



**CIVIL COURT
(FAMILY SECTION)**

MR JUSTICE HON. ANTHONY G. VELLA

Sitting of Friday 14th July 2023

Application number : 297/2021 AGV

In the names of

KV

Vs

AB

The Court,

Having seen the Sworn Application of KV , respectfully states and solemnly declares as follows:-

1. That this lawsuit is regarding the care and custody and the residence of the parties' daughter, JB who was born on the 11 of November 2016 in Malta, and who is five (5) years old.

2. That the salient facts which gave rise to this lawsuit are the following:-
 - i) That Plaintiff is a Czech national and lives in the Czech Republic whilst defendant is a Maltese national and lives in Malta.
 - ii) That the parties met in the year 2013 in Malta while plaintiff was in Malta for summer, and they started their relationship. At that time Plaintiff was living in the United Kingdom, however at the start of parties relationship, Defendant bought her a flight ticket to Malta to be with him in Malta.
 - iii) That the Parties lived in rental apartments for this period.
 - iv) That from this relationship the parties had a daughter, that is, JB who was born on 11th November 2016 in Mater Dei Hospital Malta (**DOC KV 1**) therefore a minor. The birth of the child was also registered in the Czech Republic (**DOC KV2**).
 - v) That after the birth of the child, the parties lived together for around two years in Malta, in a rented apartment.
 - vi) That in November 2018, the parties went to live for two years in Bristol England, for a better standard of living and also because the Defendant was offered a job there.
 - vii) That since Plaintiff got pregnant with the minor child, the Defendant's behaviour changed, in the sense that he became very possessive of her.

This behaviour led to him being severely aggressive. This also led to Plaintiff being hospitalised in the United Kingdom, after Defendant broke her nose during an argument, for which he spent one night in prison, before she dropped the charges because she loved him.

- viii) That because of the Covid pandemic, the parties could not continue to reside in England and returned to Malta in March 2020, where they spent the first two weeks living in a rented property, paid by Defendant's parents.
- ix) That in April 2020 the parties began renting an apartment in Xemxija, since the Defendant's mother did not want the parties to reside in her property.
- x) That in January 2020 the Plaintiff's father passed away, and in July 2020 she was constrained to go for one month to the Czech Republic in order to meet the notary for the division of inheritance. That the Plaintiff also took with her the minor child, since the Defendant did not possess the capacity to care for the minor alone, principally because of his mental state and also because of his bad and aggressive behaviour.
- xi) That whilst the Plaintiff was in the Czech Republic, the relationship of the parties ended, due to the bad behaviour and abuse of the Defendant who was also violent in the Plaintiff's regard. Therefore although the Plaintiff and her daughter had to return to Malta on the 22nd of August 2020, they remained there, this however with the permission of the Defendant, as shall be proven during the hearing of evidence in this lawsuit.
- xii) That during the parties' residence in Malta, the bad and violent behaviour of the Defendant whilst he was drunk, had also led to the Plaintiff having to seek the assistance of the police, where she was directed to seek refuge in a shelter.

- xiii) That in August 2020, the Plaintiff barely heard anything from the Defendant, other than to tell her that he is taking drugs and is living his life with his new girlfriend – who subsequently in November 2020 was kicked out of his property after she was found to have stolen the minor child Julia’s gold jewellery.
- xiv) That in December 2020, the Defendant spent Christmas with the Plaintiff and the minor in the Czech Republic, however no other attempt could be given to their relationship due to Defendant’s aggressive behaviour which persisted.
- xv) That proceedings were initiated against the Plaintiff in the Czech Republic by the Defendant, and the Plaintiff was ordered to return to Malta together with the said minor (copy of the judgement is here attached as **DOK KV3**) by means of a judgement of the Regional Court in BRNO as a Court of Appeal on the 26th August 2021 from the judgement delivered by the Municipal Court on the 11 of June 2021.
- xvi) That as results from the translation of the said judgement, the Court ordered:
 - a) The return of the said minor from the Plaintiff within thirty (30) days from the service of the judgement;
 - b) That the Defendant had to provide residence for the Plaintiff and for the minor (which consists of an apartment with one bedroom and bathroom) paid for six (6) months;
 - c) That the Defendant had to pay maintenance for the minor child in the amount of one thousand Euro (€1,000) six months in advance into the bank account of the Plaintiff;
 - d) That the Defendant had to pay the amount of CZK 12,000 to make good for the travel expenses of the Plaintiff and minor child;
 - e) That the Defendant does not take the minor child from the custody of her mother, the Plaintiff;

- xvii) That because the Plaintiff was not vaccinated she could not return with the minor child to Malta in the period of thirty (30) days given by the Czech Court;
- xviii) That the Plaintiff was vaccinated with the first dose of the vaccine against Covid-19 on the 8th of September 2021 and with the second dose on the 29th of September 2021.
- xix) That the Plaintiff had informed the Defendant – by means of an e-mail dated the 19th of September 2021, that she was going for a few days to Poland with the minor to meet the minor’s godmother, KC , and that this trip would not impact his contact with the minor;
- xx) That the Plaintiff arrived in Poland on the 20th of September 2021;
- xxi) That on the 23rd of September 2021, the Defendant – after publishing various posts on social media, saying he does not know where Plaintiff is and in order to find her – went into a commercial establishment in Poland, where Plaintiff was with the minor. He held K hostage until the Plaintiff went to meet him, leaving the minor child in her friend’s care. The Defendant was violent, beating the Plaintiff, and she managed to escape him, spending the night in a hotel with her daughter. The next day the parties met in order to discuss her return to Malta. On the day the Polish police accompanied the Defendant and he took the minor from her mother’s arms and drove off to Malta with his father.
- xxii) That the Plaintiff understood – but was not certain – that the said minor was in Malta living with her father and this because the Defendant cut all contact of the mother with her child, in a way that she was blocked from all access to her daughter.
- xxiii) That between the 28th of September and the 18th of October the Plaintiff had no contact with the minor because she was blocked by Defendant.
- xxiv) That therefore on the 17th of October 2021, the Plaintiff came to Malta in order to see her daughter.

