



**QORTI ĊIVILI
(SEZZJONI TAL-FAMILJA)**

IMĦALLEF

**Onor. Abigail Lofaro LL.D., Dip. Stud. Rel.,
Mag. Jur. (Eur. Law)**

Today 30th May, 2024

Sworn Application: 87/23AL

A B C

vs.

- 1. D E**
- 2. F G B C** by means of a decree dated 4th October 2023 the name was corrected to read C GB F
- 3. Dr Charmaine Cherrett and P.L. Louisa Tufigno** appointed as Curators by means of a decree dated 13th April 2023 to represent the interests of the minor **H I B C**
- 4. The Director of the Public Registry**

The Court

Having seen the application filed by Plaintiff dated 12th of April 2023¹, wherein it stated:

1. That from a relationship she had with D E, the minor child H I B C was born on the 7th of September 2021 (Ara certifikat tat-twelid hawn anness u mmarkat bhala Dok A);

2. That the plaintiff was previously married to F G B C in Libya, which marriage was by tradition and was not valid. That despite all this, when the parties arrived in Malta, they declared to be married and thus were recognised as a married couple. That therefore when the minor child was born, the legal presumption arose that all children born in marriage are recognised as being those of the spouse;

3. That the parties C regulated their legal position by means of a contract dated the twenty-seventh (27) of October, two thousand and twenty two (2022) in the acts of Notary Brenda Jane Camilleri whereby in clause e), the parties recognised that F G B C is not the natural father of the minor child H (see contract hereby attached and marked as Doc B).

4. That as will result in the acts of the case, the natural father of the minor child H is D E. That this is confirmed by DNA tests (hereby exhibited and marked as Doc C).

5. That by means of a court decree dated the 27th of February 2023, the plaintiff was authorised to file these procedures according to article 77B of the Civil Code (see legal copy of the decree hereby attached and marked as Doc D).

7. That the facts hereby declared are known by plaintiff personally.

For these reasons, the plaintiff humbly requests this Honourable Court to:

¹ Fol. 1.

(1) Declares that D E is the natural father of the minor child H I B C and not F G Soumaroro C and this in terms of article 77B of Chapter 16 of the Laws of Malta;

(2) Orders the defendant Director of Public Registry to make the necessary corrections in the Birth Certificate of the Minor child H I B C (Dok A) so that all the columns were the details of F G B C are inserted as being the father of the child are cancelled and substituted by the relative details of D E.

With all costs against the defendants, who is demanded for reference to the oath.

Having seen the Plaintiff's list of witnesses;

Having seen the decree dated 18th April 2023² by which the Court appointed Dr Charmaine Cherrett and P.L. Louisa Tufigno to represent the interests of the minor H I B C and the reply filed by the said Curators³ whereby they declare and confirm on oath:

Illi l-esponenti ghadhom ma humiex edotti mill-fatti;

Illi l-esponenti jirriservaw li jipprezentaw risposta ulterjuri jekk kemm-il darba l-esponenti jirnexxilhom ikunu edotti mill-fatti.

Salv eccezzjonijiet ulterjuri.

Bl-ispejjez

Having seen the Curators' list of witnesses;

Having seen the sworn reply of the Director of the Public Registry;⁴

1. Illi preliminarjament għandha ssir korrezzjoni fl-okkju stante illi missier l-minuri huwa 'C G B F' u mhux kif rappreżentat fl-okkju tal-kawza u dan

² Fol. 26.

³ Fol. 36.

⁴ Fol. 31.

skont l- Att tat-twelid tal-minuri H I B C (minn issa il-quddiem imsejjañ "il-minuri"). Illi tali korrezzjoni għandha wkoll tiġi riflessa fiż-żewġ talbiet kull fejn isem il- missier kif iddikjarat fuq l-Att tat-Twelid tal-minuri huwa msemmi.

2. Illi preliminarjament ukoll jiġi rilevati illi l-esponent mhuwiex edott mill-fatt li ġew iddikjarati fir-rikors guramentat.

3. Illi skont dak li jirrizulta ictu ocoli fl-Att tat-twelid tal-minuri twieled f'Malta nhar is-17 ta' Settembru 2021 lil attrici A B C u l-konvenut C G B F, fiż- żwieġ, u dana kif iddikjarat mill-kontendenti fl-istess Att tat-Twelid b'numru progressiv 5857/2021, anness u mmarkat Dok. DRP 1.

4. Illi jidher li l-attrici qegħda tisħaq illi dak kif iddikjarat minnha stess mhuwiex minnha stante illi qegħda tgħid illi huwa fil-fatt D E l-missier bijoloġiku u mhux ir-raġel tagħha C G B F.

