

**CIVIL COURT  
(FAMILY SECTION)**

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

**Today 15th November 2023**

**Sworn App. No. : 117/2022 JPG**

**Case No. : 15**

**NO**

**Vs**

**And by virtue of decree dated 11<sup>th</sup>  
July 2022, Dr. Leontine Calleja and  
PL Nicolette Aquilina were  
appointed as Deputy Curators to  
represent the absentee KV, born in  
B, H daughter of JK and Z nee K.**

**The Court:**

Having seen the application filed by Plaintiff dated 1<sup>st</sup> June 2022, wherein it held that:

- 1. The applicant married the absentee KV by mean of a civil marriage on the 19 of April 2014 and this in accordance to the marriage certificate annexed and marked Dok. ONI.*
- 2. Around two years after this marriage that is around April 2016, the applicant's wife abandoned the marriage and this by leaving Malta without*

*even telling the applicant. In fact, the applicant has not been in contact with his wife since then, and he does not know where she is living except that he has a suspicion that she is living in H.*

- 3. The spouses did not have any children as a result of their marriage.*
- 4. The parties do not possess or own any immovable property together and this given the fact that during marriage they did not acquire any such property or real rights over immovable property. In fact, when the parties were living together, they lived in property rented from third parties and today the applicant lives in property he rents out from third party at his exclusive expense.*
- 5. The parties have been living separately for a period of time which exceeds one year in the last two years in accordance with article 66B (a) of Chapter 16 of the Laws of Malta and therefore their subsist valid reasons at law for divorce to be granted between the spouses.*
- 6. Moreover, this marriage broke down not because of any fault on the part of the applicant but rather due to the sole acts of the defendant who abandoned the marriage and therefore the effects contemplated in Article 48 of Chapter 16 of the Laws of Malta should be brought into effect against the defendant spouse and this as envisaged in Article 66E of Chapter 16 of the Laws of Malta in the context of divorce.*
- 7. The applicant has already obtained authorization from this Honorable Court in order to proceed with divorce and this in accordance with the decree dated 5<sup>th</sup> May 2022, copy annexed and marked Dok ON2.*
- 8. The applicant has complied with the decree aforementioned and this by confirming it under his sworn, oath before the Registrar of the Family Court.*

*Therefore, the applicant respectfully requests this Honorable Court so that saving any declaration which it feels necessary and opportune;*

- i. *Pronounce the divorce of the parties;*
- ii. *Declares and orders the cessation of the community of acquests existing between the parties;*
- iii. *Declares that such divorce is a consequence of the abandonment of the spouse KV in accordance to Article 41 of Chapter 16 of the Laws of Malta and as a result applies mutatis mutandis Article 66E of Chapter 16 of the Laws of Malta.*
- iv. *Consequentially orders, against the spouse KV, the effects contemplated in Article 48(1) of Chapter 16 of the Laws of Malta and establishes a date from when the effects in respect of Article 48(1)(c) should apply;*
- v. *Orders the Registrar of the Court so that in a time frame established by the Court, notifies the Director of Public Registry of this divorce and the cessation of the community of acquests.*
- vi. *Declares and orders all that is necessary and opportune according to the circumstances.*

Having seen that the sworn application and the decree of this Court been duly notified according to law;

Having seen the reply filed by the Deputy Curators dated 13<sup>th</sup> October 2022;

Having seen the note filed in terms of Article 66G at page 38;

Having seen the exhibited documents and all the case acts;

Having heard final submissions;

Having seen the Articles 66A, 66B u 66C of Chapter 16 of Laws of Malta;

**Considers:**

*Plaintiff filed an affidavit (vide fol 14 et seq)* and explained that he has been living in Malta since 2011 and that he married Defendant on the 19<sup>th</sup> of April 2014. He adds that during their

marriage, they had no children. He declared that the parties did not acquire any immovable property and lived in a rented property in Qawra. He confirms that they have been living separately since 2016, when Defendant left him and left the country. Plaintiff contends that it seems that Defendant returned to her home country, H. He confirms that ever since she left, there was no contact between them and that Defendant has even blocked him on her phone as well as on social media. Plaintiff declares that he pays no maintenance and no requests to this effect were made by Defendant.