- xxv) That on the 20th and on the 21st of October the Defendant permitted the Plaintiff to meet the minor in his garden, where he spent two whole hours looking at her and laughing at the Plaintiff, in a way that severely interrupted the time of the mother with her daughter after 3 weeks with no contact.
- xxvi) That from the 22nd to the 27th of October the Defendant again stopped all contact between mother and minor child. It was only the 28th and 31st October and on the 11th of November that the Defendant permitted the Plaintiff to speak to her daughter, with a very limited time of contact, under his supervision.
- xxvii) That on the 3rd of December the Defendant allowed the Plaintiff to see her daughter, although the Plaintiff said that the need for supervision is unacceptable, it was the only choice permitted to her by Defendant. Therefore she saw her daughter in Defendant's house, under his continuous supervision.
- xxviii) That this is certainly not an arrangement which can persist. The last time the Plaintiff saw her minor daughter, was on the 7th of December 2021, where she went to Defendant's home – with his permission – to see her daughter who was ill, and after just ten minutes with her daughter, wound up threatened by Defendant, his mother and her partner that they will call the police if she does not leave instantly, and this without a valid reason.
3. That the Plaintiff after filing this act is leaving to her country and will return to Malta when this suit is appointed for hearing by this Honourable Court, not only to testify but also to participate wholly in the continuation of this suit. That the Plaintiff does not have family members in Malta and she will be doing all this with suffering and great expenses whilst the Defendant will be fighting this suit from the comfort of his own home.

4. That in addition whatever the circumstances where which led to the minor being brought to Malta, according to the Hague Convention, it is not in the minor's interest that she continues to be brought up by the father for a number of reasons, amongst which that the father considers his daughter as a tool of vengeance against the Plaintiff since she did not want to remain with him, and therefore is dedicating himself to keeping the plaintiff not only from seeing her daughter but also from having electronic contact with her. That in addition the minor child is also being raised by the Defendant's mother and her partner. It is said for things to be clear, that their relationship began when they met in Mount Carmel Hospital.
5. That as is evident from Defendant's behaviour – as well as from his mental state and his cocaine use, *ex admissis*, and his violent and aggressive behaviour– that he cannot be entrusted with the upbringing of the child. That it is also evident that the minor's place should be back in Czech Republic, with the Plaintiff her mother.
6. That it is also unjust that a child of five (5) years is being kept from her mother, for no valid reason. This is most certainly not in the child's best interests.
7. That Plaintiff has been duly authorised to file a lawsuit for the care and custody of the minor JB and this in order that she be allowed to travel to and establish her residence and of the minor abroad, that is in Czech Republic, against Defendant by decree in this sense delivered from this Honourable Court on the 6th of December 2021 (**DOC KV 4**).
8. That this suit is being filed so that the Court, after hearing the parties, their witnesses and the said minor, orders that in the supreme interest of the same child, lives with her mother, the said KV, in Nacho, Czech Republic.

Consequently Plaintiff respectfully requests that this Honourable Court, sees fitting and opportune to states the following:-

- i. Orders and declares that in the best interest of the said minor child, parties daughter, JB, that the care and custody of the said minor be entrusted to Plaintiff her mother and that the same minor lives together with Plaintiff her mother outside of the Maltese Islands, specifically in the Czech Republic;
- ii. Authorises Plaintiff to, on a date established by this Court in her eventual judgement leave Malta and take with her the said minor child JB in order to live with her in Czech Republic and this notwithstanding all orders otherwise obtained by the parties or either one of them after the issue of the Prohibitory Injunction to stop a person from taking a minor outside of Malta;
- iii. Authorises Plaintiff to withdraw the passport issued by the Republic of Malta to the minor JB which was deposited under this Honourable Court's authority in the records of the Prohibitory Injunction number 196/2021;
- iv. Authorises Plaintiff, if such is needed to travel with the minor child J B from Malta to Czech Republic, as will eventually be ordered as requested in the preceding request, in order that on her own and without the need of Defendant's consent or participation, applies for and receives passport, visa or other document of whatever nature that is needed in order that the said minor JB , be able to enter Czeck Republic and lives in Czech Republic and also in order that the minor JB stops and enters in all countries needed in her journey between Malta and Czech Republic;

With expenses, including those suffered in the mediation proceedings and those of the Prohibitory Injunction number 196/2021, against the Defendant who is from now summoned for reference to his oath.

The Court,

Having seen the Sworn Reply of AB respectfully submits and solemnly pleads:-

1. That the exponent opposes the first request of the Plaintiff and this since there is no reason why the care and custody of the Minor daughter of the parties JB should be awarded in the hands of the Plaintiff, but there are impelling reasons which militate in favour of the care and custody of the minor JB being awarded exclusively in the hands of the exponent father, and this as will be shown hereunder, and this since the Plaintiff does not rear the child in a manner which is conducive to her upbringing and development, does not take care of the said minor as is expected from a 'bonus paterfamilias' and neither is she, generally, safeguarding the best interests of the minor child, and also since even up until recently she has endangered the minor with her abduction outside of the country.
2. That the exponent opposes fervently to the second ulterior request contained in the first request of the Plaintiff, that is, that the minor lives together with the Plaintiff outside of the Maltese Islands, specifically in the Czech Republic. In fact, as will be shown, it has already been confirmed by foreign courts that the habitual residence of the minor child is in Malta, and that it was the Plaintiff who illegally and arbitrarily stole the minor JB and took her not only to the Czech Republic, but also to Poland, and this with the aim of hiding her from the exponent father, and so as to keep the minor under her exclusive care.

3. That, as a consequence and for the same reasons, the second and third requests of the Plaintiff also do not merit being acceded to by this Honourable Court.
4. That the fourth request of the Plaintiff must also be rejected for the same reasons.
5. That together with this reply, the exponent is also presenting a counter – claim and this in terms of article 398 of Chapter 12 of the Laws of Malta, which counter claim shall ensure hereunder.

Save for further exceptions.

With costs against the Plaintiff.

The Court,

Having seen the Counter-Claim of AB who respectfully submits and solely declares as follows:-

1. That the Plaintiff, of Czech nationality, relocated in Malta in the year two thousand and thirteen (2013), wherein shortly after she entered into a relationship with the exponent, who is of Maltese Nationality, from which relationship, the minor JB , was born at Mater Dei Hospital on the eleventh (11th) of November of the year two thousand and sixteen (2016)¹;
2. That with reference to the Plaintiff's declaration of facts, where it is stated that "*the birth of the daughter was also registered in the Czech Republic*", it is being declared that this registration was made without the knowledge of the father, moreover this registration was not made with the consent of

¹ As shown on the birth certificate Annexed in the Sworn Application of the plaintiff and marked Dok KV 1

the father, so much so that the news of this registration came as a surprise to exponent.

