



**CIVIL COURT  
( FAMILY SECTION)**

**MR. JUSTICE ANTHONY G. VELLA**

**Sitting of Thursday 9<sup>th</sup> May 2024**

**Sworn Application no: 70 /2023 AGV**

**ABB**

**Vs**

**IM**

**The Court,**

**Having seen the Sworn Application of ABB ;**

**Respectfully states and on oath confirms:-**

1. That this lawsuit is regarding the custody and the residence of the parties' daughter, NM , who was born on 15<sup>th</sup> October 2020, today she is two and a half years old.
2. That the salient facts which gave rise to this lawsuit are the following;-
  - i. That the Defendant is of a Serbian nationality whereas the Plaintiff is of Latvian nationality.
  - ii. That the parties started their relationship in Malta and from this relationship they had a daughter – NM – born in Malta on the 15 October 2020 (Birth certificate attached and marked as Doc ABB1).
  - iii. That although the parties resided in Malta for around a year and four months after the birth of their daughter, they went – as a family – to reside in Latvia on the 3 March 2022. This happened mainly on the insistence of the Defendant, with agreement between the parties to live there for an indefinite period of time.
  - iv. That during this period of 11 months living in Carnikava, Latvia, the Defendant worked remotely – as he always did. Whilst the Plaintiff was – and still is – working in a child care, the same child care where the minor child used to – and still does – attend.
  - v. That although the parties did have arguments between them in Latvia and that their relationship was deteriorating, it would only be during these arguments that the Defendant would say he wants to go to Malta, however he would not continue to mention or insist on it when the argument calms down.
  - vi. That for the parties to work on their relationship, the Defendant had suggested a holiday, and later decided to book tickets for a holiday to

Malta<sup>1</sup>, which was intended to serve as a holiday as described and also so they could see the Defendant's family who live in Malta, mainly his sister, her husband and their children. The dates of the holiday were between the 31 January 2023 and the 7 February 2023. The Defendant had suggested and the Plaintiff agreed that the first 2 days of their holiday would be spent in a hotel room, and the rest of the holiday would be spent with Defendant's sister<sup>2</sup>.

- vii. That the parties therefore came to Malta on holiday and stayed at the Carlton Hotel in Sliema.
- viii. That on Thursday the 2 February 2023, whilst the Plaintiff was buying food for the parties – as requested to do so by the Defendant – she received the message quoted below from the Defendant, before he effectively kidnapped their daughter.

*“A, I regret having to say this, but **I have left the hotel and I took N with me. I have decided that we are staying in Malta** as the original plan was not to go to Latvia to live there but rather to go for 5-6 months and go back here .... **I know it will not be easy for you or N for some time and I am sorry for that, but I believe I am doing the right thing**” (The entire message is being attached and marked as **Dok ABB 2**).*

- ix. That subsequently the Plaintiff filed police reports also because the Defendant illegally took the child from her mother with her passports, and kept her from her mother – save for a little amount of time for her to breastfeed – and above all because he refused to return the child home in Latvia as originally planned, on the 7th February.

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<sup>1</sup> Also discussing a holiday in Vienna in Spring and eventually also to Serbia.

<sup>2</sup> When the parties were already in Malta they agreed to extend their stay in the hotel for another night until the 3<sup>rd</sup> February.

- x. That during this time the Defendant also told Plaintiff by message that “*I am more than happy to get a court order or a decision for both of us to see her. As soon as I have a legally binding document that is prohibiting you from denying me access to my daughter, I will let her see you.*” (**Dok ABB 3**).
- xi. That the Defendant continued to refuse his giving the passports of the minor and the minor to the Plaintiff to return home – the Defendant allowed the minor to go with the Plaintiff mother on the 9 February 2023, however without her passport.
- xii. That these circumstances were planned by the Defendant, following advise he took when he was still in Latvia so that the Plaintiff was placed – at a disadvantage and with great prejudice to her daughter – in a position where she does not have the means to live and much less does she have the money to finance the Defendant’s premeditated litigation.
- xiii. That the Defendant is trying to establish and secure the normality which he wished, and therefore that he has “50/50” care of the minor NM – as he testified on oath during the proceedings for the issuance of the Warrant – also after he dragged the Plaintiff and his daughter in Malta – **masked as a holiday** – away from their home, their routine, their work, the school, friends and their life, by means of an *ex admissis* “**trick**”. That the purpose of this “trick” was to secure the jurisdiction of the Maltese Courts – based on the incorrect – assumption transmitted to Defendant by his advisors that Maltese courts impose what Defendant called “50-50” arrangements on parents regarding their children. That the consequence of this “trick” was dire, such that the child is living with the mother – Plaintiff – in a shelter

where mother and child are **obliged** to vacate between 9:00am and 6:00pm – where they spend the day roaming outside of the shelter and in public parks with all their belongings in their backpack – and sleeping in the same bed together, and in a room which hosts five women. That moreover the applicant faces the risk of losing her job in Latvia, with no income and with unstable access to education for the minor child, whose access with her father has to be physically guarded by applicant last some fresh bout of trickery be advised to Respondent.

- xiv. That from when the warrant of prohibitory injunction number 32/2023/2, for the travel of the minor child NM was issued, the Plaintiff became effectively imprisoned in Malta, living without an income, without money and without residence, and held from continuing her employment in her country, and residing in a shelter provided by Agenzija Appogg, as described in the preceding paragraph.
3. That it is evident from Defendant's behaviour and antecedents that he cannot be entrusted with the upbringing of the child. That it is also evident that the minor's place should be back in Latvia, with her mother.
4. That Plaintiff has been duly authorised to file a lawsuit for the care and custody of the minor NM and this in order that she be allowed to return to her established residence abroad, that is in Carnikava, Latvia, against Defendant by decree in this sense delivered from this Honourable Court on 17<sup>th</sup> March 2023 (**DOC ABB 4**).
5. That this lawsuit is being filed precisely in order that the Court, after it listens to the parties and their witnesses, orders that in the supreme interest of the said child, NM lives with her mother, the said ABB in Latvia.

Consequently Plaintiff respectfully requests that this Honourable Court, sees fitting and opportune for that states above:-

- i. Orders and declares that in the best interest of the said minor child, parties daughter, NM that the care and custody of the said minor be entrusted to Plaintiff her mother.
- ii. Authorises Plaintiff to, on a date established by this Court in her eventual judgement leaves Malta and takes with her the said minor child NM in order to continue to live with her in Carnikava, Latvia and this notwithstanding all orders otherwise obtained by the parties or either one of them after the issue of the Prohibitory Injunction to stop a person from taking a minor outside of Malta.
- iii. Authorises Plaintiff to withdraw all passports of the minor NM the existence of which results during the hearing of the suit, including the passport issued by the Republic of Latvia to the minor NM which was deposited under this Honourable Court's authority in the records of the Prohibitory Injunction numbers 32/2023/2 by order in this sense on the 7<sup>th</sup> of February 2023.
- iv. Authorises Plaintiff, if such is needed to travel with the minor child NM from Malta to Latvia, as will eventually be ordered as requested in the preceding request, in order that on her own and without the need of Defendant's consent or participation, applies for and receives passport, visa or other document of whatever nature that is needed in order that the said minor N M , be able to enter Latvia and lives in Latvia and also in order that the minor NM stops and enters in all countries needed in her journey between Malta and Latvia.

With expenses, including those suffered in the mediation proceedings and those of the Prohibitory Injunction number 32/2023/2, against the Defendant who is from now summoned for reference to his oath.

**Having seen the Sworn Reply of I M** holder of Serbian passport number  
and holder of identity card number

Respectfully submits and on oath declares:-

1. That in the first instance, it is to be underlined that the Respondent filed a sworn application, so that all matters relating to the minor NM be regulated, which sworn application bears reference 98/2023AGV in the names IM vs AB – B
2. That with respect to the **first request** of the Applicant, this should be rejected, as the care and custody of the minor NM should be vested to the two parties jointly.
3. That with respect to the **second request** of the Applicant, this should be rejected, as the residence of the minor NM should be with the father in Malta.
4. That with respect to the **third request** of the Applicant, this should be rejected, as the passports of the Minor, presently deposited under the authority of the Court, once withdrawn, as well all other passports which shall be issued, shall be held by the Respondent.

