



**CIVIL COURT
(FAMILY SECTION)**

MR. JUSTICE ANTHONY G. VELLA

Sitting of Tuesday 5th December 2023

APPLICATION number : 261/2022 AGV

In the names

EAS

vs

**Dr Yanika Bugeja and PL Joeline
Pace Ciscaldi as depity Curators
for A A A A**

The Court,

Having seen the Sworn Application of EAS humbly states and on oath confirms:-

- 1) The Plaintiff and the Defendant were married in Egypt on 16 August 2006 and subsequently moved to the United Kingdom. Throughout their marriage, the parties had one child, Z , who was born on 10 March 2007 in the United Kingdom. During her time in Egypt and in England, Plaintiff was subjected to patriarchal behaviour at the hand of both her husband and her father-in-law which ultimately culminated in daily, intolerable abuse by Defendant and his family on Plaintiff.
- 2) That subsequently Defendant had obtained a divorce from his wife on 10 February 2008 in Egypt, which divorce was obtained in the absence of the Plaintiff and no maintenance was awarded for the needs of the minor child, Z . As a result, the minor child received no maintenance from his father from 2008 until a decree in 2018.
- 3) Eventually, Plaintiff was forced to leave the matrimonial home and moved to Malta with the minor child, Z . After considerable time it became clear that Defendant had no intention of paying maintenance for his son unless compelled to do so by means of a court order. As such, Plaintiff was forced to institute proceedings for maintenance. By means of a judgment handed down by the Civil Court (Family Section) applicant secured maintenance from Defendant however the said amount is not being paid and applicant was forced to enforce the judgment through the auspices of the Maltese Central Authority.

- 4) Since applicant was made to leave Egypt Defendant has never come to Malta to see his son and has never asked after his son and as such there is no relationship between Defendant and his son. Despite the fact that the minor child is nearly sixteen years old, applicant still encounters difficulties in raising her son when signatures of both parents are required.
- 5) Moreover, Defendant continues to harbour a very hostile attitude towards Plaintiff including through subtle means including by not paying maintenance and, on the few occasions that he did, paying through his lawyer and never directly to the Plaintiff.
- 6) Applicant has been authorised to proceed with this suit by means of a decree dated the 13 October 2022 hereto attached and marked **DOK A**.

For these reasons applicant requests with respect that this Honourable Court deem it fit and in the best interests of the minor child to in the first instance entrust parental authority of the minor child, Z, to the applicant mother and in the second instance to entrust care and custody of the minor child, Zi, to the applicant mother, save any other provision that the Court deems fit in the circumstances.

Having seen the Reply of curators appointed by the Court, wherein they pleaded :-

1. Having been unaware of the facts of the case.
2. Hereby request to be granted details as to how to communicate with Defendant, including his email address, mobile phone number as well as his postal address or any other means of communicating with him.

3. Hereby they reserve their right to file further pleas once they succeed in communicating with Defendant.

4. With costs.

Having seen all the acts and documents exhibited.

Facts

Parties got married on the 16th August, 2006 and on the 10th March, 2007, they had a son Z. During their marriage, Plaintiff explains that she suffered domestic violence and abuse, so much so that their son was born prematurely.

Two months after the birth of their son, he had to be hospitalised, but Defendant could not be bothered to be present, infact she was accompanied by her brother-in-law.

It was soon after that Defendant decided to divorce her and though she begged him not to, he went ahead with his decision and they divorced on the 10th February, 2008. Their child was not even one year old, but Defendant was totally disinterested in their son's well being. He seldom inquired about his welfare or showed any consistent involvement in his life. Neither did he contribute towards the maintenance of the child.

Plaintiff explains that after being sent to attend her ex-husband's brother's wedding in Egypt, together with her son Z , upon their departure, member of Defendant's family took hers and her son's passport and without proper identification and documentation they could not travel out of Egypt.

Eventually, Defendant had remarried on the 31st August, 2008 and he had another child. During such time, Defendant's family visited her and their grandson once a year until he was four years old.

She further explains that when their son was just one year old, Defendant had decided to provide maintenance in the sum of €35 per month, however he was not consistent in these payments. Since she needed financial support she decided to take the matter before the Egyptian courts . She was expecting maintenance because Defendant is a wealthy man with multiple businesses.

In 2014, she admits to taking legal action against Defendant to secure the rights and maintenance for their son Z .