3. That during the course of their relationship the parties have resided in Malta and based themselves in Malta, excluding the short period of a year wherein the parties attempted to change their scenery and went to England for a short period, prior to them returning to Malta and continued residing in Malta, so much so, that the habitual residence of the minor JB was and still is in Malta, as decided and affirmed by Foreign Courts, duly annexed, and marked as **Dok AB 1 and Dok AB2**.
4. That the exponent had agreed for the minor to go on a short vacation with the mother to the Czech Republic, for a short period of time, that is from the eighteenth (18) of July of the year two thousand and twenty (2020) till the twenty second (22) of August of the same year, wherein the flights were booked with the return flight.
5. That unfortunately, the minor was abusively and illegally retained by the Plaintiff mother, not only in the Czech Republic, but also as shall be shown, even in Poland, wherein the mother did not return the minor as was agreed to.
6. That the mother did not return together with the minor, despite the requests made by the father for the return of the minor to Malta, and also despite the Court Order for return of the minor which was given by the Municipal Court in Brno on the eleventh (11) of June of the year two thousand and twenty (2020) in accordance with the Hague Convention, within the period of thirty (30) days from notification of the judgement, whilst the Regional Court in Brno as a Court of Appeal affirmed this order in its judgement on the twenty sixth (26) of August of the year two thousand twenty (2020) since the Regional Court in Brno as a Court of Appeal held the following:
“the Respondent suggested suspension of preliminary execution of

Judgment. This however was dismissed by the Resolution of the Regional Court in Brno”²;

7. That as ordered by the Foreign Courts, the exponent provided residence for the minor and the mother, for a period of six (6) months which were to follow the return of the minor and the mother in Malta, which residence consisted of an apartment with two bedrooms with all the necessities required as was retained by the Regional Court in the Czech Republic, and this as will be shown during the course of the present case.
8. That the exponent has also provided maintenance for six (6) months in advance in the sum of one thousand euro (Eur 1,000) in the Plaintiff’s bank account, and this also as ordered by the Foreign Courts, and as shall be shown during the course of the present case.
9. That the exponent has also made good for the flight tickets, as ordered by the Foreign Courts, as shall be shown during the course of the present case, however despite this the Plaintiff did not use this money to honor that which was expected of her and that which was ordered for her by the Foreign Courts, that is her return to Malta.
10. That after having not returned to Malta, the Plaintiff took the minor to Poland, accompanied with a certain KC , and this in clear violation of the return order imposed by the Foreign Courts. Despite the fact that the exponent had travelled to the Czech Republic where he was ready to wait for the Plaintiff’s return from Poland, after the social workers from the Czech Republic informed the Plaintiff of this, she advised them that she would not allow the exponent to exercise his right of access, as a consequence of which the exponent had to go himself to Poland, to search for the Plaintiff and most importantly the minor. It was with the assistance of the Police and after the mother was found under the effect of alcohol,

² Copy of which sentence have been exhibited as Dok AB1 u DokAB2.

and after evidence of the relationship between the Father and the Minor was provided, that the police gave consent to the exponent to take the minor back into his custody.

11. With pain and a lot of trouble to him, the exponent was able to stop the kidnapping and assure the safe return of the minor to Malta, the place where JB was born and raised and where she lives.
12. That the Plaintiff behaves in the most unacceptable manner in the presence of the minor, and this both during the access and even during the telephone conversations that are carried out with the same minor. All this has led to the minor not being able to feel a sense of security and stability, for instance when the Plaintiff states in an excessive manner, even recently, that the minor is in Malta only temporarily and even specifies that she is here for holiday only, amongst other things, and this as shall be shown during the course of the present case. See Dok AB 3.
13. That as will result during the course of these proceedings, the Plaintiff is not worthy of raising the minor and this since she is genetically alcoholic, where the alcohol problem goes back to her ascendants. During the time in which the minor was in the Czech Republic, the minor was in the care of the Plaintiff as well as the Plaintiff's mother, both being genetically alcoholic. In this regard, the exponent reported to the social services in the Czech Republic, only to realise however that his reports were going unnoticed, such that they were being assigned to various social workers since the assigned social worker was on long sick leave, for the whole period of the abduction, as will be shown.
14. That the exponent, tried, on a number of occasions, to give access of the minor to the Plaintiff in Malta, however the Plaintiff's attitude was not at all appropriate, wherein the Plaintiff was trying to provoke the exponent, to scare the minor, to infiltrate the minor's mind with falsities, smoking in front of the minor, and speaking unsoundly in front of the minor. This apart

from a real fear which the exponent had during access, that the Plaintiff mother would once again attempt to abduct the minor child, and this apart from the fact that the exponent also fears that the Plaintiff kept and is still keeping in her possession the minor's Czech Republican passport or any other passport of the minor.

15. That the exponent in fact requested the issuing of a warrant of prohibitory injunction so as to impede the taking of the minor outside of Malta, that is warrant of prohibitory injunction number 196/2021/2, for which warrant a request will be made in due time by the exponent for its acts to be attached to this case (see in this sense decree with which warrant was acceded to definitively attached as Dok AB4).
16. That after the exponent gave access of the minor daughter of the parties to the Plaintiff, after that the Plaintiff returned to Malta with the minor in October 2021, the Plaintiff started arguing and provoking the Defendant during access, such that the exponent had to report these incidents, as seen in Doc AB 3.
17. That the exponent did not find cooperation from the Plaintiff mother so that the minor attends school, which was important so that the minor recovers the year which lost academically, and this due to the malicious intent of the Plaintiff.
18. That therefore this case had to be instituted.

That therefore this Honourable Court has been requested to:-

1. Accord the exponent the care and custody of the minor JB , as well to order that the minor continues residing in Malta with the exponent father, save for according access to the Plaintiff to the said minor if the court deems fit, which access should be in Malta, and under the conditions that this Court deems proper to impose, including with supervision of the access,

monitoring and even with regular testing for the Plaintiff's alcoholism, and even so that the Plaintiff attends parenting courses.

2. Orders that the Plaintiff pays such monthly maintenance due according to law, as the Court deems fit for the minor, and the modalities of payment, including the periodical increases so as to make good for the increase in cost of living, and an order for direct payment from the Plaintiff's salary to be affected with regards such maintenance, and this as the Court deems fit.
3. Declares that any social benefits in connection with the minor, including children's allowance, are paid exclusively to the exponent father.
4. Gives any other order which it deems fit and proper.

With costs, including those of the mediation and those of the warrant of prohibitory injunction number 196/2021 against the Plaintiff who is from now being summoned with reference to the oath of the adversary.

The Court,

Having seen the Sworn Reply of Dr. Stephen Thake as mandatory of KV (to defendant's counter-claim), who respectfully submits as follows:-

1. That the first demand should be rejected since it is not in the best interest of the minor child, J B , that the care and custody be entrusted to Defendant, her father and that she lives with her father in Malta, and this for multiple reasons *inter alia* his mental health issues, his violent behaviour and his drug abuse, as shall be proven during the hearing of this suit. Rather it is in the minor child's best interest that care and custody be entrusted to Plaintiff, her mother – who has always been her daughter's primary (and only) carer - and that the said minor lives together with Plaintiff - in the Czech Republic.

