



**CIVIL COURT
(FAMILY SECTION)**

JUDGE

**Hon. Abigail Lofaro LL.D., Dpi. Stud. Rel.,
Mag. Jur. (Eur Law)**

Today the 1st November 2023

Sworn Application Number 105/15 AL

A B I.D. 251481 (M)

Vs

C D I.D. 83780 (A)

(Marriage Certificate with Progressive Number 958/2007)

The Court:

Having seen the sworn application¹ of the plaintiff A Aquilina whereby she premised and declared:

- 1. That the parties married in Amsterdam, Holland on the twenty first of November of the year two thousand and six (21.11.2006), as results from the attached marriage certificate marked as Dok. "A";*
- 2. That the parties marriage was duly registered in Malta as results from the attached marriage certificate marked as "Dok.B";*

¹ Fol 1 Maltese version/fol 11 English version

3. *That the parties have been living in Malta permanently since fourteen June of the year two thousand and thirteen (14.06.2013);*
4. *That from this marriage, their minor daughter E D was born on the twenty fifth June of the year two thousand and nine (25.06.2009), as results from the attached birth certificate marked as “Dok. C”;*
5. *That the defendant C D has rendered himself guilty of excesses, cruelty, threats and grievous injuries perpetrated against the plaintiff his wife and their minor daughter such that in doing so he has rendered impossible conjugal life between the parties;*
6. *That moreover, defendant C D has rendered himself guilty of adultery;*
7. *That, moreover, married life between the parties is impossible on grounds of incompatibility of character between the parties;*
8. *That the plaintiff has been authorised to proceed for personal separation ad mensa et thoro in virtue of a decree given by this Hon. Court, the said decree bearing number 683/15RGM, a copy of which is being attached herewith and marked as Dok “D”;*
9. *That for these reasons this sworn application had to be filed to request the personal separation between the parties*

Therefore, let the defendant show cause why, for the aforementioned reasons, this honourable Court should not, after making any necessary declaration and giving any opportune order:

1. *Declare and pronounce the personal separation ad mensa et thoro between the parties on account of excesses, cruelty, threats and grievous injuries that the said C D committed against his wife and their daughter E and/or on account of adultery committed by the defendant and/or because of incompatibility of character between the parties and for the purposes of Article 48 (c) of the Civil Code (Chapter 16), establish the date from when the said defendant is to be considered as having given cause to the separation;*
2. *Accord the care and custody of the minor E D in favour of the plaintiff, in the best interests of the said minor;*

3. *Order the defendant to pay to the plaintiff for herself and for their minor daughter E D that maintenance which this Honourable Court shall fix in accordance with the needs of the plaintiff and of the minor and the means of the defendant, payable by the defendant to the said plaintiff every week or every month as shall be ordered by this Court, ordering that if and whenever the defendant is in the employ of third parties, the maintenance so established shall be paid directly to the plaintiff by the employer of the defendant from time to time being deducted from the defendant's salary, or, should it be deemed fit by this Court, order the defendant to pay to the plaintiff, instead of the whole or part of the said maintenance, a global sum which in the opinion of the Court shall be sufficient to render the plaintiff independent or less dependant on the defendant.*
4. *Apply against the defendant in whole or in part the provisions of Article 48 and 51 of the Civil Code (Chapter 16);*
5. *Wind up the community of acquests between the parties, liquidate the same community and all other common property between the parties acquired during the marriage and divide the same between two portions which need not necessarily be equal, composed as ordered and established by this Court taking into account, inter alia, the paraphernal credits which the plaintiff has agaist the community of aquests and the date of acquisition of the various objects so divided and the date established by this Court as the date when the defendant is considered as having given rise to the separation, if need be after the appointment of experts to effect the said liquidation and propose a plan of division;*
6. *Assign the two portions, one to the plaintiff and one to the defendant;*
7. *Condemn the defendant to deliver to the plaintiff the paraphenral effects belonging to the plaintiff and, separately, order that the plaintiff be accorded the full administration of her paraphernal property.*

With costs against the defendant, who is hereby being notified that the plaintiff reserves the right to furnish evidence by reference to the defendant's oath.

Having seen the plaintiff's list of witnesses² and list of documents;³

² Fol 13 (English version)

³ Fol 15 (English version)

Having seen its decree dated 18th May 2015;⁴

Having seen the plaintiff's sworn note;⁵

Having seen the parties joint note;⁶

Having Seen the defendant C D's sworn reply⁷ whereby he submitted:

1. *That as regards the first claim, the defendant agrees that this Honourable Court should pronounce the personal separation between the parties but this not for the reasons stated by the plaintiff who is solely and exclusively responsible for the breakdown of the marriage, having rendered herself guilty of adultery, excesses and cruelty, threats and grievous injuries against the defendant to the extent that the marriage has irretrievably broken down, such that consequently the dispositions of article 48(c) of the Civil Code should not be applied against the defendant but against the plaintiff.*
2. *That the second claim is being contested since the care and custody of the minor child should be entrusted to the defendant, or in default, jointly between the parties with ample and adequate access in favour of the defendant as may be ordered by this Honourable Court. The defendant will be filing his counter-claim in this regard.*
3. *That the third claim is unfounded in fact and at law in so far as this concerns the request for maintenance payable to the plaintiff, since the plaintiff is in gainful employment and has moreover forfeited her right to maintenance being the party solely responsible for the breakdown of the marriage between the parties, while as regards the claim for maintenance for the minor child the defendant respectfully submits that any maintenance payable for the minor child should be established taking into account the income of both parties and the residence of the minor child. The claims for payment of a lump sum and/or the deduction of maintenance directly from the defendant's salary where applicable are not justified and should be wholly rejected.*
4. *That the fourth claim should be rejected since there exist no circumstances at law to justify such request as will be shown throughout the hearing of*

⁴ Fol 17-20

⁵ This refers to the Maltese version filed at fol 21 of the Acts

⁶ At fol 32

⁷ At fol 33- this refers to the Maltese version and the translation is available at fol 41

the case, and moreover such sanctions should be applied against the plaintiff who is solely responsible for the breakdown of the marriage.

- 5. That the fifth claim is not contested in so far as this relates to the division and the liquidation of the community of acquests, but the defendant does not agree that he should be assigned a portion which is less than that assigned to the plaintiff, since contrary to what was stated by the plaintiff, it is the plaintiff herself who should be assigned a smaller portion in view of the fact that she is repsonsible for the breakdown of the marriage and it is the defendant who has paraphernal claims against the community of acquests, as will be shown throughout the hearing of the case.*
- 6. That the sixth claim is not contested limitedly to the assignment of two portions, namely one to the plaintiff and one to the defendant.*
- 7. That the seventh claim should not be upheld since the defendant has no paraphernal effects belonging to the plaintiff, which are all in her possession. Consequently the plaintiff's claim to be accorded the full administration of her paraphernal property was done gratuitously and should not be upheld since such effects have always been under the plaintiff's administration.*
- 8. The defendant reserves the right to make further pleas.*

With costs against the plaintiff.

Having seen the defendant's list of witnesses⁸

Having seen the defendant's counter-claim whereby he premised and declared:

- 1. That the parties got married in Amsterdam, Holland, on the twentieth (20th) of November of the year two thousand and six (2006), which marriage was also registered in Malta as per certificates already filed by the reconvened plaintiff and marked as Doc. 'A' and Doc. 'B' respectively.*
- 2. That from the said marriage the parties had a child, namely E D who was born on the twenty fifth (25th) day of June of the year two thousand and nine (2009) and who is still a minor, as per birth certificate also exhibited by the reconvened plaintiff and marked Dok. 'C'.*

⁸ Fol 42

3. *That the marriage between the parties has irretrievably broken down and the conjugal life between the parties is no longer possible and this for reasons attributable solely and exclusively to the reconvened plaintiff who rendered herself guilty of adultery, excesses, cruelty, threats and grievous injuries against the defendant.*
4. *That the parties have been authorised to proceed with a personal separation in terms of a decree granted by this Honourable Court and dated the seventeenth (17th) March of the year two thousand and fifteen (2015), a copy of which is hereby being attached and marked as **Doc. 'LB1'**;*
5. *That it wasn't possible for the parties to reach an amicable settlement in view of the plaintiff's intransigence.*
6. *That the facts herein stated are personally known to the defendant.*

For these reasons the defendant humbly prays this Honourable Court to:-

1. *Declare and pronounce the personal separation between the parties for reasons attributable to the reconvened plaintiff who rendered herself guilty of adultery, excesses, cruelty, threats and grievous injuries against the defendant and because the marriage has irretrievably broken down and for the purpose of article 48 (c) of Chapter sixteen (16) of the laws of Malta establish the date on which the reconvened plaintiff should be considered as being responsible for the separation.*
2. *Order that the care and custody of the minor child E D be entrusted solely to the defendant.*
3. *Condemn the reconvened plaintiff to pay the defendant such just and adequate maintenance for the needs of the minor child E D which shall be established by the Court taking into account the plaintiff's means and the needs of the minor child payable by the reconvened plaintiff to the defendant weekly or monthly as may be ordered by the Court.*
4. *Order that, in case the second claim is not upheld, the care and custody of the minor child shall be entrusted jointly to the parties with adequate and ample access in favour of the defendant on such days and times as may be established by this Honourable Court.*

5. *Liquidate the paraphernal credits held by the defendant and qualify same as paraphernal credits of the defendant against the community of acquests existing between the parties.*
6. *Order the dissolution and termination of the community of acquests existing between the parties.*
7. *Liquidate the said community of acquests, with the appointment of experts as may be necessary, and divide same in two portions as shall be ordered and established by this Honourable Court, which portions shall be assigned as to one to the defendant and one to the reconvened plaintiff, after the defendant is accredited his paraphernal claims against the community of acquests and after this Honourable Court establishes the date on which the reconvened plaintiff is to be considered as having been repsonsible for the separation.*
8. *Order the reconvened plaintiff to deliver to the defendant all the defendant's dotal and paraphernal property in such short and peremptory period accorded to her and in default condemn the reconvened plaintiff to pay such sum so liquidated, if necessary with the appointment of experts, representing the value of said dotal or paraphernal property.*
9. *Apply against the reconvened plaintiff the effects of the provisions of articles 48 and 51 of Chapter 16 of the Laws of Malta in whole or in part such that, where applicable the reconvened plaintiff loses all entitlements that she may have on one half of the acquests made during the marriage with the ability of the defendant and this from the date when the reconvened plaintiff gave rise to the separation between the parties.*
10. *Appoint a Public Notary to publish all the relative deeds and curators to represent the eventual contumacy on the said deeds.*
11. *Order the relative annotation of the judgment eventually delivered by this Honourable Court in the public registry.*

With costs against the reconvened plaintiff, including those incurred in mediation proceedings, who is summoned for reference to the oath.

Having seen the defendant's list of witnesses⁹ and list of documents.¹⁰

⁹ Fol 46

¹⁰ Fol 47

Having seen the reconvened plaintiff's reply¹¹ to the reconvening defendant's counter-claim whereby she submitted:

1. *That as regards the first claim, the reconvened plaintiff agrees that this Honourable Court should pronounce personal separation between the parties, not for reasons stated by the reconvening defendant but for the reasons already indicated by the reconvened plaintiff in her Sworn Application, such that the dispositions of article 48 (c) of the Civil Code should not be applied against the reconvened plaintiff but against the reconvening defendant.*
2. *That in the best interests of the minor, the care and custody of the minor E D should not be entrusted in the hands of the reconvening defendant but should be trusted in the hands of the reconvened plaintiff.*
3. *That consequently the third claim for payment of maintenance by the reconvened plaintiff to the reconvening defendant for the minor child should be likewise wholly rejected.*
4. *That while the reconvened plaintiff insists that in the best interests of the minor, the care and custody of the minor E should be entrusted solely in the hands of the reconvened plaintiff, the reconvened plaintiff does not object to the reconvening defendant being granted access in Malta to the minor on such dates and in such times as this Honourable Court shall establish taking into account primarily the best interests of the minor.*
5. *That the fifth claim of the reconvening defendant should be rejected outright in so far as it may refer to the period between the parties' date of marriage in Holland on the 21st November 2006 and their establishment in Malta on the 14th June 2013 on account of applicable Dutch Law which on marriage renders common property all the property of the parties whether acquired before or after marriage.*
6. *That in any case, and without prejudice to the foregoing, any paraphernal claims made by the reconvening defendant have to be adequately proven by the reconvening defendant according to law.*
7. *That, in so far as the sixth claim is concerned, this Honourable Court should order the dissolution and termination of all common matrimonial property held by the parties, taking into account Dutch Law for the period between the date of marriage of the parties in Holland (21st November,*

¹¹ At fol 52

2006) and the date of establishment in Malta (14th June 2013) and Maltese Law thereafter.

- 8. That in so far as the seventh claim is concerned, it is not only the community of acquests which should be liquidated but all common matrimonial property held by the parties, taking into account Dutch Law for the period between the date of marriage of the parties in Holland (21st November, 2006) and the date of establishment in Malta (14th June 2013) and Maltese Law thereafter and further taking into account the fact that the reconvening defendant and not reconvened plaintiff is responsible for the breakdown of the marriage and the reconvened plaintiff's paraphernal credits.*
- 9. That the eighth claim should be rejected because the reconvened plaintiff has no paraphernal or dotal effects belonging to the reconvening defendant in her possession.*
- 10. That the ninth claim requesting the application of articles 48 and 51 of Chapter 16 of the Laws of Malta in their entirety or partially against the reconvened plaintiff is not warranted and should be rejected as the breakdown of the marriage was caused by the reconvening defendant and not by the reconvened plaintiff.*
- 11. That the tenth claim is not contested.*
- 12. That the eleventh claim is not contested.*
- 13. That reconvened plaintiff reserves the right to make further pleas.*

With costs against the reconvening defendant who is, as of now summoned for reference to his oath.

Having seen the reconvened plaintiff's list of witnesses¹²

Having seen the decree dated 17th March 2015, authorising the parties to proceed with these proceedings;

Having seen the minute registered in the sitting of 23rd June 2015 ordering that proceedings be conducted in the English Language.¹³

¹² Fol 54

¹³ Fol 50

Having seen the preliminary Judgment given by this Court in the names A B vs C D application number 105/2015/1AL decided on the 5th May 2016 by virtue of which the Court ordered the immediate cessation of the Community of Acquests between the parties and therefore from that date onwards the applicable matrimonial regime is that of separation of estates;

Having seen the plaintiff's sworn note¹⁴ translated into the English language;¹⁵

Having seen the plaintiff's Affidavit confirmed under oath together with all the documents attached;¹⁶

Having seen the defendant's sworn note;¹⁷

Having seen all the minutes of the proceedings, the Affidavits of the parties, the evidence brought forward by the plaintiff in the form of affidavits drawn up by third parties; the witnesses summoned and documentary evidence exhibited and which evidence was brought before the nominated Judicial Assistants, namely Dr Anna Mallia and subsequently Dr Abigail Critien (today Magistrate Dr Abigail Critien). The Court also took note of all reports filed by the Child Advocates nominated in these proceedings, namely by Dr Tanya Sammut Catania and by Dr Stephanie Galea. The Court took note of all the *pendente lite* applications and replies filed and all the relative decrees as well as all the records of this case and the relative final notes of submissions presented by both parties.

The Action

In brief, and as reproduced above, this case concerns an action of personal separation and matters concerning the respective parties minor child. The case was filed by the plaintiff and a counter-claim was filed by the defendant in the manner outlined above.

Proof:

Prior to examining the evidence contained in the Acts of these proceedings the Court makes reference to the respective parties sworn notes.

Sworn Note of the plaintiff:

¹⁴ Fol 21

¹⁵ Fol 56 - 62

¹⁶ Dok F fol 64- 89 and documents attached at fol 90-128

¹⁷ Fol 184- 191

Plaintiff states that defendant is responsible for the separation on account of adultery, accesses, threats, cruelty, and injuries against her to the extent that it rendered matrimonial life impossible. She maintains that he admitted to adultery and that was in addition to messages she saw on facebook exchanged between defendant and a certain Ms G.

Plaintiff states that defendant is never satisfied with what he has, has a superiority complex and belittles the plaintiff and that she often caught him lying to her such as when she found out that he was on holiday with Ms M N. She also mentions that in the past he has suffered from depression.

Plaintiff points out that the minor was Baptized as was agreed by both parties but defendant has now raised objection to the minor being brought up in a Catholic environment, including school.

Plaintiff explains why she should be entrusted with the sole care and custody of the minor, namely due to defendant's irresponsible behaviour of exposing their daughter to third parties with whom he has an intimate relationship with, as well as the unnecessary tension and stress he causes the minor as well as his opposition for her being brought up as a practicing catholic. She highlights the difficulty of coming to any form of agreement with the defendant who also dislikes Malta and does not wish to live here.

In her sworn note she refers to the current arrangement on access but highlights that he does not respect the times they would have agreed to.

On the basis of this she feels that maintenance and access need to be regularised. She declares her earnings for year 2014 at a total net income of €15, 336. At the time of submission of her sworn note she states that defendant was operating *Laparelli Cafe* in Valletta from which she states he has substantial income. With regard to maintenance for the needs of the minor she claims that he has unilaterally decided to pay the basic amount of €200 and also missed a couple of payments and while they had agreed to share the costs for the minor's health and education, she states that defendant has not kept his word on this.

With regard to her request for maintenance for her own needs she maintains that should she remain in employment she would not insist on an amount to be liquidated thereby however reserving all her rights to request such maintenance should she no longer remain in employment.

In her sworn note the plaintiff believes that due to defendant's failure to settle his share of health and education expenses it would make more sense for the amount

of maintenance to include his share of such expenses and she proposes that this should be in the region of €375¹⁸ per month.

With regard to the Community of Acquests and her pretensions and suggested division, the Court makes reference to that indicated hereunder when referring to plaintiff's affidavit.

Sworn Note of the Reconvening Defendant (hereinafter referred to as defendant):

Defendant categorically denies all the allegations brought forward against him in the plaintiff's sworn note. In fact he alleges that it is the plaintiff who is responsible for the breakdown of the marriage and he cites: adultery, abandonment, excesses, cruelty, threats and grievous injuries caused by the plaintiff against him. He alleges that just months after their arrival in Malta, in October 2013, the plaintiff abandoned the matrimonial home, for no valid reason.

