



## **Court Of Appeal**

### **Judges**

**THE HON. CHIEF JUSTICE MARK CHETCUTI  
THE HON. MR. JUSTICE GIANNINO CARUANA DEMAJO  
THE HON. MR JUSTICE ANTHONY ELLUL**

**Sitting of Monday, 4<sup>th</sup> November, 2024.**

**Number: 2**

**Application Number: 124/20/1 JPG**

**Charlene Akerhomebe**

**v.**

**Gabriel Johnson Akerhomebe**

### **The Court:**

1. Defendant filed an appeal from the judgement delivered by the Civil Court (Family Section) on the 15th April, 2024, whereby he contests that part of the judgement whereby the court authorised the plaintiff to “.... *reside exclusively in the matrimonial home together with her children and this within two months from the date of judgement*”. The plaintiff was

notified but did not file a reply. Although in front of the First Court the plaintiff was being assisted by a lawyer, on the 22nd June 2023 the lawyer declared that she was renouncing to her brief. The plaintiff did not attend the sittings that followed and was not represented.

2. Plaintiff and defendant got married on the 9th April, 2011. During the marriage two children were born. On the 26th August 2020 the plaintiff filed separation proceedings. The premises 8, Triq Sant'Antnin, Hamrun was the matrimonial home. The premises were originally leased by the parties from the Housing Authority by a contract signed on the 27th February, 2014. Another contract was signed on the 13th November, 2019. Defendant resides in the premises whereas plaintiff and the children live in the same residence as plaintiff's brother. According to the judgement delivered by the first court, the children are to reside with the plaintiff, whereas the defendant has visitation rights from Friday at 6:00 pm to Sunday at 3:00 pm. By judgement delivered on the 23rd February 2022, the First Court ordered the cessation of the community of acquests. No appeal was filed from that judgement.

3. In the appealed judgement, the court said:

***“Matrimonial Home:***

*From the evidence produced, the Court observes that the matrimonial home was leased to the parties by the Housing Authority. From the evidence produced, Respondent is currently residing in the matrimonial home, whilst Plaintiff together with the children is residing*

*in her father's residence together with her brother. Throughout the pendency of the proceedings, this Court has seen Plaintiff affirming that this Court should order the eviction of the Respondent from the matrimonial home and that Plaintiff, together with the parties' minor children ought to be authorized to reside in the matrimonial home. Despite this insistence, no pendente lite applications were filed by the Plaintiff.*

*Respondent on the other hand contends that he cannot be expected to afford renting another residence alone, and contribute financially towards the minor children's needs, especially in light of the fact that Respondent has also contracted a monthly obligation for the hire purchase of a vehicle for work purposes. The Court has also seen that following her parents' passing, Plaintiff together with her brother, have sold a garage originally pertaining to her parents.*

*After careful consideration, this Court authorizes Plaintiff to reside in the matrimonial home with the children and Respondent shall be solely responsible for utility bills from date of that Plaintiff left the matrimonial home to date of this judgment”.*

4. In the appeal application, defendant requested the Court to:

*“... revoke and/or vary the judgement delivered by the First Hall (Family Section) of the 15th April, 2024 in the parties names in so far as the matrimonial home is concerned, and authorises appellant to reside in the property 8, Triq Sant'Antnin, Hamrun whilst assigning the lease to him and pay the utility bills of the said premises”.*

5. The plaintiff contests the decision and contends that the court failed to consider the following circumstances:

- i. His gross earnings are €1,300 per month;
- ii. He pays the monthly sum of €315 as payment of the price for the vehicle he uses for work as a driver;

iii. He has to pay €400 per month as maintenance for his children, and another €100 per month for another child.

iv. He also pays €140 rent every three months, utility bills, internet (€35) and mobile phone expenses (€65).

v. Respondent resides with her brother, in a property which they co-own. Furthermore, she sold a garage and her share was €20,000. She also receives social benefits (€562), and €706 every three months as children allowance.

