

**CIVIL COURT  
(FAMILY SECTION)**

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

**Hearing of the 25th November 2024**

**App. No. : 24/2023JPG**

**Number: 16**

**AGC previously known as AW EGC and KC**

**Vs**

**Director of Public Registry and by virtue of a  
decree dated 20<sup>th</sup> September 2023 Dr  
Christopher Chircop and PL Marie Claire  
Bartolo were appointed as Deputy Curators  
to represent MW absent from  
these Islands**

**The Court,**

Having seen the application filed by AGC, EGC and KC dated 7<sup>th</sup> February 2023, at page 1 et seqq., and English Translation at page 13, wherein it held:

- 1) That plaintiff AGC previously known as AW was born on X in Malta from the relationship between plaintiffs EGC and KC (copy of birth certificate hereby attached and marked Dok A;*
- 2) That, in fact, on the date of his birth, the details of AGC's father as indicated in the certificate form issues from Hospital refer to plaintiff KC (copy hereby attached and marked Dok B;*

- 3) *That, however on the date of birth of plaintiff AGC, plaintiff EGC was still legally married to defendant MW, ever though she was at that time already de facto separated from him, without any physical contact with him, and in fact, the said marriage was already the subject of a decree nisi.*
- 4) *That, nevertheless, in the act of birth of plaintiff AGC bearing progressive number one thousand seven hundred and four (1704) of the year X, in the column detailing the father's details there are indicated the details of the defendant MW.*
- 5) *That, on the contrary, plaintiff AGC is not the natural child of defendant MW but of plaintiff KC is also further proven by genetic tests copy of which is hereby being attached and marked Dok. C.*
- 6) *That plaintiffs EGC and KC got married on the 14<sup>th</sup> day of May of the year two thousand and five (2005), as results clearly from the marriage certificate (hereby attached and marked Dok.D.) and continue to live together as one family together with their children including plaintiff AGC.*
- 7) *That defendant MW is aware that he is not the natural father of plaintiff AGC and, in fact, was never involved in his upbringing or in any other way in plaintiff's life, to the extent that today plaintiffs are not even aware as to whether he is still alive and, if yes where he currently resides.*
- 8) *That, in fact, through a Change of Name Deed dated tenth (10) of January of the year two thousand and five (2005) and subscribed by plaintiffs EGC and KC in the name and on behalf of their son, at the time still a minor, plaintiff AGC, the same plaintiff declared that he was renouncing the use of the surname W to assume the surname of his natural parents GC (copy hereby attached and marked Dok E).*
- 9) *That plaintiff AGC has always been known by this name and in fact, all official documents pertaining to himself refer to him by the name of AGC in line with his natural parentage.*
- 10) *That plaintiffs now wish to obtain a declaration that plaintiff AGC is, for all intents and purposes at law, the natural child of plaintiffs EGC and KC and this in view of the fact that the continued reference to the person of the defendant*

*MW in the act of birth of plaintiff AGC, apart from being completely untrue, is causing problems for the recognition of plaintiff as a Maltese citizen.*

**11)** *That, it is therefore necessary in terms of art.77 et seq. tal-**Kodici Civili**, for this Honourable Court to declare that plaintiff AGC is the natural child of the other plaintiffs EGC and KC and not of the defendant MW and to order all the necessary corrections in the act of birth of plaintiff AGC and this so that in the row concerning the father's details, the details of defendant MW are substituted by the details of plaintiff KC.*

*Therefore Plaintiff humbly requests that this Honorable Court subject to those declarations which are necessary and or requested:*

- 1) Declares that Plaintiff KC is the natural and biological father of Plaintiff AGC gja' AW.*
- 2) Orders, in view of the above, any and all corrections and/or annotations in the act of birth of Plaintiff AGC bearing progressive number one thousand seven hundred and four (1704) of the year X so that even in such act Plaintiff KC is recognized as the natural father of the same AGC and therefore including also that the personal details of Defendant MW as indicated in the same act of birth of Plaintiff AGC in the part or column or row concerning the father's details are substituted by those of Plaintiff KC.*
- 3) Consequently authorises Plaintiff AGC to assume, for all intents and purposes at Law, the surname by which he is currently known GC instead of W.*
- 4) Consequently orders that the Director of Public Registry to effect same corrections and annotations*

