



**CIVIL COURT
(FAMILY COURT)**

MR. JUSTICE HON. ANTHONY VELLA

Sitting of Tuesday 29th October 2024

Sworn Application : 82/2019 AGV

In the names of:-

RS

Vs

A S

The Court,

Having seen the sworn application of RS , who humbly requests the following:-

1. That the parties married on the tenth of October of the year two thousand and eleven (10.10.2011) and have been de facto separated as of April of the year two thousand and eighteen.
2. That from this marriage the parties had a son AD S , who was born on the seventeen of August of the year two thousand and eleven and is currently seven years old.
3. That the parties entered into a contract of separation of estates published in the acts of Not Dr. Sandra Bugeja on the twenty-eight of April of the year two thousand and eighteen a copy of which is attached and marked as Dok RS1 and there exists no Community of Acquests between the parties.
4. That the matrimonial home is Flat two, Eden Rock, Triq Nardu Sacco, Zurrieq, and was purchased solely by the Plaintiff and this as copy of the contract sale attached hereto and marked as Dok RS2. That all furniture, fixtures and improvements in the same property were made by Plaintiff. That Defendant should therefore have no claim over the said property *qua* matrimonial home, and he left the same in July of the year two thousand and eighteen and returned the keys to the same in December of the same year.
5. That the marriage between the parties suffered an irreversible breakdown and this for reasons attributed solely to the Defendant who is responsible for the breakdown of the marriage and this because he rendered himself guilty of excesses, cruelty, threats and

grievous injury against Plaintiff as will be proved during the hearing of the case.

6. That during the major of their married life, the parties lived apart from each other and this because Defendant remains living in the United Arab Emirates, specifically Dubai, whereas applicant and the son lived in Malta, and it was only in the year two thousand and seventeen that he moved to Malta.
7. That applicant was informed that Defendant assumed big debts in Dubai, without her knowledge or consent and she is also informed that he was in trouble because he failed to pay his rent in the month before he left Dubai, so much so that he was arrested until payment was settled. From that which she has been told Plaintiff believes that Defendant is paying a loan monthly in order to settle his debts, but she is unaware of the amounts being paid by way of loan repayments.
8. That all attempts at reconciliation and mediation failed and the mediation process was declared closed on the twenty third of January of the year two thousand nineteen and by means the same decree she was authorized to proceed with this case.

In light of all that has been closed above, Plaintiff humbly asks this Honorable Court to:-

1. Declare and pronounce the personal separation between the parties for grave reasons attributed to the Defendant who rendered himself

guilty of excesses, cruelty, threats and of grievous injury against Plaintiff.

2. Declares that the Plaintiff is the sole owner of the property Flat 2, Eden Rock, Triq Nardu Sacco, Zurrieq, and that this is no longer to be considered as the matrimonial home and consequently declares that Defendant has no rights over the same.
3. Declares that any debts which Defendant has in Dubai or elsewhere made without the proper knowledge and consent of applicant and that the same debits are to be paid solely by Defendant.
4. Entrust the care and custody of the minor child AD S to Plaintiff and order that the minor resides with the Plaintiff with rights of access towards the father.
5. Liquidates the maintenance due for the minor ADS and order that the Defendant pays the sum so liquidated to Plaintiff in a bank account to be indicated by her.
6. Orders the Defendant to pay half of health and education expenses related to the minor.
7. Order that all benefits to the minor child payable by the state be paid solely to the applicant and to authorize her to apply for all such benefits without the need of her husband`s consent.

8. Authorize Plaintiff to apply for a passport for the minor on her own and without the need to the signature of Defendant and to authorize her to withdraw the same on her own.

With expenses against Defendant who is from now being called in reference to his oath.

Having seen the sworn reply of AS , who humbly pleads as follows:-

1. First of all, Plaintiff should show and exhibit a copy of degree authorization her to initiate these proceedings.
2. There is agreement that the parties were married on the tenth day of October of the year two thousand eleven that the parties had a minor child whose name is AD S on the seventeenth day of August of the year two thousand eleven and that the same parties have been *de facto* separated since April two thousand and eighteen.
3. That with regards to the first claim made by the Plaintiff although a personal separation should be declared between the parties, however this happened only due to reasons solely and exclusively imputable to the Plaintiff and this due to adultery committed by the Plaintiff as well as due to himself guilty of excesses, cruelty, threats and grievous injury against Plaintiff assumed the responsibilities and obligations which arises from the marriage hence the marriage

has irretrievably broke down. In fact the Defendant is availing himself of the right given to him to Counter Claim.

4. With regards to the second and third claim these should be partially declaimed in the sense that works and improvements have been made in this property as well as Defendant retain the right over certain objects and things which were made in the matrimonial home that is Flat number 2, Eden Rock, Triq Nardu Sacco, Zurrieq, from which the Defendant should be compensated. Furthermore no debts have been made without the Plaintiff 's knowledge or that are still pending;
5. That the fourth Claim should be partially denied in the sense that care and custody of the minor child should be joint whereas there is agreement that the minor should live with the Plaintiff with the right of access of the Defendant.
6. That with regards to the fifth and sixth claim of the Plaintiff , the Defendant agrees that maintenance should be given for the minor child according to the Defendant's means which in fact he is already contributing maintenance for the minor, the said maintenance should include the health and educational expenses or should be reduced and the health would be shared by both parties and paid separately.
7. That there is no objection to the seventh claim always as long as the minor continues living with the Plaintiff.

8. That the eight claim should be denied in view of the fact that there does not exist any reason why the Plaintiff should apply and collect the minor's passport on her own, this should be done with the consent and signature of both parties.

Save the other father's pleas.

Costs to be borne by the Plaintiff.

Having seen the COUNTER CLAIM of defendant AS by virtue of which he is availing himself of the benefits of the Counter Claim which is granted to him according to Chapter 12 of the Laws of Malta, who humbly requests as follows:-

1. That the parties married on the tenth day of October of the year two thousand eleven.
2. That on the seventh day of August of the year two thousand eleven a boy was born to the parties whose name is A D S .
3. That this marriage had irretrievably broken down and this for reasons or imputable to the reconverted Plaintiff since she became guilty of excesses, cruelty, threat and or grievous injury against Plaintiff as well as because of gross incompatibility of character.
4. That notwithstanding the fact that there were attempts at reconciliation on again this was not successful due to reasons imputable to the reconvene Plaintiff.
5. That the Defendant still has a credit which needs to be liquidated in his favour and will be proved by evidence which is to be produced;

6. That the reconvened Plaintiff obstructs and does not cooperate in that which pertains to the access and contact of the minor with the Defendant and father notwithstanding the fact that the father has so much at heart his son who he loves and cherishes.
7. That the Defendant pays maintenance for the minor ADS to the reconvened Plaintiff.
8. That these facts as above declared are all directly known to the Defendant.

Therefore, in the light of the above, the Defendant asks the reconvened Plaintiff to state why this Honorable Court should not:-

1. Pronounce the personal separation between the parties for reasons recognized at Law and due to himself guilty of excesses, cruelty, threats and of grievous injury against Plaintiff as well as a gross incompatibility of character.
2. Authorized the Defendant to live separately from his wife the reconvened Plaintiff.
3. Order that the care and custody of the minor AD S ,be joint between the parties with a right of access to the minor for Defendant.
4. Apply against the reconvened Plaintiff complete or in part the disposition in Article 48 of the Civil Code Chapter 16.

