

**CIVIL COURT
(FAMILY SECTION)**

**THE HON. MADAM JUSTICE
JACQUELINE PADOVANI GRIMA LL.D., LL.M. (IMLI)**

Today 1st July 2024

Sworn App. No. : 36/2022 JPG

Case No. : 22

DVA

Vs

**By virtue of the decree dated 11th
July 2022, Dr Martin Fenech and
PL Gerald Bonello have been
appointed Deputy Curators to
represent the absent UA**

The Court:

Having seen the sworn application dated 9th February 2022 at page 1 et seqq of the acts which provides:

- 1. Whereas the parties got married in Malta on the 27th of June 2009 (see the annexed marriage certificate, marked as "Dok A") and from this marriage four children were born (two girls and two boys), E, W, EL and J, all of whom today*

are still minor and are W, X, Y and Z years old respectively (see the annexed birth certificates, marked as “Dok B”, “Dok C”, “Dok D” and “Dok E”);

- 2. Whereas whilst the applicant is of Maltese nationality, the respondent is of Nigerian nationality and in the year 2015 obtained Maltese citizenship;*
- 3. Whereas just a year after the parties got married, in 2010, the applicant had already started mediation proceedings due to the fact that the relationship between the parties was unstable because the respondent was frequently absent from home and, since that time, there were occasions of infidelity from the part of the respondent in regard to the applicant;*
- 4. Whereas the 2010 mediation was closed because the applicant decided to forgive the respondent (see the annexed Court decree dated 2nd December 2010, marked as “Dok F”);*
- 5. Whereas although the parties had reconciled, their relationship got worse and in September 2017 the respondent left home for good and he did not return since then;*
- 6. Whereas throughout the past years, although several attempts have been made on the part of the applicant in order to and in the hope that she would reconcile with her husband, the respondent did not show interest in this and, instead, decided to keep living a promiscuous and shabby lifestyle;*
- 7. Whereas, today the parties have been over four years de facto separated and there exists no prospect of reconciliation between them because nothing has changed from the side of the respondent and presently the applicant is trying to start a new page in her life;*
- 8. Whereas in January of 2021, the applicant had presented a letter in order to proceed with mediation proceedings with the aim that possibilities of legal separation or divorce, and maintenance, care and custody, and access to the children, might be discussed between the parties (vide Dok G);*

9. *Whereas the counter-party did not turn up to the mediation appointments, although he had been duly notified;*
10. *Whereas this mediation was closed by a decree dated 26th of January 2022 (vide Dok H);*
11. *Whereas presently the applicant has adamantly decided that she wants to proceed with a divorce but because of the intransigence of the counter-party, the parties failed to agree on issues which would regulate their divorce;*
12. *Whereas throughout these last years that the parties have been separated, the counter-party rarely came to see his children. In fact, the respondent has not seen the children since November of 2021. This is because he spends long periods in other countries including in Italy, France, Holland, the Ivory Coast, South Africa and in Nigeria (for reasons unknown to the applicant), and, when he returns, he often comes to see the children unannounced and without informing neither the applicant nor their children regarding the dates of his departure and return to Malta;*
13. *Whereas in fact, during the period when the children had online lessons due to covid-19, the respondent even used to go to see the children during their online lesson and expected to take them out with him;*
14. *Whereas when the father is not in Malta, he makes contact with the children by telephone calls to the mother, but these telephone calls are not very frequent;*
15. *Whereas the applicant presently works full-time as a Sales Administrator, whilst contributing to the property rent - EUR 600 per month - where she is presently residing with her children, and also with her mother;*
16. *Whereas the applicant has no information regarding the respondent's employment and earnings;*

17. Whereas although during these past years there has never been a formal agreement between the parties regarding maintenance, the respondent has rarely administered any sum of maintenance and when he did, he generally never gave more than EUR 200, and therefore presently it is the mother who is principally and almost exclusively with hardship providing for the children of the parties;
18. Whereas this Court must also be informed that on the 25th of May 2021 this Court upheld a request from the mother for a warrant of prohibitory injunction against the respondent (decree herewith appended and marked “Dok I”) for the latter to be prohibited from taking the minor children overseas since he had promised the children multiple times that he would take them for a holiday to Nigeria (the respondent’s country of origin) without consulting with the applicant beforehand;
19. Whereas the applicant knows these facts personally;
20. Whereas the parties are not legally separated and have never personally made a request for legal separation before this Honourable Court;
21. Whereas a note according to article 66G (2)(a) of Chapter XVI (see Dok J) is being appended to this application.