5. That with respect to the **fourth request** of the Applicant, this should be rejected, as the residence of the Minor NM , shall be with the father in Malta, and therefore, there should be no order which authorises the Minor to travel to Latvia in order to reside there.

Save further pleas permitted by Law.

With costs of the present proceedings, of the mediation procedure, of the warrant of prohibitory injunction 32/2023/2 and of the counter warrant number 64/23, against Applicant who is from now summoned so that a reference to her oath be made.

Having considered all acts and documents related to the case.

Having heard all the evidence submitted by the parties.

Having seen their final note of submissions.

## **CONSIDERS:**

### **Facts**

The parties met whilst they were both working as waiters in a restaurant in 2019. They started their relationship in August of the same year. Around five months later Plaintiff found out she was pregnant. Initially Defendant states that Plaintiff wanted to commit an abortion, but then he convinced her and they agreed to keep the baby. On the 21<sup>st</sup> March 2020, they moved in together in a single bedroom flat in Sliema, which they rented out.



Since all this happened Defendant explains that it is was during the Covid -19 pandemic and the restaurants where they worked had to be closed down due to Government instructions, they were receiving reduced wages. Plaintiff states that during such a time they had decided to remain in Malta.

Defendant explains that once the restaurants opened he went back to work, but Plaintiff terminated her employment on the 30<sup>th</sup> September, 2020 and he confirms that by then Plaintiff was very well advanced into her pregnancy. Defendant goes on to state that Plaintiff was receiving the childrens allowance, but he had no idea where the money was ending up.

Plaintiff states that they had agreed that once their child was born, she would not work to bring up their daughter. Defendant had started a new job with the company “Loqus” where he had chosen to work remotely from home, and this worked well so he could spend more time with the family. Defendant confirms this and states that he was earning an income of around €25, 000 gross for the job of a Backend Testing Engineer. Defendant also adds that on the 1<sup>st</sup> February, 2021, they had moved to another apartment, a two bedroom flat in Sliema.

Nora was born on the 15<sup>th</sup> October, 2020 and Plaintiff explains that they had to register the birth of the child in Malta to eventually obtain a Latvian and a Serbian passport.

Defendant goes on to explain that when N was around eight months old, Plaintiff started to work as a waitress three times a week, that included also the weekends, and since he worked remotely or there were days he was off, he used to take care of Nora during these times. Defendant mentions that this is when the problems started as Plaintiff would expect him to carry out

chores and somehow the time was always when N was awake and he could enjoy her company.

Her attitude changed and she would insult him and belittle him and then she would turn to being silent and not utter a word to him for days.

Sometime after Defendant started a new job, he realised that some colleagues were working remotely from abroad and since his mother was not in good health, he asked his employer whether it was possible for him to work remotely too and once he was granted permission, they decided to move to Serbia for around 5 to 6 months and so they left for Serbia in September, 2021, thereby terminating the lease of their apartment in Malta.

Defendant explains his version stating that once his management gave him the go ahead to be able to travel<sup>3</sup>, as long as he put in his working hours, they had the time to go and visit their respective families in Serbia and Latica. They also planned to spend some time in Spain and Italy, where they had respective friends, but he admits that Malta was always to remain their home and base and all their travels were meant to be temporary. He also added that there was an understanding between them that as N had not started compulsory schooling, they could take the opportunity to travel as much as possible.

When they moved to Serbia, they had plans to return to Malta within a month to celebrate N's birthday and in fact they only packed for a month, leaving most of their belongings with Defendant's sister here in

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<sup>3</sup> Dok. 1

Malta and with a friend. Defendant gives his version explaining that they went for five/six months in Serbia and they stayed with his parents. He had informed his superiors of this.<sup>4</sup> He confirms that they returned to Malta for N ' s first birthday party and they had tickets booked to return to Serbia on the 15<sup>th</sup> November, 2021<sup>5</sup> to spend a couple of more months with his family. However, there was a huge spike in the Covid cases in Serbia and as a result entry into the EU from Serbia was strictly forbidden. So, Defendant insists that they chose to remain in Malta. Meanwhile, they were looking for a place to rent once again.

In fact, they returned in October 2021 and they resided with Defendant's sister and her family. However, the parties' relationship during such a period was not progressing well, Plaintiff lamenting that Defendant lacked any form of affection towards her. After coming to an agreement, Plaintiff moved with their daughter to a friend, remaining in contact with Defendant not to upset much of the minor's routine. This is confirmed by Defendant, but he adds that it was Plaintiff whose behaviour towards him changed and deteriorated. She started insulting him, belittling him in front of his family. When one day she informed him that she was leaving with N and moving in with her friend E , he took advice from his lawyer.

He also disagrees that Plaintiff let him see N regularly. He used to see her mostly after work, but she would find excuses at times to avoid him meeting his daughter.<sup>6</sup>

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<sup>44</sup> Dok. 2B and 2C

<sup>5</sup> Dok. 2C

<sup>6</sup> Dok. 4.1. – 4.38

In November 2021, Plaintiff confirms that she reconciled with Defendant, only to find that the latter's sister as well as her husband were no longer the same with her and showed great dislike towards her. Defendant confirms that Plaintiff was insisting to meet up to discuss their relationship.<sup>7</sup> They made it up and he did so admittedly for the benefit of their child growing up with a family under one roof.

Defendant also confirms that they moved in with friends of theirs until they found a flat of their own and they moved all their belongings there. He admits that at this point, their relationship was far from perfect, but he was happy living together with Plaintiff and N .

Plaintiff confirms that Defendant no longer wanted to go to Serbia, so they agreed to spend the winter months in Malta, and they resided in an apartment belonging to their friends. On the 3<sup>rd</sup> March, 2022, they moved to Latvia<sup>8</sup> and they settled in a rented apartment in Carnikava. She admits that Defendant was very excited to go to Latvia, but nonetheless, they had not planned to move there for a specific period of time since she wanted to see whether she and her daughter would settle there. Defendant's version is that after their break-up and reconciliation they started discussing travelling once again and the choice fell on Latvia, and he was hopeful it would be a fresh start.

Defendant explains that they had agreed to leave some of their belongings at his sister's house and part of them at their friends where they were living. They just took up a couple of suitcases. Plaintiff states that they planned to move more of their belongings on their next visit to Malta and Plaintiff

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<sup>7</sup> Dok. 4.38

<sup>8</sup> Dok. 5

explains that Defendant used to make her believe that they would be rich and afford to come for their holidays to Malta and therefore take back to Latvia their remaining belongings.<sup>9</sup>

According to Plaintiff, the intentions seemed that they were planning to settle down permanently in Latvia, infact Defendant encouraged Plaintiff to look for a job, also helping prepare a CV.<sup>10</sup> They also started looking for a kindergarten for their daughter and she also attended a driving school until November 2022.<sup>11</sup> Defendant does not agree with this version and explains that they were planning to stay in Latvia for a period between five/six months, until the end of summer so that they would avoid the heat in Malta and they could celebrate N 's second birthday here in Malta.

Defendant also adds that before leaving for Latvia, he had informed CD the Human Resources Manager at work and also L FC that he would be staying in Latvia for a period of around five to six months. They also wanted him to confirm whether he would be staying there on a permanent or temporary basis as this would impinge on his income tax status in Malta. He confirmed that he would be returning to Malta and infact up to date he continues paying income tax and national insurance to the Government.<sup>12</sup>

In fact, Defendant continues that the flat they rented from Plaintiff's friends was rented without a contract, but there was a verbal agreement that they would pay €300 a month as well as utility bills. He also confirms that their relationship did not improve much, but in front of their friends or family Plaintiff gave the impression that she was very happy.

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<sup>9</sup> Dok. A2

<sup>10</sup> Dok. A3

<sup>11</sup> Dok.ABB 9

<sup>12</sup> Dok. 6 – 7

In July, 2022, Defendant returned to Malta and his visit was work related. There he returned to Latvia, with more of their belongings. Plaintiff explains that they were very happy in Latvia. From the 15<sup>th</sup> March, 2022 their daughter was registered with a family doctor A S and she was following up her vaccination programme.