2. That the second demand should be rejected by this Honourable Court primarily since the parties' daughter, JB should reside with her mother in Czech Republic as she did before she was taken from her mother's arms, by Defendant and secondly since the Defendant has not been authorised to file judicial proceedings constituting a demand for maintenance.
3. That the third demand should be rejected by this Honourable Court since the beneficiary of social benefits paid by the State is identified by the legislation regulating such payment, rather than by Court Judgement, particularly where the state authority effecting payment would be the Czech Republic.
4. That judicial costs of the lawsuit filed by the Plaintiff and the counter-claim filed by the defendant, including the costs of the mediation proceedings and those of the Prohibitory Injunction number 196/2021 should be borne by the defendant.

Save other pleas.

Having seen all the acts and documents exhibited in the case.

Having also seen the various reports exhibited by the Directorate of Child Protection.

FACTS

Plaintiff explains that she had met Defendant in 2013 when she came to Malta. They fell in love and Defendant insisted that she moves to Malta, which she did and they moved into an apartment that belonged to Defendant's family, though they did not approve of their relationship.

In 2016 they had their daughter Julia and when she was two years old, around 2018, they decided to move to England. Initially everything seemed to be fine, but by time, Defendant started to feel depressed and spent a great deal of his time in bed. She explains that she worked the day shift, whereas Defendant worked night shifts and when she returned home, she would find that he would not have taken care of their daughter J, nor would he have done anything in the house. So it became difficult for her to balance with work and the family. He admitted to feeling depressed in England and he disliked the weather.

She also adds that Defendant started to become aggressive with her and there was an episode where she had to ask for the police's intervention.

Since Defendant was tired of living in the UK they decided to come back to Malta and this was around March 2020, just before Covid broke out. However, they did not find much help from Defendant's family and they had to rent out a place to live in. Back in Malta, Defendant became more rude and aggressive with Plaintiff and he even admitted to have started taking cocaine to control his depression and he also started to threaten her. He even sent her photos of the drug intake.³

In July 2020 she went to the Czech Republic after her father had passed away to settle some things and she was meant to stay there for a month and during such period the relationship with Defendant was not good and both acknowledged it, so the latter agreed for her to remain in the Czech Republic with their daughter. They corresponded on this matter between them and therefore Plaintiff insists that she has not abducted the child.⁴

³ Docs. KV 11

⁴ Docs. KV 1- KV 9

In August 2020, Defendant had tried to convince her that he was healing his depression with cocaine and he wanted to see his daughter, however, Plaintiff was scared since he was making use of drugs and she insisted that she would only agree once he presents a drug test and then they would sign an agreement. He asked her to draw up an agreement and send it to him. In cross-examination she admits that Defendant refused to submit himself to a drug test.⁵ She also denies telling him that he is a good father, but at the same time she never said that he is bad.

She added that there was a period after this that Defendant was not in contact, but this was because he was in a relationship with another woman and totally under the influence of drugs, when later he told her he had sent this woman out of his house because he suspected that she had robbed their daughter's jewellery, to finance her drug abuse.

After this incident, Defendant kept on insisting with Plaintiff to try and make it up and he wanted to visit them, which he did in Christmas 2020. However, she admits that she was adamant to make it up with him from the minute he returned to the UK and this was because he was really obsessive, still rude and aggressive. Seeing this she refused to move back to the UK, where Defendant was living at the time, because she had stability, a job and a place in the Czech Republic. As a result, Defendant reported her for kidnapping their daughter and he involved social workers in the Czech Republic.

The matter ended up in Court for abduction and Plaintiff explains that the Court had ordered that she had to return their daughter to Malta and she states that this came with various conditions imposed on Defendant such as providing Plaintiff

⁵ Dok. KV 12

and her daughter with a residence and the payment of alimony for the minor child six months in advance. The primary condition obviously being that Plaintiff was obliged to return to Malta with the minor child within thirty days from the judgement, but since it was during Covid and she had not been vaccinated, she could not come to Malta within the thirty day time period.

Instead she went to spend a couple of days with her daughter's godmother's family who she had not seen in ten years, in Poland because there was no requirement of vaccinations during the Covid period and she informed Defendant of this by means of an email on the 19th September. It so happened that whilst she was there, somehow Defendant drove all the way from Malta to Poland with his father and they came for Julia and took her away from her whilst she was at a shopping mall, probably because he found help through social media. She admits that they were assisted by the Police who were presented with the Court documents. She denies having been intoxicated when the policed turned up with Defendant to take Julia.

Since the 23rd September, 2021 she has not been able to contact her daughter much and moreover Defendant had blocked her. However, after the abovementioned incident, she managed to contact him and she came to Malta in November, 2021 and she had to visit her daughter at Defendant's parents house, which she believes is not the right place, since his mother suffers from a depression. In 10 days she was here, she only saw her daughter twice and Defendant prevented her from taking her anywhere alone.⁶ They met at a garden next to his property and they were alone, but she denied that he gave her and Julia space.

⁶ Docs. KV1 – KV 8

After this she next saw her daughter twice when she came for a two week holiday on the 4th December. Defendant had accompanied J to the hotel where Plaintiff was staying and stayed there whilst she swam with her daughter.

Next time she came was when she filed the court case and Defendant refused to let her see J unless it was under supervision, so she did not see her.

Plaintiff confirms that she has stability and can offer the said stability to their daughter, since she has a house in the Czech Republic. She also confirms that she works as a manager of a restaurant and she has an income of around €900 monthly. Prior to this she used to work at a petrol station and she used to have to ask her mother for help with their daughter. After Defendant reported her she used to have the social workers and police turning up very often at her house and she admits that they reassured her that things were fine.

As to the present situation with Defendant she states that he lives at home with Julia, his mother and her partner, who she met when she was at Mount Carmel Hospital. She also adds that they take J to a shop that his father runs and it is not a nice place for a child, because it has a bar.

Plaintiff denies having alcohol problems and is prepared to submit herself to tests to confirm this.

In cross examination she admits to telling J that she had come to Malta to take her back home. She might have refused to want to go, but Plaintiff states that this was because Defendant was filling her head up with these things.

Plaintiff explains in cross-examination that there was one court case before the Bormough Court in the Czech Republic and the first decision was given on the

11th June, 2021 and then there was an appeal filed. She admits that she had not passed on the bank details to Defendant subsequent to the first judgement.

