COURT OF MAGISTRATES (GOZO) INFERIOR JURISDICTION

MAGISTRATE DOTTOR BRIGITTE SULTANA LL.D., LL.M. (CARDIFF), ADV. TRIB. ECCL. MELIT.

Today, Friday, 31st of May 2024

Application number: 9/2022 BS

Shaun David Curry

-vs-

Jelena Jefremova

The Court;

A. Preliminary:

Having seen the application of applicant Shaun David Curry[1] whereby he requested that defendant Jelena Jefremova should *be condemned to pay the applicant the sum of five thousand, seven hundred Pounds Sterling (GBP5,700) which in today's exchange rate is equivalent to the sum of six thousand, six hundred and fifty-three Euros (€6653) which represent the value of an engagement ring which the Claimant gave to the Respondent with the intention of marrying her, however the engagement was terminated in view of reasons attributed to the Respondent.*

Which amount is certain, liquidated and due and which you failed to pay without any valid reason at law and this notwithstanding the various requests made for payment.

[1] Application in the Maltese language at fol 2 and in the English language at fol 3.

Saving any other measure that this Honourable Court deems appropriate in such circumstances.

With costs and legal interest until the date of effective payment against the Respondent who remains from now summoned under oath.

Having seen the reply of defendant Jelena Jefremova[2] who submitted:

That the plaintiff's claims are unfounded in law and in fact and must be rejected for several reasons:
In the first place, the gift given by Curry to her was given at a time when the parties were living together in England before they ever had contact with the Maltese Islands. Accordingly, that donation is regulated by English laws, which laws do not provide for a right of rescission or reversion in favour of the donor in the event that the relationship between the parties ends.
In the second place, the donation was not made because of any "engagement" between the parties but only in light of the fact that she was pregnant with the donor's child, namely Xavier Shaun Curry, who was actually born on June 8, 2016 a few months after the said donation.
In the third place, and without prejudice to the foregoing, the defendant contests the amount that the plaintiff is requesting and this because nowadays this ring is a used one that certainly does not have the same value of a new ring;
In the fourth place, and always without prejudice to the foregoing, the defendant is entitled to receive maintenance from the plaintiff for the common minor son Xavier Shaun Curry. The plaintiff has not provided any form of maintenance or assistance to his son since April 2022. Therefore, any amount that may eventually be owed by the exponent (even if, for the sake of argument only, any amount is due from her) must be set off with a larger amount due from him to her as maintenance arrears and future maintenance.
Saving further pleas in law and in fact.

Having examined all acts of the case.

Having seen that at the hearing of the 27th September, 2022 the respondent's request for proceedings to progress in the English language was adhered to.[3]

[2] Reply in the Maltese language at fols 7 and 8 and in the English language at fols 9 and 10.
[3] Record at fol 84.

Having seen the English law expert's opinion of the 17th November, 2022 regarding the right of rescission or reversion of an engagement ring following the breakdown of an engagement.[4]

Having seen that at the hearing of the 1st February, 2023 the applicant rested his case.[5]

Having seen that at the hearing of the 10th May, 2023 the respondent rested her case.[6]

Having seen that at the hearing of the 15th November, 2023 the parties declared the case rested and the case was left adjourned to today for judgment while the parties were authorised to file final notes of submissions in the interim.[7]

Having seen the parties' final notes of submissions.[8]

B. Evidence:

The Court heard all witnesses, read all sworn declarations, and considered all documentary evidence brought before it as follows:

Shaun David Curry, applicant, gave testimony via sworn declaration[9] in which he declared:

That he met the respondent in London in the second half of 2014 and the two started dating a short time after that.

That he proposed marriage to her in Fiji on the 25th of April 2015 and she accepted his proposal upon which acceptance they agreed that on their return to London he'd buy her a diamond ring to make the engagement official.

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[4] Expert opinion released by Max Ansell, a solicitor and officer of the Senior Courts of England and Wales wherein it is stipulated that *"The position of the law in England and Wales is as follows: 1. The gift of an engagement ring shall be presumed to be a "gift", however; 2. Bind case authorities stipulate that this presumption may be rebutted if the ring was given on the condition, express or implied, that it should be returned if the marriage did not take place."* The expert opinion was resubmitted in its sworn, authenticated and apostilled form via note of the applicant of the 13th January, 2023 – note at fol 70, notarial certificate issued by London Notary C.D. Guthrie at fol 71 and expert opinion at fols 72 and 73 with apostille at fol 74.

[5] Record at fol 69.

[6] Record at fol 95.

[7] Record at fol 125 and 126.