***Plaintiff testified vice voce on the 29<sup>th</sup> of May 2023, (vide page 43 et seq)*** and explained that he came to Malta in 2011, and met Defendant in Bugibba. He testified that after six months of courtship, they got married on the 19<sup>th</sup> of April 2014 in Valletta. He affirmed that their marriage lasted for two years, and that Defendant left him, took all her possessions and abandoned the matrimonial home after they started having a series of misunderstandings. Plaintiff contends that he attempted to contact Defendant after she left, however she had blocked him. Plaintiff adds that he is under medication because of Post Traumatic Stress Disorder (PTSD), something Defendant knew about.

Plaintiff explains that they were renting their matrimonial home, and that they did not purchase any vehicles.

In ***cross-examination***, Plaintiff confirms that he was surprised when he realised that Defendant had left suddenly without notice, and adds that he attempted to call her but her phone was switched off. He adds that he even asked his friends to try and call her but she did not even answer. Plaintiff affirms that Defendant has no family members here in Malta and that while she was here, she used to work at the Seabank Hotel as a cleaner, where she worked for around six months. Plaintiff explained that the hotel had terminated her employment since Defendant would always be late for work. Plaintiff testified that his wife is H, and that she used to visit her family, but he never travelled nor did he meet her family here in Malta, but only spoke to them on Whatsapp. Plaintiff asserts that he never held a joint bank account with his wife but each had separate accounts.

***Charmaine Psaila Ragi on behalf of APS Bank Plc testified on the 28<sup>th</sup> of June 2023, (vide fol 157 et seq)*** and explained that neither of the parties had a banking relationship with APS Bank.

***Joshua Attard on behalf of BNF Bank testified on the 28<sup>th</sup> of June 2023, (vide fol 159 et seq)*** and explained that neither of the parties had a banking relationship with the Bank.

***Johanna Bartolo on behalf of BOV Bank Plc testified on the 28<sup>th</sup> of June 2023 (vide fol 53 et seq)*** that no accounts have been found in the parties' names as indicated.

***Jeanette Lepre on behalf of Lombard Bank Malta plc, testified on the 28<sup>th</sup> of June 2023 (vide fol 153 et seq)*** and explained that neither of the parties held accounts with the bank.

***Lorraine Attard on behalf of HSBC Bank Malta plc testified on the 28<sup>th</sup> of June 2023 (vide fol 161 et seq)*** explained that Plaintiff opened an account with the bank on the 26<sup>th</sup> September 2015.

***Saviour Theuma on behalf of the Social Security Department testified on the 28<sup>th</sup> of June 2023 (vide fol 143 et seq)*** and explained that no records of payments given by the Department to either of the parties were found.

***Brian Farrugia on behalf of Transport Malta testified on the 28<sup>th</sup> of June 2023 (vide fol 133 et seq)*** and explained that no vehicles have been or are registered in Defendant's name. With regards to Plaintiff, witness testified that in the past Plaintiff had three vehicles that were registered in his name, but at present has no vehicles registered in his name.

***Louis Buhagiar on behalf of Jobs Plus, testified on the 28<sup>th</sup> of June 2023, (vide fol 124 et seq)*** and exhibited Plaintiff's JobsPlus Employment history.

***Inspector Lara Butters on behalf of the Principal Immigration Officer, testified on the 20<sup>th</sup> of July 2023,*** and explained that no movements relating to Defendant were found and neither was any information found. Witness added however, that since Defendant is a H national and therefore an EU member state, there is freedom of movement and thus there would be no record of her movements within the EU.

***Louis Buhagiar on behalf of JobsPlus, testified on the 20<sup>th</sup> of July 2023,*** and explained that there are no records relating to Defendant.

*Lorraine Attard on behalf of HSBC Bank Malta Plc, testified on the 20th of July 2023, explained that she was unable to verify whether the accounts held by the bank actually pertain to Defendant.*

*Plaintiff, re-produced on the 9<sup>th</sup> of October 2023, (vide fol 174 et seq), confirmed that he has not had any contact with Defendant in the interim and that he has no information about her whereabouts.*

**Considers:**

According to Law, it is confirmed in Articles 66A and 66B of Chapter 16 of the Laws of Malta:

*66A. (1) Each of the spouses shall have the right to demand divorce or dissolution of the marriage as provided in this Sub-Title. It shall not be required that, prior to the demand of divorce, the spouses shall be separated from each other by means of a contract or of a judgement.*

*(omissis)*

*66B. Without prejudice to the following provisions of this article, divorce shall not be granted except upon a demand made jointly by the two spouses or by one of them against the other spouse, and unless the Court is satisfied that:*