She explains that when she had sent J to nursery in the Czech Republic she had informed Defendant and she considered that he accepted it.

In cross-examination she also admits that despite claiming that Defendant was violent with her she had not filed reports, because she had lost faith in the Maltese system, especially after Defendant was drunk and the police stopped. At that moment she had seen Defendant's father passing on money to the police and nothing ever happened.

Regarding giving her consent to Defendant to send J to school, she states that he had asked her and she asked him to refer the matter to her lawyer, but he never did and he still managed to send her to school in Malta without her consent.

Defendant explains that when their daughter was born they remained living in Malta for a while. Then in July 2020, Plaintiff needed to go to the Czech Republic because her father had passed away sometime before and she needed to regulate some documents. He agreed to her going and she was meant to be gone for a month, infact they also purchased the return ticket. It so happened that she inherited a house, a car and money from her father and she decided that she was better off in the Czech Republic and she did not want to come to Malta. It was after this that he decided to file abduction proceedings against her. This took quite a while and he admits that the abduction proceedings did not start immediately as there were quite a lot of documents to be filled in. Meanwhile, he had sent some jackets that belonged to J and also some toys. He also confirms sending her a trampoline as a gift.

After the abduction proceedings were initiated in the Czech Republic and a decision was given that the child had to be returned to Malta by Plaintiff within 30 days, he had to contact the Central Authority here in Malta and they were following up the matter. He admits going to the Czech Republic during the Christmas period, even when there were the abduction proceedings ongoing, but he states that he did so, to try to reconcile.

According to the Czech Court he was ordered to give her €1000 maintenance upfront for six months, an apartment and money to travel too and within thirty days from the judgement she had to return with the child to Malta. There was also an appeal he confirms. However, after the appeal was given, instead of returning the child, Plaintiff sent him an email on the 19th September, to inform him that she would be spending four days with J's godmother in Poland. He realised that this godmother was in the Czech Republic from Facebook.⁷

Defendant admits that he wanted to find Plaintiff and his daughter at all costs, so he went to the Czech Republic to ask Plaintiff's mother of her whereabouts and then he went to the social services, but they weren't helpful. However, they did try to call her and it went on a Polish voice mail. It was then that he traced the place through the Facebook of the godmother and he managed to find her in a shopping mall in Dyno. He continues to explain that Plaintiff escaped with the minor child and he had to seek help from the Police who assisted him and after showing them all the relevant legal documentation they took Julia and gave him to Defendant.

⁷ Docs. AB 1 – AB 2

He also adds that the Police carried out a breathalyser test on Plaintiff and they found that she was highly intoxicated and therefore not in a position to take care of the minor child.

When the access in Malta started Plaintiff would at times turn up late and at times also under the influence of alcohol . When she was not in Malta there used to be phone calls and Plaintiff used to try to manipulate the child reassuring her that they would soon go back to the Czech Republic and this upset him a great deal, because she was playing with her mind.

Defendant also confirms that he enrolled his daughter at school here in Malta, although Plaintiff opposed greatly because she wants her to attend school in the Czech Republic. He also explains that the minor child has started to learn some Maltese now. He also takes her to swimming lessons and private lessons and also catechism lessons. If he does not manage to pick her up there is always some family member to help out, if not he keeps her at school at the club..

He admits that J suffers from eczema and also asthma, but they are under control. However, unlike him, Plaintiff smokes in front of her when she knows she has this condition.

With regards to maintenance Defendant states that despite the Court Decree of the 13th May, 2022, where Plaintiff was ordered to pay maintenance in the sum of €100 for her daughter and half the education and health expenses, she has failed to make her contributions.

He confirms that ever since there has been the court case, he has incurred the following educational and health expenses, for which Plaintiff has not contributed:-

- i) Klabb 3-16 - €396
- ii) Pharmacy and Doctor's fees and expenses - €281.76
- iii) School and catechism expenses and stationery - €10.50
- iv) Swimming lessons once a week - €25 each time (up to date he has paid €600)⁸

He confirms that Plaintiff has never contributed towards these expenses.⁹ He had to file various reports for her failing to pay maintenance¹⁰ and he also communicated with her to effect payment.¹¹

Presently, Defendant confirms that he works as a deliveries driver with Shortlets Malta and he has an income of €1375,40 monthly net income.¹²

He explains that he had problems with Plaintiff to give her consent to J attending school here in Malta and in the end he had to prepare an affidavit to get her enrolled without Plaintiff's consent.¹³

He mentions various episodes when Plaintiff would be intoxicated during access of her daughter. This was confirmed by J herself when she mentioned that her mother was drinking Skol with her boyfriend. There were episodes that happened during drop off before the police station and the said police were witness to this too. He adds that following these incidents, the Court ordered access to be supervised for Plaintiff.

⁸ Docs. AB 1 – AB 4

⁹ Doc. AB 5

¹⁰ Doc. AB 7

¹¹ Doc. AB 8

¹² Doc. AB 9

¹³ Doc. AB 10

Defendant states that he has also had to file domestic violence reports against Plaintiff, where she swore at him and she was also aggressive.¹⁴ He also exhibited recordings of Plaintiff, some of which include recordings of her using foul language or threatening language in front of their minor daughter J. She also is heard encouraging their daughter to use foul language and she also tried to convince her that they would be returning to the Czech Republic and she would not see her father ever again.

PS 627 Daniel Gauci exhibited reports filed by Plaintiff against Defendant. The report referred to Defendant's failing to give access of the minor child to Plaintiff. He confirms that he issued charges on the 31st October. Defendant had informed him that he had sent Plaintiff messages and he also has screen shots, but she never replied.¹⁵

He confirms that he had seen the documents that had granted access to Plaintiff, the only problem was that there was no indication regarding the location for drop off and pick up. He confirms too that Defendant had informed Plaintiff that access had to be exercised from his residence in Attard.

DA confirms that there existed some difficulties with regards to the access as Defendant did not want to pick up from Qawra, but he wanted Plaintiff to pick up and drop off in B'Kara where he was attending a course. The matter was resolved as she personally had asked the Court to determine the matter.

She added that she had met the minor child with Defendant and once during access Plaintiff and child and they seemed happy.

¹⁴ Docs. AB 11 – AB 13

¹⁵ Doc. DJ 1

The Court had ordered that the access had to take place in front of the police station. She admits that she was not aware of instances where Plaintiff did not turn up for access. She recalls that last Sunday she was informed by her colleagues that Plaintiff had returned the child late as she had fallen asleep. She was also unaware as to whether Plaintiff was presenting herself for pick up and drop off intoxicated.