By May/June 2022 she had found a job as a teaching assistant at a kindergarten close to their house and their daughter loved it. They decided that she would start work in September rather than July, 2022 to spend more time together as a family.<sup>13</sup> Defendant's version conflicts with Plaintiff's in the sense that he testified they had planned to return to Malta by the end of summer 2022, so around June he had discussed with Plaintiff to find a part-time job so they would have some extra money to save and put aside upon their return to Malta as they would have the expense of renting a place and to pay upfront the rent they need. They then planned to take up their travel plans once again towards the end of 2022.

Defendant goes on to state that he was very surprised that Plaintiff found a job and decided to start in September, 2022 when she was given the option to start in July, 2022. The advantage was that since she was working in a public kindergarten she was entitled to enrol N too at the same school and that is what they did.

Plaintiff states that in January, 2023 she was promoted to a teacher at the same kindergarten that their daughter attended.<sup>14</sup> From her salary she had agreed to pay for her needs, as well as some of N's needs and for such a

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<sup>13</sup> Doks A7, A7 A and A7B, A7C, A7D and A7E

<sup>14</sup> Doks. A8, A8A and A9.

purpose she would transfer €100 into Defendant's accounts. The rest of the salary was put aside to save for a future family property. To this Defendant adds that Plaintiff started purchasing winter clothes for N and he questioned it, since they had no plans of spending their winter in Latvia.

Plaintiff goes on to explain, how she kept on her studies in Pedagogie,<sup>15</sup> also how they settled into a life in Latvia, making friends, spending time as a family, also visiting her family members in Riga. N was loving her school and so was Defendant to have seen her settle so much.

To this Defendant rebuts Plaintiff's version in the sense that after he returned to Latvia things seemed to be calm, until on the 9<sup>th</sup> July, 2022, he received a message from Plaintiff wherein she informed him that one of them had to leave the apartment and she intended to stay in Latvia.<sup>16</sup> She also informed him that she wanted to move on in her private life. Since Plaintiff's wages were not high enough to pay rent and survive, they agreed that they would live together and try to make things work out. He refused to leave his daughter to chance.

At that point he was already aware that Plaintiff's actions and decisions would make their return to Malta, as originally planned and agreed, quite difficult. Plaintiff was making it difficult and being inconsistent, he insists as at times she would tell him he could return to Malta with N and at times she would tell him that she was keeping her with her. Meanwhile, he helped out with N, since Plaintiff worked longer hours than the school hours.

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<sup>15</sup> Dok.A10

<sup>16</sup> Dok. 8.1 – 8.3

According to Plaintiff, it was not until the end of November, 2022, that Defendant started to mention that he wanted to move back to Malta and after Plaintiff explained that both she and her daughter were very happy in Latvia and they had settled down, that he stopped mentioning it for a time. In fact, by December, 2022 they had started talking about having a second child.

Defendant mentions the period of November to be a difficult one as they argued because Plaintiff was not contributing towards the living expenses and moreover, she was using his credit card to pay the driving lessons. Defendant adds that Plaintiff refused to contribute and when he could not take the arguments any longer, he took the decision that he was going to book their flights to return to Malta. According to Defendant, Plaintiff refused to go, but she accepted that he takes N with him.

It was once again in January, 2023, after an argument that Defendant mentioned once again that he wanted to move back to Malta, with Plaintiff admitting that she resisted trying to explain to him that changing their daughter's routine would be very upsetting for her. He also made it clear that if he went back to Malta he was going back with their daughter N<sup>17</sup>.

However, she felt that this was the result of their argument, since on the 22<sup>nd</sup> January, 2023 they went to see property with the idea of renting long-term, from March, 2023 when it would become available. Defendant went along with the idea because he did not want another argument.

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Defendant goes on to explain that he was not happy with his situation, and he spoke to his HR Manager and his brother-in-law about his situation. He adds that his HR manager was concerned about his tax situation in Latvia as well as his permits in Malta, as she was under the impression that his permit depended upon his employment in Malta. He explains that he had never applied for his residency in Latvia since they had just gone on holiday.<sup>18</sup> He informed his brother-in-law TP that he was trapped in Latvia because he could not leave and go to Malta without N .

Defendant explains what led to his decision to book flights to Malta. Their arguments during such a period became worse and Plaintiff would insist that she wanted to keep N with her. He had no intention of renting out another property and he had informed Plaintiff, since he wanted to return to Malta, and he wanted to reach some compromise regarding N .

During such a time, it was Plaintiff who came up with the idea to go on holiday to Malta.<sup>19</sup> Reaching a point, when he wanted to commence mediation having already consulted a lawyer in Malta, he decided to accept the idea of a vacation in Malta, planning to commence the mediation on their arrival.

That same day, Plaintiff explains that Defendant booked flights for them three to return to Malta for a week between the 31<sup>st</sup> January and 7<sup>th</sup> February, 2023.<sup>20</sup> Plaintiff explains that Defendant had told her that this was an important holiday for them as a family. Originally, the plan was for

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<sup>18</sup> Dok. 10.2

<sup>19</sup> Doks. 11.1 – 11.4

<sup>20</sup> Dok. A 11

them to stay with his sister and her family, but then Defendant insisted that to have some privacy, they stay in a hotel for a couple of days.<sup>21</sup>

Plaintiff explained that they she had taken a week off from work, whereas she had informed N's teachers that she would be absent from school for a week due to them travelling. They also packed for a week.

When they were in Malta, precisely on the 1<sup>st</sup> February, 2023, they went to their friend's house, where they had stored their remaining belongings, but on their return to the apartment, Defendant refused to pack the things away. It was then on the 2<sup>nd</sup> February, 2023, that whilst Plaintiff went out to purchase some books for N , whilst she was sleeping, that Defendant asked her to buy some snacks on the way. It was whilst she was shopping that she received a message from Defendant, whereby he informed her that he had left the hotel with N since he had decided he wanted to remain in Malta and had no intention to return to Latvia. This is confirmed by Defendant, and he adds that he had informed Plaintiff that he was happy to sign an agreement with regards the care and custody of N .

It was then that she called the police and a few friends to accompany her to Defendant's sister's house where they were residing. Eventually, Defendant came downstairs and tried to justify that he took N because he did not like Latvia and although she begged him to sort things out because she loved him, he admitted that he no longer wanted to be with her.

Defendant admitted to her that this was all planned and whilst in Latvia he was in contact with a Maltese lawyer, who guided him accordingly.

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<sup>21</sup> Doks. A11A – ABB16

Meanwhile, Plaintiff states that she went to stay with a friend and would meet Defendant to breastfeed N . In a message that Defendant sent to Plaintiff on the 4<sup>th</sup> February, 2023 he confirmed that bringing them to Malta was all done deceitfully and trapping them here was planned. <sup>22</sup>

Once there was a warrant of prohibitory injunction in place, then Defendant started allowing Plaintiff to have N sleepover and this was on the 6<sup>th</sup> February, 2023. The following day they had planned to leave Malta, but Defendant refused to bring the minor to the airport, he refused to pass on her passports.

To this Defendant explains that once he had N living with him he kept contact with Plaintiff, who used to visit his sister's house to breastfeed her, but she kept on refusing to take her with her until Defendant gave her N' s passports. Her attitude was one of rudeness towards him and his family, so much so that his sister had asked him not to bring Plaintiff at her home any longer.

He confirms that on the 8<sup>th</sup> February, 2023, Plaintiff agreed to take N to live with her and he asked her to fix a schedule or to give him her word that she would not take N away from him, but she kept on ignoring his messages<sup>23</sup>, until on the 11<sup>th</sup> February, 2023, she had told him he could only see N every other day for two hours.<sup>24</sup>

However, by the 9<sup>th</sup> February, 2023, N was been living with Plaintiff once again and Defendant sees her every second day in a public area and in

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<sup>22</sup> Dok. A 12

<sup>23</sup> Doks15.1-15.2

<sup>24</sup> Doks. 15.2-15.6

Plaintiff's presence and moreover, they attempt at cooperating between them regarding the access.<sup>25</sup> However, she admits that there have been occasions when Defendant is verbally aggressive towards her, threatening her that he would make her life a misery and he also blamed her for everything that happened during their stay in Malta.