[8] Applicant's note of the 15th January, 2024 and respodnent's note of the 6th March, 2024.

[9] Sworn declaration at fols 15 to 22.

That upon returning to London, and having informed the family of the engagement,[10] he discovered that the respondent was still affiliated to her ex-fiancé, Michael, and still had the engagement ring Michael had given her.

That the respondent reluctantly agreed to return the engagement ring Michael had given her back to him and was very angry about having to do so.

That the respondent made clear to him that she would never return any high value items of jewellery again, after having had to return the ring to Michael.

That he didn't think much into this matter between the respondent and her ex-fiancé because at the time he was still deeply in love and planning to have a family with her.

That the respondent became very obsessive about him buying her an expensive engagement ring after she had to return Michael's ring back to him.

That after many months of hard work he had put away enough money to buy a ring of the respondent's requested specifications, that is, a diamond ring.

That for this purpose he made various enquires with several jewellers[11] until he found a ring he could afford, and she would be pleased with.

That in his communications with the various jewellers he specifically asserted that he was after buying an engagement ring.

That he eventually purchased an engagement ring from *bluenile.com*.

That the purchased ring was custom made for the couple and incorporated the number '5' various times in its design because this was a number that was of great significance to the couple.

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[10] Copies of emails announcing the engagement at fols 23, 24 and 25.
[11] Copies of enquires made via emails sent to jewellers at fols 26 to 32.

That the ring cost GBP3,817.20 including VAT[12] which was a significantly discounted price from the ring's true value since the ring was both online not instore.

That the ring's current estimated value is of GBP5,700 as indicated by Marena Heap, a graduate gemmologist in her report on the ring's retail replacement value appraisal.[13]

That upon receipt of the ring in May 2016 he placed the same on the respondent's finger wanting to ensure she had it on before she delivered their son, Xavier, who was born on the 8th June, 2016.

That he, the respondent, and their son lived in London until September 2017 when he was made redundant and they thus decided to move to Canada, near his parents.

That the respondent lived with him in Canada as his fiancée where she applied for and obtained permanent Canadian residence through relying heavily on her being engaged to him.[14]

That this notwithstanding they opted to leave Canada for Malta primarily because the respondent was not getting along with his mother.

That their engagement thus originated in Fiji, continued in the UK and in Canada, and persisted in Malta until the respondent brought it to an end in Malta where she pursued a life of partying after joining a group of young co-workers who worked with her in a hotel in Gozo.

That all through this time he was minding their son who would also ask after his mother who spent more and more time out with friends living a single life.

That the respondent gravitated towards a single life with younger, single friends and refused to mingle with mothers her age.

That at the same time his business was dwindling and the lack of funds to finance a lifestyle she desired made the respondent vexed. That this,

[12] Copy of receipt issued by *bluenile.com* at fol 35.
[13] Copy of the report at fols 36 and 37.
[14] Copies of documents pertaining to the application for Canadian citizenship and the obtainment of the same a t fols 38 to 52.

coupled with the Covid-19 pandemic, had serious psychological effects on the respondent.

That at this time the respondent would accuse him of having ruined her life by making her pregnant at the age of 25 and that she was not ready to be a mother.

That once the respondent turned 30 in July 2021 her demeanour changed again and she started threatening that changes he wouldn't like would soon be upon them.

That once they bought a car, the respondent warned him she'd be seeing other men. That at first, he didn't take this seriously but in hindsight he believes that she was being serious as she started neglecting their son and initiating many arguments.

That he found out the respondent was having an affair after his son brought him a phone that once belonged to her and which he was using in which he found a WhatsApp conversations with various men about encounters in guest rooms at the hotel where she worked.[15]

That following this he had a serious conversation with the respondent which however proved futile since her behaviour continued until she got pregnant by a local man.

That after an altercation about this local man, he recognized that his relationship with the respondent couldn't be salvaged and around April of 2022 he started requesting return of the engagement ring.[16]

That the respondent has ignored all his requests to return the ring and, in their latest communication about it she claimed that she couldn't retrieve it.[17]

[15] Print outs of example messages at fols 53 to 58. Messages between the parties regarding the return of the ring at fol 59.
[16] Print outs of text message conversations between the parties regarding the return of the ring at fol 59, fol 60, fol 61, fol 62, fol 63, fol 65, and fol 66.
[17] Print out of a text message conversation between the parties where the respondent claims she cannot find the ring at fol 66.

In cross-examination,[18] he declares that he proposed marriage to the respondent on the 25th April, 2015 in Fiji when he also promised that he'd give her a ring on their return to London.

He adds that he didn't give her any gift at the time of the proposal itself.