5. Assign to the Defendant his paraphernal property/ credits or the value of the same.
6. To liquidate paraphernal claims and any amount due to the Defendant even if for the period during marriage such as but not limited to expenses which he incurred for the property against the community of acquests and the reconvened Plaintiff assets and to order the same reconvened Plaintiff to pay such liquidated amounts.
7. To authorize the Defendant to register this Court`s Judgment in Public Registry for all intents and purposes at Law.

With all costs , including those incurred during the stage of mediation and legal interests against reconvened Plaintiff who remains summoned for deposition.

Having seen the sworn reply of RS to the counter claim of AS humbly pleads as follows:-

1.That all the claims of the Defendant as reconvened should be rejected with expenses against him and this because they are based on premises that are untuned and baseless and this as well be better proven during the proceedings.

2. That she not only rejects that which was due to himself guilty of excesses, cruelty, threats and grievous injury against Plaintiff as a gross incompatibility of character she is being accused of the Defendant as reconvened is in fact a reflection of what he himself did during the marriage and she therefore asks that the first and second claim be declared as unfounded and vexatious and consequently rejected with expenses against him.
3. That she firmly reaffirms her requests for full custody of the minor child AD S and this for reasons that will be explained in detail during the proceedings and she consequently asks that the third claim of the Defendant as reconvened for joint care and custody be rejected with expenses against him.
4. That she denies that there are any paraphernal goods or credits owned to the Defendant as reconvened and she therefore asks the fifth claim also be rejected with expenses against him.
5. That she also denies there exist any amounts due to the Defendant as reconvened for any expenses he allegedly incurred during the marriage including but not limited to any expenses signed by himself where he declares that she does not owe him any money (Dok. RS1) and as will be proven during the proceedings and she therefore asks that the sixth and seventh claim of the Defendant as reconvened be rejected with expenses against.

6. That she subsidiarily makes reference to her initial sworn application and the details provided there in and rests on the facts stated therein.

7. That she makes reference to the fact that the Defendant as reconvened did not attend several mediation sittings leaving no option but for the mediation to be closed and these proceeding initially and it is therefore the Defendant as reconvened who should be ordered to pay all expenses of these proceedings including those incurred at mediation stage.

In light of the above applicants as reconvened humbly requests all claims brought by the Defendant as reconvened in his counter claim be rejected with expense against him

With expenses and interests.

Having heard all the evidence produced by the parties.

Having considered all acts and documents exhibited in this case.

Having seen all the acts of these proceedings.

CONSIDERS

Facts

1. Plaintiff confirms Defendant's version that they met whilst both working as cabin crew with Emirates Airlines.

She confirms that after four months of dating she was pregnant and initially Defendant wanted her to abort, but she refused and he was on board.

Living in Dubai and expecting a child and not married, Plaintiff admits she had no choice but to come back to Malta. She confirms that Defendant remained living in Dubai and contrary to what Defendant claims, she states that she lived most of the pregnancy alone, Defendant only coming down to Malta whenever it was possible for him to arrange to work the Malta flight, which meant that he was in Malta for approximately 48 hours in a month. Whenever he did not manage the flight he would come down for a weekend, but it was still for a short while.

Plaintiff explains that when Defendant came to Malta he did not show much interest towards her pregnancy and was more interest in buying clothes for the child. She also explains that initially when she returned to Malta they had an agreement, whereby Defendant would contribute financially by sending an amount of money every month and he lived up to this promise for the first three months, then he stopped and would give her a sum of money when he would come to Malta.

They decided to get married since they were going to have a child and after AD was born on the 17th August, 2011, they got married on the 10th October, 2011 and by December, 2011 she moved to Dubai. She explains that this was a terrible time for her since she

did not work, she had no family or friends and was totally isolated and to make matters worse she found out about Defendant's financial status.

Plaintiff admits that Defendant had been lying to her about their financial situation, as he had a loan with the bank, which he did not tell her about since he was scared she would not want to marry him. He also used to borrow money from random people and they had to pay them back with large amounts of interest. She confirms that the debts is still there.

She questioned these problems, because having worked as cabin crew herself she was aware that Defendant had a good income and did not need these loans. However, when she confronted him , he admitted that this was because he did not know how to administer his money properly and would spend it . She tried to take care of his finances and minimize his expenses, but in vain because he was still borrowing money and they had to pay for it. When he paid her he would always pay her in cash.

On being cross-examined she confirms that with reference to the list of expenses that Defendant presented in his affidavit she disagrees with the purchase of the kitchen and living room as she had purchased them. She adds that the TV was a gift and he had also financed the travels to the US, Singapore, Sri Lanka and Germany as gifts.¹

The problems in their family life were mostly related to Defendant being egoistic and not interested in being a father. Plaintiff admits

¹ Dok. RSA 1

that she could understand that his work entailed long hours, but then when he was not working, he would prefer to go and play cricket with his friends. So, she found herself alone for most of the time and on the rare occasions when they did go out, Defendant would give a lot of attention to Adam to attract other people's attention, At home he was different and would do the least possible with their son, of if she did ask him to do something he would find all the excuses possible not to do anything.

Plaintiff also adds that she realized Defendant was not even interested in being married to her and this because she found various messages sent to random girls at the time she was pregnant, which messages were flirtatious in manner. When she confronted Defendant he claimed that someone must have hacked his account and denied ever having sent these messages.

Due to the fact that she wanted to try and keep the family together as much as possible, she forgave him, only to find out that on a layover in Los Angeles, he had taken a trip to Las Vegas with 5 girls where they shared the hotel suite together. Once again when she confronted him, he claimed that he was taking care of them as he was the only man there and he had forgotten to tell her as he felt it was not important.

Plaintiff goes on to add that Defendant was irresponsible and immature and unwilling to assume the responsibilities of marriage. He had wanted to apply for a post as SFS (Senior Flight Steward) to increase his income, but he needed to attend to some courses

before he could be considered for the job, something which he never did.

She also explains that after Adam was born they had decided to put money aside in a baby saving plan. The idea was that Defendant would deposit the money, since he was the sole bread winner, but he only did so for two months, after which it was Plaintiff who deposited money from her savings account.

Plaintiff admits to having tried to make things work for around six months, but then the situation became unbearable, so much so she decided she could not live in Dubai any longer and she returned to Malta, hoping to find a job and start separation proceedings.

Defendant was very upset about this decision and refused to speak to her for around a year and a half and during such a period, he did not contribute financially nor did he ask about his son, except occasionally when he happened to be flying to Malta.

Towards early 2014, Defendant started sending messages to her asking for forgiveness and he understood how important she and their son was to him. Since she was also aware that Defendant was a nice man deep down, she decided to give him a second chance, although she had her reservations when it came to their finances, since Defendant was extravagant and did not know how to save, so she insisted that they have a separation of estates. This contract was signed in April, 2014 and on the 28th October, 2014, I purchased the property Flat 2, Eden Rock, Triq Nardu Sacco, Bubaqra, Zurrieq.

At the beginning of 2015, they reconciled and they agreed that she would remain living in Malta, whereas Defendant would remain in Dubai until he paid off his loans, so then he could leave his job and come to work in Malta. The plan was that he would return to Malta around 2018. Defendant kept on paying €400 maintenance for the first three months, then he started coming up with excuses why he couldn't pay.