Plaintiff also explains that she had, through the help of her lawyers, filed an application to the central authority, to have the minor child returned to Latvia, but she had to proceed with this case on having been informed by the Authority, that since the child was with her they could not proceed with her application.

Plaintiff explains that whenever she would meet Defendant during access, she never knew what to expect. He started opposing her breastfeeding their daughter because she was not two years old, whereas he was never against it when they were living in Latvia. Defendant agrees to this as he believes that their daughter was over three and beyond the years of breastfeeding. Plaintiff adds that he also started to insult her and manipulate the minor child by playing with her until the bus turned up, leaving her upset as they would have to leave abruptly on the arrival of the bus.

He was also spoiling the minor child buying her lots of toys were as she was more interested in saving to have enough money to buy the basic needs for her daughter.<sup>26</sup>

Plaintiff also adds that Defendant still had his clothes and his electronic equipment in Latvia, together with all their other belongings and N 's.

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<sup>25</sup> Doks. A16 and A16 A

<sup>26</sup> Doks. REC

As a consequence of having come to Malta, thinking it was for a week, Plaintiff found herself in a situation where she had nowhere to live, no money and also without a job, so she sought the help of Appogg, who placed her in an emergency shelter, where she and N had to share the bed. They also had to spend the day out with their belongings and return at 18.00 hrs. This was all the result of the warrant of prohibitory injunction issued by Defendant.

Plaintiff goes on to explain that she and her daughter were only given six weeks to stay at the Emergency shelter, after which they had to move out. Through the help of her social workers Tasha and Caroline, they found her a room in a long term shelter in San Gwann and this was on the 26<sup>th</sup> April 2023 until the court case ends. They provide them with meals and also toys and clothes for N.<sup>27</sup>

To this Defendant explains that he was never informed by Plaintiff as to the changes in her residence. However, for the first month, following February, 2023, Plaintiff was always present when he went to see N, but at present, he meets Plaintiff and N and the former, goes away for the two hours access and then returns to pick her up.

Plaintiff adds that despite her and her daughter living in a shelter, Defendant did not bring any snacks or food for N and it was only after the 20<sup>th</sup> April, 2023, when Defendant filed the lawsuit, that he started to send her €200 monthly and he started bringing snacks and food.

Plaintiff claims that all this has led to a great deal of instability in their daughter's life and has caused confusion moving from one shelter to

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<sup>27</sup> Dok. A18

another, whereas Defendant is living with his family, is secured with a job and having finances to fight this lawsuit, whilst she has to depend on her savings.

Defendant explains that although he was granted access to his daughter, Plaintiff was refusing to allow N close to his family, in particular his sister and in his affidavit he mentions various incidents where she was present knowing that his family members were around and wanted to interact with N

2. **IT**, a friend of parties explains that she was aware of their plans to move to Latvia, to see whether it would work out and they went there with no particular period in mind. They had no plans “written in stone” when they went there.

She also states that she was in virtual contact with Plaintiff and she could recall a moment when the family mentioned that they had plans to return to Malta, but on the other hand they felt the life and environment was better for bringing up N .

She also confirmed that she was aware Plaintiff worked as a teacher in a kindergarten that N attended.

She visited them in Latvia in December, 2022 and she could see that they were very happy there and she had also asked Defendant being Serbian whether he had managed to settle there to which he replied that he was good as it was similar to Serbia. At no point did they mention that they had intentions to move back to Malta, except that they were planning a holiday between the 31<sup>st</sup> January, 2023 and 7<sup>th</sup> February, 2023.

On the 2<sup>nd</sup> February, 2023 she confirms that she had received a message from Plaintiff whereby she informed her that she could not meet up with her on the 4<sup>th</sup> February as planned, since Defendant had taken N away from her and he was insisting that they stay in Malta.

Ever since Plaintiff has remained in a shelter, she has helped her with things for N.

3. **R K** , Plaintiff's relative confirms Plaintiff's version that when the parties had moved to Latvia, they had plans to stay there as they had taken up a lot of their belongings, so much so she adds that Defendant had to get a taxi when they landed in Latvia, to help carry the luggages, She had gone to help pick them up from the airport. She denies that they just had two backpacks and 2 hand luggages, there was much more as well as two buggies. The car she picked them up with had a large trunk. They had brought clothes and toys and not just summer clothes.

She also confirmed that they used to meet up quite often with parties since they lived in Riga and she also confirmed Plaintiff's version that N was happy attending kindergarten and so was Plaintiff since she worked as a teacher there.

On the occasions she had spoken with Defendant he had expressed his happiness at being in Latvia, because of the clean air and green grass and that he was considering the thought to stay in Latvia. She admits that from talking with Plaintiff before they went to Latvia, she had told her that they were considering moving there.

4. **M S**, a friend of Defendant since 2021 confirms most of the Plaintiff's version regarding the period that they planned to move to Latvia. She explains that she was aware that the parties had gone to Latvia for an unknown period of time with the possibility of stabilizing their life in Latvia at least for a couple of years.

She also explained that in her discussions with the parties, they made it very clear that they felt it was important that their daughter N speaks the mother tongue of one of the parents, so they were pleased she was attending kindergarten and learning the Latvian language, although on being cross-examined she states that this is her opinion.

She also confirms that she was aware that Plaintiff had ended her relationship with Defendant twice, but she was unaware that their main disagreement was on their returning to Malta. Nor did she ever hear them state that they were staying in Latvia permanently, However, she had noticed that in their apartment there were a lot of toys for N .

6. **SA** is a friend that Plaintiff made through her daughter's school mates. She explains that they used to meet often since their children were friends, but she used to frequent Plaintiff more than Defendant.

She was present at N's birthday party and she could see that both parties were good parents, who loved their daughter very much. They were both very positive and pleasant parents.

She also confirmed that Plaintiff ensured that their daughter would not be picked up last from school and many times she contacted her to know what time she was going to pick up her child. She could not tell whether



Defendant picked up his daughter more, because at times N would have already been collected from school before she arrives.

She confirms that she never spoke with Plaintiff as to their plans on how long they planned to stay in Latvia.

7. **A U** , also a parent with whom Plaintiff made friends through the kindergarten which her daughter attended and where she taught. She states that when she had conversations with the couple they had expressed their desire to bring up their daughter away from Malta, mainly because it lacked a lot of greenery and space. They felt it was better bringing their daughter up in Latvia. This is what she understood to be the reasons behind their conversations, She never heard Defendant speaking negatively about Latvia and they seemed settled and happy there and she never recalls that they had any intentions of returning to Malta. On being cross-examined, she admits to never having heard them state that they intended staying in Latvia forever.

8. **KS** is an old friend of Plaintiff and she was the one who had found the apartment they rented out when they went to live in Latvia. She explains that when they arrived in March, 2022, they had rented her boyfriend's flat and from the conversations they had, as they frequented each other regularly, she understood that they had decided to go to Latvia for an indefinite time with the possibility of settling down. The parties never mentioned that it would be for a short term.

She confirms that she was aware that Plaintiff had broken up their relationship and at this time N was around one year old and it was

during the period between having gone to Serbia and before they went to Latvia.

They also mentioned that they moved to Latvia so that N would have a better life in general and she could learn Latvian. They also intended to send her to a kindergarten there not in Malta. She states that she never heard them mentioning that they had plans to return to Malta.

She confirms that Defendant always spoke very positively about Latvia as the air was much more purer than Malta. She denies that he complained of the harsh winters in Latvia. He also used to give the impression that he was happy as long as he was with N and Plaintiff. He only complained of his working hours and at times he worked over-time and this was tiring him. She was aware of this due to him saying this.