He declares that upon return to London he sought employment and started putting money aside to buy her a ring she would be fond of. He also started making enquiries online regarding the acquisition of a ring.

He states that he started working in September 2015 and he thinks he bought the ring six months after that, in March 2016. He adds that in the exhibits he included correspondence regarding the acquisition of a ring and the invoice from when he actually purchased the ring which has the date on it.

Asked if the respondent was already pregnant when he bought the ring, he states that he thinks she would have been. He adds that he thinks that he gave the ring to the respondent immediately when it arrived via courier.

On a suggestion that he actually gave the respondent a different ring when he proposed to her in Fiji, he answers that he did not. He adds that the only ring he gave her is the one in question. He also adds that in Fiji there was a clear understanding that he would buy her a ring upon their return to London.

He states that the respondent was mounting pressure on him to buy her a ring and he honoured his promise by buying her one she would be proud of after they returned to London.

Asked if there exist any photographs of him and the respondent in Fiji with the respondent wearing a ring, he says that they had fashioned a ring out of grass for mere romance purposes because there was no actual ring in Fiji. He adds that the understanding was that he would buy her a ring, as promised, in London.

[18] Transcript at fol 76 to 83.

Asked when he became aware that the respondent was pregnant he states around 30 to 60 days after they had conceived with the respondent telling him the news immediately on finding out herself.

He adds that his son was born on the 8th June, 2016. He thus agrees that in all probability the respondent was pregnant in September 2015 – 9 months prior.

On a suggestion that the ring which he is now calling an engagement ring was actually a pregnancy gift he categorically disagrees.

Max Ansell, in his capacity as English law expert, testified[19] that the United Kingdom has a Legislative Act that regulates the matter of broken engagements. He identifies the Legislative Act as *The Law Reform Miscellaneous Provisions Act of 1970*.

He quotes Section 3 Sub-Section 2 of said Act which reads: *The gift of an engagement ring shall be presumed to be an absolute gift. This presumption may be rebutted by proving that the ring was given on a condition, express or implied, that it should be returned if the marriage should not take place for any reason*.

In terms of what evidence would need to be brought before an English Court of Law to rebut the presumption that an engagement ring is an absolute gift he states that said Court would need to be satisfied that the parties had agreed that the gift was conditional and thus; that a condition was attached to the gift.

He states that the cited Legislative Act would only have effect within the Courts of the United Kingdom.

Jelena Jefremova, respondent, gave testimony via affidavit[20] in which she declared:

That she and the applicant got engaged on the 1st April, 2015 in Fiji and that, when he proposed to her, the applicant gave her a ring he had fashioned out of grass himself.

[19] Transcript at fol 85a to 85c.
[20] Affidavit at fol 87 to 90.

She exhibits two photographs which she says show such ring.[21]

That in September 2015 she became pregnant with their son, Xavier and that in May, 2016, a month before Xavier was born, the applicant gave her the ring which is the subject-matter of this case as a gift for – in his own words – *"making his dream come true"* by giving him a son.

That it was clear that the ring in question was a pregnancy gift and not an engagement ring.

That she doesn't believe that the applicant is entitled to have the ring back primarily because this was never an engagement ring and subsequently; because it wasn't given to her as subject to any condition, express or implied, that it was to be returned to him if the engagement fell through, or subject to any other condition whatsoever.

That the reason for the breakdown of her relationship with the applicant was not as alleged by the applicant but because the applicant wouldn't commit to marry her and later on made it clear that he was averse to marriage because it would involve him sharing his wealth with her. She adds that the applicant even refused a simple town hall marriage before the registrar when she suggested it in order for their son to be born within wedlock.

That the ring was given to her while they were still residing in the United Kingdom and had not yet had any connection to Malta. She adds that they only left the United Kingdom after their son was born, in November 2017 when the applicant got laid off and they first moved to Canada with his parents and subsequently to Malta in May, 2019.

That English law should therefore apply to the matter at hand and that such law does not provide for the return of an engagement ring unless there was an express condition attached to it that if the engagement fell through it is to be returned.

She further states that the applicant's claims and allegations levied against her are nothing but attempted and unfounded character

[21] Photograph at fol 91 and another at fol 92.

assassination. She adds that the applicant has contacted her ex-fiancé, Michael Barbour, online trying to extract information to use against her from him but she retains a good relationship with Mr. Barbour so the applicant's attempt backfired by Mr. Barbour letting her know what the applicant was trying to achieve. She exhibits screenshots of online conversation attempted by the applicant with Mr. Barbour and had by her with Mr. Barbour via social media.[22]

That the applicant has been very scheming toward her in an attempt to get money since he has run out of funds. She adds that he first took the car they had purchased jointly and sold it without giving her the part of its price which she had contributed and in June 2022 he started asking for the ring back in order to liquidate it and obtain funds.