Defendant denies ever having admitted to committing adultery whereby he states that plaintiff's allegations are a futile attempt at shifting blame.

He maintains he was excluded from important decisions throughout the marriage as plaintiff always wanted to be in control. He contends that such behaviour is reflected in her terms and conditions for when and how he can have access to his daughter. He agrees that he objected to the minor attending school in Mqabba but not for reasons put forward by the plaintiff and he maintains that his reasoning was that seeing they lived in Attard it did not make sense for her to go to school in Mqabba. On this defendant states: *"it was only when, just a few months later, the plaintiff left the matrimonial home to go to her parents, who incidentally live in Mqabba, that the defendant realised that the plaintiff had everything pre-planned and clearly knew that she was going to end their marriage on their return to Malta."*¹⁹

Defendant states that his consent was never sought before deciding to send the minor to a Catholic school and Catechism. He alleges that plaintiff wants to exclude him from the minor's life.

In his sworn note he refers to plaintiff's allegation that he is a liar and rebuts this and rather accuses her of the same – to this end he states that plaintiff is fully aware that Ms Angolino is a homosexual and was no more than his childhood friend and that the same Ms Angiolino rented the parties apartment in Holland from them.

¹⁸ Back in 2015

¹⁹ Fol 185

He categorically denies being a gambler and states: “*he does not deny having been to the casino on a few occasions in the past that would certainly not make him a gambler.*”

He contends he is and has always been very generous with his daughter, has always taken care of her and wanted to be in his daughter’s life, and if he had to leave Malta it was because he had no choice and he did so for employment reasons on a temporary basis following plaintiff’s decision to end the marriage. The defendant makes reference to the Court decree dated 12th January 2016 which entrusted the minor’s care and custody to the plaintiff, he contends that this is unfair and the parties should have shared care and custody. He puts forward his proposed access timetable at fol 188 of these proceedings;

Defendant maintains that his monthly contribution of €200 is what he can afford, hence why he had to leave Malta for better employment prospects as the cafe business was not what plaintiff set it out to be, and in fact he states that the business failed.

He contends that notwithstanding his difficult financial situation he never failed to contribute towards his daughter’s maintenance. He maintains that in Malta he had to pay rent and had no support network whereas plaintiff lives with her family and while she has a full time job her family are there to support her with looking after the minor. He disagrees that the health and education expenses are to be included in the monthly sum of maintenance and he states: “*Such a request further confirms that plaintiff’s intention is that of taking everything in her own hands in such a way that she will never consult with the defendant for anything including important decisions such as health and education.*”²⁰ In his sworn note he contends that his contribution ought to be €200 per month and an equal split on health and education expenses.

With regard to the Community of Acquests defendant lists²¹:

- The two immovable properties listed by plaintiff, and situated in Holland valued at €326,000 and €206,000 respectively;
- The scooter listed by plaintiff with a value of €1,500
- Household goods with a value of €4000, which he states some of which are already in plaintiff’s possession and others are in his. The Court points out that he does not elaborate any further.
- An account with Banif Malta in defendant’s name in the sum of €35,000 out of which he contends that €15,000 belong to defendant’s mother.

²⁰ Fol 189

²¹ See fol 190

- An account with ABN AMRO Bank in Holland in the name of the defendant in the sum of €10,000 which funds he claims belonged to him before marriage;
- He claims that he is aware that during the marriage plaintiff saved and accumulated funds that she is not disclosing;
- The joint loan taken during the marriage with Banif Bank plc in the sum of €20,000

Defendant's suggested plan:

1. Re properties in Holland – that they are rented to third parties until both parties agree that they should be sold and once sold proceeds are to pay off outstanding loans on said properties and balance of proceeds split once all taxes and charges are paid;
2. Scooter to be assigned to defendant, while plaintiff keeps the Citroen which she has been using since they moved to Malta and that defendant should be assigned the difference on the value of the 2 assets in question.
3. Most movables have already been divided and those outstanding are easily divided;
4. Each retain deposits and funds in their own name while they split all liabilities equally

Plaintiff's Version: Her Affidavit:

Plaintiff sheds very little light on the parties' courtship. She states that they met through her sister in the summer of 2003. For a while they visited each other in Holland and Malta, until one day she took a year's unpaid leave to spend time with defendant where they lived as a couple.

On the 21st November, 2006 they got married with a civil ceremony in Amsterdam's City Hall (Holland).

Their marriage was duly registered in Malta in 2007 as per marriage certificate available in the records of these proceedings.

It is relevant to mention that in her affidavit and sworn note, the plaintiff goes into detail regarding the immovable properties the parties acquired in the Netherlands and also its relative financing. While at the time of the filing of her affidavit it results that the parties still owned such immovables, the Court notes that in the parties respective notes of final submissions, they both submitted that the said properties have been sold, debts paid and proceeds divided. To this end

the Court will not go into further detail on the said properties in the light of the parties aligned position in the said relative notes of submissions.²²

Plaintiff alleges that problems in the marriage arose soon after they got married and she states that this was as a result :

- 1) Defendant's unstable work history both when the parties resided in Holland and also once they moved to Malta. According to plaintiff the defendant had problems in every job as well all his colleagues. *"he had a problem keeping a job because he resented being told what to do. Moreover, he always used to tell me that he did not want to work hard for his money and preferred to look for easy ways to make money"*²³. She mentions that in 2009 defendant was offered early retirement from his job with *Alitalia* in Holland, at which point he was unemployed for a year because according to plaintiff, defendant preferred to receive the generous social benefits he was eligible for rather than take on a job that was not up to his standard.

She alleges that defendant took on employment again in late 2010 with *Olympic Airways* in Holland. Plaintiff contends that defendant complained about this job and a year and a half after he was employed he was made redundant where again he found himself unemployed. *"In June 2012, we decided to move back to Malta and establish our primary residence here. I hoped C would eventually seek and find employment on the island. But as I will point out later, C's inability to hold down a job kept repeating itself throughout even in Malta. ... omissis... Having informed my superiors that I would be handing in my resignation from the company and notwithstanding the difficulties that my unplanned resignation was to bring on the company, my superiors still offered that I take unpaid leave instead of resigning so as to safeguard my position with the company in case we would decide to return to Holland. My manager, who was Italian, in particular, knew C. He was aware that C kept changing his mind and figured. That is why he himself suggested I take unpaid leave rather than resigning my employment."*²⁴

Plaintiff alleges that a few months after the move to Malta defendant wanted to move back to Holland. She contends that while in Malta he

²² See fol 1121 in note of submissions filed by plaintiff whereby she states: " the community of acquets has no immovable property – the only real estate they had was located in Amsterdam and has been sold prior to the commencement of these proceedings." This court notes that this property had not yet been sold prior to the commencement of these proceedings and this on the basis of that declared by the plaintiff in her sworn note and also her affidavit at fol 88 (page 26 of her Affidavit). That being said the Court notes that the defendant is in agreement that with respect to immovable assets both the properties that they had in common have now been. Sold, the mortgage paid off and the remaining revenue divided between the Parties. The issue on immovable properties that once existed is therefore considered by this Court as having been resolved.

²³ Fol 64

²⁴ Fol 65

belittled Malta and the way of life and was dismissive of the locality she hailed from - *Mqabba*. She states that this took her by surprise because over the years they had visited Malta and he had never brought this up before. They moved back to Holland that same summer and she resumed the job she had whereas defendant set out to job seeking *'but surprisingly, failed to find a job that he deemed to be to his liking. Barely a couple of months after we had left Malta and headed back to Holland, C announced he wished to move back to Malta to find a job here. And so we did.'*²⁵

Back in Malta he found employment with *Lufthansa Tecknik* but by the 1st February 2013 he resigned from his employment: *"With Lufthansa Tecknik he had a salary of about €25,000 a year. Yet he wasn't happy and he complained that he was given too much work for such a salary. It is to be said that the salary he had back in Holland was slightly more and yet he always complained."*

Plaintiff alleges that as a result, they moved back to Holland but only weeks after their move back to Holland defendant again proposed they move back to Malta to settle there, this time he wanted to set up his own business. By March 2013 he started travelling to Malta and plaintiff states her sister helped him when it came to finding a cafeteria for him to rent. They returned to Malta on the 14th June 2013 to conclude the lease and open the cafeteria. Plaintiff states: *"By this point I literally could not take any more moving back and forth between Holland and Malta, and to this effect I resigned my employment for good, instead of taking unpaid leave. I also made it amply clear to C that, without a doubt, it was the last time I would travel from one country to another with our young daughter as both me and our daughter were desperately craving some form of stability by this time."*²⁶

According to what Plaintiff states in her Affidavit the operation of the cafeteria did very well with an approximate income of €250 per day. Furthermore she states that defendant always made it clear that he was the boss there seeing that at the time also worked at the cafeteria until she found alternative full time employment.

According to the plaintiff, the defendant felt the nature of the work at the cafeteria was below him and he engaged other employees to run it and in June of 2014 he sought other employment with *SMS Travel Call Centre* which job he held down for a couple of months at which point he resigned

²⁵ Fol 65-66

²⁶ Fol 67

as he did not like working office hours so he went back to running the cafe with the help of his employee and parents when he was absent.

*“Naturally C’s unstable nature and his inability to hold down a job took its toll on me and on our relationship as I used to worry a lot seeing C abandoning one job after the other and never settling anywhere. Both me and my family repeatedly tried to impress on him the need to settle down especially after the birth of E but C would not hear of holding onto a job. Notwithstanding C’s attitude caused a total upheaval in my life and in our daughter’s life, I tried to support him as best as I could and accepted to follow him wherever he decided to go and do. He certainly cannot complain in this regard.”*²⁷ (Emphasis Added)

The Court refers to Dok JB 1 exhibited by Jobplus at fol 261, which document contains the employment history of the defendant which corroborates plaintiff’s timeline and defendant’s different employments)

- 2) The second allegation put forward by the plaintiff in her affidavit concerns defendant’s mental health. According to that reported by the plaintiff, defendant was under the care of both psychologists and psychiatrists initially in Holland (where she claims they visited a certain Dr W.H. Lionarons) and then in Malta, where she states they visited Dr Elaine Grech (psychologist) and family therapist Dr John Agius.

The Court notes that while the said local health professionals were indicated as witnesses they were not summoned to give evidence. Albeit the Court makes reference to the Doc MA 1 exhibited with the plaintiff’s affidavit where plaintiff points out the defendant saying: *“Se avessi pensieri suicidi e fossi sola magari non saresti così tranquilla ... essere vuoto senza cuore.”*²⁸ To which plaintiff replies: *Sei proprio cattivo a dire così.”*

- 3) Plaintiff alleges abusive behaviour on the part of the defendant which he directed towards her and her daughter. In relation to this she refers to his constant criticism of her needlessly and the way he made fun of her, she maintains that he dismissed her opinion as worthless even in front of others. She alleges that defendant belittled where she hailed from *“C constantly enjoyed belittling my hometown and me with it, foul mouthing me any chance he got.”*²⁹ With regard to abusive attitude towards her plaintiff exhibited Dok MA 2 – MA 9³⁰ namely exchanges sent by the parties in the years 2014- 2015

²⁷ Fol 68

²⁸ See Doc Ma 1 at fol 90

²⁹ Fol 70

³⁰ Fol 90 et seq

and where defendant repeatedly refers to plaintiff using derogatory language in plaintiff's regard *inter alia*: 'sei uno zero'; 'sei tornata al tuo livello basso;''fai ridere''fai pena'; 'ma che cazzo hai nel cervello'; 'sei così intelligente che da amsterdam sei finita a vivere in cameretta ad Mqabba... pensa che furba che sei'; 'sei proprio una donna vigliacca'; 'ma sei una merda'; siete solo sei meschini che vivono in una relata di paese vecchia e squallida'. This leaves no room for interpretation and the Court is convinced that defendant was abusive.

- 4) The fourth point plaintiff discusses in her affidavit concerns defendant's alleged adultery, whereby she states that in November of 2013, months after the parties decisive move to Malta, the couple were having frequent arguments and defendant recommended that they should take a break "meaning I should try moving in with my parents with E and that he would remain living in the apartment that we were at the time, renting in Attard."³¹ Plaintiff maintains the scope of this was to try to rebuild their marriage on defendant's own suggestion which she accepted and on the basis of this she moved out for two weeks, after which she agreed to move back in to the matrimonial home: "My stay however was short-lived as less than a week later I moved out again. My decision to move out was motivated by the fact that I got to know that C had been unfaithful to me."³² Plaintiff maintains that defendant left his laptop open on Facebook and: "from the messages sent via Facebook it became more evident that C slept with a Russssian girl named F G. The messages clearly indicated that she had been to our apartment, as she was familiar even with our cat. In these messages Ms G referred to C as 'Casanova' and C told her that he missed her, that it was nice spending some time with her and that he hoped to see her again soon."³³

According to the plaintiff during family therapy sessions with Dr John Agius, defendant admitted he slept with Ms G. The Court notes that Dr John Agius was not summoned to give evidence and defendant rebuts having admitted to this in front of Dr John Agius as per his affidavit

Plaintiff then refers to a second relationship with a certian H I and which she explains she found out about in circa June of 2105 when she saw defendant together with Ms I J at Pretty Bay in Bizebbuga. That day defendant had the minor with him and according to plaintiff, defendant was

³¹ Fol 70

³² Fol 70

³³ Fol 70 & 71

acting all amorous with the said Ms I J in the presence of the minor. Plaintiff expressed her concerns about this.

Plaintiff alleges that she is certain that defendant had an intimate relationship with both G and I J, and there were others she had suspicions about, but she did not know for a fact the way she did about G and I. Her suspicions refer to a certain K L, whereby she alleges to have read messages that the defendant exchanged suggesting for her to come to Malta as well as offering to pay for her stay. Plaintiff points out that defendant acted very differently with his own family when it came to money. Plaintiff also refers to another woman in defendant's life a certain : *"M N is another person with whom C has a long standing relationship which is difficult to decipher. I have known her since I got to know C and for all this time, she has never had a boyfriend. At the time I first moved to Holland, C and M N were flat-mates. It soon became evident that M craved C's attention and friendship and that C was very happy to string her along. Their very close relationship went beyond normal friendship to the point that at times, it even bordered on the ridiculous. Even after M moved out, they remained in constant contact, communicating with each other several times a day. Suffice it to say, that when C moved from Holland to Genoa, M followed suit (she is also from Genoa). Now that C moved to Malta, M has also moved to Malta and is working with C in the cafeteria in South Street. On his part, whenever after our arrival in Malta C needed to go back to Holland for one reason or another, he would always stay with M."*³⁴ (Emphasis Added)

Plaintiff maintains that he often lied to her with regard to his whereabouts when he met up with M – and she also mentions that during the time she was about to leave the matrimonial home in Attard for the second time, defendant suggested that he spends the weekend with his parents in Italy but further to plaintiff receiving a call from defendant's mother that same weekend, it transpired that defendant wasn't in Italy after all and on confronting defendant on the phone, plaintiff maintains that he admitted he had gone to Holland to meet M. *"the very fact that C would lie to me often to conceal his outings with M obviously did not help me that their 'friendship' was merely platonic. C himself, at one point in time, admitted that their relationship was 'not healthy' but said it was too late to change things as they depended heavily on each other"*³⁵ (Empahsis Addd)

³⁴ Fol 72

³⁵ Fol 72

5) Gambling and financial abuse:

Plaintiff maintains that her husband has always gambled regularly both in Holland and Malta where he spent a considerable amount of money at casino's often spending up to €1000 a night and where he would '*easily blow away €3000 in four days*' and plaintiff explains that this jarred with their modest lifestyle. Plaintiff alleges that to add insult to injury defendant expected her to pay for half of all expenses and bills even when she worked a reduced hours week after having their child. She maintains that this behaviour of his: "*contrasts sharply with his stinginess with money in my regard and E's regard*" Furthermore plaintiff states that currently defendant isn't co-operative with contributions towards the minor's expenses and at times defendant fails to pay altogether.

6) Plaintiff puts forward a sixth allegation about defendant abusive behaviour towards the minor child:

Here she maintains that defendant's erratic and unsettled behaviour "*introduced a lot of instability in our daughter*"³⁶ Apart from this, plaintiff states that defendant wasn't satisfied that their daughter went to Mqabba Primary so they eventually compromised on a Church School and on the 24th May 2014 the minor was admitted to St Dorothy's School "*an English speaking school as C had wished*"³⁷ and she states that he was very happy about this, until he eventually changed his mind alleging that he never agreed to a Church School. She states: "*It is true that C did not, as a matter of fact, sign the relative application notwithstanding that it was not signed by C. However, it is categorically not true that C was not aware of the application and/or of E's acceptance to St Dorothy's or, as he is saying now, that he allegedly would not have consented had he been aware.*"³⁸

Plaintiff maintains that defendant does not care that he is causing harm to his daughter who is happy and settled at school. According to plaintiff, defendant's actions are proof of that, and she states that out of the two *Parents Days* he missed one of them, and for the one he attended he argued with the teacher because his daughter was attending Religion classes. (Emphasis Added)

On this same note plaintiff states that he didn't want his daughter to be brought up in a Catholic environment "*C is adamant on this point and quizzes the child at point blank as to whether she is still attending such lessons, all the while stressing that she is doing a very bad thing by disobeying him. This fact is instilling a senseless and pointless sense of*

³⁶ Fol 74

³⁷ Fol 74

³⁸ Fol 75

guilt in the child which is affecting her playful and sweet character ... - omissis –

...this does not make sense in the light of the fact that when E was born we had both agreed to baptize the child which we did in Mqabba Parish Church. In fact one of the godparents is indeed Domenica Italiano, C's mother”³⁹ (Emphasis Added)

Plaintiff also provides further examples in connection with her allegation about defendant's difficult behaviour and plaintiff maintains this has now had an effect on E who is afraid of her father: *“For some time now, she always feels sick at her father's house and throw's up”*⁴⁰ Plaintiff provides examples whereby she claims that the defendant has no idea how to handle a child because he can't go down to her level and according to plaintiff his behaviour has a very negative effect on the child.

Plaintiff believes it is in the minor's best interests to be entrusted with her exclusive care and custody, and she states that ever since their *de facto* separation the minor has always lived with her and that she has been her primary care-giver since birth. She maintains that even when defendant was unemployed he would complain about them having reduced child-care as it compromised his free-time *“he simply abhorred the thought of having to stay indoors in order to take care of our daughter while I was at work”*⁴¹ in furtherance of this plaintiff exhibits document MA13 at fol 102 of the acts of the proceedings. Plaintiff attached 2 further documents MA 14⁴² and MA 15⁴³ to her affidavit to substantiate her allegations.