He was always keen to go on vacations since he got discounts, being cabin crew, so they agreed that she would take care of her needs and Adam's and he would finance their holidays, although she would have preferred if he paid the monthly alimony. There were occasions however, where he would pay her a sum of money in cash, which she accepted to avoid further arguments.

After three years passed, Defendant told her he had paid the loan and he was going to look for a job in Malta. He offered to buy her a new car and once she had chosen it, he told her he did not have money for the deposit as he had taken out a loan again.

Plaintiff therefore complains that money remained an issue in their marriage, so much so that she was informed that Defendant had been arrested on having failed to pay his landlord. Once she knew of these problems she insisted with Defendant that he should remain in Dubai until he settled all his debts. However, he told her that he had managed to arrange things with the bank and he would be able to pay his debt from Malta with cheaper installments.

In June 2017, Defendant moved to Malta and went to live with Plaintiff and son. He got a job with the Malta International Airport,

but once again he was very reluctant to help out in the house and help with Adam. She realized that Defendant had not changed in the least. He still did not want to assume any responsibility and moreover he treated her like hired help.

Initially he followed access and then he started wanting to change or not coming to see his son and instead he going to play cricket. He would ask to change last minute when she would have already made plans. She was aware that he had problems with his working hours and that he also did not have a car, however she too had her commitments.

She tried to control their finances, but the issue of money remained a bone of contention between them, so much so that in December, Plaintiff states that Defendant made her sign a paper wherein there was a declaration that none of them owed money to each other.²

They argued constantly and Defendant would not speak to her for days or if he did it was to insult her, so in April, 2018, she decided to take legal advice to initiate separation proceedings. From the minute Defendant came to live with them, it was stressful and tense for their son, who Defendant tried to involve in their arguments and burden him with their problems such as sending him with the maintenance in his pocket.³

2. **Defendant** met Plaintiff when they both worked as cabin crew with Emirates, through a common friend and colleague. At the time

² Doc. RM 9 attached to Plaintiff's affidavit.

³ Doc. RM 2

they lived in Dubai and he admits that he took a liking immediately to Plaintiff.

It was after a couple of days that they came across each other once again and they started dating. Plaintiff made him aware that she had commitment problems, after coming out of a long and difficult relationship and it was for this reason that she moved to Dubai, to try to recover and start afresh.

So, their courtship was made up of good moments and then break ups and he realized that Plaintiff needed her space and time as he was more taken up by the relationship. It was after he took a step back for a while, she told him that she loved him. From then on their courtship blossomed, until Plaintiff discovered that she was expecting Defendant's child and this was on the 30th December, 2010.

Since they lived in Dubai, where it is not permitted to have children outside of marriage, they had to make excuses and on some occasions pretend that they were married. They spoke to the Emirates clinic and she was given open sickness, until they decided it would be best for Plaintiff to return to Malta, whereas he would remain working in Dubai to save money to support her financially. He adds that Petitioner did not give her notice and he paid €800 for her. He used to return around three times a month to Malta until their son AD was born.

Although he had intended to propose to Plaintiff whilst taking her on a vacation to New York, he only did so when in Malta and she accepted.

Defendant explains that they experienced difficult times during such a period, as Plaintiff had trust issues and was annoyed with him that he had a credit card debt which he was paying off. He admits that trying to travel to Malta, more than once a month and purchasing all the needs for the child, led him to find it difficult to cope with all the expenses, but what was important for him was that he was close to Plaintiff.

On the 17th August, 2011, Plaintiff gave birth to AD . By the time he landed in Malta, AD was born. Things went well for a while, but then it so happened that Plaintiff during the marriage used to be aggressive and shout at him, whilst he used to remain calm as it was in his nature. They had agreed that after marriage, Plaintiff would return to Dubai and they would settle there. They got married in Malta, although he admits that he would have preferred to have an Indian wedding. He adds that he had spent a substantial amount of money for the wedding.

Plaintiff returned to Dubai in January 2012, together with AD and her sister. She was unhappy from the start, she disliked the apartment and also she disliked him playing cricket, his only hobby. They argued constantly even in front of her sister and he states that Plaintiff was also very jealous of his female colleagues.

It was after their trip to Amsterdam, that Plaintiff came to Malta for a couple of weeks. She returned to Dubai and in less than a week, she had planned her return to Malta, with AD and he returned to the apartment to find that she had left, together with their son. She

simply left him a note stating that she did not want to live with him any longer and she did not recognize him any longer. Although his first reaction was to catch the first plane and come to Malta, he took his parents' advice and waited to calm down before acting impulsively.

He explains that one of their main problems was that Plaintiff was excessively jealous of him and paranoid and most of the time she would overreact.

In December, 2012, he received a phone call from Malta to be informed that there were separation proceedings instituted against him. He paid Plaintiff the €2000 she claimed he owed her, and from 2013, he started to pay maintenance to Defendant in the sum of €400 a month and he used to have access to his son AD during the once a month he used to return to Malta. He also admits that there were occasions when he would pay Plaintiff larger sums of maintenance to cover various months and most of the time he paid in cash.

There was a time, when things between them improved and although he had asked Plaintiff to reconcile, she refused since she admitted to being in a relationship. On being cross-examined he stated that this was around 2012. However, around January/February, 2014, she agreed to reconcile because she was no longer in a relationship, but she subjected their reconciliation to a request for a separation of assets which they signed on the 25th April, 2014.

On being cross-examined he also confirms that between 2012 and 2014 when they were separating he had sent her an email admitting that he was having a series of casual relationships.

Plaintiff insisted that she could not move to Dubai and she was interested in buying a place in Malta. He offered to help out with the purchase of the property, but she insisted that she wanted the property in her own name and she did not want him to have to burden the loan if something happened to her. He trusted her and let her proceed with the purchase, from which she had €20, 000 saved and an income of €1000 a month.

Defendant confirms that Plaintiff had insisted on the separation of assets so she could buy the house in her name.

He adds that Plaintiff had a budget of €8000 to furnish the property and after having accompanied her to choose the furniture, he forked out the difference as the bill had amounted to €14, 000. Overall he confirms that he had paid around €20, 000 to furnish the house. In addition, he took the family on many vacations from Singapore, to America, even Sri Lanka and India. He is now expecting Plaintiff to pay half of these expenses.

Defendant lists out all the expenses he paid throughout.⁴ On being cross-examined he confirms that he paid Plaintiff in cash and had based himself on memories.

He confirms that he was aware that Plaintiff had around €10, 000 saved before she bought the house. He confirms that her father

⁴ A fol. 173 of Defendant's affidavit.

gave her €10, 000 to furnish the house, as well as he also bought her a car. He had promised to buy it for her, but when she wanted to purchase one he did not have the money. He also adds that he only found out that Plaintiff's father gave her another €6000 for the wedding. He confirms that Plaintiff had lent him €5,000 and he had paid her back.

He states that he remained living and working in Dubai until he found work in 2017 and they broke up again in 2018. He admits that he always tried to accommodate Plaintiff because he loved her and their son, but there were times that her insecurities will kick in and problems would start. Meanwhile, he was covering several travelling expenses as well as still paying out the maintenance in the sum of €400 monthly.

