

**CIVIL COURTS
(FAMILY SECTION)**

**MADAME JUSTICE
JACQUELINE PADOVANI GRIMA LL.D., LL.M. (IMLI)**

Today, 31st July 2024

Warrant No: 80/2024/2 JPG

**JG
vs
AA**

The Court,

Having seen the application filed by JG dated 30th May 2024, wherein it stated:

That the applicant has an interest that the minor, hereinafter indicated, be not taken outside Malta;

That the respondent/s is/are persons having, or who might have, the legal or actual custody of the said minor;

Wherefore, the application respectfully requests that this Court orders the issue of a warrant of prohibitory injunction against the respondent/s enjoining him/them not to take, or allow anybody to take, the said minor out of Malta;

Particulars of the minor:

The minor ICG, daughter of JG and AA, born on the Y in Tal-Qroqq, Msida, Malta, holder of S passport number X (copy of birth certificate, passport and recent photograph attached and marked Dok. A, Dok. B and Dok. C respectively).

That the parties are parents to the minor child ICG who was born in Malta on the Y;

That the parties met in Malta in May 2013 when they were both residing here, and they lived together for the last nine (9) years of their relationship until their relationship broke down in March 2023;

That after the parties spent some weeks in S on vacation during last summer, in September 2023 the respondent decided not to return to Malta with the minor and this without the applicant's consent;

*That the applicant instituted proceedings for wrongful retention through the Hague Convention on the Civil Aspects of International Child Abduction in S, which proceedings were recently decided and it was ordered that the minor is to return to Malta, and this as evidenced in the official correspondence send to the Maltese Central Authority, a copy of which is attached and marked **Dok. D**;*

That the respondent has informed the applicant that she intends to return the minor to Malta on the 31st May 2024 late at night and is insisting that she is going to keep the minor with her in a hotel, the details of which she has not provided to the applicant, and that she is to hand over the minor to the applicant the following day 1st June 2024 at a time and location which are yet to be determined and that she will be leaving Malta for S;

That considering that the respondent has already unlawfully retained the minor in S and has during the past eight months made every attempt not to return to Malta with the minor, the applicant has no assurance that the respondent does not actually intend to leave Malta once again with the minor;

That the respondent's actions have been detrimental to the minor who was abruptly taken away from her father and from the life which she knew in Malta where she also attended school regularly before the wrongful retention, and the applicant feels that it is essential that the minor is not subjected to further instability and that it is ensured that she is not taken out of Malta unless this is with the consent of both parties or in the alternatively with the authorisation of the competent Court;

That the applicant has already instituted procedures before this Honourable Court in the names JG vs AA (Sworn Application Number 72/2024AL) (by means of which he is requesting inter alia that the care and custody, primare residence, access and mainteannce of the minor are regularised.

That is in the minor's best interest that she remains in Malta until such time that there is an agreement or final decision regarding these matters, and that her removal from Malta without the authorisation of this Honourable Court is prohibited until such time.

Having seen that the application and annexed documents, the decree and notice of hearing have been duly notified in accordance with law;

Having seen the reply filed by AA dated 9th July 2024, wherein it was submitted:

That although the respondent does not intend to depart from these islands with the parties' child, ICG, except possibly for holidays in the parties' country of origin, and unless and until the Court grants authorisation for the minor to return to the care and custody of respondent, and return with the same respondent to S¹, she is still opposing the issue of the warrant, vexatiously demanded, on the following grounds:

- 1. That according to article 873 of Chapter 12 of the laws of Malta and according to jurisprudence, this Honourable Court has to examine whether the applicant has shown that (a) the warrant is necessary to preserve any right of the person*

¹ Application of the respondent of the 13th June 2024 in the lawsuit 'JG vs AA', sworn application number: 72/24 AL.

requesting it and (b) he has to show that prima facie he possesses such right, without delving into the merits of the case². That although the applicant is the father of the minor child, he possesses no right of access in Malta which should be secured by this Honourable Court and therefore there exists no right prima facie that he is trying to secure, and any form of proceedings regarding care, custody and access of the minor should continue to take place in S, and not in Malta. Moreover this application for the issue of a warrant of prohibitory injunction is being made only to keep the minor and respondent from returning back home and back to their normal life in S. Moreover, this warrant is being filed not for the applicant to ensure a right but for applicant to acquire a right.