She also concluded that they were happy and planned to stay on because they had brought over most of their belongings and once they had started to send N to kindergarten, where Plaintiff also worked. She states that she was not aware that Defendant wanted to send her to kindergarten because, unlike Malta there were no children with whom she could interact.

She explains that there was an occasion when Plaintiff had asked her to recommend a couple's therapist because she wanted to improve her relationship with Defendant. This was around December, 2022, when during the same period Plaintiff had also told her that they were planning to have a second child. On being cross-examined she confirmed that Plaintiff had broken off her relationship with Defendant in July 2022. She also confirms that she never discussed the break up with Defendant.

By then from the conversations she was having with the parties she felt that they intended to stay in Latvia and settle there. They were very happy that N, had settled at school and made friends.

She confirms also having a conversation with Defendant, when he admitted that he did not intend to move to Serbia because he had experienced bad company there and did not intend to pass through the same experience.

The last thing she knew was that what was meant to be a week holiday in Malta, to which Plaintiff was looking forward, ended up with problems, since Defendant had taken N away from Plaintiff and refused to return to Latvia. This she got to know after Plaintiff had contacted her.

8. **G O** , is the landlord of the apartment that parties had rented out in Latvia, precisely Zvejnieku, 21-14, Carnikava, Adazu nov. LV -2163. He confirms that the parties had rented out the apartment from the 3<sup>rd</sup> March, 2022 for an indefinite period and there was no written rental agreement because Plaintiff was a friend, mainly of K S from whom he had two children. He denies that Defendant had asked for the rental period to be till the end of summer 2022.

He also adds that for the past 11 months (from when he testified)\_ he had received monthly rents in the amount of €300 from Defendant through Revolut. He confirms that he was never informed that the rent was terminated.

He adds that when he entered the apartment on the 5<sup>th</sup> February, 2023, he had found all their personal belongings, as well as those of their daughter. The fridge was full of food as well as the pantry was well-stocked.

In a further affidavit, he confirms that the said apartment is still available for Plaintiff and her daughter for an indefinite period, although temporarily he was aware that they were living in Malta. Meanwhile, Plaintiff is paying the rent of €400 monthly until November, 2023.

9. **S S** confirms that she is the owner of a cottage “Rožu, 24, “ Carnikava, Adazu, nov. LV 2163 and that the parties had gone to view it as they had expressed their interest to rent it for at least one year, starting from March, 2023, when it would become available for rent once again.

10. **H B** became a friend of parties when they moved to Carnikava. He confirms that he had never heard the parties mention that they wanted to return to Malta, but on the other hand, Defendant had told him that Malta did not work out for them and Latvia was much better.

From the conversation he had had with Defendant, when they happened to go to the beach together, he understood that they had moved to Latvia, although he never mentioned that they were there forever.

11. **EMA** is Plaintiff’s nephew. He confirms that from the conversations he used to have with the parties, Defendant never mentioned that he wanted to go back to Malta. In fact, he complained that Malta was too overcrowded. They never said that their stay in Latvia was for a limited period and they seemed happy and settled well, giving the impression that they were there forever.

12. **M K** was an ex-colleague of Defendant who remained in contact with him. He said that they had last met in February, 2022 and they discussed their plans for their life. The parties mentioned that they planned to travel as much as they could before N would start school.

After their last vacation in Serbia and in Latvia, they came back to Malta, as that is where they were living and he explains that Defendant had opened up with him that his relation with Plaintiff was not so good and that she was threatening to take the child away from him,

On cross-examination he mentions that Defendant had spoken to him about these problems after they came to Malta from Latvia and it was around February 2023. He denies that they had moved to Latvia and he insists that they had only went for a couple of weeks for a vacation and to visit the family.

He denies not being aware that they were in Latvia for a year and he explains this because although they were good friends they were not always in contact as they both had their lives.

13. **I P**, Defendant's sister states that she was very close to the parties, especially since they had spent about a month living with her around August/September, 2021. She explains that the parties intended to travel a lot especially since N was still young. They had travelled to Serbia, then returned to Malta, then they went to Latvia, where they had plans to spend about five/six months, but they never planned to stay there permanently. This was confirmed by the parties according to her.

She also confirms that once they were in Latvia, she used to speak to Defendant on a daily basis, but he did not mention that he was unhappy, but he was opening up with her husband. They told her that they did not want to worry her, since Defendant was having problems with Plaintiff who was insulting him and she wanted to leave him with or without N .

She added that the parties had been in Latvia between March 2022 and January 2023. On their return on the 2<sup>nd</sup> February, 2023, they had spent some time in a hotel and then Defendant left with N , informing Plaintiff that he was refusing to return to Latvia, because the plan was never to stay there permanently.

Plaintiff was going to their apartment to breastfeed the child, but since they were arguing each time, she informed Defendant to meet Plaintiff elsewhere. At present she confirms that N is residing with Plaintiff and she grants around two hours access and sometimes more to Defendant.

14. **Louis Buhagiar** in representation of Jobsplus exhibited the employment history of the parties.<sup>28</sup>

15. **TP**, Defendant' s brother-in-law confirms that he was close to the parties, especially since they spent some time living with them. He also confirmed that they intended to travel a great deal and they had spent some time in Serbia around five to six months. They then returned to Malta and planned to return to Serbia, but because of the Covid restrictions, they changed their mind and they decided to go to Latvia. Between the time they went to Serbia and Latvia, the parties lived with them.

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<sup>28</sup> Doks. LB 1 and LB 2

He confirms that the parties had plans to stay in Latvia for around five or six months and in fact they had left quite a lot of their belongings at their flat and also at an apartment belonging to their friend.

He explains that apart from being relatives, Defendant and him were colleagues and so they spoke daily. Defendant had told him that their situation in Latvia was worse than when they were in Malta. He also informed him that Plaintiff had no plans to come back to Malta and she had also informed him that she wanted to end their relationship. Defendant was concerned because the original plan had always been to come back to Malta.

16. ZN is Plaintiff's friend as they were colleagues. She admits that the parties had lived with her and her partner for a period because they were travelling between Serbia and Latvia and for the time they were in Malta they needed a short stay. She also explains that since Defendant was working remotely, they could travel, so they decided to go to Latvia to see what it is like living there.

She also adds that they were undecided about their plans, but they were not planning to come back to Malta. They also had in mind two other different countries. They used to discuss these matters, since they lived together.

She also confirmed that Defendant had gone to their house because they had stored some of their belongings, amongst which his computer, which he had gone to collect.

She also explains that when the parties had come over to Malta for a week, after two days that they had been here, Plaintiff called her to inform her that Defendant had taken N away from her and he moved to his sister. So, she confirms that she had accompanied Plaintiff to try to get her daughter back, but they had to ask for the assistance of the Police. The Police had informed them that what Defendant did was legal and also when she spoke to Defendant he admitted with her that he had been planning this, after he had taken legal advice.

After this incident, she states that Plaintiff had spent some time living with her and when Defendant gave her back their daughter, she moved in with some other friends for a while, but eventually she stayed in a home, where she had curfews with the times. Presently she could confirm that Plaintiff and her daughter were living in a home in San Gwann.

17. **ELS** is Plaintiff's friend and she was also an ex-colleague. She explains that there was a time when the parties broke up and Plaintiff lived with her and her family for around three weeks. At the time they already had N and she confirms that the parties used to meet regularly despite their break up.

It was when they got back together that they took the decision to move to Latvia, as due to the Covid restrictions it was difficult to go to Serbia and they chose Latvia instead. They planned to go and see whether it would work out.

From her conversations with Plaintiff they seemed to be settling down and she had found a job at the same kindergarten which N attended.



She recalls that when the parties had come over to Malta for a week, they had planned to meet up in Sliema. Whilst Plaintiff was doing some shopping that Defendant requested from her, she received a message from him whereby he informed her that he had left the hotel and took N and that he was not going to allow her to see the child until there was a Court decision, Obviously, they were all shocked with this message.

She knows that Plaintiff had gone to check at Defendant's sister's residence, where he was infact with N , but he refused to let her in according to what Plaintiff told her.