In cross examination,[23] she agrees that notwithstanding what she said in her first reply to the applicant's requests to this Court, she and the applicant were engaged as per her declaration in her affidavit.

She states that the ring which the applicant had fashioned out of grass when he proposed to her in Fiji is her actual engagement ring.

She denies that the applicant had promised to buy her a proper engagement ring and dismisses the idea that she expected one.

Asked if she wore the grass ring to work or social events, she replies in the negative but states that she always kept it.

Shown the applicant's emails to various diamond suppliers she states that it may well be that the applicant was referring to the ring which is the subject matter of this case as an engagement ring but that doesn't make it so. She confirms that she can read the subject line in the emails and that is what is said in them.

She states that the diamond ring was given to her as a gift in furtherance of her pregnancy with the son she has with the applicant.

She states that she does not recall the exact date when the ring was given to her, but it was a month before she gave birth thus in May, 2016.

[22] Screenshots at fol 93 and fol 94.
[23] Transcript at fol 98 to 117.

Asked which finger she wore the ring on he states that at the time she was pregnant and her fingers were swollen so she would wear the ring in any finger it fit.

Asked where she wore the ring after she gave birth, she states that she wore it on her ring finger of either hand.

Asked if it isn't implied that a diamond ring given by way of engagement is to be returned if the engagement falls through, she responds that the diamond ring was not given as an engagement ring. She adds that it was given as an absolute gift out of happiness that she was giving the applicant a son.

She agrees that when it was given to her she was, however, engaged.

Asked if she has returned the ring from a previous proposal with a different partner, she says that she had because that was the ring which her then partner had proposed with.

She states that she is willing to return the grass ring that the applicant proposed with in Fiji.

She agrees that the WhatsApp screenshots submitted by the applicant are of conversations she had with an ex-colleague of hers from the hotel she worked at in Gozo. She adds that the room mentioned in those messages is not a private room but a room that's used by all staff as a staff room. Regarding the mention of drinking wine in those same messages she states that this was by way of a joke and is being interpreted out of context.

She states that her relationship with the applicant came to a definitive end in December 2021 and she met her current partner in February 2022. She states that she has another son with this new partner who was born on the 24th October, 2022. She states that she conceived quite soon after she met her current partner.

She agrees that she and the applicant had visited Malta before May 2019 but insists that this was only on holiday and she only relocated to Malta in May, 2019.

Confronted by her statement in her affidavit where she declared that she had never had any contact with Malta before May 2019 she states that she still believes that to be a correct statement even though she agrees that she had been on holidays in Malta before then.

Asked if she broke the engagement in Malta, she states that she had already mentioned that she didn't wish to persist with it when they were still in England. She states that she told the applicant that she wanted to break off the engagement when they visited her parents in the United Kingdom in December 2021. She said that at that time she was already officially living in Malta.

She states that she doesn't know where the ring is now. She adds that she never returned the ring to the applicant but that the applicant might have it even though she didn't give it back to him.

Referred to messages exhibited in the acts of the proceedings where the applicant keeps asking her for the ring back and she ignores his request until she says that she cannot retrieve it she states that she hopes she hasn't lost it.

She insists that she doesn't know where the ring is.

In re-examination,[24] she states that in the seven years she was with he applicant there were never any plans for marriage. She adds that not even their families were introduced.

Asked if there is any term for a gift from a partner to another on the occasion of the birth of a baby, she states that in many cultures the man gives a gift to the woman for a child and said gift is called a *"push gift"*. She states that this is given after delivery of the baby.

Referred to a document exhibited at fol 119 and 120 she states that that is an email she forwarded to the applicant after she was probably looking at *Pinterest* for some wedding inspiration and she saw a nice venue in Slovenia. She adds that this was not followed by any discussion or the payment of a deposit.

[24] Transcript at fol 121 to 124.

Asked by the Court if she was exploring the possibility of marriage, she states that they had been together since 2019 so it is possible. She adds that this notwithstanding, there was no interest from the applicant's side.

C. Considered:

Preliminary:

With these proceedings the applicant requested that this Court condemns the respondent the pay him the price in today's exchange rate of the value of an engagement ring which he gave her with the intention of marrying her after the engagement was terminated for reasons attributable to her.

The respondent replied to this claim by pleading that the ring was given to her by the applicant when they were still living in the United Kingdom and that therefore, the gift has to be considered in terms of English Law which does not provide for rescission or reversion in favour of the donor in the event that the relationship ends.