- 2. That even if the applicant has a right prima facie which should be preserved and the warrant is necessary, the Court must be convinced that the grade of prejudice which applicant will suffer if this right is not safeguarded by the issue of a warrant, must be **irremediable**. Therefore it is not enough that there is mere difficulty, discomfort or worry³. The Maltese Courts have held that “B’irrimedjabbli wiehed ghandu jfisser illi l-hsara li minnha r-rikorrent ikun qed jilmenta, tkun wahda tali illi ma tistax tissewwa mod iehor. Jekk l-inkonvinjent jew in-nuqqas lamentat jista’ jitnehha, mqar b’decizjoni wara li jigi mistharreg il-kaz fil-mertu, jigi nieqes dan l-element ghall-hrug tal-Mandat”⁴ and also that “il-mandat ta’ inibizzjoni huwa meqjus bhala mezz procedurali ta’ naturza eccezzjonali”⁵. The applicant will not suffer any irremediable prejudice if this warrant is not issued as a S judgement has already ruled that the minor child is to be returned back to Malta – an order by the Courts which the respondent abided with. If for the child to have a better lifestyle and for the respondent to be capable of maintaining herself and her child, it is required that the minor and respondent relocate back to S, the respondent will proceed according to law and will only leave Malta with the authorisation of the Court.*

² Panorama Company Limited vs Enemalta Corporation decided by the First Hall of the Civil Court on the 14th of February 2013; Emanuel Sammut vs Josephine Sammut decided by the First Hall Civil Court on the 5th of June 2003; The Golden Sheperd Group Limited vs Enemalta Corporation decided by the First Hall Civil Court on the 17th March 2009.

³ See Cassar Pullicino noe vs Caruana Curran noe et. Decided by the Court of Commerce on the 26 of May 1995 – “Anke jekk rikorrent ghandu jedd prima facie x`jigi tutelat, il-grad ta` pregudizzju li jkun se jgarrab jekk il-jedd tieghu prima facie ma jkunx tutelat bil-hrug tal-Mandat, irid ikun irrimedjabbli” – dan skond il-gurisprudenza tal- Qrati taghna. Mhux bizzejjed li jkun semplici diffikulta’, disagju jew thassib”.

⁴ See “Avukat Victor Borg Grech vs Joseph Gasan et noe” decided by the First Hall Civil Court on the 2 of January 1993.

⁵ See “Charles Mugliett vs Saviour Bonnici” decided on the 25 of January 2005.

The respondent is well aware of her obligations even those arising from international treaties;

3. *That this Honourable Court has previously stated that “This Court has always held that such proceedings should only be availed of to safeguard the best interest of the minor and to protect one of the parents from being arbitrarily deprived of a relationship with the minor, and not as an attempt to hold the other parent hostage in a particular country.⁶” The daughter is trapped in a country which is not her home, where the minor does not attend school and where she has no friends, does not have family and is no longer in the care of her mother which she has always known and got used to. This is certainly not in the best interest of the minor. In addition to this, the applicant is also seeking to limit and hinder the mother’s access in Malta for the upcoming summer holidays, and the right of the respondent to be informed about the child’s life in Malta. This further portrays the intent of the applicant which is to alienate the mother from their daughter’s life.*

4. *That the applicant presented the Court with a version of events that is completely detached from reality. That in order for the full truth to be known by this Honourable Court, the respondent will briefly outline the actual events:*
 - a) *That the Parties are both S nationals and started their relationship in Malta in May 2013, always with the intention of returning back to S together.*

 - b) *That in the year 2013, the respondent had come to Malta for three (3) months to study, while the applicant was in Malta for a sabbatical year, after leaving his employment as hairdresser in Madrid. The parties started their relationship and because of this relationship, the respondent postponed her return to S and continued to live with the applicant in Malta for some time.*

 - c) *That from 2014 to 2016, the parties planned to return to S together, but the applicant delayed the move due to the economic crisis in S during this*

⁶ RZ vs DZ decided on the 5th of October 2021 with reference number 134/2021/2.