PC 732 Melvin Galdes in representation of the Unit of the Gender Based, Domestic Violence presented a report filed by Plaintiff. He states that the report was filed on the 15th October wherein Plaintiff complained that on her day of access to the daughter, Defendant did not bring her.

Since no legal documents were presented regarding access he had contacted DC regarding the matter, since she worked in social welfare and there was an agreement reached with the parties.

As a unit, they do not deal with access but with insults, threats, or violence or harassment. In this case, Plaintiff lodged a report complaining of an incident which happened where the parties had to meet for access near the Aquarium in Qawra. He explained that there was a risk assessment done by J T and J G P and it was confirmed that Plaintiff was at high risk. The risk assessment was done within 24 hours as is usually the case.¹⁶

He added that from his end no proceedings were initiated, but Inspector Colin Sheldon took care of the matter.

¹⁶ Doc.MG1

He also confirms commenting to the Defendant that he could tell that Plaintiff smelt of alcohol, but he had only met her once and the matter arose since Defendant mentioned that she used to have an alcohol abuse problem.

PC 943 James Scerri confirmed that on the 9th November, 2022, at 19.50 hrs Defendant had turned up at the Qawra police station because he had to meet Plaintiff who has access at that time. Plaintiff did not turn up until 20.35 hrs and when she did, Defendant alleged that she was in a drunken state. So he went out to verify himself and he could see Plaintiff holding on to a railing, she was not walking straight and she was very pale. He confronted her and asked her what she was doing in a drunken state with a six year old child, but she could barely speak and all she said was that she wanted to go home.

He confirmed that she was in a drunken state because he could smell her, though no breathalyser tests were carried out.

PS 55 Cutajar confirmed PC 943 J S 's version and he confirms that he went out to check on Plaintiff when S informed him that she seemed to be drunk. He explains that she could barely go down the stairs of the police station and she had to hold on to the rail. He also added that she could barely speak and she was accompanied by a male friend, who informed him that he would be taking care of her. He said that he had smelt the alcohol too, but confirmed that no breathalyser tests were carried out.

Since he was concerned about the matter, he had contacted the Child Protection Unit to look into the matter and he had asked Defendant for his contact details.

He also presented a bodycam footage.

Shelly Galea Spiteri, in her capacity as area service leader of the supervised access visits. When the case was referred to their services, she made contact with the parties and this was on the 27th December, 2022 and they had agreed that they would start access on the 7th January, 2023, but then they had issues to contact Plaintiff and it was only possible to fix a date to commence access for the beginning of February, after she contacted them on the 26th January.

She confirms that on the both occasions that there was access, it went well and from the feedback that the supervisors gave her, the mother and child bonded well.

DC was appointed by the court to follow access and after drawing up her report and she had recommended that they monitor the situation. After the report they had done some spot checks, though they never found any signs that the parties were drinking.

From the feedback she has received she confirms that the access is proceeding well and the minor child was very happy to see her mother.

She said that she was aware of an incident of Plaintiff's intoxication when she attended the police station.

She explains that she was also aware that there was an incident when Plaintiff turned up late for the access. She also confirms that Plaintiff had decent living arrangements, living with a family, where she has her own bedroom and bathroom.

She confirms that she had no concerns about the Plaintiff's behaviour and her bond with the child. She was also made aware by Plaintiff that Defendant made use of cocaine.

NCB , Defendant's sister explains that what she is heard saying in the recording exhibited by Plaintiff that he is an alcoholic, this was said on the spur of the moment when they were in a heated argument. She admits that Defendant is a good father capable of looking after his daughter.

This evidence was also confirmed by Defendant's other sister **JBB** .

CONSIDERATIONS

CARE AND CUSTODY

According to recent jurisprudence, our Courts have always determined that a decision on care and custody of the child, must always uphold a decision that is in the best interests of the minor . In the case **Maria Dolores sive Doris Scicluna vs Anthony Scicluna** decided by the First Hall of the Civil Court on the 27 th November, 2003 the Court reiterated as follows :-

“apparti l-hsieb ta’ ordni morali u dak ta’ ordni legali, li ghandhom setgha fil-materja ta’ kura u kustodja tat-tfal in generali, il-principju dominanti “in subjecta materia,” li jiddetermina normalment u generalment il-kwistjonijiet bhal din ix-xorta f’dina l-kawza, huwa dak tal-aktar utilita’ u dak tal-aqwa vantagg u interess tal-istess minuri fl-isfond tac-cirkostanzi personali u “de facto” li jkunu jirrizultaw mill-provi tal-kaz li jrid jigi rizolut....”

In the case **AB vs CD** decided by the said Court on the 23rd February, 2018:-

“Il-Qorti ghaldaqstant, ghandha s-setgha illi jekk ikun fl-ahjar interess tal-minuri, tafda wiehed biss mill-genituri bil-kura u kustodja tal-minuri u dana ai termini tal-Artikolu 56 tal-Kodici Civili. Illi kif kellha l-okkazzjoni ttenni din il-Qorti diversi drabi, l-interess tal-minuri huwa iprem mid-drittijiet tal-genituri. “Il-Qorti tirrileva illi filwaqt li dejjem taghti piz ghad-drittijiet tal-genituri, l-interess suprem li zomm quddiemha huwa dejjem dak tal-minuri, kif anke mghallma mill-gurisprudenza kostanti taghna huwa ‘l fuq iccitata.”

Plaintiff instituted these proceedings requesting the care and custody of their daughter J and to be authorised by the said Court to take her with her to the Czech Republic.

Until 2020, the parties had their issues, but they were living here in Malta and they had their daughter J. Subsequent to Plaintiff’s father’s death, in July 2020, Plaintiff, with Defendant’s consent needed to return to the Czech Republic to settle matters related to her inheritance from her father. Plaintiff left with their daughter J, and after took a decision not to return to Malta, because at the time she felt that her relationship with Defendant was already on the rocks because he was aggressive and rude with her. Since she inherited a car, a house and money she saw no reason to return as she felt better off in the Czech Republic.

The parties have conflicting interpretations on Plaintiff’s decision, who insists that she remained in the Czech Republic with Defendant’s consent. According to Plaintiff, he had completely acquiesced to her remaining there with the minor child J. Defendant, on the other hand denies ever consenting to her remaining there with their daughter and it was for this reason that he filed for abduction proceedings.

It is debatable why Defendant did not initiate the abduction proceedings immediately, but although he was not clear in his evidence, it seems that he was passing through a bad depression and he was also in a relationship with another woman who allegedly was on drugs. This is Plaintiff's version, though Defendant admits that he had passed through a bad time. Infact, he was not in touch with them until before the Christmas period and both parties agreed that Defendant should visit them. He admits that despite the abduction proceedings being underway, he went to attempt a reconciliation.

