



**CIVIL COURT
(FAMILY SECTION)**

MR JUSTICE HON ANTHONY VELLA

Sitting of Thursday 4th July 2024

Sworn Application number 18/2017 AGV

AMJ

Vs

BLJ

The Court;

**Having seen the sworn Application of AMJ dated 26th January 2017 ,
respectfully submits and on oath declares:-**

1. That the Applicant married the Defendant on the first of June two thousand and twelve (01.06.2012) in Italy, from which marriage they had a minor child, S J ,

born in Malta on the twenty-fourth of September two thousand and fourteen (24.09.2014) (See Dok A).

2. That the parties' marriage has irremediably broken down on the ground of excesses, cruelty, threats and grievous injury, amongst other valid grounds at law which rendered married life impossible and which gives ground to this personal separation, to which the Defendant is solely responsible for breaking down.

3. That the Defendant suffers from alcohol addiction as a consequence of which he has been violent towards the Plaintiff, which addiction leads to his incapability of taking care of the minor child.

4. That for this reason, conjugal life is not longer possible due to reasons, solely imputable to the Defendant.

5. That the parties have been authorized to proceed at this instance by virtue of Court decree of this Honorable Court dated fifteenth (15) of December, 2016 (See Dok B).

6. That the facts here declared are known personally by the Plaintiff.

For these reasons the Plaintiff contends, saving any necessary and opportune decisions, why this Honourable Court should not:-

1. Pronounce the personal separation between the parties on the ground of excesses, cruelty, threats and grievous injury, amongst other valid grounds at law, committed by the Defendant and consequently authorise the Plaintiff to live separately from the Defendant.
2. Decides that the exclusive care and custody of the minor child Seth be given to the Plaintiff and this as established by this Honourable Court.

3. Determines and liquidates an adequate amount of maintenance which should be payable by the Defendant to the Plaintiff for herself and the minor child and which should remain payable until the minor reaches the age of eighteen (18) years if the minor stops pursuing their studies and starts working on a full-time basis or payable up to the age of twenty three (23) if the minor decides to pursue their studies on a *full-time* basis, as well as ordering that the alimony be deducted directly from the salary or income of Defendant or work or any other benefits that he would be receiving and deposited directly in a bank account that is to be indicated by the Plaintiff and further provides how the said maintenance is to be reviewed and increased yearly so that it reflects the increase in cost of living.
4. Orders the Defendant to pay all of the expenses related with the health and education of the same minor until he is studying.
5. Orders the cessation of the existing community of acquests between the parties; liquidates the same community of acquests and orders that the objects forming part therein are divided in two portions as ordered and established by this Honourable Court, which portions are assigned one to the Plaintiff and the other to the Defendant, and this by the appointed experts and by appointing a notary to receive the relative acts and a curator to represent the Defendant if he is contumacious on the same act.
6. Orders that the Defendant has given cause to separation as found in article 48 *et seq* of Chapter 16 of the Laws of Malta and applies against him all the articles or in part the dispositions of article 48, 51 and 66 of Chapter 16 of the Laws of Malta.

7. Declares which are the paraphernal movable and immovable acts of the Plaintiff as will be proven during the case whilst also ordering and condemning the Defendant to retribute to the Plaintiff all her paraphernal things and this in a short and peremptory time given by this Honourable court.

8. Appoints a curator to represent the Defendant in case he is contumacious in the relative act of division at a time and place as established by this Honourable Court.

9. Authorises the Plaintiff to register the eventual judgment of this Honourable Court in the Public Registry of Malta.

With costs and interests against the Defendant who is demanded for a reference on oath, including the mediation letter and the Garnishee Orders Nru 83/2016.

Having seen the sworn reply of BLJ dated 16th May 2017 states with respect and solemnly declares that:-

A. DECLARATION OF FACTS

- 1) That the Defendant confirms that the parties got married on the 1st of June 2012 in Italy after having lived together in England and the Isle of Man from said marriage the parties' son S J was born on the 24th of September 2014.

- 2) That mid-2014 at Plaintiff's request the parties established their matrimonial home in Malta.

- 3) That the Defendant categorically denies the allegations made by the Plaintiff that the marriage between the parties has irretrievably broken down due to excesses, cruelty, violence or threats against the Plaintiff imputable to him since the marriage has in effect irretrievably broken down due to excesses, cruelty, and threats on the part of Plaintiff against Defendant from July 2015 onwards, which continued to escalate until she abandoned the matrimonial home in March 2016 availing herself of Defendant's absence due to a work trip abroad to take the minor son of the parties with her together with most of the movable belongings to the parties.