- period. While waiting for the economy in S to stabilize, both parties found employment in Malta. Nonetheless, Respondent continued seeking for jobs in S, and both parties were looking for an apartment in S to continue living together as they did in Malta.*
- d) That from their relationship, the parties had one (1) child, a daughter namely ICG, who was born in Malta on the Y, but is also a S national. ICG speaks only S and struggles to understand and speak in English.*
- e) That from the birth of the minor daughter, the immediate reaction of the applicant was for respondent to take care of the minor child, and thus the respondent has been exclusively in charge of the care and upbringing of the minor whereby after exhausting her sixteen-week maternity leave, respondent took a four-month period of leave of absence. Upon her return back to work she started working reduced hours to be able to care for the daughter, especially due to the medical issues of the child requiring long hours at the hospital which only the respondent used to accompany the minor child, with no support from family and friends;*
- f) That Respondent has on multiple times asked Applicant to get involved in the care of the minor but his response would be that “he had far more important things to do, and that caring for their child is your responsibility”.*
- g) That in October 2022, due to the applicant's behaviour the relationship of the parties ended and deteriorated completely. In fact, in the same month October 2022, in agreement with the applicant, the respondent went back to S to complete her studies whereby the minor child, with authorisation of both parties, was registered in B and was also enrolled in the first year of kindergarten at Public School IA. Respondent made sure that the minor child would enjoy some time with maternal and paternal grandparents, and the father when he used to visit her in S, and through online video-calls and phone calls.*
- h) That the respondent's return to S was crucial for her and the minor's well-*

- being as the economic situation of the respondent in Malta was worrying due to the fact that the respondent worked reduced working hours to be able to take care of the minor and upbringing alone, and that the applicant does not contribute anything financially to the needs of his minor daughter and the respondent - the respondent exclusively bears the financial burden of being paying for rent in Malta, for the needs of the minor girl and for her own needs.*
- i) That the applicant never showed interest in the respondent's financial problems who takes care of his daughter and the needs, residence and which School his daughter attends, instead he used to put pressure on the respondent to find a job with better pay.*
- j) That the Respondent always left Malta and returned to S with her minor child with Applicant's knowledge, consent and access arrangements.*
- k) That after the Respondent concluded her studies in S in January 2023, she returned to Malta with the minor child to finalise the employment relationship with Sammut & Associates with whom she worked casual work while she was in S. The minor and respondent resided together with the applicant in his apartment in Malta, yet in March 2023, the applicant moved out to another apartment, leaving the respondent with the minor child alone with the financial burden of paying rent of seven hundred euro (€700) monthly.*
- l) That on April 2023, the respondent found employment in Malta and minor child was registered in Santa Clara school in Malta from February until June 2023 and found it challenging due to the language barrier.*
- m) That on the 30th June 2023, respondent returned back to S with the minor daughter, upon consent from applicant, and found an employment with better pay in August 2023 since the respondent's economic situation in Malta was not sustainable. Again, respondent has always made sure that the father had access to the minor child.*

- n) That on the other hand applicant often neglects his obligations and responsibilities as a father, as seen by the various times he failed to meet with his child during his access hours.*
- o) That the parties started judicial proceedings against one another regarding the minor child. One was filed by S by the Respondent and the other was filed in Malta by the Applicant.*
- p) The respondent has always complied with the law and every order given by the Courts, as she in fact did when the S Court ordered that the minor child be returned to Malta. The respondent brought the minor to Malta herself. Therefore, the prohibitory injunction in this case is unnecessary and excessive since there is no real fear that she will move abroad to another country with the child without the father's knowledge and consent, as she never did, unless the Court orders otherwise.*
- 5. That therefore the intervention of this Honourable Court is required to refuse the issue of this warrant, which warrant has been vexatiously demanded, in order for the applicant to assure the keeping of the minor from travelling to S with the mother.*