Plaintiff maintains that the minor is happy in her current residential set-up at plaintiff's parents house where she has a proper structure, stable environment, family and friends as opposed to defendant who has none of that in Malta. *“ He frequently states that he hates Malta and insists that he does not want to remain here”* .

Plaintiff expresses her position that she does not consider defendant to be fit to have his minor daughter's care and custody *“ because he does not put her interests first.”*⁴⁴ Plaintiff reiterates what she mentioned about his actions which are detrimental to their daughter and points out: *“he refused*

³⁹ Fol 75

⁴⁰ Fol 76

⁴¹ Fol 80

⁴² Fol 103

⁴³ Fol 104

⁴⁴ Fol 81

to contribute his share of the donation fee for the third semester last year."⁴⁵ (emphasis added).

With regard to access, plaintiff refers to their informal agreement in place (at the time of submitting her affidavit). The Court notes that this is now outdated considering that the modality reflected what the parties agreed to eight years ago. Furthermore defendant no longer resides in Malta. Nonetheless it is relevant to mention that plaintiff also mentioned that defendant had an erratic behaviour even when it came to him having access with his daughter and she also emphasised his lack of co-operation when it came giving lifts to his daughter for her to attend extra-curricular activities

⁴⁶

With regard to maintenance plaintiff stated that both parties were in gainful employment with plaintiff occupying a post as deputy head of administration at Insignia Cards Limited and that during 2014 she had a total net income of €15,336 for which she attached her FS3 as Doc MA 25 at fol 116. She mentions that she has no other employment or income. On the other hand at the time of submission of her affidavit – plaintiff refers to the fact that defendant operated *Laparelli Cafe* in Valletta. Plaintiff referred to the lease agreement that was entered into in July of 2013 for a period of two years which and according to her must have been renewed after the original two years elapsed because he was still running the said cafe at the time of submission of her Affidavit. Plaintiff maintains that defendant had to employ third parties to assist him and therefore she maintains that this indicates that business at the cafe` was good. She also highlighted that the person helping him run the place is M N “*who gave up her employment with KLM airline in Holland to come to Malta.*”⁴⁷

With regard to the defendant’s contribution for maintenance of the minor child, plaintiff maintains that defendant is tight-fisted. She claims that since the *de facto* separation the payments defendant made till the time she submitted her Affidavit were as follows:-

October 2014 €250, and €200 Euro thereafter, often paying late and missing the payment in July 2015 and October 2015. She also highlighted that the amount he paid was unilaterally decided upon by defendant himself and that furthermore and notwithstanding their verbal agreement to split the minor’s education and extra-curricular activity costs, defendant either paid late or picked on what to pay his share of. To this effect she exhibited

⁴⁵ Fol 81

⁴⁶ Vide fol 83 - 84

⁴⁷ Fol 87

documents MA 27 -MA 27 together with her sworn affidavit detailing his share of €431 which defendant failed to pay.

With regard to the community of acquests – in her affidavit plaintiff puts forward her position as follows:

- Parties got married in Holland on the 21st November 2006 where they lived until the 13 th June 2013;
- On the 14th June 2013 they moved to Malta to take up permanent residence;
- *“That according to Dutch law any acquired property before marriage and that acquired after marriage becomes common property between both parties and consequently each party has a right to half the property value at the moment of division”*⁴⁸

Plaintiff then proceeds to list the assets that at the time of her affidavit she states: “ we currently own”⁴⁹:-

1. *A house situated at Oudenaardeplantsoen 27, 1000 Amsterdam Holland valued at €300,000;*
2. *A flat situated at Lann van Vlannderen 176, 1066MR Amsterdam Holland valued at €185,000*
3. *A vehicle with mark Renault Clio with registration number CBZ-973 valued at €3,500;*
4. *A scooter Kymco with registration number GBP- 859 valued at €2,300*
5. *Several domestic objects that are all in Malta such as furniture, paintings, artefacts, electronics amongst others valued at circa €4,000 most of these artefacts are in C’s possession;*
6. *The sum of €2,0000 in account 13600413013 at Bank of Valletta in my name;*
7. *1,800 shares in Malta International Airport plc acquired in my name before marriage and funds deposited at Bank of Valletta plc before marriage amounting to the sum of €5,300;*
8. *The sum of €1,500 deposited at ABNAmro in Holland with the account number 547889844 issued in my name. Prior to marriage the account held €3,500;*
9. *Two bank accounts in Malta and Holland respectively which funds appertain to E. The total sum in both accounts is circa €1,500.*
10. *The sum of circa €35,000 found in account with Banif Bank Malta plc in C’s name;*

⁴⁸ Fol 88

⁴⁹ Fol 88

- 11. A bank account with ABNAmro in Holland in 2013. In 2013 more than €50,000 were deposited in it;*
- 12. Other bank accounts SNS Bank in Holland and ING Bank Holland and investment funds, pension funds and accounts with Zwitzverleven, a company in Holland.*
- 13. Any other accounts in Malta or abroad in C's name.⁵⁰*

Plaintiff lists the following liabilities:

- 14. A loan with ING Bank Holland to the amount of €320,000 regarding the purchase of the house at Oudennardeplantsoen 27 1066th Amsterdam;*
- 15. A loan with Atlas Funding Holland for the amount of circa €190,000 regarding the purchase of the flat in Laan van Vlaandereen 176, 1066 MR Amsterdam.*
- 16. A loan with Banif Bank Malta plc of circa €20,000. C transferred these funds and to date he has not given an explanation why these funds have been transferred. In the circumstances that these funds have not been used for the needs of the family and I do not feel I am responsible for the repayment of this amount.⁵¹*

Plaintiff declares that in Holland they did not enter into any agreement to regulate their matrimonial regime:

Other evidence produced by the plaintiff in the proceedings

Affidavit of O B⁵²

Plaintiff's father explains that he got to know the defendant in around 2004 when defendant was courting his daughter. He declares that he had a noticeable air of superiority, he looked down on the Maltese and those from the South further.

He provides examples – such as defendant objecting that the minor mixes with friends from Mqabba; he objected to her attending Mqabba Primary School and he dismissed looking for a future home to settle there or close by, even though witness states that the parties needed to rely on him and his wife to help out with the minor.

⁵⁰ Fol 89

⁵¹ Fol 89

⁵² Dok JA 1 fol 162 to 164

He goes on to explain that defendant never settled in any job, he found always finding a problem or an excuse to leave and he provides examples to this effect. He also explains that defendant always felt he knew best and did not take other people's advice or opinions well. As an example of this he refers to the cafeteria that defendant opened once the parties relocated to Malta, which plaintiff's father had advised against because he knew it was a tough business to run. He states that defendant disregarded his advice, but as he anticipated defendant soon roped in third parties to help him run it and a couple of years later he passed on the business.

He refers to the defendant as moody and unpredictable and the type to readily insult others. He refers to phone conversations between defendant and plaintiff where he overheard the hurtful and insulting tone defendant spoke with his daughter and he adds that if something did not go the way that the defendant expected it to he would blame the plaintiff and referred to her as 'zero'^[2] and incapable.

He explains how he and his wife continue to help plaintiff with the minor, referring to after school collection and lifts for after school activities yet notwithstanding: *"C always has something to say about us insulting us and then sometimes he asks A to tell us to do some favours for him"*

He provides examples as to how defendant puts extra and unnecessary pressure on the minor such as when the minor receives a Skype call from the defendant at their home. He states: *When E has to go to her father although she likes to go she gets very anxious and nervous knowing that if she does not want to eat or sleep at his place he would become angry and call A, offending her and her family.*

He concludes his affidavit by referring to an incident that concerned the minor's passport and the manner in which this escalated. He explains that his daughter was concerned about defendant holding onto the minor's passport and for a while she had been asking him to return it. He explains that on the 21st November 2015, - by which time defendant was scheduled to leave Malta a few days later- when defendant came to collect his daughter from his home, plaintiff again requested the defendant to hand over the minor's passport. Defendant reacted and pushed plaintiff to make his way inside the house to take his daughter: *"At the time I realized what was happening and shouted at him to go out of my property. After going out he went to the other front door of my residence and began banging furiously on the door yelling E. At that time my wife began phoning up 112. He started calling the police and that if they were not coming he would throw the*

^[2] Fol 163

door inside. He then left and went to Zurrieq police station. In the afternoon A filed a report too."

He states that the following day the defendant turned up at his house unannounced to collect the minor who had already gone out with the plaintiff seeing that there was no arrangement for him to collect his daughter. Upon answering the intercom, defendant beckoned the witness to go down – but witness states that since he was suspicious about defendant's intentions and since he had nothing to talk to the defendant about he did not go down and later that day filed his own police report.

Affidavit of P B⁵³

Plaintiff's mother divides her affidavit into 5 sections highlighting i) defendant's behaviour with the plaintiff; ii) defendant's relationship with M N; iii) defendant's attitude towards work; iv) a section about the minor and v) defendant's communication with E and plaintiff's family.

Re (i): Witness declares that when she first got to know the defendant he seemed polite but this soon wore off and she did not like the way defendant acted with plaintiff whereby he: *said cruel words to her especially when they had arguments*⁵⁴. When she visited them in Holland she could tell the couple argued a lot and defendant ordered plaintiff about. She provides examples of his difficult character, such as leaving early from family events and his overall habitual complaining including about work. *"This used to make A unhappy but I did not say anything in order not to make things even more difficult for A."*⁵⁵

Re (ii) witness confirms that she was with her daughter in Malta who was trying on her wedding dress at Alamango, when someone called her and alerted her to the fact that defendant was on a flight with Ms N headed for Spain. *"This made A very upset and you cannot blame her getting to know that your boyfriend is on the way to a secret holiday with a female friend while she is choosing her wedding dress is definitely not acceptable."*⁵⁶ Witness confirms that her daughter confronted defendant about this in her presence. She also confirms that she and her daughter often discussed how upsetting this friendship between defendant and Ms N was to the plaintiff, and notwithstanding this defendant *"ignored her feelings and continued with his plans"*⁵⁷ Witness also explains that upon opening

⁵³ Dok CA 1 fol 165 to 170

⁵⁴ Fol 165

⁵⁵ Fol 165

⁵⁶ Fol 165-166

⁵⁷ Fol 166

the cafeteria in Malta Ms N started to work there too. She confirmed seeing this for herself.

Re (iii) Witness refers to her daughter's stable job with Telecom Italia in Holland as opposed to the various jobs defendant complained about and lost, and upon which he decided "*to try his luck in Malta*". This was 2012 and as she explains it was the start his indecisiveness between Malta and Holland with his first job being Lufthansa Technik and during this time the parties moved into the witness's home, each time they came back to Malta he would complain both about the job and about the country and each time they moved back to Holland he would soon start thinking about coming back to Malta. The last move being in 2013 when he opened a cafeteria. She adds that plaintiff would open the cafeteria in the morning because defendant was not the type to wake up early. One day she injured herself and needed to go to hospital and she called her parents to take her and upon informing defendant about her injury his reaction was: "*it serves you right*".⁵⁸ She explains that on that occasion her daughter had suffered a hairline fracture, and even though she needed to rest she went in the next day to help because defendant complained that he could not cope on his own, something the witness adds her daughter did daily till defendant turned up for work.

Re (iii) Witness states that when it was convenient for him to leave the minor with her and her husband he never raised any objection and that way he could go on holidays or out to eat with plaintiff. Similarly when they first came to Malta the minor was enrolled in Mqabba Primary School, she was pulled out on their return to Holland and re-admitted when they came back – until defendant suddenly objected claiming that attending that school was not good enough for his daughter for reasons of class and standing and this notwithstanding that while he and plaintiff were at work they needed her support with the child:

"C began arguing that E should attend another school giving the excuse that the South people are of inferior intelligence, and laid back even knowing that all his wife's brothers and sisters have all studied there and all have completed tertiary education. E was then admitted to St Dorothy's" ⁵⁹

Witness refers to how she and her husband help plaintiff by providing a support network for the minor while plaintiff is at work thereby ensuring that all her needs are taken care of, and she highlights the fact that the minor is very settled and happy at school and also obtaining excellent results. Furthermore she adds: "*All members of our family are very close together and we all help each other when needed. We all do and give the best to E as we understand the difficult emotional*

⁵⁸ Fol 167

⁵⁹ Fol 167

and psychological situation she is going through because of her parents separation.”⁶⁰

She adds that the minor attends catechism in Mqabba and ballet in Mosta which she sees to herself in terms of lifts while her daughter is at work. *“C not only does not appreciate this, instead he insults us by calling us witches and ghosts. On Saturdays she is accompanied by A or by C when he is in Malta and is due to take her home that day/time.”*

Re (iv) She refers to the way the minor gets anxious when she receives phone calls from the defendant because in order to take a call from him he wants her to be in a room on her own away from her family where he would name call plaintiff and her family witches and/ghosts and make the minor feel uneasy, in turn the minor would later tell them: *“not to worry as she does not think that we are witches ...*

-Omissis-

E likes seeing her father but she becomes nervous when the time comes for him to pick her up as she knows that if she does not eat he gets very angry . She always tells us that she prefers not to sleep at his place but rather sleeps with her mother”⁶¹

Plaintiff’s mother provides two examples of defendant’s irresponsible behaviour in connection with the minor by keeping the minor for a sleepover without any advance notice and on one such occasion the minor threw up while at the psychologist.

Similarly she refers to the defendant’s stand and reaction when plaintiff requested him to return the minor’s passport and to the incident that took place as a result of which she called 112 for help due to the scene that got out of hand and confirms what Joseph B stated in his affidavit.

She concludes her affidavit by referring to the Court decree regulating access and witness states that defendant does adhere to the decree in a strict manner. She also concludes by referring to an example to convey defendant’s behaviour with the minor, if a family member passed by while she was on a Skype call with him:

“On the 25th January 2015 at about 18.55, C did skype with E while she was in the kitchen. I had to go there and switch off the cooker. He saw me passing by and started telling E if there were ghosts in the house and he is seeing ghosts around her. My husband who was in the living room together with A heard him and was very upset so he went near the tablet and told him that he would not

⁶⁰ Fol 168

⁶¹ Fol 169

tolerate his insults any longer as this was unacceptable. C started telling him to shut up as he was talking to E. He ordered E to go in another room alone and she did."⁶²

She explains how defendant did not stop things there but followed it up by calling plaintiff where he even suggested a confrontation with plaintiff's father the next time he picked up his daughter. She concludes that she cannot understand why defendant had so much hatred towards them considering they never did anything to him and which at their age *'these situations are very upsetting and wearing us down'*.

Affidavit of Q R⁶³

In her introduction plaintiff's sister states that as a family they have always tried to help out and she herself did so when trying to help C set up a business in Malta: *"however my effort was useless because C was very hard to please"*

She confirms plaintiff's allegation that defendant had difficulty when it came to settling down in a job and that he would refuse a job even if it did not appeal to him as being of a certain standing. She states that when out of a job he did not help around the house either and that she witnessed this herself when she visited the parties in Holland. She refers to his job at Lufthansa Teknik something she had also helped him with by carrying out some tax calculations. Soon after he took the job she visited her sister in Holland who had not yet left to come and join defendant in Malta – so she helped her pack all their belongings in preparation for sending them to Malta, however not long after she returned from this holiday C resigned from his post.

Plaintiff's sister explains how she assisted C when he discussed opening up businesses in Malta – she too refers to the flower business he was interested in opening and for which she did all the ground work and obtained a vat number – all this was in vain as he then decided against it, and she also refers to the cafeteria business and how she assisted him in looking for a suitable property. She also assisted in helping him look for a place for the parties to live in once they moved to Malta and she confirms that it was important for him to be in Attard or Sliema but not Mqabba nor its surrounding villages and she states: *"since he considered living in the south as of a lower class."*

She confirms that within weeks of their arrival and of opening the cafeteria defendant was already back to complaining mode as he considered the hours between 7 am – 5 pm Monday – Friday to be too long.

⁶² Fol 170

⁶³ Dok MS 1 fol 171 to 175 and Docs: 'MS2' at fol 176, 'MS3' at fol 177, 'MS4' at fol 178, 'MS5' at fol 179, 'MS6' at fol 180, 'MS7' at fol 181, 'MS8' at fol 182

She states that plaintiff often opened up with her about the odd relationship that defendant had with M N. *“ an episode I clearly remember occurred in 2006 when A was on a short stay in Malta in order to book services for their wedding day. I remember one day when A, our mother and myself were at Alamango in Gzira. Whilst trying on a wedding dress, A received a phone call informing her that whilst C was supposed to visit a friend, instead C had just boarded a flight to Spain with Ms M N. At that precise moment A called C in front of me and our mother, asking him if it was true that he lied in saying that he was going to visit a male friend while instead he was with Ms. N about to embark on their flight to Spain. He denied stating that whoever told her this was lying. A was so distressed that we had to inform the staff at the bridal boutique that we had to leave there and then as the bride-to-be had just received a bad news. Eventually C called back saying he was sorry...”*⁶⁴

With regard to money, plaintiff's sister refers to a transfer that was made from defendant's account to hers in December 2012 in the sum of €32,973.98. She states that in January she transferred that money back into his account and to this effect she attaches copies of bank transfers, marked documents MS2 to MS 8. Plaintiff's sister doesn't elaborate about the purpose of this transfer. She does however confirm that he was “a huge fan of casinos” and while on Holland in 2011 she did go to a casino with her husband and the parties but defendant was the only one who gambled. She also states that defendant would ask her sister to pay for her share of any bill in their presence on a number of occasions.

Plaintiff's sister confirms defendant's mocking character *“he would constantly question her and all our family's intelligence given that we lived in a small village as he felt that he together with his family were superior even though all of us received a good education and are employed in very good positions.”*⁶⁵

She also refers and provides examples about the lack of support from defendant's family - who invariably took his side and how plaintiff would call her when she got upset about this; defendant's difficult character and indecisiveness, his irritability with plaintiff and how he did things to upset her when she had a family event they had to attend to as well as his neediness:

“... he would often encourage A to come to Malta to visit us with E so that at the same time, he can have some quiet and relaxing time. However almost every time at the same time, he would start calling and texting her that she left him all alone at home while she is relaxing and enjoying herself and he's depressed and

⁶⁴ Fol 172

⁶⁵ Fol 173

indirectly asking her to cut short her one week break to return back and take care of him''⁶⁶

She explains that the same thing happened in May 2011 and her 30th birthday celebrations were cancelled for the same reasons.