The respondent pleaded further that the ring gifted to her was in fact not an engagement ring but a pregnancy gift when she became pregnant with the child she had with the applicant, the minor Xavier, who was born on the 8th June, 2016.

Finally, the respondent contested the price claimed by the applicant as the value of the ring in question additionally claiming that she is due maintenance for the son she has with the applicant from the applicant who she claims has consistently failed to pay said maintenance.

Considered Further:

Before delving into the applicable legal considerations, this Court deems it opportune to give a synthesis of the facts of the case leading to the current dispute.

From the parties' testimonies, it transpires that **the parties agree** that they met at the end of the year 2014, beginning of the year 2015 and quickly embarked into a romantic relationship.

Their relationship culminated in a marriage proposal made by the applicant to the respondent on the 25th April, 2015 in Fiji. The respondent accepted the marriage proposal.

At this time, the applicant gave the respondent a symbol of his commitment to her in the form of a ring he fashioned out of grass.

Following said proposal, the parties returned to London, where they were then residing, and the applicant started making enquires with various jewellers to purchase a diamond ring for the respondent.

A diamond ring was in fact purchased from *bluenile.com* for GBP3,817.20 including VAT.

The ring was received by the applicant in May 2016 and he immediately gave it to the respondent who thus had it before their one child together, a son, Xavier, who was born on the 8th June, 2016.

Between September and November 2017, the parties and their minor son left London to Canada where they stayed with the applicant's family and the respondent even obtained Canadian citizenship.

Eventually, in May 2019, the parties and their minor son left Canada for Gozo, Malta which is where their relationship broke down and they went their separate ways with the respondent embarking on a new romantic relationship with a third party in February 2022.

In April 2022, the applicant started demanding the diamond ring back from the respondent.

On the other hand, **the parties disagree** on the nature of the diamond ring gifted by the applicant to the respondent with the applicant insisting that such ring was promised by him to the respondent in Fiji as a symbol of his commitment toward her and toward marrying her whereas the respondent insists that her only engagement ring with the applicant is the one he fashioned with grass in Fiji while the diamond ring was never

promised or meant as an engagement ring but was actually a pregnancy gift and what in Latvian culture is termed a *"push gift"*, that is; a gift given by the father to the mother for delivering a child.

The parties further disagree on the reason for the breakdown of their engagement with the applicant insisting that the respondent was adulterous and upset about having become a mother at an age she deemed to be too young while the respondent insists that the breakdown was due to the applicant's refusal to make good on his promise of marriage.

Considered Further:

The first conundrum that this Court is to resolve is whether the diamond ring gifted by the applicant to the respondent was in fact intended as an engagement ring or otherwise since this will have implications on the demand advanced by the applicant through these proceedings.

It is very clear that the positions taken by each of the parties regarding the nature of this gift of a diamond ring are diametrically opposed, with the applicant insisting that such ring was given as an engagement ring, and promised by him to the defendant in Fiji at the time when he proposed marriage to her, when it was not yet in his possession, whereas the respondent's stance is that her only and actual engagement ring is the one given to her by the applicant at the time of the proposal, that is; a ring that the applicant fashioned out of grass and which she proudly exhibited on her social media as per images which have been submitted by way of evidence in this case.[25]

It is thus that this Court has to decide which version of the two given by the contending parties, considered in line with the remainder of the evidence, is the most credible on a balance of probabilities - *in dubio pro reo*.[26]

[25] Images at fol 91 and 92.

[26] Ref. Judgment delivered by the First Hall of the Civil Court on the 30th October, 2003 in the names ***George Bugeja vs Joseph Meilak –*** Case ref. 462/2002/1: *Fil-kamp civili ghal dak li hu apprezzament tal-provi, il-kriterju ma huwiex dak jekk il-gudikant assolutament jemminx l-ispjegazzjonijet forniti lilu, imma jekk dawn l-istess spjegazzjonijiet humiex, fic-cirkostanzi zvarjati tal-hajja, verosimili. Dan fuq il-bilanc tal-probabilitajiet, sostrat baziku ta' azzjoni civili, in kwantu huma dawn, flimkien mal-proponderanza tal-provi, generalment bastanti ghall konvinciment. Ghax kif inhu pacifikament akkolt, ic-certezza morali hi ndotta mill-preponderanza tal-probabilitajiet. Dan ghad-differenza ta' dak li japplika fil-kamp kriminali fejn il-htija trid tirrizulta minghajr ma thalli dubju ragjonevoli.*

In this light, this Court can safely rely on the copious emails exchange between the applicant and third parties – his family as well as various jewellers – where the applicant refers to an 'engagement' and, more specifically, when communicating with the various jewellers, to an engagement ring.[27]

That said, the respondent's argument that the applicant might well have been referring to an "engagement ring" simply in order to facilitate his explanation of the type and style of ring he had in mind could hold.

