note, the copy of the judgement of separation or of the contract of consensual separation, as the case may be, the advocate shall present these documents not later than, or during, the first sitting in the cause:”***

The Court notes that from the acts of these proceedings it results that counsel to Plaintiff filed the note in terms Art 66G of Chapter 16 on the 26<sup>th</sup> April 2023 (Vide Fol 80).

The Court notes that the Deputy Curators did not succeed in establishing contact with Respondent, however the Court observes that Plaintiff exhibited two sets of correspondence

sent by Respondent indicating that he has no objection to Plaintiff's request for divorce.

The Court observes that according to Plaintiff's testimony, Defendant has never resided in Malta together with Plaintiff, and therefore the community of acquets was never established between the parties.

The Court observes that there are no maintenance arrears due and it also 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 contracted on the 9th of May 1998 in the Republic of the X between Plaintiff SB and Respondent DB by divorce, which marriage bears the registry number 98-115 of the year 1998, 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 noted in the Public Registry.**

**Moreover, the Court upholds the demand of the Plaintiff to revert to her maiden surname, that is B, and orders the Director of Public Registry to take the appropriate measures.**

**Costs shall be equally divided between the parties but shall be provisionally at the cost of the Plaintiff.**

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

**Lorraine Dalli  
Deputy Registrar**