She concludes her affidavit by referring to the minor's sweet nature but points out that the minor experiences noticeable changes in her character either before meeting or after meeting her father. She concludes by mentioning that E is very attached to plaintiff's family and notwithstanding all they do to help with the minor, the minor herself mentions to them that defendant calls them names.

Sittings before the Judicial Assistant:

8th February 2017 – during this sitting the parties declared that they owned no immovable property in Malta, and with regard to the house in Holland they declared that this was for sale and that once sold and paying all expenses they would divide the proceeds equally between them.

With regard to vehicles they declared they owned one car CBZ 973 and a scooter and undertook to present valuations.

During this sitting 2 witnesses testified namely:

1. **Darren Manduca** from Banif who gave evidence to the effect that there were:

- Five accounts in the sole name of the Husband documents of which exhibited and marked Banif 1 to 5, witness clarified that only two of these five accounts were active namely account bearing number 320080.10.001 and 320090.20.001

Two accounts in the wife's sole marked Banif 6 and 7 both closed

- Two joint accounts in the parties names marked Banif 8 and 9, both active

2. **Joseph Saliba** from Jobsplus:

Who exhibited the employment history sheet of the parties namely JB 1 and JB2.

Sitting held on the 3rd October 2016

⁶⁶ Fol 174

During the said sitting no witnesses were summoned however plaintiff's lawyer declared that the parties had no immovable property in Malta and the parties agreed that their immovable property in Holland should be sold.

Reference was made to the Court decree regulating care and custody and access, whereby care and custody was entrusted to the plaintiff and defendant's lawyer pointed out that her client wished for this to be joint. Access was also regulated for when the defendant visits Malta which also included his rights to a sleepover. With regards to maintenance, plaintiff's lawyer pointed out that there was no court decree to this effect and that while defendant was paying maintenance for the child in the sum of €200 per month he was in default since September 2014 and also default of his share of health and education expenses since April 2014.

Sitting held on the 8th March 2017

1.Franco Degabriele in representation of Dragonara Casino Limited;

Witness informed that he needed more time to carry out the required verifications.

2.Maria Montebello in representation of Casino Malta;

Witness confirmed that defendant is a client of the Casino and plays at the Casino Bay Street Malta. In all he went there thirty times between the 24th December 2015 and the 26th February of 2017. Witness stated that defendant took in the sum of €9445 to play but he never won. Witness stated that defendant lost the sum of €6345. She explained that her records are based on money that defendant changed into chips. Witness exhibited Doc. CM and Doc. CM 1.

3.Stephen Micallef in representation of Portomaso Casino and Oracle Casino.

Witness confirmed that defendant is a client of both casinos but only frequented the Oracle Casino in Bugibba once on the 17.4. 2015 where he played the amount of €915 and lost the said amount. With regard to Portomaso Casino witness exhibited a document indicating the amount of times defendant frequented the casino as well as what he played and what he lost in each session. "*b'kollox sarraf 41, 120 euro (forty one thousand and one hundred and twenty euros*⁶⁷". Witness exhibited Doc PC 2⁶⁸ which conveys the transactions at the cash desk and Doc PC 3⁶⁹ confirming the dates of his visits to the casino.

Sitting held on the 2nd November 2017:

1.Mary Mizzi in representation of Dragonara Gaming Ltd.

⁶⁷ Fol 280

⁶⁸ Fol 290

⁶⁹ Fol 293

The witness exhibited a document showing defendant's attendance at Dragonara Casino – Doc MM1 for period 25th December 2010 until 4th March 2017. Witness explained that the company started operating in June 2010; and as for defendant's level of play, which she referred to as: the winnings and the losses witness stated:

“ From Doc MM2 I can say that the defendant played €188,690 and lost €37,120.” Witness had to carry out further verifications to answer how this money was paid, that is whether cash or card. Her examination was suspended in this regard.

2.Stephen Baldacchino in representation of BNF Bank

Witness stated that he had already given evidence beforehand and that he was asked about certain transactions as outlined in the summons he received which questions were in connection with documents previously exhibited by BNF bank, during the sitting of the 8th February 2017, marked documents Banif 1 through to Banif 9.

For ease of reference the Court is going to reproduce the relevant part of the testimony of the witness, given the questions he was asked in the summons:

“I would like to add that in relation to all SEPA transfers I give further information. With reference to Doc. Banif 6 a fol 256 of the acts and question 1 in Doc A attached to the summons I state that I am exhibiting the relevant details for both transactions in document SB 1 and SB 2 being exhibited now. I went through all the payments I found and I made a summary of all the BIC reference in order to facilitate the understanding at the originating and receiving bank which summary is being marked as Doc SB 3. In Doc SB 3 there is also the answer that is my reply for question number 2 in Doc A attached to the summons Doc SB1, to clarify, shows the originating bank and BIC reference ABNALZA which means that the funds were transferred to BNF Bank from AMRO Bank Amsterdam account.

With reference to question 3 on Doc A attached to the summons and which relates to a transaction dated 14th February 2013 (Banif 1 a fol 233) I am exhibiting Doc SB 4 which shows the relevant details.

These transactions show that they were made from a European account in his name to his name with the exception of Doc SB1 which was a transaction from M B's name to his as well.

With reference to the 3 transactions for €10,000 each affected on the 29th September 2014 shown on Doc Banif 1 a fol 241 of the acts, I am exhibiting 3 documents, one for each transaction (Doc SB5 till Doc SB7). These €10,000

transactions were originating from 3 separate term deposit liquidations (see Banif 3,4 and 5) and transferred on the same day to accounts in the name of C D in the Netherlands.

All other SEPA transactions over €1000, are being presented as Doc. SB8 till 20’’⁷⁰

Witness also exhibited a copy of the sanction letter as Doc SB 21 relative to the personal loan of €20,000 shown on document Banif 9.

Sitting of the 6th March 2018:

1.Neville Aquilina in representation of Dragonara Gaming Ltd. ⁷¹

Witness makes reference to his colleague who had already given evidence and further to that states that the casino in question does not accept cheques only cash or credit card. Furthermore he states that the casino itself does not issue cheques either.

2.Stephen Baldacchino in representation of BNF Bank

Witness was asked to give evidence about a specific cheque but refrained from doing so in the absence of the required court authorization.

Lease Agreement

Together with defendant’s reply⁷² to plaintiff’s application of the 12th April 2018, defendant exhibited a lease agreement dated 3rd July, 2013 between George and Anita Lapira and C D in relation to the shop situate at 28A South Street Valletta.

Doc MA 120607 and MA 120702

Together with plaintiff’s application of the 12th June 2018⁷³ plaintiff exhibited Doc MA 120607 namely a judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature in the names Police vs C D, and Doc MA 120702⁷⁴ namely a judgment of the Court of Appeal in the names Police vs C D

Sitting held on the 21st May 2018

⁷⁰ Fol 311

⁷¹ Fol 340

⁷² Fol 355 reply dated 30th April 2018

⁷³ Fol 364

⁷⁴ Fol 370

1.WPC Charmaine Fenech who testified on the report lodged by A B and exhibited Doc CF1 which consists of an updated report dated 23rd November 2015 and from which said report it transpires that this was filed by plaintiff in connection with threats she received on her mobile from the defendant. Charges were issued since defendant ignored police's request for him to turn up to the police station, which said charges were declared time-barred by the Court as subject was not found.

2.Witness Nadine Fabri in representation of BNF bank gave evidence and exhibited cheque 949686 for the amount of €15,000 and which under court order was sealed and marked doc 'NF 1' and furthermore she exhibited updates on the parties respective accounts already exhibited in previous proceedings with updates from 2nd February 2017 onwards namely:

Dok NF2 – defendant's salary account

Dok NF 3- term account opened on 14th February and closed on 16th February 2018

Dok NF 4 – joint account opened on 8th January 2014 and still active but from document exhibited there are no funds in the account- re: account 000396362.10.001⁷⁵

Dok NF5 – loan account opened on the 13th January 2014 for the amount of €20,000 which amount was settled on the 16th February 2018;

Witness declared that was not in a position to explain what happened to the 35,000 mentioned in Dok MF 3 exhibited in the previous sitting but witness undertook to carry out the necessary verifications.

Sitting of the 4th December 2019

1.Police Inspector John Spiteri – explained that he was stationed at the vice squad and they had received a number of reports filed by H J against the defendant for insults, threats and stalking. Witness obliged himself to file a note in the acts of the case containing the said reports filed by H J against the defendant and any relevant statements given by defendant who was eventually arraigned on the 6/4/16 . Witness declared he would file the relative charge sheet and judgment.

A note was in fact filed by Inspector John Spiteri⁷⁶ containing the following documents:

- Charges brought against C D in connection with *inter alia* : threats, insults, harassment for the period November 2015 – April 2016 to the detriment of H J;

⁷⁵ The only joint accounts are this account the loan account – essentially from the evidence the only funds in this joint account were the funds from the loan drawdown of 20,000 subsequently transferred into the account of the defendant – see fol 258 Doc Banif 8

⁷⁶ Fol 428 dated 10th December 2019

- Police reports filed by H J against C D dated 11/02/16 and 18/03/16;
- C D's statement dated 4th April 2016 given before the Vice Squad.

Sitting held on the 23rd October 2020

Inspector John Spiteri exhibited:

- Doc JSA 1 a copy of the charges brought against the defendant on the 6th April 2016 in relation to a number of incidents in relation to H J;
- Doc JS 2 the judgement of the Magistrates Court (Malta) as a Court of Criminal Judicature;
- Doc JS 3 the judgment of the Court of Appeal confirming the judgement of the Court of Magistrates (Malta). The witness also confirmed under oath the note and documents which he filed in the Court Registry on the 10th December 2019. Witness explained that during the statement a translator was present and after giving his statement defendant availed himself of his right not to sign the statement.

Sitting of the 11th October 2021

The plaintiff gave evidence and exhibited Documents marked MAM 1; MAMA 1; MAM2; MAM3; and MAM 4.

Further to having filed her affidavit plaintiff gave evidence on the issue of maintenance and extraordinary expenses concerning the minor whereby she stated that the parties had agreed that they would pay one half each of expenses related the minor's health education and extra-curricular activities. She stated that at first defendant paid but then he became selective on what to pay:

*"our daughter goes to a church school, to St Dorothy's and he decided that he will no longer pay the fee because he said that it is a church school so we don't have to pay and the church does not provide an invoice with VAT so he just paid the first..."*⁷⁷ She confirmed that he stopped paying all expenses in connection to health, education and extra-curricular activities notwithstanding that when it came to the latter he encouraged his daughter to attend such activities. Plaintiff confirmed that she sends the defendant a monthly email with the pending expenses and receipts and while he acknowledges the emails he never pays for the expenses she incurs. She confirmed under oath that she spent the amount of €14,665 and the amount due to her from the defendant was one half of that amount. To this effect she exhibited Documents MAM 1 – MAM 4, all of which she stated she had already sent to the defendant. With reference to document MAM2 plaintiff explained that this document confirms how defendant would inquire about an expense and then fall short of paying. She also confirms that while at first defendant had started to pay €250 in maintenance for the child he

⁷⁷ Fol 519

then reduced this amount to €200 per month and as per documents exhibited (Doc MAMA 1) he missed a payment in July of 2015 and stopped paying in July of 2021. Plaintiff also highlighted that in connection with the more recent payments made, these were being sent to her from M N's account. With reference to Doc MAM3 plaintiff explained that this confirmed defendant's threat that he will stop paying maintenance, whereas she explained that the purpose of her exhibited Document MAM4 is to prove he is employed with Shell in Poland, and that he had been in a relationship of around three years with someone in Poland a certain Kasia Dziuba who she explained contacted plaintiff as she wanted to get rid of defendant as he was harassing her too. Plaintiff stated that defendant found out that this Ms Zuba had contacted plaintiff and as a result he started to harass plaintiff and to substantiate this, plaintiff referred to Documents at fol 915- 919 where *inter alia* defendant threatens: to stop paying maintenance and to take away the minor. Plaintiff also refers to a call she received from the Italian Embassy because allegedly defendant was trying to apply for an Italian passport for the minor as a result of which the minor was scared to travel.

“A B: Because she thinks that if she goes he will keep her and secondly when he sees her he is always arguing and whenever he comes to Malta she is not very happy to see him.

Dr B: Where did she get the idea that if she goes abroad to her father she will not be back?

A B: Because her father told her”⁷⁸

Sitting of the 29th November, 2021

Whereby plaintiff's legal counsel informed that he would not be insisting on the testimony of H I J but intended to produce evidence in connection with defendant's income.

Sitting of the 23rd February, 2022

Plaintiff's legal counsel requested defendant's legal counsel to exhibit payslips for years 2019 – 2022

Note filed and dated 9th March 2022 by defendant with copies of payslips for years 2019- 2021 at fol 929 – 1049 in the Polish language.

Sitting of the 2nd May, 2022

⁷⁸ Fol 520

Plaintiff's legal counsel referred to his previous request as per sitting of the 23rd February, 2022 which to date he had not received and therefore stated that save for such evidence he had no further evidence to produce.

Defendant's Evidence:

The defendant was afforded 4 sittings to produce his evidence before the Judicial Assistant. He did not raise any objection to this and as indicated in the acts by the note filed by the Judicial Assistant he requested to cancel his first sitting by forfeiting it as per document filed by the Judicial Assistant. Defendant did not turn up for the following two sittings scheduled by the Judicial Assistant and on the fourth sitting he produced one witness namely a representative of St Dorothy's School. Further to this sitting, defendant filed an application for a further sitting but the Court denied his request for reasons outlined in the plaintiff's reply. Furthermore he also filed an affidavit.

Sitting of the 7th November, 2022.

Caroline Jane Anastasi in representation of St Dorothy's School was summoned by the defendant to give evidence. She stated that she was requested as per summons to present the duly filled in school registration form and contributions paid to the school, which she exhibited and marked as Doc CJA 2⁷⁹ and CJA 1⁸⁰ respectively. On being questioned to explain what the fee is and if it is obligatory witness stated:

"Dawk il-hlasijiet li hemm innizzlin kollha obbligati li jithalsu, ovjament obbligati sa certu punt ghax huma contributions."

Witness was asked if the contribution is mandatory:

Dr Daniel Attard: obbligat imma jew mhux?

Xhud: su, mhux...

....

Xhud: hemm obbligu

In cross-examination the witness explained: *"Huma jissejhu contribution igifieri min ma jkunx jista' jhallas ikollha min ma jhallashomx, min ma jkunx jista' jhallas."*⁸¹

⁷⁹ Fol 1067

⁸⁰ Fol 1066

⁸¹ Fol 1062- 1064

Defendant's Affidavit⁸².

Defendant starts off his affidavit by giving an account of how the parties met and states that the parties had a very decent life where they were able to travel including to exotic places. He states that they purchased their first property in Holland prior to marriage, and subsequently got married. He confirms the facts in relation to the dates and places of marriage in Holland and in Malta and the birth of their child as explained by plaintiff herself.

He denies plaintiff's allegations with regard to his unstable employment or that it was the cause of the breakdown of the marriage. He states that he was employed with Alitalia for eight years and then he was made redundant. He refers to a document allegedly attached to his affidavit and marked Doc LB 1, however the said document does not transpire from the acts. Defendant states he tried to look for employment but remained unemployed for nine months during which time plaintiff was pregnant and he states:

"so I chose to be close to my wife during her pregnancy and assist as needed. During this time I was receiving the unemployment wage so our way of living was not impacted."^[1]

After which he joined Olympic air as a station manager. He states they were both busy at work and they received a lot of help from his parents who visited them frequently from Italy. He says he was made redundant from this job too and makes reference to Doc LB 2. However the Court notes that neither does this document transpire from the Acts. He states that this impacted his mental health and he is not ashamed of it and he confirms that he went through a period when he was depressed: *"any my wife just contributed to make it all much heavier, showing no empathy, not evn coming with me at least once when I had to attend visits to professionals that were counselling me"*^[2]

Defendant states that plaintiff became fully absorbed in the minor and became distant with him on a personal and physical level. He maintains that notwithstanding all of this he never lost focus of his family and its well-being. He explains that not long after they had their daughter they acquired a new house, and in order to afford it they had to rent the first one. Their tenant was M N something he states plaintiff conveniently omitted to mention. *"I knew M since we were young children, in fact we attended the same kindergarten. A knew that*

⁸² Fol 1082

^[1] Fol 1083

^[2] Fol 1083

M was my best friend since childhood and I have nothing to be ashamed of because our friendship was nothing more than honest friendship.”^[3]

With regard to M N, defendant praises her for having been prompt in paying her rent for three years and for looking after their property in Holland at no charge when the parties relocated to Malta. He accuses plaintiff of venting anger towards Ms N when in his opinion she should be appreciative of the service they received from her. Defendant goes on to refer to plaintiff’s allegations about the strange relationship that he had with Ms N, and he concerns such allegations as ‘crazy’, defendant furthermore states that he did not consider Ms N to be a physically attractive woman so he could not understand how the plaintiff ever perceived Ms N as a threat. He considers plaintiff to have had an obsession about Ms N and that plaintiff caused unnecessary stress to this friendship:

“Indeed, and to the contrary, it was A that was causing a strain to my friendship with M for no apparent reason. M knows my family, but I could not even have my daughter meeting her. Also she could not meet my parents to have dinner or spending time with us as A did not want her anywhere near us in our social activities.” ^[4]

In his affidavit defendant refers to plaintiff’s objections to him meeting up with Ms N as: a big fuss and exerting strong psychological pressure on everyone.