This if not for the fact that in various WhatsApp messages exchanged between the contending partiers the applicant is seen to persistently demand return of the "engagement ring" with the respondent never contradicting the nature of the ring in question as an engagement ring or claiming that the real engagement ring was the one the applicant fashioned out of grass in Fiji while the diamond ring was in fact a gift intended for a pregnancy or delivery of a child.

In fact, these allegations are only first made by the respondent in these proceedings, and in her attempt to have English Laws relating to engagement rings apply to the claim here in these proceeding advanced by the applicant.

This Court is not, however, swayed by these arguments as advanced by the respondent. On the contrary, it is this Court's opinion that if the respondent truly believed that the diamond ring was a pregnancy gift or a gift given to her for delivering the parties' child, she would have been vehement about this in the WhatsApp conversations she had with the applicant between April 2022 and June 2022.[28]

In said conversations, the applicant is seen to consistently and persistently demand the return of the "engagement ring" with the respondent never contradicting him on the true nature of the ring in question.

The only rebuttal the respondent ever advances to the applicant's demands for the return of the ring in said WhatsApp conversations is

[27] Ref. emails at fols 23, 24 to 25, 26 and 27, 28 to 30, and 31 and 32.
[28] Ref. printouts of WhatsApp conversations at fols 59 to 66.

that the ring was 'a gift', without qualifying such as a gift other than by way of engagement,[29] not even when the applicant insists that the ring was no mere gift but a symbol of their commitment toward one another and that it was to be returned since they were not getting married.[30]

Additionally, when on the 6th June, 2022, again via WhatsApp message, the applicant demanded the respondent to bring the engagement ring back to him, her response was nothing more than that she couldn't find the ring, not that she would bring the ring fashioned out of grass, or that the diamond ring was not an engagement ring and/or was not due back.[31]

This Court is additionally unconvinced by the respondents' stance that the diamond ring was actually a gift given with reference to the pregnancy or the delivery of the parties' child. This for the simple reason that said ring was given to the respondent by the applicant before the delivery of their child and the respondent herself defined a "push gift" allegedly of cultural significance in her home country as a gift given upon delivery of a child.

It is thus this Court' opinion that the ring in question, that is, the diamond ring bought by the applicant from *bluenile.com* for STG3,817.20 including VAT[32] cannot but be considered as the couple's true engagement ring, with the ring fashioned in Fiji from grass having been merely symbolic, so much so that the respondent agreed in cross-examination that she never wore the ring fashioned out of grass in public or to social events but she did wear the diamond one on her ring finger, even if – allegedly – on said finger of both hands.

Considered Further:

With the fact that the diamond ring forming the subject matter of these proceedings was in fact the contending parties' engagement ring, as given by the applicant to the respondent, established, this Court's next task is to establish an answer as to the query of the applicable law in terms of the same said ring.

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[29] Ref. 4th line from the top on the printout of a WhatsApp conversation from the 17th May, 2022 at fol 62.
[30] Ref. lines 13 to 17 on same printout of the WhatsApp conversation from the 17th May, 2022 at fol 62.
[31] Ref. conversation of the 6th June, 2022 – printout at fol 66.
[32] Ref. invoice at fol 35.

The respondent contends that since the ring was given to her while she and the applicant were residents of London, United Kingdom, it is English Law that must apply to the matter at hand.

In his turn, the applicant insists that once he and the respondent had moved their residence to Gozo, Malta, it is Maltese Law that is to apply.

In this regard, reference is made to Council Regulation (EU) No. 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation,[33] Article 8 of which provides as follows:

> *Article 8*
> *Applicable law in the absence of a choice by the parties:*
>
> *In the absence of a choice pursuant to Article 5, divorce and legal separation shall be subject to the law of the State:*
>
> a) *where the spouses are habitually resident at the time the court is seized; or, failing that*
> b) *where the spouses were last habitually resident, provided that the period of residence did not end more than 1 year before the court was seized, in so far as one of the spouses still resides in that State at the time the court is seized; or, failing that*
> c) *of which both spouses are nationals at the time the court is seized; or, failing that*
> d) *where the court is seized.*

From a reading of this article, it is clear that in case of proceedings for divorce or personal separation, parties have a choice of law which includes the law of the State where they are habitually resident and, only failing that, where they were last habitually resident and so on in the hierarchy established by the article itself.