She admits that all came as a big surprise because she was under the impression that they were happy and settled in Latvia. She also adds that for a while Plaintiff had lived with her and her family. During such time, Plaintiff used to go out to meet Defendant with N , There were occasions he came to their place, but since he worked she was not always aware of what was happening.

She also confirmed that Plaintiff had told her that they had taken the most important belongings, but they had left some of them with a friend.

She also confirmed that she was aware that Defendant had access to the child for two hours every alternate day.

17. S K explains that in 2022, the parties had gone to her office to ask about enrolling their daughter in the kindergarten. Also, she confirms that Plaintiff had sent her an email with her cv inquiring about a vacancy as a teacher assistant. She was eventually employed as a teaching assistant, but since she was hardworking and always on time, she personally asked her

to take some courses so she could start working with them as a teacher. Her income was that of €650 a month.

She confirms that Plaintiff started working with them on the 1<sup>st</sup> September, 2022. She also confirms that Plaintiff had applied for leave between the 30<sup>th</sup> January, 2023 and 7<sup>th</sup> February, 2023 because she was going on a vacation to Malta. Later, she informed her about Defendant taking N away from her and refusing to leave Malta and she states that she was very upset and tried to help her.

At present they have retained her employment as she is a good teacher and she is registered as being on unpaid leave, however this lasts for a certain period which is about to elapse and she would have to see how to tackle the situation.

As to N she states that she was very happy at school and at present she is still considered to be their student, but there are limitations on the time-period.

When she was going to be absent from school in January 2023, Plaintiff did message her to inform her about it. The first time she had informed her of absenteeism was for the period 13<sup>th</sup> March to 13<sup>th</sup> June and this would require her approval. As to when they travelled to Malta, Plaintiff had verbally informed her that N would be with her to justify her absence.

18. Caroline Chircop, in representation of Agenzija Appogg confirms that Plaintiff had contacted Appogg on the 18<sup>th</sup> February, 2023 asking for support in view of her situation, where she was meant to return to Latvia

on the 7<sup>th</sup> February, 2023 and instead she was stuck here because of Defendant who had taken N away from her.

She assisted her with finding accommodation since she did not have the financial means. She found a place for her in a residential setting on the 16<sup>th</sup> of March. She had referred her to another residential home due to the fact that her previous accommodation could only keep her for six weeks. It was an emergency shelter, where she could only return at night. The new residential home has carers all day round.

She also added that she had around three sessions with Plaintiff and she had no reservations on the child, who was always well kept and well dressed.

19. **LFC** in her capacity as HR Manager of Loqus Group, Loqus Services Limited confirms that Defendant is an employee of the said company. She states that in April, 2021, Defendant had made a request to be able to work remotely and she had referred the matter to the senior management who had approved it. The request was made for a couple of months because he and Plaintiff planned to visit their respective families in Serbia and Latvia and this because they had had a child.

In June 2022, she had reached out to Defendant to determine whether the visits abroad were going to last longer without her knowledge and whether the set up with their company was still valid. He confirmed that he was still a resident in Malta and he was well within his travel limits as he had confirmed with the relevant authorities.

She adds that as far as she was concerned Defendant always had the intention to return to Malta, there were no intentions to stay for a longer term.

In August 2022, she explains that she was contacted by Defendant and he also spoke to the CEO where he opened up about his relationship problems with Plaintiff, who expressed the wish not to return to Malta and she wanted sole custody of the child.

She also confirmed that Defendant was paying his taxes and national insurance here in Malta and this since the date of employment 1<sup>st</sup> February, 2021.

20. S S , Plaintiff's sister explains that she was aware that the parties had gone to Latvia as a trial to live there as this is what Plaintiff told her. She agrees that Defendant never stated that they were in Latvia to stay forever. However, she could tell from the fact that N started nursery and also Plaintiff was working. There was a time when they were thinking of moving to Riga, where she lived and they were planning to go in September, 2022, however, at the beginning of summer Plaintiff had contacted her and informed her that they had decided to stay in Carnikava because they liked the life there.

She affirms that she had never heard them mention any plans of moving to Malta, although their future plans were not carved in stone.

She was also aware that they had left some of their belongings in Malta at a friend and they planned to bring them over when one of them went over to Malta.

She had attended N's second birthday celebration and when she spoke to Defendant he had told her that he was enjoying the orderly life in Carnikava and he was learning the Latvian language.

She confirms that she was aware that there were problems in the parties' relationship, but she was not aware that it concerned their residing in Latvia. She also admits that she was aware that Plaintiff was still receiving childrens allowance from the Maltese government, but she was never aware of the fact that Defendant never applied for a visa whilst in Latvia.

She was very surprised when Plaintiff had called her whilst they were meant to be on vacation in Malta in January 2023 to inform her that Defendant had taken N away from her and he was insisting that he wanted to stay in Malta. Ever since she has been in contact with her regularly.

### **Having Considered,**

The cases initiated by the respective parties regards the care and custody of the minor child N , both parties requesting to be granted the minor child.

The Court insists of first pronouncing itself on the issue raised by Plaintiff on "illegal retention." The case in question is definitely not one of "illegal retention," despite the fact that Plaintiff was tricked in one way or another when coming to Malta, believing she was coming here on vacation with her family, as she had initially proposed.

The case in question very clearly is a custody case no more no less and it is from this perspective that the Court will considering its judgement.

## Care and Custody

The Maltese Courts have pronounced themselves several times on the matter of the care and custody of minor children. The Court is going to reproduce verbatim a brief collection of such cases, in the Maltese language:

Illi huwa ritenut fil-gurisprudenza taghna li f'decizjoijiet li jirrigwardaw minuri bhal dawn ghandu jipprevali fuq kollox l-aqwa interess tal-minuri. Infatti, fil-kawza fl-ismijiet **M. Bonnici vs Onor J. Raynaud**<sup>29</sup> gie dikjarat li: *“Il-principju li ghandu jipprimeggja, meta l-Qorti tigi biex taghti provvedimenti dwar il-kura tat-tfal huwa dak li huwa suggerit mill-aktar utilita’ u dak tal-aqwa vantagg ghall-interess tal-istess tfal,”* kif ukoll ghall-kawza fl-ismijiet **Dr. V. Randon vs J. Randon u Scifo Diamantino vs M. Scifo Diamantino** fejn gie ritenut li *“r-regola generali f’din il-materja hi l-ahjar interess u vantagg tat-tfal”*.

Fil-kawza **Jennifer Portelli pro.et noe. vs. John Portelli**<sup>30</sup> intqal: *“Jinghad illi l-kura tat-tfal komuni [tal-mizzewgin], sew fil-ligi antika u sew fil-ligi vigenti, kif ukoll fil-gurisprudenza estera u f’dik lokali hija regolata mill-principju tal-aqwa utilita’ u l-akbar vantagg ghall-interess tal-istess tfal li c-cirkustanzi tal-kaz u l-koefficjenti tal-fatti partikulari tal-mument ikunu jissuggerixxu. Illi in konsegwenza, ir-regola sovrana fuq enuncjata ghandha*

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<sup>29</sup> *Deciza 25/06/2003 mill-Prim Awla tal-Qorti Civili Ċitazz Numru2668/1996/2RCP*

<sup>30</sup> . *Rik.Gen.Nru.:571/2021JPG*

*tipprevali dwar il-kustodja u l-edukazzjoni tat-tfal komuni tal-mizzewgin meta jisseparaw ruhhom ġudizzjarjament, sew meta jiġu biex jisseparaw konsenswalment.”*

Fis-sentenza fl-ismijiet **Maria Dolores sive Doris Scicluna vs Anthony Scicluna** deciza mill-Prim'Awla tal-Qorti Civili fis-27 ta' Novembru 2003 intqal illi:-

*“apparti l-ħsieb ta' ordni morali u dak ta' ordni legali, li għandhom setgħa fil-materja ta' kura u kustodja tat-tfal in ġenerali, il-prinċipju dominanti 'in subjecta materia', li jiddetermina normalment u ġeneralment il-kwistjonijiet bħal din inserta f'dina l-kawża, huwa dak tal-aktar utilita' u dak tal-aqwa vantaġġ u nteress tal-istess minuri fl- isfond taċ-ċirkostanzi personali u 'de facto' li jkunu jirriżultaw mill-provi tal-każ li jrid jiġi riżolut...”*