Defendant then adds that when they first came to Malta and he found employment with LH Technik for a few months, according to defendant they both agreed to move back to Holland because A was still employed there and they still had two properties on their names in Holland. In his opinion plaintiff could not accept the fact that he resigned from this job even though he maintains it was their joint decision to go back to Holland and he alleges that this is what cracked an already suffering marriage. In fact according to defendant the final move to Malta was his attempt to save the marriage. He claims that when they moved in June 2013 he organised the shipment of a container of belongings – once in Malta he set up his business and claims to have used his savings. They rented a flat at €800 per month in Attard. Defendant adds that even though plaintiff had strongly objected to the business, she conveniently accepted to work there and receive a pay seeing that she was unemployed. *“Since A was unemployed, she accepted to work with me in the cafeteria. Of course it was convenient for her to get a salary so she soon forgot all the criticism and opposition that she had against my business venture.”*⁸³ (Emphasis Added)

^[3] Fol 1083

^[4] Fol 1084

⁸³ Fol 1085

Defendant alleges that it became obvious to him that A had an agenda when they moved to Malta considering that she left soon after, and took their daughter and moved in with her parents where she still resides till today. “ *the ease and speed in which she moved out from our apartment in Attard and went to her parents strongly suggest that she has been planning this move for quite some time. It was clear that being a family was not her priority and it was comfortable for her to escape to her parents.*”^[5] (Emphasis Added)

Defendant alleges that plaintiff did nothing from her end to save the marriage and she stopped attending family therapy sessions with Dr John Agius for no reason, leaving him very negatively impacted having spent so much money and done so much to try and save his marriage. He blames plaintiff for how his relationship with his daughter has suffered and also states:

“A seemed to think that a child born and grown in Amsterdam could simply be put in her grandparents’ house to grow up the very same way as A grew up.”^[6]

He states he never gave his consent for his daughter to go to Catechism nor a Church school and he confirms that plaintiff is still asking him to: “*repay half of the school donations (NOT fees) while I clearly expressed my opposition to this and not agreeing to a donation which was decided by the Church*”^[7] (Emphasis Added)

He refers to his similar objections to the minor’s extra-curricular activities chosen without his express consent. He also states that he is happy to pay for school books but isn’t satisfied with the type of receipts given to him.

Notwithstanding the above defendant states:

Despite all above I was willing to settle all these (expenses with or without receipts but still this wasn’t enough for her).^[8] (Emphasis Added)

He refers to plaintiff as being egoistic and selfish and blames plaintiff for minor’s refusal to travel and have sleepovers with him and accused plaintiff of having ruined the minor’s relationship with her Italian family.

He declares that he now lives in Poland a move he had to make because he could not cope with his pay at *Malta Aviaserve* where he earned €1,250 per month.

He disputes plaintiff’s allegations about the hotels he stays in when he comes to Malta to visit his daughter and states:

^[5] Fol 1085

^[6] Fol 1086

^[7] Fol 1086

^[8] Fol 1087

“However, it is a very sad feeling that at the end of the day I always need to bring her back because she needs to sleep in Mqabba with her mother. I do not agree with this and it is extremely unfair for a foreign father coming to Malta and having to live with such restrictions.”

-Omissis-

who should pay all bills when presented (but without any previous consultation) whilst being excluded from all aspects of his daughter’s life ’^[9]

He blames plaintiff for his role as a virtual father. “

With regard to plaintiff’s allegations that defendant committed adultery his position is as follows:

“I reject such allegations as any possible relationship with third parties commenced after the marriage had already broken down”

In his affidavit he declared to have moved out of Malta permanently and he says that the marriage has broken down beyond the possibility of any reconciliation for reasons that plaintiff is to blame for – including her family’s influence and her abandonment and no attempt to reconcile.

He states that the parties should be vested with joint care and custody of the minor on the basis of the fact that there are no justifiable grounds for it to be otherwise.

He proposes access for when he is in Malta and that states that he plans to come to Malta once a month where he suggests he should be able to see his daughter twice a week for four hours and a full weekend including a sleepover. During holidays he suggests that he should have three days of access with a twelve hour duration and a full weekend including a sleepover and that he should be allowed to travel with his daughter four times a year for periods not exceeding two weeks each time.

With regard to maintenance he believes the all inclusive amount of €375 per month should suffice.

He concludes his affidavit by referring to the community of acquests which was terminated by a judgment of this Court of the 5th May 2016. He states all immovable properties have been sold. He maintains that plaintiff still uses the car they brought to Malta but that she has failed to maintain it properly. He denies plaintiff’s claims of having held on to several domestic objects, and on the other hand alleges that all of their furniture was moved to her parents house. He believes whatever property is held in common should be sold and proceeds divided equally. He claims to have a right of credit of €16,000 representing a sum

^[9] Fol 1088

of money that he had in his personal bank account in Holland ABN -AMRO Dutch bank before marriage and he claims to have exhibited document LB 3 to this effect – which the Court notes does not transpire from the acts.

Salient Points from the various Reports of the two Child Advocates

With reference to the first report⁸⁴ the Child Advocate held an appointment with the minor child who at the time was six years old, where the minor was reported to be very quiet during the said meeting. On the basis of this the Child Advocate also spoke to the parents. Plaintiff explained to Child Advocate that the father was travelling frequently looking for work opportunities abroad, and she felt that the minor was affected by the lack of stability. On his part defendant raised the issue that he was not happy that his minor daughter was attending a Catholic school being a non practising Catholic himself – that said, Child Advocate noted that he admitted that he had agreed to baptise the Child.

Child Advocate recommended a modality of access consistent with the fact that defendant resided abroad and suggested that should he wish to have longer visits he would need to file an application to have this modified. In the light of the fact that at the time in question the defendant father was residing abroad the Child Advocate recommended that plaintiff mother ought to be entrusted with the care and custody of the child.

A decree dated 12th January 2016 was given by this Court incorporating the Child Advocate's recommendation.

In subsequent reports when the minors was older the Child Advocate submitted that the minor explained that she had a very good relationship with her mother and maternal grandparents. The minor alleged that she met her father whenever he was in Malta and she was also in frequent contact with him via Skype . The minor alleged that she enjoyed spending time with her father when he is in Malta but she did not feel comfortable enough to have sleepovers with him- the thought makes her feel anxious, as she had expressed in the previous appointment with the child advocate, where even though the minor told the Child Advocate that defendant had now stopped telling her he wanted to take her out of Malta she was still afraid that he may still have that plan. In her report the child advocate stated that this contradicted defendant's allegation that the minor had a change of heart about travelling with him. The child advocate reports that she found the minor very consistent in what she says and very much the same as the previous occasions she held an appointment with the minor. (Emphasis Added). The Court notes that this stand was reiterated in subsequent reports filed by the Child Advocate who therefore recommended that it was in the minor's best interests to

⁸⁴ Fol 157

keep things the same and reject any requests by the defendant to have sleepovers or tavel with the minor

1. The Demand for Personal Separation by the Plaintiff and the Reconvening Defendant Respectively:

Both parties cite several grounds against each other as per their respective first demand. They both cite adultery, excesses, cruelty, threats, and grievous injuries as well as incompatibility of character between the parties. In his sworn note and affidavit defendant also alleges desertion on the part of the wife.

Reference is made to the relevant articles of the law in Chapter 16 of the Laws of Malta in connection with the grounds invoked, namely:

Article 38: “ *Either of the spouses may demand separation on the ground of adultery on the part of the other spouse.*

Article 40: *Either of the spouses may demand separation on the grounds of excesses, cruelty, threats or grievous injury on the part of the other against the plaintiff, or against any of his or her children, or on the ground that the spouses cannot reasonably be expected to live together as the marriage has irretrievably broken down*

Provided that the court may pronounce separation on the ground that the marriage has irretrievably broken down notwithstanding that, whether previously to or after the coming into force of this article, none of the spouses had made a demand on such ground.

Article 41: *Either of the spouses may also demand separation if, for two years or more, he or she shall have been deserted by the other, without good grounds.*

Reference is made to the respective parties mutual allegation that the other is guilty of adultery. Our Courts have consistently held that adultery is the most serious of grounds for which either spouse may demand personal separation. The whole issue though revolves around the proof of the alleged adultery. Our Courts often cite the judgment in the names Maria Dolores sive Doris Scicluna vs Anthony Scicluna⁸⁵ to this end where the Court reiterated the position that this is the most grave cause for which a spouse may demand personal separation and: “*huwa ormai pacifiku fid-dottrina u fil-gurisprudenza li l-adulterju jista’ jkun pruvat permezz ta’ indizzji u prezunzjonijiet, purche dawn ikunu gravi, prečizi u konkordanti, b’mod li ma jhallu l-ebda dubju f’min għandu jiggudika.*”

⁸⁵ Decided by the First Hall Civil Court on the 27th Novembr 2011: Writ No. 1715/2001 RCP

With regard to the grounds cited in Article 40 the Court makes reference to the fact that it is sufficient if any one of the grounds cited subsists. To this end reference is above-quoted judgment in the names of Maria Dolores sive Doris Scicluna vs Anthony Scicluna⁸⁶ where the Court held:

Illi 'noltre il-Qorti tirrileva li kif inhu pacifiku perche il-coniuge offeso domandare la separazione contro il-coniugo colpevole non e necessario che concorrono gli eccessi, le sevizie, le minaccie, e le ingiurie gravi, ma qualunque di tale causa da sola basta, perche` sia tale da violare profondamente i riguardi della convivenza cconiugale "Elisa Thompson vs Edward Thompson (Prim' Awla tal-Qorti Civili, 12 ta' Mejju, 1925);

That said, for the Court to accept the grounds or any one of them as invoked by the parties against each other, as stated by the Court in the same case of Maria Dolores sive Doris Scicluna vs Anthony Scicluna:

"Biex il-Qorti taççetta dawn ir-raġunijiet, jew kwalsiasi waħda minnhom, trid tara li dawn ikunu tali li jirrivestu fl-azzjoni proposta u min jaġħmilhom hu ħati taġħhom. Il-kwistjoni hi waħda ta' fatt imħollija fil-valutazzjoni ta' min irid jiġġudika, iżda meta jirriżultaw, dawn għandhom indubbjament jiffirmaw motiv ta' separazzjoni in kwantu jirredni l-konvivenza komuni diffiċli jekk mhux impossibbli"

In the light of the reconvening defendant's allegation that the plaintiff deserted the matrimonial home, the Court makes reference to the judgment in the names: Oine Anne Edwards vs L-Avukat Dr Josepeh H Xuereb⁸⁷

"Skont l-artikolu 48 jikkostitwixxi ġusta kawża għas-separażjoni l-abbandun ta' parti lill-oħra mingħajr raġuni tajba jekk idum għal sentejn jew iżjed."

On the basis of this the Court in the above-quoted case went on to analyse the facts and dates of the wife's departure from the matrimonial home and her motivation and reasons in relation to the same.

On the basis of the grounds invoked by both parties reference is made to Article 48 of Chapter 16 of the Laws of Malta which stipulates as follows:

⁸⁶ Decided by the First Hall Civil Court on the 27th November 2003 Writ No. 1715/2001/1 RCP

⁸⁷ Decided by the First Hall of the Civil Court on the 22nd October, 1961 by Judge Flores

The spouse who shall have given cause to the separation on any of the grounds referred to in articles 38 and 41, shall forfeit:-

- (a) the rights established in articles 631, 633, 825, 826 and 827 of this Code;*
- (b) the things which he or she may have acquired from the other spouse by a donation in contemplation of marriage, or during marriage, or under any other gratuitous title;*
- (c) any right which he or she may have to one moiety of the acquests which may have been made by the industry chiefly of the other spouse after a date to be established by the court as corresponding to the date when the spouse is to be considered as having given sufficient cause to the separation. For the purposes of this paragraph in order to determine whether an acquest has been made by the industry chiefly of one party, regard shall be had to the contributions in any form of both spouses in accordance with article 3 of this Code;*
- (d) the right to compel, under any circumstances, the other spouse to supply maintenance to him or her in virtue of the obligation arising from marriage.*

(2) The things mentioned in paragraph (b) of sub-article (1) of this article shall revert to the other spouse, and the acquests mentioned in paragraph (c) of the said sub-article shall remain entirely in favour of such spouse, saving any right which the children or other third parties may have acquired thereon prior to the registration of the judgment of separation in the Public Registry

Whereas in Article 51 of Chapter 16 of the Laws of Malta:

Where separation is granted on any of the grounds mentioned in article 40, it may produce any of the effects mentioned in article 48, if the court, having regard to the circumstances of the case, deems it proper to apply the provisions of that article, in whole or in part.

Application of the said grounds invoked in the light of the parties versions and the evidence produced:

The Court shall first examine the issue of Adultery under article 38 of Chapter in the light of the evidence produced.

In her sworn note and affidavit plaintiff states the defendant is to be found responsible for the separation *inter alia* because of his adultery, something that the reconvening defendant categorically denies in his sworn note.

From an examination of plaintiff's affidavit which has already been summarised above the following is relevant to the point at issue :

Keeping in mind that from the facts of this case it is uncontested that the parties moved to Malta in June 2013, plaintiff states that in November 2013 she temporarily moved into her mother's house on defendant's own suggestion to see if they could work out their marital issues. She continues to explain that upon having gone back to the matrimonial home she found clear messages on defendant's laptop indicating that he was having intimate relations with a certain F G. Plaintiff also alleged that defendant admitted to this affair in front of their family therapist Dr John Agius. The Court notes that plaintiff did not exhibit the messages she claims to have seen on defendant's laptop and neither did she summon Dr Agius notwithstanding that she indicated him in her list of witness.

In her said sworn note and affidavit plaintiff also alleges that defendant had relationships with other women and among them refers to his relationship with a certain H I J. In her affidavit plaintiff states: " I know for a fact that C is in a relationship with a certain H I J". To substantiate this allegation plaintiff exhibited a judgment in the names: Police vs C D decided by the Magistrates Court (Malta) as a Court of Criminal Judicature dated 6th April 2016 which is available at fol 367 of the Acts and marked Doc MA120607, as well as the decision of the Court of Appeal at fol 370 of the Acts marked as Doc MA 120602, furthermore she also summoned Inspector John Spiteri to give evidence before the judicial assistant⁸⁸ and in his evidence Inspector Spiteri stated that he was stationed at vice squad and he confirmed that they had received a number of reports from H I J.

The said Inspector filed the relative reports and exhibited the same as per note dated 10th December 2019 at fol 428 of the Acts. The said note consists of 5 documents including: a) the charges brought against the defendant, b) the reports filed by H I J and also c) the defendant's statement before the police. The said documents shed very clear light on the period when defendant was in a relationship with H I J – from the said documents it transpires that the relationship ended towards December 2015 and it had been going on for around two years.

Going back to the plaintiff's affidavit she states as indicated above that they took a break in November 2013, she moved back in two weeks later and then a week later she moved out again: "My decision to move out was motivated by the fact that I got to know that C had been unfaithful to me."

As per plaintiff's affidavit, plaintiff is here referring to an alleged affair that defendant had with a certain F G (not I J).

⁸⁸ See fol 425 sitting dated 4th December 2019. A court decree dated 14th July 2018 authorized the witness to give evidence.

Plaintiff did not produce any evidence to substantiate her allegations vis-a-vis the affair with Ms G but she produced categoric proof of an affair with Ms I J.

Neither party summoned the family therapist, and as a result the Court does not have clear proof on the alleged affair with Ms G which plaintiff contends caused her to move out from the matrimonial home when the marriage had already been on the rocks for a while due to constant arguing.

The Court refers to the documentary evidence confirmed under oath by the relative police inspector where it results that Ms I J, lodged reports against the defendant on the basis of which criminal proceedings were taken against the defendant who was found guilty of stalking, harassing and threatening Ms I J. The said documents in the acts of the case also shed light on the fact that this relationship with Ms I J ended in December 2015 and had been going on for approximately two years.

The Court here makes reference to the defendant's affidavit whereby he states the following:

"I confirm that A did nothing to try and save our marriage. In the beginning of 2014 we were attending couple therapy with Mr John Agius and all of a sudden she stoppped attending those without any kind of serious effort."⁸⁹

And

*"With respect to A's allegations that I committed adultery; I reject such allegations as any possible relationship with third parties commenced after the marriage had already broken down and as such adultery cannot be used as a ground to impute responsibility for the breakdown of our marriage."*⁹⁰ (Emphasis Added)

On the basis of the evidence this court has at hand, what has been proven to the satisfaction of this Court is that very soon after plaintiff moved out of the matrimonial home defendant had already jumped into another relationship with Ms I J, and as a result of this relationship plaintiff's allegations about defendant's injurious character have been confirmed, notwithstanding defendant's dismissive attitude about this relationship and the context of those proceedings.

That said plaintiff failed to produce sufficient evidence as required by law to substantiate her allegations about Ms G.

⁸⁹ Fol 1085

⁹⁰ Fol 1088

Furthermore, defendant's irregular relationship with I J surely negatively impacted any prospects of any reconciliation between the parties. The Court is therefore going to dismiss plaintiff's allegation on the ground of adultery on the basis of not successfully producing categorical evidence about the alleged affair with Ms G.

With regard to the defendant's allegation that the plaintiff committed adultery the Court notes that the defendant failed to produce any evidence to even suggest the same. The Court believes it pertinent to point out that it finds his version in his affidavit most unconvincing and particularly when he states " *Throughout the time she has not made any attempt to reconcile our differences and simply walked away to the extent that she has rendered impossible conjugal life between us and destroyed the marriage*"

The Court next refers to the defendant's allegation on the plaintiff's desertion as per Article 41 of Chapter 16 of the Laws of Malta.

It is an uncontested fact that plaintiff moved out of the house in November 2013. Plaintiff produced concrete evidence confirming that in early 2014 the defendant was in a relationship with another woman – I J – therefore on that basis alone seeing that defendant was in another relationship only months later the plaintiff was surely justified not to return to the matrimonial home. Therefore not only is the two year requisite not satisfied but furthermore plaintiff had very valid reasons not to return to the matrimonial home.

The Court here makes reference to the judgment in the names: *Oine Anne Edwards vs l-Avukat Dr O H Xuereb*⁹¹

"Skont l-artikolu 48 jikkostiwixxi ġusta kawża għas-separazzjoni l-abbandun ta' parti lill-oħra mingħajr raġuni tajba jekk idum għal sentejn jew iżjed. L-attriċi halliet id-dar konjugali fis-27 ta' Ġunju 1957 mingħajr ma rritornat u f'Marzu 1958 il-konvenut beda r-relazzjoni adulterina. Hekk jekk qatt l-attriċi ma kienetx taħt ċirkustanzi tal-mument, ġustifikata li titlaq id-dar konjugali l-abbandun tagħha sar ġustifikat meta bdiet dik ir-relazzjoni tal-konvenut li l-attriċi permezz ta' detectives li qabbdet saret taf biha. B'dan il-mod dak l-abbandun li jrid ikun fiż-żmien tiegħu kollu ngust ma kienx hekk għaž-żmien minimu ta' sentejn li tippreskrivi il-liġi biex ikun jikostitwixxi motiv ġuridiku għall-konvenut ta' separazzjoni.