On being cross-examined he also confirmed that the preparation for the abduction proceedings took some time, so it was not a matter of a month. Nonetheless, they were instituted and a first judgement was delivered by the Court of First Instance in Brno on the 11th June, 2021 further to which there was an appeal on the 4th October, 2021 which confirmed the judgement of the Court of First Instance. The Court of Appeal confirmed that there was an abduction and that the minor child has to be returned to Malta, it being her habitual residence. It placed forward the condition that Plaintiff had to return the child within 30 days from the delivery of the written copy of the judgement, failing which, Defendant was entitled to take over the minor child from the Czech Republic. Moreover, Defendant was granted a number of guarantees to ensure the return of the minor child, which guarantees were fulfilled, except for the amount for the tickets, since Plaintiff never returned the child.

If the Courts had any doubt, as to the Plaintiff's true intentions on abducting her child, this becomes more blatant, when further to her obligation to return the minor child to Defendant in Malta, she sent him an email, on the same day she was travelling to Poland, precisely the 19th November, 2021 to inform him that she was going to Poland to visit J's godmother's family. Plaintiff denies having tried to defy the Czech court's decision and planning to escape so much so that

she informed Defendant of her intentions. She also tried to justify her decisions because of the Covid travelling conditions at the time, since Malta required her to be vaccinated when she was not. On the other hand, there were no such conditions to enter Poland.

Plaintiff 's justifications still cast doubt on their veracity, even more so, when Defendant had to proceed on a witch hunt between the Czech Republic and Poland to find his daughter, to the extent that he even had to ask for the intervention of the police to assist him in taking the child and bringing her over to Malta, where she has been living ever since.

As a background, both parties seem to thrust various accusations to cast doubt on each other as to their adequacy as parents. Plaintiff accuses Defendant of having abused of cocaine and produced a confirmation from his end. Defendant denies these accusations, stating that he told her so for her to empathise with him. He admittedly in their exchange of messages informed her that he was taking cocaine and he also send her a picture of what seemed like cocaine he was about to sniff. However, he cannot be seen in the photo and though in all probability it was him, it does not result that there was a serious drug problem. It might have been temporary in view of the circumstances, but further evidence to show that there was an addiction is shortcoming. All Plaintiff requested was that Defendant signs an agreement between them, but not before he carries out a drug test, which he refused.

Plaintiff also accuses Defendant of having an unstable family, where his mother suffers from depression and lives in apathy, together with her partner whom she met at Mount Carmel Hospital. Again, unfortunately, the evidence on these accusations leaves much to be desired and on a balance of probabilities, it is not strong enough to raise the concern it is intended to.

Defendant, on the other hand, accuses Plaintiff of not being a suitable mother, because she drinks excessively and more often than not she is intoxicated in the presence of the minor child J. Once again, the only witness to corroborate these accusations is PC 943 James Scerri and PS 55 Cutajar who confirmed that when Plaintiff returned the minor child beyond the access hours at the police station in Qawra, she was in a drunken state, so much so that she nearly tumbled down the stairs. They however explain reaching this conclusion from what they witnessed personally and after having smelt her breath, but deny ever conducting a breathalyser test. This incident does strengthen Defendant's accusations, but yet again it could have been a one-off episode. The Court would have been more convinced had Defendant produced stronger evidence in this respect.

Defendant also refers to the incident when in Poland and the police intervened to assist him to take home the minor child, at the time they approached Plaintiff she was drunk and in fact the Police had informed her that she was in no position to look after the child. However, no further evidence was brought forward to substantiate this allegation.

Once Plaintiff moved temporarily to Malta, Defendant mentions that this alcohol abuse continued in front of the minor child even during access and there was an occasion when Julia told him that her mother was drinking Skol with her boyfriend. At no point in the proceedings, does Plaintiff rebut these allegation nor did she produce evidence to the contrary.

DC , senior social worker from the Directorate of Child Protection confirmed that she had been informed about the incident at the Police station, where Plaintiff was found in a drunken state, however she had carried out a number of spot checks at the parties residence and no intoxication had resulted.

She also added that Defendant also subjected himself to a toxicological test and all the results were negative.

Considering the above, both parties fall short from being the responsible parents one would wish to have, though they both seem to love their daughter and care for her. Nonetheless, the accusations made with respect to each other, raise concern, but confronted with such weak evidence in this regard, the Court believes that they were made up or exaggerated as to be vindictive towards each other. In cases of care and custody, the parents must set aside their differences and disputes and place all their energy and focus on their children's best and vital interests.

Presently, Plaintiff moved to Malta on account of the court proceedings, as well as to be close to her daughter. She rented out a place and also found a job here. Meanwhile, Defendant has also started sending the minor child to school and she has also started to speak the Maltese language. She attends swimming lessons, private lessons and also Catechism lessons.

Consequent to Defendant's claims that there were incidents when Plaintiff turned up drunk for access, the Court following an application by the Defendant ordered that access to Plaintiff be granted under supervision. PS 55 also expressed his concern on seeing Plaintiff appear in a drunken state to drop off the minor child after exercising her access and he had personally contacted the Child Protection Services to monitor the case.

Despite DC as a senior social worker with the Directorate of Child Protection as well as SGS a social worker too, reported to the Court that it would be in the best interests of the child, if the care and custody will be joint and "*the minor*

*spend equal time with the parents. The family will be monitored regularly by the Directorate for Alternative Care and periodical reports will be submitted to this Honourable Court,*¹⁷ this Court tends to disagree.

Primarily, this case was instituted by Plaintiff to be granted full care and custody of the child and take her with her to the Czech Republic, therefore the recommendations of the Directorate of Child Protection cannot hold considering that the intentions of Plaintiff are still to leave Malta, if she is granted the care and custody of the child. On the other hand, it would be applicable and viable if the Court agrees with the said conclusions reached by the Directorate.

Once the access under supervision was decreed by the Court on the 12th October, 2022, as varied by its decree of the 27th January, 2023 there have been several inconsistencies from Plaintiff's end, in the sense that initially the Directorate tried to contact Plaintiff several times, but it was in vain, until she decided to contact them herself directly. Moreover, Defendant exhibited a note to identify the occasions when Plaintiff did not turn up for her access or turned up late¹⁸ and there were several of them throughout October and November, 2022. Plaintiff herself presented a note wherein she justifies her non appearance and puts all the blame on Defendant.¹⁹

Essentially, there exist inconsistencies in this regard resulting from the evidence produced by the parties. For instance, in his note Defendant states that on the 15th October, 2022 Plaintiff failed to turn up for access, whereas he had reminded her with a message the day before. However, the message exhibited by Defendant does not indicate a day creating doubt whether he did in fact contact her the

¹⁷ Report of the Directorate of Child Protection filed on the 3rd March, 2023.