Therefore, the applicant humbly asks this able Court to:

1. Pronounce the divorce between the parties;
2. Authorise the applicant to revert to her maiden surname, that is, Mifsud;
3. Declare that the care and custody of the minors E, W, EL and J is entrusted exclusively to the mother;
4. Authorise the applicant to remain residing in the matrimonial home to the exclusion of the counter-party;

5. *Declare that the access of the father takes place in the presence of the mother and under other provisions that this Court in the circumstances deems appropriate and opportune;*
6. *Condemns the defendant to pay the applicant a sum of maintenance for their minor children which this Court deems fit, according to the minors' needs and according to the means of the defendant and of the applicant, which sum should be paid on the date and time set by this Court;*
7. *Dissolve the community of acquests between the parties and liquidate and divide the same in two portions in which one portion will be assigned to the applicant and the other to the counter-party, and if necessary to nominate an architect, a notary to receive the opportune act as well as a curator to represent the contumacious in the same act;*
8. *Apply against the defendant the sanctions contemplated in the provisions of article 48 of the Civil Code;*
9. *Order the Registrar of the Courts to, in the time specified by this Court, notify the Director of Public Registry regarding the divorce of the parties so that this is registered in the Public Registry.*

With costs to be borne by the defendant who is hereby being immediately summoned.

Having seen the reply filed by the Deputy Curators *at page 192A* of the acts, wherein they held that

1. *The parties are not separated by means of a Court Judgment or by means of a deed of personal separation;*
2. *With regards to the other requests, they make reference the testimony adduced.*

Having seen the judgment in parte dated 30th March 2023 ordering the termination of the community of acquests; (Vide fol 220 et seq);

Having seen that during the sitting of the 8th February 2024, the Deputy Curators informed this Court that they were not successful in contacting Defendant and declared that they have no further evidence to produce;

Having seen the application filed by Plaintiff on the 15th of February 2024, requesting this Court to suspend final judgment and to request this Court to consider an addition to the original requests made in the sworn application;

Having seen the application filed by Plaintiff on the 4th of April 2024, requesting this Court to convert the personal separation proceedings into divorce proceedings;

Having seen the note filed by Plaintiff's counsel in accordance with article 66G(1) of the Civil Code;

Having seen this Court's decree dated 29th April 2024 wherein it acceded to the request for the conversion of the proceedings;

Having heard final submissions;

Considers:

Plaintiff testified by means of an affidavit (vide fol 32 et seq) and explained that she contracted marriage with Defendant on the 27th of June 2009 and from this marriage, they had four children; E, W, EL and J. Their marriage was not an easy one and the marriage lacked communication on the part of the Defendant, Defendant was often absent from home and evaded his duties as a father. She adds that Defendant would force her to have intercourse, and lacked compassion and respect in her regards. Defendant also had issues with the Courts, lost his job due to theft. She explains that Defendant lived the life of a bachelor, staying out late into the night, flirting with other women.

Plaintiff affirmed that a year after their marriage, she had opened the first mediation, however, she chose to give Defendant another chance, after he had promised that he would change which he did for a few months. However, Defendant kept on getting her

pregnant, and irrespective of this, he expected Plaintiff to be in gainful employment. Despite having endured four complicated pregnancies and births by cesarean section, Defendant would force her to have intercourse, and would wake her up for this purpose. With the passing of time, Plaintiff admitted that she could not fight back and leave, and decided to stay in the marriage until there was nothing left but bitterness, depression and anxiety. She explains that she was also diagnosed with gynecological issues after the birth of their last child, and Defendant would rebuke her for this. In August of 2017, shortly after the birth of their last child, she had found a number of contraceptives and pills in her husband's bag and had decided to terminate the marriage. In 2018, however, she had discovered that Defendant had brought a woman of Nigerian nationality, from Italy to work as a stripper in a local dance club in Paceville, and had subsequently discovered that Defendant had been in contact with this woman before her arrival in Malta and that he was having an affair with said woman. Plaintiff affirms that she was even receiving anonymous phone calls disclosing that Defendant was openly having an affair with this woman and about their promiscuous activities in public.