Defendant continues to explain that in January, 2017 he managed to find a job at Malta International airport, with a lesser pay and also further away from his family, who lived in India. He hoped that their relationship would improve, but it was not the case. Plaintiff was depressed and had been seeing a psychologist before she met him due to the problems of her previous relationship.

She kept on doubting him and was constantly checking his phone. Since he came to Malta, he did not have any friends or family and Plaintiff encouraged him to start cricket, but when he did, she complained that he gave priority to cricket rather than to her. They tried to go to therapy, but after a while, she refused to go again.

However, Defendant admits that their marriage was not working out any longer because of Plaintiff's attitude and behaviour and they had no choice, but to proceed with the separation.

During the last three months that they lived together, Plaintiff tried to avoid him from seeing his son and the only time she let him enjoy her son was when he celebrated his First Holy Communion.

With regards the note he signed on the 26th December, 2017, wherein he stated that Plaintiff does not owe him money, he admits that this was signed under pressure, because he felt that if he signed, their relationship would improve, but it did not. He signed because he wanted to try to keep his family intact.

At present he lives in a rented apartment which he shares with another man just to be with his son. At present he is working as a VIP host at the VIP terminal at Malta International Airport, but for some reason, Plaintiff does not want him to spend time with Adam. The court has ordered his access, but if he happens to have work on the days of access, she requests a month's notice. He adds that the court decree does not state who is to do the drop off and pick up and so Plaintiff takes advantage of this and insists that he does them both, when she knows that he does not drive. He concludes that Plaintiff does her utmost to keep him away from their son and she did not even let him see her on her birthday.

He confirms that he has no pending loans in Dubai.⁵ He also confirms that he was arrested because of a bounced cheque, which he had issued and the salary was deposited late so that was the

⁵ Dok. AS 1

reason why it bounced. He was also paying €500 a month to his uncle for a car as there were some pending fines.⁶

3. **Fr. David Cortis**, Rector at St. Augustine's College confirms that AD S, is a student at St. Augustine's college. He confirms that all fees have been paid since AD started attending Year 1. He confirms that till the time he was testifying the college had received the sum of €1350 for the last three years as donations. He confirms that these sums were always paid regularly and they were always paid by Plaintiff.

He also confirms that there are other school fees consisting of photocopies, IT fees and also fees for outings and although Plaintiff works as a teacher at the same college she does not benefit from any discounts on the said fees.

4. **J T C**, Plaintiff's father explains that when Plaintiff was pregnant she was still living in Dubai and she was not married to Defendant. Until she gave birth he confirms that she came over to Malta and after their son was born she decided to return to Dubai to live with Defendant, but it did not work out and she decided to return back to Malta in July 2012. During such a time, Plaintiff and AD lived with them until he was 5 years old. Between July 2012 and the end of 2013 Defendant was hardly ever in contact with Plaintiff and his son, until in 2014 they decided to give their relationship another chance,

⁶ Doks. RS 1 and RS 2 a fol. 359

but Plaintiff remained living in Malta, whereas Defendant remained living and working in Dubai.

During such a time he confirms that Defendant would come over to Malta often and he would live with them and they never expected to contribute towards any expenses, although he made himself very comfortable.

Whilst living with them, he realized that Defendant did not give much attention to his son and he preferred to spend time on his phone or else he used to insist with Plaintiff so they leave Adam with them and they go out alone.

On being cross-examined, he admits that he was not always at home during the time when Defendant was in Malta. But he could confirm that he spent the least possible time with his son.

He admits that Defendant is lacking in his responsibilities as a father and after having asked to see his son three times a week, weeks go by without him communicating with him, He adds that he has very often given a helping hand to Plaintiff to help her collect or take their son to his activities or else he has also helped her financially, when she was in need. She used to show that she was short of money.

Plaintiff he states has always been a responsible person, so much so that to bring up her son she left her job with Emirates and works today as a teacher, where the income is less. Seeing her with financial difficulties, led them to give her €10, 000 to help her furnish her house. Infact, he confirms that on the 7th October 2015 he issued a bank draft in this amount and donated it to her to purchase the furniture she needed for her apartment.

He admits to also helping Plaintiff to purchase a car, for which Defendant had promised to help her and never did. She had paid him one-fifth of the price and he forgave her the balance. He also confirms that they had given her €6,000 for her wedding which she used as a contribution towards the expenses of their wedding and also €1000 as a wedding gift which she also used to cover expenses.

When they went on a cruise he confirmed that he had paid for all his excursions, whereas they paid their own. He also denies that Defendant paid for his other daughter when they went to Dubai.

5. **Johanna Bartolo**, in representation of Bank of Valletta plc. Confirms that from the researches carried out she found three accounts bearing Plaintiff's name:-

- Savings account 40010928695 still active
- Current account 40016456433 still active
- Savings account 40016380486 still active.

6. **Tina Lombardi** in representation of Malta International Airport confirms that Defendant has been working with them since 26nd June, 2017 and currently works on full time definite contract which expires on the 31st December, 2020 and he holds the position of assistant officer VIP host.

His gross basic salary as per contract is €20, 623.40 per annum, however they have been working on reduced hours.⁷ The normal working hours are between 8 am to 6 pm on a shift basis (3 in and 2 out) and currently when she testified she admits that there have been changes to the normal working hours.⁸

As to the leave taken he confirmed that he took 249 hours and has a balance of 42 hours left. She also adds that as from the end of March, employees were forced to take leave.⁹

7. Inspector Hubert Gerada confirms that Defendant for the time being is legally residing in Malta since a residence permit was issued on the grounds of temporary resident by ID Malta. He believes that before he was an exempt person and today he is temporary.

8. **Shashi Sharma**, Defendant's mother said that her relationship with Plaintiff, once she got to know her was fine. Once Plaintiff had moved to Malta, they had come to visit Adam. Initially, Plaintiff did not show him to them, but then she accepted as long as she was present. She tried to explain to Plaintiff to try and sort out her differences with Defendant and to avoid going to court.

⁷ Doks. TL 1

⁸ Dok. TL 2

⁹ Doks. TL 3

She confirms that before Defendant met Plaintiff he used to help her out financially, but it was not the case when they started going out together.

She confirms that she was aware that Defendant had a loan and he was paying it even when he was in Malta.

Her brother had sold the car that belonged to Defendant and with the money he had to pay off money to Dubai officials for parking the car there and then he kept the rest of the money and paid Defendant's loans by installments. She adds that for the sale of the car they received 100, 000 rupees.

As to the furniture when Defendant had to come to Malta he sold the beds, some furniture were given as gifts to friends and others were left with a caretaker.

9. **RS** Defendant's sister states that her brother was very much in love with Plaintiff and he had plans to marry her from the very start. She also states that Defendant was so much in love with Plaintiff that he used to give in to whatever she wanted, such as that the wedding should be held in Malta and she refused to have an Indian wedding. They got married soon after Plaintiff discovered that she was expecting a child and she believes that Plaintiff wanted to go ahead with the wedding because she wanted AD to be brought up within a family structure.

She also explains that when they came for the wedding to Malta, although Plaintiff's family welcomed them, they asked them to take care of their food and they accepted thinking it was the Maltese way

of hospitality, whereas in India things were done differently because they would consider them as gods visiting their house.

She also admits that her parents were upset because Plaintiff was indifferent to their religious beliefs and insisted that AD was Catholic.