In the case at hand, the matter isn't one of divorce or personal separation but one relating to a movable, an engagement ring, and the implications on the same movable following the breakdown of the engagement.

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[33] OJ L 343, 29.12.2010.

In this regard, the matter can be deemed as one of breach of contract – the engagement contract – with the object relative to the same being the diamond ring currently in Malta as given by one party to another with both parties also currently in Malta.

It is thus clear that by application of the territorial and national principles applied in matters of international law, whereby the State has absolute and exclusive control and authority over its own territory and, as a consequence of this, over persons, property and events that take place in its territory; saving exceptions due to the doctrine of privileges, the matter at hand is to be regulated and decided in terms of Maltese law.

This is in line with the provisions of Article 742 of the Code of Organisation and Civil Procedure which establishes in no unclear terms, *inter alia*, that:

> **742.** *(1) Save as otherwise expressly provided by law,* ***the civil courts of Malta shall have jurisdiction to try and determine all actions, without any distinction or privilege, concerning the persons hereinafter mentioned****:*
>
> *a) citizens of Malta, provided they have not fixed their domicile elsewhere;*
> *b)* ***any person as long as he is either domiciled or resident or present in Malta****;*
> *c)* ***any person, in matters relating to property situate or existing in Malta****;*
>
> [...]
>
> [emphasis added]

It is therefore this Court's conclusion that the applicable law to the matter at hand, a matter referring an item – the ring – which was brought to Malta and persons – the contending parties – as are resident or present in Malta – is the Law of Malta.

In this regard, the body of the Laws of Malta contains separate provisions that can be applicable to a case concerning the breakdown of an engagement.

A set of provisions is found in Chapter 5 of the Laws of Malta, that is; The Proclamation on the Promises of Marriage Law.

Article 3 of the mentioned Proclamation provides that if a person competent by law to enter into obligations makes or enters into any promise, contract, or agreement of marriage and subsequently, wilfully and unlawfully commit a breach thereof, or, after making or entering into such promise, contract, or agreement, unlawfully refuse to perform the same within a reasonable time, after request made, (of the reasonableness of which time the court shall be the competent judge), the party injured shall be entitled to maintain an action for damages against the party guilty of such breach or non-performance, in such manner, and subject to the same rules, as are by law prescribed, for the recovery of damages for the breach of any other promise, contract, or agreement.

This provision cannot, however, be applied to the case at hand since by virtue of Article 1233(1)(g) of the Civil Code of Malta, for such provision to be applicable, any promise, contract, or agreement of marriage must, on pain of nullity, be expressed in a public deed or a private writing.

In the case at hand, no evidence of a public deed or a private writing amounting to a promise, contract, or agreement of marriage was brought forward.

This notwithstanding, apart from an action brought forward in terms of the Proclamation, there is also the possibility of bringing forward an action for damages in terms of the general principles relating to obligations as established by Article 1125 of the Maltese Civil Code.[34]

Thus is this current action as filed by the applicant.

In this regard, in the judgement delivered by the First Hall of the Civil Court on the 13th May, 1952 in the names ***Bernarda Caruana et vs Giuseppe Borg***, the Court held that for an action for damages in a case like this at hand to succeed, there must exist the concurrence of the following elements: [i] the existence of an engagement; [ii] the unjust

[34] **1125.** *Where any person fails to discharge an obligation which he has contracted, he shall be liable in damages.* Ref. also the judgement delivered in the names ***Farrugia vs Chricop*** – Vol. XXIV.1.945.

resolution of said engagement, and; [iii] the existence of material damages as a consequence of said resolution.

In the case at hand, the existence of an engagement is clear not just from the exchange of the ring in subject-matter, but also on both parties' admission.

Neither is there any disagreement on the fact that such engagement was broken.

As for damages, the only claim for damages as can be entertained by this Court in the absence of any counter-claim by the respondent – notwithstanding the respondent's allegations in her reply to the applicant's demands that the applicant failed to pay her maintenance due – is that advanced by the applicant with reference to the value of the engagement ring he gave to the respondent.

With reference to engagement rings, Maltese jurisprudence has been consistent in retaining that such a ring, even if it has similarities, in nature, to the institute of *kappara* by being deemed an *arra sponsalia*, is subject to the provisions of Article 1809 of the Maltese Civil Code which stipulates as follows:

> **1809.** *(1)* ***Any donation made by the future spouses in contemplation of marriage,*** *or by the marriage contract,* ***whether reciprocally or by one to the other, shall lapse if the marriage does not take place****.*
>
> *(2)* ***The provisions of this article, however, shall not apply, and the donee may retain the things given, if the marriage does not take place by reason of the refusal of the donor without just cause to contract such marriage****; saving the right of the donee to claim damages under the provisions of the Promises of Marriage Law.*

Article 1809 is thus clear that the donee can retain gifts given to him/her in contemplation of marriage if the engagement is broken for reasons attributable to the donor.