Plaintiff goes on to explain that in 2014 she took the decision to move to Malta with Z to offer him a better future and when she arrived in 2011, she decided to familiarise herself with the law in Malta. In 2014, she opened a court case in Malta for maintenance and on the 3rd of May, 2022 she was granted maintenance.

Today she admits that she has invested all her energies in her son's education.

Z A , parties' son states that he has chosen to reside with his Plaintiff mother because it is in his best interests because she offers him a stable environment and this is valuable for his happiness and development.

Living with his mother, allows him to follow a routine, between school and extra-curricular activities, which he would not want to disrupt in any way.

He also explains that his mother gives a lot of importance to his education, so much so that now he is about to attend one of the best colleges in Malta.

Plaintiff also offers him a safe abode and also she allows him to express his opinion and desires, thereby allowing him to have a say in matters that concern him.

As to Defendant he explains that he has never shown interest in him or his mother and throughout the last 12 years, it was the grandfather who had tried, only to criticise his English and to threaten he would send lawyers to fight against Plaintiff.

He also expresses his disappointment, because although his father has a multi-million business in England and a factory in Egypt and the pharmaceutical VitaBiotics, he finds it hard to pay his €500 towards his maintenance when it is not a problem to maintain his other children from another marriage.

His mother represents everything to him and for this reason he wants to remain in her care and custody.

CONSIDERATIONS:

Our Courts have consistently always considered the best interests of the children involved in decisions regarding their care and custody. In the case **Susan Ellen Lawless vs Il Reverendo George Lawless** decided by the First Hall of the Civil Court on the 8th December, 1858, the Court held as follows:-

“la cura ed educazione dei figli, nel caso che la moglie non continua ad abitare col marito, deve essere commessa ed affidata a colui, fra i

conjugi, che si riconoscerà' piu' atto ed idoneo a curarli ed educarli, avuto riguardo allo loro eta', ed a tutte le circostanze del caso – sotto quei provvedimenti, che si peputino spediti del vantaggio di tali figli.”

The Court also reiterated as follows in the following cases **John Cutajar vs Amelia Cutajar et** (decided by the First Hall of the Civil Court on the 28th January, 1956) and **Maria Dolores sive Doris Scicluna vs Anthony Scicluna** (decided on the First Hall of the Civil Court on the 27th November, 2003:-

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

In the judgement **Sylvia Meli vs Philip Vassallo**, the Court of Appeal 25.11.1998 the Court enunciated as follows:-

“In this case the court must to do what is in 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 parties had a child, named Z . Not even a year had passed from the birth of this minor child, that Defendant decided to proceed with a divorce from Plaintiff.

From the moment the child was born, Defendant did not show much interest in the said child. He was not even present at his birth.

Z himself testified stating that his father rarely made any contact with him and his mother, it was only his paternal grandfather who did on a couple of occasions, but he did so simply to criticise his English, as well as to threaten that he would be taking legal action against his mother.

He also admits that he owes everything to his mother. She was always present throughout his upbringing, and she was always there to support him and provide for his needs. She also focused on his education and placed it as a priority in their life, so much so that at present he attends one of the best colleges in Malta.

The minor child is unwilling to upset a routine he has with his mother juggling around school and also his extra-curricular activities. They have been in Malta since 2011 and nonetheless Defendant never came to Malta since then to see his son. This evidence has not been rebutted in any way since Defendant failed to produce any evidence.

Plaintiff has also explained that each time she requires both parents' signatures she is finding problems because Defendant does not cooperate.

Plaintiff also raises issues regarding the payment of maintenance, due for their minor child. She testified having filed court proceedings requesting maintenance from Defendant, even more so, because he is financially wealthy and runs a huge business. This matter, however, was already treated and decided in other proceedings that have since been determined.

DECIDE:

Having considered all the above, the Court upholds Plaintiff's requests.

Entrusts parental authority of the minor child, Z , to the applicant mother.

Entrusts the full care and custody of the minor child, Z , to the applicant mother.

Furthermore, the Court also orders that Plaintiff retains the minor child's passport and orders that the renewal of the said passport shall be granted without the Defendant's prior written or verbal consent.

Any other decisions regarding the minor shall be taken by Plaintiff without the need to obtain authorisation from Defendant.

All costs are to be temporarily borne by Plaintiff, and will become recoverable in full from Defendant once his whereabouts are established.

Hon. Mr. Justice Dr. Anthony J. Vella

Registrar