



**CIVIL COURT
(FAMILY SECTION)**

MR JUSTICE HON ANTHONY VELLA

Sitting of Thursday 23rd May 2024

Sworn Application number; 193 /2023 AGV

PM

VS

Dr Martin Farrugia and PL Daniel Aquilina for absent SM

The Court;

Having seen the Sworn Application, of PM , holder of Identity Card number 9001240A, dated 21st August 2021;

Humbly submits and upon her oath personally confirms the following:

1. That from a marriage between the parties (religious marriage performed in Ghana in 2009) the minor ST. M was born on the 20 January 2017 and this according to the birth certificate hereto attached and marked as Dok A;
2. That the parties together with their minor daughter have been resident in Malta since February of the year 2014;
3. That on 17 February 2022 the father SM the defendant went abroad to Ghana without any indication as the date of his return to Malta, since then neither the applicant nor her daughter ST M have had any contact with the defendant;
4. That the minor ST M presently resides with the mother, the applicant;
5. That therefore, the defendant is not present in his daughter's life and this shall be proven throughout these proceedings;
6. That the applicant has assumed all parental responsibility alone and this as shall be proven throughout the proceedings. The father does not contribute towards the maintenance of his daughter ST M and that therefore, all expenses connected with her upbringing are fully assumed by the mother;
7. That it is in the minor's best interest that the applicant is assigned full care and custody of the minor ST M and that the absent defendant be deprived of all parental authority in accordance with Article 154 of Cap 16 of the Laws of Malta and any other relevant legal provisions in the supreme interests of the minor and this as shall be proven throughout these proceedings;

8. That it is also in the best interest of the minor that the applicant be authorized to apply for the minor's passport without the signature of the absent defendant and this as shall be proven throughout these proceedings;
9. That it is also in the best interest of the minors that the application be authorized to travel abroad with the minor without the signature, consent, or authorization of the absent defendant and this as shall be proven throughout these proceedings;
10. That the applicant is authorized to proceed with this sworn application by virtue of a decree given by this Honorable Court dated the twenty-first (21st) of June of the year two-thousand and twenty three (2023) following the mediation between the parties which could not occur precisely due to the defendant's absence, a copy of which decree shall be submitted during these proceedings owing to logistical and technical problems relating with the provision of a copy of the same decree from the registry of this Honorable Court and this by consequence of renovations in the room wherein the same registry is located.

Therefore, the applicant requests this Honorable Court, in accordance with the abovementioned, to:

1. Declare and assign the care and custody of the minor ST M with the applicant mother exclusively;
2. Orders that the residence of the minor shall be with the applicant mother;

3. Deprive the absent defendant from all parental authority in terms of Article 154 of Cap 16 of the Laws of Malta and of any other relevant and applicable legal provision in supreme interest of the minor and exclusively assigned the parental authority to the applicant mother so that she retains the exclusive rights , responsibility and authority to all those decisions , both of an ordinary as well as extraordinary nature regarding upbringings ,health , education, extra-curricular activities of the minor , together with decisions regarding domicile, travelling and issuance and renewal of the minor's passport and this without the need of the defendant's signature.
4. Liquidates and affixes maintenance for the minor which maintenance shall incorporate the father share of half of the expenses relating to health education, extra-curricular activities of the minor which maintenance shall be payable commence full -time work, or until the age of twenty three should she decides to continue her studies on full-time basis and consequently orders the defendant to pay maintenance so liquidated in accordance with the manner of payment including provisionally of periodical increases to make up for the cost of living increases.
5. Orders that the same maintenance is directly deducted from the defendant salary income from any employment or work which he has or may have or from any benefits of which he may be in receipt from time to time.
6. Orders that the same maintenance be deposited in a bank account indicated by the applicant.
7. Declares that the defendant is responsible to pay for unpaid backpay of maintenance together with expenses relating to the health and education

unpaid by him together with cost-of-living increases, and this as shall be proven throughout these proceedings.

8. Liquidates unpaid backpay of maintenance together with expenses relating to the health and education (and extra curricular activities should that be the case) unpaid by him, together with cost-of-living increases.
9. Orders that the defendant pays the applicant all unpaid backpay of maintenance together with expenses relating to the health and education (and extra curricular activities should that be the case) unpaid by him, together with cost-of-living increases.
10. Orders that all social benefits and or social assistance which is payable to the minor ST M is given to the applicant.
11. Provides such orders and provisions as adequate and opportune in relation to the minor ST M

With costs against the defendant who is hereinafter called upon to given reference on oath.

HAVING SEEN the reply filed by the curators;

Having seen the sworn reply of Dr Marin Farrugia and PL Daniel Aquilina, who by virtue of Court decree of the 26th Janury 2024 were appointed curators to represent SM , who is absent;

Submit with respect;

That they in their capacity as curators, to represent the absent SM are not presently briefed of the facts which gave rise to this case and reserve their right to file subsequent pleas at later stage

Without prejudice to subsequent pleas.

Having seen the evidence brought in this case.