Defendant never accepted that their third born was on the autism spectrum and used to call Plaintiff crazy whenever she voiced out her concerns about their child. He also wanted her to abort their last child, as he did not want another child. She contends that Defendant was not present as a husband and neither was he present as a father, and would spend long hours away from home. He would generally come home to shower, change and go out again. He never attended the children's school activities and Plaintiff used to lie to her children to cover up Defendant's behavior. To date the children effuse to speak to their father, and it is Plaintiff who compels them to do so.

To date Defendant is hardly ever in Malta, and has been staying away from Malta for long periods of time since October/November of 2020. This has been hard on Plaintiff, since they still share the custody of the children. She affirms that the last time he saw the children was in November of 2021 and despite the fact that he has not been working since July 2020, claims that he is too busy to meet the children whenever he is in Malta. Defendant also tells the children that he will be taking them to Nigeria, despite the fact that the children do not want to and have been living in fear ever since. The children also have no relations with Defendant's family.

Plaintiff explains that Defendant has been having problems with the law courts since 2008/2009, when a woman who had alleged that Defendant had impregnated her had filed a police report involving injuries caused by Defendant and who had eventually miscarried the baby. Plaintiff was called to testify, however Defendant never disclosed the verdict of these proceedings. There was also an incident about a car accident later in 2009. Defendant's main profession was that of a footballer, however, he was accused of and found guilty of corruption in relation to two Maltese Premier League matches in 2018 by the Court of Magistrates and was given a life suspension from every football activity. He had also stole three thousand euros from one of the companies he worked for in 2020. Defendant had also accumulated considerable debt without her knowing.

Plaintiff testified that they were never financially stable, and whenever Defendant had an income he would send most of it to Nigeria, and as a result they always lived in rented property. Plaintiff explains that she has been living with her mother since 2010 and between 2010 and 2014 Defendant had not lived with them but lived with friends. Defendant would merely contribute EUR 100 or EUR 200 at times as his share, while Plaintiff paid the rent, bills and provided for the needs of the children. Plaintiff also explained that while they were still living together she had noticed strange transfers of considerable amount of money, the largest was around EUR 40,000, however Defendant never gave her any information.

Plaintiff's mother, testified by means of an affidavit (vide fol 37 et seq) and explained that her daughter faced a difficult marriage from the very beginning however she had attempted to save it on diverse occasions; betrayal was one of the main issues that led to the marriage break down. She affirms that her daughter has now been separated from her husband since August 2017 but was too weak to open court proceedings back then, after having been left with four children, especially since the younger ones were still babies at the time. She confirms that her daughter had lived with her since 2010 and Defendant rarely visited her and the children.

Plaintiff testified viva voce on the 2nd of February 2023 (vide fol 201 et seq) and confirmed that she had met Defendant in 2007 in Paceville, and started seeing each other. At the time he had told her that he was a professional footballer in Malta. At the time she was twenty-five (25) years old. In 2009 they got married and from this

marriage had four (4) children. Plaintiff affirmed that she left him after a year into the marriage and filed for mediation proceedings, however she had decided to give him another chance. In 2014 they got married in Church since they are both Christians. Plaintiff explains that wedding in 2009 was a civil wedding. Defendant did change and had showed remorse for his actions, however, after his father passed away and left for Nigeria, and in 2015, Defendant was his old self again. In 2014, Defendant acquired Maltese citizenship and began travelling frequently for work purposes, however it was always Plaintiff who financially supported the family. Plaintiff confirms that she fell pregnant with her fourth child when the third child was five months old. At the time, Defendant was in prison as he was found guilty of corruption.