She explains that when Defendant called to inform her that they were expecting a child he was overjoyed. The problems between them started after the child was born and this was mainly because Defendant used to have long hours at work and Plaintiff was alone in Dubai raising a child most of the time without any help. She also insists that Defendant was trying to get a job as a ground steward to have more flexible hours to be with his family more.

She explains that she offered to leave her job in India and move to Dubai together with her parents so that they could help her out with AD and Plaintiff could return to work, but she refused their help. Then they started travelling a great deal so as to spend time together.

She confirms that then Defendant informed her that Plaintiff was leaving Dubai and moving to Malta and sometime later that the latter was going to purchase property in Malta. She adds that she had warned Defendant to have part of the house on his name, but he was fine with Plaintiff purchasing in her name. She also states that Defendant had paid for most of the things in the house from furnishings, doors, bathrooms and also fittings. He had also told her to make a down payment on the place, however on being cross-

examined she admits to not being aware that they had a separation of assets.

When he came to Malta, she states that Defendant was fooled and he was sent out of the house. Plaintiff deprived him of water and everything was kept under lock and key and he had no access.

She confirms that Plaintiff had contacted her to accuse Defendant of having a relationship, because she had found messages he exchanged with a woman. She explains that she did tell Plaintiff to trust her brother because he was not the type of person to cheat on his partner and when she confronted him she knew the woman he had spoken to was the wife of a friend of his, who had contacted him for advice. This is what Defendant had told her.

She adds that when Plaintiff decided to leave Dubai on July 2012, she had sent her an email. She admits not replying to the email, but she had contacted Plaintiff and they had a long conversation where she suggested marriage counselling and also offering them to spend some time in India to help out with the child, which is always an overwhelming time.

She confirms that they had an Idol of God not an Indian ceremony after the wedding at their place here in Malta. She adds that when she had asked Defendant to change the wedding date because their father was unwell, it was Defendant who refused because he confirmed that Plaintiff had everything organized.

As a father she saw Defendant as being a very dedicated father, he used to play with AD and take them out whenever he was not working

10. **Notary Sandra Bugeja** exhibited the deed of sale by Plaintiff as well as the separation of estates.¹⁰

11. **Lorraine Attard** in representation of HSBC Bank Malta plc. confirmed that from the researches carried out the following accounts in Plaintiff's name resulted:-

- Current account 078011954002 today closed¹¹
- Savings account 078011954051 today closed¹²
- Current account 078011954001 today closed¹³
- Credit account today closed¹⁴
- Current account with Clifton Caruana 006006282001¹⁵

13. **Johanna Bartolo** in representation of Bank of Valletta plc confirmed that from the researches carried out the following accounts resulted in Plaintiff's name:-

- Savings account 40010928695 still open¹⁶
- Savings account 40016380486 still open¹⁷
- Savings account 40016456433 still open¹⁸
- Savings account 40017090364 still open¹⁹
- House loan 40022541497 still open²⁰

¹⁰ Doks. SB 1 and SB 2

¹¹ Doks. LA 1 and LA 2

¹² Doks. LA 3 and LA 4

¹³ Doks. LA 5 and LA 6

¹⁴ Dok. LA 7

¹⁵ Doks. LA 8 and LA 9

¹⁶ Doks. JB 1

¹⁷ Doks. JB 2

¹⁸ Doks. JB 3

¹⁹ Doks. JB 4

²⁰ Doks. JB 5

- Current account 40024769426 today closed²¹

Joint accounts

- Current account with CC 40016367690 today closed²²
- House loan 40016601437 joint with Clifton Caruana today closed²³
- House loan with CC 40016601453 today closed²⁴
- Savings account with JB 40015598447 still open²⁵

13. **MC** , states that she went to Dubai to help Plaintiff, her sister with AD she had stayed in their apartment. She spent a month and mostly with her sister and AD as Defendant used to be at work, but she had gone at their request to help her out with a four month old child.

She describes the apartment as bare, with a sofa, one bedroom and a bathroom and a kitchen equipped with the bare necessities.

She admits that although she insisted, Defendant paid for her trip stating it was her birthday present as she had gone to help them. He also used to pay for her if they went out as he considered her their guest.

She confirms that when Plaintiff came to Malta she always worked.

²¹ Dok. JB 6

²² Dok. JB 7

²³ Dok. JB 8

²⁴ Dok. JB 9

²⁵ Dok. JB 10

She also adds that when they went to India she had paid Defendant as he had purchased the tickets.

As to Defendant's relation with the child she states that when they were at their apartment, it was always Plaintiff and her who took care of Adam, but if they went out Defendant would show off as though he really took care of this child.

14. **Fr. David Cortis** confirms that Plaintiff started working at the school on the 5th December, 2012 and he presented her FS3s till 9th November, 2023, which include all supplements, allowances etc.²⁶

Having Considered,

Responsibility

Both parties blame each other for the separation, attributing to each other excesses, cruelty, threats or grievous injury against the other. Defendant also cites adultery on the part of Plaintiff as another ground for separation.

Adultery

In the case **Josephine Edwards vs Avukat Dr. Joseph a. Xuereb noe.** the Court enunciated that:

***“Ghall-prova tal-adulterju ma hemmx bzonn ta’ testimonjanza
“de visu,” jew il-flagranza, bizzejjed il-konkors ta’ cirkostanzi***

²⁶ Dok. DC 1

precizi, gravi u univoci, li jwasslu lill-gudikant għall-konvincement tal-fatt.”

It has now been established through local jurisprudence that adultery ***“dejjem gie meqjus bhala l-kawzali l-aktar gravi li għaliha l-ligi tawtorizza s-separazzjoni personali ..”***²⁷

Although Defendant alleges that Plaintiff committed adultery, he failed to prove so. The evidence produced confirms that at a point in time when the parties were *de facto* separated in 2013 and living distances apart between Dubai and Malta, they both admitted to having relationships.

Plaintiff does not deny that once their marriage was not working and was falling apart and moreover there did not seem to be any hope of reconciliation, she tried to build a new life for her and her son. Likewise, at the same time. Defendant was admitted to also being in various relationships with other women. He did so blatantly in an email he sent to Plaintiff.

These issues arose at a time when they were undergoing mediation proceedings.

Considering the above, Defendant’s claim that the marriage broke down because Plaintiff committed adultery, is completely unfounded.

²⁷ Carmelo sive Charles Farrugia vs Josephine Farrugia

He failed to produce evidence that at the time when the marriage broke down, she was in any sort of relationship.

This allegation further finds no support in that sometime after the parties decided to reconcile and give their marriage another chance. They reconciled between 2014/2015, only to separate again three years later for totally unrelated reasons.

Furthermore, the Courts have on many occasions emphasized the point that if adultery subsists at some point during a separation, but it is not the cause that led to the separation, a spouse cannot be held responsible for the breakdown of the marriage on this ground.

In this regard, in the case **Rikors Number 368/05** decided on the 26th January, 2011, the Court had this to say:-

“Il-Qorti tenut tac-cirkostanzi ta’ dan il-kaz, u li wasslu lill-partijiet ghas-separazzjoni, hi tal-fehma li din il-hbiberija temporanja li l-konvenut kellu ma’ din il-mara, la kienet il-kawza tas-separazzjoni u lanqas ikkontribwit b’xi mod ghat-tkissir ta’ dan iz-zwieg. Din il-hbiberija tal-konvenut ffit li xejn ghandha rilevanza fil-kaz odjern.”