Illi fil-kawża fl-ismijiet **Susan Ellen Lawless vs. Il Reverendo George Lawless** il-Qorti kienet qalet illi:-

*“ La cura ed educazione dei figli, nel caso che la moglie non continua ad abitara col marito, deve essere commessa ed affidata a colui frai u conjughi che si rinconoscera piu atto ed idoneo a curarli ed educarli, avuto riguardo alla lora eta' ed a tutte le circostanza del caso sotto quei provvedimenti che si reputino spediti pel vantaggio di tali figli. Illi kif kellha l-okkazjoni ttenni*

*din il-Qorti diversi drabi, l-interess tal-minuri huwa iprem mid-drittijiet tal-genituri.*”<sup>31</sup>

Illi fid-decizjoni ta’ din il-Qorti diversament presedita fis-sentenza fl-ismijiet **Frances Farrugia vs. Duncan Caruana**, deciza fil-31 ta’ Mejju 2017<sup>32</sup> il-Qorti qalet hekk:-

**“ Il-Qorti tirrileva illi filwaqt li dejjem taghti piz ghad-drittijiet tal-genituri, l-interess suprem li zzomm quddiemha huwa dejjem dak tal-minuri kif anke mghallma mill-gurisprudenza kostanti taghna hawn ‘il fuq iccitata.”**

In tema legali ssir referenza ghall-kawza fl-ismijiet: **Cedric Caruana vs Nicolette Mifsud**<sup>33</sup> fejn il-Qorti enfasizzat li fejn jidhlu l-minuri: *‘huwa ta’ applikazzjoni assoluta l-Artiklu 149 tal-Kap 16 li jaghti poter lill-Qorti taghti kwalsiasi ordni fl-interess suprem tal-minuri. Fil-fehma tal-Qorti, l-Artiklu 149 tal-Kap 16 jaghmilha cara illi fejn jikkoncerna l-interess suprem tal-minuri, idejn il-Qorti m’hiex imxekla b’reboli stretti ta’ procedura... fejn jidhlu d-drittijiet u l-interess suprem tal-minuri il-Qorti taghna ghandhom diskrezzjoni wiesgha hafna.... Addirittura l-Qorti tal-Familja ghandha s-setgha li tiehu kull provvediment fl-ahjar interess tal-minuri.’*

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<sup>31</sup> Deciza mill-Prim Awla tal-Qorti Civili fil- 8 ta’ Dicembru 1858.

<sup>32</sup> Vide Rikors Ġuramentat 268/11AL.

<sup>33</sup> Rik.Gen.Nru:571/2021JPG



Fi kliem il-Qorti tal-Appell fis-sentenza fl-ismijiet: **L Darmanin vs Annalise Cassar**:-<sup>34</sup>

*“.....meta tigi biex tiddeciedi dwar kura u kustodja ta’ minuri, il-Qorti ma ghandhiex tkun iddettata u kondizzjonata mil-meriti u dimeriti tal-partijiet ‘ut sic’ izda biss x’inhu l-ahhjar interess tal-minuri”.*<sup>35</sup>

Din il-Qorti taghmel referenza ghall-pronunzjament tal-Qorti tal-Appell (Sede Superjuri) fid-decizjoni tagħha tal-25 ta’ Novembru 1998 fl-ismijiet: **Sylvia Melfi vs. Philip Vassallo** irriteniet li:-

*“In this case the Court must seek 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 Court should at all times seek the best interests of the child irrespective of the allegation, 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. Exaggerated controversies between the parties often make one wonder how much the parents have at heart the interest of their children. Sometimes parents are only interested at getting at each other and*

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<sup>34</sup> Deciza mill-Qorti tal-Appell fil-31 ta’ Ottubru 2014.

<sup>35</sup> Rik.Gur.Nru.: 206/2018 JPG

*all they want is to pay back the other party through their minor child.”*

Parties met whilst working as waiters with the same company and some months into their relationship Plaintiff discovered that she was pregnant. She initially had intentions to have an abortion because she did not feel it was the right time to have a child, since she still wanted to travel, but Defendant managed to talk her out of it.

Nora was born on the 15<sup>th</sup> October, 2020. The parties then decided that since N had not started her compulsory schooling, they could travel by visiting their respective families, since Plaintiff was Latvian and Defendant was Serbian so they would get to see N. They afforded to this because Defendant was given the opportunity to work remotely with Loqus group.

They visited Serbia first and the plan was to spend some five/six months there. They came down for N 's birthday and when they were planning to return to Serbia, the Covid restrictions made it difficult to go there, so instead they opted to go to Latvia. It is in this context that the respective parties tend to disagree. For Plaintiff they went there for an indefinite period to determine whether she and N would be able to settle there. On the other hand, Defendant claims that the plan was to spend around five months there and then return to Malta.

Plaintiff produced various friends as witnesses who confirmed that the parties had settled into a life in Latvia and discussing with the parties themselves, the feedback they got was that they moved to Latvia because they felt it was a better environment where to bring their daughter up, as Malta has become overcrowded. Plaintiff's Latvian friends all seem to be

consistent wherein they claim that Defendant had confessed that he loved the greenery and nature in Latvia and was glad that he was bringing up his daughter in this environment. Although none of the friends confirmed that the parties were there forever in Latvia, they all seem to be in agreement that they were there for an indefinite period of time.

Moreover, from the various emails exchanged between Defendant and LF C, HR Manager of Loqus Group, where Defendant worked, it transpires that the parties did not have plans to spend more than five months in Latvia and together with her he clarifies issues related to income tax and working permits.<sup>36</sup>

From the evidence it transpires that the parties' relationship was not really working out and they had problems and their ups and downs. To this effect, Plaintiff had in fact informed Defendant of her intentions to stay on in Latvia through a message she sent him on the 9<sup>th</sup> July, 2022, since she had found a job as a kindergarten assistant and she was also able to enrol N at the same school, which she in fact attended and settled in nicely. In the same message,<sup>37</sup> Defendant acts surprised stating "***So did we just decide we are staying and living in Latvia?***" to which Plaintiff replied - "***You may leave Latvia but I have work starting in September and N kindergarten.***" Plaintiff's intentions of staying permanently in Latvia are very evident, though it emerges that at that point she was unsure as to whether to retain N with her. In the same message, she states "***I am not holding her,***" but Defendant resists foreseeing what was in the child's interest and decides he would not leave Latvia with N, without having her mother present. However, Defendant himself admits that Plaintiff herself was totally

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<sup>36</sup> Vide Defendant's affidavit a fol. 203

<sup>37</sup> Vide Defendant's affidavit a fol.151

confused as to where N should be. In Defendant's own words, "*A's stance regarding this was not consistent, in the sense that one day she would tell me that I can simply return to Malta with N, whilst the next day she would just say, that N is staying in Latvia and will be going to kindergarten in Latvia. This situation kept on dragging for months.*"

Defendant admits that "*A's actions and decision would make our, or at least my return to Malta with N, as originally planned and agreed difficult.*" His intentions were clearly to move back to Malta, as they had never planned to stay in Latvia permanently. When he had suggested to Plaintiff to seek a job, the intentions were for them to raise sufficient funds to be able to afford to rent a place once the original plan was to return to Malta at the end of summer.

Clearly, Plaintiff was not really interested in this idea and was simply seeking to find a job to have a further justification to stay in Latvia. In fact, she could have commenced her job in July, 2022, but instead she chose to start in September, 2022 when they were planning to return to Malta.

Defendant justifies his lingering on in Latvia, to help out with the expenses, because Plaintiff's income was not enough to cover the rent of the flats and to give themselves time to sort themselves out, with Plaintiff insisting that she wants her own life and wants to date other men.

Understandably, if their relationship broke down there was nothing keeping Defendant in Latvia, except his daughter, however from the evidence produced, it is clear that he utilised his time there contacting his lawyers in Malta to plot a plan to bring N to Malta with him. It was Plaintiff herself who gave him the opportunity as she agreed to go on what was

intended to be a vacation in Malta, but in reality was a “trick” to keep his daughter and Plaintiff in Malta.