Plaintiff testified that she had received calls informing her that her husband was in an adulterous relationship and even met the girl, and that Defendant had even got her pregnant three times and forced her to abort on all occasions. She explained that she had always kept the truth from the children, and lied to the children even when Defendant was in prison. Plaintiff confirms that Defendant had once sent her a payment of EUR 700 in 2018 and that she was living with her mother.

Plaintiff also confirms that she does not co-own any property with Defendant, and nor did they hold any joint accounts, and that her vehicle is registered in her father's name.

Louis Buhagiar produced on the 28th March 2023 (vide fol 612) exhibited the parties jobs plus employment history (Vide Dok LB1 and LB2)

Johanna Bartolo on behalf of BOV Bank PLC, testified on the 18th of April 2023 (vide fol 636 et seq) and explained that Plaintiff held one savings account, and said account as opened in November 2014 and is still open. (Vide Dok JB1) Defendant held two accounts, one of which is a savings account in US Dollars with a zero (0) balance. No transactions were carried out and no statement was ever generated. Another savings account was opened in February 2006 and is still active. (Vide dok JB2). No credit cards resulted in the name of Defendant but two credit cards resulted in Plaintiff's name. (Vide DOk JB 3 and JB 4). Plaintiff also holds a Visa Card. (Vide Dok JB 5 and JB 6)

Dr Patrizia Salerno on behalf of APS Bank testified on the 18th of April 2023 (vide fol 637 et seq) and explained that Defendant never held any accounts with the bank, whereas Plaintiff holds a savings account which was opened on the 5th of May 201 and is still active. (Vide dok APS 1).

Saviour Theuma on behalf of the Department for Social Services testified on the 18th of April 2023 and exhibited documentation in relation to social benefits received by Defendant.

Joseph Rivans, testified on the 19th of June 2023 (vide fol 209A et seq) and confirmed that Defendant last applied for the renewal of his identity card on the 14th of January 2022. (Vide Dok JR 1).

Inspector Hubert Gerada on behalf of the Immigration Police, testified on the 10th October (vide fol 647 et seq) and exhibited documentation relative to Defendant's movements. (Vide dok PI01-PI02)

Inspector Lara Butters produce don the 25th of October 2023 (vide fol 662 et seq) and explained that the last time Defendant was in Malta was on the 1st of October 2023, and arrived on flight TK 1396 from Istanbul. Prior to that date, there were considerable movements to and from Malta, most of which were from Istanbul to Malta or from Malta to Istanbul. The first departure from Malta dates back to the 26th of May 2011. (Vide Dok LB 1)

Plaintiff filed a second affidavit (Vide fol 664 et seq) and explained that during the week of the 16th of October 2023, she was contacted by a friend of who works at the airport and informed her that she saw Defendant at the airport, leaving Malta. Her friend also informed her that this was not the first time she saw Defendant at the airport, and thus Defendant has been probably making frequent trips to Malta without even contacting her so as to see the children. Plaintiff also adds that she was contacted via social media by a woman, who informed her that Defendant married again in Nigeria on the 11th of December 2021 to a woman of Nigerian nationality and who is very much younger than him and who is also pregnant. Plaintiff also discovered that Defendant has been in contact with this woman, since 2016, the year their third child was born.

Therefore it was evident that Defendant was leading multiple lives with different women in the same time frame.

Considers:

Articles 66A and 66B of Chapter 16 of the Laws of Malta provide that:

66A. (1) Each of the spouses shall have the right to demand divorce or dissolution of the marriage as provided in this Sub-Title. It shall not be required that, prior to the demand of divorce, the spouses shall be separated from each other by means of a contract or of a judgement.