Darba li l-allontanament tal-attriċi, kif fuq espost ma jikkostitwix l-abbandun li trid il-liġi bħala motiv ta' separazzjoni dan lanqas ma jista' jiġi inkwadrat fil-

⁹¹ Decided by the First Hall Civil Court as per Judge Flores on the 22nd February 1961

figura ta' ngurja gravi ghax b'dak il-mod ikun qieghed jitqies bhala motiv ta' separazzjoni minghajr ir-rekwizit taz-żmien li l-ligi tirrikjedi għall-abbandun"

Excesses, cruelty, threats, grievous injuries and irretrievable breakdown of the marriage :

On the basis of the evidence in the acts of this case the court draws on the following:

1. Plaintiff's allegation that defendant was verbally abusive towards her and mocked her.

The Court not only finds the plaintiff's version credible but this is also confirmed by her family who confirm defendant's abusive behaviour towards both plaintiff and themselves. Defendant had every opportunity to carry out any cross-examinations but he failed to do so. Furthermore the Court refers to the documents which plaintiff attached to her affidavit which the Court has already quoted from and will reproduce some of the injurious and cruel content again, because they convey in no uncertain terms that defendant was abusive in both her and her family's regard and for which this Court finds defendant responsible for the breakdown of the marriage on grounds of repetitive cruelty, threats and grievous injury. The Court makes further reference to docs MA1 to MA 10 and to quote a few:

Doc MA 2 fol 91: "*sei un zero amsterdam era troppo pr tei sei tornata al tuo livello basso*";

".... fatti pure un futuro con qualcuno del tuo livello"

"... sei cosi intelligente che da amsterdam sei finita a vivere in cameretta ad mqabba"

Doc MA 3 fol 92: "*se penso che mia figlia crescerà in sta isola di cafoni. Poi a casa vostra mi vengono i brividi*"

"Ma sei una merda dopo quello che hai fatto non ti meriti niente ... fai davvero schifo."

"La verità è che non vuoi stare con suo padre e glielo devi dire ... dille quanto sei cretina che sei scappata da amsterdam per tornare imqabba ... he cretina davvero."

Doc MA 6 fol 95: "*Fate proprio schifo a fare pregare una bambina ... vedrai i guai che passerete ... te lo garantisco*"

Doc MA 7 fol 96: “Fottiti grandissima stronza”

Doc MA 8 fol 97: “Voglio parlare con mia figlia deficiente”

Doc MA 10 fol 99: “Il ballet non e scuola dell’obbligo ...e` un invenzione tua non le piace neanche la classica stronzata maltese come museo ... i vostri valori da zulu` ... dillo al giudice.”

Plaintiff’s allegation that defendant looked down upon where she hailed from and how he belittled have all be satisfactorily proven.

On this point the Court also wishes to make reference to defendant’s own Affidavit where his tone is clear.

Unfortunately, E has been deprived of having a healthy upraising with two (2) parents due to the weird behaviour of her mother. A seemed to think that a child born and grown in Amsterdam could simply be put in her grandparents’ house to grow up in the same way as A grew up...”

Therefore in his own words proving plaintiff’s assertion of how defendant looked down on her and her family, with an air of superiority.

This tone is present in his final written submissions where he dismisses plaintiff’s allegation and contends that plaintiff ‘*did not produce any evidence that this was abuse and not mere fair criticism*’⁹² This Court cannot fathom how fair criticism comes into this and reminds the defendant that he was insulting his wife and her family and accusing her for not doing anything to save her marriage in the same breath.

From the evidence in this case it is most evident that the defendant’s actions rendered it impossible for the marriage to succeed. To this end the Court refers to his lifelong friendship with his childhood friend. He knew this friendship upset the plaintiff but instead of trying to ease his wife’s concerns about this friendship, he harboured on without any concern for her feelings. Plaintiff’s allegation was confirmed by plaintiff’s mother who explained that her daughter often opened up with her about this, but it is also confirmed by defendant’s own admission when in his affidavit he actually blames the defendant for stultifying his friendship with Ms N.

With reference to plaintiff’s allegations of defendant’s gambling habit and how it contrasted with his reluctance to provide for his family, the Court notes that the defendant refutes both such allegations as being absurd.

⁹² Fol 1199

The plaintiff summoned representatives of the following Casinos to give evidence: Casino Malta; Oracle and Portomaso; Dragono Casino. The said representatives produced documentation with a register of the occasions that the defendant visited the casinos and what he *bought-in* on the nights he frequented the place. The Court is convinced on the basis of the evidence available in the acts, the plaintiff has proven to the degree required at law that the frequency of defendant's visits to the casino's and the *buy-ins* on each night did not reflect a casual or occasional visit to the casino as portrayed by the defendant. The Court cannot align itself with that type of spending especially when health and education fees of a minor remain unpaid.

During the course of these proceedings the plaintiff maintained that defendant made it difficult to keep up a basic maintenance payment in a prompt fashion and she confirms under oath the dockets of documentary evidence containing breakdowns and receipts of expenses he was refusing to pay for the minor's health and education –(vide volume 4 of the Acts).

While the court notes that defendant's stand throughout these proceedings is that he always provided for his family and would do anything for his daughter, he has not only failed to substantiate this but also, ironically corroborated the plaintiff's allegations in his regard – reference is here made to the witness summoned by the defendant - a representative from St Dorothy's school. As can be seen from the defendant's line of questioning his scope here was to establish that the donation payable to the school could never be deemed to be a mandatory obligation because otherwise it would not be called a 'donation'. The Court takes exception to this frame of mind.

The Court has reviewed all the evidence produced and considers it shocking, to say the least, that that the defendant would try to justify and downplay the manner in which he gambled away that amount of money to the detriment of his family and then acted so stingily with his family for basic needs such as health and education. Indeed in his sworn note he went as far as to state that he does not deny having frequented the casino *on a few occasions*⁹³. By its very definition 'few' means amounting to a small number and by no stretch of the imagination can the amount of visits to the relative casinos as per documentary evidence ever equate to a few occasions. Reference is here made to the testimony of the witnesses summoned by the plaintiff and the documentary evidence tendered which corroborate plaintiff's version. Furthermore, the bank account transactions at ATM's located at our outside the said casino's reflect withdrawals of amounts of five hundred Euro per night several times a week, and yet defendant objected to paying his share of his daughter's donation fee, something he outright admitted to, his reason being that it was a donation payable to the

⁹³ See fol 185 paragraph (x)

Church. At the same time defendant tries to convince that he always had the family's and daughter's best interests at heart. An argument which falls hard and flat in the light of the evidence at hand and plaintiff who has been consistent and credible throughout.

It is for these reasons that the Court fully agrees with the plaintiff – that defendant's behaviour towards his family contrasted sharply with the ease at which he splurged money for purely selfish reasons to the detriment of his family and its well-being. The Court considers that plaintiff's has successfully proven that defendant's actions put an enormous strain on the family. The plaintiff has produced clear and corroborating evidence regarding defendant's insensitive and stingy behaviour on the one part and his uncontrollable spending on the other, which in the Court's opinion is tantamount to excesses and cruelty.

On the basis of all of the above the Court is morally convinced that the defendant's actions have given rise to the cause of the breakdown of the marriage due to his bad habits, lack of responsibility towards his family and accountability towards his family as well as his eagerness to involve himself in an intimate relationship with I J as tantamount to a clear violation of article 40 of Chapter 16 of the Laws of Malta on account of excesses, cruelty and grievous injury. His adulterous behaviour albeit not proven to the degree required at law as having been the cause of the breakdown of the marriage surely eliminated any possibility of reconciliation. The Court has no reason not to accede to the parties demand for personal separation and to this end attributes sole responsibility on the defendant and furthermore applies in toto the effects of Article 48 against the defendant.

The Court refers to defendant's allegations that the plaintiff is responsible for the breakdown of the marriage where he too cited grounds of excesses, threats, cruelty and grievous injury. While the defendant attempted make several allegations about the plaintiff the Court notes that his version wasn't corroborated in any manner and furthermore the Court does not consider the defendant's version as a credible one and therefore rejects his demand to hold the plaintiff responsible for the breakdown of the marriage.

2. a) Care and Custody of the minor

Both parties put forward a demand for sole care and custody.

It is pertinent to mention that the plaintiff has throughout the proceedings consistently maintained her position that it is in the minor's best interests if she is vested with her sole care and custody. In the defendant's case whereas in his counter-claim he requested joint care and custody by default if the Court did not accede to his request for sole care and custody, the position he put forward in his final submissions is that it would be in the minor's best interests for the parties to be vested with joint care and custody - as per paragraph 26 at fol 1201.

The Court notes that this was a highly contested matter between the parties. By virtue of a decree early on in the proceedings the plaintiff was entrusted with the sole care and custody of the minor. Furthermore the defendant filed several applications for access and modifications thereof. The Court also points out that during the course of these proceedings a child advocate was appointed on four different occasions and save for the minor's first meeting with the Child Advocate when the minor was only six years old and very quiet, on the other occasions the Child Advocate had the opportunity to speak to the minor at length. The Court notes that it was reported that the minor was consistent and clear as to what her wishes were on all occasions. It is also very relevant to mention that today the minor is fourteen (14) years old.

The Court reiterates that all matters concerning minors are delicate matters that are guided by the cardinal principle of the best interests of the child. Case law has consistently reaffirmed this and the Court here makes reference to the judgments in the names *Tabone Lea pro et noe vs Tabone Jesmond*⁹⁴, *Scicluna Maria Dolores sive Doris vs Scicluna Anthony*⁹⁵, *u Sylvia Melfi vs Philip Vassallo*,⁹⁶ all of which affirm the principle that the Court has to concern itself solely with what is considered to be most advantageous for the minor. On the basis of this it is therefore not for the Court to look at what the parents want or claim but what has to be determined in an absolute manner is what that which is necessary and beneficial for the minor in question. It has been held that:

“Il-kura tat-tfal komuni tal-miżżewġin, sew fil-liġi antika, sew fil-liġi viġenti, kif ukoll fil-ġurisprudenza estera, u f’dik lokali, hija regolata mill-prinċipju ta’ l-aqwa utilita` u l-akbar vantaġġ għall-interess ta’ l-istess tfal li ċ-ċirkostanzi tal-każ u l-koeffiċjenti tal-fatti partikulari tal-mument ikunu jissuġerixxu. In konsegwenza, ir-regola sovrana fuq enunċjata għandha tipprevali dwar il-kustodja u l-edukazzjoni tat-tfal komuni tal-miżżewġin, sew meta il-konjuġi

⁹⁴ Deċiża nhar it-2 ta’ Ottubru 2003 mill-Prim’ Awla tal-Qorti Ċivili (Rik. Nru. 1396/2001)

⁹⁵ Deċiża nhar is- 27 ta’ Novembru 2003 mill-Qorti Ċivili (Sezzjoni Familja) Ċit. Nru 1715/2001

⁹⁶ Deċiża nhar il-25 ta’ Novembru 1998 mill-Qorti tal-Appell

jisseparaw ruhhom ġudizzjarjament, sew meta jiġu biex jisseparaw konsenswalment”

- Omissis-

“Il-kura u l-edukazzjoni tat-tfal, fil-każ li l-mara ma tibqax tghix mar-raġel, trid dejjem tiġi affidata lil dak, fost il-miżżewġin li jiġi rikonoxxut bħala aktar adatt u idoenju sabiex jikkurahom u jedukahom, tenut kont ta’ l-eta` tal-istess tfal u ċ-ċirkostanzi kollha tal-każ taht dawk il-provvediment li jiġu kkunsidrati għall-vantaġġ ta’ tali tfal.”

Furthermore in Melfi vs Vassallo the Court of Appeal held that :

“In this case the court must do what is the sole interest of the minor child. In its decision whether the care and custody of the child should be given to one parent or the other the Court must solely be guided by what is most beneficial to the child...”

.... The Court should at all times seek the best interests of the child irrespective of the allegations, true or false, made against each other by the parties. Such allegations often serve to distance oneself from the truth and serve to render almost impossible the search of the Court for the truth. This is why it is the duty of the Court to always look for the interests of the child.”

Based on the evidence produced in this case and taking into consideration the content of the various Child Advocate reports were there is a strong element of continuity, the Court concludes that it is in the minor’s best interests to maintain the status quo. The plaintiff has been entrusted with the care and custody of the minor since the very early stages of the proceedings. The plaintiff has produced sufficient evidence to convince this court that she has not only provided a stable home and environment for the minor with a support network of her family, a fact that has been corroborated by her own relatives in their respective affidavits. This

is also evident from other documentary evidence in the acts of these proceedings. For example reference is made to fol 1066 marked Doc CJA 1, which said document was exhibited by Caroline Anastasi Head of St Dorothy's Senior School, from which it transpires such payments for the minor's schooling, for years 2020 – 2023 were issued by plaintiff's father and on the other hand by his own admission the defendant's has refused to contribute towards the same fees.

Furthermore, the minor child herself expressed her wishes with the Child Advocate on more than one occasion where she consistently maintained that she is very happy with her current set up, and while she enjoys her time with the defendant she does not wish to have any sleepovers nor tavel with the defendant.

On the basis of the evidence at hand, strengthened by the reports of the Child Advocate, the Court is convinced that it is the Plaintiff who has been minor's pillar of consistency and dedication throughout the course of these proceedings, and the Court has absolutely no doubt that plaintiff has the minor's best interests at heart, whereas the same cannot be said for defendant. The evidence in these proceedings prove that the plaintiff has taken decisions concerning the minor rationally and selflessly unlike the defendant. This is most clear from the evidence tendered where it has ben proven to the satisfaction of the Court finds that defendant's objections on matters concerning decisions related to the minor's education as very concerning. By way of example the Court mentions the fact that the minor attends a Church School namely - St Dorothy's the plaintiff exhibited susbstantial evidence showing that the minor is settled in that school, doing well and happy to be there yet the defendant himself raises his objections to the minor attending such school found and objected to paying his share of the nominal donation fee. For the Court this is a clear example of the lack of ther defendant's ability to recognise what is in the minor's best interests.

Reference is also made to the defendant's objection in relation to his daughter attending Catechism lessons and this notwithstanding that he admitted with the Child Advocate that he had agreed to having the minor baptised. So notwithstanding that he alleges he has his daughter's best interests at heart, this Court considers the situation to be otherwise and the Court has sufficient evidence at hand to show that in this particular case joint decision making is untenable, it would never work out and that would be to the detriment of the minor.

On the basis of the above the Court is convinced that it is in the minor's best interests to maintain the current state of fact and therefore for the Court to confirm that the plaintiff is to be entrusted with the sole care and custody of the minor.

Finally and notwithstanding the above decision to entrust the plaintiff with the sole care and custody of the minor, the Court orders:-

- i) the plaintiff to inform the defendant of any important decisions taken in connection with the minor's health and education;
- ii) authorises the defendant to receive information directly from the school about the minor's academic achievements and progress, as well as attend any of her school activities where parents are invited to attend.

2 b) Access

On the basis of the above, it is pertinent for the Court to next tackle the issue of Access. The Court notes that it is the right of every child to build a relationship with the parent that the child does not live with. Furthermore access is to be established by taking the best interests of the child into account, by also ensuring that the minor in question is afforded a sense of stability and considering her age holds that her wishes are to be respected. It is also pertinent to mention that the defendant does not live in Malta at present and therefore provision has to be made

for to ensure a workable modality of access taking into consideration different outcomes.

The Court notes that on the basis of the reports filed by both Child Advocates who spoke to the child at different stages of the proceedings, the outcome was consistently the same whereby the child enjoys her time with her father but she does not wish to have sleepovers and/or travel with him.

Nonetheless the Court feels that the minor has clearly expressed her wish to have access to her father and on the basis of this orders that access shall take place in the manner set forth hereunder:

A) The following shall only come into effect in the event that the defendant relocates to Malta, whereby access to his daughter shall be regulated as follows:

- i) He shall have access to his daughter daily *via Whatsapp* or *Skype* which said calls shall be made in the evening and taking into account the exigencies of the minor;
- ii) He shall also have access to the minor at least twice during the week from five in the afternoon (5.00pm) till eight in the evening (8.00pm), whereby he shall collect the minor either from her mother's residence or from any extra-curricular or other activities or commitments that she may have and he shall return the minor to her mother's residence at eight in the evening (8.00pm) allowing for a maximum ten (10) minute delay in view of traffic;
- iii) In the weekend he shall have access either on Saturday or on Sunday alternating from one week to the next, from nine (9.00am) in the morning till nine (9:00 pm) in the evening when access is exercised on a Saturday and from ten (10.00am) in the morning till six (6.00pm) in the evening when access is exercised on a Sunday.
Provided that sleepovers shall only take place if the minor expressly agrees to them. Furthermore the minor shall be entitled to change her mind at any time and the defendant shall respect her wishes at all times. The same shall apply for any form of travel with the minor.

B This modality of access shall come into effect immediately and shall remain in force until such time the the defendant lives in a country other the Malta where his access shall be regulated as follows:

- i) He shall be able to communicate with the minor daily using the minor's preferred mode of communication (such as *WhatsApp* or *Skype*). The

Minor child is now fourteen years old and she can regulate such calls with him;

- ii) He shall have access to the minor once (1) a month at the weekend between nine (9.00am) and nine (pm on the Saturday) and ten (10.00 am) and six (6.00pm) on the Sunday. Furthermore defendant undertakes and obliges himself to inform the plaintiff at least one (1) month in advance of his chosen weekend for the following month. When exercising such access he shall ensure that the minor does not miss out on any of her extra-curricular activities or scheduled activities or events that she may have, and it shall be his obligation to collect her and drop her off from such activities. Furthermore prior to exercising such access defendant shall collect the minor from the place indicated to him by the plaintiff and drop off the minor at the place indicated to him by the plaintiff.