5. Illi in sostenn tal-pretiża tagħha hija tippreżenta test tad-DNA li skontha juri li D E huwa fil-fatt il-missier naturali u bijoloġiku tal-minuri.

6. Illi l-esponent jirrimetti ruħu dwar it-talbiet attrici salv illi:

7. Fl-ewwel lok issir korrezzjoni fit-talbiet attrici skont l-ewwel eċċezzjoni tal-esponent;

8. Fit-tieni lok, il-Qorti għandha tkun sodisfatta sal-grad rikjest mil-liġi illi missier il-minuri huwa fil-fatt D E u mhux C G B F u b'hekk tingħeleb il-presunzjoni li l-wild twieled frott iż-żwieġ bejn il-konjugi u dan inter alia anke billi it-test tad-DNA ppreżentat mir-rikorrenti mar-rikors promotur jiġi guramentat u mingħajr preġudizzju għal testijiet ulterjuri li din l-Onorabbli Qorti jidrilha xierqa u opportuni skont iċ-ċirkostanzi

Illi magħdud mas-suespost, f'każ li t-tieni talba tintlaqa minn din l-Onorabbli Qorti, D E għandu permezz ta' nota jippreżenta d-dettalji personali kollha tiegħu, senjatament is-segwenti: (1) In-numru tal-karta tal-identità tiegħu, (2) Ismu u kunjomu, (3) L-età tiegħu meta twieled l-minuri, (4) Il-post tat-twelid tiegħu, (5) Il-post ta' residenza tiegħu meta

twielded l-minuri, (6) L-isem u l-kunjom tal-ġenituri tiegħu, u (7) Jekk innanniet Aerni kienux għadhom ñajjin meta twieled l-minuri. Tali informazzjoni hija meħtieġa biex eventwalment tiġi inserita fl-Att tat-Twelid tal-minuri f'każ li t-talbiet attriċi jintlaqgħu;

9. Illi fit-tielet lok, għandu jkun deciz x'kunjom se jassumi il-minuri u dan fl-añjar interess tal-istess minuri;

10. Illi finalment, l-esponent m'għandu jeñhel ebda spejjez ta' dawn il-proċeduri stante illi huwa car illi fil-każ odjern ma jirrizulta ebda nuqqas tal-esponent imħarrek;

11. Salv eċċezzjonijiet ulterjuri skont il-liġi.

Bl-ispejjez kontra r-rikorrenti li minn issa inġunta in subizzjoni.

Having seen the Director of the Public Registry's list of witnesses;

Having seen that both Defendants appeared in the sitting of the 20th June 2023⁵ and were served the Acts of the case but did not file a reply and therefore are in default;

Having seen the application filed by Plaintiff⁶ whereby she asks the Court for authorisation to proceed in accordance with Article 77C of the Civil Code and the decree⁷ whereby the Court grants such authorisation;

Having seen that during the sitting of the 20th June 2023⁸ the court acceded to Plaintiff's request for the proceedings to be conducted in the English language;

Having seen that during the sitting of the 4th October 2023,⁹ Plaintiff asked the Court for defendant's name to be corrected as this should

⁵ Fol. 42.

⁶ Fol. 13.

⁷ Fol. 17.

⁸ Fol.42.

⁹ Fol. 60.

read 'C G Soumaru F' and having seen that the Court acceded to such request;

Having seen the exhibited documents and all the case acts;

Having seen that the case was left for judgement for today;¹⁰

Considered:

1. The present case

Plaintiff is requesting the Court to declare that the minor H I B C is the son of D E and not of C G B F, to whom Plaintiff is married, and to order the Director of Public Registry to carry out the necessary corrections on the minor's birth certificate.

The Defendants in this case were duly served with the Acts of the case but did not file a sworn reply and therefore are in default with the consequence that the Court does not have their version of the facts.

The Director of Public Registry filed a sworn reply whereby he brings forward a number of pleas but ultimately, he submits to the Court's discretion.

Evidence

Plaintiff testifies by means of an affidavit lodged via a Note in the Acts, dated 26th July 2023,¹¹ and by means of which she declares that she is the mother of H I B C born on the 7th September 2021. She explains that she was married to Defendant C G B F by tradition in their country and when they moved to Malta they had declared themselves married and were recognised in Malta as married. In 2017 she separated *de facto* from said defendant C G B F and in 2019 she met the other defendant, D E, and she moved in with him in December 2019, and by whom she conceived the minor child in 2021.

¹⁰ Sitting of 31 January 2024 a. fol. 63.

¹¹ Fol. 50.

Plaintiff states that she had to register the minor child under her then still husband's name as they were still married. In 2022 she reached an Agreement with her husband regarding the care and custody of a daughter they had together by means of which her husband, defendant C G B F, recognised he is not the natural father of H I B C.¹² She says that she still lives with defendant D E and that the minor child recognises him as his father. She declares that they also submitted to a DNA test which confirmed that the defendant Viktor E is the father of the minor child.