(omissis)

66B. Without prejudice to the following provisions of this article, divorce shall not be granted except upon a demand made jointly by the two spouses or by one of them against the other spouse, and unless the Court is satisfied that:

- (a) upon a demand made jointly by the two spouses, on the date of commencement of the divorce proceedings, the spouses shall have lived apart for a period of, or periods that amount to, at least 6 months out of the preceding year: Provided that when the demand is made by one of the spouses against the other spouse, on the date of commencement of the divorce proceedings, the spouses shall have lived apart for a period of, or periods that amount to, at least one year out of the preceding two years; or*
- (b) on the date of commencement of the divorce proceedings, the spouses are separated by means of a contract or court judgment; and*
- (c) there is no reasonable prospect of reconciliation between the spouses; and*

(d) the spouses and all of their children are receiving adequate maintenance, where this is due, according to their particular circumstances, as provided in article 57:

Provided that the spouses may, at any time, renounce their right to maintenance: Provided further that for purposes of this paragraph, maintenance ordered by the court by a judgement of separation or agreed to between the spouses in a contract of separation, shall be deemed to be adequate maintenance:

Provided further that a divorce pronounced between spouses who were separated by a contract or by a judgement shall not bring about any change in what was ordered or agreed to between them, except for the effects of divorce resulting from the law.

Deliberates:

The parties contracted marriage 27th of June 2009 in Malta (vide marriage certificate at page) and from this marriage had four children, who are still minors. Plaintiff is of Maltese nationality, whereas Defendant was a Nigerian national but obtained his Maltese citizenship in 2015.

The parties have been *de facto separated since September 2017*, after Defendant left the matrimonial home permanently. The parties' children live with Plaintiff at Plaintiff's mother residence, whereas Defendant is not at present based in Malta. The Court notes that the Deputy Curators did not manage to make contact with Defendant and thus is compelled to determine the merits of the case solely on the evidence adduced by Plaintiff.

After carefully evaluating the testimony and evidence tendered by Plaintiff, the Court finds no reason to doubt Plaintiff's version as tendered before this Court *viva voce*. The Court examined the judgment delivered by the Court of Magistrate of Criminal Judicature against Defendant on the 10th January 2018 in which Defendant was found

guilty of conspiracy, and guilty of attempted bribery. The Court has also seen the messages received by Plaintiff from third parties informing her of Defendant's infidelity, and photos with another women, together with other photos corroborating Plaintiff's version of facts.

Furthermore, the Court finds that there is no reasonable prospect of reconciliation between the parties.

The Court upholds Plaintiff's request to revert to her maiden surname "Mifsud."

Community of Acquests

The Court notes that despite the fact that the community of acquests is devoid of assets, it is still the operative regime regulating the parties' marriage.

Matrimonial Home:

The Court observes that testimony Plaintiff affirmed that the parties' did not co-own any property and thus it appears that the matrimonial home is held under a title other than ownership. Thus, and in light of the considerations made, this Court orders that Plaintiff together with the parties' children are to reside in the matrimonial home to the exclusion of Defendant.

Bank Accounts:

Plaintiff testified that the parties held no joint bank accounts together and each held separate bank accounts. The Court assigns the bank accounts in Plaintiff's name to Plaintiff and those in Defendant's name to Defendant.

Vehicles:

Plaintiff declared that the parties did not co-own any vehicles, and that the vehicle in her possession, is registered in her father's name.

Care and Custody

In proceedings which involve the rights of minors and those belonging to the parents, the Court has a duty to take into account that which is primarily in **the best interests of the child** and this is due to the fact that in the majority of cases its decisions will inevitably have a lasting effect on the life of the child. The jurisprudence of the Maltese Courts has always been consistent in that, issues regarding the care and custody of children are to be primarily regulated by the principle of the best interests of the child, the best utility and best advantage to the interests of the child.¹

The Court also makes reference to the considerations of the Court of Appeal in its judgment in the names: *Sylvia Melfi vs. Philip Vassallo* decided on the 25th of November 1998:

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

Similarly, the European Court of Human Rights affirms:

¹ **Maria Dolores sive Doris Scicluna vs Anthony Scicluna**, First Hall of the Civil Court, decided 27 November 2003: “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 insorta 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...”