C. When the defendant visits Malta for periods of two weeks his access shall be regulated as follows:

- i) Saving and without prejudice to any scheduled travel plans of the minor with the plaintiff, and provided that the defendant would have given the plaintiff adequate notice of not less than fourteen (14) days in advance of his intended stay in Malta, his access to the minor shall be twice (2) during the week between Monday and Thursday for a period of two (2) hours in the afternoon or the evening as preferred by the Minor **and** every weekend for the duration of his stay (of up to 2 weeks) on Saturday from nine (9.00 am) in the morning till nine (9.00pm) and on Sunday from ten (10.00.am) in the morning till four in the afternoon (4.00pm), provided that the defendant shall ensure that the Minor child has completed all her homework and that she is taken to and collected from any extra-curricular activities or other activities scheduled including but not limited to birthday parties or events with friends even if such coincide with the defendant's access and this in the minor child's best interests and well-being.
- Furthermore when exercising access to the minor the defendant shall collect the minor from the wife's residence or any such other place in Malta that the wife indicates and return the said minor child to the wife's residence or any other place in Malta indicated by the wife.

D. Furthermore the Court regulates the parties respective access to the minor on the following special dates and occasions as follows:

- i) The plaintiff shall have access to the Minor on Mother's Day and on the plaintiff's birthday;
- ii) The defendant shall have access to the Minor on Father's Day and his birthday and only in the event that the child expressly agrees to a sleep over, then this may take place either on the eve or on the actual day. In the event that the Minor does not wish to have a sleepover then the defendant shall exercise access between nine (9.00am) and eight in the evening (8:00 pm), however in the event that the defendant's birthday falls on a school day his access shall be exercised after school where he shall collect the minor from the wife's residence one (1) hour after she gets home from school until eight in the evening (8:00 pm).
- iii) In the event that the defendant decides to relocate to Malta all public holidays shall be shared equally alternating from one public holiday to the next – the first public holiday being exercised by the plaintiff, thereby alternating thereafter. If on the other hand the defendant does not reside in Malta then whenever he is in Malta on a public holiday and without prejudice to any other specific day of access on such day as regulated in this clause, he shall have access to the Minor on that day between ten in the morning (10:00 am) till six in the evening (6:00pm);
- iv) All Christmas and Easter holidays shall be split equally as follows:
 - a) On the first Christmas following this judgment, the plaintiff shall exercise uninterrupted access to the minor for the first half of the minor's school holidays (last day of school included) following which the defendant shall have uninterrupted access for the second half of the minor's school holidays, without any sleepovers unless with the express consent of the minor.

In furtherance of this the defendant shall collect his daughter from the plaintiff's residence every morning at ten (10:00 am) and he shall return the minor to the plaintiff's residence that same day at six (6:00pm) in the evening;

The Parties shall then alternate the block days of holidays they are afforded from one year to the next.

b) On the the First Easter after this judgment—the said holidays shall be split equally between both parties – this time with the defendant having access to his daughter for the first half of the said holidays using the same modality as described for the Christmas and Festive Season Holidays. The parties shall thereafter alternate the set of days they are afforded from one year to the next.

c) with regard to the minor’s birthday which falls on 26th June, the Court orders that both parties are to respect the minor’s wishes on this day but they shall each have access to the minor on her birthday for at least two (2) hours each.

E. With regard to travel

The Court orders that this is an over-riding clause because at present the minor has made it clear that she does not want to travel with the defendant. The minor’s wishes are to be respected and the conditions for travel outlined hereunder shall only be implemented if it is the minor’s express wish to travel and provided such wish has been specifically confirmed by the minor to the plaintiff:

- i) the minor shall have a valid passport. The plaintiff shall apply for this herself without the need of defendant’s signature. Similarly the plaintiff shall hold onto the said passport and only be required to consign the said passport to the defendant when it is the minor’s expressed wish to travel.
- ii) Travel conditions shall be regulated as follows:
 - Duration of travel shall be for a period of not more than seven (7) days;
 - The minor herself agrees to the said travel;
 - Neither party shall travel on any days where in terms of this judgment the other party has access;
 - Whoever travels with the minor shall incur all expenses in connection with the same;

The Court is of the opinion that the above to be in minor’s best interests while also taking into consideration her wishes.

3. a) The Parties respective claims for maintenance

The plaintiff has put forth a claim demanding maintenance payable by the defendant for both herself and for the minor child, whereas the reconvening defendant's claim is limited to that of the minor child.

With respect to the plaintiff's claim for maintenance the Court notes as follows:

In the plaintiff's sworn note section C she states that both parties work full-time. She refers to her position at Insignia Cards Limited, a fact that she reiterates again in her affidavit at fol 86- this time she also states that her position is one of deputy head of administration at Insignia Cards where she also exhibits her FS 3.

In her note of submissions the plaintiff states:

*"As to maintenance for the defendant, in the light of the fact that the defendant is responsible for the separation, it would be appropriate that the Court orders the payment of maintenance in favour of the wife."*⁹⁷

On the other hand in defendant's note of the submissions he submits that the plaintiff is in full time employment and furthermore no maintenance is due to her on account of her responsibility for the breakdown of the marriage.

This Court has already decided to accede to plaintiff's first demand and declared the defendant as solely responsible on the basis of Article 40 of Chapter 16 of the Laws of Malta. On the basis of this, while at this stage the Court denies the plaintiff's request and will not proceed to liquidate an amount of maintenance for own needs, the Court is only denying this request on the basis of the fact that the plaintiff wife has confirmed and presented documents to show that she is currently in full time employment. Provided that this shall be without prejudice to the plaintiff's right to claim maintenance from her husband who is not relieved from his obligation to supply maintenance to the plaintiff should her circumstances change in the future and this on the basis of Article 54 (1) of Chapter 16 of the Laws of Malta.

4. b) Maintenance for the minor child.

This demand is consequential to the demand on care and custody of the minor. On the basis of the fact that this Court is entrusting the plaintiff with the sole care and custody of the minor this necessitates that it is the defendant who has to

⁹⁷ Fol 1121

contribute towards the minor's upbringing by paying the plaintiff maintenance for the said minor . The Court makes reference to case law that promotes this line of thought and hereby cites: **Portelli Jennifer pro et noe vs. Portelli John**⁹⁸ where the Court made reference to and elaborated on the Article 3, 3B u 7 Chapter 16 of the Laws of Malta which stipulate:

Article 3: Both spouses are bound, each in proportion to his or her means and of his or her ability to work whether in the home or outside the home as the interest of the family requires, to maintain each other and to contribute towards the needs of the family

3B: Marriage imposes on both spouses the obligation to look after, maintain, instruct and educate the children of the marriage taking into account the abilities, natural inclinations and aspirations of the children.

(2) The obligation of the parents to provide maintenance according to sub-article (1) also includes the obligation to continue to provide adequate maintenance to children, according to their means, and where it is not reasonably possible for the children, or any of them, to maintain themselves adequately, who:

(a) are students who are participating in full-time education, training, or learning and are under the age of twenty-three.

- omissis-

7: Parents are bound to look after, maintain, instruct and educate their children in the manner laid down in article 3B of this Code

In the judgment cited above, the court held:

⁹⁸ Deċiża nhar il-25 ta' Ġunju, 2003 mill-Prim' Awla tal-Qorti Ċivili (Ċit. Nru 2668/1996)

“Abbazi tal-premess, jirrizulta mid-dispozzjonijiet tal-liġi, li l-ġenituri għandhom l-istess obbligu versu l-ulied tagħhom, u għalhekk it-tnejn għandhom jikkontribwixxu għat-trobbija ta’ l-istess...

... Kif għandha tkun tali kontribuzzjoni minn kull wieħed mill-ġenituri, tvarja minn każ għal każ, u hafna jiddependi fuq il-mezzi rispettivi u l-bżonnijiet tal-istess minuri, pero` xorta jibqgħu veljanti u skjetti l-prinċipji li jirregolaw l-istess dimirijiet u obbligazzjonijiet tal-ġenituri verso l-istess ulied, speċjalment għall-manteniment ta’ l-istess fit-termini preskritti fl-artikolu 19 (1) u (2) u l-artikolu 20 tal-Kap 16, li għalhekk jinkludu kontribuzzjoni għall-ikel, ilbies, saħħa u abitazzjoni u spejjeż meħtieġa għall-istess saħħa u għall-edukazzjoni tagħhom skond il-bilanċ bejn il-bżonn u l-mezzi, kkalkulati ai termini tas-subartikolu ta’ l-istess artikolu 20.”

In furtherance of this the Court makes reference to Articles 19⁹⁹ and 20 of Chapter 16 of the Laws of Malta which stipulate:

Article 19:

- (1) Maintenance shall include food, clothing, health and habitation.*
- (2) In regard to children and other descendants, it shall also include the expenses necessary for health and education.*

And

Article 20:

- 1) Maintenance shall be due in proportion to the want of the person claiming it and the means of the person liable thereto.*

-Omissis-

- (3) In estimating the means of the person bound to supply maintenance, regard shall only be had to his earnings from the exercise of any profession, art, or trade, to his salary or pension payable by the Government or any other person, and to the fruits of any movable or immovable property and any income accruing under a trust.*

⁹⁹ Refer to Amanda Briffa pro et noe v. Stephen Fenech decided by the Court of Appeal on the 12th May 2022.

-Omissis-

Since we are here concerned with an action for personal separation, the Court also makes reference to the relevant part of Article 54 of Chapter 16 of the Laws of Malta:

-omissis-

54 (2) the amount of maintenance referred to in sub-article (1), and the maintenance due to children in the event of separation, shall be determined having regard to the means of the spouses, their ability to work and their needs, and regard shall also be had to all the other circumstances of the spouses and of the children, including the following:

(a) the needs of the children, after considering all their circumstances.

-omissis –

(f) the accommodation requirements of the spouses and of the children

- omissis-

As seen from the above dispositions of the law, parents have the same obligations towards their children and therefore both of them have to contribute towards the said minor's upbringing. Article 2 of Chapter 16 of the Laws of Malta provides in unequivocal terms that parents shall assume equal responsibilities towards their children irrelevant of their marital status.

From the evidence brought forward in this case the plaintiff declared (albeit in 2015) to earn a net income of €15, 336.

Furthermore, while the defendant did present his payslips however the Court points out that these are in Polish, and left unexplained. In his note of submissions he refers to his monthly income in the sum of €1,800 without elaborating any further.

The Court also notes that while several *pendente lite* applications were filed in relation to matters concerning Access, none were filed to regularise maintenance for the needs of the minor and this notwithstanding that there is sufficient evidence to confirm that the defendant made it abundantly difficult to contribute for his daughter's upbringing, especially where it concerned her health and education. Reference is here made to the plaintiff's evidence before the Judicial

Assistant¹⁰⁰ where the plaintiff states that the parties had a verbal agreement that they would split the minor's health, education and extra-curricular activity expenses. She states that while they started off by implementing this agreement defendant soon started to pick and choose what to pay and eventually stopped paying altogether (see fol 519 of the Acts). Plaintiff states: *"It is to note that every month I send him by email with the list of the pending expenses accumulating together with the receipts, he acknowledges that he receives them but again the payment never happens.* During the said sitting of the 11th October 2021 plaintiff confirmed under oath that she had spent the sum of €14,665 in total, in connection with expenses concerning the minor's health, education and extra-curricular activities. She therefore requested to be reimbursed with one half of this amount being the one half that defendant had verbally agreed to contribute towards. It is also pertinent to point out that plaintiff stated in her testimony that defendant used to encourage her daughter to go to sports and extra-curricular activities and he would ask her on a daily basis whether she did any such activities that day. To this effect during the same sitting the plaintiff exhibited an entire file with all the receipts and the summary of the said expenses, marked Dok MAM1, and she also exhibited Dok MAM2 which document shows that defendant confirms that he has received such receipt but then stops short of paying his share. Plaintiff also stated in her testimony that upon their *de facto* separation, plaintiff paid a couple of maintenance contributions in the amount of €250 and the unilaterally reduced this to €200 per month. It is pertinent to note that the defendant did not cross-examine the plaintiff.

Reference is made to defendant's Affidavit at fol 1087 where after listing all the amounts plaintiff has claimed he needs to reimburse her with he states in no uncertain terms: ***"Despite all of the above I was willing to settle all these expenses with or without receipts but still this wasn't enough for her"*** and then in his note of submissions he submits that insofar as arrears are concerned the Court should only admit those supported by proper receipts. Therefore in both his affidavit and final written submissions is agreeing to the payment of arrears and the court is highlighting this in the context of the fact that the plaintiff does not have a specific claim in her sworn application. To this end the Court here makes reference to a recent decision of its own in the names: AB vs Dr Victor Bugeja pro et noe Sworn Application No. 157/2021 whereby on the issue of arrears of maintenance it held:

"Fl-affidavit tagħha l-attriċi saħqet "nitlob wkoll li għandu iħallasni il-manteniment u l-ispejjez tal-ulied l-oħra minn kemm ilu li telaq lejn l-Ingilterra u cioe minn Lulju 2018 stante li qatt ma għadda manteniment. Ser nippresenta b'nota separata prospett ta' dak li jiena qed nitlob".

¹⁰⁰ Sitting held on the 11th October 2021

F'dan ir-rigward, il-Qorti tissottolineja illi ai termini tal-Artikolu 3B subinċiż 1 tal-Kodiċi Ċivili ż-żwieġ jimponi fuq il-miżżewġin l-obbligu li inter alia jieħdu ħsieb u jmantnu lill-ulied Fol. 34, 35. Rik. Ġur. Nru. 157/2021 AL A B -vs- Dr Victor Bugeja pro et noe li jiġu miż-żwieġ skont il-ħila, xeħtiet naturali u aspirazzjonijiet tal-ulied. Għalhekk tali obbligu jibqa' fis-seħħ nonostante jekk hemmx in vigore o meno digriet tal-Qorti għal ħlas ta' manteniment u nuqqas ta' digriet ma jfissirx illi l-ġenituri għandhom jonqsu milli jottemporaw rwieħhom mal-liġi. Stabbilit dan, il-Qorti trid tghaddi biex tara jekk it-talba tal-attriċi kif magħmula fl-affidavit tagħha hijiex waħda ġusta, stante li l-istess ma ġietx imresqa fir-rikors promotur. F'dan ir-rigward il-Qorti tagħmel referenza għas-sentenza fl-ismijiet Linda Pulis vs Alfred Pulis, fejn il-Qorti tal-Appell spjegat illi t-talba oriġinali tal-mara kienet waħda għad-determinazzjoni tal-manteniment fis-sens ta' Artikolu 54 subartikolu 2 tal-Kodiċi Ċivili, iżda ingħad illi "għalkemm huwa veru li dawn id-disposizzjonijiet jirreferu primarjament għad-determinazzjoni tal-manteniment ex nunc, meta fil-kors ta' kawza ta' separazzjoni issir il-prova ta' arretrati ta' manteniment, l-ewwel Qorti generalment tiehu in konsiderazzjoni dawn l-arretrati fil-komputazzjonijiet u kalkoli għad-determinazzjoni ta' l-istess manteniment, u dan speċjalment meta flok manteniment fi ħlas rateali jiġi ordnat il-ħlas ta' somma globali, pagabbli f'daqqa jew fi skadenzi".

B'hekk dan ifisser illi għalkemm wieħed ma jkunx għamel talba ad hoc għall-arretrati ta' manteniment, l-Ewwel Qorti xorta waħda tiehu in konsiderazzjoni ta' dikjarazzjoni ta' arretrati fid-deċizzjoni tagħha, salv li ssirilha prova tal-imsemmija arretrati. Stabbilit il-premess, madanakollu jiġi mfakkar li f'tali kwistjonijiet "l-Qorti trid timxi fuq il-provi u mhux fuq semplici asserzjonijiet anke jekk magħmula f'noti ta' sottomissjonijiet. Provi huma jew id-dikjarazzjonijiet guramentati tal-partijiet, jew id-deposizzjonijiet tagħhom magħmula quddiem il-Qorti jew quddiem Assistent Gudizzjarju jew perit gudizzjarju, jew dak li huma jghidu f'affidavit (salv dejjem il-kwistjoni tal-kredibbilita')".

The Court makes further reference to defendant's note of submissions where he submits that he earns €1,800 Euro and also has to travel to Malta to see his daughter thereby incurring expenses for such travel. He therefore argues that an all inclusive monthly maintenance of €350 should suffice.

This Court disagrees with the defendant's submissions. First of all the Court starts by stating that the defendant had every opportunity to cross-examine the plaintiff by utilising the sittings that were scheduled for his evidence before the Judicial Assistant.

The Court also notes that during the course of the past eight years of these proceedings, the defendant has paid a basic maintenance occasionally missing out on even that, and notwithstanding the manner in which daily living expenses and health and education costs have exponentially increased he never bothered to increase his contribution. The rest of the entire financial and emotional burden of the minor's upbringing was shouldered by the plaintiff who single handedly ensured that notwithstanding her modest income, the minor wasn't deprived of any opportunities. From the evidence it is clear that it was the plaintiff who took into account wholeheartedly the minor's well-being, needs and aspirations.

On account of defendant's failure to put his daughter's educational and health interests first and considering that the plaintiff has proven to the satisfaction of this Court that defendant squandered community funds recklessly, the Court is of the opinion that the amount of maintenance so liquidated by this Court and payable by the defendant to the plaintiff for the needs of the minor is to be in the form of an all inclusive maintenance and therefore it shall include the defendant's share of all the minor's health, education expenses as well as her extra-curricular activities.

Furthermore in the light of the particular facts and circumstances of this case, and also taking into account the fact that the defendant does not reside in Malta, the Court deems it appropriate to liquidate and order that the defendant be condemned to pay the plaintiff a lump sum payment of maintenance for the minor child.

Consequently the Court orders the defendant to pay the liquidated lump sum of twenty eight thousand, nine hundred and thirty two Euro (€28,932.) which said sum consists of the following:

- i) the monthly rate of €350 calculated for the next four years until the minor reaches the age of eighteen;
- ii) the monthly rate €100 per month for all health education and extra-curricular activities for the next four years until the minor reaches the age of eighteen;
- iii) the sum of €7, 332. representing one half ($\frac{1}{2}$) of the arrears confirmed under oath by the plaintiff before the Judicial Assistant.