On this point, in the judgement delivered by the Court of Appeal on the 18th June, 1945 in the names ***Giovanni Vassallo vs Violet Camilleri***, it was retained that by application of Article 1570 – today's Article 1809 of

the Civil Code, the donee may retain all items given to him/her in contemplation of marriage, including the engagement ring, if the engagement is broken for reasons imputable to the donor.

It is therefore clear that this Court cannot decide on the applicant's demands without delving into the reasons for the breakdown of the engagement.

In the case at hand, various reasons for the breakdown of the engagement were attributed by each party against the other.

This Court is however not convinced of the position held by the respondent that the applicant, after proposing in Fiji and presenting her with an engagement ring, was vehemently refusing to marry her and considers the applicant's stance that the relationship broke down for reasons attributable to the respondent is more credible.

This particularly due to the fact that email correspondence submitted by the applicant following enquiries made by the respondent with a marriage venue show that back in August 2019, after the parties had moved to Malta in May of the same year, the applicant was keen to consider the details obtained by the respondent for marriage to be celebrated at a venue in Slovenia.[35]

This is in stark contrast with the testimony given by the respondent during her cross-examination where she stated that such emails only show that she found an interesting venue but that this did not prove that the applicant was ready to go through with the marriage.

Further to this, the respondent herself admitted in cross-examination that as early as in December 2021 she told the applicant that she wanted to break off the engagement while on a visit to her parents in the United Kingdom and, subsequently, by February 2022 she was in her current relationship with her current partner with whom she has another child born in October 2022.

It is thus this Court's opinion that no fault may be imputable to the applicant for the breakdown of the engagement and the ring or rather,

[35] Ref. email printouts at fol 119 and 120.

and in line with applicant's demands to this Court, its value must thus be returned to the applicant.

As for the value to be thus returned to the applicant, this Court notes that the diamond ring which is the subject matter of these proceedings which purchased by the applicant from *bluenile.com* for GBP3,817.20.[36]

This value was not validly contradicted by the respondent by way of counterevidence, and this, notwithstanding that it was contested in the respondents' reply to the applicant's demands.

The applicant also submitted a report by gemmologist Ms. Marena Heap valuing the ring at GBP5,700.[37]

This Court however notes that Ms. Heap's report was not confirmed on oath by the same Ms. Heap and also appears to have been released on *bluenile.com*'s stationary by a *Blue Nile* graduate gemmologist – the same Ms. Heap. It therefore cannot be deemed by this Court as an independent and impartial appraisal.

The report is additionally dated 6th May 2016 whereas the final invoice showing the price paid for the ring by the applicant is dated the 1st May, 2016 – a difference, therefore, of a mere 5 days which would not explain the price discrepancy.

It is thus this Court's opinion that the company vendor of the ring to the applicant may have well decided to give a discount or a promotional price to the applicant, but it is only the actual price paid by the applicant that can be deemed as the ring's true value and the applicant's true loss.

The alternative – should the applicant have wanted to safeguard a possible increase in the ring's value – would have been for the applicant to demand return of the diamond engagement ring instead of payment of its value.

This is not, however, the case. The applicant has in fact only demanded payment of the value of the ring, saving this Court's rights to give any other measure it deems appropriate, which in this case shall be a measure

[36] Invoice at fol 35.
[37] Ref. report at fols 36 and 37.

that decreases the total claimed by the applicant in his demand to this Court to the actual loss incurred by the applicant in the value of GBP3,817.20.

Decide:

For the reasons here above stated, this Court is deciding this case by denying the respondent's defence pleas and upholding the applicant's demands but ordering the respondent to pay the applicant the sum of three thousand eight hundred and seventeen Pounds Sterling and twenty cents (GBP3,817.20) – instead of that originally requested by the applicant in the value of GBP5,700 – representing the value of the engagement ring given to her by the applicant in contemplation of marriage since the engagement was broken for reasons imputable to her and this; at the exchange rate to Euro as applicable at the time of actual payment.

With costs and legal interest until the date of effective payment against the respondent.

(ft.) Dr. Brigitte Sultana
Magistrate

(ft.) Daniel Sacco
Deputy Registrar

True Copy

For the Registrar