Having seen all the documents exhibited, and all the acts of these proceedings.

CONSIDERS:

The facts of the case are briefly the following. The parties had met in Ghana in 2006 and were married two years later. Defendant had moved to Malta that same year, and plaintiff followed in 2014. The minor child was born here in Malta in 2017. In 2020, plaintiff found out that defendant had got secretly married again by proxy to another woman in Ghana, without telling her. Their relationship obviously deteriorated, and she left the apartment where they were living in 2021 and took the child with her and moved to another apartment in Qawra. During this time, defendant would take the child to school and bring her back to plaintiff's residence, and he would occasionally contribute to the child's upbringing.

In February 2022, plaintiff received a message from defendant that he had left Malta. This took her completely by surprise. From that day, no communication whatsoever has been sent by defendant, and plaintiff has no record of his whereabouts. This complete absence of the father in the child's life has made it very difficult for plaintiff to file any application for her child without the father's signature or written consent.

Together with her affidavit, plaintiff exhibited a list of expenses she normally incurs in raising her minor child, which amount to Å680 per month. Defendant has not contributed anything since he abandoned them in February 2022. In the meantime, plaintiff has seen to all the child's needs on her own. She has been in continuous employment since her arrival here in Malta, and has managed to get by on her own, without defendant's help.

As the defendant could not be traced or contacted to have his version of events brought in this case, the Court has plaintiff's evidence as proven facts, and no evidence to the contrary has been produced. The Court sees no reason to uphold all plaintiff's pleas in this case and hopes that she may be able to recover at least part of the expenses she has incurred in her child's upbringing.

From the evidence submitted, plaintiff states that she spends around Å680 per month on the child, which sum includes a share in the rent that she pays monthly. The Court shall nonetheless award the minimum maintenance customarily awarded in such cases, which sum shall include defendant's share of the ordinary expenses incurred in the child's health and educational matters. The Court is therefore awarding plaintiff the sum of Å250 per month by way of maintenance for the child. On her tenth birthday, the maintenance shall increase by Å25 per

month to Å275, and on her fifteenth birthday it shall again increase by a further Å25 per month to Å300.

Plaintiff is also claiming arrears in maintenance. She claims that Since defendant left in February 2022, that brings a total of 27 months of maintenance, totalling Å6,750 in arrears due to plaintiff from defendant.

All the other pleas raised by plaintiff shall be upheld by the Court. It is indeed hoped that the mother may find all the assistance that she needs, and that she may recover from defendant at least part of all the expenses she has incurred to date in the raising of her child.

DECIDE:

NOW, THEREFORE, FOR THESE REASONS, THE COURT,

UPHOLDS PLAINTIFF'S PLEAS.

1. Declares and assigns the care and custody of the minor ST M, with the applicant mother exclusively;
2. Orders that the residence of the minor shall be with the applicant mother;

3. Deprives the absent defendant from all parental authority in terms of Article 154 of Cap 16 of the Laws of Malta and of any other relevant and applicable legal provision in supreme interest of the minor and exclusively assigns the parental authority to the applicant mother so that she retains the exclusive rights, responsibility and authority to all those decisions, both of an ordinary as well as extraordinary nature regarding upbringings, health, education, extra-curricular activities of the minor, together with decisions regarding domicile, travelling and issuance and renewal of the minor's passport and this without the need of the defendant's signature.
4. Liquidates and affixes maintenance for the minor in the amount of Å250 per month, which maintenance shall incorporate the father's share of half of the expenses relating to health, education, extra-curricular activities of the minor which maintenance shall be payable until the minor reaches the age of eighteen should she decide to terminate her studies and commence full-time work, or until the age of twenty-three should she decide to continue her studies on full-time basis and consequently orders the defendant to pay maintenance so liquidated in accordance with the manner of payment including provisionally of periodical increases to make up for the cost of living increases.
5. Orders that the same maintenance is directly deducted from the defendant's salary or income from any employment or work which he has or may have or from any benefits of which he may be in receipt from time to time.
6. Orders that the same maintenance be deposited in a bank account indicated by the applicant.

7. Declares that the defendant is responsible to pay for unpaid arrears of maintenance together with expenses relating to the health and education unpaid by him together with cost-of-living increases, and this in the amount of Å6,750.
8. Liquidates unpaid arrears of maintenance together with expenses relating to the health and education (and extra curricular activities should that be the case) unpaid by him, together with cost-of-living increases, as already determined.
9. Orders that the defendant pays the applicant all unpaid arrears of maintenance together with expenses relating to the health and education (and extra curricular activities should that be the case) unpaid by him, together with cost-of-living increases.
10. Orders that all social benefits and or social assistance which is payable to the minor ST M is given to the applicant.
11. Authorises plaintiff to apply on her own, without the need to obtain defendant's written consent or signature, for the minor child's passport or for any other document issued by the Maltese authorities, including applications for the child's education, summer school, examinations, and any other requirement as may be needed from time to time.

All costs are to be borne temporarily by plaintiff, and shall be recoverable from defendant when his whereabouts are determined.