The Court notes that in plaintiff's note of submissions, additional receipts were filed – however the Court points out that a note of submissions is not intended for either party to present any additional evidence. The Courts have pronounced themselves on this matter and to this end this Court makes reference to the judgment in the names: *Linda Pulis vs Mario Pulis* decided by the Court of Appeal on the 16th February, 2007 176/2002/1 where the Court held:

“Provi jew dikjarazzjonijiet ġuramentati tal-partijiet, jew disposizzjonijiet tagħhom magħmula quddiem il-Qorti jew quddiem Assistent Ġudizzjarju jew perit ġudizzjarju jew dawk li huma jgħidu affidavit (salv dejjem il-kwisjtoni tal-kredibbilita) ... l-attriċi qatt ma ġabet l-icken prova ta’ kemm setghu kienu dawn l-arretrati. L-ewwel darba li saret referenza għal xi ċifra derminata kien fin-nota ta’ sottomissjonijiet li kif ingħad ma tagħmilx prova.”

5. The parties respective claims against each other for the court to apply the sanctions contemplated in Articles 48 and 51 of the Civil Code.

In the light of the fact that the Court is acceding to the demand for personal separation for reasons that are solely attributable the defendant, thereby exonerating the plaintiff from any form responsibility, the Court consequently denies the defendant’s demand to have the said sanctions applied against the plaintiff.

With reference to the defendant’s gambling problems resulting in squandering thousands of Euros during the marriage to the detriment of his family, and with reference to the manner in which defendant treated the defendant and constantly belittled her as clearly evidenced by documents exhibited together with plaintiff’s affidavit thereby supporting her claim that defendant was verbally abusive towards her, and finally considering that from the outset of these proceedings the defendant was in an intimate relationship with a certain Vanessa I J, uses its discretion thereby applying the said sanctions in *toto* against the defendant, thereby acceding to the plaintiff’s fourth demand.

6. Termination and Liquidation of the Community of Acquests

The Court refers to the following chronological sequence of events.

- Date of Parties Marriage: 21st of November 2006 in Holland – as per Doc A at fol 5 in the acts of the proceedings;
- Parties continued to reside in Holland;
- Year of Registration of Marriage in Malta – 2007 as per Doc B available in the acts; In his affidavit defendant makes reference to the parties getting married in Malta according to the Catholic Rites in September 2007
- Parties continued to reside in Holland;
- Definite move to Malta took place on the 14th June 2013;
- On the 5th of May 2016 the Court ordered the cessation of the community of acquests as per Judgement in the names A B vs C D Sworn Application 105/2015/1 AL and from that date forward their marriage was regulated by matrimonial regime of Separation of Estates.

The above timeline is not a contested matter and the cut-off date of the said community of acquests is established in the light of the partial judgment given by this Court.

Matters Arising:

According to plaintiff's sworn note:

*"According to Dutch Law, on marriage all properties belonging to the married couple irrespective of whether acquired before or after marriage become joint properties of the parties and each party is entitled to half of such properties on division. The parties did not enter into any agreement which altered this legal position. In any case, the moment parties took up residence in Malta, the community of acquests was also established in terms of Maltese law."*¹⁰¹

In the defendant's sworn note there is no mention of the above, and he proceeds to list the assets which form part of the Community of Acquests,¹⁰² while reserving the right to add or change further assets/liabilities.

On this point the Court refers to the fifth premise in reconvened plaintiff's reply to reconvening defendant's counter-claim whereby she states¹⁰³:

"that the fifth claim of the reconvening defendant should be rejected outright in so far as it may refer to the period between the parties' date of marriage in Holland on the 21st November 2006 and their establishment in Malta on the 14th June 2013 on account of applicable Dutch Law which on marriage renders common property all the property of the parties whether acquired before or after marriage".¹⁰⁴

The Court points out that the plaintiff never produced any evidence with regards to the position put forward by her in her sworn note and reply to reconvening defendant's counter-claim. Furthermore in her note of submissions plaintiff's position is that it is the community of acquests that is applicable from the date of marriage.¹⁰⁵ The defendant does not rebut this in his note of submissions.

The Court also points out that on the basis of the Transitory Provisions of Council Regulation EU 2016/1103 of the 24th June 2016 on: *Implementing enhanced cooperation in the area of jurisdiction applicable laws and regulations and*

¹⁰¹ Fol 60

¹⁰² Fol 189

¹⁰³ Fol 52

¹⁰⁴ See fol 52

¹⁰⁵ Fol 1121

enforcement of decisions in matters of matrimonial regimes , this Regulation does not apply since legal proceedings were instituted prior to the 29th January 2019.

Therefore although the parties established themselves in Malta on the 14th June 2013, the court considers the following:

- The plaintiff did not produce any evidence regarding her claim in relation to the content of Dutch Law and furthermore in her note of submissions she states that community of acquests is applicable from the date of marriage;
- The fact that neither party brought forward any evidence in connection with a different applicable regime;
- The inapplicability of the above-mentioned EU Regulation ;
- The fact that the parties marriage was registered in Malta;
- The parties respective written submissions

the Court shall therefore proceed to determine the liquidation on the basis of *lex fori* namely the Community of Acquests from date of marriage, and therefore from the 21st November 2006 up until the 5th May 2016 being the date of cessation of the said regime.

The Court now proceeds to analyse the content and claims.

Firstly the Court notes that all immovable proprties in Holland have been sold, the respective loans in connection with the same immovables settled and the balance of the proceeds have been split. This as per parties respective notes of written submissions. The Court here refers to fol 1121 where plaintiff submits:

“the community of acquests has no immovable property- the only real estate they had was located in Amsterdam and has been sold prior to the commencement of these proceedings.”

Similarly in paragraph 56 of defendant’s submissions the Court notes:

“with respect to immovable assets, both properties that we had in common, have been sold the mortgage paid off and the remaining revenue divided between the parties.”

For the sake of correctness, seeing that both parties listed the two immovables and the respective loans in their sworn notes, it is impossible for the said properties to have been sold before the commencement of these proceedings. In this respect the Court also makes reference to the sitting before the Judicial Assiatant dated 8th February 2017 at fol 231. Nonetheless it is clear to this Court that the parties have resolved this matter between them and will not take these assets and the respective liabilities into further consideration for the

determination of the content of the Community of Acquests, and this on the basis of the parties own submissions.

Furthermore in their relative notes of submissions both parties state that the vehicle that they brought to Malta has since been scrapped. The Court notes that the only mention of a vehicle in these proceedings was the Renault Clio with registration CBZ 973 – on the basis of the parties submissions the Court will not take this asset into consideration for the determination of the content of Community of Acquests.

The Court will now analyse the evidence in relation to the content of the Community of Acquests, with the key snapshot date being the 5th May 2016 being the date of cessation of the said Community of acquests.

Having examined all the evidence, and in the light of the previous paragraphs the Court notes that the BNF Bank Malta plc was asked to give evidence on the accounts held in the parties singular names and joint names and to provide clarifications on specific transactions. Plaintiff also summoned Casinos to give evidence on defendant's attendance and spend at the relative casinos.

Having examined all the evidence the Court considers the following to be relevant:

1. That on the 24 06. 2013 the sum of €32,156.49 was transferred from BNF bank account in the name of A B¹⁰⁶ account number 244236.10.001 and the said sum was transferred (same day) into the account in the name of C D with BNF bank account number 320080 10. 001 as evidenced at fol 233 doc Banif 1. It is pertinent to note that the sum of €30,1330 from the sum of €32,156.49 derived from the liquidation of a term account with BNF bank bearing number 244236.20.001, in the name of A B which was closed on transfer to above-mentioned account. (See fol 257 Document Banif 7) On the 05.07.2013 a cheque was drawn on this account for the sum of €15,000 as per fol 233 (overleaf). From the evidence in the acts of the proceedings this is accounted for in relation to the operation of the cafeteria, leaving a balance of €17, 156.49. That said on the 5th of May 2016, the balance in this account (i.e. 244236.10.001) was of **€1182.10** The Court declares that the said amount of €1182.10 to pertain to the Community of acquests.

¹⁰⁶ See doc Banif 6 fol 256 overleaf

2. That on the 14.02.2013 the account with BNF bank in the name of C D bearing account number 320080.20.1 had an opening balance of €35,000. From the evidence the Court has at hand it follows that these funds were transferred from defendant's account bearing number 320080.10.001 as per marked document Banif 1 at fol 233 of the acts, into account 320080.20.001 marked document Banif 2 at fol 252 which account remained active until 2018 when the term deposit was liquidated and the funds plus interest were transferred back into defendant's account on the 16.02.2018 bearing account number: 000320080.10.001 totalling the sum of €36, 636.83, (out of which €1636.83 is interest) and this as per follow-up evidence given by BNF bank representative whereby from documents submitted marked marked Dok NF 2 and NF 3. The Court declares such funds in the amount of €36,636.83 to pertain to the Community of acquests.
3. That on the 28.01.14 the sum of €30,000 was transferred from account 320080.10.001 with BNF bank in the name of C D and transferred into three separate term accounts namely: term deposit account in th name of defendant bearing number 320080.20.005; 320080.20.006; 320080.20.007 marked documents Banif 3,4,5 respectively at fol 253-255 of the Acts. From the said indicated accounts the same amounts were transferred out of the accounts on the 29.09.2014 and from the evidence it transpires that the said sums were transferred into account with BNF bank in the name of the defendant bearing account number 320080.10.001 marked Document Banif 1 at fol 241 together with the sum of €406.68 interest (€135.56 per term liquidation of €10,000) and they were subsequently transferred out of this account in three separate transactions of €10,000 each between the 29th and 30th September 2014 as evidenced at fol 241. €30,000 The bank representative confirmed that these funds were transfered out of Malta by the defendant. Reference is made to the evidence of Stephen Baldacchino who gave evidence in representation of BNF Bank on the 2nd November 2017 who confirmed that these funds were sent to a bank in defendant's name in the Netherlands as per BIC/IBAN ABNANLA2A NL82ABNA0407260374 as per testimony of Stephen Baldacchino who exhibited documents marked SBO 5 SBO 6 and SB 07 at fol 332 – 337) and also gave an explanation of the same. The Court declares these funds in the amount of €30,000 to pertain to the Community of Acquests

With respect to the loan taken by the parties from BNF Bank plc the Court notes that as per documentary evidence available in acts this was a joint loan taken on the 13th of January 2014 for the amount of twenty thousand Euro (€20,000). The sanction letter is exhibited from where it results that this loan was taken by the parties for their personal commitments and to pay back money to C D's parents. The sanction letter is signed by both parties.

Repayments were made throughout when the community was in vigore and on the date of termination of the community of acquests (5th May 2016) the balance due on the loan was in the amount of €- 11, 837.74; This balance was settled in full by 2018 and from the documentary evidence in these proceedings the repayments on this amount were made from BNF account marked Document NF 2 with account number 000320080100001 in the name of the defendant.

The Court declares this amount of €-11, 837.74 to be a debt chargeable to the Community of Acquests.

With regard to Foreign Bank Accounts: The plaintiff's sworn note refers to ABN Amro Holland and SNS Bank Holland. No evidence was produced by either party – however by his own admission, in his affidavit defendant states that he has an account with ABN – AMRO Dutch bank and he alleges that he has a right of credit of €16,000 representing a sum of money that he had in his personal account prior to marriage. In his affidavit he claims to have exhibited a document to this effect and even referred to the alleged document as LB 3.– however no such document is available in the acts. It is also pertinent for this Court to make reference to the fact that in defendant's sworn note and declaration of assets he confirms that there was a balance of ten thousand Euro in this account. On the basis of the principle that whoever alleges has to prove his allegation, the Court notes that the acts do not contain any proof on the paraphernal nature of these funds and therefore on the basis of this lack of proof of their paraphernal nature they are to be deemed to form part of the community of acquests.

Therefore on the basis of the above and the evidence available in the acts the Court considers the net asset value of the Community of Acquests as follows:

€1182.10 – balance in account Account No 00320080101 – Current Account 32008010.001 in the name of the defendant – at date of termination of Community of Acquests as per snapshot of account as at 5th May 2016; +

€36, 636.83 – which were liquidated from term deposit accounts created in 2013 and liquidated in 2018 where they were transferred into into account number 000320080.10.001 in defendant's name with BNF bank – these are community funds deriving from an asset going back to 2013.

€30,000 (which were transferred out of BNF account by defendant into account in the Netherlands with BIC/IBAN ABNANLA2A NL82ABNA0407260374 as per documents marked SBO 5 SBO 6 and SB 07 at fol 332 – 337) – these were community funds transferred out of Malta by the defendant to the detriment of the community of acquests.

€16,000 – representing defendant’s own statement in his affidavit and for which he failed to produce any documentaton to substantiate his alleged paraphernal credit.

€-11, 837.74

Total Net Asset Value of the Community of Acquests = €71, 981.19

With respect to plaintiff’s argument in relation to the money defendant gambled. While the Court sympathizes with the plaintiff and deplores the defendant’s reckless draining of the community of acquests, the Court is of the opinion that there is a difference between money moved around and unaccounted for compared to money spent, whether wisely or recklessly. The Court finds no distinction here and while such irresponsible and grievous behaviour has ramifications, hence *inter alia* why the Court has attributed the responsibilty for the cause of this separation entirely on the defendant, as outlined ealrier on in this judgment, having considered the arguments pur forward by both parties in their relative notes of submissions, the Court is of the opinion that there is no refund to be made in this respect.

On the basis of the above net asset value of the community of acquests the Court therefore hereby orders and condemns the defendant to pay the plaintiff the sum of €35, 990.60, which said sum represents the plaintiff’s share of funds forming part of the community of acquests at the date of termination of the Community of Acquests and on which said date the said funds were held in accounts in the defendant’s sole name as outlined above.

Furthermore on account of the fact that :

- the community of acquests was terminated on 5th May 2016;
- the sanctions contemplated under article 48 et seq of Chapter 16 of the laws of Malta have been applied in *toto* against the defendant;
- that neither party produced any further evidence in relation to any other assets that may have been listed in their respective sworn notes and affidavits,

without prejudice to plaintiff’s credit due to her in terms of her share of the liquidation of the community of acquests as outlined above, each party is to retain whatever other assets and/or liabilities they possess/incurred in their personal name.

The court orders the parties to close the joint account with BNF Bank Malta plc – which the court notes had no balance at date of termination of the community of acquests.

Finally the Court notes that neither party presented any evidence to the degree required at law on any alleged paraphernal claims and therefore in the absence of any such evidence rejects such claims.

Decision

Therefore, and for the above reasons, this Court decides this case by rejecting the defendant's pleas insofar as they are incompatible with the below and hereby disposes of the plaintiffs' demands, by:

1. Upholding the plaintiff's first demand while upholding the reconvening defendant's first demand in a limited manner thereby pronouncing personal separation between the parties for reasons solely attributable to the defendant as outlined in section 1 of this judgment. Furthermore the Court establishes the 1st of November 2013 as the date when the reconvening defendant caused the breakdown of the marriage;
2. Upholding the plaintiff's second demand while rejecting the reconvening defendant's second and fourth demands, thereby entrusting the plaintiff with the sole care and custody of the minor E D whose principal residence shall therefore be with the plaintiff in Malta at the residence so established by the plaintiff. Furthermore, orders that the plaintiff may alone take all decisions of the minor including ordinary decisions concerning her health and all decisions whether of an ordinary or extraordinary nature with regard to the minor's education. However with regard to the following decisions only, and which decisions are of an extra-ordinary nature that would specifically include: i) medical interventions that would require procedures and operations and ii) decisions required where the minor child may be in danger, then such extraordinary decisions shall be taken jointly by the parties. Furthermore, the Court orders that the defendant's access to the minor, as well as other access in relation to special occasions to be regulated in accordance with section 2 (b) of this judgment.
3. With regard to the third demand:
 - i) By Denying *Rebus sic stantibus* the plaintiff's claim for the court to order the defendant to pay maintenance to the plaintiff so however the plaintiff has not forfeited her right to claim maintenance from the defendant should there be any change of her circumstances;

- ii) Upholding the plaintiff's third demand while rejecting the reconvening defendant's third demand vis-a-vis maintenance for the minor and orders the defendant to pay the plaintiff the lump sum of twenty-eight thousand and nine hundred and thirty two Euro (€28,932), as outlined in section 3(b) of this judgment.
 - iii) Furthermore and in the event that after the child completes her eighteenth (18th) year, she continues to undertake full time studies, learning or training, then from that day onwards, and therefore from the 25th June 2028, the defendant shall commence to pay the plaintiff the all inclusive monthly maintenance in the amount of four hundred and seventy Euro per month (€470) per month, until such time as the child continues to pursue her full time studies, learning or training or until the age of twenty-three (23) whichever occurs first. The said monthly maintenance of four hundred and seventy Euro (€470) shall increase annually in accordance with the cost of living index. Furthermore if the minor resides alone then the said maintenance shall be paid by the defendant directly to the child.
4. Upholds the plaintiff's fourth demand while rejecting the reconvening defendant's ninth demand and orders that the sanctions contemplated in article 48 are to be applied in *toto* against the defendant;
 5. With regard to the plaintiff's fifth demand and the reconvening defendant's sixth demand this has in partially been resolved by virtue of the judgment given by this court on the 5th May 2016 whereby this Court ordered the cessation of the Community of Acquests between the parties and from that day forward their marriage was regulated by the matrimonial regime of Separation of Estates. Consequently the Court proceeds to uphold the plaintiff's fifth demand, while rejecting the reconvening defendant's fifth demand and partially upholds the reconvening defendant's seventh demand and insofar as the said demands are compatible with the request for a liquidation of the community of acquests in the manner outlined in section 5 however rejects the parties respective demands on any paraphernal credits.
 6. Upholds the plaintiff's sixth demand in the manner outlined in section 4 of this judgment and condemns the reconvening defendant to pay the plaintiff the sum of €35, 990.60, as determined in section 5 of this judgment.
 7. Rejects the plaintiff's seventh demand and the reconvening defendant's eighth demand;

8. Rejects the reconvening defendant's ninth demand;
9. Abstains from taking further cognisance of the reconvening defendant's tenth demand in light of the fourth section of this judgment.
10. Upholds the reconvening defendant's eleventh demand and on the basis of Article 35 sub-article 3 of Chapter 16 of the Laws of Malta, refers to the progressive registration number of the parties marriage certificate namely 958/2007.

The Court orders that the Registrar of Courts notifies the Director of Public Registry with this judgement within a week from when it is declared *res judicata*.

With Costs both of the partial judgment dated 5th May 2016 in the names A B vs C D Sworn Application No 105/2015/a AL and the costs of these proceedings to be borne entirely by the reconvening defendant.