- 4) That Defendant has also instituted proceedings for separation against the Plaintiff through application number 38/2017 RGM.

- 5) That in spite of the difficulties that the marriage had encountered, the Defendant tried to save the relationship and also sought to reconcile with Plaintiff at his insistence Plaintiff also half-heartedly

attended a marriage counselling session with Defendant, but then she discontinued attendance.

- 6) That the Defendant categorically denies the allegations made against him that he suffers from an alcohol addiction and that as a result he has been violent to Plaintiff. Defendant is a social drinker, and he enjoys a beer in the evening after work but this in no way impinges upon his life. On the other hand, unfortunately during the parties' entire relationship and short years of marriage the Plaintiff suffered from bouts of depression for which she was prescribed medication which seriously impacted upon her life and that of the family particularly from the summer of 2015 onwards when she developed a distorted view of reality.

- 7) That all the allegations that the Defendant is unfit or incapable to take care of his minor son S are totally untrue and unfounded.

B. DEFENDANT'S PLEAS

For these reasons while Defendant agrees that this Honorable Court should pronounce the personal separation between parties and proceed with the termination and liquidation of community of acquests between them he pleads:-

- i. That the personal separation between the parties has resulted for causes attributed to Plaintiff and that for the purposes of Section 48 et seq of the Civil Code this Honorable Court should established the date on which Plaintiff should be considered as being responsible for the separation in

therefore follows that his Honorable Court should reject Plaintiff first claim *in parte* and sixth claim.

- ii. That his Honorable Court should reject Plaintiff second claim that she be assigned sole care and custody of their minor son SJ and declares that the parties shall continue to exercise joint custody over the said minor child. This Honorable Court is requested to order that the minor child shall continue to reside and be domiciled in Malta, this being the chosen domicile of the parties in the best interest of the minor Child. Residence access and determined by this Honorable Court, in the best interest of the minor child although Plaintiff has arrogated to herself sole decision making power over the said minor child and effectively regularly refuses to allow the Defendant regular access to his son, there is no valid reason at law, why this should be minor son and cultivate a strong bond with him and this in the best interests of the minor child himself.
- iii. That this Honorable Court should reject Plaintiff's request for maintenance for herself since Plaintiff is able to work and provide for herself therefore this Honorable Court should reject Plaintiff's third claim also in the light of Defendant second plea.
- iv. That Plaintiff's fourth claim is to be rejected by this Honorable Court in the light of Defendant second plea.
- v. That Plaintiff seventh claim is to be rejected by Honorable Court as Defendant is not in possession of any paraphernal property belonging to Plaintiff.

With costs comprising those incurred in the mediation proceedings to be borne by the Plaintiff.

Having seen all acts and documents related to the case.

Having considered that this case is being decided in conjunction with the case in the names **BLJ vs AJ**, **Application Number 38/17** and for such intents and purposes at law, the evidence collected and the considerations made in this case apply *in toto* to this case.

DECIDE:

1. Upholds Plaintiff's requests and pronounces the separation between the parties on the grounds of cruelty (*sevizzi*), committed by Defendant and consequently authorizes the Plaintiff to live separately from Defendant.
2. Upholds Plaintiff's second request and decides that the exclusive care of the minor child S be given to the Plaintiff and custody will be exercised jointly.
3. Partially upholds the third request and orders Defendant to pay maintenance to the Plaintiff for the minor child as determined under the subtitle "Maintenance" in the judgement **BLJ vs AJ Application Number 38/17**, which maintenance is to be paid until the minor reaches the age of 18 years if the minor stops pursuing their studies and starts working on a full-time basis.

The said maintenance is to be paid directly in a bank account that is to be indicated by Plaintiff.

The said maintenance is also to be reviewed and increased yearly according to the cost of living index.

4. Partially upholds Plaintiff's fourth request and orders that all expenses related to the extraordinary health and education of the minor child until he is studying be divided equally between the parties, including extra-curricular activities.
5. Upholds Plaintiff's request and orders the cessation, liquidation and assignment of the said community of acquests as aforementioned and decided in the subtitle "Community of Acquests."
6. Rejects the sixth request.
7. Upholds the seventh request and orders Defendant to reconstitute to Plaintiff her paraphernal things within a month from the date of judgement as aforementioned in the sub-title "Community of Acquests."
8. Upholds the eighth request as far as is necessary.
9. Upholds the ninth request.

All costs and interests, as well as costs for the mediation letter and the garnishee orders Number; 83/2016 are to be borne by Defendant.

Hon. Mr. Justice Dr. Anthony J. Vella

Dep Registrar