Dr Marisa Cassar testifies by means of an affidavit,¹³ and submits the results of the DNA test carried out. She confirms that from the tests she carried out it results that D E Passport X is the natural father of H I B C ID No. X

2. Legal Principles and their application to the present case

Article 67 of the Civil Code states as follows:

“A child conceived in wedlock is held to be the child of the spouses.”

And for this reason the minor H I B C in this case was registered under the name of the Plaintiff's husband even if it results from the case that he is not the natural father of the minor. The legislator, by means of these Articles seeks to protect the legitimacy of the child. As stated in the judgment of the Court of Appeal in the names **Marco Vella vs Pauline Cassar et**¹⁴ *“Illi huwa car li l-hsieb tal-ligi huwa dak li jipprotegi l-istat ta' legittima tal-persuna, ladarba din twieldet fiz-zwieg, u ladarba l-istat tal-istess minuri huwa konformi mal-istess diskrezzjoni wkoll hajja tieghu, hekk mizmum fir-rejalta` socjali bhala iF l-istess konjugi.”*

The mother is now seeking to register the child under the name of his natural father D E. Because the minor was born when the mother was still married to the defendant C G B F, this action qualifies as an action under Article 77A which states:

¹² Agreement signed on the 27th October 2022 a. fol. 8.

¹³ Fol. 52.

¹⁴ Decided on the 25th May 2007.

“Without prejudice to the provisions of article 81, any person claiming to be the natural parent of a child born in wedlock, or that person’s heirs if the person was deceased before the child is born, may proceed by sworn application before the competent court against the spouses and child, or their respective heirs if anyone of them is deceased, in order to be declared as the natural parent of the child, and only if that person produces evidence that during the time from the three-hundredth day to the one-hundred-and-eightieth day before the birth of the child, the spouse who gave birth had committed adultery with that person and furthermore produces evidence of any other fact which may also be genetic and scientific tests and data that tends to exclude one of the spouses as the natural parent of the child.”

which in turn requires the authorisation to proceed under Article 77 C which the Court granted by means of a decree dated 27th February 2023, a copy of which was presented in these proceedings by the Plaintiff.¹⁵

As stated in Article 70A:

“(1) Whenever the clarification of natural parentage of a child is required:

- (a) the spouse may require the spouse who gave birth and the child;*
- (b) the spouse who gave birth may require the spouse and the child;*
- (c) the child may require both parents; and*
- (d) the alleged natural parent may require both spouses and the child, to consent to a genetic test of parentage and to acquiesce to the taking of a genetic sample appropriate for the test, which sample must then be taken according to the then current provisions of the law.”*

The Court concludes that in this case the eighth plea brought by the Director of the Public Registry has been satisfied in the sense that the Plaintiff has managed to produce enough evidence proving that the minor is the son of the defendant D E, and not of her husband at law, the defendant C G B F, thanks also to the proof provided by genetic testing.

¹⁵ Fol. 17.

By means of a note presented in the Acts on the 4th July 2023,¹⁶ Plaintiff satisfied the second part of the eighth plea by listing down the details which the Director of Public Registry requested.

The Court, having determined that the minor is the son of defendant D E and not of her husband at law, defendant C G B F, agrees with Plaintiff that the minor's surname should read E after the Defendant's D E's surname, the latter being the natural father.

DECIDE

Now therefore, for these reasons, the Court:

UPHOLDS Plaintiff's requests and

1. Declares that D E is the natural father of the minor son H I B C and not of the Plaintiff's husband at law the Defendant C G B F in terms of Article 77B of the Civil Court;
2. Orders the Director of Public Registry to amend the act of birth number five thousand eight hundred and fifty seven of two thousand twenty one (5857/2021) of the minor son H I B C, in the sense that where the details of F G B C are inserted as being the father of the child, these are to be cancelled and substituted by the relative details of D E Nigerian Passport X, namely cancelling the words "F G B C" where there are written the names and surnames of the father of the minor child and instead listing down "D E" as the father, who was thirty nine (39) years old when the minor was born, resident at St Paul's Bay, son of J E who in turn had passed away when the minor was born and K E and orders judgement to be served upon the Director of Public Registry;
3. By application of Article 149 of Chapter 16 of the Laws of Malta, orders that the minor child assumes the defendant D E's surname

¹⁶ Fol. 44.

and that this change is also reflected on the child's birth certificate number five thousand eight hundred and fifty seven of two thousand twenty one (5857/2021);

Costs are to be borne equally by the Parties, save for the Director of the Public Registry, whose costs are to be borne by Plaintiff.