Therefore, for all intents and purposes at law, adultery on the part of Plaintiff has not been proved.

Excesses, cruelty, threats or grievous injury committed by the wife

In the judgement **Antoinette Cauchi vs Alexander Cauchi**, insults and grave offences have been defined as “***jinkludu kliem jew agir illi joffendu l-pudur ta’ dak li jkun minkejja illi dawn jirreferu ghal affarijiet vera jew foloz.***”

Jurisprudence has also established that to prove excesses, cruelty and threats they must have been committed habitually and repeatedly. In the judgement **Jayne Margaret Chetcuti vs Lawrence Chetcuti** decided by the Court of Appeal on the 15th December, 2015 it stated that:

“...mhux kull nuqqas da parti ta’ konjugi versu l-konjugi l-iehor jwassal ghas-sevizzi, minacci jew ingurja gravi fit-termini tal-Artikolu 40 tal-Kodici Civili u huma biss dawk in-nuqqasijiet li, maghmula ripetutamente u abitwalment, iwegghu u jferu lill-konjugi sal-grad li l-konvivenza matrimonjali ssir wahda difficili u insopportabbli. Kif jinsab ritenut fil-gurisprudenza patria: “Per sevizie del senso della legge s’intendono atti abituali di crudelta’ che offendono la persona o l’anima di colui e sono diretti al punto di ingenerare in lui perturbazione, un dolore ed un aversione verso chi commette tali atti [PA Camilleri utrinque, 16 Marzu, 1898].”

In the case **Catherina Agius vs Benedict Agius**, decided on the 13th June, 1967 the Court stated that for the grounds contemplated under Article 40 of the Civil Code, the parties or one of them must have been living “***f’sistema costante di vessazione e di***

disprezzo, di oltraggio e di umiliazione che rendono almeno insopportabili l'abitazione e la vita comune.”

Furthermore, in the case **Giuseppa Agius vs. Pacifiko Agius** decided on the 10th December, 1951 by the Court of Appeal, the Court reiterated as follows:-

“Mhux talli tghajir tal-konjugi bejniethom jikkostitwixxi dik l-ingurja gravi li tiggustifika d-domanda ta' separazzjoni personali; imma meta l-kliem dirett minn wiehed mill-konjugi lill- iehor huwa tali li joffendi l-qalb u l-unur tal-bniedem, dawk il-kliem jammontaw ghal dik l-ingurja gravi...

Huma sevizji dawk l-atti abitwali li joffendu l-persuna u l-animu tal-konjugi li lilu huwa dirett u li jaslu biex joholqu ezarcerbazzjoni f'dak il-konjugi hekk offiz u avversjoni profonda ghall-konjugi l-iehor li jikkometti dawk l-atti...Ix-xehha tar-ragel, meta hija ezagerata u eccessiva, tista' tikkostitwixxi servizju li tirrendi impossibbli l-konvivenza konjugali.”

In a relatively recent judgement **Antoine Portelli vs Marthese Portelli sive Merthis** decided on the 27th April, 2017 the Court distinguished as follows:

“Il-Qorti tabbraccja d-distinzjoni bejn “sevizzi” u “eccessi” delineatabilment mill-Perit Legali fir-rapport minnu redatt

b'referenza ghad-dottrina esposta minn Fadda u Baudry Lacantinerie.

“Eccessi” huma atti ta’ vjolenza kommessi minn konjugi fil-konfront tal-konjugi l-iehor jew l-ohra illi huma tant gravi li jistghu jpoggu fil-perikolu s-sahha jew addirittura l-hajja ta’ dak li jkun. Tali vjolenza tista’ tkun mhux biss fizika izda ukoll psikologika. Vjolenza psikologika gravi, kostanti u fuq medda ta’ zmien tista’ ukoll twassal ghad-dannu fis-sahha ta’ min jissubixxi tali vjolenza psikologika u ghalhekk tikkwalifika ukoll bhala “Eccess” fit-termini tal-Artikolu 40 tal-Kap.16.”

In the judgement **Elisa Thompson vs Edward Thompson** the Court made it clear that not all grounds need to be proven, it is sufficient if one of them subsists.

Plaintiff explains how once she discovered that she was expecting Defendant’s child they could no longer live in Dubai as an unmarried couple, as it is considered to be tantamount to a criminal offence.

Plaintiff had no choice, but to leave her job and she moved to Malta. Defendant juggled between Dubai and Malta until they decided to get married on the 10th October, 2011 and they moved to Dubai.

It was during such a period that Plaintiff realised that Defendant was almost a stranger to her. He still led a single life going out with his friends when he was not working, as well as playing cricket. Plaintiff complains that he was incapable of finding a balance between his work and time for his family.

Another issue that she faced in the marriage is the fact that Defendant was a bad administrator of money. She became aware that he had a large loan with the Bank which he had not spoken to her about.

Despite him receiving a good salary, Defendant also used to borrow money from third parties and this Plaintiff to wonder where and on what he was spending his money.

When Plaintiff decided to start administering their finances herself, this led to further arguments as Defendant got frustrated and kept on resorting to taking loans from others and consequently the debts accumulated.

Defendant, on the other hand, considers one of their main problems in marriage to have been Plaintiff's obsession with money. He complains that she expected him to contribute towards the family, which he did, but then she expected not to contribute herself, so what she owned was hers and if she lent Defendant money, she expected it back.

Defendant does not bring forward evidence to show that essentially Plaintiff was a cause of problems to the financial issues in their marriage.

It is understandable that Plaintiff was very precocious when it came to their finances, considering Defendant's habit of borrowing money and not administering his money properly.

Plaintiff also complains that despite the fact she was aware that Defendant worked for long hours, having worked in the same area, she felt very lonely because Defendant was never there when he was not at work.

Defendant was generous enough to pay for Plaintiff's sister to come over to Dubai to help her out with the child, but when he was there he rarely helped out.

Plaintiff applied for a separation in August, 2012 and the situation remained the same until early 2014, when Defendant admitted his faults and wanted them to attempt a reconciliation. Defendant also promised that he would change, so Plaintiff decided to give him a second chance,

Having experienced the financial problems, Plaintiff requested that this time around they sign a separation of assets to which he agreed,

It was only until 2015 when the parties officially reconciled and Defendant promised to settle all his loans and return to live in Malta.

However, Plaintiff reiterates that once again the financial problems continued to arise. He insisted on taking them on extravagant holidays, boasting that he could afford them due to the discounts he acquired through his job.

At the same time, he failed to honour his maintenance obligations regularly. Plaintiff also discovered that Defendant had taken out another loan, alleging that the scope behind them were to pay their holidays, but it later turned out that he planned to invest in something else that turned out to be a fraud.

He was also arrested in Dubai for failing to pay rent to the landlord. Defendant denies this stating that his salary had been deposited late into his account, so there were not enough funds to pay the rent.

Defendant moved to Malta in June, 2017, but Plaintiff insists that nothing changed by them. He was still the same egoistic person who had all his priorities wrong. He failed to help out with Adam unless specifically asked to do so. He thus failed to take on family responsibilities and continued to lie to Plaintiff about various matters, leaving her to feel helpless.

The conflicting evidence between Defendant and his mother who confirms these debts, whereas Defendant initially denies their existence and then plays it down with conflicting versions, making him less credible.