*With expenses to be suffered by the Defendants or which of them and with reference to their Oath.*

Having seen that the application and documents, the decree and notice of hearing have been duly notified according to law;

Having seen the sworn reply of Dr Christopher Chircop and PL Marie Claire Bartolo as Deputy Curators to represent MW dated 24 October 2024 (Vide Fol 153 et seq) wherein they held:

- 1. That with regards to the merits of the case the applicants declare that they do not know the facts of the case and therefore they reserve the right to submit other pleas at a later stage if they become aware of any facts in relation to this case.*
- 2. That it is the Plaintiff that should prove their case and therefore it is up to the Plaintiff to submit the necessary evidence to convince this Honourable Court that the allegations made against MW are true.*

*With the right to submit other pleas.*

*With costs against the Plaintiff, who is summoned so that a reference to their summon be made.*

Having seen the sworn reply filed by the Director of Public Registry dated 23 October 2024 (Vide Fol 146 et seq) wherein it was held:

- 1. That in the first place it is stated that there is a mistake in the identity card (or rather the residence permit) of the Plaintiff "AGC" appears to be ID and not IDX. Thus, the appropriate correction should be requested;*
- 2. That on the merits of the case, the exponent is not aware of the facts;*
- 3. That from what results ictu oculi from the Act of Birth with progressive number 1704/X, "AW" was born in Malta on X to "MW" and "EW" wife of the said MW', in wedlock. This according to what the mother declared on the Act of Birth and thus it certainly cannot be said that a mistake was made by the Director of the Public Registry when the Act of Birth was registered;*
- 4. That notwithstanding, the Plaintiffs are insisting that the natural father is "KC" and not "MW". In order to substantiate their claim, the Plaintiffs are to present genetic tests which illustrate this and furthermore by means of a deed poll, it appears that the child already had his surname changed to "GC" instead of "W".*

5. *That without prejudice to the preliminary pleas, the exponent submits to the decision of this Honourable Court save the following:*

6. *That in order to uphold the first demand, this Honourable Court should be satisfied that the Plaintiff is truly the biological and natural son of KC and not of MW and this even with the use of genetic tests through experts appointed by this Honourable Court. That furthermore, if the genetic tests already presented will constitute some form of proof, they should be sworn by the expert who carried them out;*

7. *That with regards to the second demand, provided that this Honourable Court feels that it should uphold the first plea, a note with the details of the alleged father should be presented at the time of birth of the Plaintiff. Particularly the details to be specified are his forename and surname, the number of his identity document, his age when the Plaintiff was born, his place of birth, his place of residence when the Plaintiff was born, and his father's name and surname (paternal grandfather of the Plaintiff) and whether he was alive or was dead when the Plaintiff was born. Such information is necessary to eventually be included in the Act of birth of the minor in case the Plaintiff requests are upheld;*

8. *That if the Court upholds the first two demands, since the act of birth of the Plaintiff in the column titled name and surname of the mother there are the words "wife of the said MW", the words "the said" should be removed since MW no longer appears as the father;*

9. *That together with the premised, there should be agreement on the surname which the Plaintiff is going to assume. In case, this will reflect the change that occurred in the ed poll, or rather change to "GC" a specific order should be made by this Honourable Court to make a general annotation to this effect on the Act of birth bearing number 1704/X since at present, the surname of the child on the same Act of birth is indicated as "W";*

10. *That finally, the applicant should not incur any costs of these procedures since it is clear that in the present case no default of the respondent results;*

*11. Saving further pleas;*

*With costs against the Plaintiff who is being summoned so that a reference to his evidence be made.*

Having examined the evidence on oath;

Having seen the exhibited documents and all the case acts;

Having seen the note in the record of the proceedings dated 14 October 2024 wherein Counsel to parties declared that they have no final submissions to make and that they rely on the evidence adduced. (vide page 135).