Having heard the evidence on oath;

Having seen all documents exhibited in the proceedings;

Having heard final oral submissions;

Considers:

From the acts of the case it appears that JG and AA, S nationals, began a relationship in Malta in 2013. Their daughter ICG was born on the Y in Malta. In July 2020, the minor attended a day care centre New Ark Nursery in Malta but was registered in B, S on the 2nd of November 2022 and attended school there till January 2023. Thereafter, Defendant and her daughter returned to

Malta. In March 2023, the parties separated with the father renting an apartment in the same building he previously resided with Defendant. At this time, ICG went to Santa Clara School, in Sliema. The parents agreed to divide the summer vacations between them and this took place initially without any problems, however, the mother failed to return to Malta in September 2023 and started working in S as a teacher in a secondary school in N. Mediation proceedings have been initiated in Malta by Plaintiff, whilst similar proceedings were initiated by Respondent in S. Subsequent to the mother's retention of the child of the parties, ICG in S, Plaintiff initiated Child Abduction proceedings and on the 9th of May 2024, the Appellate Court in N ordered the return of the minor ICG to Malta (vide Dok RM2 at page 28 et seqq.).

Plaintiff argues that since Respondent has already unlawfully retained the minor in S, Plaintiff has no assurance that Defendant will not leave Malta again with the minor. Plaintiff argues that it is in the child's best interest to have stability in her life and to attend school regularly in Malta. Moreover, Plaintiff has already filed proceedings – Sworn application 72/2024 AL, requesting care and custody and primary residence of the minor, and for access and maintenance to be duly regulated.

Respondent reiterates that in spite of the fact that the parties started their relationship in Malta in May 2013, the intention of the parties was always to return to S to establish the residence there. Indeed, the Respondent had only come to Malta to study for a three month period whilst Plaintiff was enjoying a sabbatical year after terminating his employment as a hairdresser in Madrid. Respondent states that during 2014 and 2016, the parties had planned to return to S together, but Plaintiff kept delaying this move due to the economic crisis in S. Indeed, Respondent kept seeking jobs in S and both parties were seeking to purchase an apartment in S. ICG was born on the Y and became the immediate and sole responsibility of Respondent who was tasked with her care. At the end of the stipulated maternity leave, Respondent was constrained to work with reduced hours since her daughter had serious respiratory problems (child asthma) which required frequent hospitalisation.

In spite of Respondent's repeated pleas for Plaintiff to share child-care responsibilities, Plaintiff's response was **“he had far more important things to do and that caring for their child is your responsibility.”**⁷

In October 2022, the parties' relationship was terminated and the parties agreed that Respondent

⁷ Vide page 23

was to return to S with ICG to complete her studies and ICG was **authorised by both parents to attend school in B**. Respondent ensured that ICG enjoyed both Paternal and Maternal grandparents whilst the father used to visit ICG in S and communicate by means of video calls. Respondent insists that the Plaintiff did not contribute any maintenance regarding his daughter's daily needs. Moreover, Respondent was exclusively responsible for the payment of the rent for their apartment. Indeed, the excessive financial burden on Defendant was the reason why it had become imperative for Defendant to return to S to be able to finalize her studies and sustain employment as a teacher such that her working hours would coincide with the child's school hours. Respondent informed the Court that contrary to Plaintiff's testimony, Plaintiff does not participate in the care of the child, keeps long hours in his hairdressing salon, and partakes of regular drumming sessions with a band group till very late at night. Moreover, Plaintiff and the band have regular performances⁸ during the weekend where Plaintiff returns home in the early hours of the morning. Respondent reiterates that it was she who returned to child ICG back to Malta, following the abduction proceedings and that she has always abided by the law and intend to keep on doing so.