The child's best interests may, depending on their nature and seriousness, override those of the parents (see Sahin v. Germany [GC], no. 30943/96, § 66, ECHR 2003-VIII).

The Court recognises that in normal circumstances both parents have an important and fundamental role in the upbringing and life of their children, and therefore no one of them should be excluded from the child's care unless there are serious reasons which lead the Court to take such a drastic measure. In fact this has been the stance adopted in the judgement in the names of **AB vs CD** decided on the 23rd of February 2018, wherein the Court affirmed that it has the power to entrust the care and custody of a minor solely in the hands of one of the parents if this is the minor's best interests, in accordance with Article 56 of the Civil Code, and that while the parents' rights a relevant consideration, the child's best interests are the Court's primary consideration.²

Although this Court has always held that it is generally in the best interest of the child that the child's relationship and rapport with both parents is preserved and protected, irrespectively of the nature of the relationship between that same child's parents, as has been said, in these matters the Court must be guided by the best interests of the child, and therefore the Court must examine whether in the circumstances it is in the best interests of the child for one of the parents to be divested of parental authority.

The Court notes furthermore that according to Article 149 of the Civil Code:

“Notwithstanding any other provision of this Code, the court may, upon good cause being shown, give such directions as regards the person or the property of a minor as it may deem appropriate in the best interests of the child.”

Maintenance

² “Il-Qorti għaldaqstant, għandha s-setgħa illi jekk ikun fl-aħjar interess tal-minuri, tafda wieħed biss mill-ġenituri bil-kura u l-kustodja tal-minuri u dana ai termini tal-Artikolu 56 tal-Kodiċi Ċivili. Illi kif kellha l-okkażjoni ttenni din il-Qorti diversi drabi, l-interess tal-minuri huwa iprem mid-drittijiet tal-ġenituri. “Il-Qorti tirrileva illi filwaqt li dejjem tagħti piż għad-drittijiet tal-ġenituri, l-interess suprem li żżomm quddiemha huwa dejjem dak tal-minuri, kif anke mgħallma mill-gjurisprudenza kostanti tagħna hawn ‘il fuq iċċitata.””

The legal principle regulating maintenance is based on article 7(1) of the Civil Code which provides as follows: ***“Parents are bound to look after, maintain, instruct and educate their children in the manner laid down in article 3B of this Code.”***

The parents, therefore, have the same legal obligation towards their children, with both parents having to contribute to the upbringing of their children. The quantum of this obligation of a child’s maintenance is calculated according to the parents’ needs, and the criteria set out in article 20 of the Civil Code.

Article 20 of the Civil Code provides that:

(1) Maintenance shall be due in proportion to the want of the person claiming it and the means of the person liable thereto.

(2) In examining whether the claimant can otherwise provide for his own maintenance, regard shall also be had to his ability to exercise some profession, art, or trade.

(3) In estimating the means of the person bound to supply maintenance, regard shall only be had to his earnings from the exercise of any profession, art, or trade, to his salary or pension payable by the Government or any other person, and to the fruits of any movable or immovable property and any income accruing under a trust.

(4) A person who cannot implement his obligation to supply maintenance otherwise than by taking the claimant into his house, shall not be deemed to possess sufficient means to supply maintenance, except where the claimant is an ascendant or a descendant.

(5) In estimating the means of the person claiming maintenance regard shall also be had to the value of any movable or immovable property possessed by him as well as to any beneficial interest under a trust.

In the case in the names of ***Georgina Schembri pro et noe vs Dino Schembri*** decided on the 28th November 2002, the Court held that:

“L-obbligi ta’ manteniment tal-konjugi huma regolati bl-artikolu 3 tal-Kap 16...jirriżulta mid-disposizzjonijiet tal-Liġi, li l-ġenituri għandhom l-istess

obbligi versu l-ulied taghhom, u għalhekk it-tnejn li huma għandhom jikkontribwixxu għat-trobbija tal-istess, aktar u aktar meta illum il-miżewwġin huma f'posizzjoni ta' ugwaljanza u għandhom l-istess drittijiet, u allura anke skont l-artikolu 2 tal-Kap 16, "jerfghu responsabbiltajiet indaqs matul iż-żwieġ taghhom" (Ara Eoll Jennifer Portelli pro et noe vs John Portelli (Rik Nru 2668/1996) deċiża fil-25 ta' Ġunju 2003).³

The obtaining Jurisprudence illustrates that the obligation of the parents is an absolute obligation, and persists even where the parents are unemployed (*Vide Maria Bugeja pro et noe vs Spiridione sive Stephen Bugeja First Hall Civil Court (FD) (154/94)*).