**Considers:**

From the evidence adduced it appears that, Plaintiff AGC (vide evidence at pg 97) was born on X to EGC and KC. However, his mother was still legally married to MW so that automatically, the latter was indicated as his father on AGC's birth certificate. Indeed, on the hospital certificate, the details of KC, his actual father, were duly inserted as may be seen from Dok B.

Plaintiff added that his mother and W had in fact been de facto separated for some time before his parents initiated their relationship. Moreover the genetic tests carried out by Dr Cassar (vide Dok C.) prove without a shadow of doubt, that KC was his natural father. Indeed, Plaintiff declares that he has always lived with both parents and that W was never involved in his upbringing.

Plaintiff confirmed that his natural parents got married on the 14<sup>th</sup> May 2005 (vide DOK D.) Plaintiff declared that his parents had signed a change of name deed so that even before his parents' marriage, he assumed the surname GC. Indeed, Plaintiff filed and exhibited a number of official documentation which indicate his use of the surname GC over a significant period of time (vide DOK AJ1.)

Plaintiff KC at pg 119 et seqq. confirmed on oath that through a relationship with EGC, the parties had a child AGC, born on X. He stated that at the time, EGC was still legally married to MW so that he (KC) could not be recognized as the paternal father on his son's birth certificate. He confirmed that EGC had been separated de facto as from the year 2000.

KC stated that he married EGC on the 14<sup>th</sup> of May 2005. He added that the Plaintiffs undertook a genetic test which proves that AGC is their child.

KC indicated the particulars that are required to be inserted in his son's birth certificate (vide pg 119).

EGC at page 120 confirmed the testimony given by her son AGC and her husband KC and added that on the 31<sup>st</sup> of August 2000 EGC and MW were granted a divorce decree nisi - vide Dok at page 121.

Dr Marisa Camilleri at page 128 confirmed the genetic tests carried out on the three Plaintiffs and confirmed that KC is indeed AGC's father with a ninety nine point nine nine nine nine recurring (99.9999 %) percentage of probability of paternity (vide Dok CF1 at page 130 and page 131).

The Deputy Curators informed the Court that they were unable to communicate with Defendant W and therefore had no evidence to adduce.

**Considers:**

According to Law, it is confirmed in Article 77A of the Laws of Malta:

*Without prejudice to the provisions of article 81, any person claiming to be the natural parent of a child born in wedlock, or that person's heirs if the person was deceased before the child is born, may proceed by sworn application before the competent court against the spouses and child, or their respective heirs if anyone of them is deceased, in order to be declared as the*

*natural parent of the child, and only if that person produces evidence that during the time from the three-hundredth day to the one-hundred-and-eightieth day before the birth of the child, the spouse who gave birth had committed adultery with that person and furthermore produces evidence of any other fact which may also be genetic and scientific tests and data that tends to exclude one of the spouses as the natural parent of the child.*

**The Court makes a reference to Article 80 of the Civil Code according to which:**

*(1) Such possession shall be established by a series of facts which, collectively, go to show the connection of filiation and relationship between an individual and the family to which he claims to belong.*

*(2) Such facts are chiefly the following:*

*(a) in the case of spouses who have contracted marriage before the coming into force of the Marriage Act and other Laws (Amendment) Act, 2017\* that the individual has always borne the surname of the father of whom he claims to be the child;*

*(b) in the case of children born to spouses who have contracted marriage after the coming into force of the Marriage Act and other Laws (Amendment) Act, 2017, that the individual has always borne the Family Name of the spouses of whom he claims to be the child;*

*(c) that the parents have treated the child as their own, and have, as such, provided for the child's maintenance, education, and establishment in life;*

*(d) that he has been constantly acknowledged as such in society;*



*(e) that he has been acknowledged as such by the family.*

In regards to Article 81 hereabove cited, in the judgment in the names *Pierre Travers Tauss vs Direttur tar-Registru Pubbliku et noe*, decided by the First Hall of the Civil Court on the 10th May 1996, it was stated that:

*The more time passes, the more the opinion that social biological realities need to prevail upon the legal presumption that pater est quem iustaw nuptiae demonstrant, is deepening its roots. In the case of Kroon vs the Netherlands, the European Court took into consideration that the notion of family was not restricted only to relations based on marriage but it also applies to other de facto family ties where the parties are living together not in the union of marriage. It is the duty of the State to act in a manner that this relation continues to develop in the interest of the same minors. Therefore article 81 of the Civil Code should not create an obstacle towards the upholding of the pleas of the Plaintiff.*

**Considers:**

**An in depth examination of the evidence produced in this case illustrates without a shadow of doubt, that Plaintiff AGC is in fact the son of Plaintiff KC and Plaintiff EGC. This has been proven satisfactorily according to Law as a result of the genetic testing carried out by Dr Marisa Cassar on all three Plaintiffs. Dr. Cassar confirmed on oath the results of the genetic testing conducted by her which illustrate a ninety nine point nine nine nine nine recurring (99.9999) percentage probability that KC is indeed the natural father of Plaintiff AGC.**

**Genetic testing, in these type of cases, is the ultimate proof of paternity:**

**“Il-Qort rat ukoll illi l-partijiet isottoponew ruhhom ghall-ezamijiet genetici sabiex tigi accertata l-paternita’ tat-tifel b’mod**

**xjentifiku. Il-Qorti taghraf illi f'kazijiet bhal dawn, l-ezamijiet geneticu cioe l-ezami xjentifiku tad-DNA, huwa l-prova regina f'kawzi ta' paternita'. Kif intqal minn din il-Qorti diversament presjeduta:**

**“...f'kawzi bhal dawn, il-provi xjentifiċi u ġenetiċi huma l-prova regina u ghalhekk il-Qorti tista' tiddependi fuqhom minghajr analiżi ta' provi ohra u cioe jekk l-attriċi possibilment kellhiex relazzjonijiet sesswali ma' rġiel ohra, oltre l-konvenut...fiż-żmien tal-konċepiment tal-minuri...”<sup>1</sup>**

**This Court also notes that the hospital certificate issued at the time of AGC's birth plainly indicated KC as AGC's father (vide Dok B).**

**Apart from this, Plaintiffs have also satisfactorily proven that as from the 31<sup>st</sup> of August 2000, Plaintiff EGC and Defendant W had already been granted a divorce as may be seen from the decree nisi at page 121 of the proceedings. Furthermore, Plaintiff EGC and KC were married on the 14<sup>th</sup> May 2005 and both testified that their son AGC lived with them as from birth and has never in any way been brought up by Defendant W.**

**For these reasons, the Court limitedly upholds Plaintiff's requests and declares and decides:**

- 1) That Plaintiff KC is the natural and biological father of Plaintiff AGC gja' AW;**
- 2) Orders, in view of the above, that all corrections and/or annotations in the act of birth of Plaintiff AGC bearing progressive number one thousand seven hundred and four (1704) of the year X, be made so that in such act, Plaintiff KC is indicated as the natural father of the same AGC, thereby**

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<sup>1</sup> A B vs C D et, Qorti Civili (Sezzjoni tal-Familja) (Rik. Gru. Nru. 79/16) 25 April 2018

**deleting all personal details of Defendant MW as indicated in the same act of birth of Plaintiff AGC in the part or column or row concerning the father's details which details shall be substituted by those of Plaintiff KC: ID Y, born in Pieta', Z years of age when AGC was born, Plaintiff KC being the son of JC who was alive when AGC was born. The Court further orders that the words "wife of the said MW and the words "the said" shall also be deleted from the said birth certificate ;**

- 3) Consequently authorises Plaintiff AGC to assume, for all intents and purposes at Law, the surname by which he is currently known, that is, GC instead of W;**
- 4) Consequently orders that the Director of Public Registry to effect the said corrections and annotations.**

**Plaintiffs shall bear their own costs, together with the costs of the Director of Public Registry; The Defendant shall bear his own cost which shall however be provisionally paid by the Plaintiffs.**

**Read.**

**Mdm. Justice Jacqueline Padovani Grima LL.D. LL.M. (IMLI)**

**Lorraine Dalli  
Deputy Registrar**