



**CIVIL COURT
(FAMILY SECTION)**

Hon. Judge Antonio G. Vella

Today Tuesday 16th January 2024

Sworn Application Number: 172/23

NXC

- vs -

KJ

The Court:

Having seen the preliminary plea raised by KJ in her sworn reply;

Having seen the acts of the warrant of prohibitory injunction between the same parties;

Having seen the acts of the mediation letter 899/22 between the parties;

Having seen the parties' respective note of submissions;

CONSIDERS:

This is a judgment *in parte* on the preliminary plea raised by defendant in these proceedings, whereby the plea of *privilegium fori* grants any defendant the right to have the case heard by the Gozo court, on the basis that such defendant actually resides in the island of Gozo.

The relevant articles of the laws to determine and establish the *privilegium fori* are the following:

Article 50 (1) of Chapter 12 of the Laws of Malta which provides:

“Subject to the provisions of article 770 and 771, the Court of Magistrates (Gozo) shall, to the exclusion of the courts of Malta, be competent to take cognizance of all claims against persons residing or having their ordinary abode in the Island of Gozo or Comino, as well as of all other causes expressly assigned by law to such court.”

Article 741(c) of Chapter 12 of the Laws of Malta provides that:

“It shall be lawful to plead to the jurisdiction of the court ... (c) when the privilege of being sued in a particular court is granted to the defendant.”

Furthermore, Article 767 of Chapter 12 of the Laws of Malta states that:

“The privilege referred to in article 741(c) is granted to parties residing in the Island of Malta with reference to the courts of such Island, and to parties residing in either of the Islands of Gozo and Comino with reference to the court of such Islands.”

Finally, there is also Article 770 of Chapter 12 which provides:

“The privilegium fori shall also cease, where the action touches an obligation which, according to the agreement, was to be carried out in any one particular Island.”

CONSIDERS:

That it results that respondent has already raised the same plea during the mediation proceedings, which had been denied by means of a decree dated 1st May 2023.

It is the opinion of this court that judicial proceedings in all separation and custody cases start with mediation. This is an initial step in the judicial process and is mandatory on all parties. Indeed, court proceedings cannot be filed unless

a mediation has been initiated as per Subsidiary Legislation 12.20. Parties to separation proceedings or custody proceedings have no option but to commence such proceedings by filing mediation in the Family Court.

In those same mediation proceedings, defendant had in fact filed an application raising the plea of *privilegium fori* as per Article 741(c) of Chapter 12 of the Laws of Malta, which was rejected by the Court. Her plea was raised at the opportune moment, during the mediation stage, as was her right and privilege at law. In support of her plea at that stage, defendant had made reference to a judgment *in parte* delivered by the Court of Magistrates (Gozo) in its Superior Jurisdiction in the Family Section, in the case in the names Jean Pierre Muscat vs RYANNE XUEREB (Rik 7/2016JVC), decided on the 1 November 2016. In that judgment, the Court stated that the plea of *privilegium fori* raised by the defendant in those proceedings should have been raised at the mediation stage and not as a preliminary plea in the sworn reply to the sworn application. The Court in those proceedings decided – rightly so, in this Court’s opinion – that such a plea had to be raised during mediation.

On the basis of this same argument, with which this Court concurs, the defendant at this stage in proceedings cannot raise the same plea once more. The plea had been raised at the right moment and was denied by the Court during mediation. Once this plea has already been determined, this simply means that the courts in Malta have the jurisdiction to hear the case. Defendant cannot benefit from a second attempt at raising the same plea a second time. Such a plea, once raised and determined, is final.

The rest of the arguments raised by both parties are superfluous at this stage.

DECIDE:

NOW, THEREFORE, THE COURT:

For the reasons hereabove mentioned;

DENIES Defendant's preliminary plea.

ORDERS The continuance of proceedings.

Judge Antonio G. Vella

Maria Concetta Gauci

Deputy Registrar