In this respect, Plaintiff's claims that the marriage broke down because of Defendant's excesses and insults, have led him be responsible for the breakdown of the marriage.

Care and Custody

Plaintiff's pregnancy was a determining factor towards the marriage of the parties. Until their child Adam was born, Plaintiff came to live in Malta and the parties only married a couple of months later after the child was born.

Throughout her time in Dubai, Plaintiff found herself bringing up the minor child alone, since Defendant ever since continued to lead his own life. Plaintiff found herself bringing up the minor child above since Defendant worked long hours. The Court has already considered he preferred spending his leave at cricket games, playing PlayStation and when Plaintiff asked for help, he did it without a sense or responsibility.

Plaintiff also explains that when she had wanted to leave Dubai with Adam, without informing Defendant, he refused to contact her for a year and a half, not even asking on his child. So during such a period it was Plaintiff who took care of Adam's upbringing.

When things took a turn for the better, Defendant used to come to Malta and the time he lived with Defendant's parents. Plaintiff's father admits that he could see that there was no dedication from Defendant's part. He was more interested in going out together with Plaintiff leaving Adam with his grandparents. He also noticed that even when he was in Adam's presence, Defendant paid very little attention towards him.

Even when the parties decided to reconcile, the evidence produced shows that Defendant did not change and was still interested in enjoying his life as a single person would rather than bearing the responsibilities of a father.

Defendant tries to portray Plaintiff as being an irresponsible mother, since she did not appreciate his Indian culture and wanted things to be done her way. She refused to take Adam often to India. She also refused to let his family spend time with the child. In fact, Defendant's sister laments that her parents were elderly and got to spend very little time with their grandson.

Undeniably, Adam has to get to spend time with the respective families as much as possible, but it is also the case that India is far away, totally in another continent, making it difficult and expensive to travel there regularly.

Nonetheless, Plaintiff insists that when Defendant's family were in Malta, she did not hesitate to contact them to see Adam, which she gave them, but insisted that this had to be done in her presence.

The Court also confirms that it has always been the Plaintiff who took care of the minor child's education and extra-curricular activities. She was also the one who took care to pay the school's donation fees as confirmed by Fr. David Cortis, School Rector, as well as Joseph Tanti, the Karate Sensei, where Adam attends lessons.

Plaintiff also laments that Defendant is not always observant to his access times, and this reflects nothing more than lack of responsibility on his part, but also no respect for the time and the commitments of Plaintiff, who time and time again had to drop everything in order to step in when he failed to turn up or assume his responsibilities.

Moreover, the Plaintiff proved time and time again that Defendant disagreed and did not cooperate with any decision she tried to take with respect to her child Adam and this has led to several court applications being filed to help resolves these conflicting issues.

They have also gone on to consider that when there is constant disagreement between the parties it is impossible to encourage joint care and custody. The impossibility of parents to communicate and reach conclusions in the best interest of their minor children, has been proved as a ground on which to entrust the care and custody of a child to one parent alone, usually to the main carer and this not by way of punishment, but in the best interest of the children in whose interest daily decisions need to be taken. This was established in the case

Gertrude Zammit vs John Mark Zammit decided on the 27th October, 2017 wherein the Court stated:-

“In tema legali ssir referenza ghas-sentenza moghtija fit-3 ta’ Ottubru, 2008 fl-ismijiet Miriam Cauchi vs Francis Cauchi fejn il-Qorti tal-Appell iddikjarat illi fejn genituri ma jtkellmux, talba ghall-kustodja kongunta ghandha tigi skartata mill-Qorti. Dina l-Qorti filwaqt li tiddikjara li taqbel ma’ tali pronunzjament izzid illi l-istess principju japplika fejn iz-zewg genituri m’humieix kapaci jtkellmu b’mod civili ma’ xulxin li l-kura u kustodja m’ghandhiex tkun kongunta ghaliex immankabilment tkun sors ta’ litigiji ulterjuri b’detriment serju ghall-benessere tal-minuri.”

Considering the above, the Courts decides that in the child’s best interests the care and custody should be granted exclusively to Plaintiff.

Access

The access rights have been subject to dispute between the parties *pendente lite*, so much so that this court issued three decrees, precisely on the 15th March, 2019, 10th December, 2019 and 1st June, 2022.

In virtue of these decrees, access is exercised every Tuesday and Thursday between 6.30 pm till 8.30 pm, on school days on Tuesdays and Thursdays between 9 am and 7 pm, on school holidays as well as every alternate Saturday and Sunday between 9 am and 7 pm.

Despite these decrees, Defendant repeatedly failed to honour his obligations and very often failed to show up for his access, giving little or no notice at all, thereby leaving Plaintiff stranded, when she would have made her own plans. This is not to mention the effect that this skipped access visits had on Adam, who gets upset.

Defendant tries to justify these skipped access visits as being out his control due to his working commitments that preclude him from honouring his access rights. He laments that Plaintiff is not flexible at all with changes he asks for.

Defendant also expects not to be involved in Adam's extra-curricular activities and returns Adam earlier than what is meant to be his access times, so that he burdens Plaintiff with the transportation to these activities. This once again reflect Defendant's egoistic attitude.

Considering the above, the Court confirms the access as has already been decided pendente lite, precisely every Tuesday and Thursday between 6.30 pm till 8.30 pm, on school days on Tuesdays and Thursdays between 9 am and 7 pm, on school holidays as well as every alternate Saturday and Sunday between 9 am and 7 pm. It also solicits Defendant to follow his access even if the day and time coincide with his son's extra-curricular activities.

In addition, both Father's Day and Mother's Day shall be exercised from Saturday at 7 pm till Sunday at 7 pm.

Christmas day shall be spent with Plaintiff and if it falls on a day when Defendant has access, then this is to be substituted with the closest

day or weekend. On New Years Eve the child shall have a sleepover from 8 pm till 5 pm the following day.

Since Defendant is of Indian nationality, there will access also on the following Indian holidays, namely the Festival of Colour Holi between 9 am till 5 pm and The Festival of Diwali from 3 pm till 9 pm.

On the child's birthday, each of the parties is to have at least three hours to spend with the child.

The Court also deems it fit to decide that the child is to travel outside Malta only with the consent of both parties, who are not to withhold such consent unreasonably. Details of the places the minor is to travel, dates, details of lodging and persons travelling with the minor are to be given when the request for consent for travel is made.

The minor child's passport shall be held by Plaintiff and she will not need Defendant's authorisation to renew the said passport.

Maintenance

The maintenance is regulated by a decree issued by the said Court on the 31st October, 2023, whereby it ordered maintenance to be paid in the sum of €300 per month, including expenses for health and education.

In determining maintenance, the Court has to examine the needs of the person requesting maintenance and the means of the person from whom maintenance is being requested.

It has been established that Plaintiff earns around €32,460 per annum. She claims that presently she pays for most all Adam's needs and

expenses that amount to approximately €800 as she claims in her list of expenses.

Defendant's income results to be less than that of Plaintiff, approximately around €20,000 per annum.

Plaintiff too has a house, whereas Defendant had to leave his job in Dubai to be closer to his son. He also does not own a car, making it more difficult for him to move from one place to another. This in contrast to Plaintiff, who has her family's support in Malta, is established in her job, has a stable income and has a roof above her head.

Considering the above, the Court confirms that maintenance remains the sum of €250, inclusive of all health and education expenses.