The Court recognizes the fact that according to law, parents have an obligation to maintain their children according to their means. However, local Courts have always stressed that:

Il-Qorti dejjem irriteniet illi l-ġenituri ma jistghux jabdikaw mirresponsabilita` taghhom li jmantnu lil uliedhom materjalment, hu kemm hu lintrojtu taghhom. Dejjem kienet tal-fehma illi kull ġenitur għandu l-obbligu li jmantni lil uliedu anke jekk il-meżzi tiegħu huma baxxi jew jinsab diżokkupat. IlQorti ma tista qatt taċċetta li persuna ġġib it-tfal fid-dinja u titlaq kull responsabbilita` taghhom fuq il-ġenitur l-iehor jew inkella fuq l-istat." (Vide Tiziana Caruana vs Redent Muscat (272/2018) deċiża mill-Prim' Awla Qorti Ċivili fl-24 ta' Ġunju 2019; Liza Spiteri vs LEE Farrugia (219/2018) deċiża mill-Prim' Awla Qorti Ċivili fit-2 ta' Ottubru 2019)⁴

³ Translation: "the obligations of maintenance by spouses are regulated by article 3 of Chapter 16... according to the obtaining provisions of law, parents have the same obligation towards the children, and therefore, both have to contribute to the upbringing of the same, this applies even more so today, since the spouses are now equal under the law and have the same rights, and therefore, in terms of Article 2 of Chapter 16, are burdened with equal responsibilities during marriage." (Vide also Jennifer Portelli pro et noe vs John Portelli (App np. 2668/1996) decided 25th June 2003)

⁴ Translation: "The Court has always reiterated that parents cannot abdicate their responsibility of materially maintaining their children, and this independently of the quantum of their income. It was always the considered opinion of the Courts that a parent is in duty bound to maintain his children, even where his income is low or when he is unemployed. The Court can never accept a situation where a person brings a child into the world and assigns all responsibility to the other parent or to the State. (Vide Tiziana Caruana vs Redent Muscat (272/2018) decided from First Hall (Civil Court) on the 24th of June 2019; Liza Spiteri vs LEE Farrugia (219/2018) decided from First Hall (Civil Court) on the 2nd of October 2019)"

Of relevance is also the dicta of the Court of Appeal in *Marina Galea vs Mario Galea* decided on the 31st of January 2019:

“Il-manteniment tat-tfal, fil-verita` izjed milli dritt tal-ġenitur li qed irabbihom, huwa dritt tat-tfal minuri li ma jisfawx mċahhdin minn daww l-affarijiet li d- dinja tal-lum tikkunsidra bħala neċessita` għall-edEazzjoni u għall-iżvilupp tagħhom.”⁵

The Court has seen that Defendant has largely been absent from the minors’ lives, and it has always been Plaintiff who tended to the minors’ needs, and thus compelling Plaintiff to carry the burden of all the responsibilities of child rearing together with the financial responsibilities. After having examined the evidence produced, is this Court’s considered opinion that in light of the circumstances at hand, it is in the minor children’s best interest that the care and custody of the said minor children be exclusively vested in Plaintiff and that Defendant has manifested his abdication of all parental responsibility towards his children both, financially and emotionally such that merit to his deprivation of all parental authority over the said children.

The Court furthermore orders that Plaintiff is authorised to take all decisions be they ordinary and extra-ordinary in relation to the minors’ education, health and extra-curricular activities. The Court also authorises Plaintiff mother to designate a person of her trust to care for the minor children should she be indisposed for health reasons.