Deliberates:

Article 877 of Chapter 12 of the Laws of Malta provides:

877. (1) A warrant of prohibitory injunction may also be issued to restrain any person from taking any minor outside Malta.

(2) The warrant shall be served on the person or persons having, or who might have, the legal or actual custody of the minor enjoining them not to take, or allow anyone to take the minor out of Malta.

(3) The warrant shall also be served on:

(a) the officer charged with the issue of passports enjoining him not to issue, and or deliver, any passport in respect of the minor and not to include the name of the minor in the passport of the minor's legal representatives or in the passport of any other person; and

⁸ Between 20 and 25 performances a year – vide page 80 - Respondent's testimony.

(b) the Commissioner of Police enjoining him not to allow such minor to leave Malta.

The Court notes that in proceedings for the issuing of a precautionary warrant, the Court may not delve into the merits of the case, but it must be satisfied that the person asking for the warrant to be issued has a prima facie right and that the warrant is necessary in order to preserve that right. (See **Panorama Company Limited vs Enemalta Corporation** decided by the First Hall of the Civil Court on the 14th of February 2013; **Emanuel Sammut vs Josephine Sammut** decided by the First Hall Civil Court on the 5th of June 2003). The two elements must subsist and if they do not subsist, the Court has to reject the claim for an issue of a warrant of Prohibitory injunction. (See **Mary Borg vs Commissioner of Lands** decided by the First Hall Civil Courts on the 15th of December 2008; **The Golden Sheperd Group Limited vs Enemalta Corporation** decided by the First Hall Civil Court on the 17th March 2009).

These proceedings were filed by the Plaintiff, in order to request the Court to issue a warrant of Prohibitory Injunction against the Respondent to prohibit her from allowing the minor child ICG from leaving Malta.

Plaintiff argues that since Respondent as already unlawfully retained the minor in S. He has no assurance that Defendant will not leave Malta again with the minor. He stated that it was in the child's best interest to have stability in her life and to attend school regularly in Malta. Moreover, Plaintiff has already filed proceedings – Sworn application 72/2024 AL, requesting care and custody and primary residence of the minor, and for access and maintenance to be duly regulated.

On the other hand, Respondent states that Plaintiff was only really interested in ensuring that he maintained his way of living whilst remaining in Malta. She insisted that she always had Plaintiff's consent whenever she wanted to travel with her daughter to S.

She reiterates that Malta had always been a **temporary place of residence and that the intention of the parties was always to return to S for their habitual residence**. She stated that she was forced to carry, on her own, the financial burden of the child together with her daily care, whilst Plaintiff attended his hairdressing salon and his nightly drumming sessions with friends.

It is this Court considered opinion that Plaintiff has a right of access to his daughter ICG and a right to maintain and enjoy meaningful relationship with her. The Court understands that Respondent will only undertake travelling to S with the child for holidays and for much needed respite from the burdens of single parenthood, which respite might be granted by her family in S. The Court understands that it was the mother herself who returned to child following the proceedings before the S Court. It is more than evident that S is party to the **Hague Convention on the Civil Aspects of International Child Abduction** as is Malta.

Therefore, it is this Court's belief that should this warrant not be upheld, the prejudice to the Plaintiff and to the child ICG will **certainly not be irremediable** as both child and mother effectively returned to Malta. The Court however will not allow these proceedings to be used as a weapon to render Defendant, an unmarried mother, hostage in Malta. The Court understands that in future, both parties shall **agree in writing** as to when either party may travel abroad with the child.

For these reasons, the Court holds that the essential elements for granting of a Prohibitory Injunction on the child of the parties, do not concur and therefore, the Court denies Plaintiff's application dated the 30th May 2024, with costs.

Furthermore, the Court orders that a copy of this decree be notified to all the Authorities concerned in accordance with the law.

Given in camera.

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

**Christabelle Cassar
Deputy Registrar**