6. Probably in these circumstances the defendant does not afford to rent premises at the prevailing current market rent. He argues that he cannot rent premises with shared accommodation as his children spend two nights during the week at his residence.

7. On the other hand the plaintiff has alternative accommodation. However, she said that she lives with her brother; *“Jiena norqod mal-art. Hija fuq is-sodda u t-tfal nifthulhom sodda. Ma għandniex fejn norqdu għaliex kamra waħda għandu”* (sitting held on the 3rd November 2022).

8. With regards to the matrimonial home, the First Court authorized the plaintiff to reside in the matrimonial home with the children, *“after*

*careful consideration*". However, the Court did not give reasons for such an order.

9. The First Court confirmed the following facts:

i. Plaintiff is residing in her father's residence with her brother. No *pendente lite* application was filed by the plaintiff to authorise her to reside in the matrimonial home to the exclusion of her husband, although throughout the proceedings she claimed that she should be granted the right to reside in the premises with the children.

ii. The children's primary residence is to be with their mother, whereas they will spend time with their father from Friday at 6:00 pm till Sunday at 3:00 pm.

iii. Respondent works as a full time taxi driver, and has gross earnings of €1,300 every month. He is to pay €400 every month as maintenance for his children, which will increase each year according to the cost of living adjustment.

10. On the 26th August 2020 the plaintiff filed the lawsuit, and stated that her address was Fredant, 23, Saura Street, Marsa. Therefore, the

Court understands that the plaintiff had already moved out of the matrimonial home.

11. Based on plaintiff's current earnings and financial commitments, **amongst which his obligation to pay maintenance for his children**, it will probably be difficult to rent an apartment at the current market rent. Furthermore, the shared accommodation option is not appropriate, since the First Court ordered that the children are to be with their father during the weekends.

12. On the other hand based on plaintiff's testimony, her current accommodation is undoubtedly inadequate. However, the evidence shows that recently the plaintiff, together with her brother, sold a garage. Her share from the price is €20,000 (contract dated 22nd November 2022). There is no proof that she has spent that money or that she has no access to her share. It is certainly strange that the plaintiff did not insist that the First Court urgently issues a *pendente lite* order with regards to the matrimonial home, if she truly lives with her children and brother in one room. Neither did she explain why she did not seek alternative accommodation after the garage was sold, that is when she had the funds to rent an apartment. The evidence also shows that the plaintiff receives social benefits from the Department of Social Security of approximately €600 every four weeks, and children allowance, and €50 being her share

of the rent of another premises.<sup>1</sup> Furthermore, the plaintiff gave no explanation as to why she is not gainfully employed.

13. In the prevailing circumstances the court is of the view that presently the plaintiff has the financial means to find alternative accommodation that is adequate for the children and herself. On the other hand if the defendant is ordered to vacate the premises, probably it will not be possible for him to exercise the visitation rights granted to him by the First Court. That part of the judgement is now a *res judicata*.

14. Therefore, the Court will partially uphold the appeal filed by the defendant without prejudice to the right of the plaintiff to request a review of the order in the eventuality that there is a significant change of circumstances. On the other hand, defendant's request to be exclusively assigned the lease of the premises is unjustified.

### **Decision.**

The Court partially upholds the appeal filed by defendant and revokes that part of the judgement authorizing the plaintiff to reside exclusively in the matrimonial home together with the children, and instead orders that

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<sup>1</sup> During 2022 she received €4,771 social benefits and €1,926 children's allowance. She also received €810.72 in maternity benefits, €233.80 additional bonus for cost of living increase, and €105 supplement of the children's. allowance. In total €7,847.84.

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defendant can continue to reside in the said premises and rejects plaintiff's request for the eviction of the defendant from the premises. This order is subject to review in case of a significant change of circumstances. However, the court rejects defendant's request to be assigned the lease of the premises.

Judicial costs concerning the appeal are at the charge of the plaintiff.

Mark Chetcuti  
Chief Justice

Giannino Caruana Demajo  
Judge

Anthony Ellul  
Judge

Deputy Registrar  
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