This is admitted by Defendant himself who states:-

***“I did, if I can say so, tricked her into coming here, but it was not my idea first of all, two months ago, she started an idea to come to Malta for a vacation, but following the discussion in the park, when she said she doesn’t want fifty fifty, I decided that, not decided, I felt that I had no choice than to trick her into coming, and starting the proceedings.”***

Evidently, Defendant had it all well-orchestrated, in the sense that for the first two days he booked a hotel, so he found the right time by sending Plaintiff to purchase some stuff and meanwhile, he left the hotel with N, only to inform Plaintiff that he took their daughter and he had decided that they were going to stay in Malta. To safeguard this position even further, Defendant issued a warrant of prohibitory injunction to prevent Plaintiff from taking their daughter out of Malta.

As a result, Plaintiff found herself imprisoned here, seeking to find a place to reside with her daughter, because meanwhile, Defendant consented to giving her the child, only to end up living in a shelter. Admittedly, Plaintiff has no job in Malta, because she had all intentions to remain living in Latvia and that is where she had found a job, which still awaits her. Moreover, she has limited finances to fight this court case, unlike Defendant who stands all to gain because he has an employment here in Malta and a place to reside.

In cases of care and custody, the Courts holds supreme what is considered to be the best interests of the child and in such a case, the circumstances in which the child was brought to Malta are unfair. She had made her friends and had settled into a routine attending school. This was all uprooted, understandably by a father who did not want to stay away from his daughter, but equally, his egositic reasons also brought a sense of suffering towards the child, who is also being denied a decent home, having to live in a shelter and left in limbo due to this case.

In Latvia she is guaranteed a school and also Plaintiff is guaranteed a job, where headmistress confirmed that she is a very good teacher and they do not want to lose her. Plaintiff also has a group of friends who have children N's age, that create further interaction for the child.

Nonetheless, despite having orchestrated the whole removal of the child from Latvia, Defendant did not deprive Plaintiff from seeing their daughter, so much so that once the precautionary warrant was in place he gave her N but did not offer her a place to stay, nor did he rent out an apartment, thinking what would be the best environment for his daughter. He simply brought her to Malta and left Plaintiff to her own devices, struggling to make sense of what was meant to be a holiday and what turned into a nightmare.

One understands, that neither party wants to deprive the other from seeing the child, but they want to spend their lives in different directions, but the Court will not allow this to take place to the detriment of the child.

Thus, considering that Plaintiff is Latvian, she has a job to return to and also the child is guaranteed schooling, in the same place, where her mother

works as an alternative to being in Malta with Defendant, who although can work remotely, the minor would end up being more with her aunt than with Defendant, when ultimately there is her mother who can take care of her.

Ultimately, the Court favours that the care and custody be given to the Plaintiff and the child be returned to Latvia, within one week from judgment.

### Access

Similarly, on the subject matter of access, the Maltese Courts have also pronounced themselves many times, as reproduced hereunder:

Illi din il-Qorti taghmel taghha b'mod partikolari l-insenjament tal-Qorti tal-Appell fil-kawza fl-ismijiet: **Miriam Cauchi vs Francis Cauchi deciza fit-3 ta' Ottubru 2008** fejn gie korrettement osservat illi:-

*“Din il-Qorti tibda biex taghmilha cara li, fejn jidhlu minuri, m'hemmx dritt ghall-access, izda obbligu tal-genituri li t-tnejn jikkontribwixxu ghall-izvilupp tal-minuri li ghal dan il-ghan, jehtigilha jkollha kuntatt ma' ommha u anke ma' missierha. Kwindi lil min jigi fdat bil-kura tal-minuri u kif jigi provdut l-access jiddependi mill-htigijiet tat-tifla u mhux mill-interess tal-genituri. Huma l-genituri li jridu jakkomodaw lit-tfal, u mhux viceversa. L-importanti hu l-istabilita' emozzjonali tat-tifla, u li din jkollha kuntatt mal-genituri taghha bl-anqas disturb possibbli.”*

Undoubtedly the circumstances of this case are very delicate and although it granted the exclusive care and custody to the Plaintiff, it never doubted for one moment the genuine love and care that Defendant has towards his daughter N. Despite egoistically tricking Plaintiff and his daughter to coming to Malta, his intentions were also motivated by the love for his daughter, to whom he was not ready to renounce to and the best solution was to bring her to Malta with her mother and retain her on the Maltese Islands.

Nonetheless, the Court has been faced with the parties wanting to live in two different countries, precisely Latvia and Malta, but the Court's function is to uphold the best interests of the minor child and not to stretch her over and beyond to please the parents. They are adults and they have every right to make their choices, but these decisions cannot afford to be self-centred, because ultimately they can prove to be detrimental to the interests of the minor child.

The Court chose to grant the care and custody to Plaintiff for these reasons, because the child was settling in Latvia, attended school, had friends and she was also following her vaccine programme there. Her only contact and interaction with Malta is her father and his relatives, who undoubtedly all love and care for the minor.

Considering that Defendant had a bond with N, this Court in no way would like to eradicate it, but on the contrary, she encourages that this bond gets stronger and the stability be maintained and considering all the abovementioned circumstances, the Court determines the following access arrangements:-



- i) N ' s passports are to be held with Plaintiff;
- ii) Plaintiff will have every right to apply for the minor's passport renewal, without Defendant's consent.
- iii) Access will be exercised during the holidays, precisely the Christmas holidays and Easter holidays whereby Defendant will have access for a whole week for each respective holiday.

During the summer months Defendant shall be granted a period of two weeks access to the minor child N.

This access must always be exercised in the presence of Plaintiff.

In all these instances, the travel arrangements for the said access to be exercised must necessitate alternative travel by the respective parties, in the sense that if Defendant travels for the Christmas holidays to spend a week with the minor child, he has to bear such expenses and for the following Easter holidays, it shall be the Plaintiff to travel to Malta with the said minor child and she shall bear all the travel expenses.

- iv) For all other periods, there shall be contact on a daily basis through video calls for a period of 30 minutes, unless the parties agree otherwise;
- v) After the child reaches the age of ten years, Defendant shall be able to travel with the minor child alone, in which case a passport must be issued solely for the said trip. Plaintiff must be notified two months before of the said trip and Defendant must oblige himself to provide all the necessary information regarding flight details, accommodation details and Defendant must oblige himself to communicate with Plaintiff at least once daily such as to allow communication with the minor child.

## **DECIDE:**

Having considered all the above, the Court concludes and decides as follows:-

- i) Upholds Plaintiff's first claim and orders and declares that in the interest of the said minor child, parties daughter NM be granted her full care and custody.
- ii) Upholds Plaintiff's second claim and authorises Plaintiff to leave Malta within a week from the said judgment and she is also authorised to take with her the said minor child NM in order to continue to live with her in Carnikava, Latvia and this notwithstanding all orders otherwise obtained by the parties or either one of them after the issue of the prohibitory injunction to stop a person from taking a minor outside of Malta.
- iii) Upholds Plaintiff's third claim and authorises Plaintiff to withdraw all passports of the minor child NM which was deposited under this Honourable Court's authority in the records of the Prohibitory Injunction numbers 32/2023/2 by order in the sense on the 7<sup>th</sup> of February, 2023.
- iv) Upholds Plaintiff's fourth claim and authorises her, if such is needed, to travel with the minor child NM from Malta to Latvia, as will eventually be ordered as requested in the preceding request, in order that on her own and without the need of Defendant's consent or participation, applies for and receives passport, visa or other document

of whatever nature that is needed in order that the said minor NM , be able to enter Latvia and lives in Latvia and also in order that the minor NM stops and enters in all countries needed in her journey between Malta and Latvia.

All expenses are to be borne by Defendant, including those suffered in the mediation proceedings and those of the prohibitory injunction number 32/2023/2.

**Hon. Mr. Justice Dr. Anthony J. Vella**

**Registrar**