*(a) upon a demand made jointly by the two spouses, on the date of commencement of the divorce proceedings, the spouses shall have lived apart for a period of, or periods that amount to, at least 6 months out of the preceding year: Provided that when the demand is made by one of the spouses against the other spouse, on the date of commencement of the divorce proceedings, the spouses shall have lived apart for a period of, or periods that amount to, at least one year out of the preceding two years; or*

- (b) on the date of commencement of the divorce proceedings, the spouses are separated by means of a contract or court judgment; and*
- (c) there is no reasonable prospect of reconciliation between the spouses; and*
- (d) the spouses and all of their children are receiving adequate maintenance, where this is due, according to their particular circumstances, as provided in article 57:*

*Provided that the spouses may, at any time, renounce their right to maintenance: Provided further that for purposes of this paragraph, maintenance ordered by the court by a judgement of separation or agreed to between the spouses in a contract of separation, shall be deemed to be adequate maintenance:*

*Provided further that a divorce pronounced between spouses who were separated by a contract or by a judgement shall not bring about any change in what was ordered or agreed to between them, except for the effects of divorce resulting from the law.*

**Deliberates:**

The Court has seen that the parties contracted their marriage on the 19<sup>th</sup> of April of the year 2014 in the Marriage Registry in Valletta, as evidenced by the marriage certificate registration number 618/2014, vide page 9 of the acts. No children were born from this marriage.

The Court notes that the parties have been *de facto* separated since the year 2016, when Defendant left the matrimonial home and left the Islands of Malta and Gozo. The Court has heard that subsequent to Defendant's abandonment of the matrimonial home following trivial arguments between the parties, and despite Plaintiff's attempts to make contact with Defendant, Defendant never made any contact with Plaintiff. Thus it is evidenced, that the parties' marriage ended as a consequence of Defendant's sudden abandonment in terms of article 41 of Chapter 16 of the Laws of Malta. Consequent to the said abandonment, this Court deems it fit to apply the effects contemplated in Article 66E of Chapter 16 of the Laws of Malta and consequently the effects envisaged in article 48(1) of the same Chapter 16 of the Laws of Malta against Defendant as of April of the year 2016.

The Court notes that Subsidiary Legislation 12.20 requires that, in cases where the parties are not already separated, proceedings are initiated by means of an application requesting the appointment of mediation proceedings. The Court observes that Plaintiff had indeed filed an application requesting this Court to authorize the initiation of divorce proceedings, as evidenced in application at page 11 of the acts.

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

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

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

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

The Court notes that from the acts of these proceedings, the said note was indeed filed. (*Vide page 38 of the acts.*)

The Court also notes that the Deputy Curators did not manage to make contact with Respondent in spite of their attempts.

The Court observes that from Plaintiff’s testimony and the evidence produced, it appears that despite the fact that the community of acquests is still operative, the parties held no immovable property or other assets in common. Furthermore, no claims relating to the community of acquests have in fact been requested, nor maintenance or alimony demanded by Defendant. In view of the above considerations, the Court orders that all bank accounts or investments in Plaintiff’s name are to be assigned to Plaintiff. Similarly, all bank accounts or other assets held in Defendant’s name are to be assigned to Defendant.



The Court also finds that there is no reasonable prospect of a reconciliation between the parties.

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

**For these reasons the Court:**

- 1. Accedes to the first request and pronounces the dissolution of the marriage contracted on the 19th of April 2014 in the Marriage Registry in Valletta, by divorce which marriage bears the registration number 618/2014;**
- 2. Accedes to the second request and orders the cessation of the community of acquests between the parties and liquidates the same by ordering that all bank accounts or investments in Plaintiff's name shall be assigned to Plaintiff. Similarly all bank accounts or other assets held in Defendant's name, shall be assigned to Defendant;**
- 3. Accedes to the third request and declares that the parties' marriage ended as a consequence of Defendant's sudden abandonment in terms of article 41 of Chapter 16 of the Laws of Malta and as a result of the said abandonment, this Court orders the applicability of the effects contemplated in Article 66E of Chapter 16 of the Laws of Malta, against Defendant;**
- 4. Accedes to the fourth request and consequently orders that the effects envisaged in article 48(1) of the same Chapter 16 of the Laws of Malta shall apply against Defendant as of April of the year 2016.**
- 5. Accedes to the fifth request and orders the Court Registrar to advise the Director of the Public Registry of the dissolution of the marriage by divorce and the cessation of the community of acquests between the parties so that these shall be registered in the Public Registry.**

**Costs shall be borne by the Defendant but shall be paid provisionally by Plaintiff.**

**Read.**

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

**Christabelle Cassar**

**Deputy Registrar**