With regards to access, the Court orders that said access is to be held in the presence of Plaintiff for one hour once a week during Defendant’s stay in Malta.

With regards to maintenance, as previously indicated, it is palpable that Defendant never contributed towards the children’s upbringing compelling Plaintiff to naturally bear alone the responsibilities and burdens of child rearing. In light of the above

⁵ Translation: “With regard to maintenance due to children, in reality, rather than being a right of the parent who is looking after them, maintenance is a child’s right in order that children are not denied material things which are in today’s world considered as necessary for their education and development.”

considerations, the Court deems that Defendant should be ordered to pay the sum of two hundred and fifty euro (€250) each month by way of maintenance for each of the minor children which amount also includes Defendant's share from the educational, medical and extracurricular expenses. The Court orders that this sum is to be deducted directly from any wages, salaries, benefits, or other income Defendant might be receiving. Such amount is to increase according to the cost of living adjustment each year, until the minor reaches the age of eighteen (18) years if the minors stop pursuing their studies and start working on a full-time basis or payable up to the age of twenty-three (23) years if the minor children decide to pursue their studies on a full-time basis. Said amount is to be deposited directly in a bank account of Plaintiff's choosing on the first day of every month. The Court orders that any benefits, and/or allowances offered by the state are to be received by Plaintiff.

Therefore, the Court holds that the parties have satisfied all the requisites envisaged in the law for the pronouncement of divorce.

For these reasons, the Court:

- 1. Upholds the first request and pronounces the divorce of the parties and authorises the Plaintiff to live separately from the Defendant;**
- 2. Upholds Plaintiff's second request and authorizes Plaintiff to revert to her maiden surname "Mifsud."**
- 3. Upholds Plaintiff's third request and awards the exclusive care and custody of the four minor children, E, W, EL, and J to Plaintiff and authorises her to take all decisions be they ordinary and extra-ordinary in relation to the minors' education, health, travel and extra-curricular activities, the issuing of passport and their renewal, the issuance of identity card and this without Defendant's consent, signature, and/or presence;**

- 4. Upholds Plaintiff's fourth request and authorizes Plaintiff to reside in the matrimonial home together with the parties' children and this to the exclusion of Defendant;**
- 5. Upholds Plaintiff's fifth request and orders that the Father's access is to be held in the presence of Plaintiff mother for one hour once a week during Defendant's stay in Malta;**
- 6. Upholds Plaintiff's sixth request and orders Defendant to pay the sum of two hundred and fifty euro (€250) each month by way of maintenance for each of the minor children which amount also includes Defendant's share from the educational, medical and extracurricular expenses. The Court orders that this sum is to be deducted directly from any wages, salaries, benefits, or other income Defendant may be receiving. Such amount is to increase according to the cost of living adjustment each year, until the minors reach the age of eighteen (18) years if the minors stop pursuing their studies and start working on a full-time basis or payable up to the age of twenty-three (23) years if the minor children decide to pursue their studies on a full-time basis. The said amount is to be deposited directly in a bank account of Plaintiff's choosing on the first day of every month. The Court orders that any benefits, and/or allowances offered by the State regarding the children shall be received by Plaintiff;**
- 7. Upholds Plaintiff's seventh request and orders the cessation of the community of acquests between the parties and liquidates the same community and orders that each party is to retain full ownership of the bank accounts in his or her individual name, having seen that from the evidence produced, it appears the parties had no other assets or liabilities in Malta;**
- 8. Upholds Plaintiff's eight request and applies against Defendant the provisions of Article 48 and 51 to 55 of the Civil Code;**

9. Authorizes Plaintiff to designate a person of her trust to care for the minor children should Plaintiff be indisposed;

10. Upholds Plaintiff's ninth request and authorises Plaintiff to register the final judgment of divorce and division of the community of acquests in the Public Registry of Malta;

Costs are to be borne by Defendant but shall provisionally be paid by Plaintiff.

Mdm. Justice Jacqueline Padovani Grima LL.D. LL.M. (IMLI)

Christabelle Cassar

Deputy Registrar