¹⁸ Fol. 456

¹⁹ Fol. 349

previous day. However, there are various emails exchanged between the respective lawyers regarding Plaintiff's non appearance.

With reference to the access that was meant to be exercised on the 19th October, 2022, Plaintiff justifies her non-appearance because after various emails exchanged between their respective lawyers and DC from the Directorate it was agreed that Plaintiff would pick up the child from B' Kara and Defendant would have to pick up from Qawra, but meanwhile, Defendant, through his lawyer advised the police station that he would not be granting access in accordance with that proposed by Doreen Camilleri and therefore refused to drop off the child at the B' Kara police station and pick her up from the Qawra one.

Thus, it results that there were various shortcomings from both parties with respect to the access rights and once again their vindictive nature has contaminated this right, which ultimately aims at giving quality time to the parent granted access to the minor child.

Defendant points at Plaintiff's further unsuitability as a parent considering the continuous foul language she uses, as well as the foul language she incites the minor child to use towards her father. Undoubtedly, this is not very exemplary as a parent. Moreover, she also manipulates the child into promising her that all will be fine and they would soon be returning home to the Czech Republic. Defendant exhibited various conversations that were exchanged between the parties and the minor child, wherein it is quoted that the minor child explains to her mother that she wants to stay in Malta and she refuses to go to the Czech Republic. It is also quoted that she corrects her mother not to use foul language towards her father, but promptly obeys her mother when she tells her to insult her father. At no point does the Plaintiff deny these words nor did she produce evidence to rebut the said

allegations. The same applies to the allegations made by Defendant with respect to the domestic violence allegations.

All in all, having considered all the above, the Court believes that the minor child J has already been through a lot for her age and at this point in her life, she seems to have settled at school and she also has a routine. Admittedly, she attends the Klabb 9-16 due to the fact that Defendant works and as he too admits, he does not always have help from his family, but when they can, they pick her up straight from school.

Both parents do not come across as being the ideal parents since there probably might have been a history of alcohol and drugs, but ultimately who is the perfect parent! Though realistically, they both need to improve their parenting skills, their love for their daughter is certainly not lacking and it recommends that both parties attend parenting skills sessions to further improve their relationship.

Overall, there has been more consistency from Defendant's end in the exercise of rights and obligations as a parent and since the minor has now reached a sense of stability in her life and has started her schooling here in Malta, it is not in her best interest to uproot that stability. Thus, contrary to what DC in representation of the Directorate of Child Protection has proposed, Defendant should retain the sole care and custody of the minor child J for all the abovementioned reasons.

ACCESS

It has been established that at the present moment, Plaintiff is residing in Malta and access has been exercised under supervision. By an application filed by the Directorate of Child Protection dated 25th January, 2023, the Court decreed on the 27th January, 2023, that the access has to be exercised by Plaintiff on a

Saturday between 9 am and 16hrs. The Directorate recommended that there be granted joint care and custody, with continuous monitoring from their end.

As abovementioned, the Court disagrees with the Directorate's recommendations, though it acknowledges that the minor child Julia has bonded with her mother and they have a good relationship.

In essence, the crux of the matter is whether Plaintiff, further to this judgement intends to remain in Malta or not. If she does, then ideally the day as recommended by the Directorate will remain applicable, that is on a Saturday between 9 am to 16 hrs, with continuous monitoring and reporting to the said Court.

If Plaintiff moves back to the Czech Republic, there should be a daily Whatsapp call between the minor child J and Plaintiff between 4 and 4.30 pm and during the weekend, this should increase to an hour between 4 and 5 pm.

At no point in time will the said minor be allowed to travel to the Czech Republic, except if she is accompanied by Defendant, who is also entitled to hold the minor's passport and moreover, he will be able to apply for a new passport without the consent and authorisation of Plaintiff.

If however, Plaintiff decides to return to the Czech Republic, access to the minor child here in Malta would have to be exercised according to an agreement reached between the parties and the Directorate of Child Protection, who would have to be informed at least one month in advance, prior to Plaintiff's return to Malta, either by the Parties themselves or by their respective lawyers.

MAINTENANCE

By a decree dated 13th May, 2022, the Court had ordered Plaintiff to pay Defendant €100 per month for the minor child, excluding half the health and education expenses.

Plaintiff had filed an application requesting a revocation of the said decree, considering that presently she is living in Malta, she has the rent to pay of the apartment she is living in, as well as the fact that her income does not top more than roughly €800 monthly. This request was denied by the Court.

Maintenance is an obligation that both parties are liable to and as parents they are obliged to provide for food, clothing and habitation for the said minors, as well as for their education and health, Moreover, Article 19 of the Civil Code necessitates that in establishing the maintenance the Court must examine the needs of the person requesting maintenance, as well as the means of the person being asked to pay maintenance.

Defendant presently testified that he works as a deliveries man and he earns a net income of around €1375 monthly. Presently he has been paying for all education and health expenses of the minor child.

Realistically, Plaintiff's income is less than that of Defendant and moreover she has to pay her rent. However, it is also true that she has a house in the Czech Republic and money that she has inherited from her father. She herself admitted that it paid her to remain in the Czech Republic because she had more financial stability there. Nonetheless, there exists no excuse for her not to contribute towards her daughter's maintenance and considering her means, the said amount as ordered per decree dated 13th May, 2022, shall be varied in the sense that it will increase to €150 monthly, which amount also includes her share of the education and health expenses.

DECIDE

Having considered all the above and for the aforementioned reasons, this Court humbly decides as follows:-

- i) It rejects Plaintiff's claims;

As to Defendant's Counter-claims, it decides as follows:-

- i) Upholds Defendant's first counter-claim according to what has been decided in the sub-titles on "Care and Custody" as well as "Access."
- ii) Upholds Defendant's second counter-claim and orders Plaintiff to pay maintenance for the minor child as decided under the sub-title "Maintenance." The said maintenance shall be increased every two years according to the cost of living index.

In addition, the said maintenance is to be deducted directly from Plaintiff's income for which her employer has to be duly informed.

In addition, the said maintenance is to be paid until the minor child attains majority or starts to work or until the age of 23 if the said minor child continues to study full-time.

- iii) Upholds Defendant's third counter-claim.

All costs are to be borne as two-thirds by Plaintiff and a third by Defendant, including those of the mediation and the warrant of prohibitory injunction number 196/2021.

Hon. Dr. Anthony J. Vella

Registrar