Community of Acquests

In his counter-claim, the Defendant as reconvened claims that there are substantial amounts of credits due by the Plaintiff, credits which he claims to have paid towards her house expenses as well as holiday expenses.

House Expenses

As to the house expenses he claims to have given Plaintiff these amount to €31,850.²⁸ Defendant insists that unfortunately he had made these payments in cash to Plaintiff and she kept the receipts. Plaintiff,

²⁸ Vide Defendant's note of submissions point. 61

on the other hand rebuts these credits due to the fact that Defendant failed to prove these payments he claims he made towards her house.

Moreover, on being cross-examined, Defendant as reconvened is not consistent in his testimony and states that what he was testifying on was dependant on his memory, but he confirms having paid for the doors and a television, which Plaintiff herself confirms. Defendants' sister also confirms his version that he paid for some furnishings for the house, but she was in no position to confirm what these items or works were, thereby not corroborating much of her brother's evidence.

On examining the details of the cash deposits that Defendant, as reconvened, claims he made, there are various payments that went into Plaintiff's account which tally with the accounts that she herself presented.²⁹

Yet again Defendant's as reconvened version is far from the truth as he keep on being inconsistent, admitting that once he was ordered to pay maintenance in the sum of €400 monthly towards AD, their son, he was not doing so regularly as he preferred to pay cash. So, both parties are in agreement that when he used to come to Malta he used to pay larger sums of cash to Plaintiff as a means to settle his maintenance dues.³⁰

Plaintiff also goes further and gives a clearer picture as to how they operated their finances, considering that Defendant, as reconvened did

²⁹ Vide Defendant's note of submissions point 76 as well those indicated by Plaintiff in her note of submissions a fol. 697 -702

³⁰ Vide Plaintiff's note of submissions a fol.704

not always honour his maintenance commitments on a monthly basis, he would pay her cash and also at times he would take them on holiday.

In addition to all this, Plaintiff is more credible considering that she has produced the various payments she has made towards the house, namely Tornello Arredamenti, Gruppo Inventa, Spot on and MF Electrix through cheque payments. She also admits that there were cash payments and that Defendant paid €1000 in cash for the doors.³¹

Even if Defendant did contribute towards some of the cash payments, it is difficult to conclude what these payments are, since the way the parties operated their finances, is a whole confusion of maintenance dues, cash he gave her to make up for these dues and also payment of holidays.

The only definite credit due by Plaintiff towards Defendant is the €1,000 for the doors, as these are not in contention. However, both parties signed an agreement whereby they declared that both of them did not owe anything to each other, which agreement was signed on the 26th December, 2017.

Moreover, from the evidence produced the Court can also conclude that Plaintiff's father had given her €10,000 by way of donation to use it to furnish the house, which he did on the 7th October, 2015, by means of a bank draft and this has been confirmed. He also confirms having given her €6,000 as a contribution towards the wedding and also

³¹ Vide Plaintiff's note of submissions a fol.696

€1,000 as a wedding gift which was used to cover the wedding expenses.

Holiday Expenses

Defendant, as reconvened is also claiming €30,300 for holiday expenses he paid.

With all due respect to Defendant, firstly he was employed with Emirates in Dubai and therefore this entitled him to get flights at a reduced price, so much so that both parties admit that he had access to an account whereby, as an Emirate employee he could purchase tickets at a discounted price. This goes to justify their extensive holidays, even quite a few long-haul.

Plaintiff pointed out that she had several times warned Defendant that there was no need to go on these lavish holidays, but it was he who always insisted that they visit such nice places and they travelled a great deal during the time that they were attempting a reconciliation. Plaintiff also confirmed that such travelling at times was like a reward, since Defendant was failing to honour his maintenance obligations on a regular basis, so she was happy to take care of the daily needs of her and her child and accept a paid holiday from his end.

This Court cannot perceive how Defendant, as reconvened, decides to claim an expense that went towards the enjoyment of the family. If it had to start including in the liquidation of community of acquests all the leisure expenses that each couple have spent during their marriage, it would become a never-ending task!

Holidays are perks that if a family can afford they do go to spend quality time together. It cannot be claimed as a credit towards one spouse or the other, even more so when in this particular case, the parties were in the process of reconciliation and at least two of those holidays were to celebrate AD 's birthday.

As to Defendant's claim that he had paid for a cruise trip with Plaintiff's parents, this is an unfounded claim, as Plaintiff's father confirms that he had taken the whole extended family on this cruise and he had paid for everyone.

The Court shall therefore find for Plaintiff and upholds all her claims.

DECIDE:

That in light of the above considerations, the said Court decides as follows:-

1. Upholds Plaintiff's first request and declares and pronounces the personal separation between the parties for grave reasons attributable to Defendant who rendered himself guilty of excesses, cruelty and threats against Plaintiff.
2. Upholds Plaintiff's second request and declares her to be the sole owner of the property flat 2, "Eden Rock," Triq Nardu Sacco,

Bubaqra, Zurrieq and that it is no longer considered to be the matrimonial home and consequently Defendant has no right over the same.

3. Upholds Plaintiff's third request and declares that any debts which Defendant has in Dubai or elsewhere, were made without the prior knowledge and consent of Plaintiff and that the same debts are to be paid solely by Defendant.
4. Upholds Plaintiff's fourth request and entrusts the care and custody of the minor child AD S, to Plaintiff and order that the minor resides with the Plaintiff with rights of access towards the father as above decided in the sub-title "Access."
5. Upholds Plaintiff's fifth request and liquidates the maintenance due for the minor AD S as decided in the sub-title "Maintenance" above and orders that Defendant pays the said sum liquidated to Plaintiff in a bank account to be indicated by her.
6. Upholds Plaintiff's sixth request and applies the education and health expenses to be paid by Defendant as decided above in the sub-title "Maintenance."
7. Upholds Plaintiff's seventh request and orders that all benefits related to the minor child payable by the State be paid solely to the applicant and to authorise her to apply for all such benefits, without the need of her husband's consent.
8. Upholds Plaintiff's eight request and authorises Plaintiff to apply for a passport for the minor on her own and without the need for the signature of Defendant and to authorise her to withdraw the same on her own.

Counter-Claim

1. Partially upholds Defendant's first counterclaim in that it pronounces and declares the personal separation between the parties, but for grave reasons attributed to Defendant who made himself guilty of excesses, cruelty and threats towards the reconvened Plaintiff.
2. Upholds Defendant's second counterclaim and authorises the Defendant to live separately from his wife the reconvened Plaintiff.
3. Rejects Defendant's third counterclaim since care and custody have been granted exclusively to reconvened Plaintiff.
4. Rejects Defendant's fourth counterclaim.
5. Rejects Defendant's fifth counterclaim as no evidence was produced in this regard.
6. Partially upholds Defendant's sixth counterclaim, in that after having liquidated and assigned the community of acquests as decided above in the sub-title "Community of Acquests," reconvened Plaintiff is obliged to pay Defendant the sum of €1,000 for the doors he paid as well as the Television he paid for is to be returned to him by Plaintiff.
7. Upholds Defendant's seventh counterclaim and authorises him to register this Court judgement in the Public Registry for all intents and purposes at law.

All costs are to be borne by Defendant.

Hon. Mr. Justice Dr. Anthony J. Vella

**Cettina Gauci
Registrar**